
TEXAS REGISTER

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Lisa Alaniz

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 July 25, 2008

Appointed to the Coastal Coordination Council for a term to expire May 31, 2009, Bob McCan of Victoria (replacing John Sullivan of Galveston whose term expired).

Appointed to the Coastal Coordination Council for a term to expire May 31, 2009, James R. Matz of Harlingen (Mr. Matz is being reappointed).

Appointed to the San Jacinto River Authority Board of Directors, pursuant to SB 526, 78th Legislature, Regular Session, for a term to expire October 16, 2011, Lloyd Tisdale of Conroe (new position due to SB 287).

Appointed to the San Jacinto River Authority Board of Directors, pursuant to SB 526, 78th Legislature, Regular Session, for a term to expire October 16, 2013, R. Gary Montgomery of The Woodlands (Mr. Montgomery is being reappointed).

Appointed to the San Jacinto River Authority Board of Directors, pursuant to SB 526, 78th Legislature, Regular Session, for a term to expire October 16, 2013, David Kleimann of Willis (replacing Lloyd B. Tisdale of Conroe whose term expired).

Appointments for July 28, 2008

Appointed to the Texas Workforce Commission, effective August 4, 2008, for a term to expire February 1, 2009, Thomas Pauken of Dallas (replacing Ronald Lehman of Round Rock who resigned). Mr. Pauken will serve as Presiding Officer of the commission.

Appointed to the Texas Workforce Commission, effective August 4, 2008, for a term to expire February 1, 2013, Andres Alcantar of Austin (replacing Thomas Pauken of Dallas).

Designating Jeffrey R. LaBroski of Richmond as Presiding Officer of the Private Sector Prison Industry Oversight Authority for a term at the pleasure of the Governor. Mr. LaBroski is replacing Kathy Flanagan of Houston as presiding officer.

Designating John L. De Noyelles of Flint as Presiding Officer of the Commission on State Emergency Communications for a term at the pleasure of the Governor. Mr. De Noyelles is replacing Dorothy Morgan of Brenham as presiding officer.

Appointed to the Texas Agricultural Finance Authority for a term to expire January 1, 2009, Dal DeWees of San Angelo (Mr. DeWees is being reappointed).

Appointed to the Texas Agricultural Finance Authority for a term to expire January 1, 2009, Ted Conover of Tyler (replacing Albert Todd Lowry of Laredo whose term expired).

Appointed to the Texas Agricultural Finance Authority for a term to expire January 1, 2010, Sydney Golden of Lake Jackson (Mr. Golden is being reappointed). Mr. Golden will serve as Presiding Officer of the board.

Appointed to the Texas Agricultural Finance Authority for a term to expire January 1, 2010, Victoria Salin of College Station (Ms. Salin is being reappointed).

Appointed to the Texas Agricultural Finance Authority for a term to expire January 1, 2010, Larry Shafer of Grandbury (replacing Jane Stinnett of Lubbock who is deceased).

Appointed to the State Board of Examiners of Marriage and Family Therapists for a term to expire February 1, 2011, Timothy Brown of Rowlett (replacing Asa Sampson of League City who resigned).

Appointed to the State Board of Examiners of Marriage and Family Therapists for a term to expire February 1, 2013, Michael Miller of Belton (replacing B.W. McClendon of Austin whose term expired).

Appointed to the State Board of Examiners of Marriage and Family Therapists for a term to expire February 1, 2013, Jennifer Smothermon of Abilene (replacing Waymon Hinson of Abilene whose term expired).

Appointed to the State Board of Examiners of Marriage and Family Therapists for a term to expire February 1, 2013, Sandra DeSobe of Houston (Ms. DeSobe is being reappointed). Ms. DeSobe will serve as Presiding Officer of the board.

Appointed to the Commission on State Emergency Communications for a term to expire September 1, 2011, Gregory Parker of New Braunfels (replacing Dorothy Marie Morgan of Brenham whose term expired).

Appointed to the Commission on State Emergency Communications for a term to expire September 1, 2011, Stephen Mitchell of Richardson (replacing Gerardo M. Garcia of Corpus Christi who resigned).

Appointed to the Commission on State Emergency Communications for a term to expire September 1, 2013, David Levy of Archer (replacing H.T. Wright of Lockhart whose term expired).

Appointed to the Red River Authority of Texas Board of Directors for a term to expire August 11, 2011, Lisa Caldwell Brent of Amarillo (Ms. Brent is being reappointed).

Appointed to the Red River Authority of Texas Board of Directors for a term to expire August 11, 2013, Cole Camp of Amarillo (replacing George W. Arrington of Canadian whose term expired).

Appointed to the Red River Authority of Texas Board of Directors for a term to expire August 11, 2013, Penny C. Carpenter of Silverton (replacing W. F. Smith of Quanah whose term expired).

Appointed to the State Community Development Review Committee for a term to expire February 1, 2009, Chuck Cazalas of Corpus Christi (Mr. Cazalas is being reappointed).

Appointed to the State Community Development Review Committee for a term to expire February 1, 2009, Wanda Herd of Wheeler (Ms. Herd is being reappointed).

Appointed to the State Community Development Review Committee for a term to expire February 1, 2009, Jerry Hubbell of Mt. Vernon (Mr. Hubbell is being reappointed).

Appointed to the State Community Development Review Committee for a term to expire February 1, 2009, Dale Spurgin of Anson (Mr. Spurgin is being reappointed).

Appointed to the State Community Development Review Committee for a term to expire February 1, 2009, Neal Burnett of Plainview (Mr. Burnett is being reappointed).

Appointed to the State Community Development Review Committee for a term to expire February 1, 2009, Doug King of Bandera (Mr. King is being reappointed).

Rick Perry, Governor

TRD-200804052



Appointments

Appointments for August 5, 2008

Designating Robert C. Barnes as Presiding Officer of the Texas Mutual Insurance Company Board of Directors for a term at the pleasure of the Governor. Mr. Barnes is replacing Richard Cooper of Lubbock as presiding officer.

Appointed to the Texas Mutual Insurance Company Board of Directors for a term to expire July 1, 2011, Jay Eisen of Beaumont (replacing Ruben Hope of Montgomery who resigned).

Appointed to the State Preservation Board for a term to expire February 1, 2009, Charlotte C. Foster of Houston (replacing Jocelyn Straus of San Antonio who resigned).

Appointed to the Nueces River Authority Board of Directors for a term to expire February 1, 2013, Robert M. Dullnig of San Antonio (Mr. Dullnig is being reappointed).

Appointments for August 6, 2008

Appointed to the State Board of Podiatric Medical Examiners for a term to expire July 10, 2013, James Michael Lunsford of Katy (replacing Matthew Lynch of Troy whose term expired).

Appointed to the State Board of Podiatric Medical Examiners for a term to expire July 10, 2013, Joe E. Martin, Jr. of College Station (replacing Bruce Scudday of El Paso whose term expired).

Appointed to the State Board of Podiatric Medical Examiners for a term to expire July 10, 2013, James Michael Miller of Aledo (replacing Carol Baker of Spring whose term expired).

Rick Perry, Governor

TRD-200804110



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-0729-GA

Requestor:

The Honorable Robert F. Vititow

Rains County Attorney

220 West Quitman Street

Post Office Box 1075

Emory, Texas 75440

Re: Authority of a commissioners court to remove from county right-of-way structures it deems to be a safety hazard (RQ-0729-GA)

Briefs requested by September 1, 2008

RQ-0730-GA

Requestor:

The Honorable Joe Driver

Chair, Committee on Law Enforcement

Texas House of Representatives

P.O. Box 2910

Austin, Texas 78768-2910

Re: Authority of a county attorney to issue commissions for reserve or nonpaid peace officers (RQ-0730-GA)

Briefs requested by September 4, 2008

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

TRD-200804093

Stacey Napier

Deputy Attorney General

Office of the Attorney General

Filed: August 5, 2008



Opinions

Opinion No. GA-0650

Ms. Kathleen T. Jackson, Chair

Lower Neches Valley Authority

Post Office Box 5117

Beaumont, Texas 77726-5117

Re: Whether members of the board of directors of the Lower Neches Valley Authority may participate in the Authority's health care plan (RQ-0673-GA)

S U M M A R Y

A director of the Lower Neches Valley Authority is not eligible to participate in the Authority's health care plan.

Opinion No. GA-0651

The Honorable Billy W. Byrd

Upshur County Criminal District Attorney

405 North Titus Street

Gilmer, Texas 75644

Re: Whether a justice of the peace who is an attorney may be appointed to represent criminal defendants in appellate proceedings (RQ-0674-GA)

S U M M A R Y

Neither Government Code section 82.064 nor Code of Criminal Procedure article 26.06 prohibits a justice of the peace who is an attorney from accepting an appointment to represent an indigent criminal defendant at the appellate level, and both implicitly recognize the justice's authority to do so.

Nevertheless, the justice also is subject to the Code of Judicial Conduct and the Texas Disciplinary Rules of Professional Conduct. Whether a justice of the peace may be appointed to represent criminal defendants in appellate proceedings without violating the Code of Judicial Conduct or the Disciplinary Rules of Professional Conduct is a question requiring the resolution of fact issues and cannot be determined by this office.

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

TRD-200804092

Stacey Napier

Deputy Attorney General

Office of the Attorney General

Filed: August 5, 2008



PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 12. COMMISSION ON STATE EMERGENCY COMMUNICATIONS

CHAPTER 251. REGIONAL PLANS--STANDARDS

1 TAC §§251.1, 251.3 - 251.5, 251.8, 251.9, 251.11 - 251.13

The Commission on State Emergency Communications (CSEC) proposes amendments to §§251.1, 251.3 - 251.5, 251.8, 251.9, and 251.11 - 251.13 concerning guidelines governing the relationship between CSEC and the Regional Planning Commissions regarding the submission of regional strategic plans and amendments; use of revenue; procurement, management, and disposition of 9-1-1 equipment and controlled assets; use of funds for database maintenance; monitoring policies; and emergency notification services.

Government Code §2001.039 requires each state agency to review and consider for re-adoption each of its rules not later than the fourth anniversary on which the rule takes effect and every four years thereafter. In the February 1, 2008, edition of the *Texas Register* (33 TexReg 951) CSEC published notice of its intent to review its Chapter 251 rules. At this time, CSEC has determined that sufficient reason exists to readopt with amendments to nine of the 13 rules. Proposed amendments to the remaining four rules (§§251.2, 251.7, 251.10, and 251.14) will be published at a later time.

Each rule is being amended to shorten the Purpose subsection and delete the Definitions subsection. (CSEC §251.14 is the agency rule for definitions and it will be amended and re-numbered in September 2008 to clarify that it is applicable to all other CSEC rules.)

