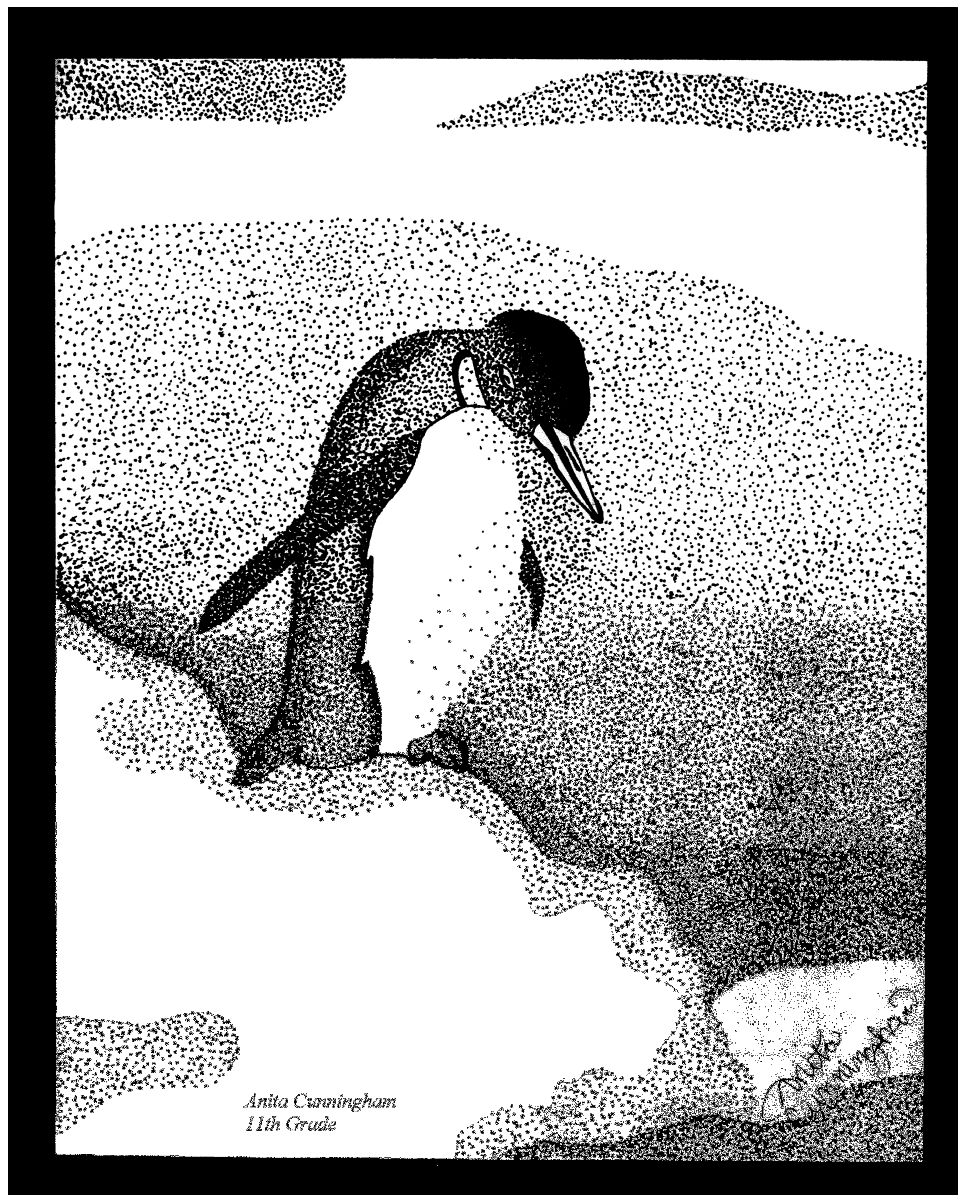

TEXAS REGISTER

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November 16, 2007

Pages 8223 - 8376



*Anita Cunningham
11th Grade*

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

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THE GOVERNOR

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

Appointments

Appointments for October 30, 2007

Appointed to the Texas Southern University Board of Regents for a term to expire February 1, 2009, Tracye McDaniel of Houston (unfilled position).

Appointed to the Texas Southern University Board of Regents for a term to expire February 1, 2009, Curtistene McCowan of DeSoto (unfilled position).

Appointed to the Texas Southern University Board of Regents for a term to expire February 1, 2011, Samuel Bryant of Austin (unfilled position).

Appointments for October 31, 2007

Appointed to the State Community Development Review Committee for a term to expire February 1, 2009, John Firth of Copperas Cove (replacing Eddie Janek of Galveston whose term expired).

Appointed to the San Jacinto Historical Advisory Board for a term to expire September 1, 2013, George W. Strake, III of Houston (replacing Jeffrey Dunn of Dallas whose term expired).

Appointed to the Texas Commission on Law Enforcement Officer Standards and Education for a term to expire August 30, 2013, Sheriff Joel Richardson of Canyon (replacing Sheriff Dan Smith of Belton whose term expired).

Appointed to the Texas Commission on Law Enforcement Officer Standards and Education for a term to expire August 30, 2013, Stephen M. Griffith of Sugar Land (replacing Steven Byrd of Dallas whose term expired).

Appointed to the Texas Commission on Law Enforcement Officer Standards and Education for a term to expire August 30, 2013, Ada Brown of Dallas (replacing Joe Stivers of Huntsville whose term expired).

Appointed to the Texas Commission on Law Enforcement Officer Standards and Education for a term to expire August 30, 2011, Patricia Hollingsworth of Arlington (replacing Cathy Ellison of Austin whose term expired).

Appointed to the Texas Commission on Law Enforcement Officer Standards and Education for a term to expire August 30, 2011, Constable Charles Hall of Midland. Constable Hall will serve as Presiding Officer of the board.

Appointed to the Select Interim Committee to Study the Practice of Breeding White-Tailed and Mule Deer, pursuant to SB 573, 80th Legislature, Regular Session, for a term to expire at the pleasure of the Governor, William H. Eikenhorst of Brenham.

Appointed to the Select Interim Committee to Study the Practice of Breeding White-Tailed and Mule Deer, pursuant to SB 573, 80th Legislature, Regular Session, for a term to expire at the pleasure of the Governor, Scott W. Bugai of Seguin.

Appointed to the Select Interim Committee to Study the Practice of Breeding White-Tailed and Mule Deer, pursuant to SB 573, 80th Legislature, Regular Session, for a term to expire at the pleasure of the Governor, Joseph Warren Bluntzer of Lometa.

Rick Perry, Governor

TRD-200705270



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 Opinion

RQ-0642-GA

Requestor:

The Honorable Jon C. Fultz

Grimes County Attorney

Grimes County Law Enforcement Center

382 FM 149 West

Anderson, Texas 77830

Requestor:

Mr. Sidney "Buck" LaQuey

Grimes County Auditor

Post Office Box 510

Anderson, Texas 77830

Re: Whether a commissioners court is required to notify in advance of a budget hearing on a proposed salary reduction (RQ-0642-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-200705407

Stacey Napier

Deputy Attorney General

Office of the Attorney General

Filed: November 7, 2007



Opinion

Opinion No. GA-0578

The Honorable Rick Perry

Governor of Texas

Post Office Box 12428

Austin, Texas 78711

Re: Whether a vacancy exists in the newly-created 444th and 445th Judicial Districts, and if so, whether those positions are required to be funded (RQ-0629-GA)

SUMMARY

The courts for the 444th and 445th Judicial Districts were created on September 1, 2007, and a vacancy currently exists in each court such that the Governor is required to make an appointment to each court. By virtue of article V, section 7 of the Texas Constitution, persons appointed as judges of the 444th and 445th Judicial Districts are entitled to an annual state salary. The degree to which the judges are at this time entitled to supplemental salary payments, office space, staffing, and other perquisites of office depends upon a showing of essentiality, which requires factual determinations not amenable to the opinion process.

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

TRD-200705408

Stacey Napier

Deputy Attorney General

Office of the Attorney General

Filed: November 7, 2007

EMERGENCY RULES

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

TITLE 13. CULTURAL RESOURCES

PART 3. TEXAS COMMISSION ON THE ARTS

CHAPTER 31. AGENCY PROCEDURES

13 TAC §31.4

The Texas Commission on the Arts adopts on an emergency basis an amendment to §31.4, concerning Committees. Elsewhere in this issue of the *Texas Register*, the Texas Commission on the Arts contemporaneously proposes an amendment to §31.4 for permanent adoption.

The purpose of the amendment is to modify committee structure to reflect the current goals and strategies of the commission.

The amendment is adopted on an emergency basis to reflect agency restructuring and its goals and strategies.

The amendment is adopted on an emergency basis under the Government Code, §444.009, which provides the Texas Commission on the Arts with the authority to make rules and regulations for its government and that of its officers and committees.

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

§31.4. Committees.

(a) All committee chairmen, with the exception of the chairmen [chairman] of the Grants and Services Committee and the Finance Committee, [Assistance Review Committee,] and committee members shall be appointed by the commission chair [chairman at the first regular meeting of the commission after the chairman is elected].

(b) The term of all committee memberships shall be until the next commission meeting following the termination of the term of the chair [chairman] who appointed them, or such earlier date as the chair [chairman] may designate, or until their replacement has been named.

(c) All vacancies on any committee shall be filled by the chair [chairman].

(d) The chair [chairman] shall be an ex officio member of each committee.

(e) A quorum at each committee meeting shall consist of one-half of its members.

(f) Summary minutes will be kept of all standing committee meetings, copies of which shall be distributed to all commission members within 30 days after the meeting.

(g) The standing committees shall be the following.

(1) the Executive Committee is made up of the chair, vice chair, secretary, treasurer, parliamentarian, and two members at large appointed at the pleasure of the chair. The committee may recommend

to the commission policies and guidelines and may work with the executive director in developing and implementing such policies .

(2) the Finance Committee shall consist of at least three members, and be chaired by the treasurer. The committee may recommend to the commission financial policies and guidelines and may work with the executive director in developing and implementing such policies and shall conduct an annual review and evaluation of commission activity and develop and control internal operating budgets.

{(1) The Executive Committee shall consist of the officers of the commission and no more than two members of the commission appointed at the pleasure of the chairman.}

{(2) The Administrative Committee shall consist of at least three members; one to be the treasurer. The committee may recommend to the commission policies and guidelines and may work with the executive director in developing and implementing such policies and shall conduct an annual review and evaluation of commission activity and develop and control internal operating budgets.}

(3) the Grants and Services Committee [The Assistance Review Committee] shall consist of at least three members and shall review, with assistance from the staff and advisory panels, applications [for assistance] submitted to the commission and then make recommendations to the commission. The vice chair [chairman] of the commission shall serve as the chairman of this committee. The committee shall recommend to the commission grant submission criteria. Funding is approved contingent upon the submission of appropriate documentation and final approval by the Executive Director or his designee(s). Funding will occur on or after September 1 of every year.

{(4) The Enterprise and Development Committee shall consist of at least three members and shall be responsible for coordinating activities of the commission and the business community. Additional noncommissioner members may be appointed. Reports and recommendations will be presented to the commission.}

{(5) The Liaison to the Governor's Office Committee shall consist of at least three members and shall be responsible for maintaining direct communication with the governor's office on matters concerning the commission. Reports and recommendations will be presented to the commission.}

(4) {(6) the [The] Legislative Committee is a committee of the whole of the commission with a designated chair. This committee shall be responsible for the development and initial approval of legislative approaches and strategies of the commission [shall consist of at least three members and shall be responsible for the development and initial approval of legislative approaches and strategies of the commission.] Reports and recommendations will be presented to the commission.

{(7) The Multicultural and International Committee shall consist of at least three members and shall be responsible for coordinating activities of the commission and minority arts organizations.}

~~Additional noncommissioner members may be appointed. Reports and recommendations will be presented to the commission.~~

~~{(8) The Education Committee shall consist of at least three members and shall be responsible for development and initial approval of all matters dealing with the commission's arts education initiatives. Reports and recommendations will be presented to the commission.}~~

(5) ~~{(9)}~~ The Officer Nominating Committee shall consist of three members, the committee chairman to be appointed by the commission chair ~~[chairman]~~ and the other two members to be selected at large by the commission. The committee shall select a slate of nominees to serve as officers of the commission and shall recommend this slate of nominees to the commission at its quarterly meeting in June.

(h) Special committees may be appointed from time to time by the chair ~~[chairman]~~ who shall designate the duties and term of such committees.

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

Filed with the Office of the Secretary of State on October 30, 2007.

TRD-200705247

Gary Gibbs

Executive Director

Texas Commission on the Arts

Effective Date: October 30, 2007

Expiration Date: February 26, 2008

For further information, please call: (512) 935-6564



CHAPTER 35. A GUIDE TO OPERATIONS, PROGRAMS AND SERVICES

The Texas Commission on the Arts (commission) adopts on an emergency basis the repeal and replacement of §35.1 and §35.2, concerning a guide to operations, programs, and services. Elsewhere in this issue of the *Texas Register*, the Texas Commission on the Arts contemporaneously proposes the repeal and replacement of §35.1 and §35.2 for permanent adoption.

The purpose of the repeal and replacement is to be consistent with changes to programs and services of the commission as outlined in the Texas Arts Plan as amended October 2007.

These sections are adopted on an emergency basis to enable the Texas Commission on the Arts to get the word out to the arts field about our programs in a timely manner in anticipation of our upcoming annual grants deadline.

13 TAC §35.1, §35.2

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

The repeals are adopted on an emergency basis under the Government Code, §444.009, which provides the Texas Commission

on the Arts with the authority to make rules and regulations for its government and that of its officers and committees.

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

§35.1. *A Guide to Operations.*

§35.2. *A Guide to Programs and Services.*

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

Filed with the Office of the Secretary of State on October 30, 2007.

TRD-200705243

Gary Gibbs

Executive Director

Texas Commission on the Arts

Effective Date: October 30, 2007

Expiration Date: February 26, 2008

For further information, please call: (512) 936-6564



13 TAC §35.1, §35.2

The new sections are adopted on an emergency basis under the Government Code, §444.009, which provides the Texas Commission on the Arts with the authority to make rules and regulations for its government and that of its officers and committees.

No other statutes, articles, or codes are affected by the emergency new sections.

§35.1. *A Guide to Operations.*

The commission adopts by reference *A Guide to Operations* (revised October 2007). This document is published by and available from the Texas Commission on the Arts, P.O. Box 13406, Austin, Texas 78711. This document is also available online at www.arts.state.tx.us.

§35.2. *A Guide to Programs and Services.*

The commission adopts by reference *A Guide to Programs and Services* (revised October 2007). This document is published by and available from the Texas Commission on the Arts, P.O. Box 13406, Austin, Texas 78711. This document is also available online at www.arts.state.tx.us.

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

Filed with the Office of the Secretary of State on October 30, 2007.

TRD-200705244

Gary Gibbs

Executive Director

Texas Commission on the Arts

Effective Date: October 30, 2007

Expiration Date: February 26, 2008

For further information, please call: (512) 936-6564



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 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 17. MARKETING AND PROMOTION

SUBCHAPTER C. GO TEXAN AND DESIGN MARK

4 TAC §§17.51 - 17.58, 17.60

The Texas Department of Agriculture (the department) proposes amendments to Title 4, Chapter 17, Subchapter C, §§17.51 - 17.58, concerning the departments GO TEXAN promotional marketing program, and new §17.60, concerning the addition of the GO TEXAN Restaurant Program. The amendments to §§17.51 - 17.58 are proposed to delete all references to programs that no longer exist as part of the GO TEXAN program, such as TAP, Taste of Texas, Vintage Texas, Texas Grown and Naturally Texas, and to insert references to the GO TEXAN Restaurant Program into §17.51, Definitions, §17.52, Application for Registration to Use the GO TEXAN and Design Mark, §17.55, Registration of Those Entitled to Use the GO TEXAN and Design Mark, and §17.56, Termination of Registration to Use the GO TEXAN and Design Mark.

Gene Richards, Assistant Commissioner for Marketing and Promotion, has determined that for the first five years the proposed amendments and new section are in effect, there will be an increase in state revenue due to the fees required to be paid to become a member of the GO TEXAN Restaurant Program. At this time, it is not possible to determine the amount of fees that will be collected. The revenue will be based on a \$25 annual membership fee and the number of applicants to the program. There will be no fiscal implications for local government.

Mr. Richards has also determined that for the first five-year period the proposed amendments and new section are in effect, the public benefit anticipated as a result of administering and enforcing the amended and new sections will be the establishment of a GO TEXAN Restaurant Program, which will allow restaurants in Texas to become GO TEXAN members and provide consumers a way to identify restaurants in Texas that are using Texas agricultural products as part of their menus. There will be a fiscal impact on microbusinesses, and small businesses wishing to become a member of the GO TEXAN Restaurant Program in the form of a \$25 annual membership fee.

Comments on the proposal may be submitted to Gene Richards, Assistant Commissioner for Marketing and Promotion, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas

78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendments to §§17.51 - 17.58 and new §17.60 are proposed under Texas Agriculture Code, §12.0175 which provides that the department by rule may establish programs to promote and market agricultural products and other products grown, processed, or produced in the state and may adopt rules necessary to administer such a program and that the department may charge a membership fee, as provided by department rule, for each participant in a program established under §12.075 of the Texas Agriculture Code.

The code affected by this proposal is the Texas Agriculture Code, Chapters 12 and 46.

§17.51. Definitions.

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

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

(6) GO TEXAN and Design mark--~~The GO TEXAN and Design mark is a~~ [following mark being a] certification mark that is registered [pending final registration approval] with the United States Patent and Trademark Office and [also with] the Texas Secretary of State's office by the department. [GO TEXAN and Design is a certification mark of the Texas Department of Agriculture].
Figure: 4 TAC §17.51(6) (No change.)

(7) GO TEXAN Restaurant Program--

(A) Permitted restaurant establishments that:

(i) provide restaurant service;

(ii) are located in Texas;

(iii) are permitted in accordance with all state and local laws and regulations; and

(iv) are using and/or serving Texas agriculture products.

(B) Persons who apply are granted use of the mark for the promotion and assistance of the GO TEXAN program.

(8) [~~(7)~~] Horticulture products--Nursery, floral and greenhouse plants or plant products produced in Texas from seeds, rootings, cuttings, tissue cultures, seedlings or other propagation materials. Non-Texas plants being produced for such a period during which they are transplanted or increased in plant size and volume of container. Texas and non-Texas produced plant-based horticulture products processed in Texas.

(9) [~~(8)~~] Livestock feed, feed supplements and pet food--Agricultural products produced or processed in Texas for animal consumption.

(10) ~~(9)~~ Natural fibers--Fibers which have been produced from Texas crops or shorn from Texas livestock, and which are used in textiles, apparel, and other goods. The term "natural fibers" also includes leather made from the hides of animals and reptiles.

(11) ~~(10)~~ Natural woods--Forestry products produced from Texas hardwood and softwood timber and may include, but not be limited to, furniture, home furnishings, building construction materials, pulp and paper.

~~(11) Naturally Texas mark--A mark bearing the icons (or symbols) representative of leather, wool, mohair, and cotton and bearing the words "Naturally TEXAS," such mark being a certification mark registered with the United States Patent and Trademark Office, and also being registered with the Secretary of State's office by the department.~~

~~{Figure: 4 TAC §17.51(11)}~~

(12) Other Products--

(A) Any product produced in Texas which is not a Texas agricultural product, as defined in paragraph (19) ~~(21)~~ of this section, but is:

(i) produced, manufactured, constructed or created within the state; or

(ii) is processed within the state such that it has been altered by a mechanical or physical value-added procedure in Texas to change or add to its physical characteristics; and

(iii) such product enhances the GO TEXAN program;

(B) - (C) (No change.)

(13) (No change.)

(14) Processed food product--Non-Texas agricultural food product which has undergone a value-added procedure in Texas to change or add to its physical characteristics, including, but not limited to, cooking, baking, heating, drying, mixing, grinding, churning, separating, extracting, cutting, fermenting, distilling, eviscerating, preserving, or ~~[packaging,]~~ dehydrating ~~[- washing, eulling or freezing]~~. For purposes of this subchapter, the department shall have the sole discretion to determine whether a product qualifies as being a processed food product. One hundred percent fresh beef and processed 100% beef products must comply with the requirements of 17.58 of this title (relating to GO TEXAN Beef Program).

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

~~(19) TAP mark--The term "Texas Agricultural Product" or the following mark embracing the same, such mark being registered with the Secretary of State's office by the department.~~

~~{Figure: 4 TAC §17.51(19)}~~

~~(20) Taste of Texas mark--A flag-shaped mark bearing the words "Taste of Texas," so colored as to model closely the flag of the State of Texas, such mark being registered with the Secretary of State's office by the department.~~

~~{Figure: 4 TAC §17.51(20)}~~

(19) ~~(21)~~ Texas agricultural product--An agricultural, apicultural horticultural, silvicultural, viticultural, or vegetable product, either in its natural or processed state, that has been produced, processed, or otherwise had value added to the product in this state, including:

(A) equine species;

(B) feed for use by livestock or poultry;

(C) fish or other aquatic species;

(D) livestock, a livestock product, or a livestock by-product;

(E) planting seed;

(F) poultry, a poultry product, or a poultry by-product; or

(G) wildlife processed for food or by-products.

~~(22) Texas Grown mark--A vertical and rectangular mark which features a native Texas mountain laurel branch in bloom over an outline of the state of Texas with the word "Texas" at the top and the word "Grown" at the bottom of the rectangle, such mark being registered with the Secretary of State's office by the department.~~

~~{Figure: 4 TAC §17.51(22)}~~

§17.52. Application for Registration to Use the [TAP, Taste of Texas, Vintage Texas, Texas Grown, Naturally Texas, or] GO TEXAN and Design Mark.

(a) No person shall use, employ, adopt, or utilize the [TAP, Taste of Texas, Vintage Texas, Texas Grown, Naturally Texas, or] GO TEXAN and Design mark, unless prior application for registration or licensing has been made to the department and permission to make such use, employment, adoption, or utilization has been granted.

(b) Unless permission is otherwise granted by the department, the GO TEXAN and Design mark may only be used by registrants and licensees to certify and promote the following Texas agricultural products:

(1) agricultural products produced in Texas;

(2) agricultural food products processed in Texas, regardless of origin, and unprocessed agricultural food products grown in Texas. A food service company, excluding restaurants ~~[including a restaurant]~~, is not eligible for membership unless it processes a packaged product for resale, in which case, the mark may only be used to promote the specific program-eligible products. Food service companies ~~[or restaurants]~~ may not use the mark in any general fashion to promote the business or its services;

(3) wine which is:

(A) at least 75% by volume, derived from grapes grown and fermented in the State of Texas; and

(B) fully produced and finished within the State of Texas;

(4) Texas-grown nursery, floral, and forestry products;

(5) leather, textile, or apparel products approved by the commissioner as being:

(A) composed of 50% or greater natural fibers derived from crops or livestock grown or raised within the State of Texas, the identity of the fibers having been preserved throughout processing so as to be verifiable by satisfactory documentation as having originated in Texas; or

(B) composed of 50% or greater natural fibers, regardless of where grown or raised, which have been processed into leather, textile, or apparel products within the State of Texas in a manner which substantially changes their form, and, if composed of natural fibers derived from crops or livestock grown or raised outside the State of Texas, the natural fibers must be of a type commercially produced within the State of Texas;

(6) horticulture product(s);

(7) lamb or goat meat(s). In order to be certified as "GO TEXAN" lamb or goat meat(s), lamb or goat meat(s) must be from a lamb or goat that has been fed in Texas for at least 30 days and:

(A) be from a lamb or goat that has been slaughtered in Texas; or

(B) be from a lamb or goat slaughtered and fabricated in Texas;

(C) for purposes of this paragraph, "fabricated" shall be defined as the process of taking a carcass and cutting the carcass into wholesale or retail cuts of meat;

(8) livestock or poultry feed(s), feed supplement(s) and pet food(s);

(9) fish, shellfish, or other aquatic species in their raw form or processed form;

(10) natural fiber(s);

(11) natural wood(s);

(12) processed food product(s);

(13) processed natural fiber and natural wood product(s);

(14) wildlife processed for food or by-products;

(15) equine species; ~~and~~

(16) Texas processed agricultural product(s); and [-]

(17) Texas restaurants as provided for in §17.60 of this title (relating to GO TEXAN Restaurant Program).

~~{(e) The Texas Agricultural Product, Taste of Texas, Vintage Texas, Texas Grown, and Naturally Texas marks shall only be used by program members to identify products meeting the requirements for membership for those programs prior to May 23, 1999 as follows:}~~

~~{(1) for the TAP mark, for products identified in subsection (b)(1) of this section;}~~

~~{(2) for the Taste of Texas mark, for products identified in subsection (b)(2) of this section;}~~

~~{(3) for the Vintage Texas mark, for products identified in subsection (b)(3) of this section;}~~

~~{(4) for the Texas Grown mark, for products identified in subsection (b)(4) of this section; or}~~

~~{(5) for the Naturally Texas mark, for products identified in subsection (b)(5) of this section.}~~

(c) ~~{(d)}~~ Applications submitted under this section shall be made in writing on a form prescribed by the department. Application forms may be obtained by contacting the Texas Department of Agriculture Marketing and Promotion Division at P.O. Box 12847, Austin, Texas 78711, phone (512) 463-7624.

(d) ~~{(e)}~~ Applications shall be submitted to the assistant commissioner for Marketing and Promotion, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711.

(e) ~~{(f)}~~ If approved, applicants shall remit the required registration fee with the application.

(f) ~~{(g)}~~ Upon receipt of the registration fee, the department shall mail to the registrant or licensee a certificate of registration, which is valid for one year and shall expire on the last day of the month corresponding to the license anniversary date. The department shall also provide copies of the mark, suitable for reproduction.

(g) ~~{(h)}~~ Other than the use of the mark, no registrant or licensee shall use any statement of affiliation or endorsement by the State of Texas or the department in the selling, advertising, marketing, packaging, or other commercial handling of [~~TAP, Taste of Texas, Vintage Texas, Texas Grown, Naturally Texas, or~~] GO TEXAN products or operating GO TEXAN restaurants.

(h) ~~{(i)}~~ Registrants and licensees shall indemnify and hold harmless the commissioner, the State of Texas, and the department for any claims, losses, or damages arising out of or in connection with that person's advertising, marketing, packaging, manufacture, or other commercial handling of [~~TAP, Taste of Texas, Vintage Texas, Texas Grown, Naturally Texas, or~~] GO TEXAN products or the operation of restaurants.

(i) ~~{(j)}~~ Any permission under the certificate of registration granted to a registrant to use the mark shall be nonexclusive and non-transferable for the products listed in the application.

(j) ~~{(k)}~~ Registrants shall do nothing inconsistent with the ownership of the mark in the department, and all use of the mark by any registrant shall inure to the benefit of and be on behalf of the department. Further the registrants shall not have any right, title, or interest in the mark, other than the right to use the mark in accordance with the certificate of registration. Registrants must agree not to attack the title of the department to the mark, or attack the validity of the certificate of registration or the permission granted by the department.

(k) ~~{(l)}~~ The nature and quality of the goods sold by registrants in connection with the mark shall conform to any standards which may be set from time to time by the department. Registrants shall cooperate with the commissioner by permitting reasonable inspection of the registrant's operation and supplying the commissioner with specimens of use of the mark upon request. Registrants shall not use the mark on goods sold or marketed as products from another country or state, or as products from a city or region outside of Texas, unless prior written authorization is received from the department.

(l) ~~{(m)}~~ Registrants and licensees shall comply with all applicable laws and regulations and obtain all appropriate governmental approval pertaining to the selling, advertising, marketing, packaging, manufacturing, or other commercial handling of the products or operation of restaurants covered by the certification of registration.

(m) ~~{(n)}~~ Registrants shall use the mark only in the form and manner, and with appropriate legends, as prescribed from time to time by the commissioner. [~~Registrants shall affix on all product(s) bearing the mark the following legal notice: GO TEXAN and Design is a certification mark of the Texas Department of Agriculture.~~]

(n) ~~{(o)}~~ The department shall have the sole right and discretion to bring infringement or unfair competition proceedings involving the [~~TAP, Taste of Texas, Vintage Texas, Texas Grown, Naturally Texas, or~~] GO TEXAN and Design mark [~~marks~~].

(o) ~~{(p)}~~ The department may consider in its evaluation of an applicant or registrant any information regarding an applicant or member that could impair the department's efforts to promote the development of markets for Texas agriculture and other products.

(p) ~~{(q)}~~ The consideration of information as provided in subsection (o) [~~{(p)}~~] of this section may include consideration of any information that may not enhance the integrity and positive image of the program, including, but not limited to, a review of criminal information, as allowed by applicable laws and regulations.

§17.53. Action on Application.

(a) The assistant commissioner for Marketing and Promotion, Texas Department of Agriculture, within 30 days of receipt of an ap-

plication for registration or license to use the [~~TAP, Taste of Texas, Vintage Texas, Texas Grown, Naturally Texas, or~~] GO TEXAN and Design mark, shall make an initial determination of whether such registration permission shall be granted or denied, and [~~forthwith~~] notify the applicant in writing of his decision [~~setting forth in detail the reasons for such grant or denial~~]. If the applicant is denied registration, then the applicant shall be provided a reason for such denial.

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

§17.54. Denial of Application to Use the [~~TAP, Taste of Texas, Vintage Texas, Texas Grown, Naturally Texas, or~~] GO TEXAN and Design Mark.

An application for registration or license to use the [~~TAP, Taste of Texas, Vintage Texas, Texas Grown, Naturally Texas, or~~] GO TEXAN and Design mark may be denied if:

(1) application is not made in compliance with §17.52 of this title (relating to Application for Permission To Use [~~the TAP, Taste of Texas, Vintage Texas, Texas Grown, Naturally Texas, or~~] GO TEXAN and Design mark);

(2) the applicant cannot provide adequate assurances that the product or restaurant for which application is made qualifies and will continue to qualify for the program(s) in which it is enrolled;

(3) the product is of a quality markedly inferior to that representative of similar products produced in Texas;

(4) the applicant has misused the [~~TAP, Taste of Texas, Vintage Texas, Texas Grown, Naturally Texas, or~~] GO TEXAN and Design mark prior to the date of application; or

(5) applicant's use of the [~~TAP, Taste of Texas, Vintage Texas, Texas Grown, Naturally Texas, or~~] GO TEXAN and Design mark would either:

(A) impair or frustrate the department's efforts to expand or encourage development of the markets for Texas agricultural and other products; or

(B) fail to enhance the integrity and image of the program, as determined by the department; or

(6) it has been determined not to be in accordance with department policy [~~for reasons of policy, as determined by the department~~].

§17.55. Registration of Those Entitled to Use the [~~TAP, Taste of Texas, Vintage Texas, Texas Grown, Naturally Texas, or~~] GO TEXAN and Design Mark.

(a) The commissioner shall enroll in a register the names of all persons granted permission under these sections to use the [~~TAP, Taste of Texas, Vintage Texas, Texas Grown, Naturally Texas, or~~] GO TEXAN and Design mark. The register shall be available for public inspection during normal business hours in the offices of the Texas Department of Agriculture, 1700 North Congress Avenue, in Austin, Texas.

(b) The procedure [~~Procedure~~] for annual renewal of registration of persons authorized to use the [~~TAP, Taste of Texas, Vintage Texas, Texas Grown, Naturally Texas, or~~] GO TEXAN and Design mark is as follows: [-]

(1) Forty-five days before the expiration date of the registration, the department shall mail to each person previously registered or licensed to use the GO TEXAN and Design mark a statement setting forth the amount due as an annual registration fee.

(2) All payments are due by the expiration date of the registration.

(3) Within 30 days of receipt by the department of the renewal statement, together with the annual registration fee, the department will mail to the registrant a renewal certificate of registration.

(4) Failure to remit the annual registration fee by the due date shall result in the registrant being designated as inactive. Failure to remit the annual registration fee within 366 days of the due date shall result in the expiration of the registration and a new application for membership will be required for re-instatement to the program.

(c) An annual registration fee of \$25 for registration in the GO TEXAN, [~~and~~] GO TEXAN Associate and/or GO TEXAN Restaurant program shall be paid to the department.

~~[(d) Annual registration fees paid to the department for membership in the GO TEXAN program shall include the use of the TAP, Taste of Texas, Vintage Texas, Texas Grown or Naturally Texas marks for members enrolled in those programs prior to May 23, 1999.]~~

~~[(d) [(e)] Annual GO TEXAN, [~~and~~] GO TEXAN Associate registration, and the GO TEXAN Restaurant Program registration fees charged by the department shall not exceed \$50.~~

§17.56. Termination of Registration To Use the [~~TAP, Taste of Texas, Vintage Texas, Texas Grown, Naturally Texas, or~~] GO TEXAN and Design Mark [~~marks~~].

(a) Registration to use the [~~TAP, Taste of Texas, Vintage Texas, Texas Grown, Naturally Texas, or~~] GO TEXAN and Design mark may be revoked at any time if the mark is misused.

(b) Misuse of the [~~TAP, Taste of Texas, Vintage Texas, Texas Grown, Naturally Texas, or~~] GO TEXAN and Design mark includes, but is not limited to:

(1) use of the mark in the selling, advertising, marketing, packaging, or other commercial handling of a product or restaurant for which registration to use the mark has not been granted by the department;

(2) use of the mark in the selling, advertising, marketing, packaging, or other commercial handling of a product which is of a quality markedly inferior to that representative of similar products produced in Texas; or

(3) use of the mark would either:

(A) impair or frustrate the department's efforts to expand or encourage development of the markets for Texas agricultural and other products; or

(B) fail to enhance the integrity and image of the program, as determined by the department

(4) use of the mark in a manner violating any rule promulgated by the commissioner.

(c) Proceedings for the revocation of registration to use the [~~TAP, Taste of Texas, Vintage Texas, Texas Grown, Naturally Texas, or~~] GO TEXAN and Design mark shall be conducted in the manner provided for contested cases by the Administrative Procedure Act, Texas Government Code, Chapter 2001, and Chapter 1 of this title (relating to General Practice and Procedure).

(d) A proceeding for revocation of registration to use the [~~TAP, Taste of Texas, Vintage Texas, Texas Grown, Naturally Texas, or~~] GO TEXAN and Design mark shall not preclude the commissioner from pursuing any other remedies, including, where applicable, the penal and injunctive remedies provided for by law.

§17.57. Associate GO TEXAN Members.

(a) (No change.)

(b) Application process.

(1) Application to use the GO TEXAN and Design mark in accordance with this section, shall be made in the same manner as provided in §17.52 of this title (relating to Application for Registration To Use the [~~TAP, Taste of Texas, Vintage Texas, Texas Grown, Naturally Texas, or~~] GO TEXAN and Design Mark).

(2) (No change.)

(c) Eligibility Requirements and Membership Categories.

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

(4) Retailer. A licensee's use of the mark is limited to general promotion of GO TEXAN products as defined in §17.51 and §17.52 of this title (relating to Definitions and Application for Registration To Use the [~~TAP, Taste of Texas, Vintage Texas, Texas Grown, Naturally Texas, or~~] GO TEXAN and Design Mark) in its retail locations;

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

(d) - (e) (No change.)

§17.58. *GO TEXAN Beef Program.*

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

(d) Application Process.

(1) Application to use the GO TEXAN and Design mark in accordance with this section, shall be made in the same manner as provided in §17.52 of this title (relating to Application to Use the [~~TAP, Taste of Texas, Vintage Texas, Texas Grown, Naturally Texas, or~~] GO TEXAN and Design Mark).

(2) - (4) (No change.)

(e) - (f) (No change.)

§17.60. *GO TEXAN Restaurant Program.*

(a) Statement of Purpose: The GO TEXAN Restaurant Program is established to provide a marketing program that adds value to Texas restaurants and encourages these establishments to purchase products produced or processed in Texas.

(b) Restaurant Requirements: To be eligible for the GO TEXAN Restaurant Program, members shall meet and agree to the following requirements:

(1) Restaurant members shall purchase and use product(s) made, grown, processed or value added in Texas, as well as products produced by GO TEXAN members.

(2) Restaurant members must complete and submit the annual GO TEXAN survey.

(3) Restaurant must be a permitted food establishment providing restaurant service located in Texas that is permitted in accordance with all state and local laws and restaurant regulations.

(c) Restaurants headquartered out of state must have a place of business with a Texas address to be considered eligible for GO TEXAN Restaurant Program membership.

(d) Display of GO TEXAN Restaurant Program Items:

(1) Restaurant members may post their membership certificate to give notice that their establishment is an official GO TEXAN Restaurant member.

(2) Restaurant members shall, whenever possible, display, advertise and promote product(s) made, grown, processed or value added in Texas to consumers within the restaurant. Texas Department

of Agriculture will provide a copy of the GO TEXAN logo for use in promotion of the Texas restaurant establishment.

(e) Application Process:

(1) Application to use the GO TEXAN and Design mark in accordance with this section shall be made in the same manner as provided in §17.52 of this title (relating to Application to Use the GO TEXAN and Design Mark).

(2) Applicants must certify on the application that all applicable GO TEXAN Restaurant Program requirements are met.

(3) Except as otherwise provided in this section, all requirements for membership in the general GO TEXAN program shall apply to restaurants certified under this section.

(4) Restaurants must submit the GO TEXAN Restaurant Program Member application in addition to the \$25 annual GO TEXAN membership fee. Restaurants will be billed the annual registration fee of \$25 each membership year thereafter.

(5) Restaurants must submit a copy of the Texas Department of State Health Services Food Permit with membership application. If a restaurant establishment loses its permit or if the permit is revoked by the Texas Department of State Health Services, the establishment's GO TEXAN membership is void.

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

Filed with the Office of the Secretary of State on November 5, 2007.

TRD-200705320

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: December 16, 2007

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



TITLE 13. CULTURAL RESOURCES

PART 3. TEXAS COMMISSION ON THE ARTS

CHAPTER 31. AGENCY PROCEDURES

13 TAC §31.4

The Texas Commission on the Arts proposes an amendment to §31.4, concerning Committees. Elsewhere in this issue of the *Texas Register*, the Texas Commission on the Arts contemporaneously adopts an amendment to §31.4 on an emergency basis.

The purpose of the amendment is to reflect agency restructuring and its goals and strategies.

Gary Gibbs, Executive Director, Texas Commission on the Arts, has determined that, for the first five-year period the amendment is in effect, there will be no fiscal implications for state or local government as a result of enforcing the amendment.

Mr. Gibbs also has determined that, for each year of the first five years the amendment is in effect, the public benefit anticipated as a result of enforcing the amendment will be streamlined governance. There is no anticipated economic cost to persons who

are required to comply with the repeal and new sections as proposed. There will be no effect to small or micro businesses.

Comments on the proposal may be submitted to Jim Bob McMillan, Texas Commission on the Arts, P.O. Box 13406, Austin, Texas 78711-3406. Comments will be accepted for 30 days after publication in the *Texas Register*.

The amendment is proposed under the Government Code, §444.009, which provides the Texas Commission on the Arts with the authority to make rules and regulations for its government and that of its officers and committees.

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

§31.4. Committees.

(a) All committee chairmen, with the exception of the chairmen [chairman] of the Grants and Services Committee and the Finance Committee, [Assistance Review Committee,] and committee members shall be appointed by the commission chair [chairman at the first regular meeting of the commission after the chairman is elected].

(b) The term of all committee memberships shall be until the next commission meeting following the termination of the term of the chair [chairman] who appointed them, or such earlier date as the chair [chairman] may designate, or until their replacement has been named.

(c) All vacancies on any committee shall be filled by the chair [chairman].

(d) The chair [chairman] shall be an ex officio member of each committee.

(e) A quorum at each committee meeting shall consist of one-half of its members.

(f) Summary minutes will be kept of all standing committee meetings, copies of which shall be distributed to all commission members within 30 days after the meeting.

(g) The standing committees shall be the following.

(1) the Executive Committee is made up of the chair, vice chair, secretary, treasurer, parliamentarian, and two members at large appointed at the pleasure of the chair. The committee may recommend to the commission policies and guidelines and may work with the executive director in developing and implementing such policies.

(2) the Finance Committee shall consist of at least three members, and be chaired by the treasurer. The committee may recommend to the commission financial policies and guidelines and may work with the executive director in developing and implementing such policies and shall conduct an annual review and evaluation of commission activity and develop and control internal operating budgets.

~~[(1) The Executive Committee shall consist of the officers of the commission and no more than two members of the commission appointed at the pleasure of the chairman.]~~

~~[(2) The Administrative Committee shall consist of at least three members, one to be the treasurer. The committee may recommend to the commission policies and guidelines and may work with the executive director in developing and implementing such policies and shall conduct an annual review and evaluation of commission activity and develop and control internal operating budgets.]~~

(3) the Grants and Services Committee [The Assistance Review Committee] shall consist of at least three members and shall review, with assistance from the staff and advisory panels, applications [for assistance] submitted to the commission and then make recommendations to the commission. The vice chair [chairman] of the commission shall serve as the chairman of this committee. The com-

mittee shall recommend to the commission grant submission criteria. Funding is approved contingent upon the submission of appropriate documentation and final approval by the Executive Director or his designee(s). Funding will occur on or after September 1 of every year.

~~[(4) The Enterprise and Development Committee shall consist of at least three members and shall be responsible for coordinating activities of the commission and the business community. Additional noncommissioner members may be appointed. Reports and recommendations will be presented to the commission.]~~

~~[(5) The Liaison to the Governor's Office Committee shall consist of at least three members and shall be responsible for maintaining direct communication with the governor's office on matters concerning the commission. Reports and recommendations will be presented to the commission.]~~

(4) ~~[(6) the~~ [The] Legislative Committee is a committee of the whole of the commission with a designated chair. This committee shall be responsible for the development and initial approval of legislative approaches and strategies of the commission [shall consist of at least three members and shall be responsible for the development and initial approval of legislative approaches and strategies of the commission.]. Reports and recommendations will be presented to the commission.

~~[(7) The Multicultural and International Committee shall consist of at least three members and shall be responsible for coordinating activities of the commission and minority arts organizations. Additional noncommissioner members may be appointed. Reports and recommendations will be presented to the commission.]~~

~~[(8) The Education Committee shall consist of at least three members and shall be responsible for development and initial approval of all matters dealing with the commission's arts education initiatives. Reports and recommendations will be presented to the commission.]~~

(5) ~~[(9) The Officer Nominating Committee shall consist of three members, the committee chairman to be appointed by the commission chair~~ [chairman] and the other two members to be selected at large by the commission. The committee shall select a slate of nominees to serve as officers of the commission and shall recommend this slate of nominees to the commission at its quarterly meeting in June.

(h) Special committees may be appointed from time to time by the chair [chairman] who shall designate the duties and term of such committees.

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 31, 2007.

TRD-200705249

Gary Gibbs

Executive Director

Texas Commission on the Arts

Earliest possible date of adoption: December 16, 2007

For further information, please call: (512) 936-6564

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CHAPTER 35. A GUIDE TO OPERATIONS, PROGRAMS AND SERVICES

The Texas Commission on the Arts (commission) proposes the repeal and replacement of §35.1 and §35.2, concerning a guide to operations, programs, and services. Elsewhere in this issue of the *Texas Register*, the Texas Commission on the Arts contemporaneously adopts the repeal and replacement of §35.1 and §35.2 on an emergency basis.

The purpose of the proposed repeal and replacement is to be consistent with changes to programs and services of the commission as outlined in the Texas Arts Plan as amended October 2007.

Gary Gibbs, Executive Director, Texas Commission on the Arts, has determined that, for the first five-year period the repeal and new sections are in effect, there will be no fiscal implications for state or local government as a result of enforcing the repeal and new sections as proposed.

Mr. Gibbs also has determined that, for each year of the first five years the proposed repeal and new sections are in effect, the public benefit anticipated as a result of enforcing the repeal and new sections will be the ability to utilize federal and state financial assistance funds in a more effective manner, thereby allowing more Texas organizations, communities, and citizens to participate in agency programs. There is no anticipated economic cost to persons who are required to comply with the repeal and new sections as proposed. There will be no effect to small or micro businesses.

Comments on the proposal may be submitted to Jim Bob McMillan, Texas Commission on the Arts, P.O. Box 13406, Austin, Texas 78711-3406. Comments will be accepted for 30 days after publication in the *Texas Register*.

13 TAC §35.1, §35.2

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

The repeals are proposed under the Government Code, §444.009, which provides the Texas Commission on the Arts with the authority to make rules and regulations for its government and that of its officers and committees.

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

§35.1. A Guide to Operations.

§35.2. A Guide to Programs and Services.

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

Filed with the Office of the Secretary of State on October 30, 2007.

TRD-200705245

Gary Gibbs

Executive Director

Texas Commission on the Arts

Earliest possible date of adoption: December 16, 2007

For further information, please call: (512) 936-6564



13 TAC §35.1, §35.2

The new sections are proposed under the Government Code, §444.009, which provides the Texas Commission on the Arts with the authority to make rules and regulations for its government and that of its officers and committees.

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

§35.1. A Guide to Operations.

The commission adopts by reference *A Guide to Operations* (revised October 2007). This document is published by and available from the Texas Commission on the Arts, P.O. Box 13406, Austin, Texas 78711. This document is also available online at www.arts.state.tx.us.

§35.2. A Guide to Programs and Services.

The commission adopts by reference *A Guide to Programs and Services* (revised October 2007). This document is published by and available from the Texas Commission on the Arts, P.O. Box 13406, Austin, Texas 78711. This document is also available online at www.arts.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.

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Gary Gibbs

Executive Director

Texas Commission on the Arts

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For further information, please call: (512) 936-6564



TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 22. PROCEDURAL RULES

SUBCHAPTER J. SUMMARY PROCEEDINGS

The Public Utility Commission of Texas (commission) proposes the repeal of §22.183 and new §22.183, relating to Failure to Attend Hearing and Disposition by Default. The proposed new rule will remove the restrictions on the types of proceedings that may proceed on a default basis and will clarify the procedures that will be used to process contested proceedings if a party fails to appear for hearing, including more specific criteria for what types of notice must be provided to defaulting parties. The current §22.183 allows disposition by default for proceedings initiated by the commission staff where allegations are made in a Notice of Violation, but the rule does not apply to the assessment of administrative penalties. Because the State Office of Administrative Hearings (SOAH) has adopted the commission's procedural rules, current §22.183 has had the effect of prohibiting the processing of Notices of Violation that seek administrative penalties when the party fails to appear for hearing, even though more severe actions such as license revocation are permitted. The proposed new rule would remove the current restriction that prohibits default orders from assessing administrative penalties and would permit the assessment of penalties through a default order if a party fails to appear, consistent with the manner in which other regulatory agencies address such matters. The proposed

new rule is also intended to generally conform the rule to the procedures used by the SOAH for other state agencies and provides clarity as to the forms of notice that must be given to an affected party prior to the issuance of a default order. Project Number 33864 is assigned to this proceeding.

Nathan Barrow, Legal Division, has determined that, for each year of the first five-year period the proposed repeal and new section are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Barrow has determined that, for each year of the first five years the proposed repeal and new section are in effect the public benefit anticipated as a result of enforcing the section will be more efficient processing of contested proceedings where a party fails to appear for hearing, while preserving a party's right to notice of hearing and an opportunity to contest allegations.

There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Mr. Barrow has also determined that, for each year of the first five years the proposed section is in effect, there should be no effect on a local economy and, therefore, no local employment impact statement is required under the Administrative Procedure Act (APA), Texas Government Code, §2001.022.

The commission staff will conduct a public hearing on this rule-making, if requested pursuant to APA, Texas Government Code, §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on Thursday, December 20, 2007 at 10:00 a.m. The request for a public hearing must be received within 30 days after publication in the *Texas Register*.

Comments on the proposed repeal of the current §22.183 and the proposed new §22.183 may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 30 days after publication in the *Texas Register*. Sixteen copies of comments to the proposed repeal of the current §22.183 and the proposed new §22.183 are required to be filed pursuant to §22.71(c) of this title. Comments should be organized in a manner consistent with the organization of the proposed rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should refer to Project Number 33864.

16 TAC §22.183

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

The repeal of the current §22.183 is proposed under the Public Utility Regulatory Act (PURA), Texas Utilities Code Annotated, §14.002 and §14.052 (Vernon 2007), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure; and PURA, §15.024, which provides the commission with the authority to assess a

penalty against a person who fails to timely respond to a written notice summarizing an alleged violation and a corresponding recommended penalty.

Cross Reference to Statutes: Public Utility Regulatory Act, §§14.002, 14.052, and 15.024.

§22.183. *Failure to Attend Hearing and Disposition by Default.*

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

Filed with the Office of the Secretary of State on November 5, 2007.

TRD-200705293

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Earliest possible date of adoption: December 16, 2007

For further information, please call: (512) 936-7223



16 TAC §22.183

New §22.183 is proposed under the Public Utility Regulatory Act (PURA), Texas Utilities Code Annotated §14.002 and §14.052 (Vernon 2007), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure; and PURA, §15.024, which provides the commission with the authority to assess a penalty against a person who fails to timely respond to a written notice summarizing an alleged violation and a corresponding recommended penalty.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 14.052, and 15.024.

§22.183. *Failure to Attend Hearing and Disposition by Default.*

(a) Disposition by default. If a party who does not have the burden of proof fails to appear for hearing, the presiding officer may proceed in that party's absence on a default basis. In the proposal for decision or final order, the factual allegations listed in the notice of hearing will be deemed admitted.

(b) Notice of default proceeding. Any default proceeding under this section requires adequate proof of the following:

(1) Proof that proper notice of hearing was provided to the defaulting party pursuant to Tex. Gov't Code, Chapter 2001. Such notice must have included a disclosure in at least twelve-point, bold-face type, that the factual allegations listed in the notice could be deemed admitted, and the relief sought in the notice of hearing might be granted by default if the defaulting party fails to appear at the hearing; or

(2) If it is not possible to prove actual receipt of notice, a hearing may proceed on a default basis if there is credible evidence that:

(A) the notice of hearing was sent by certified mail, return receipt requested to the last known address in the commission's records, if the party has a license, certificate, or registration approved by the commission; and

(B) the notice of hearing was sent by certified mail, return receipt requested to the registered agent for process for the party

on file with the Secretary of State, if the party is registered with the Secretary of State.

(c) Admission of evidence. The party with the burden of proof shall submit evidence to the presiding officer in accordance with the requirements of this section.

(d) Motion to set aside a default. Not later than 10 days after the hearing has concluded, if a dismissal, proposal for decision, or a proposed final order has not been issued, a party may file a motion to set aside a default and reopen the record. The presiding officer may grant the motion, set aside the default and reopen the record for good cause shown.

(e) Default proposal for decision or order. Upon the failure of the defaulting party to appear at the hearing, the presiding officer may issue a default proposal for decision or final order, as applicable. Parties may file exceptions and replies to exceptions to a default proposal for decision pursuant to §22.261 of this title (relating to Proposals for Decision) and may file a motion for rehearing to a default final order pursuant to §22.264 of this title (relating to Rehearing).

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

Filed with the Office of the Secretary of State on November 5, 2007.

TRD-200705294

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Earliest possible date of adoption: December 16, 2007

For further information, please call: (512) 936-7223



PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 31. ADMINISTRATION

16 TAC §31.4

The Texas Alcoholic Beverage Commission proposes an amendment to §31.4, governing the required placement of certain signs on the premises of alcoholic beverage license and permit holders. The proposed amendment would add subsection (b) to the rule mandating that the holder of a license or permit authorizing the on-premises sale of alcoholic beverages post signs of certain language, size, and materials, providing public warnings about the ill health effects of consuming alcoholic beverages during pregnancy. The amendment is proposed in response to the addition of new §11.042 and §61.111 to the Alcoholic Beverage Code.

Lou Bright, General Counsel, has also determined that for each year of the first five years the rule is in effect there will be a cost of \$18,000 to state government. This is the estimated cost for the commission to print and mail the signs to retailers required to display the signs. There is no fiscal impact on local government as a result of implementing and enforcing this rule. There is no anticipated fiscal impact to small businesses or persons required to comply with the section.

Lou Bright, General Counsel, has determined that for the first five years the rule is in effect the public will benefit from this amendment because of the propagation of information about fetal alcohol syndrome.

Comments may be addressed to Lou Bright, General Counsel, Texas Alcoholic Beverage Commission, P.O. Box 13127, Austin, Texas 78711.

This amendment is proposed under the authority of §5.31 of the Alcoholic Beverage Code, which gives the commission the authority to prescribe and publish rules necessary to carry out the provisions of the Texas Alcoholic Beverage Code and §11.042 and §61.111 of the Alcoholic Beverage Code, which require the commission to adopt the rule.

Cross Reference: Section 11.042 and §61.111 of the Alcoholic Beverage Code are affected by this amendment.

§31.4. *Public Information Signs.*

(a) Any licensed business location in the state which sells or serves alcoholic beverages to the ultimate consumer shall display at his place of business in a prominent place easily seen by the public, i.e. near the door or by the cash register, a sign that provides the following information: "If you have a complaint about the sale or service of alcoholic beverages in this establishment, please contact the Texas Alcoholic Beverage Commission, P.O. Box 13127, Austin, Texas 78711-3127, or phone (512) 206-3333 [(512) 458-2500]."

(b) The holder of a permit authorizing the sale of alcoholic beverages for on-premises consumption shall display a warning sign on the egress to each public restroom on the permitted premises that provides the following information: "WARNING: According to the surgeon general, women should not drink alcoholic beverages, including distilled spirits, beer, coolers, and wine during pregnancy because of the risk of birth defects."

(c) ~~(b)~~ This sign shall be no smaller than 6 inches by 3-1/2 inches and shall be in lettering or type of a size sufficient to render it both conspicuous and readily legible.

(d) ~~(c)~~ The sign shall be made of sturdy material; if made of paper, the ~~paper~~ weight shall be no less than 65# stock.

(e) ~~(d)~~ The responsibility of furnishing the required sign is the sole responsibility of the licensee or permittee.

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 30, 2007.

TRD-200705224

Alan Steen

Administrator

Texas Alcoholic Beverage Commission

Earliest possible date of adoption: December 16, 2007

For further information, please call: (512) 206-3204



CHAPTER 33. LICENSING

SUBCHAPTER A. APPLICATION PROCEDURES

16 TAC §33.10

The Texas Alcoholic Beverage Commission proposes a new rule §33.10, regulating the citizenship and status of applicants for alcoholic beverage licenses and permits. The new rule mandates that applicants must be lawfully authorized to work in the United States and that business entities must be organized under the laws of the state.

Lou Bright, General Counsel, has determined that for the first five years the rule is in effect there will be no fiscal impact on units of state or local government or small businesses or persons required to comply with the section as a result of enforcing the new rule.

Lou Bright, General Counsel, has determined that for the first five years the rule is in effect the public will benefit from the adoption of the proposed rule because it ensures that persons regulated by the commission are in compliance with federal immigration laws and are subject to the laws of the state.

Comments may be addressed to Lou Bright, General Counsel, Texas Alcoholic Beverage Commission, P.O. Box 13127, Austin, Texas 78711.

This new rule is proposed under the authority of §5.31 of the Alcoholic Beverage Code, which gives the commission the authority to prescribe and publish rules necessary to carry out the provisions of the Texas Alcoholic Beverage Code.

Cross Reference: Section 1.07 and §109.53 of the Alcoholic Beverage Code are affected by this new rule.

§33.10. Citizenship and Status.

(a) An individual who applies for a license or permit shall, at the time of filing the application, be a United States citizen or legally authorized to work in the United States. The commission will not issue a permit or license to a person that will cause the person to be in violation of the person's immigration status and/or result in them being illegally in the United States.

(b) No permit shall be issued to a corporation, partnership, firm, association, or other legal entity, other than an individual, unless the entity is incorporated or organized under the laws of the State of Texas.

(1) This requirement does not apply to an entity holding a brewer's permit, and other licenses and permits as are necessary to the operation of the brewer's permit.

(2) This requirement does not apply to a foreign corporation that was engaged in the legal alcoholic beverages business in this state under charter or permit prior to August 24, 1935.

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 30, 2007.

TRD-200705227

Alan Steen

Administrator

Texas Alcoholic Beverage Commission

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For further information, please call: (512) 206-3204



SUBCHAPTER C. LICENSE AND PERMIT ACTION

16 TAC §33.33

The Texas Alcoholic Beverage Commission proposes a new rule §33.33, requiring licensees and permittees to maintain a current, valid address on file with the commission and would allow notices required under the code and rules to be served by mail to that address.

Lou Bright, General Counsel, has determined that for the first five years the rule is in effect there will be no fiscal impact on units of state or local government as a result of enforcing the new rule. There is no anticipated fiscal impact on small businesses or persons required to comply with the section

Lou Bright, General Counsel, has determined that for the first five years the rule is in effect the public will benefit from the adoption of the proposed rule because it ensures that persons regulated by the commission may be delivered notices and correspondence affecting a permit or license issued by the commission. It also provides notice to persons of the address at the commission to which change notices shall be submitted.

Comments may be addressed to Lou Bright, General Counsel, Texas Alcoholic Beverage Commission, P.O. Box 13127, Austin, Texas 78711.

This new rule is proposed under the authority of §5.31 of the Alcoholic Beverage Code, which gives the commission the authority to prescribe and publish rules necessary to carry out the provisions of the Texas Alcoholic Beverage Code.

Cross Reference: Section 11.65 of the Alcoholic Beverage Code is affected by this new rule.

§33.33. Notification Requirements.

(a) A person who holds a license, permit or certificate issued by the Alcoholic Beverage Commission shall maintain a current mailing address and telephone number on file with the division that has issued the license, permit or certificate.

(b) A person who holds a license, permit, or certificate issued by the Alcoholic Beverage Commission shall send a written notice of change of mailing address to the Commission within seven (7) business days of the change.

(1) A person who holds a license or permit issued by the Commission shall file a change of address with the Licensing Division at TABC, P.O. Box 13127, Austin, Texas 78711.

(2) A person who holds a certificate issued by the Commission shall file a change of address with the Seller/Server Training Division at TABC, P.O. Box 13127, Austin, Texas 78711.

(c) A notice sent to a person by the Alcoholic Beverage Commission shall be sent by first class mail to the last known mailing address of a person.

(1) A person notified by mail under this subsection is presumed notified on the third day after the date on which the notice is mailed.

(2) This subsection does not apply to a notice required by Government Code §2001.054.

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 30, 2007.

TRD-200705225

Alan Steen

Administrator

Texas Alcoholic Beverage Commission

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For further information, please call: (512) 206-3204



CHAPTER 37. LEGAL SUBCHAPTER A. RULES OF PRACTICE

The Texas Alcoholic Beverage Commission proposes the repeal of §37.2, relating to the rules governing contested cases before county courts; §37.3, relating to the service of pleadings and notice of hearing; §37.4, relating to notice of hearing; and the adoption of new §37.2, relating to procedure in contested cases.

Government Code, §2001.39 requires that each state agency review and consider for re-adoption every four years each rule adopted by the agency under Government Code, Chapter 2001. Sections 37.2 - 37.4 have been reviewed and the commission has determined that they can be simplified because the same rules and procedures apply to contested cases before county courts and the State Office of Administrative Hearings. New §37.2 replaces the repealed sections and adopts the provisions of Government Code, Chapter 2001, and the rules adopted by the State Office of Administrative Hearings for all contested cases for which notice and hearing are required.

Lou Bright, General Counsel, has determined that for the first five years that the proposed new rule is in effect there will be no fiscal impact on units of state or local government as a result of enforcing and administering the section as proposed.

Lou Bright has also determined that for the first five years that the proposed new rule is in effect there will be no fiscal impact on small or micro-businesses. There is no anticipated impact on persons who are required to comply with the section.

Lou Bright has also determined that for each of the first five years that new §37.2 is in effect it is anticipated that the public will benefit by the simplification and consistency of procedural rules in all commission contested cases that require notice and hearing.

Comments on the proposed repeal and new rule may be addressed to Lou Bright, General Counsel, Texas Alcoholic Beverage Commission, P.O. Box 13127, Austin, Texas 78711. Comments will be accepted for 30 days following publication of the repeal and proposed new rule in the *Texas Register*.

16 TAC §37.2

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

The repeal of the existing rules and adoption of the new rule are authorized by §§5.31, 5.43, and 11.65 of the Alcoholic Beverage Code (Code). Section 5.31 give the commission authority to prescribe and publish rules necessary to carry out the provisions of Code. Section 5.43 provides the commission with authority to prescribe rules of procedure for cases not heard by the State

Office of Administrative Hearings. Section 11.65 adopts the provisions of Government Code, Chapter 2001, and the rules of procedure adopted by the State Office of Administrative Hearings.

Cross Reference: Section 5.43 and §11.65 of the Alcoholic Beverage Code are affected by these repeals and the proposed new rule.

§37.2. Rules Governing Contested Cases Before County Courts.

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 30, 2007.

TRD-200705231

Alan Steen

Administrator

Texas Alcoholic Beverage Commission

Earliest possible date of adoption: December 16, 2007

For further information, please call: (512) 206-3204



16 TAC §37.2

The repeal of the existing rules and adoption of the new rule are authorized by §§5.31, 5.43, and 11.65 of the Alcoholic Beverage Code (Code). Section 5.31 give the commission authority to prescribe and publish rules necessary to carry out the provisions of Code. Section 5.43 provides the commission with authority to prescribe rules of procedure for cases not heard by the State Office of Administrative Hearings. Section 11.65 adopts the provisions of Government Code, Chapter 2001, and the rules of procedure adopted by the State Office of Administrative Hearings.

Cross Reference: Section 5.43 and §11.65 of the Alcoholic Beverage Code are affected by these repeals and the proposed new rule.

§37.2. Contested Case.

(a) This rule relates to any contested case under the Alcoholic Beverage Code (Code) where notice and hearing are required, or an opportunity for public participation is provided under the Code.

(b) All notices and pleadings in a contested case shall comply with the provisions of Texas Government Code, Chapter 2001, Subchapters C, D, and F and the rules of procedure adopted by the State Office of Administrative Hearings in Title 1, Texas Administrative Code, Chapter 155.

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

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TRD-200705234

Alan Steen

Administrator

Texas Alcoholic Beverage Commission

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For further information, please call: (512) 206-3204



16 TAC §37.3

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

The repeal of the existing rules and adoption of the new rule are authorized by §§5.31, 5.43, and 11.65 of the Alcoholic Beverage Code (Code). Section 5.31 give the commission authority to prescribe and publish rules necessary to carry out the provisions of Code. Section 5.43 provides the commission with authority to prescribe rules of procedure for cases not heard by the State Office of Administrative Hearings. Section 11.65 adopts the provisions of Government Code, Chapter 2001, and the rules of procedure adopted by the State Office of Administrative Hearings.

Cross Reference: Section 5.43 and §11.65 of the Alcoholic Beverage Code are affected by these repeals and the proposed new rule.

§37.3. *Service of Pleadings and Notice of Hearing.*

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 30, 2007.

TRD-200705232

Alan Steen

Administrator

Texas Alcoholic Beverage Commission

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For further information, please call: (512) 206-3204



16 TAC §37.4

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

The repeal of the existing rules and adoption of the new rule are authorized by §§5.31, 5.43, and 11.65 of the Alcoholic Beverage Code (Code). Section 5.31 give the commission authority to prescribe and publish rules necessary to carry out the provisions of Code. Section 5.43 provides the commission with authority to prescribe rules of procedure for cases not heard by the State Office of Administrative Hearings. Section 11.65 adopts the provisions of Government Code, Chapter 2001, and the rules of procedure adopted by the State Office of Administrative Hearings.

Cross Reference: Section 5.43 and §11.65 of the Alcoholic Beverage Code are affected by these repeals and the proposed new rule.

§37.4. *Notice of Hearing.*

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

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Alan Steen

Administrator

Texas Alcoholic Beverage Commission

Earliest possible date of adoption: December 16, 2007

For further information, please call: (512) 206-3204



CHAPTER 41. AUDITING

SUBCHAPTER C. RECORDS AND REPORTS BY LICENSEES AND PERMITTEES

16 TAC §41.56

The Texas Alcoholic Beverage Commission proposes an amendment to §41.56, concerning out-of-state winery direct shipper's permits. Holders of Direct Shipper's permits are required to report their regulated activities to the commission and pay relevant taxes based on those activities. This amendment would change the reporting requirement from monthly to quarterly.

Lou Bright, General Counsel, has determined that for the first five years the rule is in effect there will be no fiscal impact on state or local government as a result of enforcing the amended rule. There is no anticipated fiscal impact on small businesses or persons required to comply with the section.

Lou Bright, General Counsel, has determined that for the first five years the rule is in effect the public will benefit from the adoption of the amendments. The public benefit that will result is increased efficiency in the administration and enforcement duties of the agency and a reduction in the reporting requirements by permittees and licensees to the commission without any reduction in permittee/licensee accountability and payment of taxes to the state.

Comments may be addressed to Lou Bright, General Counsel, Texas Alcoholic Beverage Commission, P.O. Box 13127, Austin, Texas 78711.

This amendment is proposed under the authority of §5.31 of the Alcoholic Beverage Code, which gives the commission the authority to prescribe and publish rules necessary to carry out the provisions of the Texas Alcoholic Beverage Code and §54.06 of the Alcoholic Beverage Code, which provides the commission with authority to establish rules for periodic reports by out-of-state winery direct shipper's permit holders.

Cross Reference: §5.32 and §54.06 of the Alcoholic Beverage Code are affected by this amendment.

§41.56. *Out-Of-State Winery Direct Shipper's Permits.*

(a) This rule relates to Chapter 54 of the Alcoholic Beverage Code.

(b) Each holder of an out-of-state winery direct shipper's permit shall make fiscal year quarterly reports [~~a monthly report~~] (Direct Shipper's Report) to the commission on forms prescribed by the administrator.

(c) The report shall be made and filed by the permittee with the commission at its offices in Austin, Texas, on or before the 15th day of the month following the end of the quarterly reporting period [~~calendar month~~] for which the report is made and shall show:

(1) the fiscal quarter and year [~~month~~] for which the report is made, the permit number and the name and address of the winery;

(2) invoice date, invoice number, customer name, city, total wine gallons per invoice, carrier making delivery, and freight bill number for each sale and delivery.

(d) Holders of out-of-state winery direct shipper's permits must pay the excise tax on the total gallons of wine shipped into the state, not later than the 15th day of the month following the quarterly reporting period [~~month~~] the wine was shipped into the state. Remittance of the tax due on wine, less 2.0% of the amount due when submitted within the required time, shall accompany the quarterly [~~monthly~~] report hereinbefore provided and shall be made by check, United States money order, or other acceptable methods of payment payable to the Texas [~~State~~] Comptroller of Public Accounts [~~Texas~~].

(e) As long as an out-of-state winery direct shipper's permit remains active, the [~~monthly~~] report required herein must be filed [~~each month~~] even though no sales or shipments have been made.

(f) Quarterly Reporting Periods: September 1, through November 30; December 1, through February 28 or 29; March 1, through May 31; and June 1, through August 31.