SECTION-BY-SECTION EXPLANATION

Amendments to §251.1 serve to clarify the minimum requirements for submitting and amending regional strategic plans.

Amendments to §251.3 serve to establish a timeframe for submitting requests for use of revenue and remove the Approval subsection which restates CSEC's statutory obligation to approve regional strategic plans.

Amendments to §251.4 serve to considerably shorten the rule by eliminating the Definitions subsection, removing repeat references to the Americans with Disabilities Act, and shortening the subsections on Testing and Training.

Amendments to §251.5 serve to rename the rule to include "Controlled Assets" and to shorten and clarify the requirements for

managing and disposing of 9-1-1 equipment and controlled assets.

Amendments to §251.8 serve to rename the rule to include "9-1-1" to clarify the type of equipment subject to the rule and to shorten the rule to clarify the requirements and eliminate redundant or unnecessary language.

Amendments to §251.9 serve to shorten the rule to clarify the requirements and eliminate redundant or unnecessary language.

Amendments to §251.11 serve to make clear CSEC's authority to do compliance monitoring of the Regional Planning Commissions and their performing local governments or public safety answering points.

Amendments to §251.12 serve to incorporate CSEC's standard form contract between CSEC and the Regional Planning Commissions.

Amendments to §251.13 serve to delete redundant or unnecessary language.

FISCAL NOTE

Paul Mallett, CSEC's executive director, has determined that for each year of the first five fiscal years (FY) that amended §§251.1, 251.3 - 251.5, 251.8, 251.9, and 251.11 - 251.13 are in effect there will be no cost implications to the state or local governments as a result of enforcing or administering the amended sections.

PUBLIC BENEFIT

Mr. Mallett has determined that for each year of the first five years the amended section is in effect, the public benefits anticipated as a result of the proposed revisions will be added certainty amongst the agency's stakeholders regarding their obligations and responsibilities; additional accountability of public funds; and increased management of equipment and controlled assets purchased with public funds.

REGULATORY ANALYSIS OF MAJOR ENVIRONMENTAL RULES

CSEC has determined that this proposal is not a "major environmental rule" as defined by Government Code §2001.0225.

LOCAL EMPLOYMENT IMPACT STATEMENT

CSEC has determined that this proposal does not directly affect a local economy and, therefore, has not drafted a local employment impact statement as would otherwise be required under the Administrative Procedures Act §2001.022.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

In accordance with Government Code §2006.002(c), Mr. Mallett has determined that there will be no adverse economic ef-

fect on small businesses and micro-businesses as the rules being amended affect only the relationship between CSEC and the Regional Planning Commissions. Accordingly, CSEC has not prepared an economic impact statement or regulatory flexibility analysis.

PUBLIC COMMENT

Comments on the proposal may be submitted in writing to Patrick Tyler, Commission on State Emergency Communications, 333 Guadalupe Street, Suite 2-212, Austin, Texas 78701-3942 or by email to patrick.tyler@csec.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

STATEMENT OF AUTHORITY

The amendments are proposed pursuant to the Health and Safety Code §§771.051, 771.055, 771.056, 771.057, 771.061, 771.075, 771.0751, 771.078, 771.079.

No other statute, article, or code is affected by the proposal.

§251.1. Regional Strategic Plans for 9-1-1 Service.

(a) Purpose. The purpose of this rule is to establish [Commission on State Emergency Communications (Commission) herein establishes] a framework for regional planning commissions (RPCs) to use in the development and submission of regional strategic plans for 9-1-1 service, or amendments thereto, pursuant to Health and Safety Code §771.055 - 771.057 [for provisioning 9-1-1 service]. Regional strategic plans should, at a minimum, include[, but not be limited to,] the elements and subsections required by statute, [of] this rule, and applicable Commission policies and procedures. [Other rules provide specific standards for performance of these requirements.]

(b) Definitions. Unless the context clearly indicates otherwise, terms contained in this rule are defined as shown in Commission Rule 251.14, General Provisions and Definitions.]

(c) Regional Plan Submission. All regional strategic plans for 9-1-1 service, or amendments thereto to those regional plans, must be submitted to the Commission for approval or disapproval as by a RPC as specified by Health and Safety Code, Chapter 771, §771.056; Submission of Regional Plan to the Commission, and §771.057; Amendment of Plan. The RPC shall comply with all applicable federal and state laws in carrying out its approved regional plan.]

(b) [(d)] Regional Plan Scope. Regional [All regional] plans [for 9-1-1 service submitted for approval] must address the entire geographic area within the boundaries of the [a] RPC. The regional plan must identify all participating public safety agencies and Emergency Communication Districts. [All counties with a population greater than 120,000, according to the latest federal census, must have 9-1-1 service by September 1, 1995. In counties with less than 120,000 in population, resolutions supporting the regional plan must be included for all participating cities and counties. Because the definition of Public Agency in Health and Safety Code, Chapter 771, §771.001(7) creates a possibility of overlapping jurisdictions, the city or county government of that area should submit the resolution to support the regional plan.]

(c) [(e)] Regional Plan Criteria. In addition to the elements required by Health and Safety Code §771.055, regional plans must include the following, in order: [The regional plan must include a description of how the 9-1-1 service is to be administered, a description of how money is to be allocated within the region, projected financial operating information for the two state fiscal years following the submission of the regional plan, strategic planning information for the five state fiscal years following the submission of the regional plan, and a detailed description of the equipment, network, and database services

as required by Health and Safety Code, Chapter 771, §771.055, Strategic Planning.]

- (1) Contingency routing plan;
- (2) Network testing plan;
- (3) Local monitoring plan;
- (4) Capital asset plan;
- (5) Network diagrams;
- (6) Database maintenance plan; and
- (7) Equipment maintenance plan.

(d) [(f)] Regional [All regional] plans [for 9-1-1 service] must include at least one Primary PSAP and the following equipment and service at all PSAPs:

- (1) Automatic Number Identification (ANI) level of service;
- (2) Automatic Location Identification (ALI) level of service;
- (3) Wireless Phase I E9-1-1 level of service;
- (4) TDD/TTY or TDD/TTY compatible equipment in compliance with the Americans with Disabilities Act (ADA) and in compliance with Commission Rule 251.4, Guidelines Accessibility Equipment.
- (5) A standby power supply for the 9-1-1 equipment;
- (6) Forced disconnect feature to allow the PSAP to clear incoming circuits when necessary;
- (7) The following must be redundant [redundant crucial service items]:

(A) Network connections between each service provider facility [telephone central office or mobile switch] and the 9-1-1 Network Provider's selective router (SR) [SR];

(B) Network connections from the SR to the Primary PSAP;

(C) Network connections from the ALI database to the Primary PSAP;

(D) Database routers at the Primary PSAP;

(E) Telephone sets and/or integrated ANI and ALI display call taking positions; and

[(F) Stand-alone TDD units; and]

(F) [(G)] Any other equipment essential to the 9-1-1 call-taking function.

(8) A published ten-digit emergency telephone number that can accept emergency calls 24 hours a day, 7 days a week, 365 days a year and which is answered by a qualified 9-1-1 call taker;

(9) A positive response to each 9-1-1 call to include an audible ringing tone connecting to a PSAP where either the call is answered by personnel at the PSAP or a recorded announcement provides further information; and

[(10) The following required elements to ensure the reliability of the 9-1-1 equipment and service:]

[(A) Contingency routing plan;]

[(B) Network testing plan;]

- ~~{(C) Local monitoring plan;}~~
- ~~{(D) Capital asset plan;}~~
- ~~{(E) Network diagrams;}~~
- ~~{(F) Database maintenance plan; and}~~
- ~~{(G) Equipment maintenance plan.}~~

~~{(g) Amendments to Regional Plan. A regional plan may be amended according to procedure established in accordance with Commission Rule 251.6, Guidelines for Strategic Plans, Amendments, and Revenue Allocation.}~~

~~{(e) [(h)] Call Taking Positions. Requests for an increase in the number of 9-1-1 call taking positions within a PSAP should be submitted for approval with submission of the regional strategic plan. If an increase in the number of positions is required after the regional plan has been approved, the RPC shall comply with Commission rules, policies and procedures.}~~

~~{(f) [(i)] Adding a PSAP. An RPC may request [Should there be a need] to add a new PSAP within the region by submitting an amendment to its regional plan and shall; the RPC shall} follow the requirements for amendments in accordance with Commission [Rule 251.6, Guidelines for Strategic Plans, Amendments, and Revenue Allocation. The amendment request shall comply with Commission] rules, policies and procedures.~~

~~{(g) [(j)] Contracts. Each [The] RPC shall execute interlocal agreements between itself and each public agency in the RPC's region that address, at a minimum, [its local governments responsible for PSAPs relating to] the planning, development, operation and provision of 9-1-1 service, the use of 9-1-1 funds, and the requirements in the contracts promulgated pursuant to [and adherence to applicable law in accordance with] Commission Rule 251.12, Contracts for 9-1-1 Services [Contracts for 9-1-1 Services].}~~

~~{(k) Procurement. The RPC shall use competitive procurement practices and procedures similar to those required by state law for cities or counties, as well as any additional Commission policies, in conjunction with the procurement of 9-1-1 Customer Premises Equipment, 9-1-1 Network, and 9-1-1 Database Services, and any other items to be obtained with 9-1-1 funds in accordance with Commission Rule 251.8, Guidelines for the Procurement of Equipment and Services with 9-1-1 funds.}~~

~~{(l) Equipment Management. The RPC is responsible for the 9-1-1 equipment in accordance with Commission Rule 251.5, Guidelines for 9-1-1 Equipment Management and Disposition. Any integration of expanded third-party applications onto a call taking position must be in accordance with Commission Rule 251.7, Guidelines for Implementing Integrated Service. If changes or extensions of 9-1-1 service occur, the RPC is to administer and report them in accordance with Commission Rule 251.2, Guidelines for Changing or Extending 9-1-1 Service Arrangements}~~

~~{(h) [(m)] Testing. Each [The] RPC shall test all 9-1-1 equipment [Customer Premises Equipment (including TDD/TTY), 9-1-1 Network,] and Services [9-1-1 Database services.} Testing shall occur when new service or equipment is installed, service or equipment is modified, and on a regular basis to ensure system reliability and compliance with the ADA. A schedule for ongoing testing shall be developed by the RPC and shall be available to the Commission for monitoring.~~

~~{(n) Monitoring. The Commission reserves the right to perform on site monitoring of the RPC and/or its performing local governments or PSAPs, including mobile PSAPs, for compliance with ap-~~

~~licable law in accordance with Commission Rule 251.11, Monitoring Policies and Procedures.}~~

~~{(i) [(o)] Performance Reporting. Each [A] RPC shall submit financial and performance reports to the Commission at least quarterly on a schedule to be established by the Commission. The financial report shall identify actual implementation costs by county, budget allocation, [strategic plan priority level], and component. The performance report shall reflect the progress of implementing the region's strategic plan including, but not limited to, the status of equipment, services, and program deliverables in a format to be determined by the Commission.}~~

~~{§251.3. Use of Revenue in Certain Counties.}~~

~~{(a) Purpose. The purpose of this rule is to implement §771.0751 [Section 771.0751 of the Texas] Health and Safety Code, which authorizes the Commission to use 9-1-1 fees and surcharges in certain counties, in addition to other authorized or required uses, for any necessary 9-1-1 related costs.}~~

~~{(b) Definitions. Unless the context clearly indicates otherwise, terms contained in this rule are defined in Commission Rule 251.14, General Provisions and Definitions.}~~

~~{(b)[(e)] Eligibility. The eligibility for approval of funding under this rule is as follows:}~~

~~{(1) A PSAP within a county participating in a regional strategic plan with a population of at least 700,000 as reported by the Texas State Data Center; or}~~

~~{(2) A PSAP within a county participating in a regional strategic plan that has the highest population within the region as reported by the Texas State Data Center.}~~

~~{(c) [(d)] Requests. Requests for funding under this rule shall be submitted by the RPC as an amendment to its regional strategic plan at fiscal year close out when all encumbrances and payables have been expended in accordance with Commission rules, policies and procedures; must demonstrate that all basic regional 9-1-1 needs have been met prior to funding under this rule; and must include a letter signed by the RPC's Executive Director authorizing the request and listing each PSAP to receive funding and the respective amount to be received. [part of the regional strategic plan or proposed as an amendment to the regional plan; subject to the format and documentation requirements and review and approval processes as described in Commission Rule 251.1, Regional Strategic Plans for 9-1-1 Service, Commission Rule 251.6, Guidelines for Strategic Plans, Amendments, and Revenue Allocation, and other applicable Commission rules and policies. Requests should demonstrate that all basic regional 9-1-1 needs are met and maintained prior to any additional costs proposed under this rule.}~~

~~{(e) Approval. Approval of regional plans or amendments requesting funds under this rule may only be approved by vote of the Commission. Once approved, procurement, operation, and maintenance of enhancements funded under this rule are subject to all applicable Commission rules and policies.}~~

~~{§251.4. Guidelines for Accessibility Equipment.}~~

~~{(a) Purpose. The purpose of this rule is to establish [As authorized by Chapter 771 of the Texas Health and Safety Code, the Commission on State Emergency Communications (Commission) may impose 9-1-1 emergency service fees and equalization surcharges to support the planning, development, and provision of 9-1-1 service throughout the State of Texas. In accordance with §771.055 of the above chapter, such service implementation shall be consistent with regional plans developed by regional planning commissions. The Commission herein establishes] minimum standards for [regional planning commissions {RPCs}] to use in complying with applicable}~~

sections of the Americans with Disabilities Act (ADA) [as pertain to the provisioning of emergency communications services].

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

{(1) Customer Premises Equipment (CPE)—the terminal equipment at a PSAP.}

{(2) Integrated TDD—the TDD has been incorporated into the CPE equipment.}

{(3) Public Safety Answering Point (PSAP)—A 24-hour communications facility established as an answering location for 9-1-1 calls originating within a given service area, as further defined in applicable law Texas Health and Safety Code, Chapters 771 and 772.}

{(4) Stand-Alone TDD—a separate TDD unit that is not connected to the CPE.}

{(5) TDD—the acronym for Telecommunication Device for the Deaf. Other interchangeable acronyms accepted are TTY (Teletypewriter) or TT (Text Telephone).}

{(6) TDD Detectors—monitor incoming trunks for TDD tones. Upon detection, a response sequence begins. A built-in recording provides a repeating voice announcement, "TDD Call," to the telecommunicator. A message is sent to the TDD caller (such as "9-1-1 Please Hold"). The telecommunicator then utilizes a TDD to communicate.}

{(c) The Americans with Disabilities Act (P.L. 101-336), commonly referred to as the ADA, impacts telephone emergency communications services by mandating direct access to the service via TDD and computer modem. Title II, Section 35.162 of the ADA states: "Telephone emergency services, including 9-1-1 services, shall provide direct access to individuals who use TDD's and computer modems." Although the ADA does not mandate TDD detection equipment, the Department of Justice addresses the issue of a "silent call" in their Technical Assistance Manual by stating, "operators must be trained to recognize that silent calls may be TDD or computer modem calls and to respond appropriately." Installation of detection equipment will assist the telecommunicator in call-handling efficiency.}

{(d) The Commission has established rules and policies that must be implemented in a 9-1-1 Regional Strategic Plan (Chapter 251). The Commission will consider as part of the regional plan, accessibility equipment that will improve the effectiveness and reliability of 9-1-1 call delivery systems and provide direct access to individuals who use TDDs and computer modems. This may include the following when the equipment is for ADA compliant 9-1-1 call delivery: TDD detection equipment, integrated TDDs, and stand-alone TDDs.}

{(e) Policies and Procedures.}

{(b) [(4)] Equipment.[:] All 9-1-1 Public Safety Answering Points (PSAPs) must have telecommunication device for the deaf (TDD) [TDD] accessibility equipment at each 9-1-1 call taking position [call station]. This equipment may be integrated into the CPE or may be a separate stand-alone unit. In addition, each PSAP must also have at least one functioning stand-alone TDD unit available to be used as back-up in the event of equipment failure; in order to comply with Title II of the ADA. [CSEC Rule 251.6 outlines the strategic planning process for the provisioning of this equipment.}

{(c) [(2)] Testing.[:] In accordance with Commission Rule 251.1, Regional Strategic Plans for 9-1-1 Service, all [AH] PSAPs must test the 9-1-1 equipment to ensure that the integrated and stand alone TDD is functioning properly. [within the CPE equipment.}

The stand-alone unit should also be tested regularly to ensure it is functioning properly. CSEC Rule 251.4 states "The RPC shall test all 9-1-1 Customer Premises Equipment (including TDD/TTY), 9-1-1 Network, and 9-1-1 Database services. Testing shall occur when new service or equipment is installed, service or equipment is modified, and on a regular basis to ensure system reliability and compliance with ADA. A schedule for ongoing testing shall be developed by the RPC and shall be available to the CSEC for monitoring."

{(d) [(3)] Training.[:] All 9-1-1 call takers must be trained to recognize and accept TDD calls through both the integrated and stand alone TDD [equipment and the stand-alone unit in order to be in compliance with the ADA]. Training [This training] must be offered [at least as often as all other training, but] at a minimum of once every six months. [The Commission has established "Best Practices for Basic 9-1-1 System Training" along with an accompanying "Best Practices Training Manual" to assist the RPCs in meeting ADA Title II minimum requirements.}

§251.5. Guidelines for [9-1-1 Equipment] Management and Disposition of 9-1-1 Equipment and Controlled Assets.

{(a) Purpose. The purpose of this rule is to implement [establish] the Texas Uniform Grant Management Standards (UGMS) [as the required procedure] for the management and disposition of 9-1-1 [equipment] equipment and controlled assets purchased with 9-1-1 funds. In-structions [Other instructions] provided in this rule are in addition to the direction provided in UGMS.

{(b) Definitions: Unless the context clearly indicates otherwise, terms contained in this rule are defined as shown in Commission Rule 251.14, General Provisions and Definitions.}

{(b) [(c)] Management and Disposition [of Equipment]. Each RPC shall designate at least one individual who is responsible and accountable for all 9-1-1 equipment [Equipment, Database Maintenance Equipment], and controlled assets in its region purchased with 9-1-1 funds.

{(c) [(d)] Interlocal Agreement [agreement]. For all 9-1-1 equipment and controlled assets not under [maintained on] the RPC's direct control [premises], the RPC [RPCs] will [contract with each of its participating local governments to] ensure, at a minimum, that:

(1) Ownership [All issues of ownership], transfer of ownership, control, and/or disposition of 9-1-1 equipment and controlled assets are covered in its [acquired with 9-1-1 funds shall be identified within] interlocal agreements.

(2) Contract [All contract] provisions for 9-1-1 equipment and controlled assets set forth in its [the] interlocal agreements are [agreement shall be] consistent with UGMS.

{(d) [(e)] Maintenance. Maintenance procedures shall be in place to keep 9-1-1 equipment and controlled assets [the property] in good working order [condition].}

(1) RPCs funding the purchase and/or lease of 9-1-1 equipment and controlled assets shall develop and adopt, within 30 days of purchase, maintenance plans covering the equipment involved as part of the regional plan [within 30 days of purchase]. Maintenance plans shall be provided to the Commission [CSEC] upon request.

(2) The Commission shall review maintenance costs for consistency with funding priorities and the approved regional [RPC] strategic plan.

{(e) [(f)] Property Records. Each RPC shall maintain property records in an inventory list and provide the list to the Commission [Property records shall be maintained and provided to the CSEC] upon request.

(1) All 9-1-1 equipment and controlled assets [Equipment meeting the definition of capital equipment] shall be listed on the inventory. [In addition to the controlled assets listed in UGMS that must be included on the inventory, the CSEC requires that computers, modems, printers, plotters, distance measuring devices (DMD), global positioning satellite (GPS) equipments, and sign-making machines, purchased entirely or in part with 9-1-1 funds, be reflected in the RPC's inventory.]

(2) A [CSEC requires a] physical inventory of all 9-1-1 equipment and controlled assets shall be taken at least once a year [to be taken] and the results reconciled to the property records [annually]. An annual certification [of assets] shall be provided to the Commission in accordance with Commission rules, policies and procedures [CSEC according to CSEC policy].

(f) [(g)] Control System. A control system must be in place [developed] to ensure adequate safeguards to prevent loss, damage, or theft of 9-1-1 equipment and controlled assets. Documentation [of the property. A description] of the control system shall be provided to the Commission [CSEC] upon request.

(g) [(h)] Disposition. Funds generated by the disposition of 9-1-1 equipment and controlled assets shall be reported to the Commission [CSEC] on the Financial Status Report [according to CSEC policy]. A [disposition] report listing all disposals of 9-1-1 equipment and controlled assets shall be provided to the Commission [CSEC] annually [according to CSEC policy].

[(i) Monitoring. The CSEC reserves the right to perform on-site monitoring of the RPC and/or its performing local governments or PSAPs for compliance with this rule as well as all applicable law, policies and procedures. All monitoring activities will be conducted in accordance with §251.11 of this title (relating to Monitoring Policies and Procedures).]

[(j) Other Issues.]

[(1) The requirements established in this rule also apply to an Emergency Communications District that has purchased Equipment with 9-1-1 Equalization Surecharge Funds.]

[(2) The Texas State Property Accounting Policies and Procedures Manual shall be referenced for guidance when questions arise to particular questions not covered in this rule.]