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 30, 2007.

TRD-200705228

Alan Steen

Administrator

Texas Alcoholic Beverage Commission

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For further information, please call: (512) 206-3204



CHAPTER 45. MARKETING PRACTICES SUBCHAPTER C. STANDARDS OF IDENTITY FOR MALT BEVERAGES

16 TAC §45.71, §45.85

The Texas Alcoholic Beverage Commission proposes the amendment of §45.71, relating to definitions under Chapter 45, Subchapter C, relating to standards of identity for malt beverages, and §45.85, relating to approval of labels of malt beverages. These amendments implement changes to §101.67 of the Texas Alcoholic Beverage Code, as amended by SB 904, §20, 80th Legislature, Regular Session, 2007.

The proposed amendment to §45.71 adds definitions for "independent laboratory" and "independent, reputable laboratory". These terms are used in the amendments made to §101.67, but were not defined.

Amended §45.85 implements the changes made to §101.67 of the Texas Alcoholic Beverage Code, by SB 904, §20, 80th Legislature, Regular Session, 2007, regarding the procedure for submitting samples and the fee assessed for submitting an application for label approval to the commission. Section 101.67 previously prescribed a fee of \$25. When §101.67 was amended the fee set forth in the statute was changed from the specific amount of \$25 to "an amount sufficient to cover the cost of administering" the section. The fee proposed in the amended rule remains at \$25.

Lou Bright, General Counsel, has determined that for the first five years that the proposed rules are in effect there will be no fiscal impact on units of state or local government as a result of enforcing and administering the section as proposed.

Lou Bright, General Counsel, has determined that for the first five years that the proposed rules are in effect, small businesses, micro-businesses or persons who chose to have the alcoholic content of a beverage tested by an independent laboratory will be required to pay any charges assessed by the laboratory for conducting the test. A person required to submit an application for label approval will also be required to pay a fee sufficient to cover the cost of administering this section. The proposed fee is the same as the fee currently paid with the application, so there will be no change in the amount small businesses, micro-businesses or persons required to comply with the section will pay.

Lou Bright, General Counsel, has determined that for each of the first five years that the proposed rules are in effect the public will benefit by the simplification of the label approval process, as well as the opportunity to submit test results in lieu of shipping the actual product to the commission for testing.

Comments on the proposed rule amendments may be addressed to Lou Bright, General Counsel, Texas Alcoholic Beverage Commission, P.O. Box 13127, Austin, Texas 78711. Comments will be accepted for 30 days following publication of the proposed amended rules in the *Texas Register*.

These proposed rule amendments are authorized by §5.31 and §101.67 of the Alcoholic Beverage Code (Code). Section 5.31 gives the commission authority to prescribe and publish rules necessary to carry out the provisions of Code. Section 101.67 provides the commission with authority to prescribe rules of procedure for accepting analysis of beer, ale, or malt liquor by an independent laboratory and establishing a reasonable fee.

Cross Reference: Section 5.31 and §101.67 of the Alcoholic Beverage Code are affected by these amendments.

§45.71. Definitions.

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

- (1) Beer--A malt beverage containing one half of one percent or more of alcohol by volume and not more than 4.0% of alcohol by weight, and shall not be inclusive of any beverage designated by label or otherwise by any other name than beer.
- (2) Bottler--Any person who places malt beverages in containers.
- (3) Brand label--The label carrying, in the usual distinctive design, the brand names of the malt beverage.
- (4) Container--Any can, bottle, barrel, keg, or other closed receptacle, irrespective of size or of the material from which made, for use for the sale of malt beverages at retail. This provision does not in any way relax or modify §101.44 and §1.04(18) of the Alcoholic Beverage Code.
- (5) Domestic malt beverages--A malt beverage manufactured in the United States.
- (6) Gallon--United States gallon of 231 cubic inches of malt beverages at 39.2 degrees Fahrenheit (4 degrees Celsius). All other liquid measures used are subdivisions or multiples of the gallon as so defined.

(7) Independent laboratory--A laboratory which has a good reputation in the industry and is not affiliated with the Texas Alcoholic Beverage Commission or with any entity regulated by the Texas Alcoholic Beverage Commission.

(8) Independent, reputable laboratory--A laboratory which has a good reputation in the industry and is not affiliated with the Texas Alcoholic Beverage Commission or with any entity regulated by the Texas Alcoholic Beverage Commission.

(9) ~~(7)~~ Malt beverage--A beverage made by the alcoholic fermentation of an infusion or decoction, or combination of both, in potable brewing water, of malted barley with hops, or their parts, or their products, and with or without other malted cereals, and with or without the addition of unmalted or prepared cereals, other carbohydrates or products prepared therefrom, and with or without the addition of carbon dioxide, and with or without other wholesome products suitable for human consumption.

(10) ~~(8)~~ Malt liquor--Any malt beverage containing more than 4.0% of alcohol by weight.

(11) ~~(9)~~ Territory--Puerto Rico.

(12) ~~(10)~~ United States--The several states and territories and the District of Columbia; the term "state" includes a territory and the District of Columbia; and the term "territory" means the Commonwealth of Puerto Rico.

§45.85. *Approval of Labels.*

(a) Application for label approval shall be made to the administrator at Austin, Texas, and shall be accompanied by a legible copy of the Federal Label Approval issued by the Department of Treasury. [three labels for which approval is sought. In all such instances where the label has been approved by the Federal Bureau of Alcohol, Tobacco and Firearms, a photostatic copy of the certificate of approval must be furnished to the commission upon demand.]

(b) A sample of the beverage must be submitted to the commission for analysis to verify alcohol content. A product analysis provided by an independent laboratory may be submitted in lieu of the actual samples.

(c) A fee in the amount of \$25.00 is required for each size requested on the application.

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 30, 2007.

TRD-200705242

Alan Steen

Administrator

Texas Alcoholic Beverage Commission

Earliest possible date of adoption: December 16, 2007

For further information, please call: (512) 206-3204



TITLE 22. EXAMINING BOARDS

PART 11. TEXAS BOARD OF NURSING

CHAPTER 216. CONTINUING EDUCATION

22 TAC §§216.1 - 216.7

The Texas Board of Nursing (BON) proposes amendments to 22 TAC §§216.1 - 216.7, relating to Continuing Education. Senate Bill 993 (SB 993) was passed in the 80th Legislative Session and addressed Nursing Peer Review. It also specifically addressed continuing education (CE) for nurses in that, effective September 1, 2007, the Board has the discretion to accept only Type I CE courses for license renewal. Senate Bill 993 amended the Nursing Practice Act (Tex. Occ. Code §301.303) by deleting the portion of the section that required the Board to allow Type II CE.

Prior to February 1, 2004, the Board of Vocational Examiners required LVNs to have Type I CE only. When the boards combined in 2004, LVNs were allowed to have up to 10 hours of Type II CE because the Nursing Practice Act allowed it.

The current types of CE are divided into Type I and Type II CE. The proposed rule amendments would allow only Type I, so, therefore, the distinction would be eliminated. The proposed amendments would distinguish between acceptable and unacceptable types of CE.

Type I CE are courses that are approved and reviewed by organizations recognized by the Board to approve CE programs and the entities that provide such programs. Some of the organizations recognized by the Board are: American Academy of Nurse Practitioners; American Nurses Credentialing Center; American Association of Critical-Care Nurses; American Association of Nurse Anesthetists; American College of Nurse Midwives; Texas League of Vocational Nurses; Licensed Vocational Nurses Association of Texas; National Association for Practical Nurse Education and Service (NAPNES); National Federation of Licensed Vocational Nurses (NFLVN); Continuing Medical Education (for APNs only); National Association of Pediatric Nurse Associates and Practitioners; Colleges and Universities; and Other State Boards of Nursing.

A Type II program is one which meets the criteria in the Board's rules, but has not been approved by one of the credentialing organizations. A Type II may be a program approved for another healthcare professional, such as a physician or pharmacist, or a program offered by one's employer or other organization. The program, however, must address nursing practice or the provision of health care, include nurses in the target audience, and meet the definition of nursing continuing education. Other activities accepted for Type II credit include program development and presentation, and authorship. The proposed amendments will eliminate this type of CE.

Academic courses in nursing can be taken for credit and meet Type I requirements if a grade of C or better or pass on a pass/fail system is achieved. One academic semester hour is equal to 15 contact hours. The courses must be within the framework of a curriculum that leads to an academic degree in nursing or any academic course relevant to nursing practice/health care. If academic courses are taken for credit but are related generally to health care but not specifically to nursing care, or if a course was audited, then the course would qualify as Type II credit. The proposed amendments will distinguish between what academic courses are acceptable for CE (courses taken for a grade or pass/fail) and unacceptable (audited or not specific to nursing).

Chapter 216 of the Board's rules outlines the CE requirements for nurses. The proposed amendments would limit acceptable CE to Type I, as explained above, and would eliminate Type II CE. Because no outside process exists to review Type II courses, the Board Staff has to review each Type II CE submitted to ensure that it meets the requirements of the Board's rules.

These courses have historically been difficult to audit for license renewal due to the wide array of courses that exist and the lack of information available to review the course curriculum.

Due to the elimination of any distinction in types of CE, the proposed amendments will only refer to and distinguish between "acceptable CE" and "unacceptable CE." In addition, non-substantive grammatical and consistency edits were included.

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 all acceptable continuing education courses will be approved by an entity approved by the Board in order to assure quality CE. 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.

Texas Occupations Code, §301.303, is affected by the proposed amendments.

§216.1. Definitions.

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

- (1) (No change.)
- (2) Advanced Practice Nurse (APN)--A nurse anesthetist, nurse practitioner, nurse midwife, or clinical nurse specialist approved by the board to practice as an advanced practice nurse based on completion of an advanced educational program acceptable to the board. [A registered nurse approved by the board to practice as an advanced practice nurse based on completion of an advanced educational program acceptable to the board. The term includes a nurse practitioner, nurse-midwife, nurse anesthetist, and a clinical nurse specialist.]
- (3) - (4) (No change.)
- (5) Authorship--Development and publication of a manuscript related to nursing and health care.
{(5) Bioterrorism: The overt or covert dispensing of disease pathogens or toxins by individuals, groups, or governments for the purpose of causing harm for either ideological, political, or financial gain.}
- (6) - (7) (No change.)
- (8) Contact hour--Sixty consecutive minutes of participation in a learning activity.
- (9) Continuing Education (CE)--Programs beyond the basic preparation which are designed to promote and enrich knowledge, improve skills and develop attitudes for the enhancement of nursing practice, thus improving health care to the public. [Nurse refresher courses are not accepted for continuing education credit.]
- (10) Continuing education program--An organized educational activity, e.g. self-paced (online), classroom, approved through an

external review process based on a predetermined set of criteria. The review is conducted by an organization(s) recognized by the board to approve programs and providers. [designed and evaluated to meet a set of behavioral objectives which may be presented in one session or a series of sessions.]

- (11) (No change.)
- {(12) Inservice programs--Educational activities sponsored by the employing agency to provide specific information about the work setting: Orientation or other programs which address the institution's philosophy, policies and procedures, on-the-job training; basic cardiopulmonary resuscitation; and equipment demonstration are not acceptable for continuing education credit.}

{(13) Institutional-based instruction--Planned programs conducted by the employing agency for the development of its nursing staff's knowledge and improvement of skills. Institutional-based instruction which qualifies under §216.3(1) of this title (relating to Type I) is acceptable for Type I credit. Type II credit may be obtained for programs which comply with §216.4 of this title (relating to Criteria for Acceptable Continuing Education Activity).}

(12) [(14)] [Limited] Prescriptive Authority--Authorization granted to an advanced practice nurse who meets the requirements to carry out or sign a prescription drug order.

{(15) Orientation--A program designed to introduce employees to the philosophy, goals, policies, procedures, role expectations and physical facilities of a specific work place. This does not meet the continuing education criteria as intended by these rules.}

(13) [(16)] Program number--A unique number assigned to a program upon approval which shall identify it regardless of the number of times it is presented.

(14) [(17)] Provider--An individual, partnership, organization, agency or institution approved by an organization recognized by the board which offers continuing education programs.

(15) [(18)] Provider number--A unique number assigned to the provider upon approval by the credentialing agency or organization.

{(19) Self-directed study--An educational activity wherein the learner takes the initiative and the responsibility for assessing, planning, implementing and evaluating the activity. Self-directed study may include program development, auditing of academic course, initial specialty certification, home study, programmed instruction and authorship.}

{(20) Type I--Programs(s) approved through an external review process based on a predetermined set of criteria. The review is conducted by an organization(s) recognized by the board to approve programs and providers.}

{(21) Type II--Program(s) which meet the criteria for acceptable continuing education activity but which have not undergone an external review process.}

§216.2. Purpose.

The purpose of continuing education is to ensure that nurses stay abreast of current industry practices, enhance their professional competence, learn about new technology and treatment regimens, and update their clinical skills. Continuing education in nursing includes programs beyond the basic preparation which are designed to promote and enrich knowledge, improve skills and develop attitudes for the enhancement of nursing practice, thus improving health care to the public. Pursuant to authority set forth in Texas Occupations Code §301.303, the board requires [is establishing rules requiring] participation in continuing education activities for license renewal.

The procedures set forth in these rules provide guidance to fulfilling the continuing education requirement. The board encourages nurses to choose continuing education courses that relate to their work setting and practice area, which benefits the public welfare. [a variety of means for licensees to comply with this requirement. The board assumes licensed nurses will maintain the high standards of the profession in selecting quality educational programs to fulfill the continuing education requirement. The board also assumes that providers will plan and implement quality educational programs which meet the criteria of the board.]

§216.3. Requirements.

(a) Twenty contact hours of continuing education within the two years immediately preceding renewal of registration are required.

[(1)] These [Type I. Ten contact] hours shall be obtained by participation in programs approved by a credentialing agency recognized by the board. [The program shall meet all criteria listed in §216.4 of this title (relating to Criteria for Acceptable Continuing Education Activity). In addition, there shall be a nurse on the planning committee and target audience shall include nurses. For RN or LVN/RN target groups, a RN shall be on the planning committee to ensure that program objectives and content are commensurate with recognized standards for RN continuing education courses. The board recognizes agencies/organizations to approve providers and/or programs for Type I credit.] A list of these agencies/organizations may be obtained from the board's office or web site.

[(2)] Type II. The remaining 10 contact hours shall be obtained by participation in additional Type I programs or by participation in activities listed in §216.4 of this title.

(b) [(3)] Requirements for the Advanced Practice Nurse. The licensee authorized by the Board as an advanced practice nurse (APN) is required to obtain 20 contact hours of continuing education within the previous two years of licensure.

(1) [(A)] The required hours are not in addition to the requirements of subsection (a) [paragraphs (1), (2), (4), and (5)] of this section.

(2) [(B)] The 20 contact hours of continuing education must be appropriate to the advanced specialty area and role recognized by the Board.

(3) [(C)] The APN who holds [limited] prescriptive authority must complete, in addition to the required contact hours in paragraph (2) [subparagraph (B)] of this subsection [paragraph], at least five (5) [5] contact hours of continuing education in pharmacotherapeutics.

(4) [(D)] Category I Continuing Medical Education (CME) contact hours will meet requirements [for Type I contact hours] as described in this chapter.

[(4)] For either two year renewal cycle preceding September 1, 2007, a license holder who renews a license to practice as a Nurse or Advanced Practice Nurse shall have completed not less than two contact hours of continuing education in bioterrorism as part of the total hours of continuing education required to be completed under (1) and (2).]

[(A)] The minimum two contact hours required continuing education in bioterrorism shall include information relevant to preparing for, reporting medical events resulting from, and responding to the consequences of an incident of bioterrorism.]

[(B)] The bioterrorism continuing education program will be acceptable to the board for Type I or Type II credit if it meets the following criteria:]

[(i)] the bioterrorism course must include information relating to preparing for an incidence of bioterrorism including the clues to bioterrorism attack and the signs, symptoms, and modes of transmission of high-priority agents of bioterrorism;]

[(ii)] the bioterrorism course must include information relating to the reporting of an incidence of bioterrorism including the ways in which to contact the proper authorities and correctly document the incidence of bioterrorism;]

[(iii)] the bioterrorism course must include information relating to the implementation of decontamination procedures, the identification of treatment locations and treatment personnel, the acquisition of treatment-related supplies, the awareness of any facility-organized response plans, and the development of a patient care plan to address the situation; and]

[(iv)] the bioterrorism course is designed for and targeted to Registered Nurses and Licensed Vocational Nurses.]

[(C)] A license holder who does not comply with the continuing education requirement imposed under this paragraph is subject only to required completion of the continuing education requirement in a period set by the board of 30 days or less or an administrative penalty imposed under Subchapter K of the Nursing Practice Act, or both.]

[(D)] A license holder who does not comply with the sanctions imposed under subparagraph (C) of this paragraph is subject to any sanction imposed under §301.453 of the Nursing Practice Act.]

(c) [(5)] Forensic Evidence Collection.

(1) [(A)] Each nurse licensed in Texas and employed in an emergency room setting on or after September 1, 2006 shall complete a minimum of two hours of continuing education relating to forensic evidence collection, as required by Texas Occupations Code §301.306 and this rule by:

(A) [(i)] September 1, 2008 for nurses to whom this requirement applies who are employed in an ER setting on or before September 1, 2006, or

(B) [(ii)] within two years of the initial date of employment in an emergency room setting. This requirement may be met through completion of [either Type I or Type II] approved continuing education activities, as set forth in §216.4 of this title.

(2) [(B)] This requirement shall apply to nurses who work in an emergency room (ER) setting that is:

(A) [(i)] the nurse's home unit;

(B) [(ii)] an ER unit to which the nurse "floats" or schedules shifts; or

(C) [(iii)] a nurse employed under contractual, temporary, per diem, agency, traveling, or other employment relationship whose duties include working in an ER.

(3) [(C)] A licensed nurse in Texas who would otherwise be exempt from CE requirements during the nurse's initial licensure or first renewal periods under §216.8(b) or (c) of this title shall comply with the requirements of this section. This is a one-time requirement for each nurse employed in an emergency room setting. In compliance with §216.7(b) of this title, each licensee is responsible for maintaining records of CE attendance. Validation of course completion in Forensic Evidence Collection should be retained by the nurse indefinitely, even if a nurse changes employment.

(4) ~~[(D)]~~ The minimum 2 hours of continuing education requirement shall include information relevant to forensic evidence collection and age or population-specific nursing interventions that may be required by other laws and/or are necessary in order to assure evidence collection that meets requirements under Texas Government Code §420.031 regarding use of a service-approved evidence collection kit and protocol. Content may also include but is not limited to documentation, history-taking skills, use of sexual assault kit, survivor symptoms, and emotional and psychological support interventions for victims.

(5) ~~[(E)]~~ The required hours are included in the ~~[requirements of paragraphs (1) - (3) of this section relating to]~~ continuing education requirements for nurses.

~~[(6) Continuing Education Requirements for Retired Nurses Providing Only Voluntary Charity Care.]~~

~~[(A) In compliance with Texas Occupations Code §112.051, the Board shall adopt rules providing for reduced fees and continuing education requirements for retired health care practitioners whose only practice is voluntary charity care.]~~

~~(d) [(B)] A nurse who is 65 years old or older and who holds or is seeking to hold a valid volunteer retired (VR) nurse authorization in compliance with Texas Occupations Code §112.051 and Board rule (22 TAC §217.9(d)):~~

~~(1) [(i)] Must have completed at least 10 hours of [either Type 1 or Type 2] continuing education as defined in this chapter during the previous biennium, unless the nurse also holds valid recognition as an advanced practice nurse or is a Volunteer Retired Registered Nurse (VR-RN) with advanced practice authorization in a given role and specialty in the State of Texas.~~

~~(2) [(ii)] Must have completed at least 20 hours of [either Type I or Type 2] CE as defined in this chapter if authorized by the Board in a specific advanced practice role and specialty. The 20 hours of CE must meet the same criteria as APN CE defined under subsection (b) [paragraph (3)] of this section. An APN authorized as a VR-RN with APN authorization may NOT hold prescriptive authority. This does not preclude a registered nurse from placing his/her APN authorization on inactive status and applying for authorization only as a VR-RN.~~

~~(3) [(iii)] Is exempt from fulfilling targeted CE requirements except as required for volunteer retired advanced practice nurses.~~

§216.4. Criteria for Acceptable Continuing Education Activity.

Continuing Education programs must be approved by a credentialing agency or an affiliated entity of one of these agencies. Proof of successful completion shall contain the name of the provider; the program title, date, and location; number of contact hours; provider number; and credentialing agency. [The following criteria have been established to guide approved organizations the licensed nurse in selecting appropriate programs and providers to guide the provider in planning and presenting continuing education programs. Activities which may meet these criteria include: classroom instruction; individualized instruction; and academic courses.; self-directed study; and institutional-based instruction.]

~~[(1) Length. The program shall be at least one contact hour (60 consecutive minutes) in length.]~~

~~[(2) Learner objectives.]~~

~~[(A) Objectives shall be written and shall be the basis for determining content, learning experience, teaching methodologies, and evaluation.]~~

~~[(B) Objectives shall be specific, attainable, measurable, and describe expected outcomes of the learner.]~~

~~[(3) Target audience. The target audience for the program is identified.]~~

~~[(4) Planned program. There shall be evidence of program planning based on needs of potential target audience.]~~

~~[(5) Content.]~~

~~[(A) The content shall be relevant to nursing practice and/or health care and provide for the professional growth of the licensee.]~~

~~[(B) Content is related to and consistent with the program objectives.]~~

~~[(6) Instructor qualification.]~~

~~[(A) There shall be documentation of the instructor's expertise in the content area. The instructor should apply principles of adult learning.]~~

~~[(B) If the program includes a clinical nursing component, a licensed nurse with expertise in that specific component shall provide supervision with a ratio of no more than 12 participants to one faculty.]~~

~~[(C) If the program includes a clinical component other than nursing, an instructor possessing the appropriate credentials of the discipline shall provide supervision.]~~

~~[(7) Teaching methods.]~~

~~[(A) Learning experiences and teaching methods shall be appropriate to achieve the objectives of the program.]~~

~~[(B) Principles of adult education shall be used in the design of the program.]~~

~~[(C) Time allotted for each activity shall be sufficient for the learner to meet the objectives of the program.]~~

~~[(D) A schedule of the program shall be provided which describes content with corresponding time frames.]~~

~~[(E) Facilities and educational resources shall be adequate to implement the program.]~~

~~[(8) Evaluation.]~~

~~[(A) Participants shall complete a written evaluation of the:]~~

~~[(i) teaching expertise of each instructor;]~~

~~[(ii) learner's achievement of objectives;]~~

~~[(iii) relevance of objectives to overall purpose/goal of activity;]~~

~~[(iv) effectiveness of teaching strategies; and]~~

~~[(v) appropriateness of physical facilities and educational resources.]~~

~~[(B) If participation is in an academic course or other program in which grades are granted, a grade equivalent to "C" or better shall be required, or "Pass" on a Pass/Fail grading system.]~~

~~[(9) Records.]~~

~~[(A) Records of programs shall be kept by the provider for a minimum period of four years from the date of completion.]~~

~~[(B) Records shall include target audience, program planning materials, content, objectives, outline of instructor qualifications, teaching strategies and materials, evaluation tools and summary and a list of participants.]~~

~~[(C) The provider shall furnish each participant a record of successful completion specifying the provider; title, date and location of program; number of contact hours; and provider number, grades and organization granting approval, if applicable. This record shall be kept by the nurse for a minimum period of four years from the date of completion.]~~

~~§216.5. Additional Criteria for Specific Continuing Education Programs.~~

~~In addition to those programs reviewed by a Board-approved entity, a licensee may attend an academic course that meets the following criteria: [listed in §216.4 of this title (relating to Criteria for Acceptable Continuing Education Activity); the following guidelines shall apply to the selection and/or planning and implementation of specific CE programs:]~~

~~[(1) Academic course.]~~

~~(1) [(A)] The course shall be within the framework of a curriculum that leads to an academic degree in nursing or any academic course relevant to nursing practice[health care].~~

~~(2) [(B)] Participants, upon audit by the board, shall be able to present an official transcript indicating completion of the course with a grade of "C" or better, or a "Pass" on a Pass/Fail grading system.~~

~~[(C) Academic courses in this category are acceptable for Type I CE credit.]~~

~~[(2) Individualized instruction (home study/programmed instruction). The program shall:]~~

~~[(A) be developed by a professional group such as an educational institution, corporation, professional association, or other provider of continuing education;]~~

~~[(B) follow a logical sequence;]~~

~~[(C) involve the learner by requiring an active response to the educational materials presented;]~~

~~[(D) contain a means to measure achievement of learning objectives of the program; and]~~

~~[(E) provide a record of attendance which complies with §216.4(9)(C) of this title concerning records indicating completion of the program.]~~

~~[(F) Up to 20 contact hours of Type I or five contact hours of Type II credit for one renewal period may be obtained through individualized instruction.]~~

~~[(3) Self-directed study.]~~

~~[(A) Program development and presentation.]~~

~~[(i) The program or presentation must not be a part of the licensee's primary employment responsibilities.]~~

~~[(ii) Credit shall be awarded only once regardless of the number of times the program/work was presented.]~~

~~[(iii) Upon audit by the board, the licensee must submit program objectives and an outline including date and location of the presentation not to exceed one page.]~~

~~[(iv) Two hours of Type II credit per program topic up to five hours per renewal period may be obtained through this means.]~~

~~[(B) Auditing of academic courses.]~~

~~[(i) Academic courses in nursing or health care may be audited. Audited courses meet Type II requirements.]~~

~~[(ii) Upon audit by the board, the licensee must submit a letter from the course instructor on the academic institution's letterhead indicating that the licensee attended the course.]~~

~~[(iii) Two hours of Type II credit per course may be obtained through this means.]~~

~~[(C) Certification.]~~

~~[(i) A licensee who completes the requirements for certification in a nursing specialty by a national credentialing body may receive Type II continuing education credit.]~~

~~[(ii) This is a one-time approval for initial certification only.]~~

~~[(iii) Upon audit by the board, the licensee must furnish a letter from the national specialty organization indicating initial certification.]~~

~~[(iv) Five hours of Type II credit for initial certification may be obtained through this means.]~~

~~[(D) Authorship.]~~

~~[(i) A licensee may receive CE credit for development and publication of a manuscript related to nursing and health care.]~~

~~[(ii) Credit for publication shall be awarded only once per renewal period.]~~

~~[(iii) Upon audit by the board, the licensee must submit a letter from the publisher indicating acceptance of manuscript for publication or a copy of the published work.]~~

~~[(iv) Five contact hours of Type II credit may be obtained through this means per renewal period.]~~

~~[(4) Out-of-state programs. A continuing education program attended or undertaken in a jurisdiction outside of Texas may be accepted:]~~

~~[(A) for Type I credit if all criteria are met and if it is approved by one of the board's recognized credentialing agencies/organizations; and]~~

~~[(B) for Type II credit if it meets the criteria listed in §216.4 of this title and §216.5 of this section concerning criteria for acceptable continuing education activity and additional criteria for specific continuing education programs.]~~

~~§216.6. Activities Which are not Acceptable as Continuing Education.~~

~~The following activities do not meet continuing education requirements for licensure renewal.~~

~~(1) Basic Life Support (BLS) or cardiopulmonary resuscitation (CPR) courses.~~

~~(2) (No change.)~~

~~(3) Nursing refresher [Refresher] courses. Programs designed to update knowledge or current nursing theory and clinical practice, which consist of a didactic and clinical component to ensure entry level competencies into professional practice are not accepted for CE credit.~~

~~(4) - (9) (No change.)~~

(10) Self-directed study--An educational activity wherein the learner takes the initiative and the responsibility for assessing, planning, implementing and evaluating the activity including, but not limited to:

(A) Academic courses that are audited, or that are healthcare-related courses but not part of a nursing degree program, or that are prerequisite courses such as mathematics, physiology, biology, government, or other similar courses are not acceptable;

(B) Authorship; and

(C) Program development and presentation.

§216.7. *Responsibilities of Individual Licensee.*

(a) It shall be the licensee's responsibility to select and participate in continuing education activities that will meet the criteria listed in this chapter. [~~§216.4 of this title (relating to Criteria for Acceptable Continuing Education Activity).~~]

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

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

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

TRD-200705202

Katherine Thomas

Executive Director

Texas Board of Nursing

Earliest possible date of adoption: December 16, 2007

For further information, please call: (512) 305-6823



CHAPTER 219. ADVANCED PRACTICE NURSE EDUCATION

22 TAC §§219.1 - 219.13

The Texas Board of Nursing (BON or Board) proposes amendments to Title 22, Texas Administrative Code (TAC), §§219.1 - 219.13 relating to Advanced Nurse Practitioner Program. The Texas Government Code requires the Board to review all rules every four years for the purpose of determining whether the rule should continue to exist. Chapter 219 has been under its required review. Additionally, as a result of recommendations made by the Sunset Advisory Commission (Sunset) and subsequent changes to the Nursing Practice Act during the 2007 legislative session, the Board's role has changed with regard to approval of nursing education programs. Although the Board will continue to play a role in approval of pre-licensure programs, it will not approve post-licensure programs that are nationally accredited by a nursing education accrediting body approved by the U.S. Department of Education.

The Sunset changes present a unique dilemma for new advanced practice nursing education programs that are not nationally accredited and are not eligible for such accreditation until after the first class graduates. Advanced practice nurse education programs are post-licensure programs that are required to be at the master's degree level or beyond in order for graduates to be authorized to practice in Texas (§221.3(c)(4)). As such, they would not be approved by the Board. However, national nursing education accrediting bodies for nurse

practitioner and clinical nurse specialist programs do not offer accreditation prior to graduation of the first class. This means that nursing programs that begin a new graduate program with a focus on education in an advanced practice role and specialty will have at least one graduating class that is not eligible for authorization to practice in the advanced role and specialty because the students completed a non-accredited program.

The issue as it relates to advanced practice nursing education was brought to the attention of the Sunset staff. Sunset staff clarified that their intent was not to require the Board to stop approving new advanced practice nursing education programs since there is presently no other mechanism for approval or accreditation of new programs. The proposed amendments to Chapter 219 were reviewed by the Advanced Practice Nursing Advisory Committee and presented for the Board's consideration. The proposed amendments seek to address the Board's role related to approval of advanced practice nursing education. The key change would make Board approval of advanced practice nursing education programs time-limited. It will allow programs sufficient time to seek national nursing education accreditation. Additionally, Board approval will automatically be withdrawn if a program fails to obtain such accreditation within a reasonable time.

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 amendments.

Katherine Thomas, Executive Director, has determined that, for each year of the first five years the proposal is adopted, the public benefit is that the affected statutes will be implemented and the Board's role in regard to new advanced practice nursing education programs will be clarified. 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 proposal is 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.

§219.1. *General Requirements and Purpose.*

(a) General Requirements. Advanced practice nursing educational programs in the State of Texas shall be approved [~~accredited~~] by the Board until the program is accredited or approved [~~or~~] by a national advanced practice nursing education accrediting body recognized by the Board.

(1) An educational institution located in Texas may apply for Board approval [~~accreditation~~] for advanced practice nursing educational programs that prepare either nurse practitioners or clinical nurse specialists. Only that portion of the program of study that qualifies registered nurses for authorization to practice in an advanced role and specialty recognized by the Board is eligible for approval. Board approval shall be limited to only those programs seeking initial approval that do not otherwise hold national accreditation or approval from a national nursing education accrediting body for master's or doctoral level nursing education [~~accreditation~~].

(2) To be eligible to apply for Board approval [state accreditation], the new advanced practice nursing educational program must be at or beyond the master's level of [a post-basic] nursing education [level].

~~[(3) All new advanced educational programs must be at the graduate or post-graduate level.]~~

(b) The director and faculty are accountable for complying with the Nursing Practice Act and Board rules and regulations.

(c) Advanced practice nursing educational programs shall provide reasonable and uniform standards based upon sound educational principles.

(d) ~~[(b)]~~ Purpose. This rule has ~~[These standards have]~~ been developed for use by nurse practitioner and clinical nurse specialist programs ~~[accredited by or]~~ seeking approval ~~[accreditation]~~ by the Board in order to:~~[- The purpose of these standards is:]~~

(1) Promote ~~[To promote]~~ safe and effective advanced ~~[nursing]~~ practice nursing,

(2) Serve ~~[To serve]~~ as a guide for development of new advanced practice nursing educational programs that prepare nurse practitioners and clinical nurse specialists, and

(3) Provide ~~[To provide]~~ criteria for the evaluation of new ~~[and established]~~ advanced practice nursing educational programs that prepare nurse practitioners and clinical nurse specialists.~~[- and]~~

~~[(4) To foster continued improvement of established advanced educational programs.]~~

§219.2. Definitions.

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

(1) Accredited program--A program that has been determined to have met the standards set by ~~[the Board or by]~~ a national advanced practice nursing education accrediting body recognized by the Board.

~~[(2) Advanced educational program--A post-basic advanced practice nurse program at the certificate or master's degree level. Beginning January 1, 2003, a minimum of a graduate degree in the advanced practice role and specialty will be required for authorization as an advanced practice nurse.]~~

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

(3) Advanced practice nursing educational program--A post-basic advanced practice nursing educational program at or beyond the master's level.

(4) (No change.)

(5) Approved advanced practice nursing educational program--An advanced practice nursing educational program approved by the Texas Board of Nursing.

~~[(5)]~~ Board--The ~~[Board of Nurse Examiners for the State of]~~ Texas Board of Nursing.

~~[(6)]~~ Clinical learning experiences--Planned, faculty-guided learning experiences that involve direct contact with patients or simulation ~~[under guidance of faculty].~~

(8) Course--Organized subject content and related activities, that may include didactic, laboratory and/or clinical experiences, planned to achieve specific objectives within a given time period.

(9) Curriculum--Course offerings that, in aggregate, compose the total learning activities in a program of study.

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

~~[(8)]~~ Didactic learning experiences--Any faculty-guided ~~[planned]~~ learning activities that take place in the classroom, learning resource center, skills laboratory, or similar settings, or by distance education ~~[under the guidance of faculty].~~

~~[(9)]~~ Director--A registered nurse responsible for the administration of the advanced practice nursing educational program ~~[and]~~ who meets the requirements as stated in §219.6(f) of this chapter (relating to Administration and Organization).

~~[(10) Distance education--Instruction delivered by an accredited program by any means to any location(s) other than the main campus. Distance education may range from offering a single course or multiple courses to offering the entire program of study.]~~

(13) Faculty member--An individual employed or appointed to teach in the advanced practice nursing educational program who meets the requirements as stated in §219.7 of this chapter (related to Faculty Qualification and Faculty Organization).

~~[(11)]~~ Governing institution--A college or university responsible for the administration and operation of the program.

~~[(12) Party state Any state that has entered into the Nurse Licensure Compact.]~~

(15) Objectives/Outcomes--Clear statements of expected behaviors that are attainable and measurable.

(A) Program Objectives/Outcomes--Broad statements used to direct the overall student learning toward the achievement of expected program outcomes.

(B) Clinical Objectives/Outcomes--Statements describing expected student behaviors throughout the curriculum that represent progression of students' cognitive, affective and psychomotor achievement in clinical practice across the curriculum.

(C) Course Objectives/Outcomes--Statements describing expected behavioral changes in the learner upon successful completion of specific curriculum content that serve as the mechanism for evaluation of student progression.

(16) Philosophy/Mission--Statement of concepts expressing fundamental values and beliefs regarding human nature as they apply to advanced practice nursing education and practice and upon which the curriculum is based.

~~[(13)]~~ Practicum--That ~~[The practicum is that]~~ portion of the program consisting of clinical experiences for the purpose of

integrating theory with practice, ~~including, [The term includes,] but [is] not limited to, preceptorship and/or[;] residency and integration.~~

(18) Program of study--The courses and learning experiences that constitute the requirements for completion of an advanced practice nursing educational program.

(19) [(14)] Qualified preceptor--An advanced practice nurse, physician or other health care professional acceptable to the Board who meets the following requirements:

(A) Holds an active, unencumbered license; ~~[(where licensure is required);]~~

(B) Is in current practice in the advanced specialty area;[;]

(C) Is committed to the concept of the advanced practice nurse;[;] and

(D) Functions as a supervisor and teacher and evaluates the student's performance in the clinical setting.

(20) Recommendation--A suggestion based upon program assessment indirectly related to the rules to which the program must respond in a method of their choosing.

(21) Requirement--mandatory criterion based upon program assessment that is specified in rule and must be addressed in the manner prescribed.

(22) [(15)] Shall [and must]--Denotes mandatory [Mandatory] requirements.

~~[(16) Should--A recommendation]~~

(23) 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, facilities and physical plants (Texas Education Code, Title 3, Subchapter B, chapter 61).

(24) [(17)] Unencumbered license--A professional license that does not have stipulations against it.

§219.3. Program Development, Closure, and Transfer of Administrative Control.

(a) New Programs.

(1) Proposal to develop an advanced practice nursing educational program

(A) A college or university regionally accredited by an agency recognized by the THECB [a Board-recognized approval/accrediting body] is eligible to submit a proposal to develop a new [an] advanced practice nursing educational program. ~~[Notice of intent to establish an advanced educational program shall be submitted in writing well in advance of the anticipated start of the program. This process may take 12 to 18 months to complete.]~~

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

(C) [(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 §219.6 of this chapter.[;]

~~[(i) Holds a minimum of a master's degree in nursing or the equivalent thereof as determined by the Board,]~~

~~[(ii) Is authorized to practice as an advanced practice nurse in an advanced role and specialty appropriate to the type of program being proposed, and]~~

~~[(iii) Has teaching and administrative experience related to the type of program being proposed.]~~

(D) Sufficient nursing faculty with appropriate expertise shall be in place for development of the curriculum component of the program.

(E) [(C)] The proposal shall include information outlined in Board guidelines.

~~[(D) The proposal shall include documentation of Texas Higher Education Coordinating Board approval, as applicable.]~~

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

(G) [(E)] The proposal shall [will] 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 approval to the new program, may defer action on the proposal, or may deny further consideration of the proposal.

(H) The program shall not admit students until the Board approves the proposal and grants initial approval.

(I) Prior to presentation of the proposal to the Board, evidence of approval from the appropriate regulatory/funding agencies shall be provided.

(J) When the proposal is submitted, an initial non-refundable approval fee shall be assessed per §223.1 (related to Fees) of this title.

(K) A proposal without action for one calendar year shall be inactivated.

~~[(2) Application for Initial Accreditation]~~

~~[(A) Initial accreditation must be granted prior to admission of students.]~~

~~[(B) Following approval to develop an advanced educational program, the director and faculty shall develop the application for initial accreditation.]~~

~~[(C) The director and faculty shall plan the program of learning.]~~

~~[(D) The application shall include information outlined in board guidelines.]~~

~~[(E) The Board shall review the application and supporting evidence at a regularly scheduled meeting. If the program is based upon educational principles acceptable to the Board and is in compliance with the board's requirements as specified in this subsection, initial accreditation may be granted.]~~

(2) [(F)] Survey visits shall be conducted, as necessary, by Board staff until full accreditation by a Board recognized national nursing education accrediting body is granted.

(b) Transfer of Administrative Control by Governing Institutions. A governing institution that wishes to transfer administrative control of the advanced practice nursing educational program to another governing institution shall follow the procedures specified in Board guidelines.

~~[(1) A governing institution of an advanced educational program that has full accreditation status may request permission from~~

the board to transfer administrative control of the program or any portion thereof.]

~~[(A) A governing institution that proposes to transfer administrative control of an advanced educational program or any portion thereof to another governing institution accredited by a board recognized approval/accrediting body shall submit:]~~

~~[(i) Notice of intent to transfer administrative control in writing to the board 12 months prior to the anticipated date of transfer, and]~~

~~[(ii) A written plan for closure of the nursing program as required by subsection (e) of this section if the entire program is to be transferred.]~~

~~[(B) The governing institution that will assume responsibility for the program shall submit a Proposal to Assume Administrative Control to the board six months prior to a regularly scheduled board meeting.]~~

~~[(i) The proposal shall be completed under the direction/consultation of a registered nurse who holds a minimum of a master's degree in nursing; is authorized to practice as an advanced practice nurse in a related advanced role and specialty of the type of program being proposed, and who has teaching and administrative experience related to the type of program being proposed.]~~

~~[(ii) The proposal shall include information outlined in board approved guidelines.]~~

~~[(iii) The proposal shall include documentation of Texas Higher Education Coordinating Board approval, as applicable.]~~

~~[(iv) The proposal will be considered by the Board at a regularly scheduled meeting.]~~

~~[(v) The Board may approve, may defer action, or may deny further consideration of the proposal.]~~

~~[(2) Accreditation Status of Transferred Program(s)]~~

~~[(A) If the governing institution that is assuming administrative control previously has been responsible for an accredited program and does not intend to change the program of study, then the program shall maintain its accreditation status.]~~

~~[(B) If the governing institution that is assuming administrative control previously has been responsible for an accredited program and intends to alter the program of study, then that governing institution shall submit a proposal to change the program of study in accordance with subsection § 219.9 of this chapter.]~~

~~[(C) If the governing institution that is assuming administrative control has not previously been responsible for an accredited program, then that governing institution shall submit an application for initial accreditation in accordance with (a)(2) of this subsection.]~~

~~(c) Closing a Program or Portion Thereof.~~

~~(1) When the decision to close a program or portion thereof has been made, the director shall [must] notify the Board and submit a written plan for closure that includes the following:~~

- ~~(A) Reason for closing the program or portion thereof;~~
- ~~(B) Date of intended closing;~~
- ~~(C) Academic provisions for students;~~
- ~~(D) Provisions made for access to and safe storage of vital school records, including transcripts of all graduates; and~~

~~(E) Methods to be used to maintain requirements and standards until the program or portion thereof closes.~~

~~(2) The program or portion thereof shall continue within standards until all classes that are enrolled at the time of the decision to close have graduated. In the event this is not possible, a plan must be developed whereby students may transfer to other accredited or approved programs.~~

~~§219.4. Approval [Accreditation].~~

~~(a) Approval [The progressive designation of accreditation status is not implied by the order of the following listing. Accreditation] 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 [annual reports or] survey visits or other factors listed under this subsection. Types of approval [accreditation] include:~~

~~(1) Approval. Approval initially provides [Initial accreditation. Initial accreditation is] written authorization to admit students and is granted if the program meets the requirements of the Board. Ongoing approval is contingent upon the program continuing to meet the Board's legal and educational requirements.~~

~~[(2) Full accreditation. Full accreditation is granted to an advanced educational program after one class has completed the program and is based upon evidence that the program is continuing to meet the board's legal and educational requirements.]~~

~~(2) [(3) Approval [Accreditation (Initial or Full)] With Warning.~~

~~(A) Issuance of warning. When the Board determines that a program is not meeting the Board's legal and/or education requirements, the program is issued a warning, is provided a list of the deficiencies, and is given a specified time in which to correct the deficiencies.~~

~~(B) Failure to correct deficiencies. If the program fails to correct the deficiencies within the prescribed period, the Board may:~~

- ~~(i) Restrict admissions or other program activities until the deficiencies are corrected,~~
- ~~(ii) Place the program on conditional approval [accreditation], or~~
- ~~(iii) Deny approval [accreditation].~~

~~(3) [(4) Conditional Approval [Accreditation]. Conditional approval [accreditation] is granted for a time specified by the Board in order to provide additional time to correct the deficiencies.~~

~~(A) The program shall not admit students while on conditional approval [accreditation].~~

~~(B) The Board may establish specific criteria to be met in order for the program's conditional approval [accreditation] status to be removed.~~

~~(C) Depending upon the degree to which the Board's legal and/or ~~and~~ educational requirements are met, the Board may change the approval [accreditation] status to approved [full], approval with warning, or deny approval [accreditation].~~

~~(4) [(b) Denial of Approval [Accreditation]. The Board may deny initial or ongoing approval of a program that fails to meet legal and/or educational requirements within the specified time. The program shall be removed from the list of Board-approved advanced practice nursing educational programs. [A program that fails to meet legal and educational requirements of the board within the specified time shall be removed from the list of state accredited nursing pro-~~

grams. Reasons for denial of initial or continuing accreditation include but are not limited to:]

~~{(1) Failure to meet specific criteria set out by the Board and}~~

~~{(2) Continued lack of compliance with minimum requirements as set out in this chapter.}~~

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

(1) Deficiencies in compliance with the rule;

(2) Noncompliance with the school's stated philosophy/mission, program design, objectives/outcomes, and/or policies;

(3) Failure to submit records and reports to the Board office within designated time frames;

(4) Failure to provide sufficient variety and number of clinical learning opportunities for students to achieve stated objectives/outcomes;

(5) Failure to comply with Board requirements or to respond to recommendations within the specified time;

(6) Student enrollments without sufficient faculty, facilities and/or preceptor sites;

(7) Failure to recruit qualified faculty and preceptors with appropriate role preparation for program type;

(8) Failure to obtain national accreditation or approval within five years from the date the first class completes the program; or

(9) Other activities or situations that demonstrate to the Board that a program is not meeting legal and/or educational requirements and standards.

(c) Determination of Approval Status. [Accreditation Procedures: The continuing accreditation status of each program shall be determined annually by the board based upon:]

~~{(1) Review of annual report. Each board-accredited advanced educational program shall submit an annual report regarding its compliance with the board's legal and educational requirements. Accreditation status is determined on the basis of the program's annual report and other pertinent data when a program is not visited by staff.}~~

(1) [(2)] Survey visit. Each advanced practice nursing educational program will be visited as necessary once approval [at least every six years after full accreditation] has been granted. A written report of the survey visit will be reviewed by the Board at a regularly scheduled meeting. [The Board may authorize staff to conduct a survey visit at any time based upon established criteria.]

(2) Ongoing approval may be continued on the basis of pertinent data as determined by the Board when a program is not visited by staff.

{(3) A written report of the survey visit or annual report will be reviewed by the board at a regularly scheduled meeting.}

(3) [(4)] Notice of a program's approval [accreditation] status will be sent to the director, chief administrative officer of the governing institution, and others as determined by the Board.

(d) [Voluntary] Withdrawal from the Approval [Accreditation] Process.

(1) Board approval of an advanced practice nursing educational program shall automatically be withdrawn with the first occurrence of any of the following:

(A) The program obtains accreditation by a national advanced practice nursing education accrediting agency recognized by the Board;

(B) Five years from the date the first class completes the program; or

(C) The program is denied national accreditation.

(2) [(4)] An advanced practice nursing educational program approved [accredited] by the Board may elect to withdraw from the Board approval [accreditation] process by notifying the Board of its intention to withdraw in writing.

(3) [(2)] After withdrawal from the Board approval process, the [The] advanced practice nursing educational program shall be removed from the list of Board approved [accredited] nursing educational programs.

(4) [(3)] Withdrawal of approval [accreditation] status will become effective on a date agreed upon by the Board and the program unless otherwise indicated in this subsection [at the end of the yearly review period].

(5) [(4)] Programs may reapply for initial approval [accreditation] at any time. Programs that have had Board approval withdrawn for failure to obtain accreditation by a national nursing education accrediting agency recognized by the Board must reapply for initial approval by submitting a new proposal as described in this chapter and in Board guidelines.

§219.5. Mission/Philosophy and Objectives/Outcomes [Mission and Goals (Philosophy and Outcomes)].

(a) The philosophy/mission and objectives/outcomes [mission and goals (philosophy and outcomes)] of the advanced practice nursing educational program shall be developed by the faculty.

(b) The philosophy/mission and objectives/outcomes [mission and goals (philosophy and outcomes)] shall be consistent with:

(1) The philosophy/mission [mission] of the governing institution;

(2) The scope of practice of the advanced specialty and role;

(3) The targeted population or setting for delivery of advanced practice nursing care; and

(4) Professional, educational, and ethical standards of nursing.

(c) The program objectives/outcomes [goals or outcomes] shall be consistent with the program's philosophy/mission [mission or philosophy] and shall describe the capabilities of the graduates of the program. Objectives/Outcomes shall be stated in behavioral terms and shall serve as a mechanism for evaluating student progression.

(d) The written philosophy/mission and objectives/outcomes [mission and goals (philosophy and outcomes)] shall be used as a basis for planning, organizing, implementing and evaluating the program and shall be shared with the students.

(e) The faculty shall periodically review the philosophy/mission and objectives/outcomes [mission and goals (philosophy and outcomes)], consider student input as appropriate, and make necessary revisions.

§219.6. *Administration and Organization.*

(a) The advanced practice nursing educational program shall operate within or be affiliated with a college or university[; ~~New programs shall operate or be affiliated with colleges or universities~~] authorized to award graduate degrees.

(b) The governing institution shall be regionally accredited by an ~~[a board recognized accrediting/ approval]~~ agency recognized by the Texas Higher Education Coordinating Board.

(c) There shall be an organizational chart that demonstrates the relationship of the advanced practice nursing educational program to the governing institution and indicates lines of responsibility and authority.

(d) The governing institution shall provide financial support and resources needed to operate a program that meets the legal and educational requirements of the Board and fosters achievement of program goals. The financial resources shall support adequate educational facilities, equipment and qualified administrative and instructional personnel.

~~[(e) There shall be adequate financial support commensurate with the financial resources of the institution and appropriate to the needs of the program.]~~

~~[(d) The structural relationship between the governing institution and advanced educational program specifies lines of responsibility and authority and channels of communication.]~~

(e) In colleges and universities, the program shall have comparable status with other academic units in order to adequately recruit, employ, and retain sufficient qualified faculty members with graduate preparation and expertise necessary for students to meet program goals. ~~[and in areas affecting faculty such as salary, rank, promotion, tenure, leave, benefits, academic rights, and professional development.]~~

(f) Program faculty shall have comparable status with other academic units in areas such as rank, promotion, tenure, leave, benefits, academic rights, and professional development.

(g) ~~[(f)]~~ Each advanced practice nursing educational program shall be administered by a qualified individual ~~[nurse faculty member]~~ who is accountable for the planning, implementation and evaluation of the advanced practice nursing educational program. The director shall:

(1) Hold a current, valid, unencumbered license or privilege to practice as a registered nurse in the State of Texas ~~[or reside in any party state and hold a current, valid, unencumbered registered nurse license in that state];~~

(2) Hold a minimum of a master's degree in nursing or the equivalent thereof as determined by the Board;

(3) Be authorized to practice as an advanced practice nurse in a role and specialty appropriate to the type of program;

(4) Have a minimum of three years teaching experience in a program appropriately related to the type of program being administered; and

(5) Have demonstrated knowledge, skills, and abilities in administration within graduate level advanced practice nursing educational programs.

(h) Sufficient time shall be provided for the director to administer the program. The teaching load shall not negatively impact program administration responsibilities.

(i) ~~[(g)]~~ If ~~[When]~~ the director of the program changes, the director shall submit to the Board written notification of the change indicating the final date in the position.

(1) A new director qualification form shall be submitted to the Board office by the governing institution for approval prior to appointment in a Board-approved ~~[appointing a new director for an existing program or a new]~~ advanced practice nursing educational program.

(2) A vitae and all official transcripts shall be submitted with the new director qualification form.

~~[(3) In a fully accredited program, if the individual to be appointed as director does not meet the requirements for director as specified in subsection (f) of this section, the administration is permitted to petition for a waiver of the board's requirements prior to the appointment of said individual.]~~

~~[(4) An acting director may be appointed for a period of time not to exceed one year.]~~

§219.7. *Faculty Qualifications and Faculty Organization.*

(a) There shall be written personnel policies for nursing faculty that are in keeping with accepted educational standards and are consistent with those of the governing institution to the extent possible. Variations of these policies may be necessary because of the nature of the curriculum for which the faculty must have authority and responsibility.

(1) Policies concerning workload for faculty and the director shall be in writing.

(2) Sufficient time shall be provided faculty to accomplish those activities related to the teaching-learning process as well as meet other responsibilities/expectations such as scholarly activities, practice, and research.

~~[(a) Faculty Qualifications.]~~

~~[(1) Documentation of faculty qualifications shall be included in the official files of the program. Each nurse faculty member shall:]~~

~~[(A) Hold a current, valid license to practice as a registered nurse in the State of Texas or reside in any party state and hold a current, valid registered nurse license in that state;]~~

~~[(B) Hold a minimum of a master's degree in nursing or the equivalent thereof as determined by the Board; and]~~

~~[(C) Be qualified through academic preparation to teach the subject assigned and shall meet the standards for faculty appointment by the governing institution.]~~

~~[(2) Faculty responsible for clinical management courses or involved in clinical teaching and supervision shall also:]~~

~~[(A) Be authorized to practice as advanced practice nurses in the state in which they practice;]~~

~~[(B) Have clinical practice experience at the advanced practice nursing level of at least two years. If a faculty member has less than two years advanced practice nursing experience, that faculty member must be responsible to a qualified faculty member; and]~~

~~[(C) Maintain clinical practice within the advanced role and specialty.]~~

(b) An advanced practice nursing educational program shall employ sufficient faculty members with appropriate graduate preparation and expertise necessary to enable students to meet the program goals. The number of faculty members shall:

(1) Provide students with a level of instruction and supervision that is compatible with safe practice including ~~[and that includes]~~ educational experiences necessary to meet students' learning needs; and

- (2) Be determined by such factors as:
- (A) The number and level of students enrolled;
 - (B) The curriculum plan;
 - (C) Activities and responsibilities required of faculty;
 - (D) The number and geographic locations of preceptors, affiliate agencies, and clinical practice settings; and
 - (E) The complexity of care and acuity of patients.

(c) Faculty Qualifications and Responsibilities.

(1) Documentation of faculty qualifications shall be included in the official files of the program. Each nurse faculty member shall:

- (A) Hold a current, valid license or privilege to practice as a registered nurse in the state of Texas;
- (B) Hold a minimum of a master's degree in nursing or the equivalent thereof as determined by the Board;
- (C) Be qualified through academic preparation to teach the subject assigned; and
- (D) Shall meet the standards for faculty appointment by the governing institution.

(2) There shall be written personnel policies for non-nursing faculty who teach nursing courses that are in keeping with accepted educational standards and are consistent with those of the governing institution to the extent possible. Variations of these policies may be necessary because of the nature of the curriculum for which the faculty must have authority and responsibility. Non-nursing faculty shall have graduate level educational preparation verified by the director as appropriate to the subject area.

(3) Teaching assignments shall be commensurate with the faculty member's education and experience as an advanced practice nurse.

(4) Faculty responsible for clinical management courses or involved in clinical teaching and supervision shall also:

- (A) Be authorized to practice as an advanced practice nurse;
- (B) Have clinical practice experience at the advanced practice nursing level of at least two years. If a faculty member has less than two years advanced practice nursing experience, that faculty member must be responsible to a qualified faculty member; and
- (C) Maintain clinical practice within the advanced practice role and specialty.

~~{(e) Faculty shall function under the same general policies that affect other faculty members in the institution; however, variations of these policies may be necessary because of the nature of the curriculum for which the faculty must have authority and responsibility.}~~

~~{(1) Policies concerning workload for faculty and the director shall be in writing.}~~

~~{(2) Time shall be provided faculty to accomplish those activities related to the teaching-learning process as well as meet other institutional duties such as scholarly activities, practice, or research.}~~

~~{(3) The teaching load of the director shall not negatively impact his/her ability to administer the program.}~~

(d) The faculty shall be organized with written policies and procedures and/or bylaws to guide the faculty and program's [its] ac-

tivities. The policies, procedures, and/or bylaws shall be consistent with the governing institution.

~~(e) [(+)] The faculty shall meet regularly and function in such a manner that all members participate in planning, implementing, and evaluating the program. Such participation includes, but is not limited to, the initiation and/or change of academic policies, personnel policies, curriculum, utilization of affiliate agencies, and program evaluation.~~

(1) Committees necessary to carry out the functions of the program shall be established with duties and membership of each committee clearly defined in writing.

(2) Minutes of faculty organization and/or committee meetings shall document the reasons for actions and the decisions of the faculty and shall be available for reference.

~~(f) [(+)] There shall be written plans for faculty orientation, development, and evaluation.~~

(1) Orientation of new faculty members shall be initiated at the onset of employment.

(2) A program of faculty development shall be offered to encourage and assist faculty members to meet the program's needs as well as individual faculty member's professional development needs.

(3) A variety of means shall be used to evaluate faculty performance such as self, student, peer and administrative evaluations ~~[as well as program outcomes].~~

§219.8. Students.

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

(c) Written policies regarding student admission and progression shall be developed and implemented in accordance with the requirements that the governing institution must meet to maintain accreditation. Student policies that differ from those of the governing institution shall be in writing and shall be made available to faculty and students.

(d) Students shall hold a current, valid license or ~~[multi-state]~~ privilege to practice as a registered nurse in the state(s) in which they participate in any clinical learning experiences, including, but not limited to, laboratory or observational experiences involving patient contact or having the potential to involve patient contact, including contact via telehealth.

(e) - (f) (No change.)

§219.9. Program of Study.

(a) The program of study shall be:

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

(3) Based on the philosophy/mission and objectives/outcomes ~~[mission and goals (philosophy and outcomes)];~~

(4) Organized logically and sequenced appropriately; ~~[and]~~

(5) Based on educational principles acceptable to the Board; ~~[and]~~

(6) At or beyond the master's degree level.

(b) For clinical nurse specialist programs, the program of study must also qualify the graduate for a minimum of a master's degree in nursing.

(c) The curriculum content shall include:

(1) Didactic and clinical learning experiences necessary to meet the objectives/outcomes ~~[goals or outcomes];~~

(2) - (4) (No change.)

(5) Evidence of inclusion of the following curricular requirements: [Clinical nurse specialist and nurse practitioner course requirements published by the Texas Higher Education Coordinating Board in collaboration with the Board of Nurse Examiners that became effective in January 1997:]

(A) Separate courses in pharmacotherapeutics, advanced assessment and pathophysiology and/or [or] psychopathology (psychopathology accepted for advanced practice nurses prepared in the psychiatric/mental health specialty only). These courses must be graduate [advanced] level academic courses [with a minimum of 45 clock hours per course];

(B) Evidence of theoretical and clinical role preparation;

(C) Evidence of clinical major courses in the specialty area;

(D) Evidence of a practicum/preceptorship/internship to integrate clinical experiences as reflected in essential content and the clinical major courses.

(E) In this subsection, the following terms have the following definitions:

(i) Advanced Assessment Course means a course that offers content supported by related clinical experience such that students gain the knowledge and skills needed to perform comprehensive assessments to acquire data, make diagnoses of health status and formulate effective clinical management plans.

(ii) Pharmacotherapeutics means a course that offers content in pharmacokinetics and pharmacodynamics, pharmacology of current/commonly used medications, and the application of drug therapy to the treatment of disease and/or the promotion of health.

(iii) Pathophysiology means a course that offers content that provides a comprehensive, system-focused pathology course that provides students with the knowledge and skills to analyze the relationship between normal physiology and pathological phenomena produced by altered states across the life span.

(iv) Role preparation means formal didactic and clinical experiences/content that prepare nurses to function in an advanced nursing role.

(v) Clinical major courses means courses that include didactic content and offer clinical experiences in a specific clinical specialty/practice area.

(vi) Clinical specialty area means specialty area of clinical practice based upon formal didactic preparation and clinical experiences.

(vii) Essential content means didactic and clinical content essential for the educational preparation of individuals to function within the scope of advanced nursing practice. The essential content includes but is not limited to: advanced assessment, pharmacotherapeutics, role preparation, nursing specialty practice theory, physiology/pathology, diagnosis and clinical management of health status, and research.

(viii) Practicum/Preceptorship/Internship means a designated portion of a formal educational program that is offered in a health care setting and affords students the opportunity to integrate theory and role in both the clinical specialty/practice area and advanced nursing practice through direct patient care/client management. Practicums/Preceptorships/Internships are planned and monitored by either a designated faculty member or qualified preceptor.

(d) For clinical nurse specialist programs, the curriculum must also contain a minimum of nine (9) semester credit hours or the equivalent in a specific clinical major. Clinical major courses must include didactic content and offer clinical experiences in a specific clinical specialty/practice area recognized by the Board.

(e) If a clinical nurse specialist program has as a goal or outcome the preparation of graduates for approval for [limited] prescriptive authority, then the program must also include at a minimum a separate course in diagnosis and management of diseases and conditions [problems] within the clinical specialty area recognized by the Board. This course(s) must be an advanced level academic course(s) with a minimum of 45 clock hours.

(f) Individuals prepared in more than one advanced practice role and/or specialty (including blended role or dual specialty programs) shall be considered to have completed separate advanced practice nursing educational programs of study for each role and/or specialty area.

(g) ~~[(f)]~~ The program of study shall include a minimum of 500 separate, non-duplicated clinical hours for each advanced role and specialty within the advanced practice nursing education program.

(h) ~~[(g)]~~ Post-master's preparation may be offered as graduate level course work through [certificate or] master's or higher level advanced practice nursing educational programs that include the desired role and specialty and otherwise meet the standards in this chapter.

(1) Post-master's students are required to complete a minimum of 500 clinical hours in addition to [and the equivalent of all of] the entire role, clinical major, and [Texas Higher Education Coordinating Board] curricular requirements, or the equivalent set forth in this chapter. Courses may be waived if an individual's transcript indicates that an equivalent course has been successfully completed or if the student demonstrates proficiency, validating program outcomes according to written program policies. Clinical hours shall not be waived.

(2) Only registered nurses who hold master's degrees in nursing shall be eligible for post-master's preparation as clinical nurse specialists.

(i) ~~[(h)]~~ Board staff approval is required prior to implementation of major curriculum changes. Proposed changes shall include information outlined in Board guidelines and shall be reviewed using Board standards. Changes that require approval include:

~~[(1)]~~ Changes that require approval include:]

(1) ~~[(A)]~~ Changes in program philosophy/mission and objectives/outcomes [mission and goals (philosophy and outcomes)] that result in a reorganization or reconceptualization of the entire curriculum, and/or

(2) ~~[(B)]~~ An increase or decrease in program length by more than nine semester credit hours or 25%.

~~[(2)]~~ All other revisions such as editorial updates of mission and goals or redistribution of course content or course hours shall be reported to the Board in the Annual Report.]

§219.10. Management of Clinical Learning Experiences and Resources.

(a) (No change.)

(b) Faculty shall develop criteria for the selection of affiliating agencies/clinical facilities [affiliate agencies] or clinical practice settings that address safety and the need for students to achieve the program outcomes (goals) through advanced practice nursing [the need for students to observe and practice safe, effective health care].

(c) Faculty shall select and evaluate affiliating agencies/clinical facilities [~~affiliate agencies~~] or clinical practice settings that provide students with opportunities to achieve the goals of the program.

(d) Written agreements between the program and the affiliating agencies shall specify the responsibilities [responsibility] of the program to the agency and the responsibilities [responsibility] of the agency to the program. Such agreements shall be developed jointly with the affiliating agency, reviewed periodically according to the policies of the program and the affiliating agency, and include provisions for adequate notice of termination.

(e) When clinical preceptorships are used in an advanced practice nursing educational program, the following conditions shall be met:

(1) Written agreements between the program, clinical preceptor and the affiliating agency/clinical facility [agency], when applicable, shall delineate the functions and responsibilities of the parties involved.

(2) Criteria for selecting clinical preceptors shall be developed in writing. Competent clinicians can be considered qualified to be preceptors if they are:

(A) Authorized to practice as advanced practice nurses [~~in the state in which they practice~~], or

(B) Currently [A ~~currently~~] licensed health care professionals [professional] who can provide supervision and teaching in clinical settings appropriate for advanced practice nursing.

(3) Written clinical objectives shall be specified and shared with the clinical preceptor prior to the experience.

(4) The designated faculty member shall be responsible for the student's learning experiences and shall communicate regularly with the clinical preceptor and student for the purpose of monitoring and evaluating learning experiences. If site visits are not feasible, communication and evaluation are managed by alternatives such as telephone, written communications, or clinical simulations.

(f) The maximum number of students that one advanced practice nursing educational program faculty member supervises in a clinical course should not exceed six students.

(1) If faculty are providing on-site clinical supervision of students, the ratio should not exceed two students to one faculty member during the clinical day.

(2) If faculty are providing on-site clinical supervision of students [supervising students] while managing their own caseload of patients, the ratio should not exceed one student per faculty during the clinical day.

§219.11. *Facilities, Resources, and Services.*

(a) The governing institution shall be responsible for providing:

(1) Educational facilities;

(2) Resources; and

(3) Services that support the effective development and implementation of the advanced practice nursing education program.

(b) [(a)] The physical facilities shall be adequate to meet the needs of the program in relation to the size of the faculty and the student body.

(1) [(b)] The director shall have a private office.

(2) [(e)] Faculty offices shall be conveniently located and adequate in number and size to provide faculty with [~~the opportunity for uninterrupted work and~~] privacy for conferences with students and uninterrupted work.

(3) [(f)] Space for clerical staff, records, files, and equipment shall be adequate.

(4) There shall be mechanisms that provide for the security of sensitive materials, such as examinations and health records.

(5) [(e)] Classrooms, laboratories, and technology [~~conference rooms~~] shall be conducive to learning and adequate in number, size, and type for the number of students and the educational purposes [~~for which the rooms are used~~].

(c) [(f)] The director and faculty shall have appropriate technology and support services, including but not limited to secretarial and clerical assistance, appropriate to [~~adequate in preparation and sufficient in numbers to meet~~] the needs of the program.

(d) [(g)] The learning resources, library, and program holdings shall be current, use contemporary technology appropriate for the level of the curriculum, and be sufficient for the size of the student body and the needs of the faculty.

(1) Provisions shall be made for reasonable accessibility, [~~and~~] availability, and timely delivery of information resources.

(2) Facilities and policies shall promote effective use of resources, e.g., environment, accessibility, and hours of operation.

§219.12. *Records and Reports.*

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

(1) Records [~~Current records~~] of current students;

(2) Transcripts/permanent record cards [~~Transcripts~~] of graduates;

(3) Faculty records;

(4) Administrative records that include [, ~~including~~] minutes of faculty meetings for the past three years, annual reports of the program, and school catalogs [~~bulletins~~];

(5) The current program of study and curriculum, including philosophy/mission and objectives/outcomes [~~mission and goals (philosophy and outcomes)~~];

(6) Agreements with affiliating agencies; and

(7) Master plan of evaluation with most recent data collection.

(b) Records shall be safely stored to prevent loss, destruction, or unauthorized use.

[(e)] An annual report shall be submitted to the board by the director on forms provided.

§219.13. *Total Program Evaluation.*

(a) There shall be a written plan for the systematic evaluation of the total program. The plan shall include evaluative criteria, methodology, frequency of evaluation, assignment of responsibility, [evaluative criteria,] and indicators (benchmarks) of program and instructional effectiveness [~~and program outcomes~~]. The following broad areas shall be periodically evaluated:

(1) Organization and administration of the program;

(2) Philosophy/mission and objectives/outcomes [~~Mission and goals (philosophy and outcomes)~~];

(3) Program of study, curriculum, and instructional techniques;

(4) Education facilities, resources, and services;

(5) Affiliating agencies and clinical learning activities [~~Clinical resources~~];

(6) Student achievement, e.g., attrition rates, completion rates, length of time for program completion;

(7) Graduate outcomes, e.g., certification examination pass rates, graduate surveys, employer surveys; and

(8) Faculty's performance.