§251.8. *Guidelines for the Procurement of 9-1-1 Equipment and Services with 9-1-1 Funds.*

(a) Purpose. The purpose of this rule is to implement [establish] the Texas Uniform Grant Management Standards (UGMS) [as the required procedure] for purchases of 9-1-1 equipment and services made with 9-1-1 funds. Instructions [Other instructions] provided in this rule are in addition to the direction provided in UGMS. This rule is not intended to prohibit a regional planning commission [commission's] (RPC) from implementing [use of] more stringent competitive procurement practices.

[(b) Definitions. Unless the context clearly indicates otherwise, terms contained in this rule are defined as shown in Commission Rule 251.14, General Provisions and Definitions.]

(b) [(e)] Funding. Funds allocated for the procurement of [certain] 9-1-1 equipment and services[, database services, and network services] will be subject to Commission funding priorities and policies.

(c) [(d)] Statewide Procurement. The Commission reserves the right to procure [certain] 9-1-1 equipment and services [equipment, database services, and network services] for the State program based on best value and upon determination of which goods or services are

in the best interest of the State program [program's best interest]. In instances of statewide procurement, the Commission will work with the RPCs and local governments to ensure that [such] purchases [of goods or services] are consistent with local 9-1-1 system [systems'] infrastructure and best meet the needs of the local governments.

(d) [(e)] Industry Standard. All purchases of 9-1-1 equipment and services [goods, services, systems, or technology purchased with 9-1-1 funds] shall be consistent with the current industry standard. The authority for the industry standard for 9-1-1 networks, equipment, and databases is the National Emergency Number Association (NENA).

[(f) Capital Purchases. Goods, services, systems, technology, or projects with an aggregate value greater than \$5,000, or otherwise defined as capital items by the Texas Comptroller of Public Accounts, shall be regarded as capital purchases.]

(e) [(g)] Competitive Procurement Required. Competitive procurement is required for all Capital Purchases [purchases defined as capital purchases, including lease contracts with a value of greater than \$5,000].

(1) Exceptions for sole source may be used when consistent with UGMS. Prior written concurrence from the Commission is required for any sole source purchase expected to exceed \$25,000.

(2) Purchases made by RPCs through a state agency or other qualified cooperative purchasing program shall [be considered to] satisfy this section of the rule.

(3) Purchases of tariffed goods or services meeting the definition of capital purchases are subject to competitive procurement. An [A] RPC may not contract to pay a vendor an amount higher than its tariffed price.

(4) Modifications to leases with a nonrecurring cost of greater than \$5,000 are considered capital purchases subject to competitive procurement.

(f) [(h)] Historically Underutilized Businesses (HUBs). RPCs shall take affirmative steps to contract with HUBs according to the RPC's HUB plan included in the regional strategic plan.

(g) [(i)] Record Retention. All procurement[related] records must be maintained by RPCs [a RPC] in accordance with UGMS and each [the] RPC's record retention [adopted procurement] policy. Documentation will be[, and] made available to the Commission upon request.

(h) [(j)] Code of Ethics. An RPC employee [Employees of RPCs], whose salary is funded in whole or in part with 9-1-1 Funds [funds], shall adhere to the following ethical standards. Each RPC [RPCs] shall establish a policy [policies] to ensure that this [the] code of ethics is addressed in the procurement of all 9-1-1 equipment and services and provide a copy of this policy to the Commission upon request. RPC employee [An Employee] may not:

(1) Participate in work on a contract by taking action as an employee through decision, approval, disapproval, recommendation, giving advice, investigation or similar action knowing that the employee, or member of their immediate family, has an actual or potential financial interest in the contract, including prospective employment;

(2) Solicit or accept anything of value from a vendor or [an actual] potential vendor;

(3) Be employed by, or agree to work for, a vendor or potential vendor; or

(4) Knowingly disclose confidential information for personal gain. [RPCs shall establish policies to ensure that the above code

of ethics is addressed in the procurement of all 9-1-1 equipment and services. The administrative entity may have future 9-1-1 funds withheld and/or be required to reimburse the Commission the amount of the misappropriated funds.]

(i) [(k)] Compliance. If an RPC [a 9-1-1 administrative entity] fails to comply with the provisions of this rule, the Commission may take action to recover any excessive costs clearly shown to have been paid as a result of infractions of this rule.

(j) [(h)] Applicability of State Procurement Statutes. To the extent of any conflict between this rule and applicable state statutes prescribing procurement methods, such statutes shall be followed.

[(m)] Applicability to Emergency Communications Districts (Districts). The requirements set forth in this rule also apply to Districts receiving 9-1-1 equalization funds.]

§251.9. Guidelines for Database Maintenance Funds.

(a) Purpose. The purpose of this rule is to provide guidelines for using 9-1-1 Funds to maintain location information databases. [Commission on State Emergency Communications (Commission) has adopted a policy regarding database maintenance and the use of state funds. These guidelines address the use and distribution of 9-1-1 Funds and other related funds. The maintenance of street addresses is essential to E9-1-1 systems utilizing the Automatic Location Identification (ALI) feature, which displays the locations of 9-1-1 callers.]

[(b)] Background. As authorized by the Texas Health and Safety Code, Chapter 771, the Commission may impose 9-1-1 emergency service fees and equalization surcharges to support the planning, development, and provision of 9-1-1 service throughout the state of Texas. The implementation of such service involves the procurement, installation, and operation of equipment designed to support or facilitate the delivery of an emergency call to an appropriate emergency response agency. The Commission has funded addressing projects through the state to allow for the implementation of Automatic Location Identification (ALI) level of service. It has been the policy of the Commission to fund geographic information systems and the development of digital maps to support such activities. The Commission recognizes that the maintenance of addressing systems is essential for the proper operation of an E9-1-1 system and the delivery of a caller's location. If not properly maintained, the maps and records associated with an ALI system will soon become unreliable.]

[(c)] Definitions. Unless the context clearly indicates otherwise, terms contained in this rule are defined as shown in Commission Rule 251.14, General Provisions and Definitions.]

[(d)] A regional planning commission (RPC) or emergency communication district (District) applying on behalf of a county has completed addressing is considered eligible for database maintenance funding.]

(b) [(e)] Interlocal agreements shall be executed between the RPC and the county. The agreement shall identify the database maintenance responsibilities of all parties and provide for the reporting of performance measures.

(c) [(f)] A database maintenance plan shall be submitted by the RPC in conjunction with the approved strategic plan.] The database maintenance plan in an RPC's regional strategic plan shall provide an overview of all projected activities, and identify all parties involved and their associated responsibilities.

(d) [(g)] Annual database maintenance budgets shall be submitted by the RPC [local governments] each biennium with the strategic plan, identifying all projected database maintenance expen-

ditures. [These budgets will be reviewed during the strategic plan review process.]

[(h)] Budgeted costs associated with Database Maintenance shall be monitored by the Commission staff for consistency with approved strategic plans.]

[(i)] Requesting Database Maintenance Funds. A request from a RPC or District must contain the following:]

[(1)] Certification of a fully executed interlocal agreement between the RPC and the county;]

[(2)] A database maintenance plan identifying all activities and responsible parties involved; and]

[(3)] An approved budget outlining database maintenance components and projected expenditures.]

(e) [(j)] Budget Components. A RPC or a District must submit a database maintenance budget to the Commission for approval.] County database maintenance budgets are limited to approved strategic plan amounts and may only include the following cost components. Fund distribution among these components is at the discretion of the RPC to best fit the needs of the region.

(1) Personnel. For each staff position, the following must be provided:

(A) Position title;

(B) Duties related to database maintenance;

(C) Total salary for the budget period;

[(D)] Chargeable salary (total salary less release time);]

(D) [(E)] Percentage of time to be charged to database maintenance; and

(E) [(F)] Total salary chargeable to database maintenance.

(2) Travel. Total local travel estimated for the budget period multiplied by the current reimbursement rate for use of personally owned vehicles as defined by the State of Texas and[- List] the cost rate for county owned vehicles are eligible county database maintenance travel expenses.

(3) Supplies. Consumable [Total costs associated with consumable] office supplies to be purchased during the budget period and[- Also, total] costs associated with the reproduction of maps are eligible expenses [for use by local emergency service agencies may be reflected as part of this item].

(4) Rent. Total square feet of space devoted to database maintenance times the rental rate to be charged during the budget period.

(5) Maintenance and Repairs. Maintenance [Total maintenance] costs for database maintenance equipment, such as computers [during the budget period. Computers], printers, plotters, distance measuring devices [(DMD)], global positioning satellite [(GPS)] equipment and sign-making machines, may be included.

(6) Communications. Total costs for communications including telephone, fax, courier, etc., during the budget period.

(7) Postage and Mailing. Total costs for postage and mailing services expected during the budget period.

(8) Utilities. Total costs for utilities such as electricity, gas, water, etc., for the database maintenance office space expected during the budget period.

(9) Training. Total costs for training associated with database maintenance functions for staff funded in whole or in part with 9-1-1 funds [expected during the budget period].

(10) Street Sign Replacement. Itemize the cost [Cost] share for [of] the replacement of existing street signs located in the unincorporated areas of the county. [This item shall not include the purchase of new signs in the county subsequent to the completion of rural addressing.]

§251.11. *Monitoring Policies and Procedures.*

(a) Purpose. [The Commission on State Emergency Communications (Commission) shall monitor, at least annually, each regional planning commission (RPC) to assess administrative, fiscal, contractual, procurement, inventory, local monitoring, and program activities for compliance with applicable laws, rules, policies and procedures, and effectiveness in implementing E9-1-1 service in the RPC jurisdiction.] The purpose of this rule is to provide policies and procedures to be used by the Commission in monitoring each Regional Planning Commission's (RPC) implementation and provisioning of E9-1-1 service [and guidelines by which to conduct all monitoring activities].

[(b) Background. As authorized by the Texas Health and Safety Code, Section 771.051, the Commission shall develop minimum performance standards for equipment and operation of 9-1-1 service to be followed in developing regional plans, and impose 9-1-1 emergency service fees and equalization surcharges to support the planning, development, and provision of 9-1-1 service throughout the State of Texas. The Commission reserves the right to perform monitoring of the RPC and/or its performing local governments or PSAPs for compliance with applicable law, rules, policies and procedures. Monitoring activities shall provide the Commission with the information and data necessary to best assist RPCs and local governments in implementing and strengthening the 9-1-1 system in Texas.]

(b) [(e)] The Commission reserves the right to perform monitoring of the RPC and/or its performing local governments or PSAPs for compliance with applicable law, rules, policies and procedures. Monitoring activities shall provide the Commission with the information and data necessary to best assist RPCs and local governments in implementing and strengthening the 9-1-1 system in Texas. [Definitions. Unless the context clearly indicates otherwise, terms contained in this rule are defined as shown in Commission Rule 251.14, General Provisions and Definitions.]