(b) All methods and instruments used for evaluative purposes shall be periodically reviewed and revised as necessary.

(c) Implementation of the plan for total program evaluation shall be documented in the minutes.

(d) There shall be documentation that the data obtained from the total program evaluation is reviewed and used for ongoing program improvement.

(e) Major changes in the nursing program shall be evidence-based and supported by rationale.

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

Filed with the Office of the Secretary of State on November 2, 2007.

TRD-200705277

Katherine Thomas

Executive Director

Texas Board of Nursing

Earliest possible date of adoption: December 16, 2007

For further information, please call: (512) 305-6823



PART 24. TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

CHAPTER 571. LICENSING

SUBCHAPTER A. EXAMINATION

22 TAC §571.3

The Texas Board of Veterinary Medical Examiners proposes an amendment to §571.3, regarding the ability to sit for the national veterinary examination by foreign graduates from non-accredited colleges of veterinary medicine.

The proposed amendment to §571.3 would require that the foreign graduate of a non-accredited college of veterinary medicine complete the requirements set out by the Board recognized foreign graduate programs to be eligible to apply for the national veterinary examination.

Dewey E. Helmcamp III, 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. Helmcamp has also determined that the rule will have no local employment impact.

Mr. Helmcamp has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will ensure that only qualified applicants are eligible to sit for the national veterinary examination.

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

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Suite 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7556, or by e-mail to vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register*.

The amendment is proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151(a) which states that the Board may adopt rules necessary to administer the chapter.

The proposed amendment affects the Veterinary Licensing Act, Title 4 of the Texas Occupations Code, Chapter 801, §801.252.

§571.3. Eligibility for Examination and Licensure.

(a) Definitions. The following words and terms, when used in this chapter, have the following meaning:

(1) Board--the Texas Board of Veterinary Medical Examiners.

(2) Locally derived scaled score--the equivalent of the criterion referenced passing point for the national examination or the NAVLE.

(3) National Board of Veterinary Medical Examiners (NBVME)--the organization responsible for producing, administering and scoring the NAVLE.

(4) National examination--the examination in existence and effective prior to the inauguration date of the NAVLE and which consists of the national board examination (NBE) and the clinical competency test (CCT).

(5) North American Veterinary Licensing Examination (NAVLE)--the examination which replaced the national examination in the year 2000.

(6) Passing score--an examination score of at least 75 percent on the national examination and NAVLE which is based on a locally derived scaled score, and an examination score of at least 85 percent on the SBE.

(7) Testing window--a period of consecutive days of the year specified by NBVME when qualified candidates can sit for the NAVLE.

(8) Texas State Board Licensing Examination (SBE)--the state examination developed and administered by the Board.

(b) Qualifications of Licensees.

(1) To be eligible for licensure, an applicant must present satisfactory proof to the Board that the applicant:

(A) is at least 18 years of age;

(B) has obtained at least a passing score on:

(i) the NAVLE if an applicant sits for that examination subsequent to its inauguration date; or

(ii) the national examination if an applicant sat for that examination prior to the inauguration date of the NAVLE; and

(iii) the SBE; and.

(C) is a graduate of a school or college of veterinary medicine that is approved by the Board and accredited by the Council on Education of the American Veterinary Medical Association (AVMA). Applicants who are graduates of a school or college of veterinary medicine not accredited by the Council on Education of the AVMA are eligible provided that the applicant presents satisfactory proof to the Board that the applicant is a graduate of a school or college of veterinary medicine and possesses an Educational Commission for Foreign Veterinary Graduates (ECFVG) Certificate or a Program for Assessment of Veterinary Education Equivalence (PAVE) Certificate. The Board may refuse to issue a license to an applicant who meets the qualification criteria but is otherwise disqualified as provided in the Texas Occupations Code, §801.401.

(2) An applicant may petition the Board in writing for an exception to paragraph (1)(B)(i) or (ii) of this subsection [~~subsections (b)(1)(B)(i) or (ii) of this section~~]. In deciding whether to grant the petition, the Board may consider:

(A) the availability of the national examination or NAVLE at the time the petitioner originally applied for licensure;

(B) the number of years the petitioner has been in active practice;

(C) petitioner's license status and standing in other jurisdictions;

(D) petitioner's status as a diplomate in an AVMA recognized veterinary specialty; and

(E) any other factors that may be related to petitioner's request for an exception.

(3) As a condition of granting an exception under paragraph [~~subsection~~] (2) of this subsection [~~section~~], the Board may impose additional requirements that are reasonably necessary to assure that the petitioner is competent to practice veterinary medicine in Texas.

(c) Application for the SBE and NAVLE.

(1) The applicant for the SBE and/or NAVLE shall apply on the appropriate form furnished by the Board.

(2) The completed application, including payment of appropriate fees, must be received at the Board offices no later than:

(A) 45 days prior to the date of the SBE examination for which the applicant desires to sit; or

(B) 10 days prior to the NBVME's mandated deadline for the Board to submit the NAVLE eligibility list to the NBVME.

(d) Licensing Examination

(1) Eligibility

(A) An applicant may sit for the SBE provided that the requirements of subsection (c) of this section have been met and the applicant is a graduate of:

(i) an approved and accredited veterinary medical school or college, as defined in subsection (b)(1)(C) of this section; or

(ii) a veterinary medical school or college not approved and accredited, but who has obtained an ECFVG Certificate or a PAVE Certificate.

(B) An applicant may sit for the NAVLE provided that the requirements of subsection (c) of this section have been met and the applicant is a graduate of:

(i) an approved and accredited veterinary medical school or college, as defined in subsection (b)(1)(C) of this section; or

(ii) a veterinary medical school or college not approved and accredited, but who is enrolled in the ECFVG or PAVE certification program, and meets the requirements of subparagraph (C) of this paragraph [~~subsection (d)(1)(C) of this section~~], if applicable.

(C) When applying [~~Prior to sitting~~] for the NAVLE, an applicant who is a graduate of a veterinary medical school or college not approved and accredited, and is enrolled in the ECFVG or PAVE certification program, shall submit proof that the applicant passed all English language proficiency tests required by the certification program of choice and must have completed all other requirements of each program to be considered eligible to apply for the NAVLE [~~must take and pass all English language proficiency tests required by the applicant's selected program~~].

(D) A person must first take and pass the national examination or the NAVLE in order to sit for the SBE.

(2) Eligibility Prior to Graduation. Except as provided in subparagraph [(2)](C)(ii) of this paragraph [~~below~~], an applicant who has not graduated from veterinary medical school may sit for examinations provided the following conditions have been met:

(A) To sit for the SBE, an applicant must be enrolled in an approved and accredited veterinary medical school or college as defined in subsection (b)(1)(C) of this section and must obtain a document from the dean of the school or college from which the applicant expects to graduate certifying that the applicant is within 60 days of completion of a veterinary college program and is expected to graduate.

(B) An applicant enrolled in a joint or combined degree program who has completed the applicant's veterinary medical education but has not received a diploma or transcript certifying award of the applicant's DVM degree, must obtain a letter from the dean of the school or college of veterinary medicine stating the applicant did in fact graduate before the applicant is eligible to sit for the SBE or the NAVLE.

(C) To apply [~~sit~~] for the NAVLE, a candidate shall [~~must~~], at the time an application is submitted, demonstrate that the candidate is:

(i) a student enrolled in an approved and accredited school or college of veterinary medicine as defined in subsection (b)(1)(C) of this section, and who has submitted a document from the dean of the school or college from which the student expects to graduate, certifying that the applicant is within six months of the student's expected graduation date and is expected to graduate, and has demonstrated compliance with all of the NBVME's testing requirements for the NAVLE; or

(ii) a graduate of a school or college of veterinary medicine not approved and accredited, who is enrolled in the ECFVG

or PAVE certification program, and shall submit proof that the applicant passed all English language proficiency tests required by the certification program of choice and must have completed all other requirements of each program [has taken all English proficiency tests required by the applicant's selected program].

(3) Results of Examinations. The Board will accept certified scores issued by the:

(A) American Association of Veterinary State Boards (AAVSB), or its successor, for the national examination; and

(B) the official reporting service for the NAVLE.

(4) Score Information. All requests for information on examination scores shall be processed as follows:

(A) All requests from other state licensing boards for an applicant's raw scores on the national examination or NAVLE will be referred to the official reporting service for those examinations.

(B) All requests from other state licensing boards for an applicant's locally derived scale scores on the national examination or NAVLE will be based upon national data submitted by the official reporting service for those examinations.

(C) Upon written request of an applicant, the Board will certify the score of the SBE to another state licensing board. Upon written request of an applicant, the Board will make national examination or NAVLE scores available for informational purposes only to another state licensing board but will not certify the scores.

(5) Release of Examination Grades. The Board will provide examination grades only to an applicant or another state licensing board upon the written request of an applicant.

(6) Request for Analysis of Failed Examination. Any applicant who has failed the SBE may submit a written request, within 30 days of the release of the examination results, for an analysis of the applicant's examination. The Board will not provide an analysis to an applicant who has not submitted to the Board proof of graduation from an approved and accredited school or college of veterinary medicine. An applicant who submits proof of graduation from an approved and accredited school or college of veterinary medicine after release of the examination results may request an analysis of the applicant's examination within 30 days of the date the Board receives proof of graduation. An analysis provided by the Board under this provision will be in writing. The Board will not disclose any actual examination documents or materials.

(7) Appearance for Examinations

(A) An applicant for the SBE must submit a new application and the current fees prior to admission for examination if the applicant:

(i) does not appear for the scheduled examination;

or

(ii) fails to attain a passing score on the scheduled examination.

(B) The Board shall refund the examination fee for the SBE if the applicant:

(i) provides notice of not less than fourteen (14) days before the date of the examination, that the applicant is unable to take the examination; or

(ii) is unable to take the examination because of an emergency.

(C) For purposes of subparagraph [section (d)](B)(ii) of this paragraph, an "emergency" shall be defined as any immediate, unforeseen [unforeseen] event that would render a person unable or unfit to take an examination, and may include a death in the family or an injury or other event that could be reasonably considered to be an emergency. Matters of inconvenience or failure to satisfy an examination prerequisite, shall not be considered an emergency.

(D) A candidate for the NAVLE must take the examination within the testing window in which the candidate is authorized for testing.

(i) A candidate who fails to take the examination within the appropriate testing window shall forfeit the candidate's fees.

(ii) A candidate who fails to take the examination within the appropriate testing window and desires to take the examination during a subsequent testing window must have the candidate's eligibility reconfirmed by the Board and the candidate must pay new fees.

(iii) If a candidate fails to attain a passing score on the NAVLE, the candidate must submit a new application and the current fees in accordance with this section, except that, if a candidate fails to pass the fall NAVLE, the Board will consider the candidate approved to retake the NAVLE during the following spring testing window. In that case, the candidate must submit a new NAVLE application to the NBVME and pay the NBVME's examination fee.

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

Filed with the Office of the Secretary of State on November 5, 2007.

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Loris Jones

Executive Assistant

Texas Board of Veterinary Medical Examiners

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For further information, please call: (512) 305-7563



CHAPTER 573. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER F. RECORDS KEEPING

22 TAC §573.50

The Texas Board of Veterinary Medical Examiners proposes an amendment to §573.50, regarding the records keeping for controlled substances kept on hand.

The proposed amendment to §573.50 would delete the requirement to record the diagnosis on the patient receiving the controlled drug recorded. The requirement for diagnosis is not necessary to accurately reflect the controlled substances used by the veterinarian in the course of his or her practice.

Dewey E. Helmcamp III, 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. Helmcamp has also determined that the rule will have no local employment impact.

Mr. Helmcamp has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit is to ensure efficiency and accuracy in controlled substance record keeping.

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

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Suite 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7556, or by e-mail to vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register*.

The amendment is proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151(a) which states that the Board may adopt rules necessary to administer the chapter.

The amendment affects the Veterinary Licensing Act, Title 4 of the Texas Occupations Code, Chapter 801, §801.359.

§573.50. *Controlled Substances Records Keeping for Drugs on Hand.*

Texas veterinarians shall maintain at their place of business records of all scheduled drugs listed in the Texas Controlled Substances Act in their possession. These records shall be maintained for a minimum of five years. The form for keeping records of those drugs shall contain the following information in addition to the name of the drug:

- (1) date of acquisition;
- (2) quantity purchased;
- (3) date administered or dispensed;
- (4) quantity administered or dispensed;
- (5) name of client and patient receiving the drug(s); and
- ~~{(6) diagnosis; and}~~
- (6) [(7)] balance on hand.

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

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Loris Jones

Executive Assistant

Texas Board of Veterinary Medical Examiners

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PART 34. TEXAS STATE BOARD OF SOCIAL WORKER EXAMINERS

CHAPTER 781. SOCIAL WORKER LICENSURE

The Texas State Board of Social Worker Examiners (board) proposes amendments to §§781.101, 781.102, 781.209, 781.215, 781.217, 781.301 - 781.304, 781.311, 781.314, 781.402 - 781.405, 781.409, 781.414, 781.502, 781.505, 781.509, 781.511, 781.512, 781.517 and 781.603; new §781.419; and the repeal of §781.609, concerning the licensure and regulation of social workers.

BACKGROUND AND PURPOSE

The board proposes amendments and a new rule to correct minor errors, improve the rules readability, and ensure that the rules reflect current legal, policy, and operational considerations. Additionally, the board proposes the repeal of §781.609 to eliminate duplication of language.

SECTION-BY-SECTION SUMMARY

Amendments to §781.101 are proposed to accurately reflect the restriction on the use of the social worker title in the Social Work Practice Act.

Amendments to §781.102 are proposed to improve the definitions of accredited university, Association of Social Work Boards, clinical social work, confidential information, detrimental to the client, direct practice, dual relationship, exploitation, family systems, flagrant, fraud, full-time experience, group supervision, indirect practice, individual supervision, investigator, licensee, part-time experience, psychotherapy, social work practice, supportive counseling, supervision, telepractice, and termination; to delete the definitions of exploitive behavior, pleading, reciprocity, sexual contact, and sexual exploitation; and, to renumber the definitions accordingly.

Amendments to §781.209 are proposed to clarify the types of committees that may be established by the board.

Amendments to §781.215 are proposed to clarify what is displayed on the license certificate, to add the requirements of a provisional license certificate, and, to reorder and renumber the section accordingly.

The amendments to §781.217 are proposed to change the penalty fee for late renewal to one fourth of the biennial license renewal fee for late renewals from 1-90 days late; change the penalty fee for late renewal to one half of the biennial license renewal fee for late renewals from 91-365 days late; eliminate the student loan default reinstatement fee; and renumber the section accordingly.

The amendments to §781.301 are proposed to change the academic requirements for licensure as a Licensed Clinical Social Worker to be consistent with the Occupations Code, Chapter 505; to improve language, to establish a one time window between April 1, 2008, and March 31, 2010, during which LMSW licensees of the board may use clinical supervision which was on file with the board before the board established by rule change effective August 24, 2005, that clinical and non-clinical supervision expired after five years and that after 2010, supervision toward clinical or non-clinical licensure or specialty recognition must have occurred within the previous five calendar years from the date of application; to remove the requirements of the advanced practice specialty recognition from subsection (a) and restore the requirements in subsection (b); to add the requirements for independent non-clinical specialty recognition into subsection (b); to remove language regarding the scope of practice in

subsection (b) for placement in §781.402; to remove language regarding the scope of practice in subsections (c), (d), and (e) for modification and placement in §781.402; and to reorder and renumber the section accordingly.

The amendments to §781.302 are proposed to delete provisions allowing licensees to obtain supervision toward licensure without a supervision plan; to improve language, to allow for a social worker to be under more than one supervision plan at the same time; and to reorder and renumber the section accordingly.

The amendments to §781.303 are proposed to improve language; to remove language related to qualifications for independent practice recognition that is proposed to be added to §781.301; to delete language in subsection (a) related to the application process for independent practice recognition since it is duplicated in §781.302; to delete language in subsection (b) related to the initial one-time waiver of the supervised experience requirement that expired August 31, 2007; to remove language in subsection (f) that allowed for an LMSW or LBSW to practice independently until August 31, 2007; to provide that an LMSW or LBSW may practice independently when the LMSW or LBSW holds the independent practice specialty recognition, is under application for the specialty recognition under the waiver of the supervised experience requirement, or when a supervision plan for independent practice has been approved by the board; and to reorder and renumber the section accordingly.

Amendments to §781.304 are proposed to improve language; to specify that supervisors may supervise only supervisees providing professional services within the supervisor's own competency; to establish the supervisor status renewal period as two years, to be renewed in conjunction with license renewal; to provide a process for surrender of supervisory status; to specify that any month of supervision under a supervision plan is not creditable unless the conditions of supervision specified in this section are met; to forbid supervisors from providing supervision to a social worker who is practicing outside of the scope of the license; to require a supervisor who believes a supervisee is practicing outside the scope of the license to make a report to the board; to remove language that allows for supervision completed before the effective date of the chapter to be evaluated based on the rules that were in effect at the time the supervision plan or verification was submitted to the board; and to reorder and renumber the section accordingly.

The amendment to §781.311 is proposed to allow a temporarily licensed social worker who passes the licensing examination to be considered temporarily licensed until a regular license is issued by the board or the temporary license expires, whichever is first.

The amendments to §781.314 are proposed to improve language and to use updated terminology.

The amendments to §781.402 are proposed to add language regarding the scope of practice removed from §781.301; to improve language; to include Current Procedural Terminology (CPT) Codes among identified diagnostic classification systems that may be used by Licensed Clinical Social Workers in assessment, diagnosis, treatment and other social work practice activities; to specify that a LMSW may provide clinical social work services under a contract with an agency when under a board approved clinical supervision plan; to allow for Licensed Masters Social Workers to diagnose; to remove definitions of independent non-clinical practice and independent clinical

practice since the definitions already appear in §781.102; and to reorder and renumber the section accordingly.

The amendments to §781.403 are proposed to improve language; and to add a general standard of practice that social workers ensure that the client or a legally authorized person representing the client has signed a consent for services, when appropriate.

The amendment to §781.404 is proposed to add to the list of items that a social worker shall make known to a prospective client the services that are to be provided.

The amendments to §781.405 are proposed to add a definition of sexual exploitation; and to improve language.

The amendments to §781.409 are proposed to improve language; to clarify the requirement that a social worker provide a written explanation of types of treatment and charges on a bill or statement to a client even if the bill is paid by a third party; and to delete language that indicated that a social worker is responsible for services rendered when providing approval by signature for services rendered by another individual who may or may not be licensed.

The amendments to §781.414 are proposed to improve language and specify that the board will provide consumer information on its web site or upon request.

The new section §781.419 is proposed to provide that a social worker who is licensed as a sex offender treatment provider by the Council on Sex Offender Treatment is not subject to disciplinary action by the board in relation to the social worker's provision of sex offender treatment; to specify that a social worker who is a sex offender treatment provider and who acts in conformance with the rules, policies, and procedures of the council is not subject to any administrative sanction by the board; and to specify that if the Council on Sex Offender Treatment takes disciplinary action against a social worker who is a sex offender treatment provider, the board may consider the final order imposing such disciplinary action as grounds for disciplinary action by the board.

The amendments to §781.502 are proposed to rename the section; to reflect that licenses are renewed for a two-year term; and to delete language that provided for prorated fees during the transition from renewal terms of one-year to two-years.

The amendments to §781.505 are proposed to improve language; to use the current terms of expire and expiration as opposed to the terms lapse and lapsed; to specify the current process for placing a license on inactive status; and to reactive a license that was placed on inactive status.

The amendment to §781.509 is proposed to improve language.

The amendments to §781.511 are proposed to add the expiration date of a continuing education providers approved status to certificates of completion issued by the provider and to specify that a program offered for continuing education in ethics shall meet the minimum course requirements for an ethics course approved by the board.

The amendments to §781.512 are proposed to improve language.

The amendment to §781.517 is proposed to require that supervisory training courses approved by the board before September 8, 2007 must meet the requirements in §781.511 by August 31, 2008.

The amendments to §781.603 are proposed to clarify which functions in the complaint procedure are performed by department staff; to remove the requirement that the executive director make a sworn statement in order to open an anonymous complaint; to accurately describe the review process and decisions to be made by the executive director regarding referral for investigation and notification of the respondent; to update the complaint procedure; to update the range of information provided to the boards ethics committee regarding the status of open complaints; to update references to timelines; and to reorder and renumber the section accordingly.

Section §781.609 is proposed for repeal because language in current board rule §781.703 provides for appropriate default procedures.

FISCAL NOTE

Charles Horton, Executive Director, has determined that for each year of the first five years the sections are in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the sections as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Mr. Horton has also determined that there are no anticipated economic costs to small businesses or micro-businesses required to comply with the sections as proposed. This was determined by interpretation of the rules that these entities will not be required to alter their business practices in order to comply with the sections as proposed. There are no anticipated economic costs to persons required to comply with the sections as proposed. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

Mr. Horton has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections is to effectively regulate the practice of social work in Texas, all of which will protect and promote public health, safety, and welfare.

REGULATORY ANALYSIS

The board has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment nor reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The board has determined that the 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, do not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Charles Horton, Executive Director, Texas State Board of Social Worker Examiners, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756 or by email to lsw@dshs.state.tx.us.

When emailing comments, please indicate "Comments on Proposed Rules" in the email subject line. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §781.101, §781.102

STATUTORY AUTHORITY

The proposed amendments are authorized by Occupations Code, §505.155, which requires the board to develop policies that clearly separate the policy-making responsibilities of the board and the management responsibilities of the executive director and staff of the department; by Occupations Code, §505.201, which authorizes the board to adopt rules necessary to perform the board's duties, to establish standards of conduct and ethics for license holders, to establish requirements for each type of license issued by the board, and to establish procedures for recognition of independent practice; by Occupations Code, §505.203, which authorizes the board to set fees; by Occupations Code, §505.254, which requires the board to adopt rules concerning an investigation of a complaint filed with the board; by Occupations Code, §505.303, which requires the board to establish a specialty area of clinical social work that is only available to a licensed master social worker who satisfies minimum supervised experience requirements and clinical examination as set by the board; and by Occupations Code, §505.404, which requires the board to establish mandatory continuing education requirements for license holders.

The proposed amendments affect Occupations Code, Chapter 505.

§781.101. *Purpose and Scope.*

(a) (No change.)

(b) The Act restricts the use of the titles "social worker," "licensed master social worker," "licensed social worker," "licensed baccalaureate social worker," "licensed clinical social worker" or "social work associate" or any other title that implies licensure or certification in [professional] social work [services].

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

§781.102. *Definitions.*

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

(1) Accredited colleges or universities--An educational institution that is accredited by an accrediting agency recognized by the Council on Higher Education Accreditation [Texas Higher Education Coordinating Board].

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

(7) Association of Social Work Boards (ASWB)--The international [National] organization which represents [representing] regulatory boards of social work and administrators[- Administrators] the national examinations utilized in the assessment for licensure.

(8) - (10) (No change.)

(11) Clinical social work--A specialty within the practice of master social work that requires the application of social work theory, knowledge, methods, ethics, and the professional use of self to restore or enhance social, psychosocial, or biopsychosocial functioning of individuals, couples, families, groups, and/or persons who are adversely affected by social or psychosocial stress or health impairment. The practice of Clinical Social Work requires the application of

specialized clinical knowledge and advanced clinical skills in the areas of assessment, diagnosis, and treatment of mental, emotional, and behavioral disorders, conditions and addictions, including severe mental illness in adults and serious emotional disturbances in adults, adolescents, and children. Treatment methods include, but are not limited to, the provision of individual, marital, couple, family, and group ~~[therapy and]~~ psychotherapy. Clinical social workers are qualified to use the Diagnostic and Statistical Manual of Mental Disorders (DSM), the International Classification of Diseases (ICD), Current Procedural Terminology (CPT) codes, and other diagnostic classification systems in assessment, diagnosis, and other practice activities.

~~[(12) Clinical supervision--An interactional professional relationship between a supervisor and a social worker that provides evaluation and direction over the supervisee's practice of clinical social work and promotes continued development of the social worker's knowledge, skills, and abilities to engage in the practice of clinical social work in an ethical and competent manner.]~~

(12) [(43)] Confidential information--Individually identifiable information ~~[obtained from a client or records]~~ relating to a client, including the client's identity, and demographic information ~~[collected from an individual,]~~ that relates to the past, present, or future physical or mental health or condition of a client ~~[an individual]~~; the provision of social work services to a client ~~[an individual]~~; the past, present, or future payment for the provision of social work services to a client ~~[an individual]~~; and identifies the client ~~[individual]~~ or with respect to which there is a reasonable basis to believe the information can be used to identify the client ~~[individual]~~ which is not discloseable under applicable law or court rules of evidence. Client information is "confidential" if it is intended to be disclosed to third persons to further the interest of the client in the diagnosis, examination, assessment, evaluation, or treatment, or those reasonably necessary for the transmission of the communication, or those who are participating in the diagnosis, examination, assessment, evaluation, or treatment under the direction of the social worker ~~[professional]~~, including members of the client's ~~[patient's]~~ family.

(13) [(44)] Completed application--The official social work application form, fees and all supporting documentation which meets the criteria set out in this title (relating to Required Application Materials).

(14) [(45)] Conditions of exchange--The setting of rates of reimbursement or fee structure and business rules or policies involving issues such as cancellation of appointments, office hours, and management of insurance claims.

(15) [(46)] Contested case--A proceeding in accordance with the APA and this chapter, including, but not limited to, rule enforcement and licensing, in which the legal rights, duties, or privileges of a party are to be determined by the board after an opportunity for an adjudicative hearing.

(16) [(47)] Counseling--A method used by social workers to assist individuals, couples, families or groups in learning how to solve problems and make decisions about personal, health, social, educational, vocational, financial, and other interpersonal concerns.

(17) [(48)] Consultation--To provide advice, opinions and to confer with other professionals regarding social work practice.

(18) [(49)] Continuing education--Formal or informal education or trainings, which are oriented to maintain, improve or enhance social work practice.

(19) [(20)] Council on Social Work Education (CSWE)--The national organization that accredits social work education schools and programs.

(20) [(21)] Department--Department of State Health Services.

(21) [(22)] Detrimental to the client--An act or omission by a social worker that damages ~~[of a professional responsibility that is damaging to]~~ the physical, mental, ~~[or]~~ financial, or societal status of a ~~[the]~~ client.

(22) [(23)] Direct practice--The provision of social work services to clients in which goals are reached through personal contact and immediate influence. ~~[services; research; system linkage; system development; maintenance and enhancement of social and psychosocial functioning of clients.]~~

(23) [(24)] Dual relationship--Dual or multiple relationships occur when social workers interact with ~~[relate to]~~ clients in more than one capacity, whether it be before, during or after the professional, social, or business relationship. Dual ~~[or multiple]~~ relationships can occur simultaneously or consecutively.

(24) [(25)] Endorsement--The process whereby the board reviews requirements for licensure completed while under the jurisdiction of a different regulatory board from another state. The board may accept, deny or grant partial credit for requirements completed in a different jurisdiction.

(25) [(26)] Examination--A standardized test or examination of social work knowledge, skills and abilities, which has been approved by the board.

(26) [(27)] Exploitation--The use of a pattern, practice or scheme of conduct that can reasonably be construed as being primarily for the purposes of meeting the needs or being to the benefit of the licensee rather than in the best interest of the client or at the expense of another practitioner. An unequal balance is inherent in the client/social worker ~~[professional]~~ relationship ~~[and may be present in the professional/professional relationship]~~. The ~~[To]~~ use of this power imbalance for the personal benefit of the social worker ~~[professional]~~ at the expense of the client or another practitioner ~~[professional]~~ is exploitation. Exploitation may take financial, business, emotional, sexual, verbal, religious and/or relational forms.

~~[(28) Exploitive behavior--A pattern, practice or scheme of conduct that can reasonably be construed as being primarily for the purposes of meeting the needs or being to the benefit of the social worker rather than in the best interest of the client or at the expense of another professional. Exploitation may take financial, business, emotional, sexual, verbal, religious and/or relational forms.]~~

(27) [(29)] Family systems--An ~~[open;]~~ on-going ~~[; goal-seeking;]~~ self-regulating~~;~~ social system. ~~[Certain features such as its unique structuring of gender, race, nationality and generation set it apart from other social systems. Each individual family system is shaped by its own particular structural features (size, complexity, composition, life stage), the psychobiological characteristics of its individual members (age, race, nationality, gender, fertility, sexual orientation, health and temperament) and its socio-cultural and historic position in its larger environment.]~~

(28) [(30)] Formal hearing--A hearing or proceeding in accordance with this chapter, including a contested case as defined in this section to address the issues of a contested case.

(29) [(31)] Flagrant--Conspicuously ~~[Obviously]~~ inconsistent with what is right or proper as to appear to be a flouting of law or morality.

(30) [(32)] Fraud--Any misrepresentation or omission by a social worker related to ~~[professional]~~ qualifications, services, or related activities or information ~~[that benefits the social worker]~~.

(31) [(33)] Full-time experience--Providing social [Social] work services thirty [totaling 30] or more hours per week.

(32) [(34)] Group supervision for licensure--Supervision provided to [that involves] a minimum of two and no more than six supervisees in a designated supervision session [supervision hour].

(33) [(35)] Health care professional--A licensee or any other person licensed, certified, or registered by the State of Texas in a health related profession.

(34) [(36)] Home study--A formal written evaluation or social study to determine what is the best interest of a minor child or other dependent person.

(35) [(37)] Independent clinical practice--The provision of clinical social work in independent practice in which the social worker assumes responsibility and accountability for the nature and quality of the services provided to clients, pro bono or in exchange for direct payment or third party reimbursement.

(36) [(38)] Independent non-clinical practice--The practice of non-clinical social work outside the jurisdiction of an organizational setting, after completion of all applicable supervision requirements, in which the social worker assumes responsibility and accountability for the nature and quality of the services provided to clients, pro bono or in exchange for direct payment or third party reimbursement.

(37) [(39)] Independent practice--The practice of social work services outside the jurisdiction of an organizational setting, after completion of all applicable supervision requirements, in which the social worker assumes responsibility and accountability for the nature and quality of the services provided to clients, pro bono or in exchange for direct payment or third party reimbursement.

(38) [(40)] Indirect practice--Providing social work services [Work on behalf of the client] utilizing negotiation, education, advocacy, administration, research, policy development and resource location that does not have [involve] immediate or face-to-face [personal] contact with the clients being served.

(39) [(41)] Individual supervision for licensure--Supervision provided to [of] one supervisee during the designated supervision session.

(40) [(42)] Investigator--An employee or contractor of the department [A professional] utilized by the board in the investigation of allegations of professional misconduct.

(41) [(43)] LBSW--Licensed Baccalaureate Social Worker.

(42) [(44)] LCSW--Licensed Clinical Social Worker.

(43) [(45)] License--A regular, provisional, or temporary license or recognition issued by the board unless the content of the rule indicates otherwise.

(44) [(46)] Licensee--A person licensed [or recognized] by the board to practice [perform professional] social work [practice].

(45) [(47)] LMSW--Licensed Master Social Worker.

(46) [(48)] LMSW-AP--Licensed master social worker-advanced practitioner.

(47) [(49)] Non-clinical social work--The areas of social work practice that include community organization, planning, administration, teaching, research, administrative supervision, non-clinical consultation and other related social work activities.

(48) [(50)] Part-time experience--Social work services provided for fewer [totaling less] than thirty [30] hours per week.

(49) [(51)] Party--Each person, governmental agency, or officer or employee of a governmental agency named by the ALJ as having a justiciable interest in the matter being considered, or any person, governmental agency, or officer or employee of a governmental agency meeting the requirements of a party as prescribed by applicable law.

(50) [(52)] Persistently--Existing for a long or longer than usual time or continuously.

(51) [(53)] Person--An individual, corporation, partnership, or other legal entity.

[(54)] ~~Pleading--Any written allegation filed by a party concerning its claim or position.~~

(52) [(55)] Psychotherapy--Treatment [The use of treatment methods] utilizing a specialized, formal interaction with [between a clinical social worker and] an individual, couple, family, or group by a social worker in which a therapeutic relationship is established, maintained and sustained to understand intrapersonal, interpersonal and psychosocial dynamics, and with a [the] diagnosis and treatment of mental, emotional, and behavioral disorders, conditions and addictions.

[(56)] ~~Reciprocity--The granting of an official license based on the current status of licensure in a different jurisdiction. Reciprocity is granted based on the formal written agreement between the board and regulatory body in the other jurisdiction.~~

(53) [(57)] Recognition--Authorization from the board to engage in the independent or specialty practice of social work services.

(54) [(58)] Rules--Provisions in this chapter specifying the implementation of statute and operations of the board and individuals affected by the Act.

[(59)] ~~Sexual contact--Any touching or behavior that can be construed as sexual in nature.~~

[(60)] ~~Sexual exploitation--A pattern, practice or scheme of exploitative behavior, which may include sexual contact.~~

(55) [(61)] Social Work Case Management--The use of a biopsychosocial perspective to assess, evaluate, implement, monitor and advocate for services on behalf of and in collaboration with the identified client.

(56) [(62)] Social worker--A person licensed under the Act.

(57) [(63)] Social work practice--Services provided [and actions performed] as an employee, independent practitioner, consultant, or volunteer for compensation or pro bono to effect changes in human behavior, a person's emotional responses, interpersonal relationships, and the social conditions of individuals, families, groups, organizations, and communities. The [For the purpose of this definition, the] practice of social work is guided by specialized [special] knowledge, acquired through formal social work education development and behavior within the context of the social environment, and methods to enhance the functioning of individuals, families, groups, communities, and social welfare organizations. Social work practice involves the disciplined application of social work values, principles, and methods, including, but not limited to, psychotherapy, marriage and family therapy, couples therapy, group therapy, mediation, case management, supervision of social work services and programs, counseling, assessment, diagnosis, treatment, and evaluation. Social work practice may also be referred to as social work services, [of] social welfare policies and services, social welfare systems and resources, and human services.

(58) [(64)] Supportive counseling--The methods used [by social worker] to help individuals create and maintain adaptive patterns. Such methods may include, but are not limited to, building community resources and networks, linking clients with services and resources, educating clients and informing the public, helping clients identify and build strengths, leading community groups, and providing reassurance and support. Supportive counseling [This type of social work] is not considered clinical social work.

(59) [(65)] Supervisor, board approved--A person meeting the requirements set out in §781.302 of this title (relating to Clinical Supervision for LCSW and Non-Clinical Supervision for LMSW-AP and Independent Practice Recognition), to supervise a licensee towards the LCSW, LMSW-AP or Independent Practice recognition.

(60) [(66)] Supervision--Supervision includes: [The professional interaction between a supervisor and a social worker in which the supervisor evaluates and directs the services provided by the social worker and promotes continued development of the social worker's knowledge, skills and abilities to provide social work services in an ethical and competent manner.]

(A) administrative or work related supervision of an employee, contractor or volunteer that is not related to qualification for licensure, practice recognition, a disciplinary order or a condition to new or continued licensure;

(B) clinical supervision of a Licensed Masters Social Worker providing clinical services by a Licensed Professional Counselor, Licensed Psychologist, Licensed Marriage and Family Therapist, Licensed Clinical Social Worker or Psychiatrist that is not related to qualification for licensure, practice recognition, a disciplinary order or a condition to new or continued licensure;

(C) clinical supervision of a Licensed Masters Social Worker providing clinical services by a Licensed Clinical Social Worker who is recognized by the board as a supervisor toward qualification for practice recognition;

(D) non-clinical supervision of a Licensed Masters Social Worker or Licensed Baccalaureate Social Worker providing non-clinical social work services by a licensed social worker who is recognized by the board as a supervisor toward qualification for practice recognition;

(E) non-clinical supervision of a probationary Licensed Masters Social Worker or Licensed Baccalaureate Social Worker providing clinical services by a licensed social worker who is recognized by the board as a supervisor toward licensure under the AMEC program; or

(F) supervision by an approved supervisor pursuant to a disciplinary order or as a condition of new or continued licensure.

(61) [(67)] Supervision hour--A supervision hour is a minimum of 60 minutes in length.

(62) [(68)] Telepractice--Providing social work services wherein the client and the practitioner are not in the same physical location [Interactive service delivery where the client resides in one location and the professional in another].

(63) [(69)] Termination--Ending social work services with a client [The end of professional services, meetings, and billing for services].

(64) [(70)] Texas Open Meetings Act--Government Code, Chapter 551.

(65) [(74)] Texas Public Information Act--Government Code, Chapter 552.

(66) [(72)] Waiver--The suspension of educational, professional, and/or examination requirements for applicants who meet the criteria for licensure under special conditions based on appeal to the board.

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

Filed with the Office of the Secretary of State on November 5, 2007.

TRD-200705310

Jeannie McGuire, LBSW

Chair

Texas State Board of Social Worker Examiners

Earliest possible date of adoption: December 16, 2007

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



SUBCHAPTER B. THE BOARD

22 TAC §§781.209, 781.215, 781.217

STATUTORY AUTHORITY

The proposed amendments are authorized by Occupations Code, §505.155, which requires the board to develop policies that clearly separate the policy-making responsibilities of the board and the management responsibilities of the executive director and staff of the department; by Occupations Code, §505.201, which authorizes the board to adopt rules necessary to perform the board's duties, to establish standards of conduct and ethics for license holders, to establish requirements for each type of license issued by the board, and to establish procedures for recognition of independent practice; by Occupations Code, §505.203, which authorizes the board to set fees; by Occupations Code, §505.254, which requires the board to adopt rules concerning an investigation of a complaint filed with the board; by Occupations Code, §505.303, which requires the board to establish a specialty area of clinical social work that is only available to a licensed master social worker who satisfies minimum supervised experience requirements and clinical examination as set by the board; and by Occupations Code, §505.404, which requires the board to establish mandatory continuing education requirements for license holders.

The proposed amendments affect Occupations Code, Chapter 505.

§781.209. *Committees of the Board.*

(a) The board and/or the chair may establish board committees, advisory committees and task forces [~~deemed necessary to carry out board responsibilities~~].

(b) The board chair shall appoint members of the board to serve on board committees and shall appoint the board committee chairs. The board chair shall assign board members and/or the executive director to serve on advisory committees and task forces. The board chair may invite others to serve on advisory committees and task forces.

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

§781.215. *The License.*

(a) The board shall prepare and provide to each licensee a license certificate, which contains the licensee's name, license granted

and license number. The license certificate will include any specialty recognition or supervisory status granted by the board to the licensee. [License certificates will indicate the professional social work title, whether LBSW, LMSW, LMSW-AP or LCSW, granted to applicants who have met all of the qualifications established by the board. The license certificate will also indicate the date that the license expires, unless it is renewed.] The board shall have a method to indicate the [new] expiration date of a new license and a license which has been renewed. [The license certificate will also include any specialty recognition or supervisory status, if applicable.]

(b) Regular licenses shall be signed by the board chairperson and ~~[executive director and]~~ be affixed with the seal of the State of Texas [board].

(c) Temporary license certificates shall include an expiration date. A temporary license expires on the expiration date, the date that the first licensing examination is failed, or, if the first licensing examination is passed, the date that the board issues a regular license certificate, whichever is first. [Temporary and provisional licenses shall be printed on board letterhead and signed by the executive director.]

(d) Provisional license certificates shall include an expiration date. A provisional license expires on the expiration date or the date that the board issues a regular license certificate, whichever is first.

(e) ~~[(d)]~~ All licenses issued by the board remain the property of the board and must be surrendered to the board on demand. The board maintains jurisdiction over a licensee until the license is returned to the board.

§781.217. Fees.

(a) The following are the board's fees:

(1) - (7) (No change.)

(8) fee for late renewal:

(A) 1-90 days--renewal fee plus fee equal to one-fourth of the renewal fee for an unexpired license (LMSW or LBSW fee = \$20; LCSW or LMSW-AP fee = \$25) [one-half the current contracted examination fee rounded to the nearest dollar amount]; or

(B) 91 days, but less than one year--renewal fee plus fee equal to one-half of the renewal fee for an unexpired license (LMSW or LBSW fee = \$40; LCSW or LMSW-AP fee = \$50) [the current contracted examination fee rounded to the nearest dollar amount];

(9) - (14) (No change.)

~~[(15) student loan default reinstatement fee--\$35;]~~

(15) ~~[(16)]~~ continuing education provider application fee--\$50 annually;

(16) ~~[(17)]~~ delinquent child support administrative fee--\$35;

(17) ~~[(18)]~~ legislatively mandated fees per licensee for the operation of the Office of Patient Protection per application and renewal as legislatively established;

(18) ~~[(19)]~~ legislatively mandated fees per licensee for the boards participation in the Texas On-line per application and renewal as legislatively established;

(19) ~~[(20)]~~ board approved supervisor fee--\$25 annually;

(20) ~~[(21)]~~ AMEC participant administrative fee--Fee equal to the current contract examination fee;

(21) ~~[(22)]~~ Petition for re-examination fee--\$20 per petition; and

(22) ~~[(23)]~~ Temporary license fee--\$30.

(b) - (d) (No change.)

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

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Jeannie McGuire, LBSW

Chair

Texas State Board of Social Worker Examiners

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



SUBCHAPTER C. LICENSES AND LICENSING PROCESS

22 TAC §§781.301 - 781.304, 781.311, 781.314

STATUTORY AUTHORITY

The proposed amendments are authorized by Occupations Code, §505.155, which requires the board to develop policies that clearly separate the policy-making responsibilities of the board and the management responsibilities of the executive director and staff of the department; by Occupations Code, §505.201, which authorizes the board to adopt rules necessary to perform the board's duties, to establish standards of conduct and ethics for license holders, to establish requirements for each type of license issued by the board, and to establish procedures for recognition of independent practice; by Occupations Code, §505.203, which authorizes the board to set fees; by Occupations Code, §505.254, which requires the board to adopt rules concerning an investigation of a complaint filed with the board; by Occupations Code, §505.303, which requires the board to establish a specialty area of clinical social work that is only available to a licensed master social worker who satisfies minimum supervised experience requirements and clinical examination as set by the board; and by Occupations Code, §505.404, which requires the board to establish mandatory continuing education requirements for license holders.

The proposed amendments affect Occupations Code, Chapter 505.

§781.301. Qualifications for Licensure.

(a) Licensure. The following education and experience is required for licensure as designated. ~~[the specified licenses and specialty recognitions:]~~

(1) Licensed Clinical Social Worker (LCSW).

(A) Has been conferred a doctoral degree in social work from an accredited university acceptable to the board or master's degree in social work from a CSWE accredited social work program [Must be licensed as an LMSW].

(B) Has had [Obtain] 3000 hours of board-approved [Board approved] supervised professional full-time clinical employment experience over a minimum two-year period, but within a maximum four-year period or its equivalent if the experience was completed in another state.

(C) Has had [Complete] a minimum of 100 hours of face-to-face supervision, over the course of the 3000 hours of full-time experience, with a board-approved supervisor. Supervised experience must have occurred within the five previous calendar years occurring from the date of application. If supervision was completed in another state, the social worker must have the supervision verified by the licensing board in the other state.

(D) Has made a passing [Passing] score on the clinical exam administered nationally by ASWB.

(E) From April 1, 2008 until March 31, 2010, a LMSW licensed by the board who has 24 months of verified clinical supervision on file before the effective date of this rule with the board is considered to have met the requirements of subparagraphs (B) and (C) of this paragraph.

(2) Licensed Master Social Worker (LMSW).

(A) Has been conferred a [A] doctoral degree in social work from an accredited university acceptable to the board or master's degree in social work from a CSWE accredited social work program.

(B) Has made a passing [Passing] score on the intermediate or master's exam administered nationally by ASWB.

~~[(3) Licensed Master Social Worker-Advanced Practitioner (LMSW-AP).]~~

~~[(A) Must be licensed as an LMSW.]~~

~~[(B) Obtain 3000 hours of Board approved supervised professional full-time non-clinical employment experience over a minimum two-year period, but within a maximum four-year period or its equivalent if the experience was completed in another state.]~~

~~[(C) Complete a minimum of 100 hours of face-to-face supervision, over the course of the 3000 hours of full-time experience, with a board-approved supervisor. Supervised experience must have occurred within the five previous calendar years occurring from the date of application.]~~

~~[(D) Passing score on the advanced or advanced generalist examination administered nationally by ASWB.]~~

(3) ~~[(4)]~~ Licensed Baccalaureate Social Worker (LBSW).

(A) Has been conferred a [A] baccalaureate degree in social work from a CSWE accredited social work program.

(B) Has made a passing [Passing] score on the basic or Bachelors exam administered nationally by ASWB.

(b) Specialty Recognition. The following education and experience is required for specialty recognitions as designated.

(1) Licensed Master Social Worker-Advanced Practitioner (LMSW-AP).

(A) Is currently licensed in the State of Texas or meets the current requirements for licensure as a LMSW.

(B) While fully licensed as a social worker, has had 3000 hours of board-approved supervised professional full-time non-clinical social work experience over a minimum two-year period, but within a maximum four-year period or its equivalent if the experience was completed in another state.

(C) Has had a minimum of 100 hours of face-to-face supervision, over the course of the 3000 hours of full-time experience, with a board-approved supervisor. Supervised experience must have occurred within the five previous calendar years occurring from the date of application. If supervision was completed in another state, the

social worker must have the supervision verified by the licensing board in the other state.

(D) Has made a passing score on the advanced or advanced generalist examination administered nationally by ASWB.

(2) Independent Non-clinical Practice.

(A) Is currently licensed in the State of Texas as a LBSW or LMSW or meets the current requirements for licensure as a LBSW or LMSW.

(B) While fully licensed as a social worker has had 3000 hours of board-approved supervised full-time social work experience over a minimum two-year period, but within a maximum four-year period or its equivalent if the experience was completed in another state.

(C) Has had a minimum of 100 hours of face-to-face supervision, over the course of the 3000 hours of full-time experience, with a board-approved supervisor. Supervised experience must have occurred within the five previous calendar years occurring from the date of application. If supervision was completed in another state, the social worker must have the supervision verified by the licensing board in the other state.

~~[(b) Only a person who is licensed and has been recognized by the board as follows is qualified to provide clinical and non-clinical social work services in employment or independent practice settings.]~~

~~[(1) A LCSW may provide any clinical or non-clinical social work services in either an employment or independent practice setting. A LCSW may work under contract, bill directly for services, and bill third parties for reimbursements for services.]~~

~~[(2) A LMSW-AP may provide any non-clinical social work services in either an employment or an independent practice setting. A LMSW-AP may work under contract, bill directly for services, and bill third parties for reimbursements for services.]~~

~~[(3) A LBSW or LMSW recognized for independent practice may provide any non-clinical social work services in either an employment or an independent practice setting. A LBSW or LMSW recognized for independent practice may work under contract, bill directly for services, and bill third parties for reimbursements for services.]~~

~~[(4) A LBSW or LMSW recognized for independent practice and a LMSW-AP must restrict his or her independent practice to the provision of non-clinical social work services.]~~

~~[(c) After August 31, 2007, a licensee that had not submitted an application for Independent Practice Recognition and an application for waiver of supervised experience requirements, along with the appropriate fees and supporting documentation and whose application is still pending must not engage in any independent practice that falls within the definition of social work practice in §781.102 of this title (relating to Definitions) without being licensed and recognized by the board unless the person is licensed in another profession and acting solely within the scope of that license. If engaged in professional practice under another license, the person may not use the titles "licensed clinical social worker," "licensed master social worker," "licensed social worker," "licensed baccalaureate social worker," or "social work associate" or any other title or initials that states or implies licensure or certification in social work unless one holds the appropriate license or independent practice recognition.]~~

~~[(d) After August 31, 2007, a LBSW or LMSW who is not recognized for independent practice may not provide direct social work services to clients from a location that she or he owns or leases and that is not owned or leased by an employer or other legal entity with responsibility for the client. This does not preclude in home services~~

such as in home health care or the use of telephones or other electronic media to provide services in an emergency.]

~~[(e) After August 31, 2007, a LBSW or LMSW who is not recognized for independent practice or is not exempt under subsection (e) of this section, may only practice for remuneration in a direct employment or agency setting and can not work under contract, bill directly to patients or to third party payers, unless the LBSW or LMSW is under a formal supervision plan approved by the board.]~~

(c) ~~[(f)]~~ Applicants for a license must complete the board's jurisprudence examination and submit proof of completion at the time of application. The jurisprudence examination must have been completed no more than six months prior to the date of application.

§781.302. Clinical Supervision for LCSW and Non-Clinical Supervision for LMSW-AP and Independent Practice Recognition.

(a) (No change.)

(b) An LMSW who plans to apply for the LCSW ~~[or LMSW-AP]~~ must:

(1) submit a clinical supervisory plan to the board for approval by the appropriate committee of the board or executive director/designee within 30 days of initiating supervision ~~[- If the LMSW fails to submit a supervisory plan, then the LMSW's supervisor must provide to the supervisee who in turn will need to submit to the board documentation regarding dates, times and summary of all supervisory sessions at the time the LMSW submits a clinical/non-clinical supervision verification form];~~

(2) submit a current job description from the agency in which the social worker is employed with a verification of authenticity from the agency director or their designee on agency letterhead. In order for a plan to be approved, the position description or other relevant documentation must demonstrate that the duties of the position are clinical as defined in this chapter;

(3) submit a supervision verification form to the board for approval within 30 days of the end of each supervisory plan with each supervisor. If the supervisor does not recommend the supervisee for eligibility to examine for [recognition as an AP or] LCSW, the supervisor must indicate such on the clinical supervision verification form and provide specific reasons for not recommending the supervisee. The board may consider the supervisor's reservations in its evaluation of acceptance of supervision verification submitted by [qualifications of] the supervisee; [and]

(4) submit a new supervisory plan within 30 days of changing supervisors; and ~~[- Only one supervisory plan may be in place at any time.]~~

(5) submit an application for upgrade of their licensure to Licensed Clinical Social Worker.

(c) An LMSW who plans to apply for the advanced practice recognition must:

(1) submit a non-clinical supervisory plan to the board for approval by the appropriate committee of the board or executive director/designee within 30 days of initiating supervision;

(2) submit a current job description from the agency in which the social worker is employed with a verification of authenticity from the agency director or their designee on agency letterhead. In order for a plan to be approved, the position description must demonstrate that the duties of the position are social work;

(3) submit a supervision verification form to the board for approval within 30 days of the end of each supervisory plan with each supervisor. If the supervisor does not recommend the supervisee for

eligibility to examine for advanced practice recognition, the supervisor must indicate such on the non-clinical supervision verification form and provide specific reasons for not recommending the supervisee. The board may consider the supervisor's reservations in its evaluation of acceptance of supervision verification submitted by the supervisee;

(4) submit a new supervisory plan within 30 days of changing supervisors; and

(5) upon completion and submission of documentation of the required non-clinical supervision the LMSW must apply for upgrade of their licensure to advanced practice recognition.

(d) ~~[(e)]~~ A LBSW or an LMSW who plans to apply for the Independent Practice Recognition must:

(1) submit a supervisory plan to the board for approval by the appropriate committee of the board or executive director/designee within 30 days of initiating supervision ~~[- If the LBSW or LMSW fails to submit a supervisory plan, then the supervisor for the LBSW or LMSW must provide to the supervisee who in turn will need to submit to the board documentation regarding dates, times and summary of all supervisory sessions at the time the LMSW submits a non-clinical supervision verification form];~~

(2) submit a current job description from the agency in which the social worker is employed with a verification of authenticity from the agency director or their designee on agency letterhead or submit a copy of the contract or appointment under which the LBSW or LMSW intends to work, along with a statement from their potential supervisor that he or she has reviewed the contract and is qualified to supervise the LBSW or LMSW in the setting;

(3) submit a supervision verification form to the board within 30 days of the end of each supervisory plan with each supervisor. If the supervisor does not recommend the supervisee for independent practice recognition, the supervisor must provide specific reasons for not recommending the supervisee. The board may consider the supervisor's reservations in its evaluation of qualifications of the supervisee; and

(4) submit a new supervisory plan within 30 days of changing supervisors. Only one supervisory plan may be in place at any time.

(e) ~~[(d)]~~ A licensee who is required to be supervised as a condition of initial or continued licensure must:

(1) submit a supervisory plan to the board for approval by the appropriate committee of the board or executive director/designee within 30 days of initiating supervision;

(2) submit a current job description from the agency in which the social worker is employed with a verification of authenticity from the agency director or their designee on agency letterhead or submit a copy of the contract or appointment under which the licensee intends to work, along with a statement from their potential supervisor that he or she has reviewed the contract and is qualified to supervise the licensee in the setting;

(3) ensure that their supervisor submits reports to the board at the schedule determined by the board. In each report, the supervisor must report on the status of the supervisee's performance, adherence to statutes and rules, address any special circumstances that led to the imposition of supervision, and recommend whether the supervisee should continue licensure. If the supervisor does not recommend the supervisee for continued licensure, the supervisor must provide specific reasons for not recommending the supervisee. The board may consider the supervisor's reservations in its evaluation of qualifications of the supervisee; and

(4) notify the board immediately if there is a break in the supervisory relationship and submit a new supervisory plan within 30 days of the break. Only one supervisory plan may be in place at any time.

(f) ~~[(e)]~~ A licensee who is required to be supervised as a result of disciplinary action must:

(1) submit a supervisory plan to the board for approval by the appropriate committee of the board or executive director/designee within 30 days of initiating supervision;

(2) submit a current job description from the agency in which the social worker is employed with a verification of authenticity from the agency director or their designee on agency letterhead or submit a copy of the contract or appointment under which the licensee intends to work, along with a statement from their potential supervisor that he or she has reviewed the contract and is qualified to supervise the licensee in the setting;

(3) ensure that their supervisor submits reports to the board at the schedule determined by the board. In each report, the supervisor must report on the status of the supervisee's performance, adherence to statutes and rules, address any special circumstances that led to the imposition of supervision, and recommend whether the supervisee should continue licensure. If the supervisor does not recommend the supervisee for continued licensure, the supervisor must provide specific reasons for not recommending the supervisee. The board may consider the supervisor's reservations in its evaluation of qualifications of the supervisee; and

(4) notify the board immediately if there is a break in the supervisory relationship and submit a new supervisory plan within 30 days of the break. Only one supervisory plan may be in place at any time.

(g) ~~[(f)]~~ A LBSW or an LMSW who has been approved for a probationary license under supervision while participating in the AMEC program must follow the application and supervision requirements in §781.313 of this title (relating to Alternate Method of Examining Competency).

§781.303. Independent Practice Recognition (Non-Clinical).

(a) A LBSW or LMSW who seeks to obtain board approval for the recognition of independent non-clinical practice shall meet requirements and parameters set by the board in §781.301 of this title (relating to Qualifications for Licensure).

~~[(1) To qualify for the recognition of independent practice, as a LBSW, an individual, after licensure, shall obtain 3000 hours of board approved supervised full-time experience over a minimum two-year period, but within a maximum four-year period or its equivalent if the experience was completed in another state. Supervised experience must have occurred within the five previous calendar years occurring from the date of application.]~~

~~[(2) To qualify for the recognition of independent practice, as a LMSW, an individual, after licensure, shall obtain 3000 hours of board approved supervised full-time experience over a minimum two-year period, but within a maximum four-year period or its equivalent if the experience was completed in another state. Supervised experience must have occurred within the five previous calendar years occurring from the date of application.]~~

~~[(3) To qualify for independent practice the licensee must complete a minimum of 100 hours of face-to-face supervision, over the course of the 3000 hours of full-time experience, with a board approved supervisor. A licensee who plans to apply for independent practice recognition shall:]~~

~~[(A) submit a supervisory plan to the board for approval by the appropriate committee of the board or executive director within 30 days of initiating supervision. If the licensee fails to submit a supervisory plan, then the licensee will need to submit documentation regarding dates, times and summary of all supervisory sessions at the time the licensee makes application for the upgrade.]~~

~~[(B) submit a current job description from the agency the social worker is employed in with a verification of authenticity from the agency director or their designee on agency letterhead.]~~

~~[(C) submit a supervision verification form to the board within 30 days of the end of each supervisory plan with each supervisor. If the supervisor does not recommend the supervisee for recognition as an independent practice, the supervisor must provide specific reasons for not recommending the supervisee. The board may consider the supervisor's reservations in its evaluation of qualifications of the supervisee.]~~

~~[(D) submit a new supervisory plan within 30 days of changing supervisors.]~~

(b) ~~[(E)]~~ An individual providing supervision to a LBSW shall be a LBSW recognized for independent non-clinical practice, LMSW recognized for independent non-clinical practice, LMSW-AP or LCSW. An individual providing supervision to a LMSW shall be a LMSW recognized for independent non-clinical practice, LMSW-AP or LCSW. In addition to the required licensure, the supervisor shall be board-approved and have attained the recognition of independent practice.

(c) ~~[(4)]~~ A person who has obtained only the temporary license may not begin the supervision process until the issuance of the regular license.

(d) ~~[(5)]~~ The board may use the twenty common law factors developed by the Internal Revenue Service (IRS) as part of their determination process regarding whether a worker is an independent contractor or an employee.

~~(1) [(A)] No instructions to accomplish a job.~~

~~(2) [(B)] No training by the hiring company.~~

~~(3) [(C)] Others can be hired by the independent contractor (sub-contracting).~~

~~(4) [(D)] Independent contractor's work is not essential to the company's success or continuation.~~

~~(5) [(E)] No time clock.~~

~~(6) [(F)] No permanent relationship between the contractor and company.~~

~~(7) [(G)] Independent contractors control their own workers.~~

~~(8) [(H)] Independent contractor should have enough time available to pursue other jobs.~~

~~(9) [(I)] Independent contractor determines location of work.~~

~~(10) [(J)] Independent contractor determines order of work.~~

~~(11) [(K)] No interim reports.~~

~~(12) [(L)] No hourly pay.~~

~~(13) [(M)] Independent contractor often works for multiple firms.~~

(14) ~~[(N)]~~ Independent contractor is often responsible for own business expenses.

(15) ~~[(O)]~~ Own tools.

(16) ~~[(P)]~~ Significant investment.

(17) ~~[(Q)]~~ Services available to the public by having an office and assistants; having business signs; having a business license; listing their services in a business directory; or advertising their services.

(18) ~~[(R)]~~ Profit or loss possibilities.

(19) ~~[(S)]~~ Can't be fired.

(20) ~~[(T)]~~ No compensation if the job isn't done.

~~{(b) A LBSW or LMSW who seeks to obtain a waiver of the supervision and experience requirement for independent practice recognition as set forth by the board in subsection (a)(1) - (3) of this section must submit an application for licensure/upgrade/specialty recognition and the Special Application For Waiver of Supervision and Experience Requirements, along with required documentation and the application fees no later than August 31, 2007. An application for waiver will be evaluated and either approved or denied. No partial credit will be given toward the supervised experience requirement, if an application for the waiver is denied. In order to be granted the waiver, the LBSW or LMSW must fully meet the following requirements and parameters set by the board:}~~

~~{(1) two years full time (paid or voluntary) social work experience while fully licensed as a social worker under the supervision of a licensed social worker (LCSW, LMSW-AP, LMSW, LBSW);}~~

~~{(2) three years full time (paid or voluntary) social work experience while fully licensed as a social worker under the supervision of a licensed mental health professional (LCSW, LMSW-AP, LMSW, LBSW, LMFT, LPC, LCDC, Psychologist, Psychiatrist, Psychiatric Nurse or other mental health professional accepted by the board);}~~

~~{(3) four years full time (paid or voluntary) social work experience while fully licensed as a social worker in an agency setting with or without the supervision of a licensed mental health professional; or}~~

~~{(4) four years full time (paid or voluntary) social work experience while fully licensed as a social worker without supervision in a setting that meets the criteria in subsection (a)(5) of this section.}~~

~~{(e) An applicant may appeal staff decision regarding their qualifications toward the waiver to the appropriate board committee within 30 days of receipt of staff decision. The decision of the board committee is final.}~~

~~(e) A LBSW or LMSW who plans to apply for the recognition of non-clinical independent practice shall follow procedures set out in §781.302 of this title (relating to Clinical Supervision for LCSW and Non-Clinical Supervision for LMSW-AP and Independent Practice Recognition).~~

~~(f) ~~[(d)]~~ A LBSW or LMSW [who applies for the independent practice recognition and the waiver of experience requirements before August 31, 2007, must cease and desist independent practice immediately if his or her application for the waiver of the supervised experience requirement is finally denied. An LBSW or LMSW whose application has been denied] may practice independently when the LMSW or LBSW holds the independent practice specialty recognition, is under application for the specialty recognition under the waiver of the supervised experience requirement, or when under a supervision plan for independent practice that has been approved by the board.~~

§781.304. Recognition as a board-approved~~[Board Approved]~~ Supervisor and the Supervision Process.

A person who wishes to be a board-approved ~~[board approved]~~ supervisor must file an application, and pay the applicable fee.

(1) A board-approved ~~[board approved]~~ supervisor must:

(A) be licensed as a LBSW, LMSW, LCSW or be recognized as an Advanced Practitioner, (LMSW-AP) ~~[LMSW-AP]~~ in good standing or hold the equivalent social work license ~~[or certification]~~ in another state;

(B) supervise only supervisees providing professional services within the supervisor's own competency;

(C) ~~[(B)]~~ take professional responsibility for the social work services provided within the supervisory plan;

(D) ~~[(C)]~~ have completed a supervisor's training program acceptable to the board;

(E) ~~[(D)]~~ currently be engaged in the practice of social work and self-identified as a social worker;

(F) ~~[(E)]~~ submit the required documentation and fee to the board for approval;

(G) ~~[(F)]~~ pay the annual board-approved ~~[Board Approved]~~ Supervisor fee as listed in §781.217 of this title (relating to Fees); and

(H) ~~[(G)]~~ when approved as a supervisor by the board, the licensees may perform supervisory functions indicated:

(i) a LCSW may supervise clinical experience toward the LCSW license, non-clinical ~~[Non-clinical]~~ experience toward the Advanced Practitioner specialty recognition ~~[Practice]~~, non-clinical experience toward the Independent Practice Recognition (non-clinical), a licensee under probationary initial or continued licensure, board ordered probated suspension, probationary license holders under the AMEC program;

(ii) an LMSW-AP may supervise non-clinical experience toward the Advanced Practitioner specialty recognition ~~[Practice]~~, non-clinical experience toward the Independent Practice Recognition (non-clinical), a licensee under probationary initial or continued licensure, board ordered probated suspension, probationary license holders under the AMEC program;

(iii) an LMSW with the Independent Practice Recognition (non-clinical) may supervise non-clinical experience toward the Independent Practice Recognition (non-clinical), a licensee under probationary initial or continued licensure, board ordered probated suspension, probationary license holders under the AMEC program;

(iv) an LMSW who does not hold the independent practice recognition may only supervise probationary license holders under the AMEC program;

(v) a LBSW with the Independent Practice Recognition may supervise a LBSW's non-clinical experience toward the Independent Practice Recognition (non-clinical), a LBSW under probationary initial or continued licensure, board ordered probated suspension, probationary LBSW license holders under the AMEC program; or

(vi) a LBSW who does not hold the independent practice recognition may only supervise probationary LBSW license holders under the AMEC program.

(2) On receipt of the application to be a board approved supervisor, fee and verification of qualifications, the board will issue a letter notifying the licensee of approval as a board approved supervisor.

(3) On receipt of the approved supervisor fee, the board will issue a letter certifying that the individual is an approved supervisor. [A licensee who is approved as a supervisor remains approved as a supervisor until the licensee requests to be removed as a supervisor.]

(4) The [An] approved supervisor must renew the [their] approved supervisor status in conjunction with the biennial license renewal [annually]. The [An] approved supervisor may surrender supervisory status by documenting the choice on the appropriate board renewal form and subtracting the supervisory renewal fee from the renewal payment. If a licensee who has surrendered supervisory status desires to regain supervisory status, the licensee [who fails to renew their approved supervisor status] must reapply and meet the current requirements for approved supervisor status.

(5) A supervisor must maintain the qualifications described in paragraph (1) of this section while he or she is providing supervision.

(6) Supervisory sessions may be in one-on-one sessions or in a combination of individual and group sessions.

(A) There can be no more than six individuals in a supervision group.

(B) There may be:

(i) no fewer than four hours of supervision shall occur each calendar month;

(ii) no fewer than two supervisory sessions shall occur each month;

(iii) each supervisory session shall be at least one hour in duration;

(iv) no more than 10 hours of supervision is allowed during any calendar month.

(7) A calendar month is creditable only if the supervision began no later than the first work day of the month and ended no sooner than the last calendar day of the month. Any month of supervision is not creditable unless the conditions listed in paragraph (6) of this section have been met.

(8) Supervision must be face-to-face meetings between the supervisor and supervisee unless the executive director of the board or a committee of the board has granted an exception allowing an alternate form of supervision [due to geographical difficulties or physical disabilities]. If an alternate form of supervision is approved, limits may be set on the amount of alternate supervision to assure sufficient interaction between the supervisor and supervisee.

(9) Supervision must extend over a full 3000 hours.

(10) A social worker may contract for supervision with written approval of the employing agency. A copy of the approval must accompany the supervisory plan submitted to the board.

(11) A board-approved supervisor may not charge or collect a fee or anything of value from his or her employee or contract employee for the supervision services provided to the employee or contract employee.

(12) Before entering into a supervisory agreement, the [The] supervisor must be aware of [responsible for establishing] all conditions of exchange with the clients served by her or his supervisee. The supervisor must not provide supervision if the social worker is practicing outside the authorized scope of the license. If the supervisor

believes that a social worker is practicing outside the scope of the license, the supervisor shall make a report to the board.

~~[(13) Supervision completed before the effective date of this chapter will be evaluated on the basis of the rules in effect at the time the supervision plan or verification is submitted to the board.]~~

(13) ~~[(14)]~~ A supervisor may not be ~~["]~~employed by~~["]~~ or ~~["]~~under the employment supervision of~~["]~~ the person whom he or she is supervising.

(14) ~~[(15)]~~ A supervisor may not be related within the second degree by affinity (marriage) or within the third degree by consanguinity (blood or adoption) to the person whom he or she is supervising.

(15) ~~[(16)]~~ During the period of supervised experience, a supervisee may be employed on a salary basis or volunteer within an established supervisory setting. The established settings must be structured with clearly defined job descriptions and areas of responsibility. The board may require that the applicant provide documentation of all work experience.

(16) ~~[(17)]~~ All supervision submitted in fulfillment of the board's requirements must have been on a formal basis arranged prior to the period of supervision. Supervisory arrangements must include all specific conditions agreed to by the supervisor and supervisee.

(17) ~~[(18)]~~ No payment for services will be made directly by a client to the supervisee.