(1) Monitoring--Activity Commission monitoring shall include the following:

(A) Evaluation of RPC policies and procedures for program quality and outcomes to ensure compliance with the Contract, as well as the objectives and standards set forth in all Commission Rules, Policies and Procedures, and especially relating to the rules contained in Chapter 251--Regional Plans;

(B) Determination of whether the RPC has demonstrated substantial compliance with oversight requirements, including:

(i) compliance with applicable provisions of the state's Uniform Grant Management Standards (UGMS);

(ii) competitive procurement procedures and documentation;

(iii) contract administration systems to ensure receipt of contracted deliverables;

(iv) ownership, transfer of ownership, and/or control of equipment acquired with 9-1-1 funds;

(v) maintenance of a current inventory of all 9-1-1 equipment;

(vi) maintenance of adequate and accurate fiscal records and documentation;

(vii) execution of interlocal agreements between RPC and participating local governments relating to the planning, development, operation, and provision of 9-1-1 service and the use of 9-1-1 funds, per the Contract, Article 4, Standard Interlocal Agreements with Local Governments.

(C) Examination of RPC 9-1-1 funds expended against the strategic plan component budgets and any limitations therein according to applicable law and rules.

(2) Monitoring Report and Response--The Commission will prepare a written report that describes the findings, and any possible violations, discovered during a monitoring review. Commission will complete a written monitoring report within 30 days of the conclusion of the initial monitoring activities, and will provide the RPC a copy of the report upon completion. Upon completion and receipt of the initial report, the following process shall apply: [The RPC will have opportunity to respond as outlined in subparagraphs (A) - (F) of this paragraph.]

(A) An [The] RPC may [shall] provide a written response to the initial monitoring report within 30 days of receipt of the report. The response should be provided or approved by the RPC Executive Director and/or the Executive Committee[; according to RPC authority and internal procedures].

(B) The Commission Executive Director will report a summary of the RPC's final compliance assessment upon completion of all monitoring activities, reports and RPC responses, along with a recommendation for acceptance or disapproval. The Commission may act to accept the Executive Director's recommendation. The Commission will convey its acceptance of responses, resolutions or recommendations in writing to the RPC within five working days of any such action.

(C) The Commission may delay action pending requests for additional information or investigation, and any follow up actions deemed necessary for resolution. Any such requests shall be made in writing to the RPC within five working days. The RPC shall have 15 working days in which to provide additional information requested by the Commission. Commission Executive Director will present any additional information to the Commission at its next regularly scheduled meeting in conjunction with appropriate staff review and determination. Final resolution of monitoring findings shall be communicated to the RPC within five working days.

(D) The Commission may disallow specific expenditures of 9-1-1 funds, and may direct the RPC to repay the 9-1-1 fund of any disallowed expenditure. The Commission shall communicate any such disallowance to the RPC within five working days of Commission action.

(E) The RPC may appeal a decision to disallow expenditures by writing to the Executive Director of the Commission. A review board will make recommendations to the Commission Executive Director for approval, disapproval, or approval with modifications, of monitoring exceptions. The Commission will send the final written determination by the Executive Director to the RPC within 30 calendar days of the decision. Unless other repayment plans are made, the RPC must refund all funds due after a final determination is made by the Executive Director. Failure to comply with this provision will subject the RPC to the provisions of this subsection.

(3) Disallowance and Repayment--The RPC shall reimburse the 9-1-1 fund for any 9-1-1 surcharge funds and service fees (9-1-1 funds) expended by the RPC in noncompliance with applicable law and rules. Such reimbursement shall be made in accordance with the procedure established in subparagraphs (A) - (E) of this paragraph.

(A) The RPC shall provide a written proposal to the Commission for repayment within 30 days of notification of disallowance of any 9-1-1 fund expenditures. Repayment to the 9-1-1 fund shall be completed within a reasonable length of time as established by the Commission, not to exceed 5 years.

(B) The RPC shall provide detail, in writing, of its efforts to recover 9-1-1 funds from its participating local governments and/or vendors, in compliance with the MOU, Section 2.4.

(C) The repayment plan shall be reviewed and approved by the RPC Executive Committee, or Board, prior to being submitted to the Commission.

(D) Upon receipt of the RPC repayment plan, Commission staff shall present the plan and staff recommendations to the Commission at its next regularly scheduled meeting.

(E) The Commission may accept or reject any repayment plan proposal. In either case, the RPC shall be notified of the Commission's action with five working days. In the case of rejection, this paragraph shall be repeated until resolution is accomplished.

(4) Monitoring of Repayment--Commission staff shall closely monitor repayment of any disallowed fees through review of Financial Status Reports, submitted quarterly, to the Commission. Any discrepancies or irregularities shall be reported to the Commission's internal auditor and reported to the Commission.

(5) Repeated Problems or Findings and Sanctions--If subsequent annual monitoring review reveals repeated findings that have not been corrected from a prior year's monitoring report, the RPC shall be deemed to be in continued violation. In accordance with State law, the Commission may consider designating another administrative entity if it is determined that a continued violation by an RPC constitutes willful disregard of applicable law and rules, gross negligence, or failure to observe accepted standards of administration.

~~(c) [(d)] RPC Monitoring of Interlocal Agreements and Performance. [Per Contract, Article 4. Standard Interlocal Agreement with Local Governments, each RPC shall execute an agreement between itself and each of its participating local governments and/or PSAPs in order to establish responsibilities for implementation of 9-1-1 service, the use of 9-1-1 funds, and adherence to applicable law and rules.] The RPC shall monitor, at least annually, the performance on each of its interlocal [these] agreements [with each of its local governmental entities].~~

(1) Local Monitoring Plan Development--Each RPC shall develop its own local-level monitoring plan that shall be incorporated into its Regional [9-1-1] Strategic Plan. Local monitoring plans shall include, but are not limited to, the following listed in subparagraphs (A) - (B) of this paragraph.

(A) A schedule or timetable for monitoring all interlocal contracts, 9-1-1 funded activities, equipment, PSAPs and subcontractors;

(B) Annual reviews of all subcontracts, especially addressing and/or addressing maintenance contracts;

(2) Compliance with Contract Stipulations--The RPC shall monitor each interlocal contract for performance of contract deliverables, which shall include the stipulations contained in the Contract, Article 4, Standard Interlocal Agreements with Local Governments.

(3) Documentation--Local monitoring activities, findings, recommendations and responses shall be documented in writing and retained for at least 5 years.

(4) Reporting Procedures--The RPC shall establish reporting procedures to convey the monitoring data to the RPC Executive Director, Executive Committee and the Commission.

(5) Reports to the Commission--The Commission shall require, at a minimum, the following documentation and information listed in subparagraphs (A) - (C) of this paragraph.

(A) Certification or other assurance that interlocal agreements have been executed between the RPC and each of its performing Local Governments. Such certification shall be communicated to the Commission within the RPC's biannual strategic plan submission, or upon the Commission's request.

(B) Local Monitoring Plans shall be submitted to the Commission in conjunction with the regularly scheduled biannual 9-1-1 Strategic Plan submission. Revisions to any such document shall be submitted to the Commission in writing as they occur.

(C) Local monitoring findings shall be submitted to the Commission as they are completed and approved by the RPC Executive Director, according to the local schedule, and shall be submitted in conjunction to regular Commission performance reporting schedules. The Commission shall exercise its right to conduct monitoring activities as a result of the local monitoring reports.

§251.12. *Contracts for 9-1-1 Services.*

(a) Purpose. The purpose of this rule is to implement the requirement in Health and Safety Code §771.078 that the Commission adopt by rule [In accordance with Chapter 771 of the Texas Health and Safety Code, this rule shall provide] the standard provisions for contracts between the Commission [on State Emergency Communications (Commission)] and Regional Planning Commissions (RPCs) for the provisioning of 9-1-1 service.

~~[(b) Background. The Commission shall contract with each RPC for the provision of 9-1-1 services. Each contract shall substantially conform to the standard contract form, in accordance with Commission policies and procedures.]~~

(b) [(e)] Per Health and Safety Code[;] §771.078(c), contracts under this section must provide for:

(1) the reporting of financial information regarding administrative expenses by RPCs in accordance with generally accepted accounting principles;

(2) the reporting of information regarding the current performance, efficiency, and degree of implementation of emergency communications services in each RPC's service area;

(3) the collection of efficiency data on the operation of 9-1-1 answering points;

(4) standards for the use of answering points and the creation of new answering points;

(5) quarterly disbursements of money due under the contract, except as provided by paragraph (6) of this subsection;

(6) the Commission to withhold disbursement to a RPC that does not follow a standard imposed by the contract, a Commission rule, or a statute; and

(7) a means for the Commission to give an advance on a quarterly distribution under the contract to a RPC that has a financial emergency.

(c) Per Commission rules, policies and procedures, the Commission shall provide a standard form for contracts under this section.

§251.13. The Use of the 9-1-1 Database for Emergency Notification Services.

(a) Purpose. Pursuant ~~[The Commission on State Emergency Communications (Commission), pursuant]~~ to Texas Health and Safety Code Chapter 771, §771.051(a)(7), ~~[is charged by the Texas Legislature to "assist in planning, supporting, and facilitating 9-1-1 databases, as needed." As such,]~~ the purpose of ~~[Commission issues]~~ this rule is to assist the regional planning commissions (RPCs) and local governments in the proper planning, supporting, and/or facilitation of the use of the 9-1-1 database information for emergency notification services.

(b) Background. State law provides, and the Texas Attorney General has concluded, that the 9-1-1 database information is confidential and is not available for public inspection. (Texas Health & Safety Code~~[- Section]~~ §771.061(a); Texas Attorney General Open Records Decision 661, 1999.) Thus, RPCs assisting local governments or providers that support emergency notification services in the use of the 9-1-1 database information for emergency notification services should, unless otherwise ruled to the contrary by the Texas Attorney General or a court of competent jurisdiction, require the same degree of confidentiality protections for the 9-1-1 database information when it is used for emergency notification services as they do when the information is used for 9-1-1 emergency service purposes. Furthermore, because of the confidential nature of the 9-1-1 database information and because it contains unlisted and unpublished numbers, RPCs should retain the right to withdraw their assistance if the local government or the providers that support emergency notification services do not maintain the confidentiality of the information or misuse the emergency notification services.

~~[(e) Definitions. Unless the context clearly indicates otherwise, terms contained in this rule are defined as shown in Commission Rule 251.14, General Provisions and Definitions.]~~

(c) [(d)] The information in the 9-1-1 database is collected and maintained solely for the provision of emergency services. The 9-1-1 database provider shall not release the 9-1-1 database information without the express written approval of the Commission and the RPC requesting use of such information.

(d) [(e)] The Commission intends to authorize the release of the 9-1-1 database information within the Commission program areas for the use of emergency notification services under the condition that this information is be used for the purpose of warning or alerting citizens regarding information in an emergency situation where property or human life is in jeopardy. Further, it is the intention of Commission that the current designated 9-1-1 database provider, RPCs, and Commission staff cooperate with local government to the fullest extent possible in accordance with Commission rules and policy, and state and federal law for the implementation of emergency notification services.

(e) [(f)] Since the Commission funds the maintenance of the 9-1-1 database through RPCs, the local government entity~~[- with the Commission program areas,]~~ will bear the full responsibility for the expenses related to the implementation of emergency notification services and the transfer of data.

(f) [(g)] Procedures. The procedures for authorization of utilizing the 9-1-1 database for emergency notification services will be:

(1) The RPC shall submit a written request to the Commission for the authorization to release the information. This written request shall contain:

(A) Technical format requirements ~~[A technical description]~~ of the emergency notification services;

(B) The name(s) of the local government entity(ies) requesting the 9-1-1 database and its (their) written request;

(C) A description of geographic area utilizing the services;

(D) A general description of when and by whom the service may be deployed; and

(E) An interlocal agreement from all parties that the 9-1-1 database will only be used in emergency situations and will be kept confidential and not available for public inspection.

(2) The Commission staff has the authority to review and approve the written request and shall provide written authorization once all information is provided.

(3) The designated 9-1-1 database provider shall cooperate and provide access to the information to the RPC, local government entity, or directly to the vendor of emergency notification services upon receipt from the RPC of a written request including a copy of the Commission's notification of approval.

(4) The RPC shall notify the vendor of emergency notification services regarding the confidentiality of the 9-1-1 database.

(5) The Commission staff will maintain an inventory of all requests, including withdrawals of assistance when the confidentiality of the information is misused.

(6) The RPC will notify the Commission, through its quarterly performance report, on the implementation and status of any emergency notification services that utilize the 9-1-1 database information within its region and/or when the emergency notification services is withdrawn, especially when the withdrawal is based on misuse of the confidential information.

~~[(7) The RPC will continue its duties in verifying and maintaining the accuracy of the 9-1-1 database.]~~

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 July 29, 2008.

TRD-200803944

Patrick Tyler

General Counsel

Commission on State Emergency Communications

Earliest possible date of adoption: September 14, 2008

For further information, please call: (512) 305-6930



CHAPTER 252. ADMINISTRATION

1 TAC §252.6

The Commission on State Emergency Communications (CSEC) proposes amendments to §252.6 concerning the calculation and distribution of wireless service fees.

Government Code §2001.039 requires each state agency to review and consider for re-adoption each of its rules not later than the fourth anniversary on which the rule takes effect and every four years thereafter. In the December 14, 2007, issue of the *Texas Register* (32 TexReg 9359), CSEC published notice of its intent to review Chapter 252 rules. At that time, CSEC determined that sufficient reason exists to readopt with amendments §252.6. Proposed amendments to §252.6 were published in the April 4, 2008, issue of the *Texas Register* (33 TexReg 2767). Filed comments were unanimously opposed to the amendment to base wireless fee distribution percentages on the federal decennial census rather than the state demographer's annual population estimates. At its July 25, 2008, open meeting, CSEC voted to withdraw the amendments posted on April 4, 2008 and to publish revised amendments for comment.

SECTION-BY-SECTION EXPLANATION

Subsection (a) is amended to include a reference to Health and Safety Code §771.078(b)(2), which provides the formula for calculating each regional planning commission's portion of wireless service fees.

Subsection (b) is amended to clarify the procedure for CSEC to propose distribution percentages and to allow emergency communication districts (ECDs) and regional planning commissions (RPCs) to comment on such percentages.

Subsection (c) is amended to make clear that CSEC will adopt distribution percentages at an open meeting.

Subsection (d) is new and authorizes ECDs and RPCs to request CSEC review and modification of distribution percentages to account for differences between 9-1-1 service boundaries and the geographic boundaries used by the state demographer in its population estimates. (This subsection is a modified version of the one approved by CSEC for publication at its July 25, 2008, open meeting. As modified, the subsection replaces the reference to the decennial census with that of the state demographer's population estimates in order to make the rule consistent.)

Subsection (e) is amended to provide notification to ECDs only when a distribution of wireless fees is made and to recognize the authority of the Texas Comptroller of Public Accounts to credit interest earned on wireless fees.

FISCAL NOTE

Paul Mallett, CSEC's executive director, has determined that for each year of the first five fiscal years (FY) that the proposed amended sections are in effect there are no foreseeable implications relating to cost or revenues to the state or local governments as a result of enforcing or administering the amended sections.

PUBLIC BENEFIT

Mr. Mallett has determined that for each year of the first five years the amended sections are in effect, the public benefits will be to clarify the procedures for calculating the distribution percentages with respect to wireless service fees. Mr. Mallett estimates no additional economic costs to persons required to comply with the rules.

REGULATORY ANALYSIS

CSEC has determined that this proposal is not a "major environmental rule" as defined by Government Code §2001.0225.

LOCAL EMPLOYMENT IMPACT STATEMENT

CSEC has determined that this proposal should not affect a local economy.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Mr. Mallett has determined that there will be no effect on small businesses or micro-businesses, as those terms are defined in Government Code §2003.001, required to comply with this proposal

PUBLIC COMMENT

Comments on the proposal may be submitted in writing to Patrick Tyler, Commission on State Emergency Communications, 333 Guadalupe Street, Suite 2-212, Austin, Texas 78701-3942 or by email to patrick.tyler@csec.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

STATEMENT OF AUTHORITY

The amendments are proposed pursuant to the Health and Safety Code §§771.051, 771.074, 771.0711(c), and 771.078(b)(2).

No other statute, article, or code is affected by the proposal.

§252.6. Wireless Service Fee Proportional Distribution.

(a) ~~The Commission [on State Emergency Communications (Commission)] shall use the most recent annual estimate from the Texas State Data Center to proportionately distribute [the] wireless emergency service fees [fee] per Health and Safety Code §771.0711(c) and §771.078(b)(2).~~

(b) Within 90 days of the publication of State demographer's population estimates, the [The] Commission shall provide the regional planning commissions (RPCs) and those emergency communication districts (ECDs) not participating in a regional plan with the proposed distribution percentages. RPCs and ECDs may provide comments to the proposed distribution percentages within the timeframe set by the Commission. [approve the specific proportional distributions for a given fiscal year at an open meeting within 90 days of the start of the state fiscal year]

(c) The Commission shall adopt the distribution percentages in an open meeting. [At least two weeks before that open meeting, Commission staff shall submit for publication in the Texas Register and provide to each jurisdiction projected to receive wireless service fees the proposed proportional distributions for that particular state fiscal year.] The approved [proportional] distribution percentages [listing] shall be provided to the RPCs and ECDs [jurisdictions that will be receiving the distributions] within thirty (30) days of adoption by the Commission.

(d) Upon request by an RPC or ECD, the Commission shall review and modify the distribution percentages in order to account for 9-1-1 service boundaries not reflected in the state demographer's population estimates.

(e) The Commission shall notify each ECD when [recipient of a wireless service fee proportional distribution each time] a distribution is made. The Commission shall distribute [any] interest earned on [the] wireless emergency service fees and credited by the Comptroller of Public Accounts no less than once each fiscal year [annually].

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 July 29, 2008.

TRD-200803945



TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 3. OIL AND GAS DIVISION

16 TAC §3.12

The Railroad Commission of Texas (Commission) proposes to amend §3.12, relating to Directional Survey Company Report, to allow the electronic filing with the Commission of directional survey company reports. The Commission proposes the amendments in preparation for implementation of a new completions system. Upon implementation, the Commission will be able to accept electronically filed Forms G-1 (Gas Well Back Pressure Test, Completion or Recompletion Report, and Log) and W-2 (Oil Well Potential Test, Completion or Recompletion Report, and Log), and Directional Survey Reports.

In April 2004, the Commission amended §3.80 of this title (relating to Commission Oil and Gas Forms, Applications, and Filing Requirements) to revise language relating to electronic filing in anticipation of changes and/or new electronic filing opportunities the Commission has, and continues to, develop. The Commission added language to §3.80 to allow an organization to make any required or discretionary filing using either the prescribed paper form or any electronic filing process in accordance with the rule. Section 3.80 states that the Commission may at its discretion accept other documents or data electronically transmitted. Currently, only Production Reports (Form PR), Drilling Permit Applications (Form W-1), and Annual Disposal/Injection Well Monitoring Report (Form H-10) can be filed through the Commission Online System. Additional forms will be added as the Commission develops the online filing capabilities.

In preparation for this rulemaking and in addition to §3.12, the Commission reviewed §3.11 (relating to Inclination and Directional Surveys Required); §3.13 (relating to Casing, Cementing, Drilling, and Completion Requirements); §3.16 (relating to Log and Completion or Plugging Report); §3.28 (relating to Potential and Deliverability of Gas Wells To be Ascertained and Reported); §3.31 (relating to Gas Reservoirs and Gas Well Allowable); §3.40 (relating to Assignment of Acreage to Pooled Development and Proration Units); §3.51 (relating to Oil Potential Test Forms Required); §3.53 (relating to Annual Well Tests and Well Status Reports Required); and §3.58 (relating to Certificate of Compliance and Transportation Authority; Operator Reports), to determine whether those rules contained any language that could present a roadblock to electronic filing of certain forms. The Commission found that, when read with §3.80, the language in those rules presented no such roadblocks, with the exception of §3.12, which currently requires that "(E)ach directional survey . . . shall be mailed by registered, certified, or overnight mail directly to the commission in Austin by the surveying company making the survey."

Therefore, the Commission proposes to amend §3.12 to allow a surveying company to file electronically if the Commission has provided for such filing. Most of the proposed amendments in subsection (a) are non-substantive and are made for clarification. The Commission proposes to amend subsection (a)(6) to add a requirement that the filer include the drilling permit number and the API number in the identification of the well to facilitate coordination of the data from various completion filings for individual wells. The majority of the directional survey reports currently received by the Commission already include the API number. In subsection (b), the Commission proposes to add the following sentence: "The surveying company may file electronically if the commission has provided for such filing."

Leslie Savage, Planning and Administration, Oil and Gas Division, has determined that for each year of the first five years that the amendments will be in effect there will be minimal fiscal implications for state government. The purpose of the proposed amendments is to facilitate electronic filing and processing of directional surveys. The Commission does not anticipate that the amendments will result in either an increase or decrease in the total number of directional surveys filed with the Commission. Online filing capability is being built into programs that the Commission's Information Technology Services Division is already in the process of developing, so there are no additional programming or other IT costs for the Commission. There will be no effect on local government.