(18) ~~[(19)]~~ Client records are the responsibility of the agency and shall remain the property of the agency and not the property of the supervisee.

(19) ~~[(20)]~~ A supervisor shall submit billing reflective of the services provided and the provider of that service. All billing documents for services provided by the supervisee shall reflect the license held by the supervisee and that the licensee is under supervision.

(20) ~~[(21)]~~ Supervision received during time when either the supervisor or supervisee has an expired license will be accepted only on approval by the board of an appeal.

§781.311. Temporary License.

(a) Prior to examination, an applicant for licensure may obtain a temporary license as a social worker as long as the applicant meets all the requirements, with the exception of the licensing examination, for the level of license sought.

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

(5) Should the applicant pass the exam the board will issue the license or specialty recognition in accordance with §781.305(g) of this title (relating to Application for Licensure). A temporary license holder who has passed the licensing examination is considered temporarily licensed until a regular license is issued by the board or until the temporary license expires.

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

§781.314. Issuance of License Certificates.

(a) The board issues license certificates indicating the ~~[professional]~~ social work title, whether LBSW, LMSW~~[- LMSW-AP]~~ or LCSW, granted to applicants who have met all of the qualifications established by the board. The license certificate will indicate the date that the license expires, unless it is renewed. The board shall have a method to indicate the new expiration date of a license which has been renewed. The license certificate will also include any specialty recognition or supervisory status, if applicable.

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

(d) A copy of the Code of Conduct listed in §781.401 of this title (relating to Code of Conduct) is issued with the license certificate. The copy of the Code of Conduct also includes information regarding the client complaint process. The copy of the Code of Conduct must be displayed in all locations of practice.

(e) (No change.)

(f) A licensee who offers social work services on the Internet must include a statement that the licensee is licensed by the State of Texas and provide a copy of the Code of Conduct [code of ethics] with the information on how to contact this board by mail or telephone.

(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 November 5, 2007.

TRD-200705312

Jeannie McGuire, LBSW
Chair

Texas State Board of Social Worker Examiners

Earliest possible date of adoption: December 16, 2007

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



SUBCHAPTER D. CODE OF CONDUCT AND PROFESSIONAL STANDARDS OF PRACTICE

22 TAC §§781.402 - 781.405, 781.409, 781.414, 781.419

STATUTORY AUTHORITY

The proposed amendments and new section are authorized by Occupations Code, §505.155, which requires the board to develop policies that clearly separate the policy-making responsibilities of the board and the management responsibilities of the executive director and staff of the department; by Occupations Code, §505.201, which authorizes the board to adopt rules necessary to perform the board's duties, to establish standards of conduct and ethics for license holders, to establish requirements for each type of license issued by the board, and to establish procedures for recognition of independent practice; by Occupations Code, §505.203, which authorizes the board to set fees; by Occupations Code, §505.254, which requires the board to adopt rules concerning an investigation of a complaint filed with the board; by Occupations Code, §505.303, which requires the board to establish a specialty area of clinical social work that is only available to a licensed master social worker who satisfies minimum supervised experience requirements and clinical examination as set by the board; and by Occupations Code, §505.404, which requires the board to establish mandatory continuing education requirements for license holders.

The proposed amendments and new section affect Occupations Code, Chapter 505.

§781.402. *The Practice of [Professional] Social Work.*

(a) Practice of Baccalaureate Social Work--The application of social work theory, knowledge, methods, ethics and the professional use of self to restore or enhance social, psychosocial, or biopsychosocial functioning of individuals, couples, families, groups, organizations and communities. Baccalaureate Social Work is basic general-

ist practice that includes interviewing, assessment, planning, intervention, evaluation, case management, mediation, counseling, supportive counseling, direct practice, information and referral, problem solving, supervision, consultation, education, advocacy, community organization and the development, implementation, and administration of policies, programs and activities. A LBSW recognized for independent practice may provide any non-clinical baccalaureate social work services in either an employment or an independent practice setting. A LBSW recognized for independent practice may work under contract, bill directly for services, and bill third parties for reimbursements for services. A LBSW recognized for independent practice must restrict his or her independent practice to the provision of non-clinical social work services.

(b) Practice of Clinical Social Work--~~The~~ ~~[A specialty within the]~~ practice of social work that requires the application of social work theory, knowledge, methods, ethics, and the professional use of self to restore or enhance social, psychosocial, or biopsychosocial functioning of individuals, couples, families, groups, and/or persons who are adversely affected by social or psychosocial stress or health impairment. The practice of Clinical Social Work requires applying ~~[the application of]~~ specialized clinical knowledge and advanced clinical skills in ~~[the areas of]~~ assessment, diagnosis, and treatment of mental, emotional, and behavioral disorders, conditions and addictions, including severe mental illness in adults and serious emotional disturbances in children. The practice of Clinical Social Work acknowledges the practitioners ability to engage in Baccalaureate Social Work practice and Master's Social Work Practice. Treatment methods include but are not limited to providing ~~[the provision of]~~ individual, marital, couple, family, and group therapy mediation, counseling, supportive counseling, direct practice, and psychotherapy. Clinical social workers are qualified to use the Diagnostic and Statistical Manual of Mental Disorders (DSM), the International Classification of Diseases (ICD), Current Procedural Terminology (CPT) Codes, and other diagnostic classification systems in assessment, diagnosis, treatment, and other practice activities. The practice of Clinical Social Work may include independent clinical practice and the provision of clinical supervision. A LCSW may provide any clinical or non-clinical social work services in either an employment or independent practice setting. A LCSW may work under contract, bill directly for services, and bill third parties for reimbursements for services.

(c) Practice of Master's Social Work--~~The~~ ~~[is the]~~ application of social work theory, knowledge, methods and ethics and the professional use of self to restore or enhance social, psychosocial, or biopsychosocial functioning of individuals, couples, families, groups, organizations and communities. The Practice of Master's Social Work may include the Practice of Clinical Social Work in an agency employment setting under clinical supervision. A LMSW may practice clinical social work under contract with an agency when under a board-approved clinical supervision plan. Master's Social Work practice includes applying ~~[requires the application of]~~ specialized knowledge and advanced practice skills in ~~[the areas of]~~ assessment, diagnosis, treatment, planning, implementation and evaluation, case management, mediation, counseling, supportive counseling, direct practice, information and referral, supervision, consultation, education, research, advocacy, community organization and developing, implementing and administering ~~[the development, implementation, and administration of]~~ policies, programs and activities. ~~[The Practice of Master's Social Work may include the Practice of Clinical Social Work under clinical supervision.]~~ The practice of Master's Social Work acknowledges the practitioners ability to engage in Baccalaureate Social Work practice. A LMSW recognized as an Advanced Practitioner (LMSW-AP) may provide any non-clinical social work services in either an employment or an independent practice setting.

A LMSW-AP may work under contract, bill directly for services, and bill third parties for reimbursements for services. A LMSW recognized for independent practice may provide any non-clinical social work services in either an employment or an independent practice setting. A LMSW recognized for independent practice may work under contract, bill directly for services, and bill third parties for reimbursements for services. A LMSW recognized for independent practice and a LMSW-AP must restrict his or her independent practice to the provision of non-clinical social work services.

(d) A licensee who is not recognized for independent practice or working under supervision under the authority of a board approved non-clinical supervision plan must not engage in any independent practice that falls within the definition of social work practice in §781.102 of this title (relating to Definitions) without being licensed and recognized by the board unless the person is licensed in another profession and acting solely within the scope of that license. If engaged in professional practice under another license, the person may not use the titles "licensed clinical social worker," "licensed master social worker," "licensed social worker," "licensed baccalaureate social worker," or "social work associate" or any other title or initials that states or implies licensure or certification in social work unless one holds the appropriate license or independent practice recognition.

(e) An LBSW or LMSW who is not recognized for independent practice may not provide direct social work services to clients from a location that she or he owns or leases and that is not owned or leased by an employer or other legal entity with responsibility for the client. This does not preclude in home services such as in home health care or the use of telephones or other electronic media to provide services in an emergency.

(f) An LBSW or LMSW who is not recognized for independent practice may practice for remuneration in a direct employment or agency setting and can not work independently, bill directly to patients or to third party payers, unless the LBSW or LMSW is under a formal supervision plan approved by the board.

~~[(d) Independent Non-Clinical Practice--The practice of non-clinical social work outside the jurisdiction of an organizational setting, after completion of all applicable supervision requirements, in which the social worker assumes responsibility and accountability for the nature and quality of the services provided to clients, pro bono or in exchange for direct payment or third party reimbursement.]~~

~~[(e) Independent Clinical Practice--The provision of clinical social work in independent practice wherein the in which the social worker assumes responsibility and accountability for the nature and quality of the services provided to clients, pro bono or in exchange for direct payment or third party reimbursement.]~~

§781.403. *General Standards of Practice.*

The scope of this section establishes standards of professional conduct required of a social worker. The licensee, following applicable statutes,

(1) - (8) (No change.)

(9) If bartering for services, shall [has the responsibility to] assure that the market value of the barter does not exceed the customary charge for the service.

(10) Shall ensure that the client or a legally authorized person representing the client has signed a consent for services, when appropriate.

§781.404. *Relationships with Clients.*

(a) A social worker shall make known to a prospective client the important aspects of the professional relationship, which can in-

clude but is not limited to office procedures, after-hours coverage, services to be provided, fees and arrangements for payment that might affect the client's decision to enter into the relationship.

(b) - (s) (No change.)

§781.405. *Sexual Misconduct.*

(a) For the purpose of this section, the following terms shall have the following meanings.

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

(3) Sexual exploitation--A pattern, practice or scheme of exploitation, which may include, but is not limited to, sexual contact with a client.

(b) A licensee shall not engage in sexual contact or sexual exploitation with a person who is:

(1) (No change.)

(2) a supervisee of [being supervised by] the licensee; or

(3) (No change.)

(c) - (h) (No change.)

§781.409. *Client Records and Record Keeping.*

Following applicable statutes, the licensee shall:

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

(3) in independent practice, establish a plan for the custody and control of the licensee's client [~~mental health~~] records in the event of the licensee's death or incapacity, or the termination of the licensee's professional services;

(4) (No change.)

(5) [~~at the request of a client, a client's guardian, or a client's parent (sole managing, joint managing or possessory conservator) if the client is a minor,] provide[; in plain language,] a written explanation of the types of treatment and charges [for counseling treatment intervention previously made] on a bill or statement to [for] the client (this [requirement] applies even if the charges are to be paid by a third party); and~~

(6) comply with the requirements of Texas Health and Safety Code, Chapters 161 and 611; Texas Family Code, Chapter 261; and other applicable state law concerning confidentiality of protected health information and the release of mental health records. [~~]; and]~~

~~[(7) be responsible for services rendered when providing approval by signature for services rendered by another individual who may or may not be licensed.]~~

§781.414. *Consumer Information.*

(a) A licensee shall inform each client of the name, address, and telephone number of the board for the purpose of reporting violations of the Act or this chapter in one of the following:

(1) [~~on~~] each registration form;

(2) [~~on~~] each application;

(3) each [~~on a~~] written contract for services;

(4) [~~on~~] a sign prominently displayed in each place of business; or

(5) [~~in~~] a bill for services provided.

(b) The board shall make consumer information available to the public on the board's web site or upon request.

§781.419. Licensed Sex Offender Treatment.

A social worker who is licensed as a sex offender treatment provider by the Council on Sex Offender Treatment is not subject to disciplinary action by the board in relation to the social worker's provision of sex offender treatment. A social worker who is a sex offender treatment provider and who acts in conformance with the rules, policies, and procedures of the council is not subject to any administrative sanction by the board. If the Council on Sex Offender Treatment takes disciplinary action against a social worker who is a sex offender treatment provider, the board may consider the final order imposing such disciplinary action as grounds for disciplinary action by the board.

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

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Jeannie McGuire, LBSW
Chair

Texas State Board of Social Worker Examiners

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SUBCHAPTER E. LICENSE RENEWAL AND CONTINUING EDUCATION

22 TAC §§781.502, 781.505, 781.509, 781.511, 781.512, 781.517

STATUTORY AUTHORITY

The proposed amendments are authorized by Occupations Code, §505.155, which requires the board to develop policies that clearly separate the policy-making responsibilities of the board and the management responsibilities of the executive director and staff of the department; by Occupations Code, §505.201, which authorizes the board to adopt rules necessary to perform the board's duties, to establish standards of conduct and ethics for license holders, to establish requirements for each type of license issued by the board, and to establish procedures for recognition of independent practice; by Occupations Code, §505.203, which authorizes the board to set fees; by Occupations Code, §505.254, which requires the board to adopt rules concerning an investigation of a complaint filed with the board; by Occupations Code, §505.303, which requires the board to establish a specialty area of clinical social work that is only available to a licensed master social worker who satisfies minimum supervised experience requirements and clinical examination as set by the board; and by Occupations Code, §505.404, which requires the board to establish mandatory continuing education requirements for license holders.

The proposed amendments affect Occupations Code, Chapter 505.

§781.502. License Renewal [Staggered Renewals].

~~[The board shall use a staggered system for license renewals.]~~

(a) Licenses shall be renewed for a two-year period.

(b) ~~[(1)]~~ The renewal date of a license shall be the last day of the licensee's birth month.

~~[(2) License fees will be prorated if the licensee's initial renewal date, as determined by the board, occurs less than 12 months after the original date of licensure.]~~

~~[(3) Prorated fees shall be rounded off to the nearest dollar.]~~

§781.505. Inactive Status.

(a) A licensee who does not wish to practice social work in the State of Texas and whose license has not expired ~~[lapsed, but who is not employed to provide social work services in Texas,]~~ is eligible for inactive status. The request for inactive status may be made to the board at any time prior to the expiration ~~[lapse]~~ of the license.

(b) (No change.)

(c) The inactive status fee and any applicable renewal fee and penalty fee for late renewal must be paid prior to the date the license expires ~~[lapses]~~.

(d) A licensee who has been granted inactive status ~~[person]~~ must notify the board in writing to reactivate the license ~~[person's status]~~. The reactivated license ~~[Reactivation]~~ status shall begin within seven days ~~[on the first day of the month]~~ following receipt of verification of payment of the reactivation ~~[license]~~ fee. ~~[The license fee shall be prorated to the next renewal date in accordance with §781.502 of this title (relating to Staggered Renewals).]~~

§781.509. Types of Acceptable Continuing Education.

Continuing education undertaken by a licensee shall be acceptable to the board as credit hours if the education falls in one or more of the following categories:

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

(6) ~~completing [completion of]~~ the board's jurisprudence training course no more than once per renewal period, unless the board directs otherwise.

§781.511. Requirements for Continuing Education Providers.

(a) - (j) (No change.)

(k) It shall be the responsibility of a provider to provide each participant in a program with a legible certificate of attendance following the completion of a course. The certificate of attendance shall contain:

(1) the name of the provider, the ~~[and]~~ approval number, and the expiration date of the provider's approved status;

(2) - (7) (No change.)

(l) - (p) (No change.)

(q) A program offered by a provider for credit hours in ethics shall meet the minimum course requirements for an ethics course approved by the board.

§781.512. Evaluation of Continuing Education Providers.

(a) - (e) (No change.)

(f) Complaints regarding continuing education programs offered by approved continuing education providers may be submitted in writing to the executive director. Complaints may result in an audit of a continuing education provider and may be referred to the ~~[appropriate committee of the]~~ board for appropriate action.

(g) A provider whose approval status has been rescinded by the board may reapply for approval on or after the 91st day following the board action. The provider must provide documentation that corrective action has been taken and that the provider's programs will be presented in compliance with §781.511 of this title. ~~The [An appropriate committee of the]~~ board shall review reapplication by a formerly denied continuing education provider.

(h) - (j) (No change.)

§781.517. *Evaluation of Supervisor Training Course Providers.*

(a) - (i) (No change.)

(j) Supervisory training courses approved by the board before September 8, 2007 must meet the requirements in §781.511 of this title (relating to Requirements for Continuing Education Providers) by August 31, 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.

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Jeannie McGuire, LBSW

Chair

Texas State Board of Social Worker Examiners

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SUBCHAPTER F. COMPLAINTS AND VIOLATIONS

22 TAC §781.603

STATUTORY AUTHORITY

The proposed amendment is authorized by Occupations Code, §505.155, which requires the board to develop policies that clearly separate the policy-making responsibilities of the board and the management responsibilities of the executive director and staff of the department; by Occupations Code, §505.201, which authorizes the board to adopt rules necessary to perform the board's duties, to establish standards of conduct and ethics for license holders, to establish requirements for each type of license issued by the board, and to establish procedures for recognition of independent practice; by Occupations Code, §505.203, which authorizes the board to set fees; by Occupations Code, §505.254, which requires the board to adopt rules concerning an investigation of a complaint filed with the board; by Occupations Code, §505.303, which requires the board to establish a specialty area of clinical social work that is only available to a licensed master social worker who satisfies minimum supervised experience requirements and clinical examination as set by the board; and by Occupations Code, §505.404, which requires the board to establish mandatory continuing education requirements for license holders.

The proposed amendment affects Occupations Code, Chapter 505.

§781.603. *Complaint Procedures.*

(a) A person wishing to report an alleged violation of the Act or this chapter by a licensee or other person may ~~shall~~ notify the ~~department staff [executive director]~~. The initial notification may be in writing, by telephone, or by personal visit to the board office.

(b) The ~~department staff [executive director]~~ will be responsible for the receipt and processing of complaints. The ~~department staff [executive director]~~ will maintain a log of the receipt, investigation and

disposition of all complaints. The board chairperson will appoint an ethics committee to work with the ~~department staff [executive director]~~.

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

(e) On receipt of a complaint, ~~department staff [the executive director]~~ shall send an acknowledgment letter. ~~[If the complaint is not in the form of a sworn statement, a copy of applicable rules, and an official form will be included with the letter of acknowledgment and further action on the complaint may, at the discretion of the executive director, be delayed until a sworn statement is received. The executive director may accept an anonymous complaint or a complaint that is not a sworn statement if there is sufficient information for the investigation; however, the executive director shall then complete a complaint form under oath.]~~

(f) Department staff shall forward complaints to the executive director for an initial review. The [Within 15 days of the receipt of a complaint, the] executive director shall review the complaint for jurisdiction. If a complaint appears to be within the jurisdiction of the board, the executive director shall decide whether to authorize department staff to send a copy of the complaint to the respondent and request a response. If the executive director does not authorize notification of the respondent by letter, the complaint will be referred for an investigation and the assigned investigator will determine the manner in which the respondent will be notified of the complaint (by letter, by phone call, by a site visit, or by some other appropriate means. [to assure that there is sufficient information to initiate an investigation and that the allegations contained in the complaint fall within the board's jurisdiction.] If the complaint is against a person licensed by another board, the department staff [executive director] will forward the complaint to that board not later than the 15th day after the date the agency determines that the information should be referred to the appropriate agency as provided in Government Code, Chapter 774.

(g) If the allegations do not fall within the board's jurisdiction, the executive director shall refer the complaint to the Ethics Committee. Based on its review of the complaint, the Ethics Committee may ~~[instruct the executive director to]:~~

(1) close the complaint with a letter to the complainant explaining that [why] the complaint is not within the board's jurisdiction; or

(2) refer the complaint for further investigation [advise the complainant of the additional information necessary to initiate an investigation].

(h) If the allegations in the complaint are within the board's jurisdiction and sufficient for investigation, the executive director shall:

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

(3) instruct agency staff to send a notice to the complainant acknowledging that the complaint was received, unless the complaint was anonymous [notify all parties, as appropriate, to the circumstances of the complaint, that an investigation has been initiated, and provide a copy of the board's policy regarding the time frame for conducting an investigation]; and

(4) (No change.)

(i) The ~~department staff [executive director]~~ will initiate the investigation of a complaint by requesting statements and evidence from all parties; by requesting that the complaint investigation be conducted by a department investigator; or may enlist the service of a private investigator.

~~(j)~~ If an investigation is assigned to an investigator, the executive director will request a written report of the progress of the investigation at least two weeks before each meeting of the ethics committee until the investigation is complete and will provide a copy of the report to the committee.]

~~(j)~~ ~~(k)~~ If an investigation uncovers evidence of a criminal act, the appropriate law enforcement officials will be notified only with approval of the executive director or the Ethics Committee. In any case, the complaint process will continue to its completion unless a written request is received from a law enforcement agency requesting that action on the complaint be delayed, stating the reason for requesting the delay, and stating an anticipated date by which that agency plans to take action on the case.

~~(k)~~ ~~(l)~~ If a law enforcement agency has requested a delay in the complaint process in writing, the executive director will request timely updates on that agency's progress in bringing the matter to a close.

~~(l)~~ ~~(m)~~ The department staff ~~[executive director]~~ will inform the board if the services of a private investigator are needed for the timely completion of a complaint investigation or for any other reason.

~~(m)~~ ~~(n)~~ The subject of the complaint will be notified of the allegations either in writing, by phone or in person by the executive director or the investigator assigned to the case and will be required to provide a sworn response to the allegations within fifteen days ~~[two weeks]~~ of that notice. Failure to respond to the allegations within the fifteen days ~~[two-week period]~~ is evidence of failure to cooperate with the investigation and subject to disciplinary action.

~~(n)~~ ~~(o)~~ The ethics committee will review the complaint log to ensure that:

- (1) complaint investigations are being handled in a timely manner;
- (2) complaints are not dismissed without appropriate consideration;
- (3) a person who files a complaint has an opportunity to explain the allegations made in the complaint; and
- (4) any issues related to complaints which arise under the Act, or this chapter, are resolved.

~~(o)~~ ~~(p)~~ The ethics committee shall determine whether a violation exists and whether to dismiss the complaint as unsubstantiated or to consider appropriate disciplinary action.

~~(p)~~ ~~(q)~~ If a violation is found but it does not seriously affect the health and safety of clients or other persons, the committee may resolve the complaint by informal methods such as a cease and desist order or an informal agreement with the violator to correct the violation.

~~(q)~~ ~~(r)~~ If the complaint is not resolved by the committee, the committee may recommend that disciplinary action be taken or that other appropriate action as authorized by law be taken, including injunctive relief or civil penalties. Action may be taken based on the allegations in the complaint or any violations found during investigation.

~~(r)~~ ~~(s)~~ If no violation exists or the complaint is dismissed as unsubstantiated, the complainant and the licensee or applicant shall be notified in writing of the finding. The committee may include in that notice a statement of issues and recommendations that the committee wishes to bring to the attention of the subject of the complaint.

~~(s)~~ ~~(t)~~ If the executive director receives credible evidence that a licensee is engaging in acts that pose an immediate and signifi-

cant threat of physical or emotional harm to the public, the executive director shall consult with the members of the ethics committee for authorization for an emergency suspension of the license.

(t) Once a complaint has been dismissed by the committee, it cannot be reopened. If new information that appears to be significant is received regarding circumstances surrounding a complaint that has been dismissed, a new complaint may be opened.

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

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Jeannie McGuire, LBSW
Chair

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22 TAC §781.609

(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 State Board of Social Worker Examiners or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The proposed repeal is authorized by Occupations Code, §505.155, which requires the board to develop policies that clearly separate the policy-making responsibilities of the board and the management responsibilities of the executive director and staff of the department; by Occupations Code, §505.201, which authorizes the board to adopt rules necessary to perform the board's duties, to establish standards of conduct and ethics for license holders, to establish requirements for each type of license issued by the board, and to establish procedures for recognition of independent practice; by Occupations Code, §505.203, which authorizes the board to set fees; by Occupations Code, §505.254, which requires the board to adopt rules concerning an investigation of a complaint filed with the board; by Occupations Code, §505.303, which requires the board to establish a specialty area of clinical social work that is only available to a licensed master social worker who satisfies minimum supervised experience requirements and clinical examination as set by the board; and by Occupations Code, §505.404, which requires the board to establish mandatory continuing education requirements for license holders.

The proposed repeal affects Occupations Code, Chapter 505.

§781.609. *Default Orders.*

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

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Chair
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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 9. TITLE INSURANCE

SUBCHAPTER D. PERSONAL PROPERTY

TITLE INSURANCE

28 TAC §9.501

The Texas Department of Insurance (Department) proposes new Subchapter D, §9.501, concerning the adoption by reference of amendments to the Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas (Basic Manual). The amendments are proposed to adopt forms, endorsements, and rules for the writing of personal property title insurance. The proposal is necessary to implement S.B. 1153, enacted by the 80th Legislature, Regular Session, effective September 1, 2007, which adds Chapter 2751 to Title 11, of the Insurance Code. Senate Bill 1153 authorizes the writing of title insurance when personal property is used as collateral on a loan. It will ensure attachment, perfection, or priority of a security interest in the property sufficient to protect a security interest in the property.

The Insurance Code, §2751.051, requires the Department to prescribe forms for the writing of personal property title insurance in the State of Texas. In addition, Insurance Code, §2751.004, requires the Commissioner to adopt rules as necessary to implement and enforce Insurance Code, Chapter 2751, which regulates title for certain personal property interests. The amendments to the Basic Manual, which the proposed new section will adopt by reference, were considered at a hearing on October 18, 2007, Docket Number 2672, in accordance with the Insurance Code, §2751.051 and §2751.053. All forms and rules have been proposed for use in commercial transactions. Adopting the new forms and rules to the Basic Manual will result in consistent administration of the marketing of the new product and will facilitate efficient, industry-wide regulation of the new product.

The proposed amendments to the Basic Manual are identified by the item number used at the October 18, 2007 hearing. The proposal consists of 57 items. Publication of this proposal is necessary to incorporate these items into the Basic Manual, to give public notice of the proposed items to be adopted, and to give notice of the proposal to deny approval of Items 2007-11 - 19. The Department proposes to deny approval of Items 2007-11 - 19 to ensure uniform application of the rules across all form types. The Department also proposes to change the names of forms submitted with Items 2007-1 - 2, 20 - 26, and 44 - 45 to clarify form types and to provide a generic naming scheme for all forms. In addition, the Department proposes to add a statement on each endorsement to indicate with which form each endorsement may be issued. Further, all forms have been assigned a form number; and all endorsements have been assigned an endorsement number that includes the form number to which the

endorsement may be issued. Forms have also been re-formatted to provide uniformity and to reduce page volume. The Department proposes to delete the consumer notice language from Items 2007-23 - 26 in conformity with Commissioner's Bulletin No. B-0023-07, issued May 22, 2007, relating to consumer notice of toll-free telephone numbers and procedures for obtaining information and filing complaints. The Department proposes to change the organizational structure of the Basic Manual to provide a new section for personal property title insurance and to provide new subsection tabs for Insurance Code, Chapter 2751, insuring forms and endorsements, procedural rules, and rates rules. Finally, the Department proposes to change Items 54 and 55 to procedural rules to be included in the new section for personal property title insurance.

The following items are proposed for approval:

Item 2007-1 provides a new form, entitled Personal Property Title Insurance Owner's Policy (PPT-1), to provide coverage to owners for filed financing statements and other liens.

Item 2007-2 provides a new form, entitled Personal Property Title Insurance Lender's Policy (PPT-2), to provide coverage to lenders for attachment, perfection, and priority of the security interest.

Item 2007-3 provides a new endorsement for issuance with the proposed Personal Property Title Insurance Lender's Policy (PPT-2), entitled Aggregation Endorsement (PPT-2.1), to allow aggregation of liability under separate policies when multiple policies are issued in connection with one loan.

Item 2007-4 provides a new endorsement for issuance with the proposed Personal Property Title Insurance Lender's Policy (PPT-2), entitled Gap Coverage Endorsement (PPT-2.2), to provide coverage between the Date of the Policy and the date of the filing of the financing statement.

Item 2007-5 provides a new endorsement for issuance with the proposed Personal Property Title Insurance Lender's Policy (PPT-2), entitled Increase in Liability Endorsement (PPT-2.3), to provide an increase in liability in the amount of insurance.

Item 2007-6 provides a new endorsement for issuance with the proposed Personal Property Title Insurance Lender's Policy (PPT-2), entitled Datedown Endorsement (PPT-2.4), to allow the Date of the Policy to be extended.

Item 2007-7 provides a new endorsement for issuance with the proposed Personal Property Title Insurance Lender's Policy (PPT-2), entitled Change in Location of Debtor Endorsement (PPT-2.5), to reflect a change in the State of Location of the Debtor.

Item 2007-8 provides a new endorsement for issuance with the proposed Personal Property Title Insurance Lender's Policy (PPT-2), entitled Mezzanine Endorsement (PPT-2.6), to provide coverage for a lender on a loan transaction involving Mezzanine financing.

Item 2007-9 provides a new endorsement for issuance with the proposed Personal Property Title Insurance Lender's Policy (PPT-2), entitled Assignment Endorsement (PPT-2.7), to provide coverage to the assignee if the security interest is assigned.

Item 2007-10 provides a new endorsement for issuance with the proposed Personal Property Title Insurance Owner's Policy (PPT-1) or the proposed Personal Property Title Insurance Lender's Policy (PPT-2), entitled Co-Insurance Endorsement

(PPT-1.8/2.8), to provide for multiple insurer liability on a single insurance policy and allocate liability amount among insurers.

Item 2007-20 provides a new form, entitled Personal Property Title Reinsurance Agreement (PPT-3), to allow reinsurance of personal property title insurance liability.

Item 2007-21 provides a new form, entitled Commitment Letter for Personal Property Title Insurance (PPT-4), to allow a title insurance company to issue a commitment letter in contemplation of a policy for personal property title insurance.

Item 2007-22 provides a new form, entitled Personal Property Title Insurance Search Policy (PPT-5), to provide coverage for the accuracy of the search of the relevant UCC filing office and to provide coverage for filing office indexing error.

Item 2007-23 provides a new form, entitled Personal Property Title Insurance Filing Policy (PPT-6), to provide coverage for the filing of a UCC financing statement, including correct location of filing, completeness of the financing statement, and perfection of the security interest.

Item 2007-24 provides a new form, entitled Personal Property Title Insurance Combined Search Policy (PPT-7), to provide coverage in one policy for the accuracy of combined searches, such as searching the relevant UCC filing office, searching relevant courts for judgments, searching relevant state records for encumbrances against vehicles, and searching federal court bankruptcy filings.

Item 2007-25 provides a new form, entitled Personal Property Title Insurance Lender's Policy (PPT-8), to provide coverage for the attachment, perfection, and priority of a lender's security interest in the pledged collateral of a debtor.

Item 2007-26 provides a new form, entitled Personal Property Title Insurance Owner's Policy (PPT-9), to provide coverage for owners regarding the lien status of acquired assets.

Item 2007-27 provides a new endorsement for issuance with the proposed Personal Property Title Insurance Lender's Policy (PPT-8), entitled Seller's Lien Endorsement (PPT-8.1), to provide coverage for liens that have followed the collateral rather than the seller, such as the sale of equipment not in the ordinary course of the seller's business.

Item 2007-28 provides a new endorsement for issuance with the proposed Personal Property Title Insurance Lender's Policy (PPT-8), entitled Tax Lien Endorsement (PPT-8.2), to provide coverage for federal and state priming tax liens on collateral in which the insured has a UCC security interest.

Item 2007-29 provides a new endorsement for issuance with the proposed Personal Property Title Insurance Lender's Policy (PPT-8), entitled Mezzanine Endorsement (PPT-8.3), to provide coverage for a lender on a loan transaction involving Mezzanine financing when the equity pledgor is a primary obligor.

Item 2007-30 provides a new endorsement for issuance with the proposed Personal Property Title Insurance Lender's Policy (PPT-8), entitled Pledged Equity Endorsement (PPT-8.4), to provide coverage for a lender on a loan transaction when the equity pledgor is a secondary obligor.

Item 2007-31 provides a new endorsement for issuance with the proposed Personal Property Title Insurance Lender's Policy (PPT-8), entitled Change of Name of Insured Endorsement (PPT-8.5), to allow the name and address of the insured on the policy to be changed by endorsement.

Item 2007-32 provides a new endorsement for issuance with the proposed Personal Property Title Insurance Lender's Policy (PPT-8), entitled Lender's Aggregation Endorsement (PPT-8.6), to allow aggregation of liability under separate policies where multiple policies are issued in connection with one loan.

Item 2007-33 provides a new endorsement for issuance with the proposed Personal Property Title Insurance Lender's Policy (PPT-8), entitled Renewal Endorsement (PPT-8.7), to provide coverage for advances made subsequent to the issuance of the policy by the insured to the debtor pursuant to a security agreement.

Item 2007-34 provides a new endorsement for issuance with the proposed Personal Property Title Insurance Lender's Policy (PPT-8), entitled Waiver of Attorney Subrogation Rights Endorsement (PPT-8.8), to allow a title insurance company to waive its subrogation rights of the insured against the insured's or debtor's counsel for malpractice or other causes of actions.

Item 2007-35 provides a new endorsement for issuance with the proposed Personal Property Title Insurance Lender's Policy (PPT-8), entitled Springing Control Endorsement (PPT-8.9), to provide coverage regarding the protected purchaser status of the lender under UCC Article 8 in the event that the pledgor of the equity being used to secure the loan has not, prior to the issuance of the policy, opted-in to Article 8 governance over the security interest.

Item 2007-36 provides a new endorsement for issuance with the proposed Personal Property Title Insurance Lender's Policy (PPT-8), entitled Post Policy Tax Lien Endorsement (PPT-8.10), to provide coverage for federal and state priming tax liens on collateral in which the insured has a UCC security interest and future advances on the collateral are anticipated.

Item 2007-37 provides a new endorsement for issuance with the proposed UCC Personal Property Title Insurance Lender's Policy (PPT-8), entitled Borrower's Status Endorsement (PPT-8.11), to provide coverage for a lack of attachment, perfection, priority, or enforcement of the security interest as a result of the legal status of the debtor corporation or corporate officer failure to obtain legal consent or authorization for his or her actions in connection with the loan.

Item 2007-38 provides a new endorsement for issuance with the proposed Personal Property Title Insurance Lender's Policy (PPT-8), entitled Post Policy Date Judgment Lien Endorsements Endorsement (PPT-8.12), to provide for future lien searches of the relevant records to inform the lender of any subsequent liens filed against the debtor.

Item 2007-39 provides a new endorsement for issuance with the proposed Personal Property Title Insurance Owner's Policy (PPT-9), entitled Owner's Aggregation Endorsement (PPT-9.1), to allow a buyer to aggregate a personal property title insurance policy with a real property title insurance policy in a mixed collateral acquisition.

Item 2007-40 provides a new endorsement for issuance with the proposed Personal Property Title Insurance Owner's Policy (PPT-9), entitled Pending Suits and Judgments Endorsement (PPT-9.2), to provide coverage for the accuracy of the search of relevant court records for pending law suits and judgments.

Item 2007-41 provides a new endorsement for issuance with the proposed Personal Property Title Insurance Owner's Policy (PPT-9), entitled Increase in Tax Lien Coverage Endorsement (PPT-9.3), to provide increased coverage limits above the de-

fault amount listed in the insuring clause regarding tax lien coverage of the proposed Personal Property Title Insurance Owner's Policy (PPT-9).

Item 2007-42 provides a new endorsement for issuance with the proposed Personal Property Title Insurance Owner's Policy (PPT-9), entitled Owner's Equity Ownership Endorsement (PPT-9.4), to provide coverage regarding the protected purchaser status of the owner under UCC Article 8.

Item 2007-43 provides a new endorsement for issuance with the proposed Personal Property Title Insurance Owner's Policy (PPT-9), entitled Owner's Policy Insuring Clauses Endorsement (PPT-9.5), to provide increased coverage limits above the default amount listed in the insuring clauses regarding any security interest, lien, or tax lien on the collateral on the proposed Personal Property Title Insurance Owner's Policy (PPT-9).

Item 2007-44 provides a new form, entitled Personal Property Title Insurance Owner's Policy (PPT-10), to provide coverage to owners regarding ownership and lien status of the insured interest.

Item 2007-45 provides a new form, entitled Personal Property Title Insurance Owner's Vacation Interest Policy (PPT-11), to provide coverage to owners regarding ownership status, lien status, and tax lien status of the insured interest in a vacation interest (time share).

Item 2007-46 provides a new form, entitled Personal Property Title Insurance Lender's Policy (PPT-12), to provide coverage for the attachment, perfection, and priority of a lender's security interest.

Item 2007-47 provides a new endorsement for issuance with the proposed Personal Property Title Insurance Lender's Policy (PPT-12), entitled Landlord's Lien Endorsement (PPT-12.1), to provide coverage for claims by a landlord that may have obtained a priority interest in the lender's collateral.

Item 2007-48 provides a new endorsement for issuance with the proposed Personal Property Title Insurance Lender's Policy (PPT-12), entitled Lapse Endorsement (PPT-12.2), to provide coverage for a loss of interest in the collateral due to failure to file a continuation of the UCC financing statement.

Item 2007-49 provides a new endorsement for issuance with the proposed Personal Property Title Insurance Lender's Policy (PPT-12), entitled Prior Owner Endorsement (PPT-12.3), to provide coverage for a UCC financing statement filing against a prior owner of the collateral.

Item 2007-50 provides a new endorsement for issuance with the proposed Personal Property Title Insurance Lender's Policy (PPT-12), entitled Federal Tax Lien Endorsement (PPT-12.4), to provide coverage for federal tax liens against the debtor, seller, or a prior owner of the collateral.

Item 2007-51 provides a new endorsement for issuance with the proposed Personal Property Title Insurance Lender's Policy (PPT-12), entitled Mezzanine Financing Endorsement (PPT-12.5), to provide flexible coverage options for a lender on a loan transaction involving Mezzanine financing.

Item 2007-52 provides a new endorsement for issuance with the proposed Personal Property Title Insurance Lender's Policy (PPT-12), entitled Tie-In Endorsement (PPT-12.6), to provide aggregate coverage under multiple personal property title insurance policies such that any loss under one policy is deducted from the aggregate liability of all policies.

Item 2007-53 provides a new procedural rule (PPT P-1) to clarify that all procedural rules in the Basic Manual will apply to personal property title insurance.

Item 2007-54 provides a new procedural rule (PPT P-2) to clarify that all administrative rules in the Basic Manual will apply to personal property title insurance.

Item 2007-55 provides a new procedural rule (PPT P-3) to clarify that all claims handling principles and procedures in the Basic Manual will apply to personal property title insurance.

Item 2007-56 updates the organizational structure of the Basic Manual by inserting a new section tab for personal property title insurance with subsection tabs for Texas Insurance Code, Chapter 2751, insuring forms and endorsements, procedural rules, and rates rules.

Item 2007-57 provides a new procedural rule (PPT P-4) to provide a manner for application to the Department for approval of a new or revised personal property title insurance form or a change in rate associated with such a form by requiring that all such applications be made in accordance with Insurance Code §§2703.203 - 2703.205.

The following items are proposed for disapproval:

Item 2007-11 provides a new Procedural Rule, entitled Expanded Coverage Article 9 Policy of Personal Property Title Insurance, to restrict the proposed Personal Property Title Insurance Lender's Policy (PPT-2) and the proposed Personal Property Title Insurance Owner's Policy (PPT-1) from being issued in consumer transactions and to allow a title insurance company to delete provisions of the policies, add exceptions to a schedule, and add additional provisions to a schedule without seeking promulgation of the new version of the form.

Item 2007-12 provides a new Procedural Rule, regarding the proposed Aggregation Endorsement (PPT-2.1), to require payment of the promulgated premium prior to issuance, to require underwriting requirements be met prior to issuance, to require that multiple personal property title insurance policies be issued in connection with the same indebtedness or loan in conjunction with issuance, and to require the issuing title insurance company to charge the applicable premium for each policy.

Item 2007-13 provides a new Procedural Rule, regarding the proposed Gap Coverage Endorsement (PPT-2.2), to require payment of the promulgated premium prior to issuance, to require underwriting requirements be met prior to issuance, and to require the issuing title insurance company to charge the applicable premium for each policy.

Item 2007-14 provides a new Procedural Rule, regarding the proposed Increase in Liability Endorsement (PPT-2.3), to require payment of the promulgated premium prior to issuance, to require underwriting requirements be met prior to issuance, and to require the issuing title insurance company to charge the applicable premium for each policy.

Item 2007-15 provides a new Procedural Rule, regarding the proposed Datedown Endorsement (PPT-2.4), to require payment of the promulgated premium prior to issuance, to require underwriting requirements be met prior to issuance, and to require the issuing title insurance company to charge the applicable premium for each policy.

Item 2007-16 provides a new Procedural Rule, regarding the proposed Change in Location of Debtor Endorsement (PPT-2.5), to require payment of the promulgated premium prior

to issuance, to require underwriting requirements be met prior to issuance, and to require the issuing title insurance company to charge the applicable premium for each policy.

Item 2007-17 provides a new Procedural Rule, regarding the proposed Mezzanine Endorsement (PPT-2.6), to require payment of the promulgated premium prior to issuance, to require underwriting requirements be met prior to issuance, and to require the issuing title insurance company to charge the applicable premium for each policy.

Item 2007-18 provides a new Procedural Rule, regarding the proposed Assignment Endorsement (PPT-2.7), to require payment of the promulgated premium prior to issuance, to require underwriting requirements be met prior to issuance, and to require the issuing title insurance company to charge the applicable premium for each policy.

Item 2007-19 provides a new Procedural Rule, regarding the proposed Co-Insurance Endorsement (PPT-1.8/2.8), to require payment of the promulgated premium prior to issuance, to require underwriting requirements be met prior to issuance, and to require the issuing title insurance company to charge the applicable premium for each policy.

The Department has filed a copy of each of the proposed items with the Secretary of State's Texas Register Section. Persons desiring copies of the proposed items can obtain them from the Office of the Chief Clerk, Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas, 78714-9104. To request copies, please contact Sylvia Gutierrez at (512) 463-6327.

FISCAL NOTE. Robert R. Carter, Jr., Deputy Commissioner for the Title Division, has determined that, for each year of the first five years the proposals are in effect, there will be no fiscal impact on state or local government as a result of enforcing or administering the proposed amendments. Mr. Carter has also determined that there will be no measurable effect on local employment or the local economy.

PUBLIC BENEFIT/COST NOTE. Mr. Carter has also determined that, for each year of the first five years the proposed amendments to the Basic Manual are in effect, there are a number of public benefits anticipated. The adoption of forms, endorsements, and rules for the writing of personal property title insurance will enable the writing of title insurance for personal property, such as business inventory or pledged equity, in Texas when the personal property is used as collateral on a loan. It will ensure attachment, perfection, or priority of a security interest in the property sufficient to protect a security interest in the property. The proposed amendments will also adapt the Basic Manual to implement S.B. 1153 by enabling the writing of a title insurance product that has not previously been marketed in Texas, but is currently marketed in a majority of the fifty states. The proposal will result in consistent administration of the marketing of the new product and will facilitate efficient industrywide regulation of the new product. No person or entity is required to write the new product or to comply with the proposed amendments. Title companies and agents have the option to write or not write personal property title insurance. For those who opt to write personal property title insurance, the Department has developed estimated costs for compliance based on costs that have been previously used by the Department for similar compliance requirements. The Department estimates that the costs of reproducing the forms will be no more than \$.15 per page per form for the cost of a photocopy. Entities and persons will be fully compensated for the reproduction costs

by the premiums to be collected under the premium schedule that will be adopted at a later date. Such costs are the result of the enactment of S.B. 1153, and not the result of the adoption, enforcement, or administration of the proposed amendments.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. As required by the Government Code, §2006.002(c), the Department has determined that the proposed amendments will not have an adverse economic effect on small or micro businesses that opt to write personal property title insurance. No small or micro business is required to write the new product or to comply with the proposed amendments. The Department's analysis of any possible costs for compliance with the proposal that are detailed in the Public Benefit/Cost Note section of this proposal are also applicable for small and micro businesses that opt to write personal property title insurance. Additionally, the proposed rules and forms provide an economic opportunity for the businesses that opt to write personal property title insurance, and businesses will be profitably compensated by a fee schedule. Further, such costs are the result of the enactment of S.B. 1153, and not the result of the adoption, enforcement, or administration of the proposed amendments. In accordance with the Government Code, §2006.002(c), the Department has, therefore, determined that a regulatory flexibility analysis is not required because the proposal will not have an adverse impact on small or micro businesses.

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

REQUEST FOR COMMENTS. To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on December 17, 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 comments must be submitted simultaneously to Robert R. Carter, Jr., Deputy Commissioner, Title Division, Mail Code 106-2T, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any request for a public hearing should be submitted separately to the Office of the Chief Clerk before the close of the public comment period. If a hearing is held, written and oral comments presented at the hearing will be considered. Also, any comments received during the hearing held on October 18, 2007, Docket Number 2672, are part of the record and have already been considered for purposes of this proposal.

STATUTORY AUTHORITY. The new subchapter is proposed pursuant to the Insurance Code §2751.051 and §2751.053, as enacted by S.B. 1153, and the Insurance Code, §2551.003 and §36.001. Section 2751.051 requires the Commissioner to prescribe policy forms. Section 2551.003 authorizes the Commissioner to promulgate and enforce rules prescribing underwriting standards and practices and to promulgate and enforce all other rules necessary to accomplish the purposes of Title 11, which regulates title insurance. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTES. The following statutes are affected by this proposal: Insurance Code Chapters 2551 and 2751.

§9.501. Amendments to the Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas.

In addition to the material adopted by reference under §9.1 of this title (relating to the Basic Manual of Rules, Rates, and Forms for the Writing of Title Insurance in the State of Texas), the Commissioner of Insurance adopts by reference, as part of the manual, forms, endorsements, and rules approved as a result of a public hearing on October 18, 2007, and submitted as Agenda Items 2007-1, 2007-2, 2007-3, 2007-4, 2007-5, 2007-6, 2007-7, 2007-8, 2007-9, 2007-10, 2007-20, 2007-21, 2007-22, 2007-23, 2007-24, 2007-25, 2007-26, 2007-27, 2007-28, 2007-29, 2007-30, 2007-31, 2007-32, 2007-33, 2007-34, 2007-35, 2007-36, 2007-37, 2007-38, 2007-39, 2007-40, 2007-41, 2007-42, 2007-43, 2007-44, 2007-45, 2007-46, 2007-47, 2007-48, 2007-49, 2007-50, 2007-51, 2007-52, 2007-53, 2007-54, 2007-55, 2007-56, and 2007-57. The document is available from the Texas Department of Insurance, Title Division, Mail Code 106-2T, 333 Guadalupe Street, Austin, Texas 78701-1998.

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

Filed with the Office of the Secretary of State on November 5, 2007.

TRD-200705300

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Earliest possible date of adoption: December 16, 2007

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



TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 355. RESEARCH AND PLANNING FUND

The Texas Water Development Board (the board) proposes changes to Chapter 355, including amendments to §355.3, relating to Legal and Fiscal Information; §355.5, relating to Criteria; §355.10, relating to Funding Limitations; §355.11, relating to Availability of Reports and Planning Documents; §355.71, relating to Purpose and Policy; §355.72, concerning Criteria for Eligibility; §355.77, relating to Procurement of Facility Planning Services; §355.92, relating to Notice of Funds, Submission of Applications; §355.93, relating to Eligibility; §355.97, relating to Notice Requirements; §355.100, relating to Availability of Reports and Planning Documents; and proposes new Subchapter D, Environmental Flows Grants, including new §355.110, relating to Scope, Applicability and Definitions; §355.111, relating to Notice of Eligibility and Applications for Funds; §355.112, relating to Prioritization of Funding; §355.113, relating to Applications for Environmental Flows Funding; §355.114, relating to Contents of Applications for Funding; and §355.115, relating to Board Actions, Funding and Resulting Contracts.

Subchapter A. General Research and Planning

The board proposes amending §355.3 by deleting the reference to grants "in one or more of the three categories." Presently, the board is authorized to award grants in more than three categories. Deletion of the reference to the number of categories does not affect the substance of the rule and minimizes the need for future changes.

The board proposes to delete paragraphs (1)(D) and (2)(D) of §355.5 to eliminate the sections requiring applications for research grants to provide detailed estimate of cost. Paragraphs (1)(D) and (2)(D) of §355.5 are proposed for deletion because detailed estimates are generally not available at the time of submission of the applications. Further, the costs for required professional services are usually not known at the time of the application.

The board proposes to delete paragraph (4)(H) of §355.5 because the board has determined that grants for regional facility planning encourage cooperative regional efforts and the recipients of the grants should not be penalized if the project is not ultimately constructed. Therefore, the proposed deletion of paragraph (4)(H) of §355.5 requiring recipients of funds to repay the board if the project is not constructed, enhances the likelihood of cooperative regional planning without the unnecessarily punitive effect on a recipient who may not have had control over whether the project is built. The proposed deletion also recognizes that as the result of unforeseen events, plans may require change. The recipient of planning funds may have completed all the work under the terms of the grant and should not have to make repayment due to circumstances beyond his control.

The board also proposes to delete subsections (f) - (i) of §355.10 for the reasons stated in the previous paragraph. Subsections (f) - (i) of §355.10 all relate to repayments of grant monies if the project is not constructed.

The board proposes amending §355.11, relating to availability of reports and planning documents. The amendment deletes the statement that the board must have access to all reports, planning documents, and other work product because the board always has access to all information submitted to the board and thus the statement is redundant. The amendment also modifies §355.11 by adding language that states the reports and plans are available as required by the executive administrator or as agreed to by contracting parties. This amendment is necessary because certain information contained in such documents is exempt from disclosure under the Public Information Act, Government Code, Chapter 552. For example, Texas Water Code §16.053(e)(3)(D) specifically excepts information about existing major infrastructure facilities from public disclosure. The amendment to this section assists the board in ensuring that certain information is not inadvertently disclosed.

Subchapter B. Economically Distressed Areas Facility Engineering

The Texas Water Development Board (board) proposes amendments to 31 TAC §§355.71, 355.72, and 355.77, concerning the Research and Planning Fund, of Subchapter B, Economically Distressed Areas Facility Engineering. The amendments are proposed to be consistent with recent statutory amendments and other board rules affecting the Economically Distressed Areas Program (EDAP). Specifically, the board proposes to align the requirements of Chapter 355, Subchapter B with Chapter 363, Subchapter E, concerning the EDAP.

Proposed amendment to §355.71 adds new subsection (d) that permits the board to provide financial assistance for the preliminary planning of water or sewer services to economically distressed areas to determine project feasibility. The proposed amendment includes a provision for contingencies and provides for the board to retain a minimum of 15% of the progress payments until the funded deliverable is substantially complete and approved by the executive administrator.

Proposed amendment to §355.72(a)(3) deletes the reference to required certificates of public convenience and necessity and inserts a requirement that the political subdivisions provide the legal authority under which it may provide the service for which funding is requested. In addition, the board proposes to delete subsection (a)(4)(E), which requires the county to prepare a map that shows where in the county different types of septic systems may be appropriately located. These maps are prepared customarily during the facility planning and not by the county commissioners.

Proposed amendment to §355.77 deletes the detailed procurement provisions, which did not reflect state procurement requirements, and inserts language that makes the provision consistent with Government Code Chapter 2254 and the procurement language in 31 TAC Chapter 363, relating to other financial assistance programs.

Subchapter C. Regional Water Planning Grants

Proposed amendment to §355.92 relating to notice of funds, submissions of applications deletes the reference to state fiscal year 1998 and deletes the term "initial" when that term describes the scope of work. The language relating to 1998 in §355.92 is outdated and irrelevant. The deletion of this sentence has no substantive effect on the section. The deletion of the word "initial" is necessary because the board requires a statement of the full scope of proposed work to properly evaluate the request for a grant.

The board proposed deleting the word "initial" from subsection (a) of §355.93 for the reason noted in the preceding paragraph. Additionally the board proposes amending subsection (b)(1) of §355.93 to add an activity for which the board will not provide funding. Proposed new subsection (b)(1)(B) provides that evaluations of groundwater resources for which a desired future condition has been submitted to the board by December 1, 2007 will not be eligible for funds for the obvious reason that if the desired future condition has already been submitted, then a grant for development of that condition is not required.

The board proposes deleting the word "initial" from subsection (a) of §355.97 relating to scope of work grant applications for the reasons stated in the preceding paragraphs.

The board proposed an amendment to §355.100, relating to the availability of planning documents, reports and work products resulting from grants. The amendment deletes the language stating such documents shall be available to the board because that language is redundant. Further, the amendment adds language stating that recipients of the information are required to ensure compliance with the Texas Water Code exceptions to the Public Information Act.

Subchapter D. Environmental Flows Grants

This proposed new subchapter governs the board's expenditure of research and planning fund money to compensate members of the environmental flows science advisory committee for attendance at meetings including transportation, meals, lodging

or other travel expenses in accordance with the General Appropriations Act.

Proposed new §355.110 relating to scope, applicability and definitions explains purpose, scope and meanings of words used in the subchapter. Proposed subsection (a) of §355.110 explains that the subchapter governs disbursement of funds relating to environmental flows.

Proposed subsection (b) of §355.110 lists the entities authorized to receive financial support as the environmental flows science advisory committee, the political subdivisions that are part of basin and bays stakeholder committees, the basin and bay expert science team, and for technical advisors from cooperating federal and state agencies and universities and private persons.

Proposed subsection (c) of §355.110 defines the terms: environmental flows science committee, basin and bay stakeholder committee, basin and bay expert science team, and eligible applicants.

Proposed new §355.111 relating to notice of eligibility and applications for funds provides in subsection (a) that the executive administrator of the board shall publish notice of available funds for environmental flows issues. Proposed new subsection (b) of §355.111 provides that the executive administrator shall provide application forms and may request additional information after submission of the forms. Proposed new subsection (c) of §355.111 provides that incomplete applications may be rejected.

Proposed new §355.112 relating to prioritization of funding contains subsection (a) which sets forth the board's priority in funding. Primarily the board is interested in ensuring that the persons serving on committees and teams are compensated for their travel and ancillary expenses under new proposed subsection (a)(1)(A). These persons serve without remuneration and it is important for the board to assist them in the performance of their important responsibilities. The second priority group for funding in proposed new subsection (a)(2)(A) of §355.112 is paying the administrative expenses political subdivisions for their work on basin and bay area stakeholder committees. Lastly, the board will expend available funds for contracts for technical assistance under new proposed subsection (a)(2)(B) of §355.112.

Proposed new §355.113 relating to applications for environmental flows funding provides that an applicant for funds under Subchapter D of Chapter 355 shall submit his application for funding first to the environmental flows advisory group for review, comment and recommendations prior to submission to the board. Proposed new subsection (b) of §355.113 provides that the executive administrator shall prioritize applications based on availability of funds and the recommendations of the group.

Proposed new §355.114 relating to contents of applications for funding contains proposed new subsection (a) which lists the information required in the applications for compensation for persons who serve on committees and teams. Proposed new subsection (b) of §355.114 sets forth the information required for applications from political subdivisions seeking administrative expenses. Proposed new subsection (c) of §355.114 states what information is needed from entities and persons who apply for a contract to provide technical assistance.

Proposed new §355.115, relating to board actions, funding and resulting contracts provides in proposed new subsection (a) of §355.115 that the board may take any one of a range of actions on an application for funds. Proposed new subsection (b) of §355.115 provides the upon board's approval of the application,

the executive administrator shall negotiate with and enter into a contract with certain required terms.

Bill Mullican, Deputy Executive Administrator for Planning, has determined that for the first five-year period the proposed amendments and new sections are in effect, there will not be fiscal implications on state and local government as a result of administration of the amended and new sections. No local government is required to apply for assistance under this program. If a local government does apply, any additional information requested is not anticipated to have a fiscal impact on the applicant.

Mr. Mullican also determined that for the first five years the proposed amendments and new sections are in effect, the public benefit anticipated as a result of the amendments and new sections will be greater consistency in the rules for EDAP program applicants resulting in greater efficiency in administering the program.

Mr. Mullican has determined that there will not be economic costs to small businesses or individuals required to comply with the amendments and new sections as proposed because the provisions apply only to political subdivisions that apply for funding assistance.

Comments on the proposal will be accepted for 30 days following publication in the *Texas Register* and may be submitted to Legal Services, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, or by e-mail to rulescomments@twdb.state.tx.us, or by fax to (512) 463-5580.

SUBCHAPTER A. GENERAL RESEARCH AND PLANNING

31 TAC §§355.3, 355.5, 355.10, 355.11

The amendments to §§355.3, 355.5, 355.10 and 355.11 are proposed under the authority of Texas Water Code §15.403 which requires the board to adopt rules to carry out Texas Water Code Chapter 15.

The Code affected by this proposed rulemaking is Texas Water Code, Chapter 15, Subchapter F, relating to Research and Planning; and Chapter 16, Subchapter C, relating to Planning.

§355.3. *Legal and Fiscal Information.*

As funds become available, and needs are identified, the executive administrator will publish notice in the *Texas Register* requesting applications from eligible applicants for grants [in one or more of the three categories]. Applicants shall submit application(s) in the form and in the manner prescribed by the executive administrator. The executive administrator may request additional information needed to evaluate the application, and may return any incomplete applications. Applicants may also submit and the executive administrator may also consider applications at any time, depending on availability of funds and demonstrated need.

§355.5. *Criteria.*

Applications will be evaluated by the executive administrator, considering, at a minimum, the following criteria:

(1) Research project evaluation criteria for unsolicited applications:

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

~~[(D)] detailed estimate of the cost of the proposed research project;~~

~~[(E)] estimated time required to complete the research project;~~

~~[(F)] ability to perform the research and complete the project;~~

~~[(G)] potential economic impact; and~~

~~[(H)] environmental enhancement and conservation impact.~~

(2) Research project evaluation criteria for solicited applications:

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

~~[(D)] detailed estimate of the cost of the proposed research project;~~

~~[(E)] estimated time required to complete the research project; and~~

~~[(F)] ability to perform the research and complete the project.~~

(3) (No change.)

(4) Regional facility planning project criteria:

(A) - (G) (No change.)

~~[(H)] ability of a recipient of funds to repay the assistance if a project is not constructed according to §355.10(f) of this title (relating to Funding Limitations);~~

§355.10. *Funding Limitations.*

(a) - (e) (No change.)

~~[(f)] The board may condition grants for regional facility planning to require that the recipients agree in the contract for assistance, and by the execution of any other documents necessary to secure such agreement, to pay back to the board the following specified percentages of the grant if construction on a project described by the regional facility planning grant is not begun within the following specified times:~~

~~[(1)] if construction is not begun within six years of the time the executive administrator notifies the grant recipient that the agency has closed the account for the grant, the recipient shall repay to the board 25% of the amount of the grant;~~

~~[(2)] if construction is not begun within seven years of the time the executive administrator notifies the grant recipient that the agency has closed the account for the grant, the recipient shall repay to the board an additional 25% of the amount of the grant;~~

~~[(3)] if construction is not begun within eight years of the time the executive administrator notifies the grant recipient that the agency has closed the account for the grant, the recipient shall repay to the board an additional 25% of the amount of the grant; and~~

~~[(4)] if construction is not begun within nine years of the time the executive administrator notifies the grant recipient that the agency has closed the account for the grant, the recipient shall repay to the board an additional 25% of the amount of the grant.~~

~~[(g)] Repayment under subsection (f) of this section shall occur no later than within the entity's first fiscal year following the date on which each repayment obligation is triggered.~~

~~[(h)] For the purposes of subsection (f) of this section, construction will be considered to have begun when:~~

~~[(1)] an entity closes a debt issuance that will fund a project that the executive administrator verifies is substantially the same as the project recommended in the regional facility planning grant report; or~~

~~{(2) the effective date of a contract for the construction of a project the executive administrator verifies is substantially the same as the project recommended in the regional facility planning grant report, if the project costs are not funded by a debt issuance.}~~

~~{(i) If the regional plan determines that a regional project is not feasible, repayment will not be required under the provisions of subsection (f) of this section.}~~

§355.11. Availability of Reports and Planning Documents.

All reports, planning documents, and any other work products resulting from projects receiving board funding assistance must be made available ~~[to the board and all]~~ state agencies and political subdivisions as required by the executive administrator or as agreed to by the contracting parties.

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

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SUBCHAPTER B. ECONOMICALLY DISTRESSED AREAS FACILITY ENGINEERING

31 TAC §§355.71, 355.72, 355.77

The amendments to §§355.71, 355.72, and 355.77 are proposed under the authority of the Texas Water Code §15.407(d) relating to rules governing the procurement of facility engineering services by a political subdivision and other rules as necessary to carry out Subchapter F of Chapter 15 of the Texas Water Code.

The Code affected by this proposed rulemaking is Texas Water Code, Chapter 15, Subchapter F, relating to Research and Planning; and Chapter 16, Subchapter C, relating to Planning.

§355.71. Purpose and Policy.

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

(d) The board may provide financial assistance for costs necessary to provide water or sewer services to economically distressed areas for the preliminary planning, including contingencies as determined by the board, to determine the feasibility of a water supply project, treatment works, or flood control measures. The grant agreement shall provide for the board to retain a minimum of 15% of the progress payments otherwise due to the applicant until the funded deliverable, as defined in the grant agreement, is substantially complete and is authorized by the executive administrator.

§355.72. Criteria for Eligibility.

(a) Political subdivisions must meet the appropriate requirements of this section before the board may consider an application for financial assistance for facility planning.

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

(3) A political subdivision applying for facility planning assistance must provide a citation to the specific legal authority in the

Texas Constitution and statutes pursuant to which the applicant is authorized to provide the service for which the applicant is receiving financial assistance as well as citation to the laws under which the political subdivision was created and is operating [have any required certificate of public convenience and necessity (CCN) that includes the project area and that is for the same type of service to be addressed in the proposed facility planning study; or, as an alternative, the applicant may submit an executed interlocal agreement with the holder of the applicable CCN which authorizes the applicant to provide the applicable services for the facility planning area].

(4) A political subdivision shall have submitted for review:

(A) - (D) (No change.)

~~{(E) evidence that the county commissioners court has prepared a map showing the part of the county, outside the limits of the municipalities, in which the different types of on-site sewage disposal systems may be appropriately located and the parts of the county in which the different types of systems may not be appropriately located.}~~

(b) (No change.)

§355.77. Procurement of Facility Planning Services.

{(a)} Professional engineering services necessary for preparing a facility plan for economically distressed areas shall be procured according to the Texas Government Code, Chapter 2254 (Professional Services Procurement Act), other applicable state and local laws, and the requirements of this section. The service provider shall be selected pursuant to written procedures, subject to review by the executive administrator, that assure the selection process is open to all qualified providers and that each step of the selection process is sufficiently documented. [The objective of this section is to establish basic parameters from which it can be determined that applicants receiving facility planning funds obtain the necessary professional engineering services through a process that is open to all interested qualified providers. Written procedures and documentation are recommended in order to insure receipt of services of qualified professionals at a responsible cost within the reasonable constraints of location and time for performance.]

~~{(b) Applicants shall procure the services of a consultant to perform the facility planning services pursuant to written procedures adopted by the applicant. The applicant shall maintain documentation of compliance with each step. The procedures and documentation submitted in the selection of the consultant will generally comply with the following requirements:}~~

~~{(1) contents of an acceptable statement of qualifications (SOQ);}~~

~~{(2) criteria for evaluating SOQs;}~~

~~{(3) solicitation of SOQs;}~~

~~{(4) review of SOQs according to criteria; and}~~

~~{(5) negotiation of a consulting services contract.}~~

~~{(e) The procedures and documentation establishing the applicant's compliance with the procedures shall be reviewed and approved by the executive administrator prior to consideration by the board of an application for financial assistance for such services; provided however, the executive administrator may approve variations from the requirements of this subsection based on a written finding that the applicant has substantially met the objectives of this section. The executive administrator shall review the procedures and documentation to ascertain compliance with these requirements.}~~

~~{(1) The applicant shall establish the contents of the statement of qualifications, or SOQ, for persons seeking to provide the fa-~~

ility planning services which will be reviewed by the applicant. The SOQ shall include at a minimum:}]

[(A) the key personnel (including subconsultants or subcontracted personnel) who will be performing tasks within the scope of services identifying such personnel by name, professional license or registration number, areas of expertise, years of experience in that area, and the elements of the scope of services for which each such personnel will be responsible and describe specific project experience that would demonstrate expertise for that element;}]

[(B) references establishing experience with government projects, facility planning phase engineering, demographic research, and residential surveys identified by specific project identification, location, project reference contact person and telephone number, and dates of engagement and completion of assignment;}]

[(C) insurance coverage held by the respondent relative to the project identifying the carrier by name, address, telephone number, and type and extent of coverage;}]

[(D) a signed and notarized statement that the respondent has no interest in the project that would conflict with the performance of the responsibilities of an engineer; and}]

[(E) a list of any litigation, arbitration, administrative action related to past or current project performance, or the subject of any professional censure or licensure suspension involving any identified key personnel, and if so, a brief description of each and including a brief explanation if the respondent has ever been terminated from an assignment for nonperformance or unsatisfactory work.}]

[(2) Criteria for evaluating the SOQ will include:}]

[(A) educational and experiential background of key consultant personnel who will perform work on the project;}]

[(B) record of success by the consultant and its key personnel, demonstrated by similar work previously performed;}]

[(C) adequacy of staff and equipment to perform the work within the time needed;}]

[(D) demonstrated ability of consultant to work effectively with other parties and public agencies related to the project;}]

[(E) demonstrated continuing interest by the consultant in the success, efficiency, and effective performance of facilities and plans on which the consultant has previously worked;}]

[(F) record of timely completion of previous projects; and}]

[(G) demonstrated capacity to carry out the kind and extent of work required.}]

[(3) The applicant shall insure a sufficient number of qualified respondents by publicizing a request for qualifications, or RFQ, once at least 21 days and once at least seven days before selection of a consultant, in a local newspaper within the geographical area in which the work will be performed and in a newspaper of the nearest major municipality. The RFQ shall contain at a minimum:}]

[(A) a general description of the project planning area and the facility planning services sought specifically including a reference to the work required pursuant to §355.73 of this title;}]

[(B) a statement that documentation of the minimum requirements for consideration which are to be submitted in the SOQ shall be available upon request;}]

[(C) a statement that criteria for evaluating the qualifications is available from the applicant;}]

[(D) a deadline by which respondents must submit SOQs to the requesting applicant; and}]

[(E) the requesting applicant's contact person.}]

[(4) The applicant shall select the most qualified respondent by order of highest qualification based on the published criteria.}]

[(A) Evaluation of the SOQs shall be performed by at least three persons: at least one resident within the applicant's customer base who will be affected by the proposed project, at least one with a technical expertise in the field for which the services are sought, and at least one from the management of the applicant. Each member of the ranking team will independently rank each SOQ based on the published criteria. The scores assigned to each SOQ will be accumulated to achieve a single ranking for each SOQ.}]

[(B) Based on the rankings, the applicant shall identify the three consultants with the highest rankings, or short list.}]

[(C) Upon completion of ranking and preparation of the short list, if the applicant deems it necessary to interview firms in order to determine the most qualified respondent, the applicant shall issue an invitation to appear for an interview to each respondent on the approved short list.}]

[(D) Upon the issuance of invitations to appear, the applicant shall form an interview panel to interview each respondent on the short list for the purpose of ascertaining qualifications of each interviewee and ultimately selecting the most qualified respondent. At the conclusion of the interviews or upon completion of the short list if interviews are deemed unnecessary by the applicant, the applicant shall identify the most qualified respondent, the second most qualified, and the third most qualified.}]

[(5) In order to complete the procurement process, the applicant shall negotiate the terms of a consulting services contract, including a task budget, with the consultant receiving the highest ranking. The contract shall be acceptable in form and substance to the executive administrator. In the event that the applicant cannot conclude an acceptable contract with the highest ranked consultant, the applicant shall negotiate the terms of a consulting services contract, including a task budget, with the consultant receiving the second highest ranking. In the event that the applicant cannot conclude an acceptable contract with the second highest ranked consultant, the applicant shall negotiate the terms of a consulting services contract, including a task budget, with the consultant receiving the third highest ranking. If the applicant cannot conclude an acceptable contract with the third highest ranked consultant, the applicant shall be required to commence the process over from the start.}]

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

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SUBCHAPTER C. REGIONAL WATER PLANNING GRANTS

31 TAC §§355.92, 355.93, 355.97, 355.100

The amendments to §§355.92, 355.93, 355.97, and 355.100 are proposed under the authority of Texas Water Code §15.403, which directs the board to adopt rules to carry out Texas Water Code, Chapter 15, under which the board provides the funding for regional water plans; and Texas Water Code §15.4061, which requires the board to adopt rules establishing criteria for eligibility for regional water planning money.