The 80th Texas Legislature (2007) adopted House Bill (HB) 3430, which amended Chapter 2006 of the Texas Government Code. As amended, Texas Government Code, §2006.002, relating to Adoption of Rules with Adverse Economic Effect, requires that as part of the rulemaking process, a state agency prepare an Economic Impact Statement that assesses the potential impact of a proposed rule on small businesses and a Regulatory Flexibility Analysis that considers alternative methods of achieving the purpose of the rule if the proposed rule will have an adverse economic effect on small businesses or micro-businesses.

The Commission's proposed amendments to §3.12 would have a potential impact only on those companies that perform directional surveys and that voluntarily choose to use electronic filing. The Texas Comptroller of Public Accounts website entitled "HB 3430 Reporting Requirements - Determining Potential Effects on Small Businesses," lists 2,134 companies that are classified as 213 (support activities for mining) on the North American Industrial Classification System (NAICS). This source further indicates that 1,841 companies (86 percent) are small businesses as defined in Texas Government Code, §2006.002, as amended by HB 3430. The Commission's organizational report records as of May 28, 2008, indicate that 60 companies perform directional survey activity, but provide no further breakdown with respect to relative size of the companies. Staff concludes that approximately 86 percent (or 52) of the 60 companies listed in Commission records would be small businesses or micro-businesses as defined in Texas Government Code, §2006.002, as amended by HB 3430.

The projected economic impact on these small businesses and micro-businesses will be neutral to positive. Because participation in the online filing system is voluntary, there will be no mandatory costs of compliance for those organizations and individuals opting not to make electronic filings with the Commission. If a company that is a small business elects to electronically file directional surveys with the Commission, there will be a nominal

one-time cost associated with complying with the Commission's electronic data submission requirements.

The Commission Online System provides electronic filing and processing capability for certain oil and gas forms and other documents and data that have been migrated from the Commission's mainframe system to an open systems environment. Electronic filing options included within this system generally include on-line filing over the Internet using a web browser, and EDI filing by uploading data over the Internet or submitting data on a CD. Use of electronic filing options within this system requires a filing entity to obtain a User ID by filing a Security Administrator Designation (SAD) form and following subsequent instructions for assigning security access. Currently, only Production Reports (Form PR), Drilling Permit Applications (Form W-1), and Annual Disposal/Injection Well Monitoring Reports (Form H-10) can be filed through the Commission Online System. Additional electronic filing capabilities will be added in the near future, including those associated with completion reports and directional surveys. The Commission anticipates that the Commission Online System will have the capability of accepting Directional Survey Reports by mid- to late-2009.

The Commission Online System allows the user to submit reports using one or more of the following methods: (1) Online Filing, where the data are keyed directly into online screens and submitted to the Commission over the Internet; (2) EDI-File Upload, where the data are sent directly from the filer's computer, using the Internet E-File System, to the Commission's computers in the file format prescribed by the Commission; or (3) EDI-Compact Disc, where the data are downloaded in a specified format from the filer's computer onto a CD, which the filer mails to the Commission where the data are then uploaded to the Commission's computer for processing.

To be able to file electronically with the Commission, an operator must complete and submit a Security Administrator Designation (SAD) form. This form establishes a security administrator for a company or individual electing to file reports or applications online and/or through one of the EDI options available through the Commission's Online System. Once the Commission approves the Security Administrator Designation, the Commission notifies the security administrator of the assigned User ID. The Security Administrator may then further distribute security by assigning additional User IDs to employees within the company and designating which forms they are authorized to file electronically with the Commission.

Staff estimates that the initial cost would be no more than \$100 for every entity electing to use electronic filing, regardless of the size of the business. This initial cost would include the completion of the SAD form, copying and mailing the SAD form to the Commission, and assigning user IDs within the company. However, because electronic filing will eliminate the need to send the directional surveys to the Commission via registered, certified, or overnight mail and will, therefore, eliminate the cost of such mail, the Commission finds that a company would likely very quickly recover the initial cost in the savings of mailing costs that would otherwise be incurred. The cost of compliance with the proposed amendments for the small business or micro-business will be offset by the elimination of mailing costs and the increased efficiency that electronic filing affords. Furthermore, when filings are made through the Commission's online system, all Commission offices will have electronic access to the information.

In preparing this amendment, the Commission considered requiring companies to electronically file directional surveys once

the Commission has the capability of accepting those filings online. However, because some of the companies performing directional surveys are likely to be small businesses or micro-businesses, the Commission decided to allow the option of electronic or paper filing. The Commission finds that by allowing electronic filing to be optional rather than mandatory and retaining the option of paper filing, and because the nominal initial cost of compliance with the electronic filing requirements will likely be offset by the elimination of mailing costs, there is no adverse economic effect on small businesses or micro-businesses that file directional survey reports with the Commission.

Ms. Savage also has determined that for each year of the first five years that the proposed amendments will be in effect the public benefit will be an easier and more efficient process of filing directional survey company reports and other requests associated with oil and gas exploration and production as the Commission develops the necessary capabilities, and information that is more readily accessible by both the Commission and the public.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.state.tx.us/rules/commentform.html; or by electronic mail to rulescoordinator@rrc.state.tx.us. Comments should refer to O&G Docket No. 20-0258005, and will be accepted until 5:00 p.m. on Monday, September 15, 2008, which is 31 days after publication in the *Texas Register*. The Commission finds that this comment period is reasonable because the proposal as well as an online comment form will be available on the Commission's web site several days prior to publication of the proposal, giving interested persons additional time to review, analyze, draft, and submit comments. The Commission encourages all interested persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Ms. Savage at (512) 463-7308. The status of Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.html.

The Commission proposes the amendments to §3.12 pursuant to Texas Natural Resources Code, §81.051 and §81.052, which provide the Commission with jurisdiction over all persons owning or engaged in drilling or operating oil or gas wells in Texas and the authority to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission.

The Texas Natural Resources Code, §81.051 and §81.052 are affected by the proposed amendments.

Statutory authority: Texas Natural Resources Code, §81.051 and §81.052.

Cross-reference to statutes: Texas Natural Resources Code, §§81.051 and §81.052.

Issued in Austin, Texas on July 29, 2008.

§3.12. Directional Survey Company Report.

(a) For each well drilled for oil, gas, or geothermal resources for which a directional survey report is required by rule, regulation, or order, the surveying company shall prepare and file ~~there shall be prepared and filed~~ the following information. The information shall be certified by the person having personal knowledge of the facts, by execution and dating of the data compiled:

- (1) the name of the surveying company;

(2) the name of the individual [person] performing the survey for the surveying company;

(3) the title or position the individual [person] holds with the surveying company;

(4) the date on which the individual performed the survey [was performed];

(5) the type of survey conducted and whether the survey was multishot;

(6) a complete identification of the well, including [so as to include] the name of the operator of the well; the fee owner; the commission lease number, if assigned; the well number; the API number, and the drilling permit number, the land survey; the field name; and the county and state; and

(7) a notation that the survey was conducted from a depth of ___ feet to ___ feet.

(b) Each directional survey, with its accompanying certification and a certified plat on which the bottom hole location is oriented both to the surface location and to the lease lines (or unit lines in case of pooling) shall be mailed by registered, certified, or overnight mail direct to the commission in Austin by the surveying company making the survey. The surveying company may file electronically if the Commission has provided for such filing.

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 July 29, 2008.

TRD-200803942

Mary Ross McDonald

Managing Director

Railroad Commission of Texas

Earliest possible date of adoption: September 14, 2008

For further information, please call: (512) 475-1295



PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 31. ADMINISTRATION

16 TAC §31.10, §31.11

The Texas Alcoholic Beverage Commission (Commission) proposes new §31.10 relating to how to file a complaint with the Commission and new §31.11 relating to resolution and information about complaints that have been filed with the Commission.

Senate Bill 904, §12, 80th Legislature, 2007 amended §5.53 of the Texas Alcoholic Beverage Code (Code) to require the Commission to adopt rules that clearly define the Commission's complaint process from the time the complaint is received until it is resolved. These two new sections are proposed to comply with this requirement.

Proposed new §31.10 provides the public with information on who may file a complaint, against whom a complaint may be filed, where a complaint may be filed, what information to include in a complaint, and how to obtain instructions, assistance, and forms to file a complaint.

Proposed new §31.11 informs the public that all complaints are investigated, how the investigation into complaints are prioritized, what is done following the investigation, the fact that a complainant will be notified of the result of a complaint investigation, how general information about complaints may be obtained, where violation histories of permit and license holders may be accessed, and how to obtain specific information about specific complaints.

Charlie Kerr, Chief Financial Officer, has determined that for each year of the first five years the new sections are in effect, there will be no fiscal implications to the state or local government as a result of enforcing or administering the sections as proposed. There will also be no fiscal implications on small or micro businesses or persons as a result of the adoption of the proposed new sections.

Joel Moreno, Chief of Field Operations, has determined that for the first five years the sections are in effect the public will benefit from the adoption of the proposed new sections because they will have access to information which will assist them in making complaints and will be able to access information about the resolution of complaints.

Comments may be addressed to Joan Bates, Deputy 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 new rules in the *Texas Register*.

These new rules are 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 §5.53, which requires the Commission to adopt the rules.

Cross Reference: Sections 5.31 and 5.53 of the Alcoholic Beverage Code are affected by these proposed new sections.

§31.10. Filing a Complaint.

(a) This section relates to §5.53 of the Texas Alcoholic Beverage Code (Code), which requires the Texas Alcoholic Beverage Commission (commission) to adopt a rule to define the agency's complaint process from the time a complaint is received until the complaint is resolved.

(b) The public, consumers, commission and persons and entities regulated by the commission may file a complaint against an individual or entity holding a license, permit or certificate issued by the commission.

(1) A complaint may be submitted anonymously. If the complainant wishes to be informed of the resolution of the complaint the complainant must provide contact information.

(2) A complaint may be submitted: in writing to the Texas Alcoholic Beverage Commission, P.O. Box 13127, Austin, Texas 78711-3127; in person at any TABC office; by phone at (512) 206-3333 or the phone number of the nearest TABC office, or by electronic mail at complaints@tabc.state.tx.us.

(c) A written complaint form, instructions on how and where to file a complaint and a list of local TABC offices may be found on the commission's public website at www.tabc.state.tx.us. A complainant can also request that a form and instructions be mailed to a complainant by calling the commission at (512) 206-3333, or a local TABC office. A complainant may also file a complaint on plain paper without using the form by providing the following information:

(1) Complainant name and how the complainant may be contacted if they wish to be notified of the outcome or resolution of the complaint.