The Code affected by this proposed rulemaking is Texas Water Code, Chapter 15, Subchapter F, relating to Research and Planning; and Chapter 16, Subchapter C, relating to Planning.

§355.92. *Notice of Funds, Submission of Applications.*

As funds become available, and needs are identified, the executive administrator will publish notice in the Texas Register requesting applications from eligible applicants for grants to develop a ~~[an initial]~~ scope of work or to develop or revise regional water plans. ~~[For funds in state fiscal year 1998, initial scopes of work shall be provided to the executive administrator no later than August 1, 1998, for determination of the board's allocation of existing grant funds for development of regional water plans.]~~ Eligible applicants shall submit application(s) in the form and manner prescribed by the executive administrator. The executive administrator may request additional information needed to evaluate the application, and may return any incomplete applications. Eligible applicants may also submit and the executive administrator may also consider applications at any time, depending on availability of funds and demonstrated need.

§355.93. *Eligibility.*

(a) Applicants. Eligible applicants may apply for grants to develop a ~~[an initial]~~ scope of work or to develop or revise regional water plans.

(b) Activities. Those activities directly related and necessary to the development or revision of regional water plans are eligible for funding within the limits established in §355.99 of this title (relating to Funding Limitations), with the exception of:

(1) activities for which the board determines existing information or data is sufficient for the planning effort including:

(A) (No change.)

(B) evaluations of groundwater resources for which a desired future condition has been submitted to the board pursuant to Texas Water Code §36.108(d) by December 1, 2007;

(C) ~~[(B)]~~ evaluations of groundwater resources for which current information is available from the board or other entity sufficient for evaluation of the resource;

(D) ~~[(C)]~~ determination of water savings resulting from standard conservation practices for which current information is available from the board;

(E) ~~[(D)]~~ revision of the state population and demand projections;

(F) ~~[(E)]~~ revision of state environmental planning criteria for new surface water supply projects; and

(G) ~~[(F)]~~ collection of data describing groundwater or surface water resources where information for evaluation of the resource is currently available;

(2) - (5) (No change.)

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

§355.97. *Notice Requirements.*

(a) Scope ~~[Initial scope]~~ of work for grant applications. Eligible applicants requesting funds to develop ~~[initial]~~ scope of work must, not less than 30 days before board consideration of the application, provide notice that an application for planning assistance is being filed with the executive administrator by:

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

(b) - (d) (No change.)

§355.100. *Availability of Reports and Planning Documents.*

All reports, planning documents and any other work products resulting from projects receiving board funding assistance must be made available to ~~[the board,]~~ the Texas Parks and Wildlife Department, Texas Department of Agriculture, and the Texas Commission on Environmental Quality and one copy of the regional water plans placed in at least one public library in each county and either the county courthouse's law library, the county clerk's office, or some other accessible place within the county courthouse of each county having land in the regional water planning area. The recipient of such documents shall ensure that information contained therein which is excepted from disclosure under the Public Information Act shall be protected from public disclosure pursuant to Texas Water Code §16.053.

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

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SUBCHAPTER D. ENVIRONMENTAL FLOWS GRANTS

31 TAC §§355.110 - 355.115

The new §§355.110 - 355.115 are proposed pursuant to Texas Water Code §15.403 which authorizes the board to adopt rules for Texas Water Code Chapter 15, relating to the Texas Water Assistance Program for research and planning and §15.4063 which authorizes the board to provide funds relating to activities for studying environmental flows.

The Code affected by this proposed rulemaking is Texas Water Code, Chapter 15, Subchapter F, relating to Research and Planning; and Chapter 16, Subchapter C, relating to Planning.

§355.110. *Scope, Applicability and Definitions.*

(a) This subchapter governs the board's disbursement of funds for research and planning grants relating to environmental flows. Texas Water Code §15.403 authorizes the board to adopt rules for Texas Water Code Chapter 15 relating to the Texas Water Assistance Program for research and planning and §15.4063 authorizes the board to provide funds relating to activities for studying environmental flows.

(b) This subchapter applies to the board's use of funds for financial support for the environmental flows science advisory commit-

tee pursuant to Texas Water Code §15.4063(a)(1), the basin and bay expert science teams pursuant to Texas Water Code §15.4063(a)(3), for contracts with political subdivisions designated as representatives of the basin and bay stakeholder committees pursuant to Texas Water Code §15.4063(a)(4) and for contracts with federal or state agencies, universities and private persons for the provision of technical assistance to the environmental flows science advisory committee pursuant to Texas Water Code §15.4063(a)(2).

(c) The words used in this subchapter are defined in Subchapter C of this chapter unless otherwise defined herein.

(1) Environmental flows advisory group means the group established pursuant to Texas Water Code §11.0236.

(2) Environmental flows science advisory committee means the committee established pursuant to Texas Water Code §11.02361.

(3) Basin and bay stakeholder committee means the committee appointed by the environmental flows science advisory committee pursuant to Texas Water Code §11.02362(c).

(4) Basin and bay expert science teams means the teams established under Texas Water Code §11.02362.

(5) Eligible applicants means members of the environmental flows science advisory committee, members of the basin and bay expert science teams, including political subdivisions designated as representatives of basin and bay area stakeholders committees pursuant to Texas Water Code §11.02362, and cooperating state and federal agencies, universities and private persons who provide technical assistance for the works of the environmental flows committees and teams.

§355.111. Notice of Eligibility and Applications for Funds.

(a) The executive administrator shall publish notice, as appropriate, to advise eligible applicants of the availability of funds under this subchapter.

(b) The executive administrator shall provide application forms to interested eligible applicants and may request any additional information required after a review of the application.

(c) Incomplete applications may be rejected by the executive administrator.

§355.112. Prioritization of Funding.

(a) Applications for funding shall be prioritized as follows:

(1) compensation for attendance and participation at meetings and for transportation, meals, lodging or other travel expenses associated with attendance at the meetings for:

(A) members of the environmental flows science advisory committee; and

(B) members of basin and bay expert science teams;

(2) all or part of the administrative expenses incurred in conducting meetings for:

(A) contracts with political subdivisions which are representatives of basin and bay area stakeholder committees and related basin and bay expert science teams; and

(B) contracts with cooperating federal and state agencies, universities, and private persons for technical assistance to the environmental flows science advisory committee and the basin and bay expert science teams.

(b) Funding for compensation pursuant to subsection (a)(1) of this section shall not be in excess of amounts allowed under the General Appropriations Act.

§355.113. Review of Applications for Funding by Environmental Flows Advisory Group.

(a) An applicant for funding under this subchapter shall submit his application for funding to the environmental flows advisory group for review, comment and a recommendation for funding.

(b) The executive administrator shall evaluate the applications based on the reviews, comments and recommendations received from the group.

§355.114. Contents of Applications for Funding.

(a) Applications received under §355.112(a)(1) of this title shall provide the following information:

(1) name, address, mailing address, telephone number of the applicant;

(2) the name of the committee or team of which the person is a member;

(3) legible copies of receipts for all expenditures for which reimbursement is requested; and

(4) certification that all expenditures were incurred pursuant to the course and scope of the person's membership on the committee or team.

(b) Applications received under §355.112(a)(2)(A) of this title shall provide the following information:

(1) name, address, mailing address, telephone number of the person who represents the political subdivision on the basin and bay area stakeholders committee;

(2) a letter from the chief financial officer or an equivalent person authorizing the person to seek compensation on behalf of the political subdivision;

(3) a detailed statement of the types and estimated amounts of administrative expenses for which compensation is requested including the following categories:

(A) travel expenses;

(B) meeting place and associated fees or rental of the place or necessary audio-visual equipment;

(C) staffing for meetings;

(D) public notices of meetings;

(E) any other expenses reasonably anticipated in conducting meetings of the bay and basin stakeholders committee or the related bay and basin expert science team.

(c) Applications for funding received under §355.113(2)(B) of this title relating to technical assistance shall include the following information:

(1) name, address, mailing address, telephone number of the person representing the agency, university or private entity seeking funds;

(2) a detailed statement of the work for which funding is requested and its relationship to the work of the of the environmental flows science advisory committee and the basin and bay expert science team;

(3) comments and recommendations from the environmental flows science advisory committee and the related basin and bay expert science team;

(4) expected duration of the work;

(5) detailed statement of the deliverables resulting from the work and their usefulness to the committee and science team;

(6) the expertise, experience and resources available to the applicant that will ensure the quality of the work; and

(7) any other scientific or technical information necessary to explain the work.

§355.115. Board Actions, Funding and Resulting Contracts.

(a) The board may approve, disapprove, amend, provide a greater or lesser amount of funds than recommended, request further information or continue consideration of any application for funding under this subchapter. The board shall determine the amount of funds.

(b) The board, upon approval of an application, shall authorize the executive administrator to negotiate with and enter into a contract with the eligible applicant. Such contract shall include:

(1) all terms and conditions required by state or federal law;

(2) the application;

(3) the amount of funds provided by the board; and

(4) any other terms and conditions agreed to by the board and the eligible applicant that are in accordance with state law.

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

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CHAPTER 357. REGIONAL WATER PLANNING GUIDELINES

31 TAC §§357.5, 357.7, 357.10, 357.12, 357.16

The Texas Water Development Board (board) proposes amendments to §357.5, concerning Guidelines for Development of Regional Water Plans; §357.7, concerning Regional Water Plan Development; §357.10, concerning Format of Information to be Presented in Regional Water Plans; §357.12, concerning Notice and Public Participation; and new §357.16, concerning Minor Amendments and Clean Coal Project Amendments to Regional Water Plans and State Water Plan. These amendments are proposed to provide consistency with recent statutory changes and provide greater clarity in the organization and language of certain sections as discussed herein.

The proposed amendment of §357.5(b) adds new paragraphs (1), (2), and (3) relating to the dates that the regional water plan is due after initial planning and after adoption. Proposed new §357.5(b)(2) allows for an extension of time after the September 1, 2010 due date upon written request from the regional planning group. The board has full discretion in deciding whether to grant an extension.

The board proposes amending §357.7(a)(3) by clarifying the language to ensure that evaluation of existing water supplies, needs and strategies will be based on firm yield. Additionally, the subparagraphs within §357.7(a)(3) are relettered and rewritten to provide better readability and improved organization such as placing applicable definitions near the beginning of the paragraph.

The proposed amendment of §357.7(a)(3) also provides that the planning group may conduct an evaluation based on other than firm yield only upon written approval of the executive administrator. Another proposed language change replaces the word "current" with the word "existing" to provide uniformity with the language used by the board. Finally, new language directs the planning group to perform evaluations of existing surface water supplies by using the TCEQ water availability models.

The board proposes amendments to §357.7(a)(7) and (8) relating to evaluation of all water management strategies the regional water planning group determines to be potentially feasible. The proposed amendment of §357.7(a)(7) adds subparagraph (H) which provides that a regional water planning group may substitute one water management strategy for another. The proposed amendment of §357.7(a)(8) adds new subparagraph (I) which provides the same ability for substitution of one management strategy for another in the same manner as the proposed amendment to §357.7(a)(7). Presently there is no mechanism to substitute water management strategies if one strategy becomes physically or legally impossible. This proposed amendment provides needed flexibility to regional water planning groups by allowing them to adapt to changing circumstances through substitution of an already fully evaluated feasible management strategy for the strategy that is no longer feasible.

The proposed amendments to §375.7(a)(7) and (8) will allow the regional water planning groups to substitute one water management strategy for the strategy that is no longer feasible without the necessity for plan amendment. It is important to note that both subsections (a)(7) and (a)(8) require evaluation of all water management strategies in a full and detailed manner, thus allowing substitution of one strategy for another will not affect the quality of the review of the strategy. In an abundance of caution, the proposed amendments to §357.7(a)(7) and (8) also provide that the substitution of one water management strategy for another must be approved by the executive administrator prior to substitution by the regional water planning group. Additionally, the proposed amendment provides that the executive administrator will not approve a substitution that results in supply development in excess of 125% of the recognized need for a water user group in the regional planning area. These safeguards ensure that the substitutions are consistent with current regional water plans and the state water plan and further ensure that the substitution is appropriate through review by the executive administrator.

The board proposes amending §357.10 relating to format of information to be presented in regional water plans by renaming the section as format and content of regional water plan information submitted to the board.

The board proposes amending §357.10 by adding new subsection (b) and relettering the following subsection sequentially. Proposed new subsection (b) requires date entry of data, metadata and all other relevant digital information supporting the plan prior to submission of the initially prepared plan and the submission of any changes or corrections thereto prior to submission of the adopted plan.

The board proposes an amendment to §357.12(a)(6)(D) to provide consistency for public notice requirements by changing the language in the last sentence that requires a sixty day period for public comment to a thirty day period for public comment. Presently the sixty day comment period is inconsistent with the thirty day comment period in §357.11(f) relating to comments on proposed amendments to an adopted regional water plan. The board believes that consistency in the length of the comment period aids the regional water planning groups in performing their duties under the Open Meetings Act, Government Code, Chapter 551.

The board proposes new §357.16 relating to minor amendments and clean coal project amendment to a regional water plan are added pursuant to Texas Water Code §16.053(e)(11) and (r) which require the board to provide for reasonable flexibility for a timely amendment to a plan.

Proposed §357.16(a) provides that minor amendments to a regional water plan shall be provided to the executive administrator prior to adoption by the regional water planning group.

Proposed new §357.16(b) provides the factors the executive administrator shall use in determining whether a proposed amendment is a minor amendment.

Proposed new §357.16(c) provides that when the executive administrator determines the amendment is minor, he will notify the group as soon as practicable. This requirement facilitates the timeliness of amending the plan.

Proposed new §357.16(d) sets forth the public meeting requirements for adoption of a minor amendment and requires the group to address any public comments. The subsection provides an expedited comment period of two weeks.

Proposed new §357.16(e) provides for board approval at the next regularly scheduled board meeting.

Proposed new §357.16(f) provides that the board may make an amendment to the state water plan if needed to reflect the approved minor amendment. The board does not anticipate that an amendment to the state plan will be needed after approval of a minor amendment to a regional plan.

Proposed new §357.16(g) sets forth the process for amending a regional plan to facilitate planning for water supplies for a clean coal project. Pursuant to the requirements of Texas Water Code §16.053(r) a public hearing is not required if the parameters of proposed subsection (g) of §357.16 are met.

Bill Mullican, Deputy Executive Administrator for Planning, has determined that there is no expected additional cost to state or local governments as a result of administering these proposed rules. The local governmental entities involved in the regional water planning process are not required to perform additional any tasks arising from these proposed rules in addition to the tasks already required. The proposed rules provide clarification and a simplified process for amending a regional water plan. There is no expected increase in costs to state government because the administration of these proposed amendments will not result in the need for additional staff or funds for state governmental entities.

Mr. Mullican has also determined that there may be a reduction in costs to local governments who may, in compliance with the proposed rules, expedite the adoption of minor amendments to their regional plan. Similarly, there may be a cost reduction to

state government due to the expedited approval of minor amendments to regional water plans.

Mr. Mullican has also determined that there will not be any impact to state or local government revenue as a result of administering these proposed rules.

Mr. Mullican has also determined that for the first five years these proposed rules will be in effect, there is a public benefit derived from improved clarity and readability of the proposed rules and from the expedited amendment process for regional water plans. The expedited amendment process will reduce costs for the regional water planning groups when a minor amendment to their plan is needed. The persons required to comply with these proposed rules are the regional water planning groups and there is no foreseeable increase in economic cost to small businesses or individuals for compliance with these proposed rules.

The board requests comments on the proposal and will accept comments for a period of thirty (30) days after publication of these rules in the *Texas Register*. Please send your comments by mail addressed to Legal Services, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231; by fax to (512) 463-5580; or by e-mail to rulescomments@twdb.state.tx.us.

The amendments and new section are proposed pursuant to the board's authority under Texas Water Code §6.101 relating to the board's authority to adopt rules and Texas Water Code §16.053 relating to regional water plans.

Texas Water Code §16.053 is affected by this proposal.

§357.5. *Guidelines for Development of Regional Water Plans.*

(a) (No change.)

(b) Submittal of plan. The regional water planning group shall prepare, adopt, and submit their [a] regional water plan to the executive administrator according to the following schedule: [on or before January 5, 2001, and at least as frequently as every five years thereafter, for board approval and inclusion in the state water plan.]

(1) the final plan is due on or before January 5, 2011 and every five years thereafter;

(2) the plan, as adopted by the regional water planning group, by September 1, 2010 and every five years thereafter; and the board, in its sole discretion, may provide for extensions of this date by approval of a written request from the regional water planning group; and

(3) the plan, as initially prepared by the regional planning group, by March 1, 2010 and every five years thereafter.

(c) - (1) (No change.)

§357.7. *Regional Water Plan Development.*

(a) Regional water plan development shall include the following:

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

(3) evaluation of adequacy of existing [current] water supplies legally and physically available to the regional water planning area for use during drought of record. The evaluation shall consider surface water and groundwater data from the state water plan, existing water rights, contracts and option agreements, other planning and water supply studies, and analysis of water supplies existing in and available to the regional water planning area.

(A) For purposes of this subsection: "existing" [The term ~~current~~] means water supply available at the beginning of this

task; and "firm yield" means the supply the reservoir can provide each year including during a drought of record using reasonable sedimentation rates and the assumption that all senior water rights will be totally utilized. [This evaluation shall consider surface water and groundwater data from the state water plan, existing water rights, contracts and option agreements, other planning and water supply studies, and analysis of water supplies currently available to the regional water planning area. Firm yields for reservoirs shall be presented.]

(B) Analysis of surface water available during drought of record shall be based on firm yield and may be based on operational procedures other than firm yield from reservoirs upon the written approval from the executive administrator who shall consider a written request from [documented decision of] the regional water planning group to use other than firm yield. However, [as long as] the amount of water available using [due to] the operational procedure analysis may not [does not] exceed the amount of water that would be available using system firm yield. [Firm yield is defined as the supply the reservoir can provide during a drought of record using reasonable sedimentation rates and the assumption that all senior water rights will be totally utilized.]

(C) The planning group shall use available Texas Commission on Environmental Quality water availability models for evaluating the adequacy of surface water supplies. Until information is provided by the Texas Commission on Environmental Quality, regional water planning groups may use estimates of the projected amount of surface water that would be available from existing water rights during a drought of record. Once this information is available from the Texas Commission on Environmental Quality, the regional water planning group shall incorporate it in its next planning cycle unless better site-specific information is available.

(D) Until information is available from the board regarding groundwater availability from modeling, the regional water planning groups may use estimates of the projected amounts as long as they describe the method used to arrive at those estimates. Once the groundwater availability modeling information is available for an area within a region, that regional water planning group shall incorporate such information in its next planning cycle unless better site-specific information is available.

(E) The executive administrator, after coordination with staff of the Texas Commission on Environmental Quality and the Texas Parks and Wildlife Department, shall identify the methodology, in consultation with representatives of regional water planning groups, to be used by regional water planning groups to calculate water availability during drought of record. The executive administrator shall provide available technical assistance to the regional water planning groups upon request to assist them in selecting appropriate methods and data to be used to determine water supply availability. Water supplies based on contracted agreements shall be based on the terms of the contract, which may be assumed to renew at the contract termination date if the contract contemplates renewal or extensions. [Results of evaluations shall be reported:]

(F) [~~(A)~~] Results of evaluations shall be reported by:

(i) city for cities with populations greater than 500 people,

(ii) retail public utility for counties that have less than five retail public utilities which provide more than 280 acre-feet per year for municipal use,

(iii) individual utility or collective data for all such retail public utilities that form a logical reporting unit, such as being served by a common wholesale water provider or having a common

source or other association appropriate for the area, in the judgment of the regional water planning group, for counties with more than five retail public utilities which provide more than 280 acre-feet per year for municipal use, and

(iv) categories of water use (including municipal not otherwise reported, manufacturing, irrigation, steam electric power generation, mining, and livestock watering) for each county or portion of a county in the regional water planning area. If a county or portion of a county is in more than one river basin, data shall be reported for each river basin;

(G) [~~(B)~~] for each wholesale water provider by category of water use (municipal, manufacturing, irrigation, steam electric power generation, mining, and livestock) for each county or portion of a county in the regional water planning area. If a county or portion of a county is in more than one river basin, data shall be reported for each river basin. The wholesale water provider's current contractual obligations to supply water must be reported in addition to any demands projected for the wholesale water provider;

(4) - (6) (No change.)

(7) evaluation of all water management strategies the regional water planning group determines to be potentially feasible, including:

(A) - (E) (No change.)

(F) interbasin transfers; ~~and~~

(G) other measures; and

(H) the regional water planning group may substitute one evaluated alternative water management strategy for another if the strategy originally recommended under subsection (a)(9) of this section is no longer feasible. The proposed substitution may not result in a water supply development that is in excess of 125% of recognized needs of the water user group for which the substituted strategy is recommended. Any proposed substitution must be submitted for approval to the executive administrator. If the regional water planning group can demonstrate to the executive administrator that there is good cause for the requested strategy substitution and for exceeding the 125% limit, then the executive administrator may issue a written approval of the substitution.

(8) evaluations of all water management strategies the regional water planning group determines to be potentially feasible by including:

(A) - (G) (No change.)

(H) consideration of water pipelines and other facilities that can be used for water conveyance as described in subsection (a)(1)(M) of this section; and

(I) the regional water planning group may substitute one evaluated alternative water management strategy for another if the strategy originally recommended under subsection (a)(9) of this section is no longer feasible. The proposed substitution may not result in a water supply development that is in excess of 125% of recognized needs of the water user group for which the substituted strategy is recommended. Any proposed substitution must be submitted for approval to the executive administrator. If the regional water planning group can demonstrate to the executive administrator that there is good cause for the requested strategy substitution and for exceeding the 125% limit, then the executive administrator may issue a written approval of the substitution.

(9) - (14) (No change.)

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

§357.10. Format and Content of Regional Water Plan Information Submitted to the Board [be Presented in Regional Water Plans].

(a) Initially prepared and adopted regional water plans or amendments to approved regional water plans shall be submitted to the board in conformance with this section. ~~[include the following:]~~

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

(b) Prior to submission of the initially prepared plan, the regional water planning groups shall upload the data, metadata and all other relevant digital information supporting the plan to the board's database system. All changes and corrections to this information must be entered into the board's database prior to submittal of an adopted plan.

(c) ~~[(b)]~~ The regional water planning group will transfer copies of all data and reports generated by the planning process and used in developing the regional water plan to the executive administrator. To the maximum extent possible, data shall be transferred in digital form according to specifications provided by the executive administrator. One copy of all reports prepared by the regional water planning group shall be provided in digital format according to specifications provided by the executive administrator. All digital mapping shall use a geographic information system according to specifications provided by the executive administrator. The executive administrator shall seek the input from the Texas Geographic Information Council regarding specifications mentioned in this subsection.

§357.12. Notice and Public Participation.

(a) Regional water planning groups and any subregional water planning groups shall provide for public participation which shall include the following:

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

(6) notice of the public meetings and public hearings shall include:

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

(D) information that the regional water planning group will accept written and oral comments at the hearings required by paragraphs (3) and (4) of this subsection, and information on how the public may submit written comments separate from such hearings. The regional water planning group shall specify a deadline for submission of public written comments of not earlier than 30 ~~[60]~~ days after the hearings required by paragraphs (3) and (4) of this subsection.

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

§357.16. Minor Amendments and Clean Coal Project Amendments to Regional Water Plans and State Water Plan.

(a) Minor Amendment to Regional Water Plan. A regional water planning group may amend its regional water plan by providing copy of the proposed amendment to the executive administrator.

(b) Executive Administrator Pre-Adoption Review. The executive administrator shall evaluate the proposed minor amendment prior to the regional water planning group's vote to adopt the amendment. An amendment is minor if it meets the following criteria:

(1) does not result in overallocation of an existing or planned source of water;

(2) does not relate to a new reservoir;

(3) does not have a significant effect on instream flows, environmental flows or freshwater flows to bays and estuaries;

(4) does not have a significant substantive impact on water planning or previously adopted management strategies; and

(5) does not delete or change any legal requirements of the plan.

(c) Determination by Executive Administrator. If the executive administrator determines that the proposed amendment is minor, he shall notify, in writing, the regional water planning group as soon as practicable.

(d) Regional Water Planning Group Public Meeting. After receipt of the written determination from the executive administrator, the regional planning group shall conduct a public meeting subject to the Texas Open Meetings Act, Government Code, Chapter 551. The notice of the meeting shall include an agenda item for adoption of the minor amendment and shall be published for at least two (2) weeks prior to the proposed meeting date. The public shall have an opportunity to comment and the regional water planning group shall amend the proposed minor amendment based on public comments, if necessary, to comply with existing statutes and rules related to regional water planning.

(e) Board Approval of Minor Amendment. After adoption of the minor amendment, the regional water planning group shall submit the amendment to the board which shall approve the amendment at its next regularly scheduled meeting unless the amendment contradicts or is in substantial conflict with statutes and rules relating to regional water planning.

(f) Board Amendments to the State Water Plan. The board may amend the state water plan, if necessary, to reflect the regional water planning group's approved amendment under the schedule delineated in subsection (d) of this section. The board may approve any minor amendment to the state water plan upon the executive administrator's determination under subsection (c) of this section.

(g) Amendment for Water Planning for A Clean Coal Project. An amendment to a regional water plan or the state water plan to facilitate planning for water supplies reasonably required for a clean coal project, as defined by Texas Water Code §5.001, shall be adopted by the process described in subsections (a) - (f) of this section. However, a regional planning group may amend the regional water plan to accommodate planning for a clean coal project without a public meeting or hearing as described in subsection (d) of this section if the executive administrator determines that:

(1) the amendment does not significantly change the regional water plan; or

(2) the amendment does not adversely affect other water management strategies in the regional water plan.

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

Filed with the Office of the Secretary of State on November 2, 2007.

TRD-200705292

Ingrid K. Hansen

Acting General Counsel

Texas Water Development Board

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For further information, please call: (512) 463-4946

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 19. STATE ENERGY CONSERVATION OFFICE

SUBCHAPTER E. TEXAS BUILDING ENERGY PERFORMANCE STANDARDS

34 TAC §19.51, §19.52

The Comptroller of Public Accounts proposes new §19.51 and §19.52, concerning establishing a procedure for soliciting public comment on energy codes. The new sections will be under new Subchapter E, Texas Building Energy Performance Standards which implements Senate Bill 12 and House Bill 3693, 80th Legislature, 2007. Senate Bill 12, §3.01, and HB 3693, §11, amend Health and Safety Code, §388.003, to direct the State Energy Conservation Office (SECO) to establish procedures for persons who have an interest in the adoption of energy codes to have an opportunity to comment on newly published editions of the International Energy Conservation Code and the International Residential Code. The new law directs SECO to gather public comments and forward the comments to the Energy Systems Laboratory ("Laboratory") at the Texas Engineering Experiment Station of Texas A&M University System for development of recommendations on the adoption of these energy codes for use in this state.

New §19.51 provides definitions, including definitions of the International Energy Conservation Code and the International Residential Code. New §19.52 outlines a process that SECO will use to solicit comments from the public after publication of new editions of the energy codes. Pursuant to Health and Safety Code, §388.003, following publication of a new edition of the International Energy Conservation Code, or a new edition of the International Residential Code, SECO will publish notice in the *Texas Register* and on the SECO website informing interested persons that they may provide written comments to SECO on the new editions of the codes. Comments are encouraged from any interested persons, including without limitation: commercial and residential builders; architects and engineers; municipal, county, and other local government authorities; and environmental groups. SECO will accept comments for a minimum of 30 days after publication of the notice in the *Texas Register* or for a longer period as specified in the request for comments. SECO will forward any written comments received on the codes to the Laboratory for the Laboratory to consider in developing their written recommendations.

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

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be in establishing the criteria and procedures by which the public could comment on energy codes considered for adoption. The proposed new rules would have no fiscal impact on small business. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Dub Taylor, Director, State Energy Conservation Office, Comptroller of Public

Accounts, Post Office Box 13528, Capitol Station, Austin, Texas 78711-3528.

These rules are proposed under Senate Bill 12, §3.06 and House Bill 3693, §29, 80th Legislature, 2007, which require SECO to adopt rules implementing a procedure for stakeholder participation in the review of energy codes.

The new sections implement Health and Safety Code, §388.003.

§19.51. Definitions.

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

(1) "Codes" means the International Energy Conservation Code and the International Residential Code.

(2) "International Energy Conservation Code" means the International Energy Conservation Code as developed, maintained and promulgated by the International Code Council.

(3) "International Residential Code" means the International Residential Code for One- and Two-Family Dwellings as developed, maintained and promulgated by the International Code Council.

(4) "Laboratory" means the Energy Systems Laboratory at the Texas Engineering Experiment Station of The Texas A&M University System.

§19.52. Public Comment on Building Energy Efficiency Performance Standards.

(a) Pursuant to Health and Safety Code, §388.003, following publication of a new edition of the International Energy Conservation Code, or a new edition of the International Residential Code, the State Energy Conservation Office (SECO) will publish notice in the *Texas Register* and on the SECO website informing interested persons that they may provide written comments to SECO on the new editions of the Codes.

(b) Comments are encouraged from any interested persons, including without limitation: commercial and residential builders; architects and engineers; municipal, county, and other local government authorities; and environmental groups.

(c) Comments will be accepted for a minimum of 30 days after publication of the notice in the *Texas Register* or for a longer period as specified in the request for comments.

(d) Written comments should be submitted to SECO's business or mailing address specified in §19.2 of this title (relating to State Energy Conservation Office Business Location and Mailing Address), or the comments may be submitted electronically to SECO's electronic mail address specified on SECO's web site.

(e) SECO will forward any written comments received on the Codes pursuant to this section to the Laboratory for the Laboratory to consider in developing their written recommendations.

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

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TRD-200705290

Martin Cherry
General Counsel

Comptroller of Public Accounts

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



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 35. PRIVATE SECURITY

SUBCHAPTER D. SUMMARY SUSPENSION

37 TAC §35.52

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

The Texas Department of Public Safety proposes the repeal of §35.52, concerning Summary Suspension. The repeal of the section is necessary due to it having been rendered redundant by Texas House Bill 2833, Acts 2007, 80th Legislature, Regular Session (amending Chapter 1702 of the Texas Occupations Code).

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the repeal 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 repeal. There are no anticipated economic costs to persons who are required to comply with the repeal 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 repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be greater clarity and simplicity in the Bureau's enforcement of Chapter 1702 of the Texas Occupations Code.

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 Texas Government Code does not apply to this repeal. Accordingly, the department is not required to complete a takings impact assessment regarding this repeal.

Comments on the repeal are requested and may be sent to Steve Moninger, Legal Staff, Regulatory Licensing Service-Private

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

The repeal is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer this chapter.

Texas Government Code, §411.004(3) and Texas Occupations Code, §1702.061 are affected by this proposal.

§35.52. *Summary Action Following Convictions.*

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

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Thomas A. Davis, Jr.

Director

Texas Department of Public Safety

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For further information, please call: (512) 424-2135



SUBCHAPTER E. GENERAL ADMINISTRATION AND EXAMINATIONS

37 TAC §35.70

The Texas Department of Public Safety proposes to amend §35.70, concerning General Administration and Examination. The amendment adds language to subsection (c) and is necessary in order to address the problem of fee payment checks that are returned for "insufficient funds."

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 greater administrative efficiency and a concomitant reduction in costs associated with the Bureau's administration of Chapter 1702.

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.

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

The amendment is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer this chapter.

Texas Government Code, §411.004(3) and Texas Occupations Code, §1702.061 are affected by this proposal.

§35.70. *Fees.*

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

(b) Fees collected by the board are not refundable or transferable.

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

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

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

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Thomas A. Davis, Jr.

Director

Texas Department of Public Safety

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For further information, please call: (512) 424-2135



SUBCHAPTER F. ADMINISTRATIVE

HEARINGS

37 TAC §35.92

The Texas Department of Public Safety proposes to amend §35.92, concerning Administrative Hearings. Amendments to the section are necessary in order to redact language rendered redundant by Texas House Bill 2833, Acts 2007, 80th Legislature, Regular Session (amending Chapter 1702 of the Texas Occupations Code).

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 a clearer and simplified set of administrative rules governing the Bureau's administration of Chapter 1702 of the Texas Occupations Code.

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.

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

The amendment is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer this chapter.

Texas Government Code, §411.004(3) and Texas Occupations Code, §1702.061 are affected by this proposal.

§35.92. *Service of Notice in Non-Rulemaking Proceedings.*

~~[(a) Chapter 2001 of the Texas Government Code, Chapter 1702 of the Texas Occupations Code, and these rules govern notice of any summary suspension; summary denial; imposition of penalty; preliminary hearing; pre-hearing conference; hearing before the board; notice of a contested case hearing before the State Office of Administrative Hearings (SOAH) or orders of the board.]~~

(a) ~~[(b)]~~ All licensees, letters of authority, schools, permit holders, letters of approval, letters of authorization, branch office licenses, or similar entity including any applicants for any of the above shall at all times maintain on file with the board their current mailing

and principal place of business address. Notification to the board shall be made in writing and received in the Austin office of the board within 14 days of the date of the change of address.

(b) [(e)] All registrants, commissioned security officers, alarm response runners, alarm salespersons, security officers, or any applicants for any of the above shall at all times maintain on file with the board their current residence address. Notification to the board shall be made in writing and received in the Austin office of the board within 14 days of the date of the change of address.

(c) [(d)] [~~The board may serve the notice of any summary suspension, summary denial, preliminary hearing, pre-hearing conference, hearing before the board, notice of a contested case hearing before SOAH or orders of the board, by mailing the notice by certified or registered mail to the last known address on file with the board at the time of the notice of those persons shown in subsection (b); by mailing the notice by certified or registered mail to the last known residence address on file with the board of those persons listed in subsection (c); or otherwise delivering the notice to such person. Additionally, the board will mail a copy of the notice of hearing by regular mail to any person that was mailed a notice by certified or registered mail.~~] Service by mail is complete upon deposit of the document enclosed in a postage paid, properly addressed envelope in a U.S. Post Office or official depository under the care and control of the U.S. Postal Service.

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

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Thomas A. Davis, Jr.

Director

Texas Department of Public Safety

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For further information, please call: (512) 424-2135



37 TAC §35.94

The Texas Department of Public Safety proposes to amend §35.94, concerning Administrative Hearings. Amendment to the section is necessary in order to provide the authority for default judgments required under the State Office of Administrative Hearings' administrative rule 1 TAC §155.55(d)(2).

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 greater efficiency and less cost associated with the Bureau's administrative hearings at the State Office of Administrative Hearings.

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.

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

The amendment is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer this chapter.

Texas Government Code, §411.004(3) and Texas Occupations Code, §1702.061 are affected by this proposal.

§35.94. *Default Judgments.*

Following adequate notice of a hearing on a contested case before the State Office of Administrative Hearings, failure of the respondent to appear at the time of hearing shall entitle the Bureau's staff to request issuance of a default proposal for decision by the administrative law judge. [In cases brought before SOAH, in the event that the respondent is adjudged to be in violation of the Private Security Act or these rules, the board has the authority to assess, in addition to the penalty imposed, costs of the administrative hearing.]

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

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Director

Texas Department of Public Safety

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For further information, please call: (512) 424-2135



SUBCHAPTER K. LETTERS OF AUTHORITY

37 TAC §35.171

The Texas Department of Public Safety proposes to amend §35.171, concerning Letters of Authority. Amendments to the section are necessary in order to clarify the scope of its regulations governing security departments of private businesses.

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 greater clarity and less confusion related to the Bureau's regulation of security departments of private businesses.

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.

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

The amendment is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer this chapter.

Texas Government Code, §411.004(3) and Texas Occupations Code, §1702.061 are affected by this proposal.

§35.171. Requirements for Issuance of a Private Business Letter of Authority.

(a) The security department of a private business, as defined in §1702.182 of the Act, must obtain [that protects only the property of that private business may apply for and upon approval, receive] a letter of authority in order to employ a commissioned security officer [for purposes of complying with §1702.223 of the Act].

(b) A security department of a private business shall not provide guard company services to a third party for contracted compensation.

(c) A private business letter of authority shall:

~~[(1) be obtained by a private business entity that employs commissioned or noncommissioned security officers to protect only its own property;]~~

~~[(2) register any unarmed security officers who come into contact with the public while protecting only the property of the private business in compliance with the provisions of the Act and these rules;]~~

~~(1) [(3)]~~ be issued a number with each private business letter of authority approved by the board and this number shall be used on all applications submitted to the board;

~~(2) [(4)]~~ be valid for one year and shall be renewed upon receipt of a board approved renewal application and the renewal fee;

~~(3) [(5)]~~ be renewed during the calendar month preceding the month of expiration;

~~(4) [(6)]~~ qualify a manager who meets the requirements set forth in §1702.113 and §1702.117 of the Act as they pertain to a security services contractor; and

~~(5) [(7)]~~ maintain on file with the board a certificate of proof of insurance as prescribed in §1702.124 of the Act.

(d) Holders of a letter of authority shall be subject to all rules established under the Act unless specifically exempted by the director.

(e) A security department of a private business that employs non-commissioned guards who satisfy the conditions of §1702.323(d) of the Act must obtain a guard company license.

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

Filed with the Office of the Secretary of State on November 2, 2007.

TRD-200705283

Thomas A. Davis, Jr.

Director

Texas Department of Public Safety

Earliest possible date of adoption: December 16, 2007

For further information, please call: (512) 424-2135

SUBCHAPTER L. GENERAL REGISTRATION REQUIREMENTS

37 TAC §35.181

The Texas Department of Public Safety proposes to amend §35.181, concerning General Registration Requirements. Amendments to the section are necessary in order to clarify the limitations of registration with the Bureau, and to redact language rendered redundant by Tex. H.B. 2833, Acts 2007, 80th Tex Leg., R.S. (amending Chapter 1702 of the Occupations Code).

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 greater clarity and less confusion related to the Bureau's registration of security-related employees.

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.

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

The amendment is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer this chapter.

Texas Government Code, §411.004(3) and Texas Occupations Code, §1702.061 are affected by this proposal.

§35.181. Employment Requirements.

(a) A registrant or commissioned security officer of a licensed company must meet the specifications defined by the Internal Revenue Service as an "employee" or "contract laborer."

(b) A licensee shall not make application for any person knowing that the conditions of that person's employment do not conform to subsection (a) of this section.

(c) Registrants may only perform regulated services for the employer with whom they are registered. Registrants may not contract to perform a regulated service without being licensed as a company [In the public interest and to ensure the good conduct of applicants for a registration or a security officer commission, they shall meet the requirements of §1702.113 of the Act].

(d) No licensee shall place on duty any employee who tests positive for any drug(s) or substance(s) until a successive test indicates no trace of the drug(s) or substance(s) for which the tests are performed, unless such medication is being taken under the direction of a licensed physician.

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

Filed with the Office of the Secretary of State on November 2, 2007.

TRD-200705281

Thomas A. Davis, Jr.

Director

Texas Department of Public Safety

Earliest possible date of adoption: December 16, 2007

For further information, please call: (512) 424-2135



37 TAC §35.182

The Texas Department of Public Safety proposes to amend §35.182, concerning General Registration Requirements. Amendment to the section is necessary in order to render consistent the deadline related to the submission of new fingerprints with the twelve (12) month grace period currently permitted for renewals.

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 greater uniformity and consistency related to the requirements for renewal of licenses.

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.

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

The amendment is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer this chapter.

Texas Government Code, §411.004(3) and Texas Occupations Code, §1702.061 are affected by this proposal.

§35.182. Fingerprints.

(a) An applicant for a registration, security officer commission or license under the provisions of this Act whose registration or board license has been expired for a period of time less than twelve [six] months is not required to submit new fingerprint cards when making application.

(b) Notwithstanding §35.61 of this chapter (relating to Registration Deadline) a licensee shall obtain the fingerprints of an applicant for a registration or security officer commission prior to assigning the applicant to duty.

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

Filed with the Office of the Secretary of State on November 2, 2007.

TRD-200705282

Thomas A. Davis, Jr.

Director

Texas Department of Public Safety

Earliest possible date of adoption: December 16, 2007

For further information, please call: (512) 424-2135



SUBCHAPTER T. DELEGATION OF AUTHORITY

37 TAC §35.301

The Texas Department of Public Safety proposes to amend §35.301, concerning Delegation Of Authority. Amendment to the section is necessary in order to add new paragraph (6) to subsection (a) to clarify that the Bureau manager is authorized to issue the investigative subpoenas described in §1702.367 of the Occupations Code. In addition, the title of the rule is also changed in order to clarify the purpose of the rule.

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 greater administrative efficiency in the enforcement of Chapter 1702.

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 de-

partment is not required to complete a takings impact assessment regarding this rule.

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

The amendment is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer this chapter.

Texas Government Code, §411.004(3) and Texas Occupations Code, §1702.061 are affected by this proposal.

§35.301. Delegation of Board Authority to Bureau Manager.

(a) The board has determined that good cause exists to delegate to the manager:

- (1) the authority to add new courses;
- (2) the authority to change the curriculum of existing courses;
- (3) the authority to add new examinations or to update existing examinations;
- (4) the authority to waive any rule in this Chapter if authorized by statute;
- (5) the authority to conduct special projects; [-]
- (6) the authority to issue subpoenas pursuant to §1702.367.

(b) The manager may delegate the authority to, under his general supervision, have this provision exercised by other bureau employees as appropriate.

(c) Any temporary waiver or change outlined above will be reported to the board in a timely fashion.

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

Filed with the Office of the Secretary of State on November 2, 2007.

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Thomas A. Davis, Jr.

Director

Texas Department of Public Safety

Earliest possible date of adoption: December 16, 2007

For further information, please call: (512) 424-2135



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 2. TEXAS ETHICS COMMISSION

CHAPTER 18. GENERAL RULES CONCERNING REPORTS

1 TAC §18.7

The Texas Ethics Commission adopts an amendment to §18.7, regarding the deadline for reports filed electronically with the commission. The amendment is adopted without changes to the proposed text as published in the September 21, 2007, issue of the *Texas Register* (32 TexReg 6461) and will not be republished.

Section 18.7 would require that the deadline for any report filed electronically with the commission is midnight on the last day for filing the report under the law requiring the filing of the report. House Bill 2195, 80th Legislature, Regular Session.

No comments were received regarding the proposed rule during the comment period.

The amendment to §18.7 is adopted under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

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 29, 2007.

TRD-200705208

Natalia Luna Ashley

General Counsel

Texas Ethics Commission

Effective date: November 18, 2007

Proposal publication date: September 21, 2007

For further information, please call: (512) 463-5800



CHAPTER 20. REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES

The Texas Ethics Commission adopts the repeal of §§20.25, 20.27, and 20.31, the amendments to §§20.1, 20.19, 20.21, 20.62, 20.65, 20.211, 20.213, 20.215, 20.217, 20.221, 20.223, 20.305, 20.307, 20.317, 20.323, 20.325, 20.327, 20.329, 20.333, 20.335, 20.417, 20.423, 20.425, 20.427, 20.429, 20.431, and 20.437, and new §20.20. The rules are adopted without changes to the proposed text as published in the

September 21, 2007, issue of the *Texas Register* (32 TexReg 6461) and will not be republished.

The amendment to §20.1(17) provides "special pre-election report" as a shorthand term for "special report near election" which are required to be filed under Title 15 of the Election Code and this chapter. House Bill 350, 79th Legislature, Regular Session, changed the name of "telegram report" to "special report near election."

The amendments to §20.19 and §20.21 changes the name of the report from "telegram report" to "special pre-election report." House Bill 350, 79th Legislature, Regular Session, changed the name of "telegram report" to "special report near election" and would also make clean-up changes to these rules.

The repeal of §20.25 and §20.27 repeals rules relating to filing requirements. Section 20.25 is unnecessary because it provides no guidance or clarification. Section 20.27 is unnecessary because it was superceded by §254.038 and §254.039 of the Election Code.

The repeal of §20.31 repeals a rule relating to the use of political contributions for contributions to speaker candidates. This rule is unnecessary because it was superceded by §302.0191 of the Government Code.

The amendment to §20.62(a) increases the reporting threshold from \$500 to \$5,000. The increase would allow for more filers to qualify for the simplified reporting method while still limiting its application. The simplified method for reporting reimbursements is under subsection (a). Currently, a filer may report pursuant to that subsection if (1) the amount of the reimbursements in a reporting period to a staff member do not exceed \$500, and (2) the entire amount is reimbursed in the reporting period. The amendment to §20.62(b) clarifies that a filer may report as a loan the aggregate amount of the expenditures made by a staff member instead of itemizing each expenditure as a loan.

The amendments to §§20.65, 20.211, 20.217, 20.317, 20.323, 20.329, 20.417, 20.423, and 20.429 changes the name of the report from "telegram report" to "special pre-election report." House Bill 350, 79th Legislature, Regular Session, changed the name of "telegram report" to "special report near election." By rule, the commission has adopted as a shorthand name for this report the term "special pre-election report." See Ethics Commission Rule §20.1(17).

The amendments to §§20.213, 20.215, 20.325, 20.327, 20.425, and 20.427 changes the name of the report from "telegram report" to "special pre-election report." House Bill 350, 79th Legislature, Regular Session, changed the name of "telegram report" to "special report near election." By rule, the commission has adopted as a shorthand name for this report the term "special pre-election report." See Ethics Commission Rule §20.1(17).

The amendments also require that reports due 30-days and 8-days before an election, including a report due 8 days before a runoff election, be received by the filing authority by the due date. This reflects the statutory changes made by House Bill 1381, 80th Legislature, Regular Session.

The amendments to §§20.221, 20.223, 20.333, and 20.335 changes the name of the report from "telegram report" to "special pre-election report." House Bill 350, 79th Legislature, Regular Session, changed the name of "telegram report" to "special report near election." By rule, the commission has adopted as a shorthand name for this report the term "special pre-election report." See Ethics Commission Rule §20.1(17). The amendments also reflect statutory changes made to §254.038 of the Election Code.

The amendments to §20.305 and §20.307 reflect statutory changes made to §252.0031 of the Election Code.

The amendment to §20.431 requires that certain reports filed by a general-purpose committee filing monthly must be received by the filing authority by the due date. This reflects the statutory changes made by House Bill 1381, 80th Legislature, Regular Session.

The amendment to §20.437 changes the name of the report from "telegram report" to "special pre-election report." House Bill 350, 79th Legislature, Regular Session, changed the name of "telegram report" to "special report near election." By rule, the commission has adopted as a shorthand name for this report the term "special pre-election report." See Ethics Commission Rule §20.1(17). The amendment also reflects statutory changes made to §254.039 of the Election Code.

The new §20.20 provides the filing deadline for any report filed electronically with the Ethics Commission. House Bill 2195, 80th Legislature, Regular Session, requires the commission to adopt such a rule. The rule clarifies Senate Bill 64, 80th Legislature, Regular Session, which provides a different filing deadline for certain reports filed electronically.

No comments were received regarding the rules during the comment period.

SUBCHAPTER A. GENERAL RULES

1 TAC §§20.1, 20.19 - 20.21

The amendments to §§20.1, 20.19, 20.21, and new §20.20 are adopted under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

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

TRD-200705210
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
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For further information, please call: (512) 463-5800

1 TAC §§20.25, 20.27, 20.31

The repeal of §§20.25, 20.27, and 20.31 is adopted under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

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

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Natalia Luna Ashley
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Texas Ethics Commission
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SUBCHAPTER B. GENERAL REPORTING RULES

1 TAC §20.62, §20.65

The amendments to §20.62 and §20.65 are adopted under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

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

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SUBCHAPTER C. REPORTING REQUIREMENTS FOR A CANDIDATE

1 TAC §§20.211, 20.213, 20.215, 20.217, 20.221, 20.223

The amendments to §§20.211, 20.213, 20.215, 20.217, 20.221, and 20.223 are adopted under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

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

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Natalia Luna Ashley
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SUBCHAPTER E. REPORTS BY A SPECIFIC-PURPOSE COMMITTEE

1 TAC §§20.305, 20.307, 20.317, 20.323, 20.325, 20.327, 20.329, 20.333, 20.335

The amendments to §§20.305, 20.307, 20.317, 20.323, 20.325, 20.327, 20.329, 20.333, and 20.335 are adopted under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

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

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Natalia Luna Ashley
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Texas Ethics Commission
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For further information, please call: (512) 463-5800



SUBCHAPTER F. REPORTING RE- QUIREMENT FOR A GENERAL-PURPOSE COMMITTEE

1 TAC §§20.417, 20.423, 20.425, 20.427, 20.429, 20.431, 20.437

The amendments to §§20.417, 20.423, 20.425, 20.427, 20.429, 20.431, and 20.437 are adopted under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

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

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Natalia Luna Ashley
General Counsel
Texas Ethics Commission
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For further information, please call: (512) 463-5800

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TITLE 4. AGRICULTURE

PART 3. TEXAS FEED AND FERTIL- IZER CONTROL SERVICE/OFFICE OF THE TEXAS STATE CHEMIST

CHAPTER 61. COMMERCIAL FEED RULES SUBCHAPTER C. LABELING

4 TAC §61.22

The Texas Feed and Fertilizer Control Service/Office of the Texas State Chemist adopts amendments to 4 TAC §61.22(5), concerning feed ingredients without changes to the proposed text as published in the September 28, 2007, issue of the *Texas Register* (32 TexReg 6707) and will not be republished.

The adopted amendments delete §61.22(5)(E), because it conflicts with §61.22(5)(A) which states that all ingredients shall be listed. The remaining subparagraphs have been relettered. Also, a reference in paragraph (5)(A) has been changed from subparagraph (I) to subparagraph (H).

The adoption also deletes §61.22(9)(F)(iii), because the Code of Federal Regulations (CFRs) has changed the indications for use to "increased rate of gain." The current rule is outdated.

Due to the adopted amendments, the Office of the Texas State Chemist actions will not change and inconsistencies to the rule have been removed.

No comments on the proposed amendments were received.

The amendments are adopted under the Texas Agriculture Code Chapter 141, Subchapter A, §141.004 and Subchapter C, §141.051, which provides Texas Feed and Fertilizer Control Service with the authority to promulgate rules relating to the distribution of commercial feeds.

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 30, 2007.

TRD-200705238
Dr. Tim Herrman
State Chemist and Director
Texas Feed and Fertilizer Control Service/Office of the Texas State Chemist
Effective date: November 19, 2007
Proposal publication date: September 28, 2007
For further information, please call: (979) 845-1121



SUBCHAPTER H. ADULTERANTS

4 TAC §61.61

The Texas Feed and Fertilizer Control Service/Office of the Texas State Chemist adopts amendments to 4 TAC §61.61(b), concerning poisonous or deleterious substances without changes to the proposed text as published in the September

28, 2007, issue of the *Texas Register* (32 TexReg 6708) and will not be republished.

The adoption is to delete subsection (b) because it conflicts with §61.22(9)(C)(ii) and also with AAFCO (Association of American Feed Control Officials). The remaining subsections will be relettered.

Due to the adopted amendments, the Office of the Texas State Chemist action will not change and inconsistencies in the rule have been removed.

No comments on the proposed amendments were received.

The amendments are adopted under the Texas Agriculture Code §141.004 which provides Texas Feed and Fertilizer Control Service/Office of the Texas State Chemist with the authority to promulgate rules relating to the distribution of commercial feeds.

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 30, 2007.

TRD-200705239

Dr. Tim Herrman

State Chemist and Director

Texas Feed and Fertilizer Control Service/Office of the Texas State Chemist

Effective date: November 19, 2007

Proposal publication date: September 28, 2007

For further information, please call: (979) 845-1121



TITLE 10. COMMUNITY DEVELOPMENT

PART 7. TEXAS RESIDENTIAL CONSTRUCTION COMMISSION

CHAPTER 303. REGISTRATION

SUBCHAPTER A. REGISTRATION OF BUILDERS

10 TAC §§303.1, 303.5, 303.9, 303.13

The Texas Residential Construction Commission (the "commission") adopts amendments to Title 10, Part 7, Chapter 303, Subchapter A, §§303.1, 303.5, 303.9, and 303.13, relating to the registration of builders in the State of Texas as provided for in Title 16, Property Code with changes to the proposed text as published in August 24, 2007, issue of the *Texas Register* (32 TexReg 5255). The amendments are adopted to clarify the rules and incorporate recent legislative amendments to the agency statute into its rules. In addition, the amendments are adopted as part of an agency rule review plan pursuant to Government Code §2001.039.

Section 303.1, relating to the registration process, expands the information needed on an application due to the amended definition of a builder or remodeler. Section 303.5, relating to registration of builders and remodelers, expands reporting requirements and adds subsidiaries to the information which must be reported on an application. Section 303.9, relating to registration

eligibility requirements, requires an individual registration applicant who is a lawfully admitted alien to demonstrate that his or her admission status permits the individual to work in the United States; requires business entities to report judgments, liens and payment plans in default; and requires a change of agent to be reported within 30 days of disqualification of a designated agent. Section 303.13, relating to a designated address, permits a registrant to use a post office box for receipt of mail only.

The commission received comments from Ned Munoz, on behalf of the Texas Association of Builders (hereinafter "TAB"), on the proposed amendments to §303.5 and §303.9. TAB expressed concern that use of the term "financial" without further description as it relates to a background check may be interpreted to include inspection of private financial books and records, which TAB asserts is beyond the scope and purpose of the commission. Without addressing whether access to a registered builder's non-public financial records are within the scope and purpose of the commission, the commission agrees that TAB's suggestion of modifying the term "financial" with the term "public" because it better expresses the commission's intent with regard to this amendment. Therefore, throughout the adopted section on builder registration, the commission has made clear that it will conduct a review of public financial information when evaluating an application for registration or renewal of registration.

TAB also commented on the amendment to §303.9 as it relates to proof that a lawfully admitted alien is permitted to work in the United States. TAB correctly noted that all lawfully admitted aliens who are permitted to work in the United States may not also hold a "work visa." Accordingly, the commission has revised the section to refer to lawfully admitted aliens "whose status of admission permits them to work in the United States." In addition, TAB observed that all general partnerships are not created with documentary formalities; thus, such partnerships, while legitimate, will not have documentary evidence filed with the Secretary of State. The point is well-taken. The commission adopted TAB's suggestion and modified §303.9 accordingly.

All comments regarding these rules, including any not specifically referenced herein, were fully considered by the commission. The commission has made other minor modifications to the rule texts for the purpose of clarifying its intent and improving style and readability.

The amended rules are adopted to implement new legislation enacted during the 80th Legislative Session, Regular Session, House Bill 1038, effective September 1, 2007, including Title 16, Property Code. Section 408.001 of the Property Code provides general authority for the commission to adopt rules necessary for the implementation of Title 16, Property Code. Property Code Chapter 416 provides for the registration of builders and remodelers who operate in the state of Texas.

The statutory provisions affected by this adoption are those set forth in the Title 16, Property Code Chapter 416, and House Bill 1038, 80th Legislature, Regular Session. No other statutes, articles, or codes are affected by this adoption.

§303.1. Registration Process.

(a) In order to conduct business as a builder in the state of Texas, all persons must register with the commission before acting as a builder or remodeler by submitting a Builder/Remodeler Registration Form. A person must submit a completed registration form and filing fee for issuance of a certificate of registration in the name of each entity under which the applicant intends to operate as a builder or remodeler in this state. The commission shall issue a certificate of registration to an

applicant who meets the eligibility requirements for builder registration within fifteen (15) days of receipt of the completed application and required fee.

(b) A person who submits a registration form as a new builder must also submit a Builder/Remodeler Affidavit form attesting to whether or not the person has operated as a builder or remodeler in the state of Texas since March 31, 2004.

(c) If a person submits a registration form as a new builder, and operated as a builder without proper registration, the commission may undertake one or more of the following actions as it determines is appropriate:

- (1) require the payment of a late fee in addition to the registration fee;
- (2) undertake a disciplinary action and impose an administrative penalty;
- (3) deny the application; or
- (4) institute proceedings seeking injunctive relief or a cease and desist order.

(d) If an incomplete application is submitted, the commission will provide the applicant an opportunity to submit complete information. If the applicant fails to submit a completed application within fifteen (15) days of the date of notice of a deficiency, the application will be denied and all fees paid will be forfeited.

(e) A denial under this section is final within 30 days unless the applicant files a request for a hearing before the expiration of the 30th day.

§303.5. *Registration of Builders/Remodelers.*

(a) A builder or remodeler must identify on the application the legal name and form of business under which the applicant operates, any assumed names under which it is doing business (dba), and the physical address of the primary office location for each entity.

(b) If the applicant has registered assumed names or other business entities with the Secretary of State's office, the applicant must also submit documentation verifying each name registered with Secretary of State and a copy of the Certificate of Assumed Business Name.

(c) The applicant must identify and provide ownership information on any affiliates and subsidiaries:

- (1) that have applied previously for registration with the commission;
- (2) that have had an application submitted to the commission withdrawn; denied, revoked, suspended; or
- (3) that have allowed a certificate of registration with the commission to expire for non-payment of renewal fees.

(d) A completed application for registration must include a request for sufficient information from the applicant for the commission to conduct a public financial information and criminal background check to determine the applicant's eligibility for registration under the Act.

(e) The applicant must disclose on the application for registration:

- (1) whether the applicant has entered a plea of guilty, including accepting deferred adjudication, or nolo contendere (no contest) to any felony charge, or to any misdemeanor charge when the charge was for a crime involving moral turpitude; or

(2) whether the applicant has been convicted of any felony charge or of any misdemeanor charge for a crime involving moral turpitude and that the time for appeal of the conviction has elapsed or that the conviction was affirmed on appeal.

(f) In reviewing an application to determine if an applicant is eligible for registration under this subchapter, the commission shall consider, among other things, whether the applicant has a criminal history and if so:

(1) the nature and seriousness of any crimes to which the applicant has pled guilty or pled no contest, or for which the applicant has a prior conviction or convictions, including whether such a crime involves moral turpitude;

(2) the extent to which acting as a registered builder might offer the applicant an opportunity to engage in further criminal activity of a same or similar nature as that for which the applicant has a prior conviction;

(3) the extent and nature of the applicant's past criminal activity;

(4) the age of the applicant when any criminal activity discovered occurred;

(5) the remoteness in time between the submission of the application and the date of the applicant's last criminal conviction;

(6) the applicant's overall work history in relation to the dates of any criminal convictions;

(7) evidence of the applicant's successful rehabilitation efforts while incarcerated or after release, including but not limited to, restitution to the victim, completion of probationary requirements and completion of community service; and

(8) other evidence of the applicant's eligibility to serve as a registered builder, as requested by the commission.

(g) The commission will conduct a background check of public financial information and a criminal background check of each designated agent and may conduct a public financial and criminal background check on any other person responsible for the registration if the commission determines it necessary to further the purposes of the Act.

(h) Any information obtained from an applicant as a result of the criminal background check that is not a public record at the time the commission obtains the information is deemed confidential. The commission may not release or otherwise disclose the confidential information except pursuant to a court order, subpoena or with the written consent of the applicant.

(i) For purposes of this section, an applicant who has received a deferred adjudication for any felony charge or for any misdemeanor charge for a crime involving moral turpitude shall disclose that charge on the application for registration, regardless of whether the applicant has completed the conditions of the order of deferred adjudication.

(j) An individual must respond completely and truthfully regarding criminal history and public financial information, and disclosure of ownership information on all business entities registered with the commission. Failure to respond completely and truthfully will be considered evidence that the applicant is not honest and trustworthy and does not have integrity, which may result in denial of the application.

(k) An applicant must respond timely to any commission request for information in reviewing the completed application in order to complete the application process.

(l) Failure to respond truthfully and completely to requests for information to process a completed application may result in the denial of the application.

§303.9. *Eligibility Requirements.*

(a) At the time the application for registration is filed with the commission:

(1) Individual applicants must be at least 18 years of age and a citizen of the United States or a lawfully admitted alien on a temporary visa whose status of admission permits the individual to work in the United States and must demonstrate to the satisfaction of the commission that the applicant is honest, trustworthy and has integrity.

(2) Individuals who apply as the designated agents of a corporation, limited liability company, partnership, limited partnership, limited liability partnership or other entity must be at least 18 years age and citizen of the United States or a lawfully admitted alien on a temporary visa whose status of admission permits the individual to work in the United States and must demonstrate to the satisfaction of the commission that the individual is honest, trustworthy and has integrity.

(3) A corporation, limited liability company, partnership, limited partnership, limited liability partnership or other entity must, if applicable, file documentation verifying that it is properly registered and in good standing with the Secretary of State and must demonstrate to the satisfaction of the commission that the entity has acted honestly, with trustworthiness and with integrity in its business dealings.

(b) The commission may consider a registered builder's complaint history, history of homeowner-filed requests for participation in the SIRP, compliance with state and federal law, compliance with the commission rules and requests for information, history of unsatisfied judgments and unpaid arbitration awards, history of bankruptcies, compliance history with the Secretary of State regulations and payment of taxes, and history of use of corporate and partnership structures as a means to avoid liability, and outstanding judgments, liens and payment plans in default in evaluating whether an applicant is honest, trustworthy and has integrity.

(c) If the individual applicant is a lawfully admitted alien on a temporary visa whose status of admission permits the individual to work in the United States, the applicant must also submit a copy of documentation that verifies that status.

(d) Throughout the period of active registration, a designated agent must remain eligible to represent the company. Within 30 days of any change to the material information provided on the original application for builder registration, the designated agent must submit a commission information update using a commission prescribed form and pay any fees required. If a designated agent becomes ineligible, an application to replace the designated agent with an eligible individual must be provided.

(e) Failure to comply with this section may result in disciplinary action, including the revocation or suspension of a certificate of registration.

§303.13. *Designated Address.*

(a) Each builder or remodeler shall designate in the application for registration a fixed physical address located in this state to serve as its principal place of business, which will be printed on the certificate of registration.

(b) Each designated agent shall provide in the application for registration a fixed physical address in Texas.

(c) The commission will use the fixed physical address provided as the mailing address for the registered builder unless the regis-

trant elects to utilize a Post Office Box address in lieu of the physical address for the receipt of mail only. A designated agent may submit a Post Office Box as a mailing address in addition to the physical address provided pursuant to subsection (b) of this section.

(d) If the builder or remodeler moves from the physical address designated on its certificate of registration or changes its Post Office mailing address, the registrant shall submit a change of information form and the required fee not later than thirty (30) days from the date of the address change.

(e) Each designated agent shall submit a change of information form and any required fee not later than thirty (30) days from the date the designated agent moves from the physical address provided on its application or changes its mailing address.

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

Filed with the Office of the Secretary of State on November 5, 2007.

TRD-200705321

Susan K. Durso

General Counsel

Texas Residential Construction Commission

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Proposal publication date: August 24, 2007

For further information, please call: (512) 463-2886

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TITLE 22. EXAMINING BOARDS

PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 295. PHARMACISTS

22 TAC §295.8

The Texas State Board of Pharmacy adopts amendments to §295.8, concerning Continuing Education Requirements. The amendments are adopted, without changes, to the proposed text as published in the September 14, 2007, issue of the *Texas Register* (32 TexReg 6242).

The amendments allow a pharmacist to obtain continuing education credit for taking and successfully passing the initial Geriatric Pharmacy Practice certification examination administered by the Commission for Certification in Geriatric Pharmacy.

No comments were received regarding the proposal.

The amendments are adopted under §§551.002, 554.051, and 559.052 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets §559.052 as authorizing the Board to adopt rules regarding the approval of providers of continuing education.

The statutes affected by the amendments: Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

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

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TRD-200705274

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

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Proposal publication date: September 14, 2007

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



PART 24. TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

CHAPTER 573. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER G. OTHER PROVISIONS

22 TAC §573.72

The Texas Board of Veterinary Medical Examiners ("Board") adopts amendments to §573.72, concerning Animal Reproduction, without changes to the proposed text as published in the July 13, 2007, issue of the *Texas Register* (32 TexReg 4326) and will not be republished.

The Board, through its rules and policies, interprets many activities to constitute the "practice of veterinary medicine" as the phrase is generally defined in the Veterinary Licensing Act, Texas Occupations Code, §801.002, in order to protect the public. Section 573.72 currently interprets the practice of veterinary medicine as it applies to animal reproduction, especially the practice of embryo transplantation. The Board is aware that in certain circumstances "breeding soundness examinations" or elements of such examinations may have been done by non-veterinarians. The Board, through the amendments, seeks to clarify that the assessment of an animal's potential for reproduction involves many traditional activities of veterinary medicine, including palpation, examination of blood and semen samples, ultrasonography, and related activities. When breeding soundness is a condition of a sale of an animal, only a veterinarian may issue a certificate of veterinary inspection attesting to the physical condition and/or soundness of an animal. Thus, a breeding soundness examination should be considered within the scope and function of veterinary medicine and must be conducted only by a veterinarian.

The Board received several written comments regarding the amended section, all of which were in support of the amendments, as published.

The amendments are adopted under the authority of §801.151(a) of the Texas Occupations Code that gives the Board authority to adopt rules necessary to administer the Veterinary Licensing Act.

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

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TRD-200705301

Loris Jones

Executive Assistant

Texas Board of Veterinary Medical Examiners

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Proposal publication date: July 13, 2007

For further information, please call: (512) 305-7563



CHAPTER 575. PRACTICE AND PROCEDURE

22 TAC §575.27

The Texas Board of Veterinary Medical Examiners ("Board") adopts amendments to §575.27, concerning Complaints--Receipt, Investigation and Disposition, with changes to the proposed text as published in the July 13, 2007, issue of the *Texas Register* (32 TexReg 4326). The text of the rule will be republished. In subsection (h) a minor change has been made. The reference to the "Texas Building and Procurement Commission" has been changed to the "Comptroller of Public Accounts."

The amendments spell out Board procedures in investigating complaints that are currently being followed. For example, one amendment specifies that a licensee must respond to a complaint within 21 days of receipt of the complaint from the Board. Another amendment states that in addition to contacting the complainant during an investigation, the investigator may contact other persons that may be involved in the case, such as second opinion veterinarians. Other changes are for clarification of current procedures. The name of a committee that hears complaints at an informal conference is changed from a "conference committee" to an "enforcement committee," to reflect the Board's common designation of that committee.

The Board received written comments regarding the amended section.

Comment 1. Two commenters commented that instead of a twenty-one (21) day deadline for a licensee to respond to a complaint, it should be a thirty (30) day deadline.

Agency Response: The Board appreciates the comment, but respectfully disagrees with the statement. The Board selected the proposed response time after a review of other agency response times and selected the average time used by those agencies. The Board selected the shorter time to more efficiently handle complaints filed with the Board and meet internal performance measures for resolving complaints.

Comment 2. One commenter commented that it is the responsibility of the board to make rulings in regards to disciplinary actions and that they do not believe that third party opinions or decisions should be necessary as part of disciplinary actions.

Agency Response: The Board appreciates the comment, but respectfully disagrees. The Board has concluded that in some circumstances it is often necessary to have the input of third party opinions to further expand the knowledge of the Board or bring special expertise to a particular disciplinary action.

The Board received several comments in support of the amendments, as published.

The amendments are adopted under the authority of §801.151(a) of the Texas Occupations Code which gives the Board authority to adopt rules necessary to administer the Veterinary Licensing Act.

§575.27. *Complaints--Receipt, Investigation and Disposition.*

(a) Complaints against licensees.

(1) All complaints filed by the public against board licensees must be in writing on a complaint form provided by the board and signed by the complainant. If a complaint is transmitted to the board orally or by means other than in writing and the complaint alleges facts showing a continuing or imminent threat to the public welfare, the requirement of a written complaint may be waived until later in the investigative process.

(2) Complaints by the board's enforcement section shall be initiated by the opening of a complaint file.

(3) The board shall maintain a log of complainants to whom the board sends a complaint form.

(4) Anonymous written complaints will not be investigated, but will be logged and filed for information purposes only.

(5) The board shall utilize violation code numbers to distinguish between categories of complaints.

(b) Complaints against non-licensees. Complaints against persons alleged to be practicing veterinary medicine without a license may be investigated and resolved informally by the executive director with the consent of the non-licensee, or the Board may utilize formal cease and desist procedures specified in §801.508, Occupations Code. Complaints not resolved by the executive director may be referred to a local prosecutor or the attorney general for legal action.

(c) Investigation of complaints.

(1) The policy of the board is that the investigation of complaints shall be the primary concern of the board's enforcement program, and shall take precedence over all other elements of the enforcement program, including compliance inspections.

(2) The board shall investigate complaints based on the following allegations, in order of priority:

(A) acts or omissions, including those related to substance abuse, that may constitute a continuing and imminent threat to the public welfare;

(B) acts or omissions of a licensee that resulted in the death of an animal;

(C) acts or omissions of a licensee that contributed to or did not correct the illness, injury or suffering of an animal; and

(D) all other act and omissions that do not fall within categories (A) - (C) of this paragraph.

(3) Upon receipt of a complaint, a letter of acknowledgment will be promptly mailed to the complainant.

(4) Complaints will be reviewed every thirty (30) days to determine the status of the complaint. Parties to a complaint will be informed on the status of a complaint at approximately 45 day intervals.

(5) Upon receipt of a complaint, the director of enforcement will review it and may interview the complainant to develop additional information. If the director of enforcement concludes that the complaint resulted from a misunderstanding, is outside the jurisdiction of the board, or is without merit, the director of enforcement shall recommend through the general counsel to the executive director that the investigation not be initiated. If the executive director concurs with the

recommendation, the complainant will be so notified. If the executive director does not concur with the recommendations, the investigation will proceed.

(6) The director of enforcement will assign an investigator to the complaint, and the investigator will send a request for patient records to the licensee. Once the investigator receives the patient records, the investigator will send a copy of the complaint to the licensee, along with a request that the licensee respond to the complaint in writing within 21 days of receipt of the complaint.

(7) After the licensee's response to the complaint is received, further investigation may be necessary to corroborate the information provided by the complainant and the licensee. During the investigation, the investigator shall contact the complainant. Other persons, such as second opinion or consulting veterinarians, may be contacted. The investigator may request additional medical opinions, supporting documents, and interviews with other witnesses.

(8) Upon the completion of an investigation, the investigator shall prepare a report of investigation (ROI) for review by the director of enforcement, who in turn shall present the ROI to the executive director along with a conclusion as to the probability that a violation(s) exists.

(A) If the executive director determines from the ROI that the probability of a violation involving medical judgment or practice exists, the director of enforcement shall forward a copy of the ROI and complaint file to the board secretary and another board member (the "veterinarian members") who will determine whether or not the complaint should be closed, further investigation is warranted, or if the licensee should be invited to respond to the complaint at an informal conference at the board offices.

(B) If the probable violation does not involve medical judgment or practice (example: administrative matters such as continuing education and federal and state controlled substances certificates), the executive director shall forward the complaint file to a committee of the executive director, director of enforcement, the investigator assigned to the complaint, and general counsel (the "staff committee"), which shall determine whether or not the complaint should be dismissed, investigated further, or settled.

(C) If the veterinarian members determine that a violation has not occurred, the executive director or director of enforcement shall notify the complainant and licensee in writing of the conclusion and that the complaint is dismissed.

(D) If the veterinarian members conclude that a probable violation(s) exists, the executive director shall invite the licensee and complainant, in writing, to an informal conference to discuss the complaint made against the licensee. If the veterinarian members cannot agree to dismiss or refer the complaint to an informal conference, the complaint will be automatically referred to an informal conference. The letter invitation to the licensee must include a list of the specific allegations of the complaint.

(E) A complaint considered by the staff committee shall be referred to an informal conference if:

(i) the staff committee determines that the complaint should not be dismissed or settled;

(ii) the staff committee is unable to reach an agreed settlement; or

(iii) the licensee who is the subject of the complaint requests that the complaint be referred to an informal conference.

(d) Informal conferences

(1) The informal conference is the last stage in the investigation of a complaint. The licensee has the right to waive his or her attendance at the conference. The licensee may be represented by counsel.

(2) The board may be represented at the informal conference by an enforcement committee of the executive director, the veterinarian members and a public member of the board, the director of enforcement, the investigator assigned to the complaint, and the board's general counsel. The complainant and the licensee and the licensee's legal counsel may attend the conference. Any other attendees are allowed at the discretion of the executive director. The executive director or the director of enforcement shall conduct the conference.

(3) Subject to the discretion of the executive director, the following procedure will be followed at the informal conference. The executive director shall explain the purpose of the conference and the rights of the participants, lead the discussion of the allegations of the complaint, and explain the possible courses of action at the conclusion of the conference. The licensee will be asked to respond to the allegations. The complainant will be allowed to make comments relevant to the allegations. Comments of the licensee and complainant must be addressed to the person conducting the conference and not to each other. In the interest of maintaining decorum, the licensee or complainant may be asked to leave the room while the other is talking with the committee. The enforcement committee members may ask questions of the licensee and complainant in order to fully develop the complaint record.

(4) At the conclusion of the informal conference, the enforcement committee shall determine if a violation has occurred. If the enforcement committee determines that a violation has not occurred, the enforcement committee will dismiss the complaint, and will advise all parties of the decision and the reasons why the complaint was dismissed.

(5) If the enforcement committee determines that a violation has occurred and that disciplinary action is warranted, the executive director will advise the licensee of the alleged violations and offer the licensee a settlement in the form of an agreed order that specifies the disciplinary action and monetary penalty. With the agreement of the licensee, the enforcement committee may recommend that the licensee refund an amount not to exceed the amount the complainant paid to the licensee instead of or in addition to imposing an administrative penalty on the licensee. The executive director must inform the licensee that the licensee has a right to a hearing before an administrative law judge on the finding of the occurrence of the violation, the type of disciplinary action, and/or the amount of the recommended penalty.

(6) Within 20 days after the date the licensee receives the settlement offer, the licensee must submit a written response to the board

(A) accepting the settlement offer and recommended disciplinary action, or

(B) requesting a hearing before an administrative law judge.

(7) If the licensee accepts the settlement offer by signing the agreed order, the agreed order will be docketed for board action at the next regularly scheduled board meeting. The board may approve the agreed order as docketed, approve the agreed order with amendments, or reject the agreed order. If the board approves the agreed order with amendments, the executive director shall mail the amended agreed order to the licensee and the licensee shall have fourteen (14) days from receipt to accept the amended agreed order by signing and returning it to the board. If a licensee does not sign an amended agreed order or does not respond within the fourteen (14) days, the complaint

will be scheduled for a hearing before an administrative law judge. If the board rejects the agreed order, the complaint may be scheduled for a hearing before an administrative law judge, or the board may direct the executive director to take other appropriate action.

(e) Contested case hearing

(1) If the licensee declines the board's settlement offer, or if the licensee fails to respond timely to the offer, or if the board rejects a proposed agreed order, the investigator of the complaint shall prepare a complaint affidavit containing the allegations against the licensee. The signed and notarized complaint affidavit will then be reviewed by the board's legal counsel and signed by the executive director. The date the executive director signs the complaint affidavit is the official date of filing the complaint affidavit with the board. The complaint affidavit shall serve as the board's pleading in a contested case. At least ten (10) days prior to a scheduled hearing, the complaint affidavit and notice of hearing shall be served on the licensee as set out in subsection (e)(3)(A) of this section.

(2) The executive director shall submit to the State Office of Administrative Hearings (SOAH) a completed Request to Docket Case requesting SOAH to set a hearing and/or assign an administrative law judge to the contested case. The board shall provide notice of the time, date, and place of the hearing to the licensee. Following issuance of a proposal for decision by the administrative law judge, the board by order may find that a violation has occurred and impose disciplinary action, or find that no violation has occurred. The board shall promptly advise the complainant of the board's action.

(3) Notice of SOAH hearing; continuance and default

(A) The board shall send notice of a contested case hearing before SOAH to the licensee's last known address as evidenced by the records of the board. Notice shall be given by first class mail, certified or registered mail, or by personal service.

(B) If the licensee fails to timely enter an appearance or answer the notice of hearing, the board is entitled to a continuance at the time of the hearing. If the licensee fails to appear at the time of the hearing, the board may move either for dismissal of the case from the SOAH docket, or request that the administrative law judge issue a default proposal for decision in favor of the board.

(C) Proof that the licensee has evaded proper notice of the hearing may also be grounds for the board to request dismissal of the case or issuance of a default proposal for decision in favor of the board.

(f) Contingency. The board president shall appoint another licensee board member to assume the duties of the board secretary in the complaint review and informal conference process in the event the board secretary is unable to serve in the capacity set out in this section.

(g) Report to the board of dismissed complaints. The executive director or the director of enforcement shall advise the board at each scheduled meeting of the complaints dismissed since the last meeting. The information will consist of a summary of the allegations, investigation conducted, reasons for dismissal, and file number.

(h) Use of Private Investigators. The executive director may approve the use of private investigators to assist in investigation of complaints where the use of board investigators is not feasible or economical or where private investigators could provide valuable assistance to the board investigators. Private investigators may be utilized in cases involving honesty, integrity and fair dealing; reinstatement applications; solicitation; fraud; dangerous drugs and controlled substances; and practicing veterinary medicine without a license. Private investi-

gators will be utilized in accordance with existing purchasing rules of the Comptroller of Public Accounts.

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

Filed with the Office of the Secretary of State on November 5, 2007.

TRD-200705302

Loris Jones

Executive Assistant

Texas Board of Veterinary Medical Examiners

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For further information, please call: (512) 305-7563



CHAPTER 577. GENERAL ADMINISTRATIVE DUTIES

SUBCHAPTER B. STAFF

22 TAC §577.15

The Texas Board of Veterinary Medical Examiners adopts amendments to §577.15, concerning Fee Schedule, without changes to the proposed text as published in the July 13, 2007, issue of the *Texas Register* (32 TexReg 4329) and will not be republished.

The amendments to §577.15 are being adopted to increase by \$13.00 the Board's required fees for current license renewals, inactive renewals, and special licenses. Proportional increases are also made in delinquent renewal fees. These fee increases are required to cover the costs of the Board's legislative appropriation for FY 2008. No changes are made in fees for the State Board Examination and Special License Examination, and the provisional license fee remains at \$255.

The Board received written comments regarding the amended section.

Comment 1. One commenter commented that the fees for inactive renewals should be less than the renewals for active licenses.

Agency Response: The Board appreciates the comment, but respectfully disagrees with the statement. The cost for maintaining licensing files and attendant licensing activities is the same whether a licensee is active or inactive and all licensing fees support all Board activities.

Comment 2. One commenter commented that an agency, such as the Texas Board of Veterinary Medical Examiners, that is supposed to protect the public from rogue veterinarians should be supported by the public rather than have veterinarians pay to have themselves harassed.

Agency Response: The Board appreciates the comment, but respectfully disagrees with the statement. The Board is authorized by the Texas Legislature to expend only the licensing fees it collects.

Comment 3. One commenter commented that they oppose any ruling which makes it any more difficult for a veterinarian to earn a living. This commenter also commented that they support the

provision of the amendment which increases the fee for special licensees because those licenses should be more costly to those who don't annually contribute to the veterinary board operational fund.

Agency Response: The Board appreciates the comment, but respectfully disagrees with the statement that any fee increase is ever appropriate. The Board is authorized by the Texas Legislature to expend only the licensing fees it collects. The cost of licensing and regulation of veterinarians has increased since the last license fee increase and thus the necessity for the current increase in licensure fees.

The Board received several comments in support of the amendments, as published.

The amendments are adopted under the authority of §801.151(a) of the Texas Occupations Code which gives the Board authority to adopt rules necessary to administer the Veterinary Licensing Act.

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

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Loris Jones

Executive Assistant

Texas Board of Veterinary Medical Examiners

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For further information, please call: (512) 305-7563



TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 19. AGENTS' LICENSING

The Commissioner of Insurance adopts amendments to §§19.801, 19.802, and 19.1002, concerning the licensing, registration, examination, and appointment fees, and continuing education requirements for the newly created personal lines property and casualty agent license and the life agent license. The amendments are adopted without changes to the proposed text published in the September 7, 2007, issue of the *Texas Register* (32 TexReg 6039). The Commissioner's adoption of the repeal of §19.803 of this title (relating to License Renewal Fees), concerning license renewal fees for agents, adjusters, and other licensees, is also published in this issue of the *Texas Register*. Although both adoptions concern Chapter 19, Subchapter I, this adoption is not affected by the adopted repeal.

REASONED JUSTIFICATION. These amendments are necessary to implement SB 1263, 80th Legislature, Regular Session, effective September 1, 2007, which establishes the personal lines property and casualty agent license and the life agent license to increase uniformity in insurance agent licensing criteria among the various states. The adopted amendments to §19.801 and §19.802 are necessary to maintain effective regulation of insurance licensees by establishing fees for persons

applying for and holding personal lines property and casualty insurance agent and life only insurance agent licenses. Pursuant to §4001.006, the fees must be sufficient to cover the Department's administrative costs, which include licensure and enforcement of disciplinary requirements, among other regulatory protections. The adopted amendment to §19.1002 is necessary to incorporate the new license types created by SB 1263 into the Department's existing continuing education rule. The adopted amendments are also necessary to update the Insurance Code references throughout the sections in accordance with the nonsubstantive revisions of the Insurance Code enacted by the 77th Legislature, effective June 1, 2003, and 79th Legislature, effective September 1, 2005. Adopted amendments to §19.801(c) are necessary to clarify the use of the subagent appointment in relation to the general agent, and the newly created personal lines property and casualty agent and life agent license types, and also consolidate in this subsection existing provisions from §19.802(d) relating to appointment of subagents by general lines agents. Prior to the enactment of SB 1263, only general agents could appoint another general agent as a subagent under §4001.205 of the Insurance Code. SB 1263 extends this authority by authorizing general agents, personal lines property and casualty agents, and life agents to appoint other general agents, personal lines property and casualty agents, and life agents as subagents.

Insurance agents are prohibited under the Insurance Code from writing a line of business for which the agent is not licensed by the Department. Therefore, under the Insurance Code §4001.109, subagents are not required to hold each license of the appointing agent, but the subagent is required to be licensed to write each line that the subagent is employed to write. Thus, an appointing agent may only write a line of business that the appointing agent is licensed to write; and a subagent may only write a line of business that both the subagent and appointing agent are licensed to write.

For example, a general agent appointed as a subagent by a personal lines property and casualty or life agent is limited to personal lines property and casualty or life agent products through that appointment. To write products in addition to personal lines or life products, that general agent is required to have a direct appointment from the insurance company issuing the additional products. Conversely, a personal lines property and casualty agent or life agent appointed as a subagent by a general agent remains limited to those lines authorized under personal lines property and casualty or life agent license.

Adopted amendments to §19.802(b) are necessary to add new paragraphs (22) and (23) to include personal lines property and casualty agents and life agent license types created by SB 1263 and set application, renewal, appointment, and Department administered examination fees for these license types. Under existing law, including Insurance Code §4001.006, the Department is required to set fees in amounts that are reasonable and necessary to implement and enforce Insurance Code Title 13. SB 1263 establishes the personal lines property and casualty license and the life agent license types in Insurance Code Title 13, Subtitle B. The Department anticipates no cost difference in administering the two new license types and other agent license types already regulated by the Department. Therefore, the Department is adopting the same fees for these license types as other agent license types because these previously adopted fees have already been determined to comply with the statutory requirements of reasonable and necessary.

Individuals holding either a personal lines property and casualty agent license or life agent license are subject to the Department's continuing education program both specifically under Insurance Code §4004.053(a), as amended by SB 1263, and under existing §4004.051, which regulates agent continuing education requirements for all individuals who hold a license issued by the Department. The adopted amendment to §19.1002(b)(16) is necessary to revise the definition of licensee by adding the personal lines property and casualty agent and life agent license types. Under the amended definition, personal lines property and casualty agents and life agents are required to comply with the same statutory continuing education requirements as other licensees under the Insurance Code Chapter 4004 and §§19.1001 - 19.1021. These requirements include completing 15 hours of continuing education annually as required by §4004.053, as amended by SB 1263; completing at least 50 percent of course work in classroom or classroom equivalent environments as required under §4004.051(c); and completing at least two hours of ethics training per each two-year license renewal period as required by §4004.054. Under the adopted amendment to §19.1002(b)(16), for purposes of continuing education requirements, both resident and non-resident individuals holding the new license types will be treated consistently with individuals holding existing license types.

In addition, but unrelated to the new licenses, the adopted amendments to §§19.801, 19.802, and 19.1002 are necessary to make nonsubstantive revisions to references to certain agent license titles for consistency with the statute, including change of general lines property and casualty agent to general property and casualty agent; general lines life, accident, and health agent to general life accident and health agent; and, for the purpose of referring to both collectively, general lines agent to general agent.

HOW THE SECTIONS WILL FUNCTION. Adopted amendments to §19.801(c)(1) add the personal lines property and casualty agent and life agent license types to the existing language for consistency with the amended statute that authorizes these license types to appoint subagents. Adopted new paragraphs (2)(A) and (B) of §19.801(c) specify that only general lines agents, personal lines property and casualty agents, or life agents may appoint subagents and that only general lines agents, personal lines property and casualty agents, or life agents may be appointed as subagents. Adopted new §19.801(c)(2)(C) provides clarification within the rule of the subagent's authority by restating Insurance Code §4001.109. Adopted new §19.801(c)(3) provides clarification within the rule that agents may simultaneously have multiple subagent and insurance company appointments. Adopted amendments to subsections (e) and (f) of §19.801 add introductory titles to make the style consistent with subsections (a) - (d) of that section.

Adopted amendments to §19.802(b) set application, renewal, appointment, and Department administered examination fees for the personal lines property and casualty agent and life agent license types. The adopted amendment to §19.1002(b)(16) revises the definition of licensee by adding the personal lines property and casualty agent and life agent license types. Under the amended definition, personal lines property and casualty agents and life agents will be required to meet the same statutory continuing education requirements as other licensees under the Insurance Code Chapter 4004 and §§19.1001 - 19.1021.

SUMMARY OF COMMENTS AND AGENCY RESPONSE. The Department did not receive any comments on the proposed amendments.

SUBCHAPTER I. LICENSING FEES

28 TAC §19.801, §19.802

STATUTORY AUTHORITY. The amendments are adopted under Insurance Code §§4001.002, 4001.003(9), 4001.005, 4001.006, 4001.109, 4001.153, 4001.202, 4002.005, 4003.004, 4003.005, 4004.051, 4004.053, 4004.054, 4051.401, 4051.404, 4054.301, 4054.304, and 36.001, and Government Code §2054.252. Section 4001.002(a)(7) applies the provisions of Title 13, including Subtitle A, to persons licensed under Title 13, Subtitle B (Chapter 4051, Subchapter I, establishing the personal lines property and casualty license and Chapter 4054, Subchapter G, establishing the life agent license, are both within Insurance Code, Title 13, Subtitle B). Section 4001.003(9) defines subagent. Section 4001.005 authorizes the Commissioner to adopt rules necessary to implement Insurance Code, Title 13. Section 4001.006(a) authorizes the Department to collect a nonrefundable license fee and a nonrefundable appointment fee. Section 4001.006(c) requires the Department to set fees that are reasonable and necessary to implement Insurance Code, Title 13. Section 4001.109 requires a subagent to be licensed to write each line of insurance that the subagent is employed to write, but does not require the subagent to hold each kind of license issued to the agent for whom the subagent acts. Section 4001.153 authorizes the Department to charge and set temporary license fees. Section 4001.202 authorizes the Department to charge and set agent multiple insurer appointment fees. Section 4002.005 authorizes the Department to charge and set agent licensing examination fees. Section 4003.004 authorizes the Department to set license renewal fees. Section 4003.005 provides that a renewal fee collected under §4003.004 is nonrefundable. Section 4004.051(a) requires individuals holding a Department issued license to complete continuing education. Section 4004.053(a), as amended by SB 1263, requires personal lines property and casualty agents and life agents to complete 15 hours of continuing education annually. Section 4051.051 establishes the general property and casualty license. Section 4051.401 establishes the personal lines property and casualty agent license. Section 4051.404 provides that §4001.006 applies to all fees collected under Chapter 4051, Subchapter I, regulating personal lines property and casualty agent licensing. Section 4054.051 establishes the general life, accident, and health insurance agent license. Section 4054.301 establishes the life agent license. Section 4054.304 provides that §4001.006 applies to all fees collected under Chapter 4054, Subchapter G, regulating life agent licensing. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of the state. Government Code §2054.252(g) requires the Department to increase licensing fees in an amount sufficient to cover the Department's Texas OnLine Authority subscription fee cost.

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

Filed with the Office of the Secretary of State on November 5, 2007.

TRD-200705317

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Effective date: November 25, 2007

Proposal publication date: September 7, 2007

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



SUBCHAPTER K. CONTINUING EDUCATION AND ADJUSTER PRELICENSING EDUCATION PROGRAMS

28 TAC §19.1002

STATUTORY AUTHORITY. The amendments are adopted under Insurance Code §§4001.002, 4001.003(9), 4001.005, 4001.006, 4001.109, 4001.153, 4001.202, 4002.005, 4003.004, 4003.005, 4004.051, 4004.053, 4004.054, 4051.401, 4051.404, 4054.301, 4054.304, and 36.001, and Government Code §2054.252. Section 4001.002(a)(7) applies the provisions of Title 13, including Subtitle A, to persons licensed under Title 13, Subtitle B (Chapter 4051, Subchapter I, establishing the personal lines property and casualty license and Chapter 4054, Subchapter G, establishing the life agent license, are both within Insurance Code, Title 13, Subtitle B). Section 4001.003(9) defines subagent. Section 4001.005 authorizes the Commissioner to adopt rules necessary to implement Insurance Code, Title 13. Section 4001.006(a) authorizes the Department to collect a nonrefundable license fee and a nonrefundable appointment fee. Section 4001.006(c) requires the Department to set fees that are reasonable and necessary to implement Insurance Code, Title 13. Section 4001.109 requires a subagent to be licensed to write each line of insurance that the subagent is employed to write, but does not require the subagent to hold each kind of license issued to the agent for whom the subagent acts. Section 4001.153 authorizes the Department to charge and set temporary license fees. Section 4001.202 authorizes the Department to charge and set agent multiple insurer appointment fees. Section 4002.005 authorizes the Department to charge and set agent licensing examination fees. Section 4003.004 authorizes the Department to set license renewal fees. Section 4003.005 provides that a renewal fee collected under §4003.004 is nonrefundable. Section 4004.051(a) requires individuals holding a Department issued license to complete continuing education. Section 4004.053(a), as amended by SB 1263, requires personal lines property and casualty agents and life agents to complete 15 hours of continuing education annually. Section 4051.051 establishes the general property and casualty license. Section 4051.401 establishes the personal lines property and casualty agent license. Section 4051.404 provides that §4001.006 applies to all fees collected under Chapter 4051, Subchapter I, regulating personal lines property and casualty agent licensing. Section 4054.051 establishes the general life, accident, and health insurance agent license. Section 4054.301 establishes the life agent license. Section 4054.304 provides that §4001.006 applies to all fees collected under Chapter 4054, Subchapter G, regulating life agent licensing. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of the state. Government Code §2054.252(g) requires the Department to increase licensing

fees in an amount sufficient to cover the Department's Texas OnLine Authority subscription fee cost.

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

Filed with the Office of the Secretary of State on November 5, 2007.

TRD-200705318

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Effective date: November 25, 2007

Proposal publication date: September 7, 2007

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



SUBCHAPTER I. LICENSING FEES

28 TAC §19.803

The Texas Department of Insurance adopts the repeal of §19.803, concerning license renewal fees for agents, adjusters, and other licensees. The repeal is adopted without changes to the proposal published in the September 14, 2007, issue of the *Texas Register* (32 TexReg 6270). The Commissioner of Insurance is also adopting amendments to §19.801 and §19.802 (relating to General Provisions Regarding Licensing Fees and License Renewal and Amount of Fees) in this issue of the *Texas Register*. Although both adoptions concern Chapter 19, Subchapter I, this adopted repeal is not affected by the adopted amendments to §19.801 and §19.802.

REASONED JUSTIFICATION. The adopted repeal is necessary to eliminate existing §19.803. That section was necessary to provide for the continuation of certain renewal fees until new fees became effective on November 1, 2002. As stated in §19.803(a), the fee structure in §19.802 applies to all licenses renewed on or after November 1, 2002. Therefore, §19.803 has no further continuing application and, as such, is unnecessary and obsolete.

HOW THE SECTION WILL FUNCTION. The repeal of §19.803 will remove an unnecessary and obsolete section.

SUMMARY OF COMMENTS AND AGENCY'S RESPONSE. The Department did not receive any comments on the proposed repeal.

STATUTORY AUTHORITY. The repeal is adopted under Insurance Code §§4001.005, 4001.006, 4003.004, and 36.001. Section 4001.005 authorizes the Commissioner to adopt rules necessary to implement Insurance Code, Title 13. Section 4001.006 authorizes the Department to set and collect a nonrefundable license fees from agents licensed under the Insurance Code. Section 4003.004(a) authorizes the Department to set license renewal fees. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of the state.

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

Filed with the Office of the Secretary of State on November 5, 2007.

TRD-200705319

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Effective date: November 25, 2007

Proposal publication date: September 14, 2007

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



PART 6. OFFICE OF INJURED EMPLOYEE COUNSEL

CHAPTER 276. GENERAL ADMINISTRATION SUBCHAPTER A. GENERAL PROVISIONS

28 TAC §276.3

The Office of Injured Employee Counsel (OIEC) adopts new §276.3, concerning the procedure for submission, consideration, and disposition of rule petitions to OIEC. Section 276.3 provides for how OIEC considers rule petitions, either by initiating rulemaking procedures or by denying the petition in writing. Section 276.3 is adopted without changes to the proposed text as published in the September 28, 2007, issue to the *Texas Register* (32 TexReg 6751).

New §276.3 is necessary to implement state agency rulemaking procedures in accordance with the Administrative Procedure Act, Chapter 2001 of the Texas Government Code. The public benefit anticipated as a result of the adopted section shall be the implementation of House Bill (HB) 7, 79th Texas Legislature, Regular Session, 2005, which provided the Public Counsel rulemaking authority to enact Chapter 404 of the Texas Labor Code in accordance with the requirements provided in Chapter 2001 of the Government Code. The adoption of §276.3 provides the opportunity for workers' compensation stakeholders, the citizens of Texas, and any other person the ability to file a rule petition to the Public Counsel for review, consideration, and disposition.

Section 276.3(a) provides that OIEC's rules may be petitioned in the form of a letter by any person and must contain elements as specified in the subsection. Subsection (b) provides that the petitioner may include a cost-benefit analysis, which estimates of the public benefit expected as a result of the proposed section or rule change and the probable economic cost to persons required to comply with the proposed section. Subsection (c) provides for the required method of delivery for the rule petition. Subsection (d) provides that within 60 days after the petition is submitted OIEC shall either initiate rulemaking procedures or shall deny the petition and provide the petitioner with reasons for the denial in writing.

OIEC received no public comments on this rulemaking initiative.

For: None

Against: None

Section 276.3 is adopted pursuant to Texas Government Code §2001.021 and Texas Labor Code §404.006. Section 2001.021(b) of the Texas Government Code requires state agencies by rule to prescribe the form for a petition and the procedure for rule petition's submission, consideration, and

disposition. Section 2001.021(c) provides that not later than the 60th day after the date of submission of a petition, a state agency shall deny the petition in writing or initiate a rulemaking proceeding. Section 404.006 of the Labor Code provides the Public Counsel the authority to adopt rules and requires that such rulemaking is subject to Chapter 2001 of the Texas Government Code.

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

Filed with the Office of the Secretary of State on November 5, 2007.

TRD-200705299

Brian M. White

General Counsel

Office of Injured Employee Counsel

Effective date: November 25, 2007

Proposal publication date: September 28, 2007

For further information, please call: (512) 804-4186



TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION SUBCHAPTER GG. INSURANCE TAX

34 TAC §3.811

The Comptroller of Public Accounts adopts an amendment to §3.811, concerning election by reciprocal or interinsurance exchange pursuant to Insurance Code, Chapter 224, without changes to the proposed text as published in the September 28, 2007, issue of the *Texas Register* (32 TexReg 6767).

The rule is being amended to incorporate revised statute references throughout due to the recodification of the Insurance Code. The amendment will also delete subsection (g) to eliminate the language adopting the applicable agency form by reference.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Tax Code, §111.002 and §111.0022 which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2, and taxes, fees, or other charges which the comptroller administers under other law.

The amended section implements Texas Insurance Code, Chapter 224.

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

Filed with the Office of the Secretary of State on November 5, 2007.

TRD-200705296

Martin Cherry

General Counsel

Comptroller of Public Accounts

Effective date: November 25, 2007

Proposal publication date: September 28, 2007

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



34 TAC §3.832

The Comptroller of Public Accounts adopts an amendment to §3.832, concerning assessment for the Office of the Public Insurance Counsel (OPIC) pursuant to Insurance Code, Chapter 501, without changes to the proposed text as published in the September 28, 2007, issue of the *Texas Register* (32 TexReg 6767).

Subsection (f) is being amended to incorporate revised statute references due to the recodification of the Insurance Code.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Tax Code, §111.002 and §111.0022 which provide the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2, and taxes, fees, or other charges which the comptroller administers under other law.

The amended section implements Texas Insurance Code, Chapter 501.

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

Filed with the Office of the Secretary of State on November 5, 2007.

TRD-200705295

Martin Cherry

General Counsel

Comptroller of Public Accounts

Effective date: November 25, 2007

Proposal publication date: September 28, 2007

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



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 801. LOCAL WORKFORCE DEVELOPMENT BOARDS

SUBCHAPTER B. ONE-STOP SERVICE DELIVERY NETWORK

40 TAC §801.33

The Texas Workforce Commission (Commission) adopts the repeal of the following section of Chapter 801 relating to Local Workforce Development Boards, as published in the September 14, 2007, issue of the *Texas Register* (32 TexReg 6306):

Subchapter B. One-Stop Service Delivery Network, §801.33

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of this amendment is to remove §801.33 relating to Advertising. This rule change implements the statutory provisions in House Bill (HB) 3074, enacted by the 80th Texas Legislature, Regular Session (2007). HB 3074 repeals Texas Government Code §2308.264(e)(4), which required the Commission to establish rules to ensure that entities contracting with Boards may use, display, and advertise the entity's name when providing workforce services for the Board. HB 3074 removes the requirement that contractor advertising must be allowed.

Texas Government Code, Chapter 2308, and this chapter govern Boards. The repeal of Texas Government Code §2308.264(e)(4) allows the Commission and the Boards the flexibility to decide whether contractors can use, display, and advertise their business name when providing one-stop workforce services for the Boards.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

SUBCHAPTER B. ONE-STOP SERVICE DELIVERY NETWORK

The Commission adopts the following amendment to Subchapter B:

§801.33. Advertising

Section 801.33 is deleted to reflect HB 3074, which repeals Texas Government Code §2308.264(e)(4). Repealed §2308.264(e)(4) allowed entities that contract with Boards to use, display, and advertise their business name when providing one-stop workforce services. By deleting this section, the Commission provides Boards the opportunity to make a local determination on whether to allow contractor advertising.

No comments were received.

The repeal is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted repeal affects Texas Labor Code, particularly Chapters 301 and 302, as well as Texas Government Code Chapter 2308.

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 31, 2007.

TRD-200705255

Reagan Miller

Deputy Division Director, Workforce Policy and Service Delivery Branch
Texas Workforce Commission

Effective date: November 20, 2007

Proposal publication date: September 14, 2007

For further information, please call: (512) 475-0829



REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Agency Rule Review Plan

Texas Council for Developmental Disabilities

Title 40, Part 21

TRD-200705392

Filed: November 7, 2007



Proposed Rule Reviews

Credit Union Department

Title 7, Part 6

The Texas Credit Union Commission will review and consider for re-adoption, revision, or repeal Chapter 91, §91.301 (Field Membership) and §91.302 (Election or Other Vote by Electronic Device, Absentee Ballot, or Mail Ballot) of Title 7, Part 6 of the Texas Administrative Code in preparation for the Commission's Rule Review as required by §2001.039, Texas Government Code.

An assessment will be made by the Commission as to whether the reasons for adopting or readopting these rules continue to exist. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Credit Union Department.

Comments or questions regarding these rules may be submitted in writing to, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699, or electronically to info@tcud.state.tx.us. The deadline for comments is December 14, 2007.

The Commission also invites your comments on how to make these rules easier to understand. For example:

- * Do the rules organize the material to suit your needs? If not, how could the material be better organized?
- * Do the rules clearly state the requirements? If not, how could the rule be more clearly stated?
- * Do the rules contain technical language or jargon that isn't clear? If so, what language requires clarification?
- * Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand? If so, what changes to the format would make the rule easier to understand?
- * Would more (but shorter) sections be better in any of the rules? If so, what sections should be changed?

Any proposed changes to these rules as a result of the rule review will be published in the Proposed Rules section of the *Texas Register*. The

proposed rules will be open for public comment prior to final adoption by the Commission.

TRD-200705323

Harold E. Feeney

Commissioner

Credit Union Department

Filed: November 5, 2007



Employees Retirement System of Texas

Title 34, Part 4

The Employees Retirement System of Texas (ERS) files this notice of intent to review 34 Texas Administrative Code (TAC), Chapter 69, Membership and Refunds, pursuant to Texas Government Code §2001.039. As required by this statute, the review will assess whether the reasons for initially adopting 34 TAC Chapter 69 continue to exist and whether any amendments should be made to the rules. The public comment period will last 30 days beginning with the publication of this notice of intent to review.

Comments or questions regarding this rule review may be submitted to Paula A. Jones, General Counsel, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207, or emailed to paula.jones@ers.state.tx.us.

TRD-200705414

Paula A. Jones

General Counsel

Employees Retirement System of Texas

Filed: November 7, 2007



The Employees Retirement System of Texas (ERS) files this notice of intent to review 34 Texas Administrative Code (TAC), Chapter 73, Benefits, pursuant to Texas Government Code §2001.039. As required by this statute, the review will assess whether the reasons for initially adopting 34 TAC Chapter 73 continue to exist and whether any amendments should be made to the rules. The public comment period will last 30 days beginning with the publication of this notice of intent to review.

Comments or questions regarding this rule review may be submitted to Paula A. Jones, General Counsel, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207, or emailed to paula.jones@ers.state.tx.us.

TRD-200705420

Paula A. Jones
General Counsel
Employees Retirement System of Texas
Filed: November 7, 2007

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The Employees Retirement System of Texas (ERS) files this notice of intent to review 34 Texas Administrative Code (TAC), Chapter 75, Hazardous Profession Death Benefits, pursuant to Texas Government Code §2001.039. As required by this statute, the review will assess whether the reasons for initially adopting 34 TAC Chapter 75 continue to exist and whether any amendments should be made to the rules. The public comment period will last 30 days beginning with the publication of this notice of intent to review.

Comments or questions regarding this rule review may be submitted to Paula A. Jones, General Counsel, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207, or emailed to paula.jones@ers.state.tx.us.

TRD-200705421
Paula A. Jones
General Counsel
Employees Retirement System of Texas
Filed: November 7, 2007

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The Employees Retirement System of Texas (ERS) files this notice of intent to review 34 Texas Administrative Code (TAC), Chapter 77, Judicial Retirement, pursuant to Texas Government Code §2001.039. As required by this statute, the review will assess whether the reasons for initially adopting 34 TAC Chapter 77 continue to exist and whether any amendments should be made to the rules. The public comment period will last 30 days beginning with the publication of this notice of intent to review.

Comments or questions regarding this rule review may be submitted to Paula A. Jones, General Counsel, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207, or emailed to paula.jones@ers.state.tx.us.

TRD-200705422
Paula A. Jones
General Counsel
Employees Retirement System of Texas
Filed: November 7, 2007

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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

Extension of Time to Submit Proposals

The Texas Department of Agriculture (TDA) published a Request for Proposals (RFP) for a Financial Advisor for TDA's Texas Agricultural Finance Authority programs in the September 14, 2007, issue of the *Texas Register* (32 TexReg 6425). TDA has extended the time for submitting proposals from October 15, 2007 to November 19, 2007. All other terms and requirements of the RFP remain the same.

Please contact Rick Rhodes at (512) 463-7577 or by e-mail to rick.rhodes@tda.state.tx.us if you have any questions.

TRD-200705393

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Filed: November 7, 2007

Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of October 26, 2007, through November 1, 2007. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for this activity extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on November 7, 2007. The public comment period for this project will close at 5:00 p.m. on December 7, 2007.

FEDERAL AGENCY ACTIONS:

Applicant: Mark W. Jones; Location: The project is located at 153 Front Street, in Lamar, Aransas County, Texas at the end of a residential canal leading from Aransas Bay adjacent to Goose Island State Park. The project can be located on the U.S.G.S. quadrangle map entitled: ST. CHARLES BAY, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 697,501; Northing: 3,113,406. Project Description: The applicant proposes to extend an existing residential canal approximately 112 feet into uplands by excavating within the Neptune Harbor Subdivision by mechanical dredging, and install vinyl bulkheads, a 14-foot by 55-foot boat ramp, and three 3-foot by 25-foot aluminum mooring decks in order to develop a parcel of land into three residential lots with boat access. Dredged material will be placed on the adjoining upland area of the property and contained by a levee system. CCC Project No.: 08-0018-F1; Type of Application: U.S.A.C.E.

permit application #SWG-2007-1494 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Shintech, Inc.; Location: The project is located in New Bayou, an unnamed tributary to New Bayou, and adjacent wetlands, on a 449.4-acre tract located south of FM 2917, and east of Chocolate Bayou, in Brazoria County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Mustang Bayou, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 286737; Northing: 3238450. Project Description: The applicant proposes to place 645,333 cubic yards of fill into 78.8 acres of wetlands to construct a chemical plant. In addition, the applicant proposes to excavate 9.8 acres of wetlands to create reservoirs and retention ponds. To compensate for impacts to wetlands, the applicant proposes to contribute funds to the National Fish and Wildlife Foundation to acquire and preserve bottomland hardwood or other high priority habitat in the Austin Woods Conservation Area at a ratio of 7:1. The applicant also proposes to contribute funds for the enhancement of Pilant Lake Marsh, in Brazos Bend State Park, at a ratio of 1:1. CCC Project No.: 08-0019-F1; Type of Application: U.S.A.C.E. permit application #SWG-2007-1409 is being evaluated under §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451 - 1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Tammy Brooks, Consistency Review Coordinator, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200705413

Larry L. Laine

Chief Clerk/Deputy Land Commissioner, General Land Office

Coastal Coordination Council

Filed: November 7, 2007

Comptroller of Public Accounts

Certification of the Average Taxable Price of Gas and Oil

The Comptroller of Public Accounts, administering agency for the collection of the Crude Oil Production Tax, has determined that the average taxable price of crude oil for reporting period September 2007, as required by Tax Code, §202.058, is \$63.03 per barrel for the three-month period beginning on June 1, 2007, and ending August 31, 2007.

Therefore, pursuant to Tax Code, §202.058, crude oil produced during the month of September 2007, from a qualified Low-Producing Oil Lease, is not eligible for exemption from the crude oil production tax imposed by Tax Code, Chapter 202.

The Comptroller of Public Accounts, administering agency for the collection of the Natural Gas Production Tax, has determined that the average taxable price of gas for reporting period September 2007, as required by Tax Code, §201.059, is \$5.65 per mcf for the three-month period beginning on June 1, 2007, and ending August 31, 2007. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of September 2007, from a qualified Low-Producing Well, is not eligible for exemption from the natural gas production tax imposed by Tax Code, Chapter 201.

Inquires should be directed to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

TRD-200705297
Martin Cherry
General Counsel
Comptroller of Public Accounts
Filed: November 5, 2007



Notice of Contract Award

Pursuant to Chapter 403 and Chapter 2254, Subchapter A, of the Texas Government Code, and Chapter 111 of the Texas Tax Code, the Comptroller of Public Accounts (Comptroller) announces this notice of contract award.

The Comptroller's Request for Qualifications 178c (RFQ) related to these contract awards was published in the May 18, 2007, issue of the *Texas Register* (32 TexReg 2756).

The contractors will provide Professional Contract Auditing Services as authorized by Chapter 111, Subchapter A, §111.0045 of the Texas Tax Code as described in the Comptroller's RFQ.

The Comptroller announces one additional contract awarded on October 31, 2007 as follows:

A contract is awarded to Homer Max Wiesen, 1009 Panhandle Street, Denton, Texas 76201-0857. Examinations will be assigned in \$60,000, \$75,000, \$90,000 or \$120,000 increments or packages but no contract examiner shall have examination packages totaling more than \$150,000 in fees during any one state fiscal year during the contract term.

The term of the contract is October 31, 2007 through August 31, 2008, with two one-year options to renew.

The Comptroller does not intend to award any other additional contracts under the RFQ.

TRD-200705276
William Clay Harris
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: November 1, 2007



Notice of Request for Proposals

Pursuant to Chapter 403, §403.011, and Chapter 2156, §2156.121(c), Texas Government Code; and Chapter 54, Subchapters F, G, and H, Texas Education Code; and House Bill 3900, 80th Texas Legislature, Regular Session (2007), the Comptroller of Public Accounts (Comptroller) on behalf of the Texas Prepaid Higher Education Tuition Board

(Board) announces its Request for Proposals (RFP No. 182c) for a plan manager and all related services for the new Texas Tomorrow Fund II, prepaid higher education unit tuition program (TTF II or Plan). The successful respondent(s), if any, will be expected to provide plan manager services and alternatively, investment management, marketing, recordkeeping and customer services, and all reasonably related services and assistance, to the Comptroller and the Board for the new Plan. If approved by the Board, the successful respondent(s), if any, will be expected to begin performance of the contract on or about March 10, 2008, or as soon thereafter as practical.

Contact: Parties interested in submitting a proposal should contact William Clay Harris, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 East 17th Street, Room G-24, Austin, Texas 78774, (512) 305-8673, to obtain a complete copy of the RFP. The Comptroller will mail copies of the RFP only to those parties specifically requesting a copy. The RFP will be available for pick-up at the above referenced address on Friday, November 16, 2007, after 10:00 a.m. Central Zone Time (CZT), and during normal business hours thereafter. The Comptroller will also make the entire RFP available electronically on the Electronic State Business Daily (ESBD) after 10:00 a.m. on Friday, November 16, 2007. The website address is <http://esbd.cpa.state.tx.us>.

Questions and Non-Mandatory Letters of Intent: All written inquiries, questions, and non-mandatory Letters of Intent to propose must be received at the above-referenced address no later than 2:00 p.m. (CZT) on Monday, November 26, 2007. Respondents are encouraged to fax Non-Mandatory Letters of Intent and Questions to (512) 463-3669 to ensure timely receipt. The Letter of Intent must be addressed to William Clay Harris, Assistant General Counsel, Contracts, and must contain the information as stated in the corresponding Section of the RFP and be signed by an official of that entity. On or before Friday, November 30, 2007, the Comptroller expects to post responses to questions as a revision to the electronic notice of the issuance of the RFP. Late Non-mandatory Letters of Intent and Questions received after the deadline will not be considered; all respondents are solely responsible for ensuring timely receipt of Questions and Letters of Intent in the Issuing Office.

Closing Date: Proposals must be delivered to the Office of the Assistant General Counsel, Contracts, at the location specified above (in ROOM G24) no later than 2:00 p.m. (CZT), on Tuesday, December 18, 2007. Late proposals received after this time and date will not be considered; all respondents are solely responsible for ensuring timely receipt of proposals in the Issuing Office.

Evaluation Criteria: Proposals will be evaluated under the evaluation criteria outlined in the RFP. The Board makes the final decision on award(s). The Comptroller and the Board each reserve the right to accept or reject any or all proposals submitted. The Comptroller and the Board are not obligated to execute a contract on the basis of this notice or the distribution of any RFP. The Comptroller and the Board shall not pay for any costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events pertaining to this solicitation is as follows: Issuance of RFP - Friday, November 16, 2007, after 10:00 a.m. CZT; Non-Mandatory Letters of Intent and Questions Due - November 26, 2007, 2:00 p.m. CZT; Official Responses to Questions posted - November 30, 2007; Proposals Due - December 18, 2007, 2:00 p.m. CZT; Contract Execution - March 10, 2008, or as soon thereafter as practical; Services Available under Contract - March 10, 2008.

TRD-200705412

Pamela Smith
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: November 7, 2007

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 11/12/07 - 11/18/07 is 18% for Consumer ¹Agricultural/Commercial ² credit thru \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 11/12/07 - 11/18/07 is 18% for Commercial over \$250,000.

The monthly ceiling as prescribed by §303.005³ for the period of 11/01/07 - 11/30/07 is 18% for Consumer/Agricultural/Commercial credit thru \$250,000.

The monthly ceiling as prescribed by §303.005 for the period of 11/01/07 - 11/30/07 is 18% for Commercial over \$250,000.

¹Credit for personal, family or household use.

²Credit for business, commercial, investment, or other similar purpose.

³For variable rate commercial transactions only.

TRD-200705326
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: November 5, 2007

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Court Reporters Certification Board

Certification of Court Reporters

Following the examination of applicants on September 28, 2007, the Texas Court Reporters Certification Board certified to the Supreme Court of Texas the following individuals who are qualified in the method indicated to practice shorthand reporting pursuant to Chapter 52 of the Texas Government Code, V.T.C.A.:

MACHINE SHORTHAND: JESSICA CAMPBELL - AZLE, TX; AMANDA MAZE - BRIGHTON, CO; TRUENEA TEASLEY - EL PASO, TX; ROBIN DAVIS - STEAMBOAT SPRINGS, CO; and SUSAN WINTER - JACKSONVILLE, FL.

Following the examination of applicants on September 28, 2007, the Texas Court Reporters Certification Board certified to the Supreme Court of Texas the following individuals who are qualified in the method indicated to practice shorthand reporting pursuant to Chapter 52 of the Texas Government Code, V.T.C.A.:

ORAL STENOGRAPHY: CASSANDRA VIDLER - FLOWER MOUND, TX; MELANIE BROCKINGTON - ARLINGTON, TX; SHANNON NAJAR - EASTLAND, TX; RHONDA LOPEZ - IRVING, TX; AMANDA POLASEK - HIGHLAND, TX; and KIRSTEN KIRBY - KELLER, TX.

TRD-200705325

Sheryl Jones
Administrator of Licensing
Court Reporters Certification Board
Filed: November 5, 2007

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Texas Education Agency

Request for Proficiency Tests for the Assessment of Limited English Proficient Students

Description. The Texas Education Agency (TEA) is notifying assessment publishers that proficiency assessments and/or achievement tests may be submitted for review for the *List of State Approved Tests for the Assessment of Limited English Proficient Students*. Texas Education Code (TEC), §29.056(a)(2), authorizes TEA to compile a list of approved assessments for the purposes of identifying students as limited English proficient for entry into or exit, when appropriate, from bilingual education and/or English as a second language (ESL) programs; annually assessing oral language proficiency in English and Spanish when required; and measuring reading and writing proficiency in English and Spanish for program placement. The state-approved tests placed on the list must be based on scientific research and must measure oral language proficiency in listening and speaking in English and Spanish from Prekindergarten (PK) - Grade 12. Assessments must also measure reading and writing in English and Spanish from PK - Grade 12. Reading and writing assessments indicate placement in the bilingual/ESL program and are not for entry purposes.

Norm-referenced standardized achievement tests in English will be used for identification, entry into, and exit (only for Grades 1 and 2) from programs and may be used for formative assessments.

Norm-referenced standardized achievement tests in Spanish may be used for placement purposes only. All tests to be included on the *List of State Approved Tests for the Assessment of Limited English Proficient Students* must be re-normed every six years to meet the criteria specified in TEC, §39.032, which requires that standardization norms not be more than six years old at the time the test is administered. The 2008-2009 *List of State Approved Tests for the Assessment of Limited English Proficient Students* will be in effect only for the 2008-2009 school year. Assessments currently on the list must be resubmitted only if they contain the stipulation that they may be phased out in 2008. All new assessments that meet the specified criteria must be submitted for evaluation at this time.

The Assessment Committee, comprised of stakeholders from throughout the state and TEA staff, will review and approve the 2008-2009 *List of State Approved Tests for the Assessment of Limited English Proficient Students*. The Assessment Committee may choose to change the criteria and/or effective dates at a future time.

Selection Criteria. Assessment publishers will be responsible for submitting tests that they wish to be reviewed for consideration for inclusion on the 2008-2009 *List of State Approved Tests for the Assessment of Limited English Proficient Students*. All tests submitted for review must be based on scientific research and must measure oral language proficiency in listening and speaking in English and Spanish from PK - Grade 12. Assessments must measure reading and writing in English and Spanish from PK - Grade 12 and must meet the state criteria for reliability and validity. Therefore, technical manuals must also be submitted and must be available at the meeting date. Assessments must also measure specific proficiency levels in oral language, reading, and writing in both English and Spanish. Assessment instruments (English and Spanish) submitted for review will be grouped in the following categories: (1) Oral Language Proficiency Tests in English in Listening and Speaking domains; (2) Oral Language Proficiency Tests in Span-

ish in Listening and Speaking domains; (3) Reading and Writing Proficiency in English; (4) Reading and Writing Proficiency in Spanish; and (5) Ability Tests/Gifted and Talented. Publishers are not required to submit proposals for all categories.

Proposals must be submitted and presented on January 18, 2008, to be considered for inclusion on the 2008-2009 *List of State Approved Tests for the Assessment of Limited English Proficient Students*. Assessment publishers will be required to attend the review of the assessments on January 18, 2008, which will be held at the William B. Travis Building, Room G-100, PDC7, 1701 North Congress Avenue, Austin, Texas. Complete official sample test copies in English and Spanish with comprehensive explanations, including (1) scoring information; (2) norming data information, including ethnicity, gender, grade level, and geographic region; and (3) technical manuals with validity and reliability information must be presented at that time. Only materials presented on January 18, 2008, will be considered for approval. Publishers must be available all day at the request of the Assessment Committee, and must make arrangements to pick up all materials at the end of the day. Any materials and/or revisions submitted after the deadline cannot be reviewed until the following year.

Further Information. For clarifying information, contact Georgina Gonzalez, Director of Bilingual/ESL, or Susie Coultrass, Assistant Director of Bilingual/ESL, Texas Education Agency, (512) 463-9581.

TRD-200705403

Cristina De La Fuente-Valadez

Director, Policy Coordination
Texas Education Agency
Filed: November 7, 2007

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Commission on State Emergency Communications

Public Notice--Proposed Wireless Service Fee Percentages

Per Commission on State Emergency Communications (CSEC) rule, 1 TAC §252.6, concerning *Wireless Service Fee Proportional Distribution*, the proposed allocations are being provided to all affected 9-1-1 jurisdictions for review and comment. If there are questions or requests for changes to the proposed allocations, those must be received by the CSEC no later than 11:00 AM, CST, November 26, 2007. For a copy of the proposed allocations please contact the CSEC at csecinfo@csec.state.tx.us.

Comments, questions, and requests should be e-mailed to Brian Millington at brian.millington@csec.state.tx.us; or by fax at (512) 305-6937. Hearing and speech impaired with text telephones (TTY) may contact the CSEC at (512) 305-6925.

The CSEC anticipates presenting the proposed allocations to the Commission for approval at its November 28, 2007, open meeting.

**Commission on State Emergency Communications
Wireless Emergency Service Fee Distribution Worksheet
For Use from November 10, 2007 - November 9, 2008**

PROPOSED VERSION #1

	<u>Gross Population</u>	<u>District & HRC Adjustments Name</u>	<u>Population</u>	<u>Adjusted Population</u>	<u>Distribution Percentage</u>
Atascosa	42,414			42,414	
Bandera	19,773			19,773	
Frio	16,323			16,323	
Gillespie	24,083			24,083	
Karnes	15,408			15,408	
Kendall	30,547			30,547	
<u>Wilson</u>	<u>39,142</u>			<u>39,142</u>	
AACOG Total	187,690			187,690	0.7984%
Bowie	93,286			93,286	
Cass	30,567			30,567	
Delta	5,267			5,267	
Franklin	10,270			10,270	
Hopkins	33,910			33,910	
Lamar	49,787			49,787	
Morris	13,155			13,155	
Red River	13,972			13,972	
<u>Titus</u>	<u>30,191</u>			<u>30,191</u>	
ATCOG Total	280,405			280,405	1.1928%
Burleson	18,101			18,101	
Grimes	24,802			24,802	
Leon	16,218			16,218	
Madison	13,534			13,534	
Robertson	16,171			16,171	
<u>Washington</u>	<u>32,181</u>			<u>32,181</u>	
BVDC Total	121,007			121,007	0.5148%
Bastrop	71,726			71,726	
Blanco	9,383			9,383	
Burnet	40,642			40,642	
Caldwell	35,562			35,562	
Fayette	23,763			23,763	
Hays	133,913			133,913	
Lee	16,798			16,798	
Llano	18,948			18,948	
Travis	928,037			928,037	
<u>Williamson</u>	<u>349,982</u>			<u>349,982</u>	
CAPCO Total	1,628,754			1,628,754	6.9286%

Data Source: July 1, 2006 Population Estimates from the Texas State Data Center/Office of the State Demographer. Web Site Address: <http://txsdc.utsa.edu/tpepp/txpopest.php>.

**Commission on State Emergency Communications
Wireless Emergency Service Fee Distribution Worksheet
For Use from November 10, 2007 - November 9, 2008**

PROPOSED VERSION #1

	<u>Gross Population</u>	<u>District & HRC Adjustments Name</u>	<u>Population</u>	<u>Adjusted Population</u>	<u>Distribution Percentage</u>
Bell	269,073			269,073	
Coryell	76,007			76,007	
Hamilton	8,480			8,480	
Lampasas	20,461			20,461	
Milam	25,618			25,618	
Mills	5,240			5,240	
<u>San Saba</u>	<u>6,102</u>			<u>6,102</u>	
CTCOG Total	410,981			410,981	1.7483%
Aransas	24,900			24,900	
Bee	33,207			33,207	
Brooks	7,729			7,729	
Duval	12,600			12,600	
Jim Wells	41,102			41,102	
Kenedy	392			392	
Kleberg	30,415			30,415	
Live Oak	12,061			12,061	
McMullen	863			863	
Nueces	318,651	Corpus Christi	(283,700)	34,951	
Refugio	7,497			7,497	
San Patricio	69,477	Portland	(15,957)		
		<u>Aransas Pass</u>	<u>(8,767)</u>	<u>44,753</u>	
CBCOG Total	558,894			250,470	1.0655%
Coke	3,897			3,897	
Concho	3,801			3,801	
Crockett	3,986			3,986	
Irion	1,748			1,748	
Kimble	4,612			4,612	
McCulloch	8,113			8,113	
Mason	3,719			3,719	
Menard	2,297			2,297	
Reagan	3,041			3,041	
Schleicher	2,911			2,911	
Sterling	1,223			1,223	
Sutton	4,205			4,205	
<u>Tom Green</u>	<u>103,123</u>			<u>103,123</u>	
CVCOG Total	146,676			146,676	0.6239%

Data Source: July 1, 2006 Population Estimates from the Texas State Data Center/Office of the State Demographer. Web Site Address: <http://txsdc.utsa.edu/tpepp/txpopest.php>.

**Commission on State Emergency Communications
Wireless Emergency Service Fee Distribution Worksheet
For Use from November 10, 2007 - November 9, 2008**

PROPOSED VERSION #1

	<u>Gross Population</u>	<u>District & HRC Adjustments Name</u>	<u>Population</u>	<u>Adjusted Population</u>	<u>Distribution Percentage</u>
Angelina	82,424			82,424	
Houston	23,630			23,630	
Jasper	34,863			34,863	
Nacogdoches	62,867			62,867	
Newton	14,338			14,338	
Polk	46,349			46,349	
Sabine	10,449			10,449	
San Augustine	9,217			9,217	
San Jacinto	24,739			24,739	
Shelby	25,687			25,687	
Trinity	14,247			14,247	
<u>Tyler</u>	<u>21,042</u>			<u>21,042</u>	
DETCOG Total	369,852			369,852	1.5733%
Anderson	56,202			56,202	
Camp	12,706			12,706	
Cherokee	48,320	Reklaw	(357)	47,963	
Gregg	117,743	Kilgore	(12,022)		
		Longview	(76,918)	28,803	
Marion	10,880			10,880	
Panola	23,225	Tatum	(1,168)	22,057	
Rains	10,645			10,645	
Upshur	37,379			37,379	
Van Zandt	51,827			51,827	
<u>Wood</u>	<u>41,661</u>			<u>41,661</u>	
ETCOG Total	410,588			320,123	1.3618%
De Witt	20,432			20,432	
Goliad	7,195			7,195	
Gonzales	19,256			19,256	
Jackson	14,559			14,559	
Lavaca	19,368			19,368	
<u>Victoria</u>	<u>86,334</u>			<u>86,334</u>	
GCRPC Total	167,144			167,144	0.7110%
Bosque	18,272			18,272	
Falls	18,035			18,035	
Freestone	19,381			19,381	
Hill	34,886			34,886	

Data Source: July 1, 2006 Population Estimates from the Texas State Data Center/Office of the State Demographer. Web Site Address: <http://txsdc.utsa.edu/tpepp/txpopest.php>.

**Commission on State Emergency Communications
Wireless Emergency Service Fee Distribution Worksheet
For Use from November 10, 2007 - November 9, 2008**

PROPOSED VERSION #1

	<u>Gross Population</u>	<u>District & HRC Adjustments Name</u>	<u>Population</u>	<u>Adjusted Population</u>	<u>Distribution Percentage</u>
<u>Limestone</u>	22,378			22,378	
HOTCOG Total	112,952			112,952	0.4805%
Brazoria	286,773	Pearland	(67,594)	219,179	
Chambers	32,383			32,383	
Colorado	21,629			21,629	
Liberty	77,176			77,176	
Matagorda	37,063			37,063	
Walker	64,026			64,026	
Waller	38,475	Waller	(2,310)	36,165	
<u>Wharton</u>	<u>42,252</u>			<u>42,252</u>	
HGAC Total	599,777			529,873	2.2540%
Hidalgo	708,235			708,235	
<u>Willacy</u>	<u>20,884</u>			<u>20,884</u>	
LRGVDC Total	729,119			729,119	3.1016%
Dimmit	10,033			10,033	
Edwards	1,923			1,923	
Kinney	3,327			3,327	
La Salle	5,914			5,914	
Maverick	52,162			52,162	
Real	3,295			3,295	
Uvalde	25,719			25,719	
Val Verde	47,362			47,362	
<u>Zavala</u>	<u>11,694</u>			<u>11,694</u>	
MRGDC Total	161,429			161,429	0.6867%
Archer	9,065			9,065	
Baylor	4,041			4,041	
Clay	11,161			11,161	
Cottle	1,627			1,627	
Foard	1,493			1,493	
Hardeman	4,436			4,436	
Jack	8,844			8,844	
Montague	19,773			19,773	
<u>Young</u>	<u>18,067</u>			<u>18,067</u>	
NRPC Total	78,507			78,507	0.3340%
Collin	696,306	Dallas	(45,323)		
		Frisco	26,400		

Data Source: July 1, 2006 Population Estimates from the Texas State Data Center/Office of the State Demographer. Web Site Address: <http://txsdc.utsa.edu/tpepp/txpopest.php>.

**Commission on State Emergency Communications
Wireless Emergency Service Fee Distribution Worksheet
For Use from November 10, 2007 - November 9, 2008**

PROPOSED VERSION #1

	<u>Gross Population</u>	<u>District & HRC Adjustments Name</u>	<u>Population</u>	<u>Adjusted Population</u>	<u>Distribution Percentage</u>
		Garland	(155)		
		Plano	(261,428)		
		Richardson	(24,719)		
		Wylie	(32,579)	358,502	
Dallas		Balch Springs	20,596		
		Cockrell Hill	4,398		
		Sachse	14,077		
		Seagoville	12,185		
		Wilmer	3,705	54,961	
Ellis	139,104	Cedar Hill	(249)		
		Ennis	(20,175)		
		Glenn Heights	(1,883)		
		Grand Prairie	-		
		Mansfield	(106)		
		Ovilla	343	117,034	
Erath	34,308			34,308	
Hood	49,058			49,058	
Hunt	83,050			83,050	
Johnson	150,981	Burleson	(27,023)		
		Mansfield	(1,071)	122,887	
Kaufman	93,807	Combine	1,302	95,109	
Navarro	48,715			48,715	
Palo Pinto	28,038			28,038	
Parker	106,811	Azle	(1,746)	105,065	
Rockwall	69,658	Dallas	(20)		
		Rowlett	(7,345)		
		Wylie	(881)	61,412	
Somervell	7,979			7,979	
Wise	56,495			56,495	
NCTCOG Total	1,564,310			1,222,613	5.2009%
Andrews	13,154			13,154	
Borden	710			710	
Crane	3,854			3,854	
Dawson	14,192			14,192	
Gaines	15,122			15,122	
Glasscock	1,241			1,241	
Loving	60			60	
Martin	4,820			4,820	

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**Commission on State Emergency Communications
Wireless Emergency Service Fee Distribution Worksheet
For Use from November 10, 2007 - November 9, 2008**

PROPOSED VERSION #1

	<u>Gross Population</u>	<u>District & HRC Adjustments Name</u>	<u>Population</u>	<u>Adjusted Population</u>	<u>Distribution Percentage</u>
Pecos	16,422			16,422	
Reeves	11,606			11,606	
Terrell	1,006			1,006	
Upton	3,169			3,169	
Ward	10,369			10,369	
<u>Winkler</u>	<u>6,805</u>			<u>6,805</u>	
PBRPC Total	102,530			102,530	0.4362%
Armstrong	2,170			2,170	
Briscoe	1,573			1,573	
Carson	6,497			6,497	
Castro	7,554			7,554	
Childress	7,728			7,728	
Collingsworth	2,933			2,933	
Dallam	6,244			6,244	
Deaf Smith	18,640			18,640	
Donley	3,907			3,907	
Gray	22,437			22,437	
Hall	3,660			3,660	
Hansford	5,119			5,119	
Hartley	5,520			5,520	
Hemphill	3,438			3,438	
Hutchinson	22,739			22,739	
Lipscomb	3,146			3,146	
Moore	19,944			19,944	
Ochiltree	9,300			9,300	
Oldham	2,200			2,200	
Parmer	9,788			9,788	
Roberts	860			860	
Sherman	3,108			3,108	
Swisher	8,097			8,097	
<u>Wheeler</u>	<u>5,069</u>			<u>5,069</u>	
PRPC Total	181,671			181,671	0.7728%
Brewster	9,231			9,231	
Culberson	2,646			2,646	
Hudspeth	3,483			3,483	
Jeff Davis	2,486			2,486	
<u>Presidio</u>	<u>8,105</u>			<u>8,105</u>	

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	<u>Gross Population</u>	<u>District & HRC Adjustments Name</u>	<u>Population</u>	<u>Adjusted Population</u>	<u>Distribution Percentage</u>
RGCOG Total	25,951			25,951	0.1104%
Hardin	50,419			50,419	
Jefferson	245,922			245,922	
<u>Orange</u>	<u>84,026</u>			<u>84,026</u>	
SETRPC Total	380,367			380,367	1.6180%
Bailey	6,514			6,514	
Cochran	3,590			3,590	
Crosby	6,611			6,611	
Dickens	2,699			2,699	
Floyd	7,263			7,263	
Garza	5,075			5,075	
Hale	35,921	Abernathy	(2,767)		
		Plainview	(21,856)	11,298	
Hockley	22,352			22,352	
Kent	815			815	
King	359			359	
Lamb	14,640			14,640	
Lynn	6,237			6,237	
Motley	1,381			1,381	
Terry	12,362			12,362	
<u>Yoakum</u>	<u>7,264</u>			<u>7,264</u>	
SPAG Total	133,083			108,460	0.4614%
Jim Hogg	5,090			5,090	
Starr	62,432			62,432	
Webb	234,498			234,498	
<u>Zapata</u>	<u>14,125</u>			<u>14,125</u>	
STDC Total	316,145			316,145	1.3449%
Cooke	39,852			39,852	
Fannin	34,042			34,042	
Grayson	118,438	Denison	(24,364)		
		Sherman	(38,837)	55,237	
TCOG Total	192,332			129,131	0.5493%
Brown	38,617			38,617	
Callahan	13,510			13,510	
Coleman	8,860			8,860	

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PROPOSED VERSION #1

	<u>Gross Population</u>	<u>District & HRC Adjustments Name</u>	<u>Population</u>	<u>Adjusted Population</u>	<u>Distribution Percentage</u>
Comanche	14,097			14,097	
Eastland	18,361			18,361	
Fisher	4,213			4,213	
Haskell	5,662			5,662	
Jones	20,366	Abilene	(5,488)	14,878	
Knox	3,972			3,972	
Mitchell	9,596			9,596	
Nolan	15,038			15,038	
Runnels	11,020			11,020	
Scurry	15,895			15,895	
Shackelford	3,257			3,257	
Stephens	9,495			9,495	
Stonewall	1,490			1,490	
<u>Throckmorton</u>	<u>1,762</u>			<u>1,762</u>	
WCTCOG Total	195,211			189,723	0.8071%
<u>Smith</u>	<u>194,792</u>			<u>194,792</u>	
9-1-1 Network of East Texas	194,792			194,792	0.8286%
Jones		Abilene	5,488	5,488	
<u>Taylor</u>	<u>128,115</u>			<u>128,115</u>	
Abilene/Taylor Cty. 9-1-1	128,115			133,603	0.5683%
<u>Austin</u>	<u>26,928</u>			<u>26,928</u>	
Austin Cty. Emg. Comm. District	26,928			26,928	0.1145%
Bexar	1,550,160			1,550,160	
Comal	102,032			102,032	
<u>Guadalupe</u>	<u>111,122</u>			<u>111,122</u>	
Bexar Metro 9-1-1 Network District	1,763,314			1,763,314	7.5010%
<u>Brazos</u>	<u>167,228</u>			<u>167,228</u>	
Brazos Cty. Emerg. Comm. District	167,228			167,228	0.7114%
<u>Calhoun</u>	<u>20,843</u>			<u>20,843</u>	
Calhoun Cty. 9-1-1 Emg. Comm. District	20,843			20,843	0.0887%
<u>Cameron</u>	<u>389,571</u>			<u>389,571</u>	
Cameron Cty. Emg. Comm. District	389,571			389,571	1.6572%
Dallas	2,340,063	Addison	(14,824)		

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**Commission on State Emergency Communications
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PROPOSED VERSION #1

	<u>Gross Population</u>	<u>District & HRC Adjustments</u>		<u>Adjusted Population</u>	<u>Distribution Percentage</u>
		<u>Name</u>	<u>Population</u>		
		Balch Springs	(20,596)		
		Carrollton	(52,143)		
		Cedar Hill	(42,103)		
		Cockrell Hill	(4,398)		
		Combine	(1,302)		
		Coppell	(38,255)		
		Dallas	(1,154,101)		
		DeSoto	(43,004)		
		Duncanville	(35,173)		
		Farmers Branch	(28,035)		
		Garland	(216,670)		
		Glenn Heights	(8,134)		
		Grand Prairie	(111,230)		
		Highland Park	(9,008)		
		Hutchins	(2,884)		
		Irving	(195,872)		
		Lancaster	(33,364)		
		Lewisville	(317)		
		Mesquite	(130,078)		
		Ovilla	(343)		
		Richardson	(71,954)		
		Rowlett	(47,878)		
		Sachse	(14,077)		
		Seagoville	(12,185)		
		University Park	(22,811)		
		Wilmer	(3,705)		
		Wylie	(421)	25,198	
Dallas SO (District)	2,340,063			25,198	0.1072%
Denton	590,120	Carrollton	52,143		
		Coppell	(590)		
		Dallas	(26,170)		
		Fort Worth	(43)		
		Frisco	(26,400)		
		Lewisville	317		
		Plano	(5,442)		
		Southlake	(764)	583,171	
Denco Area 9-1-1 District	590,120			583,171	2.4808%

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<u>El Paso</u>	<u>743,319</u>			<u>743,319</u>	
El Paso Cty. 9-1-1 District	743,319			743,319	3.1620%
<u>Ector</u>	<u>127,212</u>			<u>127,212</u>	
Emg. Comm. District of Ector Cty.	127,212			127,212	0.5411%
Galveston	282,126	Friendswood	(32,639)		
		League City	(63,087)	<u>186,400</u>	
Galveston Cty. Emg. Comm. District	282,126			186,400	0.7929%
Fort Bend	487,047				
Harris	3,830,130	Friendswood	32,639		
		League City	63,087		
		Pearland	67,594		
		Waller	2,310	<u>4,482,807</u>	
Greater Harris Cty. 9-1-1 Emg. Network	4,317,177			4,482,807	19.0695%
<u>Henderson</u>	<u>79,331</u>			<u>79,331</u>	
Henderson Cty. 9-1-1 Comm. District	79,331			79,331	0.3375%
<u>Howard</u>	<u>32,918</u>			<u>32,918</u>	
Howard Cty. 9-1-1 Comm. District	32,918			32,918	0.1400%
<u>Kerr</u>	<u>47,235</u>			<u>47,235</u>	
Kerr Cty. Emg. 9-1-1 Network	47,235			47,235	0.2009%
Lubbock	253,601	Abernathy	2,767		
		Plainview	21,856	<u>278,224</u>	
Lubbock Cty. Emg. Comm. District	253,601			278,224	1.1835%
<u>McLennan</u>	<u>224,167</u>			<u>224,167</u>	
McLennan Cty. Emg. Assistance District	224,167			224,167	0.9536%
<u>Medina</u>	<u>43,472</u>			<u>43,472</u>	
Medina Cty. 9-1-1 District	43,472			43,472	0.1849%
<u>Midland</u>	<u>124,383</u>			<u>124,383</u>	
Midland Emg. Comm. District	124,383			124,383	0.5291%
<u>Montgomery</u>	<u>399,941</u>			<u>399,941</u>	
Montgomery Cty. Emg. Comm. District	399,941			399,941	1.7013%

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	<u>Gross Population</u>	<u>District & HRC Adjustments Name</u>	<u>Population</u>	<u>Adjusted Population</u>	<u>Distribution Percentage</u>
Wichita	130,521			130,521	
<u>Wilbarger</u>	<u>14,115</u>			<u>14,115</u>	
Wichita-Wilbarger 9-1-1 Comm. District	144,636			144,636	0.6153%
Potter	121,375			121,375	
<u>Randall</u>	<u>111,427</u>			<u>111,427</u>	
Potter-Randall Cty. Emg. Comm. District	232,802			232,802	0.9903%
Tarrant	1,667,306	Azle	1,746		
		Burleson	27,023		
		Fort Worth	43		
		Mansfield	1,177		
		Grand Prairie	111,230		
		Irving	195,872		
		<u>Southlake</u>	<u>764</u>	<u>2,005,161</u>	
Tarrant Cty. 9-1-1 District	1,667,306			2,005,161	8.5298%
Harrison	63,715			63,715	
Rusk	48,093	Reklaw	357		
		Tatum	1,168	<u>49,618</u>	
Texas Eastern 9-1-1 Network	111,808			113,333	0.4821%
Cedar Hill			42,352		
DeSoto			43,004		
<u>Duncanville</u>			<u>35,173</u>	<u>120,529</u>	
Southwest Regional Communications Center				120,529	0.5127%
Addison Police Department			14,824	14,824	0.0631%
Aransas Pass Police Department			8,767	8,767	0.0373%
City of Dallas Emg. Comm. Office			1,225,614	1,225,614	5.2137%
City of Longview PSAP			76,918	76,918	0.3272%
Coppell Police Department			38,845	38,845	0.1652%
Corpus Christi			283,700	283,700	1.2068%
Denison Fire Department			24,364	24,364	0.1036%
Ennis Police Department			20,175	20,175	0.0858%
Farmers Branch Police Department			28,035	28,035	0.1193%
Garland Police Department			216,825	216,825	0.9224%
Glenn Heights Police Department			10,017	10,017	0.0426%
Highland Park Department of Public Safety			9,008	9,008	0.0383%

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	<u>Gross Population</u>	<u>District & HRC Adjustments Name</u>	<u>Adjusted Population</u>	<u>Distribution Percentage</u>
Hutchins Police Department			2,884	0.0123%
Kilgore Police Department			12,022	0.0511%
Lancaster Fire/Police Department			33,364	0.1419%
Mesquite Police Department			130,078	0.5533%
Portland Police Department			15,957	0.0679%
Plano			266,870	1.1352%
Richardson Police Department			96,673	0.4112%
Rowlett Police and Fire Comm. Center			55,223	0.2349%
Sherman Police Department			38,837	0.1652%
University Park Police Department			22,811	0.0970%
Wylie			33,881	0.1441%
Grand Total	23,507,783		23,507,783	100.0000%

TRD-200705279
Paul Mallett
Executive Director
Commission on State Emergency Communications
Filed: November 2, 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 17, 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 17, 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: BLR Construction Companies, L.L.C.; DOCKET NUMBER: 2007-1163-AIR-E; IDENTIFIER: RN105205744; LOCATION: Cleburne, Johnson County, Texas; TYPE OF FACILITY: rock crusher; RULE VIOLATED: 30 Texas Administrative Code (TAC) §116.110(a) and Texas Health and Safety Code (THSC), §382.085(b) and §382.0518(a), by failing to obtain authorization prior to the relocation of a portable rock crushing system; PENALTY: \$20,000; Supplemental Environmental Project (SEP) offset amount of \$10,000 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Wastewater Treatment Assistance; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Kathie Bryant dba Buena Vista Water System; DOCKET NUMBER: 2007-0304-PWS-E; IDENTIFIER: RN101190809; LOCATION: Burnet County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.42(d)(11)(E)(ii), by failing to equip each filter with an on-line turbidimeter and recorder; 30 TAC §290.42(d)(11)(D)(i), by failing to equip each filter with a manually adjustable rate-of-flow controller; 30 TAC §290.45(b)(2)(F) and THSC, §341.0315(c), by failing to provide a service pump capacity that provides each pump station or pressure plane with two or more pumps that have a total capacity of two gallons per minute (gpm) per connection or that have a total capacity of at least 1,000 gpm and the ability to meet peak hourly demands with the largest pump out of service; 30 TAC §290.42(b)(2)(B), TCEQ Agreed Order Docket Number 2003-0360-PWS-E, Ordering Provision 2.c.i., and THSC, §341.0315(c), by failing to provide a treatment plant capacity of 0.6 gpm per connection; 30 TAC §290.44(d) and TCEQ Agreed Order Docket Number 2003-0360-PWS-E, Ordering Provision 2.c.iii, by failing to provide a minimum water pressure of at least 35 pounds per square inch throughout the distribution system; 30 TAC §290.46(d)(2)(A), by failing to operate the disinfection equipment to

maintain a minimum free chlorine residual of 0.2 milligrams per liter; 30 TAC §290.113(f)(5) and THSC, §341.0315(c), by failing to comply with the maximum contaminant level (MCL) for haloacetic acid; and 30 TAC §290.113(f)(4) and THSC, §341.0315(c), by failing to comply with the MCL for total trihalomethanes; PENALTY: \$8,931; ENFORCEMENT COORDINATOR: Christopher Keffer, (512) 239-5610; REGIONAL OFFICE: 2800 South Interstate Highway 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(3) COMPANY: Hailu Sima Mesfin dba Classic Cleaners & Tailors; DOCKET NUMBER: 2006-1064-DCL-E; IDENTIFIER: RN104962196; LOCATION: Dallas, Dallas County, Texas; TYPE OF FACILITY: dry cleaner drop station; RULE VIOLATED: 30 TAC §337.10(a) and THSC, §374.102, by failing to complete and submit the required registration form; PENALTY: \$1,185; ENFORCEMENT COORDINATOR: Colin Barth, (512) 239-0086; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: Coastal Chemical Co., L.L.C.; DOCKET NUMBER: 2007-0928-IWD-E; IDENTIFIER: RN102739711; LOCATION: Pasadena, Harris County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System (TPDES) Permit Number 03483, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with permitted effluent limitations; and 30 TAC §305.125(17) and TPDES Permit Number 03483, Monitoring and Reporting Requirements Number 1, by failing to submit monitoring data on discharge monitoring reports for the pH minimum; PENALTY: \$4,509; ENFORCEMENT COORDINATOR: Laurie Eaves, (512) 239-4495; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(5) COMPANY: Common Development Group 06, LTD.; DOCKET NUMBER: 2007-1091-EAQ-E; IDENTIFIER: RN105135354; LOCATION: Bexar County, Texas; TYPE OF FACILITY: construction activities for a proposed residential project; RULE VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval of an Edwards Aquifer Water Pollution Abatement Plan; PENALTY: \$13,500; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(6) COMPANY: Comtex Dairies, L.L.C. and Randi Lockwood Willis dba Comtex Dairy; DOCKET NUMBER: 2007-1168-AGR-E; IDENTIFIER: RN103769881; LOCATION: Comanche County, Texas; TYPE OF FACILITY: dairy farm; RULE VIOLATED: 30 TAC §321.39(c)(1), by failing to remove sludge from the retention control structure; and 30 TAC §321.40(k)(2) and TPDES Permit Number TXG920011, Pollution Prevention Plan Requirements, by failing to cease applying waste or wastewater to the land management unit when results of the annual soil analysis indicate a level of greater than 200 parts per million of extractable phosphorus; PENALTY: \$4,290; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(7) COMPANY: Bill Dechert; DOCKET NUMBER: 2007-1084-MLM-E; IDENTIFIER: RN105229645; LOCATION: Junction, Kimble County, Texas; TYPE OF FACILITY: municipal solid waste disposal site; RULE VIOLATED: 30 TAC §111.201 and THSC, §382.085(b), by failing to comply with the general prohibition on outdoor burning; and 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of municipal solid waste (MSW); PENALTY: \$2,000; ENFORCEMENT COORDINATOR: Marlin Bullard, (254) 751-0335; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(8) COMPANY: Delta Bevco, Inc. dba Delta Food 2; DOCKET NUMBER: 2007-1353-PST-E; IDENTIFIER: RN101887891; LOCATION: Bridge City, Orange County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.246(4), (5), and (7)(A) and THSC, §382.085(b), by failing to maintain records on-site; 30 TAC §115.242(1)(C) and THSC, §382.085(b), by failing to upgrade the Stage II vapor recovery system (VRS) to onboard refueling vapor recovery; 30 TAC §115.242(3)(L), by failing to maintain the Stage II VRS in proper operating condition and free of defects; and 30 TAC §115.242(9) and THSC, §382.085(b), by failing to post operating instructions conspicuously on the front of each gasoline dispensing pump; PENALTY: \$2,140; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(9) COMPANY: Edna Derrick; DOCKET NUMBER: 2007-1717-WOC-E; IDENTIFIER: RN105067953; LOCATION: Buna, Jasper 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: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(10) COMPANY: Exxon Mobil Corporation; DOCKET NUMBER: 2007-1004-AIR-E; IDENTIFIER: RN102579307; LOCATION: Baytown, Harris County, Texas; TYPE OF FACILITY: refining and supply company; RULE VIOLATED: 30 TAC §116.715(a), Permit 18287, Special Condition Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$10,000; Supplemental Environmental Project (SEP) offset amount of \$5,000 applied to Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: John Muennink, (361) 825-3100; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(11) COMPANY: Flint Hills Resources, LP; DOCKET NUMBER: 2007-1095-AIR-E; IDENTIFIER: RN100235266; LOCATION: Corpus Christi, Nueces County, Texas; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §116.715(a) and (d), Air Permit Number 8803A, Special Condition Numbers 1 and 10, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$20,000; ENFORCEMENT COORDINATOR: Rebecca Johnson, (713) 767-3500; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(12) COMPANY: City of Forest Hill; DOCKET NUMBER: 2007-1240-PWS-E; IDENTIFIER: RN101391969; LOCATION: Forest Hill, Tarrant County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.42(l), by failing to compile a plant operations manual; 30 TAC §290.45(f)(4) and THSC, §341.0315(c), by failing to provide a production capacity of at least 0.6 gpm per connection; 30 TAC §290.46(j), by failing to have a customer service inspection program for the water system; and 30 TAC §290.121(a), by failing to compile a monitoring plan for the water system; PENALTY: \$950; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(13) COMPANY: Fort Bend County Municipal Utility District 30; DOCKET NUMBER: 2007-1282-MWD-E; IDENTIFIER: RN102546173; LOCATION: Fort Bend County, Texas; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0012068001, Interim Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with the permitted effluent limits; PENALTY: \$6,680; ENFORCEMENT COORDINATOR: Tom

Jecha, (512) 239-2576; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(14) COMPANY: Galileo Mount Houston TX LP dba Mount Houston Utilities; DOCKET NUMBER: 2007-1232-MWD-E; IDENTIFIER: RN102336526; LOCATION: Harris County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 14144001, Permit Conditions Number 2.d., and the Code, §26.121(a), by failing to prevent the discharge and accumulation of sludge in the receiving stream; 30 TAC §305.125(9) and TPDES Permit Number 14144001, Monitoring and Reporting Requirements Number 7.a., by failing to report any noncompliance which may endanger human health or safety or the environment; 30 TAC §305.125(1) and (5) and §317.4(g)(4)(A), and TPDES Permit Number 14144001, Operational Requirements Number 1, by failing to ensure that the facility and all of its systems of treatment and control are properly operated and maintained; and 30 TAC §305.125(1) and (5) and TPDES Permit Number 14144001, Operational Requirements Number 1, by failing to ensure that the facility and all of its systems of treatment and control are properly operated and maintained; PENALTY: \$35,490; ENFORCEMENT COORDINATOR: Lynley Doyen, (512) 239-1364; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(15) COMPANY: City of Garland; DOCKET NUMBER: 2007-0749-IWD-E; IDENTIFIER: RN101607737; LOCATION: Garland, Dallas County, Texas; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 03519, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with its permitted effluent limits; PENALTY: \$6,000; ENFORCEMENT COORDINATOR: Pamela Campbell, (512) 239-4493; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(16) COMPANY: Love's Travel Stops & Country Stores, Inc. dba Love's Country Store 214; DOCKET NUMBER: 2007-1255-AIR-E; IDENTIFIER: RN102879442; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: gasoline dispensing station; RULE VIOLATED: 30 TAC §115.252(2) and THSC, §382.085(b), by allegedly allowing the transfer of gasoline at a motor dispensing site which had a Reid vapor pressure greater than seven maximum pounds per square inch absolute; PENALTY: \$3,660; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(17) COMPANY: Orange County Water Control and Improvement District No. 1; DOCKET NUMBER: 2007-1101-MWD-E; IDENTIFIER: RN102183035; LOCATION: Orange County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ10875003, Effluent Limitations and Monitoring Requirements Numbers 1 and 3, and the Code, §26.121(a), by failing to comply with permitted effluent limitations; PENALTY: \$4,500; Supplemental Environmental Project (SEP) offset amount of \$3,600 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Wastewater Treatment Assistance; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(18) COMPANY: Polk County; DOCKET NUMBER: 2007-0298-MSW-E; IDENTIFIER: RN102668654; LOCATION: Polk County, Texas; TYPE OF FACILITY: MSW type 1 landfill; RULE VIOLATED: 30 TAC §37.111 and §37.271(5), by failing to provide financial assurance for closure, post closure, or corrective action; 30 TAC §330.121(a) and MSW Permit Number 1384A, Section VIII., Paragraph S, by failing to construct internal roads; and 30

TAC §330.151 and MSW Permit Number 1384A, Section VIII., Paragraph M, by failing to conduct vector monitoring and control measures in areas where scrap tires are stored outside; PENALTY: \$7,500; Supplemental Environmental Project (SEP) offset amount of \$6,000 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Wastewater Treatment Assistance; ENFORCEMENT COORDINATOR: Marlin Bullard, (254) 751-0335; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(19) COMPANY: City of Post; DOCKET NUMBER: 2007-0341-MWD-E; IDENTIFIER: RN102910262; LOCATION: Garza County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0013048001, Effluent Limitations and Monitoring Requirements Numbers 1 and 6, and the Code, §26.121(a), by failing to comply with permit effluent limits; and 30 TAC §305.125(1) and TPDES Permit Number WQ0013048001, Sludge Provisions, by failing to submit monitoring results; PENALTY: \$14,450; Supplemental Environmental Project (SEP) offset amount of \$11,560 applied to conducting a waste tire collection and disposal event in the City of Post; ENFORCEMENT COORDINATOR: Heather Brister, (254) 751-0335; REGIONAL OFFICE: 4630 50th Street, Suite 600, Lubbock, Texas 79414-3520, (806) 796-7092.

(20) COMPANY: Kim Moore dba Smith Springs Road Mobile Home Park; DOCKET NUMBER: 2007-1143-PWS-E; IDENTIFIER: RN101265098; LOCATION: Erath County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.41(c)(1)(F), by failing to provide a sanitary control easement or an approved exception to the easement requirements; 30 TAC §290.41(c)(3)(J), by failing to provide a concrete sealing block on the well; 30 TAC §290.41(c)(3)(P), by failing to provide an all-weather access road to the well site; 30 TAC §290.46(f)(3), by failing to properly develop and maintain water works operation records; 30 TAC §290.46(f)(3)(D)(i), by failing to properly develop and maintain water works operation records; 30 TAC §290.43(c), by failing to maintain the facility's storage tank in strict accordance with current American Water Works Association standards; 30 TAC §290.45(b)(1)(F)(iii) and THSC, §341.0315(c), by failing to provide two or more service pumps having a total capacity of two gpm per connection; 30 TAC §290.46(n)(1), by failing to maintain accurate, up-to-date detailed as-built plans or record drawings and specifications for each treatment plant, pump station, and storage tank; 30 TAC §290.46(n)(2), by failing to maintain an up-to-date map of the distribution system; 30 TAC §290.46(n)(3), by failing to maintain a copy of well completion data on file; 30 TAC §290.46(s)(1), by failing to calibrate the well meter once every three years; and 30 TAC §290.51(a)(3) and the Code, §5.702, by failing to pay public health service fees; PENALTY: \$1,375; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (210) 490-3096; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(21) COMPANY: Sunoco Pipeline L.P.; DOCKET NUMBER: 2007-1114-AIR-E; IDENTIFIER: RN100216266; LOCATION: Corsicana, Navarro County, Texas; TYPE OF FACILITY: crude oil storage plant; RULE VIOLATED: 30 TAC §106.4(a)(1) and §106.263 and THSC, §382.085(b), by failing to maintain permitted emission limits; and 30 TAC §§122.143(4), 122.145(2), and 122.146(5)(C), Federal Operating Permit (FOP) Number O-2688, General Terms and Conditions, and THSC, §382.085(b), by failing to include all instances of deviations on a semiannual deviation report; PENALTY: \$6,000; ENFORCEMENT COORDINATOR: Bryan Elliott, (512) 239-6162; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(22) COMPANY: Texas Petrochemicals LP; DOCKET NUMBER: 2007-1510-AIR-E; IDENTIFIER: RN100219526; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §116.115(c), Air Permit Number 46307, Special Condition Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; and 30 TAC §101.201(b)(1)(H) and THSC, §382.085(b), by failing to properly notify the TCEQ of an emissions event; PENALTY: \$10,266; Supplemental Environmental Project (SEP) offset amount of \$4,106 applied to Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: Kimberly Morales, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023- 1486, (713) 767-3500.

(23) COMPANY: United Copper Industries, Inc.; DOCKET NUMBER: 2007-1434-AIR-E; IDENTIFIER: RN100683531; LOCATION: Denton, Denton County, Texas; TYPE OF FACILITY: copper wire cable manufacturing plant; RULE VIOLATED: 30 TAC §122.146(1) and (2) and THSC, § 382.085(b), by failing to timely submit the required annual compliance certification; PENALTY: \$1,625; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(24) COMPANY: Viking Pools, LLC; DOCKET NUMBER: 2007-1130-AIR-E; IDENTIFIER: RN101061844; LOCATION: Midland, Midland County, Texas; TYPE OF FACILITY: swimming pool and spa manufacturing plant; RULE VIOLATED: 30 TAC §116.115(b)(2)(F), New Source Review Permit Number 36078, General Condition Number 8, and THSC, §382.085(b), by failing to comply with the permitted emission limits; and 30 TAC §101.20(2) and §122.143(4), 40 Code of Federal Regulations §63.5910(b)(1), FOP Number O-2438, General Terms and Conditions, and THSC, §382.085(b), by failing to submit the semi-annual compliance report; PENALTY: \$6,750; ENFORCEMENT COORDINATOR: Lindsey Jones, (512) 239-4930; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

(25) COMPANY: City of Willow Park; DOCKET NUMBER: 2007-1366-MWD-E; IDENTIFIER: RN102342128; LOCATION: Parker County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §30.350(j) and TCEQ Permit Number WQ0013759001, Special Provisions Number 2, by failing to ensure that an operator holding the required level of license or higher is available by telephone or pager seven days a week; 30 TAC §305.125(5) and §317.6(b)(1) and TCEQ Permit Number WQ0013759001, Special Provisions Number 3, by failing to properly operate and maintain all facilities and systems of treatment and control; 30 TAC §305.125(9)(A) and TCEQ Permit Number WQ0013759001, Standard Provisions Number 2.a., and the Code, §26.121(a), by failing to notify the TCEQ of an unauthorized discharge; and 30 TAC §305.125(4) and TCEQ Permit Number WQ0013759001, Standard Provisions Number 2.b., by failing to prevent the unauthorized discharge of wastewater from the facility; PENALTY: \$9,200; ENFORCEMENT COORDINATOR: Lynley Doyen, (512) 239-1364; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-200705328
Mary R. Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: November 6, 2007



Enforcement Orders

An agreed order was entered regarding City of Brownsboro, Docket No. 2004-0077-MWD-E on October 31, 2007 assessing \$6,800 in administrative penalties with \$1,360 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Meyer, Enforcement Coordinator, (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Inara Convenience, Inc. dba Rosedale Texaco, Docket No. 2005-0372-PST-E on October 31, 2007 assessing \$2,620 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kathleen Decker, Staff Attorney, (512) 239-6500, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ConocoPhillips Company, Docket No. 2005-0717-UIC-E on October 31, 2007 assessing \$5,375 in administrative penalties with \$1,075 deferred.

Information concerning any aspect of this order may be obtained by contacting Craig Fleming, Enforcement Coordinator, (512) 239-5806, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Donald Burkhardt dba Clearwood Recycling Center, Docket No. 2005-0959-MLM-E on October 31, 2007 assessing \$6,774 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kari Gilbreth, Staff Attorney, (512) 239-1320, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lonestar Prestress Mfg., Inc., Docket No. 2005-2083-AIR-E on October 31, 2007 assessing \$10,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Justin Lannen, Staff Attorney, (817) 588-5927, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Blacksher Development Corporation, Docket No. 2006-0517-MWD-E on October 31, 2007 assessing \$29,577 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Robert Mosley, Staff Attorney, (512) 239-0627, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Motiva Enterprises LLC, Docket No. 2006-0613-AIR-E on October 31, 2007 assessing \$18,944 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kathleen Decker, Staff Attorney, (512) 239-6500, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Qaswa Enterprise, LLC dba Dynasty Cleaners, Docket No. 2006-0914-DCL-E on October 31, 2007 assessing \$1,185 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mary Hammer, Staff Attorney, (512) 239-2496, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Dan Park dba U.S.A. Dry Cleaners, Docket No. 2006-1320-DCL-E on October 31, 2007 assessing \$1,185 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Robert Mosley, Staff Attorney, (512) 239-0627, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ahad Business, Inc. dba My Favorite Cleaners, Docket No. 2006-1337-DCL-E on October 31, 2007 assessing \$1,185 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Benjamin Thompson, Staff Attorney, (512) 239-1297, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Thai Truong dba Love Drycleaners, Docket No. 2006-1352-DCL-E on October 31, 2007 assessing \$1,185 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Alfred Oloko, Staff Attorney, (713) 422-8918, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DAEGU CORP. dba LeBon Cleaners, Docket No. 2006-1554-DCL-E on October 31, 2007 assessing \$1,185 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Alfred Oloko, Staff Attorney, (713) 422-8918, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Trinh Thuy Lam dba Almeda Cleaners, Docket No. 2006-1671-DCL-E on October 31, 2007 assessing \$1,067 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Benjamin Thompson, Staff Attorney, (512) 239-1297, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Diamond Shamrock Refining Company, L.P., Docket No. 2006-1774-AIR-E on October 31, 2007 assessing \$12,852 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Robert Mosley, Staff Attorney, (512) 239-0627, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Stuart Standley dba Total Lawn Care, Docket No. 2006-1801-LII-E on October 31, 2007 assessing \$625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tracy Chandler, Staff Attorney, (512) 239-0629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Uvalde, Docket No. 2006-1842-MWD-E on October 31, 2007 assessing \$21,750 in administrative penalties with \$4,350 deferred.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator, (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Drennan Day Custom Homes Inc., Docket No. 2006-1871-MLM-E on October 31, 2007 assessing \$16,000 in administrative penalties with \$3,200 deferred.

Information concerning any aspect of this order may be obtained by contacting Lynley Doyen, Enforcement Coordinator, (512) 239-1364, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Royse City, Docket No. 2006-1940-PWS-E on October 31, 2007 assessing \$3,360 in administrative penalties with \$672 deferred.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator, (210) 403-4033, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Granbury, Docket No. 2006-2227-PWS-E on October 31, 2007 assessing \$6,960 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator, (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Big Lake, Docket No. 2007-0018-MWD-E on October 31, 2007 assessing \$24,850 in administrative penalties with \$4,970 deferred.

Information concerning any aspect of this order may be obtained by contacting Merrilee Hupp, Enforcement Coordinator, (512) 239-4490, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Clayton Water Supply Corporation, Docket No. 2007-0065-PWS-E on October 31, 2007 assessing \$770 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Richard Croston, Enforcement Coordinator, (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding E.I. du Pont de Nemours and Company, Docket No. 2007-0155-IHW-E on October 31, 2007 assessing \$137,600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Colin Barth, Enforcement Coordinator, (512) 239-0068, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Broadmore Custom Homes LP, Docket No. 2007-0158-WQ-E on October 31, 2007 assessing \$1,900 in administrative penalties with \$380 deferred.

Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator, (210) 490-3096, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Children's Hospital, Docket No. 2007-0189-MLM-E on October 31, 2007 assessing \$2,000 in administrative penalties with \$400 deferred.

Information concerning any aspect of this order may be obtained by contacting Clinton Sims, Enforcement Coordinator, (512) 239-6933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Nico Jaap de Boer, Docket No. 2007-0196-AGR-E on October 31, 2007 assessing \$7,000 in administrative penalties with \$1,400 deferred.

Information concerning any aspect of this order may be obtained by contacting Lynley Doyen, Enforcement Coordinator, (512) 239-1364, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Velta Homes, Inc., Docket No. 2007-0246-WQ-E on October 31, 2007 assessing \$2,000 in administrative penalties with \$400 deferred.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator, (210) 403-4033, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Zavala County, Docket No. 2007-0253-MWD-E on October 31, 2007 assessing \$1,265 in administrative penalties with \$253 deferred.

Information concerning any aspect of this order may be obtained by contacting Merrilee Hupp, Enforcement Coordinator, (512) 239-4490, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Charles Taylor, Docket No. 2007-0255-PST-E on October 31, 2007 assessing \$5,250 in administrative penalties with \$1,050 deferred.

Information concerning any aspect of this order may be obtained by contacting Deana Holland, Enforcement Coordinator, (512) 239-2504, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Edgewood, Docket No. 2007-0258-MWD-E on October 31, 2007 assessing \$1,170 in administrative penalties with \$234 deferred.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator, (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding The JHM & KPM Company, LLC dba D & D Construction Materials Company, Docket No. 2007-0280-MSW-E on October 31, 2007 assessing \$1,020 in administrative penalties with \$204 deferred.

Information concerning any aspect of this order may be obtained by contacting Clinton Sims, Enforcement Coordinator, (512) 239-6933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TXI Operations, LP, Docket No. 2007-0317-IWD-E on October 31, 2007 assessing \$14,445 in administrative penalties with \$2,889 deferred.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator, (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas H2O, Inc., Docket No. 2007-0323-MWD-E on October 31, 2007 assessing \$6,929 in administrative penalties with \$1,385 deferred.

Information concerning any aspect of this order may be obtained by contacting Merrilee Hupp, Enforcement Coordinator, (512) 239-4490, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Angus, Docket No. 2007-0327-MWD-E on October 31, 2007 assessing \$1,590 in administrative penalties with \$318 deferred.

Information concerning any aspect of this order may be obtained by contacting Libby Hogue, Enforcement Coordinator, (512) 239-1165, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Mertens, Docket No. 2007-0331-MWD-E on October 31, 2007 assessing \$5,100 in administrative penalties with \$1,020 deferred.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator, (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Huntsman Petrochemical Corporation, Docket No. 2007-0343-AIR-E on October 31, 2007 assessing \$36,300 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator, (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of De Leon, Docket No. 2007-0359-MWD-E on October 31, 2007 assessing \$9,945 in administrative penalties with \$1,989 deferred.

Information concerning any aspect of this order may be obtained by contacting Craig Fleming, Enforcement Coordinator, (512) 239-5806, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jaime R. Kypuros, Jr., Docket No. 2007-0368-LII-E on October 31, 2007 assessing \$188 in administrative penalties with \$37 deferred.

Information concerning any aspect of this order may be obtained by contacting Tom Greimel, Enforcement Coordinator, (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Wichita Falls, Docket No. 2007-0376-MWD-E on October 31, 2007 assessing \$4,825 in administrative penalties with \$965 deferred.

Information concerning any aspect of this order may be obtained by contacting Catherine Albrecht, Enforcement Coordinator, (713) 767-3672, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Marathon Petroleum Company LLC, Docket No. 2007-0392-AIR-E on October 31, 2007 assessing \$30,696 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Roshondra Lowe, Enforcement Coordinator, (713) 767-3553, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Davis Petroleum Pipeline LLC, Docket No. 2007-0401-AIR-E on October 31, 2007 assessing \$30,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Terry Murphy, Enforcement Coordinator, (512) 239-5025, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Chevron Phillips Chemical Company LP, Docket No. 2007-0404-AIR-E on October 31, 2007 assessing \$7,128 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Nadia Hameed, Enforcement Coordinator, (713) 767-3629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Claybar Construction, LLP, Docket No. 2007-0437-WQ-E on October 31, 2007 assessing \$2,100 in administrative penalties with \$420 deferred.

Information concerning any aspect of this order may be obtained by contacting Suzanne Walrath, Enforcement Coordinator, (512) 239-2134, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Forest Water Supply Corporation, Docket No. 2007-0482-PWS-E on October 31, 2007 assessing \$1,214 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurie Eaves, Enforcement Coordinator, (512) 239-4495, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Petrochemicals LP, Docket No. 2007-0488-AIR-E on October 31, 2007 assessing \$2,500 in administrative penalties with \$500 deferred.

Information concerning any aspect of this order may be obtained by contacting Daniel Siringi, Enforcement Coordinator, (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding AT Holding-Copper Ridge, LLC, Docket No. 2007-0492-EAQ-E on October 31, 2007 assessing \$2,000 in administrative penalties with \$400 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, Enforcement Coordinator, (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Kennard, Docket No. 2007-0510-MWD-E on October 31, 2007 assessing \$4,200 in administrative penalties with \$840 deferred.

Information concerning any aspect of this order may be obtained by contacting Deana Holland, Enforcement Coordinator, (512) 239-2504, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding John Gardner, Docket No. 2007-0511-SLG-E on October 31, 2007 assessing \$3,060 in administrative penalties with \$612 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator, (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Department of Criminal Justice, Docket No. 2007-0514-MWD-E on October 31, 2007 assessing \$2,970 in administrative penalties with \$594 deferred.

Information concerning any aspect of this order may be obtained by contacting Merrilee Hupp, Enforcement Coordinator, (512) 239-4490, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Newcastle, Docket No. 2007-0517-PWS-E on October 31, 2007 assessing \$495 in administrative penalties with \$99 deferred.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator, (210) 403-4033, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Southwestern Public Service Company, Docket No. 2007-0521-AIR-E on October 31, 2007 assessing \$750 in administrative penalties with \$150 deferred.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator, (512) 239-1044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Marmac LLC dba McDonough Marine Service, Docket No. 2007-0540-IWD-E on October 31, 2007 assessing \$1,600 in administrative penalties with \$320 deferred.

Information concerning any aspect of this order may be obtained by contacting Libby Hogue, Enforcement Coordinator, (512) 239-1165, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jack Edwin Vanden Berge dba Vanden Berge Dairy Farms, Docket No. 2007-0545-AGR-E on October 31, 2007 assessing \$3,420 in administrative penalties with \$684 deferred.

Information concerning any aspect of this order may be obtained by contacting Tom Jecha, Enforcement Coordinator, (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Highway 46, LTD., Docket No. 2007-0546-EAQ-E on October 31, 2007 assessing \$1,000 in administrative penalties with \$200 deferred.

Information concerning any aspect of this order may be obtained by contacting Tom Jecha, Enforcement Coordinator, (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding J.B. Grand Canyon Dairy, L.P., Docket No. 2007-0588-AGR-E on October 31, 2007 assessing \$2,280 in administrative penalties with \$456 deferred.

Information concerning any aspect of this order may be obtained by contacting Lynley Doyen, Enforcement Coordinator, (512) 239-1364, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Chemicals Incorporated, Docket No. 2007-0590-IWD-E on October 31, 2007 assessing \$2,780 in administrative penalties with \$556 deferred.

Information concerning any aspect of this order may be obtained by contacting Craig Fleming, Enforcement Coordinator, (512) 239-5806, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Joe Sotelo, Docket No. 2007-0593-LII-E on October 31, 2007 assessing \$475 in administrative penalties with \$95 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Barnett, Enforcement Coordinator, (512) 239-6686, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Valero Refining-Texas, L.P., Docket No. 2007-0604-AIR-E on October 31, 2007 assessing \$46,150 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Nadia Hameed, Enforcement Coordinator, (713) 767-3629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding James E. Post, Docket No. 2007-0611-LII-E on October 31, 2007 assessing \$250 in administrative penalties with \$50 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrea Linson-Mgbeoduru, Enforcement Coordinator, (512) 239-1482, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Cleveland, Docket No. 2007-0645-MWD-E on October 31, 2007 assessing \$1,287 in administrative penalties with \$257 deferred.

Information concerning any aspect of this order may be obtained by contacting Lynley Doyen, Enforcement Coordinator, (512) 239-1364, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Lefors, Docket No. 2007-0659-MWD-E on October 31, 2007 assessing \$2,280 in administrative penalties with \$456 deferred.

Information concerning any aspect of this order may be obtained by contacting Tom Jecha, Enforcement Coordinator, (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Rio Brazos Water Supply Corporation, Docket No. 2007-0663-PWS-E on October 31, 2007 assessing \$154 in administrative penalties with \$30 deferred.

Information concerning any aspect of this order may be obtained by contacting James Nolan, Enforcement Coordinator, (512) 239-6634, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Fossil Rim Wildlife Center, Inc., Docket No. 2007-0697-PWS-E on October 31, 2007 assessing \$315 in administrative penalties with \$63 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrea Linson-Mgbeoduru, Enforcement Coordinator, (512) 239-1482, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Channel Shipyard Company, Inc., Docket No. 2007-0701-AIR-E on October 31, 2007 assessing \$10,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator, (512) 239-1044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Reagent Chemical & Research, Inc., Docket No. 2007-0705-IWD-E on October 31, 2007 assessing \$2,940 in administrative penalties with \$588 deferred.

Information concerning any aspect of this order may be obtained by contacting Merrilee Hupp, Enforcement Coordinator, (512) 239-4490, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ten Hi Gin, Inc., Docket No. 2006-2191-AIR-E on October 31, 2007 assessing \$2,500 in administrative penalties with \$500 deferred.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator, (512) 239-1044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Quick & Convenience Pro-Victoria 1 LLC dba Midway Truck Stop, Docket No. 2007-1110-PST-E on October 31, 2007 assessing \$875 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator, (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Priten Patel dba Easy Stop, Docket No. 2007-1109-PST-E on October 31, 2007 assessing \$875 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator, (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Scientific Drilling International, Inc. dba Scientific Drilling International Permian Basin, Docket No. 2007-0856-WQ-E on October 31, 2007 assessing \$875 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator, (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An order was entered regarding Boraas Properties, Inc., Docket No. 2005-1336-MWD-E on October 31, 2007 assessing \$11,385 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Catherine Albrecht, Enforcement Coordinator, (713) 767-3672, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200705410

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: November 7, 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 17, 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 17, 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: Adam J. Wood dba Hoover Valley Country Store; DOCKET NUMBER: 2005-1188-PST-E; TCEQ ID NUMBER: RN101383073; LOCATION: 7203 Park Road 4 West, Burnet, Burnet County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(a)(1)(A) and Texas Water Code (TWC), §26.3475(a) and (c)(1), by failing to provide a method of release detection capable of detecting a release from any portion of the underground storage tank (UST) system which contained regulated substances including the tanks, piping, and other underground ancillary equipment; 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances used as a motor fuel; 30 TAC §334.7(d)(3), by failing to notify the commission within 30 days from the date of the occurrence of any change or addition to the UST system; 30 TAC §334.8(c)(4)(A)(vi) and (c)(4)(B), by failing to submit to the agency a completed UST registration and self-certification form in a timely manner; and 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs at the facility; PENALTY: \$12,330; STAFF ATTORNEY: Ben Thompson, Litigation Division, MC 175, (512) 239-1297; REGIONAL OFFICE: Austin Regional Office, 2800 South Interstate Highway 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(2) COMPANY: Cleaning Stop LLC dba Crystal Cleaners; DOCKET NUMBER: 2006-1400-DCL-E; TCEQ ID NUMBER: RN103988812; LOCATION: 108 Ovilla Road, Suite 5, Red Oak, Ellis County, Texas; TYPE OF FACILITY: dry cleaning facility; RULES VIOLATED: 30 TAC §337.11(e) and Texas Health and Safety Code (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; and 30 TAC §337.14(c) and TWC, §5.702, by failing to pay dry cleaner registration fees for TCEQ Financial Administration Account Number 24003943 and associated late fees for Fiscal Year 2006; PENALTY: \$270; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Francisco Terrazas dba San Jose Custom Shutters; DOCKET NUMBER: 2007-0579-AIR-E; TCEQ ID NUMBER: RN100816693; LOCATION: 3780 North Zaragosa Road, El Paso, El Paso County, Texas; TYPE OF FACILITY: spray paint booth; RULES VIOLATED: 30 TAC §116.110 and THSC, §382.0518(a) and §382.085(b), by failing to obtain a permit or meet the conditions of a permit by rule; PENALTY: \$2,200; STAFF ATTORNEY: Anna Cox, Litigation Division, MC 175, (512) 239-0974; REGIONAL OFFICE: El Paso Regional Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(4) COMPANY: Shoukat Hussain dba Speede Mart; DOCKET NUMBER: 2007-0571-PST-E; TCEQ ID NUMBER: RN102372810; LOCATION: 1801 Ella Boulevard, Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.246(1), (3), and (6) and THSC, §382.085(b), by failing to maintain Stage II records on-site and make them immediately available for inspection by commission personnel; 30 TAC §115.244(3) and THSC, §382.085(b), by failing to conduct monthly inspections of the Stage II vapor recovery system; and 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months or upon major system replacement whichever occurs first; PENALTY: \$5,040; 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.

TRD-200705330

Mary R. Risner

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: November 6, 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 17, 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 17, 2007**. Comments may also be sent by facsimile machine to the attorney

ney 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: 125 Max Drycleaning Center, LLC dba 1.25 Max Dryclean; DOCKET NUMBER: 2006-1497-DCL-E; TCEQ ID NUMBER: RN103992012; LOCATION: 12921 Farm-to-Market (FM) Road 1960 West, Houston, Harris County, Texas; TYPE OF FACILITY: dry cleaning facility; RULES VIOLATED: 30 TAC §337.11(e) and Texas Health and Safety Code (THSC), §374.102, by failing to renew the facility's registration by completing and submitting the required registration to the TCEQ for a dry cleaning and/or drop station facility; PENALTY: \$1,185; 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.

(2) COMPANY: City of Lott; DOCKET NUMBER: 2005-0838-MWD-E; TCEQ ID NUMBER: RN103119046; LOCATION: Avenue G between Bone Branch and The Southern Pacific Railroad, Lott, Falls County, Texas; TYPE OF FACILITY: domestic wastewater treatment system; RULES VIOLATED: 30 TAC §305.125(17) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010017001, Reporting and Monitoring Requirements Numbers 1 and 3, by failing to provide monitoring results at the intervals specified in the permit; and 30 TAC §305.125(1), Texas Water Code (TWC), §26.121(a), and TPDES Permit Number WQ0010017001, Effluent Limitations and Monitoring Requirements Numbers 1 and 3, by failing to comply with permitted effluent limits during January - March, May, August, and December 2004; PENALTY: \$10,350; STAFF ATTORNEY: Shawn Slack, Litigation Division, MC 175, (512) 239-0063; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(3) COMPANY: City of Nacogdoches; DOCKET NUMBER: 2004-0157-MWD-E; TCEQ ID NUMBER: RN101611283; LOCATION: on the east side of Bayou La Nana between FM Road 1275 and FM Road 2863, Nacogdoches, Nacogdoches County, Texas; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: 30 TAC §305.125(1) and TPDES Permit Number 10342-004, Effluent Limitations and Monitoring Requirements, by failing to comply with permitted effluents for ammonia nitrogen, chlorine residual, dissolved oxygen and total suspended solids; PENALTY: \$15,975; Supplemental Environmental Project (SEP) offset amount of \$15,975 applied to the City of Nacogdoches; STAFF ATTORNEY: Ben Thompson, Litigation Division, MC 175, (512) 239-1297; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(4) COMPANY: CSA Limited, Inc.; DOCKET NUMBER: 2006-0018-IHW-E; TCEQ ID NUMBER: RN102095882; LOCATION: 16212 State Highway 249, Houston, Harris County, Texas; TYPE OF FACILITY: aerosol packaging plant; RULES VIOLATED: 30 TAC §335.6(c), by failing to update the Notice of Registration; 30 TAC §335.69(a)(1)(B) and 40 Code of Federal Regulations (CFR) §265.192 and §265.193, by failing to obtain a structural integrity tank system assessment by a registered professional engineer and to meet secondary containment requirements for tanks used to store hazardous waste; 30 TAC §335.8, by failing to perform proper closure procedures for units containing industrial solid waste; 30 TAC §335.62 and 40 CFR §262.11, by failing to conduct adequate waste determinations on waste generated at the facility; 30 TAC §335.69(a)(4) and 40 CFR §265.52, by failing to have a plan describing the emergency response arrangements agreed to by local police departments, fire departments, hospitals, contractors, and state and local emergency response teams;

and 30 TAC §335.2(a), by failing to obtain authorization to store hazardous waste at the facility; PENALTY: \$65,392; SEP offset amount of \$32,696 applied to Keep Texas Beautiful - Stop Trashing Texas Program; STAFF ATTORNEY: Kathleen Decker, Litigation Division, MC 175, (512) 239-6500; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(5) COMPANY: Eastman Chemical Company; DOCKET NUMBER: 2005-0168-AIR-E; TCEQ ID NUMBER: RN100219815; LOCATION: 300 Kodak Boulevard, Longview, Harrison County, Texas; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §101.201(a)(1)(A) and §101.201(a)(1)(B) and THSC, §382.085(b), by failing to submit an initial notification within 24 hours of the discovery of an emission event; 30 TAC §101.201(c) and THSC, §382.085(b), by failing to submit, within two weeks after the end of the emissions event, a final record of an emissions event; 30 TAC §116.115(a)(1)(A), Permit Number 19959, Special Condition 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; 30 TAC §116.115(b)(2) and §122.143(4), Air Permit 1105, Federal Operating Permit (FOP) O-01436, and THSC, §382.085(b), by failing to prevent an unauthorized emission event on March 29, 2005; 30 TAC §116.115(c) and §122.143(4), Air Permit 1329, Special Condition 1, FOP O-01974, and THSC, §382.085(b), by failing to prevent an unauthorized emission event on July 21, 2005; and 30 TAC §101.201(a)(1)(B) and §122.143(4), FOP O-01974, and THSC, §382.085(b), by failing to meet the minimum reporting requirements for an emission event which began on July 21, 2005; PENALTY: \$16,338; STAFF ATTORNEY: James Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(6) COMPANY: Herminia Witherspoon dba Nick's Conoco; DOCKET NUMBER: 2005-0285-PST-E; TCEQ ID NUMBER: RN101725059; LOCATION: 5010 Rittiman Road, San Antonio, Bear County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to provide acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases from the operation of petroleum underground storage tanks (USTs); PENALTY: \$2,850; STAFF ATTORNEY: Robert Mosley, Litigation Division, MC 175, (512) 239-0627; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(7) COMPANY: Jin Park dba Lah Cleaners; DOCKET NUMBER: 2006-1193-DCL-E; TCEQ ID NUMBER: RN104995121; LOCATION: 2641 Winrock, Houston, Harris 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; 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.

(8) COMPANY: Jogesh Amin dba Sema Texaco; DOCKET NUMBER: 2005-1522-PST-E; TCEQ ID NUMBER: RN101434314; LOCATION: 8580 North MacArthur Boulevard, Irving, Dallas 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 maintain Stage II records on-site during business hours; 30 TAC §334.72(3), by failing to report to the agency within 24 hours, the results from a petroleum storage tank release detection method conducted on June 18, 2005, that indicated a release had occurred; 30 TAC §334.74, by failing to immediately investigate and

confirm a suspected release of regulated substance requiring reporting under 30 TAC §334.72 within 30 days, using either the steps outlined in 30 TAC §334.74 or other procedures and schedules approved by the TCEQ; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.48(c), by failing to conduct inventory control for all USTs involved in the retail sale of petroleum substances used as motor fuel; PENALTY: \$9,350; STAFF ATTORNEY: Shawn Slack, Litigation Division, MC 175, (512) 239-0063; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: KC Materials, Inc.; DOCKET NUMBER: 2004-1073-WQ-E; TCEQ ID NUMBER: RN104373931; LOCATION: 24711 North Cranes Mill Road, Canyon Lake, Comal County, Texas; TYPE OF FACILITY: surface mining operation; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 CFR §122.26(c), by failing to obtain authorization to discharge storm water associated with industrial activity to the waters in the state through an individual permit, the Multi-Sector General Permit (MSGP) TXR050000 issued under the TPDES, or by qualifying for the Conditional No Exposure Certification for Exclusion under 40 CFR §122.26(g); PENALTY: \$6,000; STAFF ATTORNEY: Justin Lannen, Litigation Division, MC R-4, (817) 588-5927; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(10) COMPANY: Matbon, Inc.; DOCKET NUMBER: 2005-0106-MLM-E; TCEQ ID NUMBER: RN104318845; LOCATION: 2395 South FM Road 1665, Chico, Wise County, Texas; TYPE OF FACILITY: sand pit; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 CFR §122.26(a), by failing to obtain authorization to discharge storm water associated with industrial activity to the water in the state through an individual permit or the MSGP Number TXR050000 issued under the TPDES; and 30 TAC §297.11 and TWC, §11.081, by failing to obtain a water right prior to impounding and using state water; PENALTY: \$13,860; STAFF ATTORNEY: Xavier Guerra, Litigation Division, MC R-13, (210) 403-4016; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: Puthy Chea dba Alpine Cleaners; DOCKET NUMBER: 2006-1053-DCL-E; TCEQ ID NUMBER: RN104962055; LOCATION: 7615 Campbell Road, Suite 102, Dallas, Dallas County, Texas; TYPE OF FACILITY: dry cleaning drop station 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: \$889; STAFF ATTORNEY: Barham A. Richard, Litigation Division, MC 175, (512) 239-0107; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(12) COMPANY: R & R Mobile Home Management, Inc. dba Blessing Mobile Home Park; DOCKET NUMBER: 2006-1036-PWS-E; TCEQ ID NUMBER: RN102690302; LOCATION: 1102 Martin Avenue, Round Rock, Williamson County, Texas; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and §290.122(c), by failing to collect and submit routine monthly water samples for bacteriological analysis for the months of October - December 2005 and April 2006 and by failing to provide public notification of the failure to conduct monthly bacterial sampling for the months of October 2005 and April 2006; and TCEQ Agreed Order, Docket Number 2001-1096-PWS-E, by failing to pay an outstanding administrative penalty as required by a commission order; PENALTY:

\$1,595; STAFF ATTORNEY: Dinniah Chahin, Litigation Division, MC 175, (512) 239-0617; REGIONAL OFFICE: Austin Regional Office, 2800 South Interstate Highway 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(13) COMPANY: Roel Stoker dba Ned Tex Dairy; DOCKET NUMBER: 2007-0513-AGR-E; TCEQ ID NUMBER: RN101527570; LOCATION: County Road (CR) 913, one quarter of a mile south of the intersection of CR 913 and Highway 67, Erath County, Texas; TYPE OF FACILITY: concentrated animal feeding operation; RULES VIOLATED: 30 TAC §321.42(s), by failing to develop and operate under a Comprehensive Nutrient Management Plan certified by the Texas State Soil and Water Conservation Board; PENALTY: \$1,860; STAFF ATTORNEY: Mary Hammer, Litigation Division, MC 175, (512) 239-2496; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(14) COMPANY: Sam W. McWhorter; DOCKET NUMBER: 2007-0266-PST-E; TCEQ ID NUMBER: RN101655462; LOCATION: 1908 West Broadway, Van Horn, Culberson County, Texas; TYPE OF FACILITY: former convenience store with retail sales of gasoline; 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, three USTs for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; PENALTY: \$7,875; STAFF ATTORNEY: Anna Cox, Litigation Division, MC 175, (512) 239-0974; REGIONAL OFFICE: El Paso Regional Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(15) COMPANY: Taufiq H. Ahmed dba Comet Cleaners; DOCKET NUMBER: 2006-0938-DCL-E; TCEQ ID NUMBER: RN104963939; LOCATION: 3204 Camp Bowie Boulevard, Suite C, Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: dry cleaning drop station facility; RULES VIOLATED: 30 TAC §337.10(a) and THSC, §374.102(a), by failing to complete and submit the required registration form to TCEQ for a dry cleaning/drop station facility; PENALTY: \$889; STAFF ATTORNEY: Becky Combs, Litigation Division, MC 175, (512) 239-6939; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(16) COMPANY: Vashu Samtani dba Countryside; DOCKET NUMBER: 2005-1523-PST-E; TCEQ ID NUMBER: RN101434579; LOCATION: 13174 State Highway 198, Mabank, Van Zandt County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(2)(A)(i)(III) and TWC, §26.3475(a), by failing to perform an annual performance test on the existing line leak detectors; 30 TAC §334.50(b)(2)(A)(ii) and TWC, §26.3475(a), by failing to test the piping once per year by means of a piping tightness test or monitor the piping for releases at least once every month (not to exceed 35 days between each monitoring); 30 TAC §334.50(d)(1)(B)(ii), by failing to reconcile inventory control records monthly in a manner sufficiently accurate to detect a release which equals or exceeds the sum of one percent of flow-through plus 130 gallons; 30 TAC §334.48(c), by failing to conduct proper inventory control procedures; and 30 TAC §334.45(c)(3)(A), by failing to ensure that each UL-listed emergency shutoff valve is securely anchored to the base of each dispenser; PENALTY: \$7,650; 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.

TRD-200705329

Mary R. Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: November 6, 2007



Notice of Water Quality Applications

The following notices were issued during the period of October 16, 2007 through November 2, 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 to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. WQ0014032001, which 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 2,000 feet west of Telge Road and approximately 8,850 feet south of the intersection of Telge Road and Grant Road in Harris County, Texas.

ARANSAS COUNTY MUNICIPAL UTILITY DISTRICT NO. 1 has applied for a major amendment to TCEQ Permit No. WQ0011624001 to authorize a discharge of treated domestic wastewater to a receiving body of water and an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 88,000 gallons per day via irrigation to a daily average flow not to exceed 263,000 gallons per day via discharge to a receiving body of water. The proposed amendment requests to construct a new wastewater treatment facility beside and towards the northeast of the existing facility, which changes the buffer zone from what was originally proposed and noticed. The current permit authorizes the disposal of treated domestic wastewater via irrigation of 44.4 acres of public access land. The facility is located approximately 1,100 feet south of 8th Street and approximately 500 feet west of Park Road 13 (Palmetto Drive) in the Lamar Peninsula in Aransas County, Texas. The TCEQ Executive Director has reviewed this action for consistency with the Texas Coastal Management Program goals and policies in accordance with the regulations of the Coastal Coordination Council and has determined that the action is consistent with the applicable CMP goals and policies.

BHAKTI VISHRAM KUTEER LLC has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014818001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 49,000 gallons per day. The facility will be located approximately 1,320 feet southeast from the intersection of Farm-to-Market Road 2759 and Farm-to-Market Road 762, in the City of Rosenberg in Fort Bend County, Texas.

BILMA PUBLIC UTILITY DISTRICT has applied for a renewal of TPDES Permit No. WQ0012025002 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 750,000 gallons per day. The facility is located at 5500 Winding Ridge, approximately 8,000 feet northeast of the intersection of Louetta Road and Stuebner-Airline Road, and 11,000 feet southeast of the intersection of Spring Cypress Road and Stuebner-Airline Road in the City of Houston in Harris County, Texas.

CONOCOPHILLIPS PIPE LINE COMPANY which operates the Pasadena Products Terminal, has applied for a renewal of TPDES Permit No. WQ0002125000, which authorizes the discharge of storm

water and hydrostatic test water on an intermittent and flow variable basis via Outfalls 001, 002, 003, and 004. The facility is located at 100 Jefferson Street, approximately 0.5 miles north of the intersection of State Highway 225 and Jefferson Street, in the City of Pasadena, Harris County, Texas.

CITY OF EDGEWOOD has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014648002, to authorize the discharge of filter backwash effluent from a water treatment plant at a daily average flow not to exceed 72,000 gallons per day. The facility is located on the west side of County Road 3507, approximately 1,600 feet northeast of the intersection of County Road 3507 and County Road 3504 in Edgewood in Van Zandt County, Texas.

FAIRVIEW GARDENS DEVELOPMENTS, LLC has applied for a renewal of TPDES Permit No. WQ0013578001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 8,000 gallons per day. The facility is located at 11800 Charles Street; approximately 1.0 mile west-northwest of the intersection of U.S. Highway 290 and Farm-to-Market Road 529 in Harris County, Texas.

GSE LINING TECHNOLOGY, INC which operates GSE Lining Technology, Inc. has applied for a renewal of TPDES Permit No. WQ0003402000, which authorizes the discharge of treated domestic wastewater, reverse osmosis wastewater and process wastewater at a daily average flow not to exceed 16,000 gallons per day. The facility is located on the south side of Richey Road and approximately one mile east of the intersection of Richey Road and the Hardy Toll Road in the City of Houston, Harris County, Texas.

CITY OF GUNTER has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0010569002, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 950,000 gallons per day. The facility will be located approximately 1,800 feet east of the intersection of J C Maples Road and Farm-to-Market Road 121 in Grayson County, Texas.

HARRIS COUNTY FRESH WATER SUPPLY DISTRICT NO. 52 has applied for a renewal of TPDES Permit No. WQ0010528001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 700,000 gallons per day. The facility is located approximately 2 and 3/4 miles northeast of the intersection of Farm-to-Market Road 1960 and Farm-to-Market Road 149, at the north end of Paradise Valley Drive bounded on the north and west by Cypress Creek in Harris County, Texas.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 278 has applied for a renewal of TPDES Permit No. WQ0013037001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 400,000 gallons per day. The facility is located on the east bank of Williams Gully approximately 400 feet north of Will Clayton Parkway at 4621 Will Clayton Parkway in Humble in Harris County, Texas.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 401 has applied for a renewal of TPDES Permit No. WQ0014421001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 600,000 gallons per day. The facility is located approximately 4,000 feet west and 1,500 feet north of the intersection of Farm-to-Market Road 2920 and Boudreaux Road in Harris County, Texas.

HARRIS COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 113 has applied for a renewal of TPDES Permit No. WQ0010962001, which authorizes the discharge of treated domestic

wastewater at a daily average flow not to exceed 300,000 gallons per day. The facility is located approximately 2 miles northeast of the intersection of U.S. Highway 290 and Telge Road and 1/2 mile east of the Telge Road in Harris County, Texas.

CITY OF HOUSTON has applied to the TCEQ for a renewal of TPDES Permit No. WQ0010495003, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 28,000,000 gallons per day. The current permit authorizes the land application of class A sewage sludge for beneficial use and marketing and distribution of sludge. The facility is located approximately 2,000 feet east of State Highway 288 at 12319 and 1/2 Almeda Road in the southwest quadrant of the City of Houston in Harris County, Texas.

KLEINWOOD JOINT POWERS BOARD has applied for a renewal of TPDES Permit No. WQ0011409001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 5,000,000 gallons per day. The facility is located at 15903 Squyres, approximately 5,000 feet upstream from the crossing of Stuebner-Airline Road and Cypress Creek on the north bank of Cypress Creek in Harris County, Texas.

KOBRA MIRHAJ has applied for a renewal of TPDES Permit No. WQ0013955001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 25,000 gallons per day. The facility is located at 6341 East Mount Houston Road, approximately 600 feet north of East Mount Houston Road and approximately 1.3 miles west of the intersection of Farm-to-Market Road 527 and East Mount Houston Road in Harris County, Texas.

LAKE OAKS LANDING, INC has applied for a renewal of TPDES Permit No. WQ0013039001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 25,000 gallons per day. The facility is located approximately 4 miles south and 1,600 feet east of the intersection of State Highway 156 and U.S. Highway 190, on Lake Livingston in San Jacinto County, Texas.

LAURA REDOW KARBALAI has applied for a renewal of TPDES Permit No. WQ0012692001 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 at 9110 Mount Houston Road immediately southeast of the intersection of East Mount Houston Road and East Houston Road in Harris County, Texas.

METAL BUILDING COMPONENTS, L.P. 14031 West Hardy Road, Houston, Texas 77060, has applied to the TCEQ for a renewal of TPDES Permit No. WQ0014307001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 20,000 gallons per day. The facility is located at 14031 West Hardy Road, approximately one mile south of the intersection of West Hardy Road and Aldine Bender Road (State Highway 525) in Harris County, Texas.

TXU GENERATION COMPANY LP which operates the Comanche Peak Nuclear Power Plant, an electric generating station, has applied for a renewal of TPDES Permit No. WQ0001854000, which authorizes the discharge of once-through cooling and auxiliary cooling water and previously monitored effluents at a daily average flow not to exceed 3,168,000,000 gallons per day via Outfall 001; Safe Shutdown Impoundment containing cooling water, low volume wastes (service water), and storm water runoff on an intermittent and flow variable basis via Outfall 002; treated sanitary sewage effluent on flow variable basis via Outfall 003; low volume wastewater and previously monitored effluents on an intermittent and flow variable basis via Outfall 004; and discharge waters contained in Squaw Creek Reservoir on an intermittent and flow variable basis via Outfall 005. The facility is located at 6322 North Farm-to-Market Road 56, on the west side of Squaw Creek Reservoir along State Highway 56, approximately four

and one half (4.5) miles northwest of the City of Glen Rose, Somervell County, Texas.

LUMINANT GENERATION COMPANY which operates the Valley Steam Electric Station, a natural gas-fired electric generation facility, has applied for a major amendment to TPDES Permit No. WQ0000948000 to authorize the relocation of Units #1 and #3 boiler blowdown discharges from external Outfall 002 to internal Outfall 201. The current permit authorizes the discharge of once-through cooling water, auxiliary cooling water and previously monitored effluent (PME) at a daily average flow not to exceed 896,000,000 gallons per day via Outfall 001; low volume wastewater and/or metal cleaning waste, and storm water from yard drains on an intermittent and flow variable basis via Outfall 201; and low volume wastewater and storm water (from yard drains and diked oil storage areas) on an intermittent and flow variable basis via Outfall 002. The facility is located a 1040 County Road 1225, adjacent to Valley Lake (Brushy Creek Reservoir), and approximately two miles north of the City of Savoy, Fannin and Grayson Counties, Texas.

WEATHERFORD FARMS, INC. which operates a greenhouse operation, has applied for a renewal of TPDES Permit No. WQ0003060000, which authorizes the discharge of greenhouse wastewater and storm water at a daily average dryweather flow not to exceed 36,000 gallons per day via Outfall 001. The facility is located on the east side of Murphy Road and approximately 1.4 miles south of the Southwest Freeway (U.S. Highway 59), in the City of Stafford, Fort Bend County, Texas.

THE WOODLANDS LAND DEVELOPMENT COMPANY, L.P. has applied to the TCEQ for a renewal of TPDES Permit No. WQ0014347001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 3,000,000 gallons per day. The facility is located at 25810 1/2 Gosling Road near the City of Spring 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-200705409

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: November 7, 2007

Texas Facilities Commission

Request for Proposals #303-8-10402

The Texas Facilities Commission (TFC), on behalf of the Texas Department of Criminal Justice announces the issuance of Request for Proposals (RFP) #303-8-10402. TFC seeks a 5 year lease of approximately 3,799 square feet of office space in the Orange area, Orange County, Texas.

The deadline for questions is November 23, 2007 and the deadline for proposals is November 30, 2007 at 3:00 p.m. The award date is December 14, 2007. 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/1380/bid_show.cfm?bidid=73738.

TRD-200705324
Kay Molina
General Counsel
Texas Facilities Commission
Filed: November 5, 2007



Request for Proposals #303-8-10491

The Texas Facilities Commission (TFC), on behalf of the Office of the Attorney General (OAG), announces the issuance of Request for Proposals (RFP) #303-8-10491. TFC seeks a 5 or 10 year lease of approximately 11,233 square feet of office space in Austin, Travis 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 1, 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=73604.

TRD-200705272
Kay Molina
General Counsel
Texas Facilities Commission
Filed: November 1, 2007



Request for Proposals #303-8-10589

The Texas Facilities Commission (TFC), on behalf of the Texas Department of Criminal Justice announces the issuance of Request for Proposals (RFP) #303-8-10589. TFC seeks a 5 year lease of approximately 7,871 square feet of office space in the Pasadena area, Harris County, Texas.

The deadline for questions is November 23, 2007 and the deadline for proposals is December 14, 2007 at 3:00 p.m. The award date is January 11, 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/1380/bid_show.cfm?bidid=73740.

TRD-200705332
Kay Molina
General Counsel
Texas Facilities Commission
Filed: November 6, 2007



Request for Proposals #303-8-10617

The Texas Facilities Commission (TFC), on behalf of the Texas Veterans Commission, announces the issuance of Request for Proposals (RFP) #303-8-10617. TFC seeks a 5 year lease of approximately 2,312 square feet of office space in Killeen, Bell County, Texas.

The deadline for questions is November 21, 2007 and the deadline for proposals is November 28, 2007 at 3:00 p.m. The award date is January 1, 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=73739.

TRD-200705333
Kay Molina
General Counsel
Texas Facilities Commission
Filed: November 6, 2007



Department of State Health Services

Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Crowley	AZZ Incorporated DBA Aztec Manufacturing Partnership LTD	L06080	Crowley	00	10/12/07
Dallas	PAJ Inc DBA Prime Art & Jewelry	L06115	Dallas	00	10/31/07
Irving	Heng Ngai Jewelry Inc DBA HNJ Inc	L06108	Irving	00	10/12/07
Kingwood	North Houston Hart and Vascular Associates PA DBA Houston Heart and Vascular Associates	L06121	Kingwood	00	10/11/07
San Antonio	Northeast Baptist Surgery Center	L06119	San Antonio	00	10/19/07
Throughout Tx	Express Energy Services	L06111	Houston	00	10/16/07
Throughout Tx	Innovative Technical Solutions Inc	L06064	San Antonio	00	10/15/07

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Allen	Presbyterian Hospital of Allen	L05765	Allen	08	10/24/07
Alvin	Solutia Inc	L00219	Alvin	78	10/22/07
Arlington	GE Healthcare	L05693	Arlington	05	10/12/07
Austin	Kleinfelder	L01351	Austin	55	10/23/07
Austin	Austin Radiological Association	L00545	Austin	133	10/26/07
Austin	ARA Imaging	L05862	Austin	23	10/26/07
Austin	St Davids Healthcare Partnership LP LLP	L04910	Austin	76	10/23/07
Austin	Daughters of Charity Health Services of Austin DBA Dell Childrens Medical Center of Central Texas	L06065	Austin	04	10/23/07
Austin	Austin Radiological Association	L00545	Austin	132	10/11/07
Austin	Heart Hospital IV LP DBA Heart Hospital of Austin	L05215	Austin	25	10/18/07
Austin	Eric Tiblier PA	L05951	Austin	01	10/18/07
Austin	Austin Texas Radiation Oncology Group PA DBA Austin Cancer Centers	L01761	Austin	55	10/22/07
Bay City	Equistar Chemicals LP Matagorda Plant	L03938	Bay City	22	10/23/07
Baytown	Jacinto Medical Corporation DBA Jacinto MRI and Diagnostic Center	L04808	Baytown	16	10/25/07
Beaumont	Christus Health Southeast Texas DBA Christus Hospital - St Elizabeth	L00269	Beaumont	106	10/30/07
Beaumont	ExxonMobil Oil Corporation	L00603	Beaumont	81	10/31/07
Beaumont	Baptist Hospital of Southeast Texas	L00358	Beaumont	109	10/11/07
Bedford	Cor Specialty Associates of North Texas	L05062	Bedford	24	10/23/07
Bellaire	Texas Nuclear Imaging Inc DBA Excel Diagnostics Imaging Clinic Medical Ctr	L05009	Bellaire	32	10/17/07
Carrollton	Medical Edge Healthcare Group PA DBA Heart First	L05555	Carrollton	16	10/31/07
Carrollton	Metrocrest Hospital Authority DBA Trinity Medical Center	L03765	Carrollton	55	10/26/07
Cedar Creek	Biocrest Manufacturing LP	L05214	Cedar Creek	06	10/25/07
Cedar Park	Veterinary Diagnostic Imaging of Texas PA	L05917	Cedar Park	02	10/23/07
College Station	O I Analytical	L04238	College Station	14	10/17/07
College Station	Texas A & M University Environmental Health & Safety	L00448	College Station	128	10/22/07

AMENDMENTS TO EXISTING LICENSES ISSUED CONTINUED:

Location	Name	License #	City	Amendment #	Date of Action
Conroe	Sadler Clinic/Montgomery County Management Co	L04899	Conroe	24	10/24/07
Corpus Christi	Citgo Refining and Chemicals Company LP	L00243	Corpus Christi	39	10/26/07
Corpus Christi	Flint Hills Resources LP	L00322	Corpus Christi	42	10/12/07
Corpus Christi	Spohn Hospital	L02495	Corpus Christi	92	10/24/07
Corpus Christi	Radiology & Imaging of South Texas LLP	L05182	Corpus Christi	20	10/26/07
Dallas	Texas Heart Center PA	L06067	Dallas	01	10/29/07
Dallas	North Texas Cardiovascular Associates PA	L05602	Dallas	07	10/26/07
Dallas	Medical City Dallas Hospital DBA Medical City	L01976	Dallas	176	10/26/07
Dallas	Landmark Radiation Dallas LP	L06075	Dallas	04	10/29/07
Dallas	Baylor University Medical Center	L01290	Dallas	85	10/23/07
Dallas	Baylor University Medical Center	L01290	Dallas	86	10/25/07
Dallas	Cardiology Consultants of Texas	L04997	Dallas	38	10/24/07
Dallas	Medical City Dallas Hospital DBA Medical City	L01976	Dallas	175	10/23/07
Dallas	Cardiology Consultants of Texas	L04997	Dallas	37	10/18/07
Dallas	Petnet Solutions Inc	L05193	Dallas	31	10/17/07
Dallas	Cardinal Health	L02048	Dallas	126	10/17/07
Deer Park	Akzo Nobel Polymer Chemicals LLC	L04372	Deer Park	13	10/18/07
Denton	Texas Oncology PA DBA Texas Cancer Center Denton	L05815	Denton	08	10/25/07
Denton	Trace Life Sciences Inc	L05435	Denton	16	10/22/07
Denton	Texas Woman's University	L00304	Denton	57	10/11/07
Denton	Texas Oncology PA DBA Texas Cancer Center Denton	L05815	Denton	07	10/16/07
El Paso	Texas Oncology PA DBA El Paso Cancer Treatment Center	L05771	El Paso	07	10/26/07
El Paso	Cardinal Health	L01999	El Paso	110	10/25/07
Fort Worth	Texas Oncology PA	L05606	Fort Worth	15	10/30/07
Fort Worth	Fort Worth Heart PA	L05480	Fort Worth	23	10/12/07
Harlingen	Harlingen Medical Center	L05587	Harlingen	04	10/18/07
Houston	Cardiology Associates of Houston PA	L05608	Houston	05	10/30/07
Houston	Rice University	L00631	Houston	27	10/26/07
Houston	Spectracell Laboratories Inc	L04617	Houston	11	10/26/07
Houston	Northwest Houston Cardiology PA	L05823	Houston	03	10/29/07
Houston	Houston Northwest Radiotherapy Center	L02416	Houston	34	10/26/07
Houston	Memorial Hermann Hospital System DBA Memorial Hospital Southwest	L00439	Houston	129	10/23/07
Houston	Petnet Houston LLC DBA Petnet Houston LLC	L05542	Houston	15	10/25/07
Houston	Houston Cyclotron Partners LP DBA Cyclotope	L05585	Houston	12	10/12/07
Houston	Houston Northwest Medical Center	L02253	Houston	72	10/16/07
Houston	South Texas Nuclear Pharmacy	L05304	Houston	08	10/18/07
Houston	Nawar Tayyan MD PA	L06035	Houston	01	10/23/07
Houston	Memorial Hermann Hospital System DBA Memorial Hospital Memorial City	L01168	Houston	95	10/23/07
Houston	Baylor College of Medicine Office of Environmental Safety	L00680	Houston	96	10/25/07
Humble	Memorial Hermann Hospital Systems DBA Memorial Hermann Northeast	L02412	Humble	66	10/18/07
Irving	Heng Ngai Jewelry Inc DBA HNJ Inc	L06108	Irving	01	10/31/07
Laredo	Laredo Cardiovascular Consultants DBA Laredo Cardiovascular Consultants PA	L04687	Laredo	17	10/15/07
Laredo	Cancer Physicians Associated PA	L05790	Laredo	06	10/16/07

AMENDMENTS TO EXISTING LICENSES ISSUED CONTINUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Lewisville	Texas Oncology PA DBA Lake Vista Cancer Center	L05526	Lewisville	13	10/16/07
Longview	King Tool Company	L05142	Longview	09	10/29/07
Lubbock	Texas Tech University	L01536	Lubbock	82	10/26/07
McAllen	McAllen Hospitals LP DBA McAllen Medical Center	L01713	McAllen	85	10/16/07
McKinney	Columbia Medical Ctr of McKinney Subsidiary LP DBA Medical Center of McKinney	L02415	McKinney	38	10/26/07
McKinney	Columbia Medical Ctr of McKinney Subsidiary LP DBA Medical Center of McKinney	L02415	McKinney	37	10/19/07
Mesquite	Lone Star HMA LP DBA Dallas Regional Medical Center Women's Hospital at Dallas Regional Medical Ctr	L02733	Mesquite	39	10/24/07
Midland	Midland County Hospital District DBA Midland Memorial Hospital	L00728	Midland	88	10/30/07
Midland	Midland County Hospital District DBA Midland Memorial Hospital	L00728	Midland	87	10/24/07
Midlothian	TXI Operations LP	L01421	Midlothian	44	10/17/07
Orange	RTPS Acquisition Company LLC DBA Southeast Texas Cardiology Associates II LLP	L05204	Orange	12	10/16/07
Orange	Cardinal Health 414 Inc DBA Cardinal Health Nuclear Pharmacy Services	L04785	Orange	36	10/16/07
Palestine	East Texas Physicians Alliance LLP	L05583	Palestine	03	10/16/07
Paris	Essent PRMC LP DBA Paris Regional Medical Center	L03199	Paris	44	10/24/07
Pasadena	MEMC Pasadena Inc	L05129	Pasadena	09	10/31/07
Pittsburg	East Texas Medical Center Pittsburg	L03106	Pittsburg	22	10/26/07
Port Arthur	The Medical Center of Southeast Texas LP	L01707	Port Arthur	66	10/22/07
Round Rock	Columbia/St Davids Healthcare System LP DBA Medical Center of Round Rock	L03469	Round Rock	43	10/16/07
San Antonio	Methodist Healthcare System of San Antonio LTD DBA The Gamma Knife Center	L05076	San Antonio	22	10/30/07
San Antonio	Alamo Heart Associates PA	L04909	San Antonio	10	10/24/07
Sugar Land	Schlumberger Technology Corporation	L05677	Sugar Land	04	10/17/07
Sugar Land	Sugarland Heart Center Inc	L05921	Sugar Land	03	10/16/07
Sulphur Springs	Medical Surgical Clinic of Sulphur Springs DBA Sulphur Springs Family	L05701	Sulphur Springs	09	10/22/07
Tatum	Luminant Mining Company LLC	L06081	Tatum	03	10/23/07
The Woodlands	Pharmafrontiers Corp	L05592	The Woodlands	07	10/26/07
Throughout Tx	Rentech Boiler Services Inc	L05624	Abilene	08	10/17/07
Throughout Tx	Team Industrial Services Inc	L00087	Alvin	170	10/15/07
Throughout Tx	DFW Group Inc	L05928	Arlington	01	10/25/07
Throughout Tx	Baker Tank Company	L02599	Arp	25	11/01/07
Throughout Tx	Austin Heart PA	L04623	Austin	48	10/17/07
Throughout Tx	Texas Department of Transportation Construction Division	L00197	Austin	134	10/16/07
Throughout Tx	Chappell Hill Logging Systems Inc	L05374	Chappell Hill	06	11/01/07
Throughout Tx	N-SPEC Quality Services Inc	L05113	Corpus Christi	28	10/18/07
Throughout Tx	CTL Thompson Texas LLC	L04900	Dallas	13	10/18/07
Throughout Tx	Asphalt Pavers Inc	L05376	El Paso	03	10/18/07
Throughout Tx	H & H X-Ray Services Inc	L02516	Flint	65	10/18/07
Throughout Tx	South Limestone Hospital District DBA Limestone Medical Center	L05932	Groesbeck	01	10/18/07
Throughout Tx	Testmasters Inc	L03651	Houston	27	10/31/07
Throughout Tx	H & G Inspection Company Inc ADBA Statewide Maintenance Company	L02181	Houston	219	10/12/07

AMENDMENTS TO EXISTING LICENSES ISSUED CONTINUED:

Location	Name	License #	City	Amendment #	Date of Action
Throughout Tx	Wood Group Logging Services Inc	L05262	Houston	24	10/24/07
Throughout Tx	Testmasters Inc	L03651	Houston	26	10/25/07
Throughout Tx	Varco LP FKA Tuboscope Vetco	L00287	Houston	121	10/25/07
Throughout Tx	Halliburton Energy Services Inc	L02113	Houston	108	10/26/07
Throughout Tx	Petrochem Inspection Services Inc	L04460	Houston	82	10/22/07
Throughout Tx	Aviles Engineering Corporation	L03016	Houston	23	10/16/07
Throughout Tx	Earth Engineering Inc	L05206	Houston	06	10/18/07
Throughout Tx	Protechnics Division of Core Laboratories LP	L03835	Houston	52	10/19/07
Throughout Tx	Goolsby Testing Laboratories Inc	L03115	Humble	88	10/17/07
Throughout Tx	Oceaneering International Inc	L04463	Ingleside	53	10/26/07
Throughout Tx	Texas Perforators Inc	L05086	Kingsville	10	10/17/07
Throughout Tx	Sivalls Inc	L02298	Odessa	36	10/18/07
Throughout Tx	Cardinal Surveys Company	L00065	Odessa	74	10/18/07
Throughout Tx	Techcorr USA LLC	L05972	Pasadena	36	11/01/07
Throughout Tx	Conam Inspection & Engineering Inc	L05010	Pasadena	134	11/01/07
Throughout Tx	Conam Inspection & Engineering Inc	L05010	Pasadena	133	10/24/07
Throughout Tx	Texas Gamma Ray LLC	L05561	Pasadena	78	10/29/07
Throughout Tx	Turner Specialty Services LLC	L05417	Pasadena	30	10/31/07
Throughout Tx	Techcorr USA LLC	L05972	Pasadena	35	10/25/07
Throughout Tx	Techcorr USA LLC	L05972	Pasadena	33	10/16/07
Throughout Tx	Vulcan Construction Materials LP	L05382	San Antonio	05	10/30/07
Throughout Tx	GCT Inspection Inc	L02378	South Houston	99	10/17/07
Throughout Tx	ATL-SWL Group Inc DBA Southwest Laboratories Inc	L05269	Texas City	14	10/26/07
Throughout Tx	NRG Texas Power LLC	L02063	Thompsons	68	10/23/07

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Dallas	Presbyterian Hospital of Dallas	L01586	Dallas	90	10/25/07
Henrietta	Clay County Memorial Hospital	L03228	Henrietta	23	10/19/07
La Porte	Sunoco Inc DBA Sunoco Chemicals	L02153	La Porte	34	10/17/07
Laredo	Laredo Cardiovascular Consultants DBA Laredo Cardiovascular	L04687	Laredo	18	10/30/07
San Antonio	Southwest General Hospital LLP DBA Southwest General Hospital	L02689	San Antonio	36	10/16/07
Throughout Tx	Warrington Inc	L03074	Pflugerville	28	10/17/07
Throughout Tx	Schlumberger Technology Corporation	L00764	Sugar Land	104	10/17/07

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Austin	Austin Heart PA	L05580	Austin	20	10/17/07
La Grange	Austin Heart La Grange	L05516	La Grange	23	10/17/07
Marble Falls	Austin Heart PA DBA Austin Heart Clinic Marble Falls	L05505	Marble Falls	21	10/17/07
Round Rock	Austin Heart PA DBA Austin Heart	L05456	Round Rock	23	10/17/07
San Antonio	Christus Santa Rosa Cancer Center LLP	L00556	San Antonio	45	10/15/07
San Marcos	Austin Heart PA DBA Austin Heart San Marcos	L05452	San Marcos	26	10/17/07
Sulphur Springs	Medical Surgical Clinic of Sulphur Springs	L05701	Sulphur Springs	09	10/22/07

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of Title 25 Texas Administrative Code (TAC) Chapter 289 regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC, Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756-3189. For information call (512) 834-6688.

TRD-200705291
 Lisa Hernandez
 General Counsel
 Department of State Health Services
 Filed: November 2, 2007



Notice of Emergency Cease and Desist Order

Notice is hereby given that the Department of State Health Services ordered Bastrop Open MRI, LP (registrant-R27271-000) of Bastrop to cease and desist using the Siemens Computerized Tomographic (CT) unit, Model Number 1624530K1091 located in the CT room, until the measurements of the radiation output are performed by a licensed medical physicist and any items not meeting the specifications of the tests shall be corrected or repaired.

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-200705391
 Lisa Hernandez
 General Counsel
 Department of State Health Services
 Filed: November 7, 2007



Texas Higher Education Coordinating Board

Request for Proposal for RN Nursing Consulting Services

OVERVIEW: Texas Higher Education Coordinating Board (THECB) is seeking proposals in response to this Request for Proposal (RFP)

for RN nursing consulting services. The Board is seeking to employ a nationally-recognized nurse educator with experience in curriculum design to assist the Board in developing a new, innovative curriculum model for degree programs leading to initial licensure of registered nurses (RN programs).

The Board is a state agency with statutory authority to review curriculum and approve degree programs. Within the context of that authority, the 80th Texas Legislature directed the Board (Senate Bill 139) to "conduct a study to identify methods to improve the curricula of professional and vocational nursing programs. The study must focus on methods to improve instruction on providing safe and high-quality nursing care to patients." As a result of the study, the Board must submit to the legislature, governor and each institution of higher education that offers a nursing program "a report that includes specific, detailed recommendations concerning methods to improve the curricula, including instruction relating to patient care." The Board has used this directive as an opportunity to propose a new, innovative curriculum model(s) for the state's 86 RN programs. The proposed model(s) will fulfill the legislative directive and respond to the state's current and predicted nurse shortage and to changes in student learning, learning technologies, student populations, and the role of nurses in providing quality patient care.

The consultant's responsibility will include, but not necessarily be limited to, developing at least one new curriculum model for RN programs. The curriculum model would differentiate the unique content and skill requirements for associate degree in nursing (ADN) and baccalaureate degree in nursing (BSN) programs and would have the following minimum characteristics and/or content requirements. The model(s) will:

1. Meet or exceed standards of national nursing accreditation bodies or clearly identify conflicts with those standards;

2. Be completed by students in no more than four semesters, each semester normally representing 16 weeks of instruction (ADN and BSN), or clearly describe rationale for longer or shorter programs;
3. Emphasize the latest patient safety competencies;
4. Use competency-based testing;
5. Facilitate articulation between RN programs and mobility among different levels of nursing including Licensed Vocational/Practical Nursing (LVN), ADN, and BSN education;
6. Promote student success and completion rates;
7. Promote evidence-based practice;
8. Maximize the use of existing and potential nursing faculty at RN programs and at their clinical affiliates;
9. Propose a faculty to student ratio for clinical courses that is consistent with projected enrollment increases, likely faculty shortages, and availability of new learning technologies;
10. Integrate didactic and clinical content with new instructional technology;
11. Address any characteristics unique to Texas and nursing instruction in Texas;
12. Propose standardized pre-requisite courses at each level of ADN and BSN instruction;
13. Propose any needed modification to the differentiations between ADN and BSN instruction;
14. Promote easy transition from student nurse to practice nurse to minimize training needed after graduation; and
15. Provide a cost per graduate that is as low as possible.

THECB is, simultaneously with this RFP, also seeking proposals to develop a new curriculum model for LVN programs. Consideration will be given to consultants who respond to both RFPs and display the necessary qualifications and resources in both cases.

PROPOSER QUALIFICATIONS

To be eligible for consideration, a consultant must have: a doctoral degree in nursing, education or closely related field; experience teaching in an ADN or BSN nursing program; experience developing, modifying and evaluating nursing curriculum to meet professional standards of higher education and nurse practice; and experience writing reports for a broad audience; identify other individuals who would be available to THECB as resources.

PROPOSAL EVALUATION/AWARD THECB shall evaluate all Proposals to determine if they conform to the requirements of the RFP. Those that do not conform may be eliminated from further consideration and applicants shall be notified of that fact upon either: 1) a contract being awarded or 2) a decision not to award a contract under this RFP.

THECB will make its selection based on the following criteria: demonstrated knowledge, competence, and experience of consultant with developing RN curriculum; reference check; compatibility of Consultant with the goals and objectives of THECB; overall quality of response to RFP; reasonableness of proposed fees.

THECB will negotiate with Awarded Proposer to develop a Contract under which the nursing consultant services described in this RFP will be performed.

THECB has sole discretion and reserves the right to reject any and all responses to this RFP and to cancel the RFP if it is deemed in the best

interest of THECB to do so. Issuance of this RFP in no way constitutes a commitment by THECB to award a Contract or to pay for any expenses incurred either in the preparation of a response to this RFP, attendance at an oral presentation or in the production of a contract for financial services.

SERVICE PERIOD RN nursing consultant services related to a Contract resulting from this RFP shall commence upon the date of Contract execution and continue through March 1, 2009. THECB shall have the exclusive option to extend the contract for a one (1) to four (4) month extension following the expiration of the original Contract term. It is anticipated that future contract extensions shall be issued per the terms and conditions agreed upon in the Contract and shall be executed via the issuance of a written Contract change document by THECB's Assistant Commissioner for Academic Affairs and Research.

Proposal Deadline

Deadline for responding to this RFP is 5:00 p.m., C.S.T., December 16, 2007.

For a complete copy of the RFP, including instructions for submitting a proposal, please contact:

THECB Project Director

Chris Fowler, Project Co-Director

(512) 427-6217 Phone (512) 427-6168 Fax

E-mail: chris.fowler@theeb.state.tx.us

TRD-200705327

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Filed: November 5, 2007

◆ ◆ ◆ Texas Department of Insurance

Company Licensing

Application for admission to the State of Texas by AMERICAN EUROPEAN INSURANCE COMPANY, a foreign Fire and/or Casualty. The home office is in Concord, New Hampshire.

Application for incorporation to the State of Texas by Care N' Care Insurance, Inc., a foreign Life, Accident and/or Health. The home office is in Fort Worth, Texas.

Application to change the name of TEMPLETON FUNDS ANNUITY COMPANY to ALLIANZ LIFE AND ANNUITY COMPANY, a foreign life, accident and/or health company. The home office is in Golden Hills Drive, Minneapolis.

Any objections must be filed with the Texas Department of Insurance, within 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-200705406

Gene C. Jarmon

Chief Clerk and General Counsel

Texas Department of Insurance

Filed: November 7, 2007

◆ ◆ ◆ Notice of Public Meeting

Rates of Assessment for Expenses of Examination of Foreign and Domestic Insurance Companies and Workers' Compensation Self-Insurance Groups, Costs of Examinations and Investigations and General Administrative Expenses for the Regulation of Insurance Premium Finance Companies, and the Assessment of Insurance Maintenance Taxes and Fees

Sections 401.151, 401.152 and 401.155 - 401.156 (formerly Article 1.16), §651.006, and Subtitles C and D of Title 3 of the Texas Insurance Code and Chapters 403, 405, and 407A of the Labor Code require the Commissioner of Insurance to determine rates for: the assessment for expenses of examination of foreign and domestic insurance companies and workers' compensation self-insurance groups; the assessment to cover the cost of examinations, investigations and general administrative expenses for the regulation of insurance premium finance companies; and the assessment of insurance maintenance taxes and fees.

The General Counsel of the Texas Department of Insurance will preside over an open meeting at 9:30 a.m. on November 26, 2007, in Room 100 of the William P. Hobby State Office Building 333 Guadalupe Street in Austin, Texas, to receive comments and questions concerning the projected rates of assessment. Copies of the projected rates of assessment may be obtained from the Office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas during regular business hours.

Written comments on the projected rates of assessment 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 before the meeting. An additional copy of the comments must be submitted to Joe Meyer, Deputy Chief Financial Officer, P.O. Box 149104, MC 108-3A, Austin, Texas. Interested persons may also present written and/or oral comments related to the rates of assessment at the open meeting.

Any request for hearing should be submitted separately and in writing no later than November 30, 2007. The written request should be submitted to the Office of the Chief Clerk, Texas Department of Insurance, P.O. Box 149104, MC 113-2A, Austin, Texas 78714-9104.

TRD-200705298

Gene C. Jarmon

Chief Clerk and General Counsel

Texas Department of Insurance

Filed: November 5, 2007

◆ ◆ ◆
**Texas Department of Insurance, Division of
Workers' Compensation**

Correction of Error

The Texas Department of Insurance, Division of Workers' Compensation (Department) proposed the repeal of §131.1, concerning Initiation of Lifetime Income Benefits, in the November 2, 2007, issue of the *Texas Register* (32 TexReg 7856) . The Department's proposal contained the following errors as submitted.

On page 7856, left column, 4th paragraph, 1st sentence: The phrase "first-year" needs to be corrected.

The sentence should read as follows: "Brent Hatch, Policy Advisor, Division of Workers' Compensation, has determined that for each year of the first five years the proposed repeal will be in effect, there will be no fiscal impact to state and local governments as a result of the repeal of the rule."

On page 7856, right column, 5th paragraph, 2nd sentence, (1) and (7): For (1) the phrase "sight of both eyes" needs to be corrected and (7) the word "fact" is incorrect.

The paragraph should read as follows: "The repeal is proposed under the Labor Code §§408.161, 402.00111 and 402.061. Section 408.161 provides that lifetime income benefits are paid until the death of an employee for (1) total and permanent loss of sight in both eyes; (2) loss of both feet at or above the ankle; (3) loss of both arms at or above the wrist; (4) loss of one foot at or above the ankle and the loss of one hand at or above the wrist; (5) an injury to the spine that results in permanent and complete paralysis of both arms, both legs, or one arm and one leg; (6) a physically traumatic injury to the brain resulting in incurable insanity or imbecility; or (7) third degree burns that cover at least 40 percent of the body and require grafting, or third degree burns covering the majority of either both hands or one hand and the face. Section 402.00111 provides that the Commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority, under the Labor Code and other laws of this state. Section 402.061 provides the Commissioner the authority to adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act."

TRD-200705424

◆ ◆ ◆
Texas Lottery Commission

Instant Game Number 1000 "Crocodile Cash"

The Texas Lottery Commission filed for publication Instant Game Number 1000 "Crocodile Cash." The document was published in the August 31, 2007, issue of the *Texas Register* (32 TexReg 5806). The validation codes were changed to reflect a four digit game number after the procedure was published in the *Texas Register*. Sections 1.2.F, J and K now read as follows:

1.2 Definitions in Instant Game No. 1000.

F. Serial Number--A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) 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: 00000000000000.

J. Bar Code--A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number--A 14 (fourteen) digit number consisting of the four (4) digit game number (1000), 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: 1000-0000001-001.

TRD-200705334

Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

Filed: November 6, 2007

◆ ◆ ◆
Instant Game Number 1001 "X's and O's"

The Texas Lottery Commission filed for publication Instant Game Number 1001 "X's and O's." The document was published in the September 14, 2007, issue of the *Texas Register* (32 TexReg 6438). The validation codes were changed to reflect a four digit game number after the procedure was published in the *Texas Register*. Sections 1.2.F, J and K now read as follows:

1.2 Definitions in Instant Game No. 1001.

F. Serial Number--A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) 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: 00000000000000.

J. Bar Code--A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) 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 14 (fourteen) digit number consisting of the three (3) digit game number (1001), a seven (7) digit pack number, and a four (4) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 1001-0000001-001.

TRD-200705335
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: November 6, 2007



Instant Game Number 1002 "5X Winnings"

The Texas Lottery Commission filed for publication Instant Game Number 1002 "5X Winnings." The document was published in the September 21, 2007, issue of the *Texas Register* (32 TexReg 6676). The validation codes were changed to reflect a four digit game number after the procedure was published in the *Texas Register*. Sections 1.2.F, J and K now read as follows:

1.2 Definitions in Instant Game No. 1002.

F. Serial Number--A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) 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: 00000000000000.

J. Bar Code--A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number--A 14 (fourteen) digit number consisting of the four (4) digit game number (1002), a seven (7) digit pack number, and a four (4) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 1002-0000001-001.

TRD-200705351
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: November 6, 2007



Instant Game Number 1003 "Line 'Em Up"

The Texas Lottery Commission filed for publication Instant Game Number 1003 "Line 'Em Up." The document was published in the September 21, 2007, issue of the *Texas Register* (32 TexReg 6681). The validation codes were changed to reflect a four digit game number after the procedure was published in the *Texas Register*. Sections 1.2.F, J and K now read as follows:

1.2 Definitions in Instant Game No. 1003.

F. Serial Number--A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) 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: 00000000000000.

J. Bar Code--A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number--A 14 (fourteen) digit number consisting of the four (4) digit game number (1003), 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: 1003-0000001-001.

TRD-200705336
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: November 6, 2007



Instant Game Number 1004 "Deal or No Deal"

The Texas Lottery Commission filed for publication Instant Game Number 1004 "Deal or No Deal." The document was published in the August 24, 2007, issue of the *Texas Register* (32 TexReg 5514). The validation codes were changed to reflect a four digit game number after the procedure was published in the *Texas Register*. Sections 1.2.F, J and K now read as follows:

1.2 Definitions in Instant Game No. 1004.

F. Serial Number--A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) 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: 00000000000000.

J. Bar Code--A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number--A 14 (fourteen) digit number consisting of the four (4) digit game number (1004), 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: 1004-0000001-001.

TRD-200705337

Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: November 6, 2007



Instant Game Number 1006 "Scary Money"

The Texas Lottery Commission filed for publication Instant Game Number 1006 "Scary Money." The document was published in the August 31, 2007, issue of the *Texas Register* (32 TexReg 5811). The validation codes were changed to reflect a four digit game number after the procedure was published in the *Texas Register*. Sections 1.2.F, J and K now read as follows:

1.2 Definitions in Instant Game No. 1006.

F. Serial Number--A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) 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: 00000000000000.

J. Bar Code--A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number--A 14 (fourteen) digit number consisting of the four (4) digit game number (1006), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 1006-0000001-001.

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Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: November 6, 2007



Instant Game Number 1007 "Big Riches"

The Texas Lottery Commission filed for publication Instant Game Number 1007 "Big Riches." The document was published in the September 7, 2007, issue of the *Texas Register* (32 TexReg 6202). The validation codes were changed to reflect a four digit game number after the procedure was published in the *Texas Register*. Sections 1.2.F, J and K now read as follows:

1.2 Definitions in Instant Game No. 1007.

F. Serial Number--A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) 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: 00000000000000.

J. Bar Code--A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number--A 14 (fourteen) digit number consisting of the four (4) digit game number (1007), 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: 1007-0000001-001.

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Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: November 6, 2007



Instant Game Number 1009 "\$75,000 Pinball Wizard"

The Texas Lottery Commission filed for publication Instant Game Number 1009 "\$75,000 Pinball Wizard." The document was published in the August 31, 2007, issue of the *Texas Register* (32 TexReg 5815). The validation codes were changed to reflect a four digit game number after the procedure was published in the *Texas Register*. Sections 1.2.F, J and K now read as follows:

1.2 Definitions in Instant Game No. 1009.

F. Serial Number--A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) 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: 00000000000000.

J. Bar Code--A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number, and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number--A 14 (fourteen) digit number consisting of the four (4) digit game number (1009), 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: 1009-0000001-001.

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Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: November 6, 2007



Instant Game Number 1012 "Easy Cash"

The Texas Lottery Commission filed for publication Instant Game Number 1012 "Easy Cash." The document was published in the September 7, 2007, issue of the *Texas Register* (32 TexReg 6207). The validation codes were changed to reflect a four digit game number after the procedure was published in the *Texas Register*. Sections 1.2.F, J and K now read as follows:

1.2 Definitions in Instant Game No. 1012.

F. Serial Number--A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) 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: 00000000000000.

J. Bar Code--A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number--A 14 (fourteen) digit number consisting of the four (4) digit game number (1012), 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: 1012-0000001-001.

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Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: November 6, 2007



Instant Game Number 1013 "Wild Card Cash"

The Texas Lottery Commission filed for publication Instant Game Number 1013 "Wild Card Cash." The document was published in the October 12, 2007, issue of the *Texas Register* (32 TexReg 7330). The validation codes were changed to reflect a four digit game number after the procedure was published in the *Texas Register*. Sections 1.2.F, J and K now read as follows:

1.2 Definitions in Instant Game No. 1013.

F. Serial Number--A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) 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: 00000000000000.

J. Bar Code--A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number--A 14 (fourteen) digit number consisting of the four (4) digit game number (1013), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 1013-0000001-001.

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Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: November 6, 2007



Instant Game Number 1014 "Stocking Stuffer"

The Texas Lottery Commission filed for publication Instant Game Number 1014 "Stocking Stuffer." The document was published in the September 14, 2007, issue of the *Texas Register* (32 TexReg 6441). The validation codes were changed to reflect a four digit game number after the procedure was published in the *Texas Register*. Sections 1.2.F, J and K now read as follows:

1.2 Definitions in Instant Game No. 1014.

F. Serial Number--A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) 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: 00000000000000.

J. Bar Code--A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number--A 14 (fourteen) digit number consisting of the four (4) digit game number (1014), 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: 1014-0000001-001.

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Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: November 6, 2007



Instant Game Number 1015 "Merry Money"

The Texas Lottery Commission filed for publication Instant Game Number 1015 "Merry Money." The document was published in the September 28, 2007, issue of the *Texas Register* (32 TexReg 6884). The validation codes were changed to reflect a four digit game number after the procedure was published in the *Texas Register*. Sections 1.2.F, J and K now read as follows:

1.2 Definitions in Instant Game No. 1015.

F. Serial Number--A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) 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: 00000000000000.

J. Bar Code--A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number--A 14 (fourteen) digit number consisting of the four (4) digit game number (1015), 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: 1015-0000001-001.

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Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: November 6, 2007



Instant Game Number 1016 "\$1 Million Holiday Winnings"

The Texas Lottery Commission filed for publication Instant Game Number 1016 "\$1 Million Holiday Winnings." The document was published in the September 28, 2007, issue of the *Texas Register* (32 TexReg 6889). The validation codes were changed to reflect a four digit game number after the procedure was published in the *Texas Register*. Sections 1.2.F, J and K now read as follows:

1.2 Definitions in Instant Game No. 1016.

F. Serial Number--A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) 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: 00000000000000.

J. Bar Code--A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number--A 14 (fourteen) digit number consisting of the four (4) digit game number (1016), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 025 within each pack. The format will be: 1016-0000001-001.

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Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: November 6, 2007



Instant Game Number 1017 "Candy Cane Cash"

The Texas Lottery Commission filed for publication Instant Game Number 1017 "Candy Cane Cash." The document was published in the September 28, 2007, issue of the *Texas Register* (32 TexReg 6894). The validation codes were changed to reflect a four digit game number after the procedure was published in the *Texas Register*. Sections 1.2.F, J and K now read as follows:

1.2 Definitions in Instant Game No. 1017.

F. Serial Number--A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) 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: 00000000000000.

J. Bar Code--A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number--A 14 (fourteen) digit number consisting of the four (4) digit game number (1017), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 1017-0000001-001.

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Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: November 6, 2007



Instant Game Number 1018 "Holiday Lucky Times"

The Texas Lottery Commission filed for publication Instant Game Number 1018 "Holiday Lucky Times." The document was published in the October 5, 2007, issue of the *Texas Register* (32 TexReg 7136).

The validation codes were changed to reflect a four digit game number after the procedure was published in the *Texas Register*. Sections 1.2.F, J and K now read as follows:

1.2 Definitions in Instant Game No. 1018.

F. Serial Number--A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) 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: 00000000000000.

J. Bar Code--A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number--A 14 (fourteen) digit number consisting of the four (4) digit game number (1018), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 50 within each pack. The format will be: 1018-0000001-001.

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Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: November 6, 2007



Instant Game Number 1019 "Cool 7's"

The Texas Lottery Commission filed for publication Instant Game Number 1019 "Cool 7's." The document was published in the October 12, 2007, issue of the *Texas Register* (32 TexReg 7334). The validation codes were changed to reflect a four digit game number after the procedure was published in the *Texas Register*. Sections 1.2.F, J and K now read as follows:

1.2 Definitions in Instant Game No. 1019.

F. Serial Number--A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) 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: 00000000000000.

J. Bar Code--A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number--A 14 (fourteen) digit number consisting of the four (4) digit game number (1019), 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: 1019-0000001-001.

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Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: November 6, 2007



Instant Game Number 1020 "7-11-21"

The Texas Lottery Commission filed for publication Instant Game Number 1020 "7-11-21." The document was published in the October 12, 2007, issue of the *Texas Register* (32 TexReg 7339). The validation codes were changed to reflect a four digit game number after the procedure was published in the *Texas Register*. Sections 1.2.F, J and K now read as follows:

1.2 Definitions in Instant Game No. 1020.

F. Serial Number--A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) 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: 00000000000000.

J. Bar Code--A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number--A 14 (fourteen) digit number consisting of the four (4) digit game number (1020), 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: 1020-0000001-001.

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Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: November 6, 2007



Instant Game Number 1021 "Double Doubler"

The Texas Lottery Commission filed for publication Instant Game Number 1021 "Double Doubler." The document was published in the October 12, 2007, issue of the *Texas Register* (32 TexReg 7342). The validation codes were changed to reflect a four digit game number after the procedure was published in the *Texas Register*. Sections 1.2.F, J and K now read as follows:

1.2 Definitions in Instant Game No. 1021.

F. Serial Number--A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) 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: 00000000000000.

J. Bar Code--A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number--A 14 (fourteen) digit number consisting of the four (4) digit game number (1021), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 1021-0000001-001.

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Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: November 6, 2007



Instant Game Number 1031 "Spicy 7's"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1031 is "SPICY 7'S". The play style is "key number match with doubler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1031 shall be \$2.00 per ticket.

1.2 Definitions in Instant Game No. 1031.

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, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 7 SYMBOL, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$200, \$2,000 and \$20,000.

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. 1031 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
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
7 SYMBOL	DBL
\$2.00	TWO\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$50.00	FIFTY
\$200	TWO HUND
\$2,000	TWO THOU
\$20,000	20 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. 1031 - 1.2E

CODE	PRIZE
TWO	\$2.00
FOR	\$4.00
FIV	\$5.00
TEN	\$10.00
TWN	\$20.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) 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: 00000000000000.

G. Low-Tier Prize - A prize of \$2.00, \$4.00, \$5.00, \$10.00, or \$20.00.

H. Mid-Tier Prize - A prize of \$50.00 or \$200.

I. High-Tier Prize - A prize of \$2,000 or \$20,000.

J. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1031), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 1031-0000001-001.

L. Pack - A pack of "SPICY 7'S" Instant Game tickets contains 125 tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One ticket will be folded over to expose a front and back of one ticket on each pack. Please note the books will be in an A, B, C and D configuration.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "SPICY 7'S" Instant Game No. 1031 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 "SPICY 7'S" Instant Game is determined once the latex on the ticket is scratched off to expose 22 (twenty-two) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to either WINNING NUMBER play symbol, the player wins the PRIZE shown for that number. If a player reveals a "7" 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 22 (twenty-two) 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 22 (twenty-two) 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 22 (twenty-two) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 22 (twenty-two) 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. Non-winning prize symbols will not match a winning prize symbol on a ticket.
- C. No three or more identical non-winning prize symbols on a ticket.
- D. No duplicate WINNING NUMBERS play symbols on a ticket.
- E. There will be no correlation between the matching symbols and the prize amount.
- F. The "7" (doubler) play symbol will only appear on winning tickets as dictated by the prize structure.
- G. The top prize will appear on all tickets unless otherwise restricted by the prize structure.
- H. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "SPICY 7'S" Instant Game prize of \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00 or \$200, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, 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 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 "SPICY 7'S" Instant Game prize of \$2,000 or \$20,000, 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 "SPICY 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, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by 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 "SPICY 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 "SPICY 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 Section 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 7,080,000 tickets in the Instant Game No. 1031. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 1031 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$2	892,080	7.94
\$4	495,600	14.29
\$5	84,960	83.33
\$10	84,960	83.33
\$20	42,480	166.67
\$50	33,217	213.14
\$200	6,254	1,132.08
\$2,000	31	228,387.10
\$20,000	17	416,470.59

*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 4.32. 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. 1031 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. 1031, 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-200705288
 Kimberly L. Kiplin
 General Counsel
 Texas Lottery Commission
 Filed: November 2, 2007

◆ ◆ ◆
North Central Texas Council of Governments

Notice of Consultant Contract Award

Pursuant to the provisions of Government Code, Chapter 2254, the North Central Texas Council of Governments publishes this notice of consultant contract award. The consultant proposal request appeared in the August 17, 2007, issue of the *Texas Register* (32 TexReg 5218). The selected consultant will perform technical and professional work to implement the Air Quality Public Awareness Campaign for Refueling Station Displays.

The consultant selected for this project is Great Mileage Advertising, 3625 N. Hall Street, Suite 530, Dallas, Texas 75219. The maximum amount of this contract is \$250,000.

TRD-200705269
 R. Michael Eastland
 Executive Director
 North Central Texas Council of Governments
 Filed: October 31, 2007

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One-Call Board of Texas

Resolution - Adoption of 811 by One-Call Board of Texas

The following Resolution will be considered for Board action Wednesday, November 14, 2007.

Whereas, UTILITIES CODE, TITLE 5, CHAPTER 251, commonly referred to as the One-Call law states . . . Sec. 251.009. PROVISION OF GENERAL INFORMATION. *At least once each calendar year, at intervals not exceeding 15 months, each Class A underground facility operator who conveys, transmits, or distributes by means of its underground facilities service directly to more than one million residential customers within this state shall provide all of its residential customers in this state general information about excavation activities covered by this chapter and the statewide toll-free telephone number established by the corporation.* (emphasis added). And;

Whereas, the Public Utility Commission of Texas by rule has designated "811" for the purpose of excavation notification in Texas and has directed all telecommunication companies providing service in Texas to direct 811 calls to the statewide toll-free telephone number established by the One-Call Board (OCB) as specified in the One-Call law. And;

Whereas, it is the opinion of the OCB that the intent of §251.009 was to increase awareness of the One-Call law in Texas and how to access the Texas Excavation Notification System via the statewide toll-free number established by the OCB. Now therefore;

Be it resolved, that the Board of Directors of the One-Call Board of Texas believe that Class A underground facility operators governed by §251.009 have complied with the requirement to provide customers "the statewide toll-free number established by the corporation" by providing either the actual 800# or the abbreviated "811" number.

Public comments may be sent to:

Donald Ward, Executive Director

P.O. Box 9764

Austin, TX 78766

Phone: (512) 467-2850

Fax: (512) 467-6664

E-mail: TxAssocHQ@sbcglobal.net

TRD-200705271

Don Ward

Executive Director

One-Call Board of Texas

Filed: October 31, 2007



Public Utility Commission of Texas

Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On November 1, 2007, Alpheus Communications, L.P. filed an application with the Public Utility Commission of Texas to amend its service provider certificate of operating authority (SPCOA) granted in SP-COA Certificate Number 60112. Applicant intends to reflect a change in ownership/control.

The Application: Application of Alpheus Communications, L.P. for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 34967.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than November 21, 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 34967.

TRD-200705358

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: November 6, 2007



Announcement of Application for an Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on November 5, 2007, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Time Warner Cable San Antonio, L.P. for an Amendment to a State-Issued Certificate of Franchise Authority, Project Number 34983 before the Public Utility Commission of Texas.

The requested CFA service area will be expanded, if approved, to include the City of Schertz, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 34983.

TRD-200705362

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: November 6, 2007



Announcement of Application for an Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on November 6, 2007, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Comcast of Houston, LLC for an Amendment to a State-Issued Certificate of Franchise Authority, Project Number 34986 before the Public Utility Commission of Texas.

The requested CFA service area will be expanded, if approved, to include the Cities of Piney Point Village and Santa Fe, Texas, including any future annexations.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 34986.

TRD-200705383

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: November 6, 2007



Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of an application for sale, transfer, or merger filed with the Public Utility Commission of Texas on October 29, 2007, pursuant to the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.001 and §37.154 (Vernon 2007) (PURA).

Docket Style and Number: Application of Southwestern Electric Power Company for Regulatory Approvals Pursuant to PURA §§14.101, 39.262, and 39.915, Docket Number 34960.

The Application: Southwestern Electric Power Company (SWEPCO) is a regulated electric utility engaged primarily in the business of generating, selling, transmitting, and distributing electric power to retail and wholesale customers in Arkansas, Louisiana, and Texas. Currently,

100% of SWEPCO's common stock is owned by AEP Utilities, Inc. (AEP Utilities). American Electric Power Company, Inc. (AEP) is a public holding company that owns, directly or indirectly, all or substantially all of the outstanding stock of domestic electric utility subsidiaries and other subsidiaries and, as such, is the common parent of an affiliated group of corporations, including AEP Utilities. Currently, AEP owns 100% of the capital stock of AEP Utilities. AEP plans to realign its corporate subsidiaries and separate its business interests in the Electric Reliability Council of Texas (ERCOT) from its fully integrated utilities operations. As part of this realignment, and with this application, SWEPCO seeks regulatory approval for AEP Utilities to transfer its ownership interest in SWEPCO to AEP. SWEPCO requests a commission finding that all aspects of its contemplated ownership transfer that fall within the scope of the Public Utility Regulatory Act, Texas Utilities Code Annotated §§14.101, 39.262, and 39.915 (Vernon 2007) (PURA) are consistent with the public interest.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) at 1-800-735-2989. All correspondence should refer to Docket Number 34960.

TRD-200705273
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 1, 2007



Notice of Application for Service Area Exception Within Deaf Smith County, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on October 29, 2007, for an amendment to certificated service area for a service area exception within Deaf Smith County, Texas.

Docket Style and Number: Application of Deaf Smith Electric Cooperative, Inc. to Amend a Certificate of Convenience and Necessity for Service Area Exception within Deaf Smith County. Docket Number 34956.

The Application: Deaf Smith Electric Cooperative, Inc. seeks to provide service to a specific customer located within the certificated service area of Xcel Energy.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than November 26, 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 34956.

TRD-200705278
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 2, 2007



Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on November 1, 2007, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of Ameriphone Network, LLC for a Service Provider Certificate of Operating Authority, Docket Number 34971 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, and long distance services.

Applicant's requested SPCOA geographic area includes the area of Texas served by the Beaumont, Bryan, Corpus Christi, Hearne, Houston, and Longview Local Access and Transport Areas.

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 21, 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 34971.

TRD-200705357
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 6, 2007



Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on November 5, 2007, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of Sterling Telecom, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 34974 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service.

Applicant's requested SPCOA geographic area includes the area of the entire State of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than November 21, 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 34974.

TRD-200705361
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 6, 2007



Notice of Intent to File LRIC Study Pursuant to P.U.C. Substantive Rule §26.215

Notice is given to the public of the filing on November 5, 2007, with the Public Utility Commission of Texas, a notice of intent to file a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.215. The Applicant will file the LRIC study on or after November 15, 2007.

Docket Title and Number: Application of Verizon Southwest, Inc. for Approval of LRIC Study for Transparent LAN Service LL Optical Transport Access Pursuant to P.U.C. Substantive Rule §26.215, Docket Number 34982.

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 34982. Written comments or recommendations should be filed no later than 45 days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 34982.

TRD-200705360

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: November 6, 2007

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Request for Comments on the Proposed Strawman Rule and Public Notice of Workshop on the Rulemaking Relating to Fuel Factors

The Public Utility Commission of Texas (commission) requests that interested persons file comments regarding a proposed strawman rule filed in Project Number 34914 - Rulemaking to Amend §25.237, Fuel Factors. The proposed strawman rule contains proposed amendments to P.U.C. Substantive Rule §25.237, relating to Fuel Factors, and will be filed in Central Records on Wednesday, November 14, 2007. A copy of the proposed strawman rule may be obtained from the webpage for Project Number 34914 at <http://www.puc.state.tx.us/rules/rulemake>.

Comments on the proposed strawman may be filed by submitting 16 copies to the commission's Filing clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326 within 30 days of the date of publication of this notice. All responses should reference Project Number 34914.

The staff of the commission will hold a workshop regarding the proposed strawman rule in this project on Friday, January 4, 2008, at 10:00 a.m. in Hearing Room Gee, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. The workshop will provide an opportunity for interested persons to advise the commission of their views and insights on how the rule should be developed. The commission requests that persons planning to attend the workshop register by phone with Larry Reed, Infrastructure and Reliability Division, at (512) 936-7357.

Questions regarding this notice should be referred to Shelah Cisneros, Legal Division, at shelah.cisneros@puc.state.tx.us, (512) 936-7265. Questions concerning the workshop should be referred to Larry Reed, Infrastructure and Reliability Division, at larry.reed@puc.state.tx.us, (512) 936-7357. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200705411

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 7, 2007

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Railroad Commission of Texas

Correction of Error

The Railroad Commission of Texas proposed amendments to 16 TAC §13.70, concerning Examination Requirements and Renewals, in the November 2, 2007, issue of the *Texas Register* (32 TexReg 7829).

In paragraph six of the preamble there are two references to "22 minutes" in the explanation of the amount of time per question for the CNG examinations. The number "22" was a typographical error, and should correctly be "2 1/2" minutes or "two and a half minutes."

The paragraph should read as follows:

"The Commission considers the proposed time limits reasonable. Qualifying examinations vary in length according to the number and complexity of the CNG activities they authorize the examinee to perform. Open-book employee-level examinations currently have 50 questions; closed-book management-level examinations currently have either 50 or 100 questions. A two-hour time limit is proposed for all examinations, based on approximately 2 1/2 minutes per question for an open-book examination and approximately 1 1/4 to 2 1/2 minutes per question for a closed-book examination."

TRD-200705359

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Texas Residential Construction Commission

Notice of Applications for Designation as a "Texas Star Builder"

The commission adopted rules regarding the procedures for designation as a "Texas Star Builder" at 10 TAC §303.300. The rules were adopted pursuant to §416.011, Property Code (Act effective Sept. 1, 2003), which provides that the commission shall establish rules and procedures through which a builder can be designated as a "Texas Star Builder." The commission rules for application for designation can be found on the commission's website at www.trcc.state.tx.us.

10 TAC §303.300(i)(2) requires the commission to publish in the *Texas Register* notice of the application of each person seeking to become designated as a "Texas Star Builder" registered under this subchapter. The commission will accept public comment on each application for twenty-one (21) days after the date of publication of the notice. Information provided in response to this notice will be utilized in evaluating the applicants for approval. The Texas Star Builder designation requires that a builder or remodeler demonstrate that its education, experience and commitment to professionalism sets the builder or remodeler apart from its peers and offers some assurance to its customers that its quality of service and construction will be above average.

Pursuant to 10 TAC §303.300(i)(2) the commission hereby notices the application(s) for designation as a "Texas Star Builder" of:

Sandcastle Homes, Inc., 1405 Durham Drive, Houston, TX 77007. Sandcastle Homes, Inc. holds TRCC builder registration #1435. The applicant's registered agent is Michael Dishberger.

Interested persons may send written comments regarding this application to Susan K. Durso, General Counsel, The Texas Residential Construction Commission, P.O. Box 13144, Austin, TX 78711-3144. Comments regarding this application will be accepted for twenty-one days

following the date of publication of this notice in the *Texas Register*. Thereafter, the comments will not be considered as timely filed.

TRD-200705267

Susan K. Durso

General Counsel

Texas Residential Construction Commission

Filed: October 31, 2007

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Office of Rural Community Affairs

Rural Technology Center Grant Program

Executive Committee for Office of Rural Community Affairs

Summary:

Notice of Release of Request for the Rural Technology Center Grant Program

On November 16, 2007, the Office of Rural Community Affairs will release a Request for Proposals (RFP) for the Rural Technology Center Grant Program (Program). The proposal requirements are contained in the RFP which may be obtained at <http://www.orca.state.tx.us/> and <http://esbd.cpa.state.tx.us/>. The purpose of the Program is to award grants to public institutions of higher education, public high schools, and governmental entities located in a rural county for the development and operation of Rural Technology Centers that provide community access to technology; computer literacy programs; educational programs designed to provide concurrent enrollment credit for high school students taking postsecondary courses in information and emerging technologies; training for careers in technology-related fields and other highly skilled industries; and technology related continuing and adult education programs. The goal of the Program is to increase community access to technology and promote computer literacy. Centers will provide resources to prepare residents, including high school students, for careers in applied technology and other skilled industries. In accordance with the General Appropriations Act, funding of applications for the 2008-2009 biennium is limited to public institutions of higher education, public high schools, and governmental entities in Starr and Zapata counties. The RFP may be viewed and printed from the Internet on <http://www.orca.state.tx.us/> and <http://esbd.cpa.state.tx.us/>.

Due Date:

An original and six copies of a written proposal are due to the Office of Rural Community Affairs no later than 4:00 p.m. December 17, 2007. No proposals will be accepted after this deadline. Proposals may be sent or hand carried to:

Office of Rural Community Affairs

Mail: P.O. Box 12877, Austin, Texas 78711

By hand: 1700 North Congress Avenue, Suite 220, Austin, Texas 78701

Attention: Executive Director

Potential respondents may pose written questions concerning this RFP by e-mail. Contact Charles S. (Charlie) Stone, Executive Director, at cstone@orca.state.tx.us until 12:00 Noon, December 17, 2007. The contact person for this RFP is Charles S. (Charlie) Stone at (512) 936-6701.

TRD-200705385

Heather Lagrone

Program Development Manager

Office of Rural Community Affairs

Filed: November 7, 2007

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San Antonio-Bexar County Metropolitan Planning Organization

Request for Proposals

The San Antonio-Bexar County Metropolitan Planning Organization (MPO) is seeking proposals from qualified firms for the conduct of the Fredericksburg Road Microsimulation Modeling Study.

A copy of the Request for Proposals (RFP) may be requested by calling Jeanne Geiger, Deputy Director, at (210) 230-6904 or by downloading the RFP and attachments from the MPO's website at www.sametrop-plan.org. Anyone wishing to submit a proposal must do so by 12:00 p.m., Wednesday, December 12, 2007 at the MPO office to:

Jeanne Geiger

Deputy Director

San Antonio-Bexar County MPO

825 S. St. Mary's

San Antonio, Texas 78205

The Selection/Oversight committee will review the proposals based on the evaluation criteria listed in the RFP. The contract award will be made by the MPO's Transportation Policy Board based on the recommendation of the project's Selection/Oversight Committee.

Funding for this project, in the amount of \$660,000, is contingent upon the availability of Federal transportation planning funds.

TRD-200705268

Mona Lisa Zertuche

Transportation Assistant Planner

San Antonio-Bexar County Metropolitan Planning Organization

Filed: October 31, 2007

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South East Texas Regional Planning Commission

Request for Qualifications for Consultant

South East Texas Regional Planning Commission (SETRPC) is serving as the administrator for the Orange Regional Home Consortium, where the City of Orange serves as the responsible entity for the counties of Hardin, Liberty, Orange, and unincorporated areas of Jefferson counties. The Orange Regional Home Consortium provides a variety of grant-funded programs all aimed at providing safe, decent, and affordable housing to low income families. Under HUD guidelines, Orange Regional HOME Consortium funds are reserved for people at or below 80% of the average median family income for the respective area in which they live and are available through two basic housing need programs: Rental Housing and/or Community Housing Development (CHDO).

Consulting services will consist of the following tasks:

1. Consultant will provide one day training to housing staff of the Orange Regional Home Consortium and such other persons as the Home Consortium may require. The training content shall be determined by the parties as least six weeks in advance of the proposed training to meet the needs of the Consortium.

2. Consultant will provide ongoing technical services to the Orange Regional Home Consortium on an on-demand basis. Technical services shall include up to three site visits during the term of the contract.

Contact: Mike Foster, Community Development Director, SETRPC, 2210 Eastex Freeway, Beaumont, Texas 77703, mfoster@setrpc.org, (409) 899-8444, extension 256.

Closing Dates: If your company is interested and qualified to provide professional services to the Orange Regional Home Consortium, please contact Mike Foster via letter or e-mail addressed to Mike Foster, 2210 Eastex Freeway, Beaumont, Texas 77703 or mfoster@setrpc.org. All responding companies will receive a complete Request for Qualifications package. Final proposals will be due by 12:00 noon, CST on December 1, 2007.

Proposals will be reviewed based on Consultant Selection Criteria included in the Request for Qualifications package mailed to interested parties.

TRD-200705275

Shaun P. Davis

Executive Director

South East Texas Regional Planning Commission

Filed: November 1, 2007

◆ ◆ ◆
Stephen F. Austin State University

Notice of Consultant Contract Availability

This request for consulting services is filed under the provisions of the Texas Government Code, Chapter 2254.

PURPOSE: Stephen F. Austin State University is seeking a contractor to provide interior design services for the Board Room, Small Conference room, Recess Room and associated projects, including the selection and purchase of finishes, furnishings, carpet, etc.

CRITERIA: The individual should show an understanding of the Board's needs and desires through previous work performed or familiarity with the Board Room and Board members. Because several rooms are involved, the individual must be able to develop a design that brings continuity to the spaces.

DEADLINES AND CONTACT INFORMATION: Proposals will be submitted to Judy Buckingham, Assistant to the Board, P.O. BOX 13026, Nacogdoches, Texas 75962, (936) 468-4048, jpbuckingham@sfasu.edu, by November 26, 2007.

TRD-200705289

R. Yvette Clark

General Counsel

Stephen F. Austin State University

Filed: November 2, 2007

◆ ◆ ◆
Texas Department of Transportation

Aviation Division - Request for Proposal for Aviation Engineering Services

The City of Rockdale, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below.

The following is a listing of proposed projects at the H.H. Coffield Regional Airport during the course of the next five years through multiple grants.

Current Project: City of Rockdale. TxDOT CSJ No. 0817ROCKD. Scope: Provide engineering/design services to rehabilitate apron; rehabilitate and mark runway 17-35; install standard segmented circle; adjust location of threshold lights and install obstruction lights on hangars.

The HUB goal for the current project is 10%. TxDOT Project Manager is Clayton Bridwell.

Future scope work items for engineering/design services within the next five years may include but are not necessarily limited to the following:

1. Reconstruct entrance road
2. Rehabilitate taxiway
3. Install MIRL
4. Construct auto parking - 5 spaces
5. Install obstruction lights on hangars

The City of Rockdale reserves the right to determine which of the above scope of services may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services above.

To assist in your proposal preparation the criteria, 5010 drawing, project narrative, and most recent Airport Layout Plan are available online at www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm by selecting "H.H. Coffield Regional Airport". The proposal should address a technical approach for the current scope only. Firms shall use page 4, Recent Airport Experience, to list relevant past projects for both current and future scope.

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal". The form may be requested from TxDOT Aviation Division, 125 East 11th Street, Austin, Texas 78701-2483, phone number 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at www.dot.state.tx.us/services/aviation/consultant.htm. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion. **PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.**

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

Please note:

Six completed, unfolded copies of Form AVN-550 **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than December 19, 2007, 4:00 p.m. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Sheri Quinlan.

The consultant selection committee will be composed of local government members. The final selection by the committee will generally be made following the completion of review of proposals.

The committee will review all proposals and rate and rank each. The criteria for evaluation of engineering proposals can be found at <http://www.dot.state.tx.us/services/aviation/consultant.htm>. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Sheri Quinlan, Grant Manager. For technical questions, please contact Clayton Bridwell, Project Manager.

TRD-200705415

Bob Jackson

General Counsel

Texas Department of Transportation

Filed: November 7, 2007



Aviation Division - Request for Proposal for Aviation Engineering Services

The City of Beaumont, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below.

The following is a listing of proposed projects at the Beaumont Municipal Airport during the course of the next five years through multiple grants.

Current Project: City of Beaumont. TxDOT CSJ No.: 0820BAMNT. Scope: Provide engineering/design services to reconstruct south apron and taxiway D, rehabilitate A, C, D, E-1, E, F & G, north apron, runway 13-31.

The DBE goal for the current project is 5%. TxDOT Project Manager is John Wepryk.

Future scope work items for engineering/design services within the next five years may include but are not necessarily limited to the following:

1. Reconstruct parallel taxiway 240' from runway centerline to meet design standards.

The City of Beaumont reserves the right to determine which of the above scope of services may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services above.

To assist in your proposal preparation the criteria, 5010 drawing, project narrative, and most recent Airport Layout Plan are available online at www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm by selecting "Beaumont Municipal Airport". The proposal should address a technical approach for the current scope only.

Firms shall use page 4, Recent Airport Experience, to list relevant past projects for both current and future scope. Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal". The form may be requested from TxDOT Aviation Division, 125 East 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at www.dot.state.tx.us/services/aviation/consultant.htm. The form may not be altered in any

way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

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Please note:

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The consultant selection committee will be composed of local government members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluating engineering proposals can be found at <http://www.dot.state.tx.us/services/aviation/consultant.htm>. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Sheri Quinlan, Grant Manager. For technical questions, please contact John Wepryk, Project Manager.

TRD-200705416

Bob Jackson

General Counsel

Texas Department of Transportation

Filed: November 7, 2007



Aviation Division - Request for Proposal for Aviation Engineering Services

Cameron County, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below.

The following is a listing of proposed projects at the Port Isabel-Cameron County Airport during the course of the next five years through multiple grants.

Current Project: Cameron County. TxDOT CSJ No. 0821PTISB. Scope: Provide engineering/design services to seal PCC joints and mark taxiway A, runway 17-35 and apron; install new MIRL runway 13-31 and replace PAPI-2 with PAPI 4 runway 13-31.

There is no DBE goal. TxDOT Project Manager is John Wepryk.

Future scope work items for engineering/design services within the next five years may include but are not necessarily limited to the following:

1. Construct auto parking for new terminal building and T-hangar access taxiway.
2. Seal PCC joints
3. Apron and taxiway marking
4. Rehabilitate rotating beacon
5. Hangar construction

Cameron County reserves the right to determine which of the above scope of services may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services above.

To assist in your proposal preparation the criteria, 5010 drawing, project narrative, and most recent Airport Layout Plan are available online at www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm by selecting "Port Isabel-Cameron County Airport". The proposal should address a technical approach for the current scope only. Firms shall use page 4, Recent Airport Experience, to list relevant past projects for both current and future scope.

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal". The form may be requested from TxDOT Aviation Division, 125 East 11th Street, Austin, Texas 78701-2483, phone number 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at www.dot.state.tx.us/services/aviation/consultant.htm. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion. **PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.**

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Please note:

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The consultant selection committee will be composed of local government members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluation engineering proposals can be found at <http://www.dot.state.tx.us/services/aviation/consultant.htm>. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please

contact Sheri Quinlan, Grant Manager. For technical questions, please contact John Wepryk, Project Manager.

TRD-200705417

Bob Jackson

General Counsel

Texas Department of Transportation

Filed: November 7, 2007



Aviation Division - Request for Proposal for Aviation Engineering Services

San Patricio County, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below.

The following is a listing of proposed projects at the T.P. McCampbell Airport, Ingelside, Texas during the course of the next five years through multiple grants.

Current Project: San Patricio County. TxDOT CSJ No. 0816INGLE. Scope: Provide engineering/design to expand apron.

The DBE goal for the current project is 9%. TxDOT Project Manager is John Wepryk.

Future scope work items for engineering/design services within the next five years may include but are not necessarily limited to the following:

1. Rehabilitate apron, parallel taxiway, hangar access taxiway and runway 13-31
2. Mark parallel taxiway and runway 13-31
3. Install MIRLS runway 13-31

San Patricio County reserves the right to determine which of the above scope of services may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services above.

To assist in your proposal preparation the criteria, 5010 drawing and most recent Airport Layout Plan are available online at www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm by selecting "T.P. McCampbell Airport". The proposal should address a technical approach for the current scope only. Firms shall use page 4, Recent Airport Experience, to list relevant past projects for both current and future scope.

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal". The form may be requested from TxDOT Aviation Division, 125 East 11th Street, Austin, Texas 78701-2483, phone number 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at www.dot.state.tx.us/services/aviation/consultant.htm.

The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion. **PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.**

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DOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

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The consultant selection committee will be composed of Aviation Division staff members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluation engineering proposals can be found at <http://www.dot.state.tx.us/services/aviation/consultant.htm>. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Sheri Quinlan, Grant Manager. For technical questions, please contact John Wepryk, Project Manager.

TRD-200705418

Bob Jackson

General Counsel

Texas Department of Transportation

Filed: November 7, 2007



Aviation Division - Request for Proposal for Aviation Engineering Services

The City of Brownwood, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below.

The following is a listing of proposed projects at the Brownwood Regional Airport during the course of the next five years through multiple grants.

Current Project: City of Brownwood, Brownwood Regional Airport. TxDOT CSJ No. 0823BWOOD. Scope: Provide engineering/design services to rehabilitate and mark Runway 17-35.

There is no DBE goal. The TxDOT Project Manager is Charles Graham.

Future scope work items for engineering/design services within the next five years may include, but are not necessarily limited to, the following:

1. Construct hangar access taxiways
2. Rehabilitate aprons
3. Rehabilitate and mark Runway 13-31
4. Construct apron
5. Rehabilitate and mark taxiways

6. Extend Taxiway C
7. Install REILs Runways 13-31 and 35
8. Relocate north services road
9. Overlay Runway 17-35
10. Relocate MIRLS

The City of Brownwood reserves the right to determine which of the above scopes of services may or may not be awarded to the successful firms and to initiate additional procurement action for any of the services above.

To assist in your proposal preparation the criteria, 5010 drawing, and most recent Airport Layout Plan are available online at www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm by selecting "Brownwood Regional Airport". The proposal should address a technical approach for the current scope only. Firms shall use page 4, Recent Airport Experience, to list relevant past projects for both current and future scope.

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal". The form may be requested from TxDOT Aviation Division, 125 East 11th Street, Austin, Texas 78701-2483, phone number 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at www.dot.state.tx.us/services/aviation/consultant.htm. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

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Please note:

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The consultant selection committee will be composed of local government members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluation engineering proposals can be found at <http://www.dot.state.tx.us/services/aviation/consultant.htm>. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Edie Stimach, Grant Manager. For technical questions, please contact Charles Graham, Project Manager.

TRD-200705419

Bob Jackson
General Counsel
Texas Department of Transportation
Filed: November 7, 2007

◆ ◆ ◆
The University of Texas System

Notice of Intent to Amend Major Consulting Services Contract

Pursuant to *Texas Government Code* §2254.031, The University of Texas System Administration (the "University") intends to amend its agreement with Strategic Management Systems, Inc. that it originally entered into effective February 26, 2007.

The amendment will not provide for additional services. It is limited to authorizing the Contractor to be reimbursed, without mark-up, for future reasonable travel expenses (including meals, lodging, mileage, and coach class airfare) validly incurred directly and solely in support of the Project to review compliance activities at various University of Texas institutions and all travel to such institutions will be approved by the University in advance. The Contractor will be subject to the Travel Allowance Guide promulgated by the Comptroller of Public Accounts for the State of Texas with regard to meals, lodging, mileage, airfare, and all other expenses related to travel.

The individual to be contacted regarding any questions as to this amendment:

Art Martinez
Executive Director for Board Services
The University of Texas System
201 West 7th Street
Suite 820
Austin, Texas 78701-2981
Voice: (512) 499-4402
Fax: (512) 499-4425
E-mail: amartinez@utsystem.edu
TRD-200705363
Francie A. Frederick
General Counsel to the Board of Regents
The University of Texas System
Filed: November 6, 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).