(2) The name or identity of the individual or entity being complained about and how the commission may find or contact the individual or locate the entity. This may include physical, mailing and e-mail address, phone numbers and persons the complainant has contacted or spoken with regarding the complaint.

(3) A brief statement of the nature of the complaint and relevant facts, including the names of persons with knowledge, times, dates and location.

(4) If the complainant has documents or records related to the complaint, a copy of these should be attached to the complaint. Do not send original records with a complaint.

§31.11. Resolution and Information on Complaints.

(a) The commission investigates all complaints. The time and resources allocated to an investigation will be based on facts stated in the complaint. Complaints alleging conduct that presents a serious risk to the public health and safety will be given priority.

(b) If an investigation results in a finding that a provision of the Code or commission rules have been or may have been violated, the commission may proceed with an action to cancel, suspend or refuse to issue a permit or license under Chapters 11 and 61 of the Code, and the complainant will be informed if contact information is provided.

(c) If an investigation results in a finding that no violation of the Code or commission rules has occurred, the complainant will be informed of this result if contact information has been provided.

(d) General information and the nature and disposition of complaints can be accessed on the TABC public website at www.tabc.state.tx.us.

(e) The public can access the violation history of a license or permit issued by the commission on the TABC public website at www.tabc.state.tx.us.

(f) Information about a specific complaint against an individual or entity holding a license, permit or certificate issued by the commission may be obtained by filing a request under the Texas Public Information Act (TPIA). Some information in a complaint or investigation of a complaint may not be subject to disclosure under the TPIA.

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 July 30, 2008.

TRD-200803991

Alan Steen

Administrator

Texas Alcoholic Beverage Commission

Earliest possible date of adoption: September 14, 2008

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



PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 401. ADMINISTRATION OF STATE LOTTERY ACT

SUBCHAPTER E. RETAILER RULES

16 TAC §401.362

The Texas Lottery Commission proposes amendments to 16 TAC §401.362, relating to Retailer's Financial Responsibility for Lottery Tickets Received and Subsequently Damaged or Rendered Unsaleable, for Winning Lottery Tickets Paid and for Lottery-Related Property. The proposed amendments clarify what charges, if any, would be assessed against a retailer for tickets that are damaged or destroyed.

Specifically, the proposed amendments: (1) at subsection (a)(1), "or by §401.370" has been added; (2) at subsection (a)(2), the language has been rearranged to improve clarity and understanding, and the last sentence has been deleted; (3) at subsection (a)(3), language has been amended to require that the retailer must report damage to or destruction of tickets to the commission's lottery operations division through the retailer hotline as soon as reasonably practicable under the circumstances and no later than three (3) weeks from the occurrence or event, and also states that a ticket is considered damaged or destroyed if rendered unsaleable through circumstances or events not the fault of the retailer; (4) at subsection (a)(4), a new subparagraph (A), language regarding crediting a retailer's account when a pack is reported as damaged or destroyed has been added to the rule; (5) at subsection (a)(4), a new subparagraph (B) has been added to the rule and states that the director may not grant credit in connection with more than two separate incidents in a twelve-month period; (6) at subsection (a)(5), language has been added to the rule and sets forth the \$25 administrative fee and possible waiver thereof; and (7) a new subsection (d) has been added to the rule and defines the terms "activated" and "unactivated", with regard to packs.

The Office of the Controller has determined that for each of the first five years the amendments would be in effect there would be a negative fiscal impact to the state as a result of administering or enforcing the proposed rule amendments, and for retailers, some of which may be small or micro-businesses, a corresponding positive fiscal impact. The amendments set out very specific circumstances under which a retailer may receive credit for damaged or destroyed tickets. The fiscal impact is not quantifiable because of the many variables that exist within these circumstances, but any credit to retailers under the rule amendments would result in reduced revenue for the Commission. The Office of the Controller has also determined that for each of the first five years the amendments would be in effect there would be no fiscal impact to local government or to local employment.

Ed Rogers, Retailer Services Manager, Lottery Operations Division, has determined that for each of the first five years the proposed amendments would be in effect, the public benefit anticipated as a result of the proposed amendments would be a reduction in the financial burden for retailers that experience business losses from fire and other causes outside of their control. It is anticipated that the implementation of these proposed amendments would have some negative impact on the generation of revenue by the Commission because the financial liability for tickets damaged or destroyed by fire or other causes may, in some circumstances, shift from retailers to the Commission. It is also anticipated, however, that the proposed amendments would, over time, increase overall revenue because the financial risks to the retailers of making a larger number of lottery instant games available for sale would be reduced. Additionally, it is anticipated that the generation of revenue would be enhanced through the retention of licensed retailers who might have other-

wise discontinued their participation as retailers or defaulted in payment to the Commission and subsequently lost their licenses because of the financial requirements under the current rule.

The Commission requests comments on the proposed rule amendments from any interested person. Comments on the proposed rule amendments may be submitted to Deanne Rienstra, Assistant General Counsel, by mail to Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email to www.legal.input@lottery.state.tx.us. The Commission will hold a public hearing on this proposal at 10:00 a.m. on Thursday, September 4, 2008, at 611 E. 6th Street, Austin, Texas 78701. Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendments are proposed under Government Code, §466.015, which authorizes the Commission to adopt all rules necessary to administer the State Lottery Act and to adopt rules governing the establishment and operation of the lottery, and under Government Code, §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

The amendments implement Government Code, Chapter 466.

§401.362. Retailer's Financial Responsibility for Lottery Tickets Received and Subsequently Damaged or Rendered Unsaleable, for Winning Lottery Tickets Paid and for Lottery-Related Property.

(a) Responsibility for Lottery Tickets Received.

(1) Except as otherwise expressly provided by this subsection or by §401.370 of this title (relating to Retailer's Financial Responsibility for Lottery Tickets Received and Subsequently Stolen or Lost), each retailer shall bear the risk of loss for all lottery tickets received. Receipt of tickets by a retailer shall constitute a purchase of such tickets, and each retailer shall be liable to the commission for the retail sales price of such tickets, less any applicable commission or credit.

(2) ~~A [Notwithstanding paragraph (1) of this subsection, a] retailer may return [; and receive an accounting indicating that the packs have been removed from the retailer's inventory for,] full and complete packs of unactivated tickets in original condition and receive an accounting indicating that the packs have been removed from the retailer's inventory. Nothing in this subsection waives the requirements of §401.361 of this title (relating to Required Sales of Lottery Tickets). [The term "unactivated" has the meaning as defined in §401.370 of this title.]~~

(3) ~~A retailer must report damage to or destruction of tickets [Notwithstanding paragraph (1) of this subsection, and where no winning ticket from such pack has been validated, the director may charge a retailer an administrative fee of \$25 for each pack of unactivated tickets if damage to the pack has rendered the tickets unsaleable and the retailer has made a formal report of such damage] to the commission's lottery operations division through the retailer hotline as soon as reasonably practicable under the circumstances, but no later than three (3) weeks from the occurrence or event. [within 24 hours of discovery of the damage.] A ticket is considered "damaged" or "destroyed" if rendered unsaleable through circumstances or events not the fault of the retailer.~~

(4) ~~Under the circumstances set out in this paragraph, the director may credit a retailer for activated tickets that are damaged or destroyed. [Notwithstanding paragraph (1) of this subsection, the director may waive the administrative fee of \$25 for each unactivated pack of tickets that are damaged to the extent the tickets are unsaleable due to an Act of God provided the retailer within 24 hours of the dis-~~

~~covery of the damage has made a formal report of such damage to the commission's lottery operations division through the retailer hotline.]~~

(A) The director may credit a retailer's account for a range of activated tickets in a pack reported as damaged or destroyed providing:

(i) no validations have occurred on tickets in the range reported as damaged or destroyed;

(ii) the retailer has complied with paragraph (3) of this subsection;

(iii) if the tickets were damaged or destroyed by fire, the retailer made a formal report of the fire to appropriate fire department authorities within 24 hours of the discovery of the fire, and has provided to the commission's lottery operations division a copy of a report by a Fire Marshall that identifies the location and the cause of the fire; or

(iv) if the tickets were damaged or destroyed other than by fire, the retailer has provided to the commission's lottery operation division a copy of an insurance claim or a receipt for repairs that identifies damage at the retail location that is related to the damaged or destroyed tickets.

(B) The director may not grant credit under subparagraph (A) of this paragraph in connection with more than two separate incidents in a twelve-month period.

(5) There is an administrative fee of \$25 for a pack of unactivated tickets that is unsaleable. The director may waive the administrative fee of \$25 if the tickets are unsaleable because of damage or destruction caused by an overwhelming, unpreventable event caused exclusively by forces of nature and the retailer complied with the reporting requirements under paragraph (4)(A) of this subsection, as applicable.

~~{(5) A retailer shall report each damaged pack of tickets to the commission's lottery operations division through the retailer hotline within 24 hours of the discovery of the damage.}~~

(b) Responsibility for Winning Lottery Tickets Paid. After a retailer has paid a prize on a winning ticket, that retailer shall completely deface such ticket and render it physically incapable of being subsequently presented as a winning ticket. A retailer who has failed to deface such a winning ticket and render it physically incapable of being subsequently presented as a winning ticket shall pay to the commission the full amount of each subsequent prize that is paid on such ticket.

(c) Responsibility for Lottery-Related Property. Each retailer shall be financially responsible to the commission for all lottery-related property placed at the retailer's location.

(d) An "activated" pack of tickets is a pack of tickets that has been delivered to a retailer and that is shown as "active" in the lottery management system. An "unactivated" pack of tickets is a pack of tickets in "Available," "Issued" or "Confirmed" status in the lottery management system.

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

Filed with the Office of the Secretary of State on August 1, 2008.

TRD-200804017

Kimberly L. Kiplin
General Counsel
Texas Lottery Commission

Earliest possible date of adoption: September 14, 2008
For further information, please call: (512) 344-5012



CHAPTER 402. CHARITABLE BINGO ADMINISTRATIVE RULES SUBCHAPTER B. CONDUCT OF BINGO

16 TAC §402.200

The Texas Lottery Commission (Commission) proposes amendments to 16 TAC §402.200 (relating to General Restrictions on the Conduct of Bingo).

The purpose of the amendments is to set out the requirements for organizations to follow in order to ensure the fair conduct of a bingo game. Specifically, at subsection (a), the amendments provide that a fairly conducted bingo occasion is one that is impartial, honest and free from prejudice or favoritism, one that is free of corrupt and criminal influences, and follows applicable provisions of the Bingo Enabling Act and Charitable Bingo Administrative Rules. The amendments at subsection (b) change the advertising provision language from identifying the bingo conductor to identifying the licensed authorized organization. In subsection (c)(2) - (6), the amendments add language regarding inspection and use of bingo equipment, including that the organization must establish and adhere to written procedures addressing bingo equipment malfunctions or problems, as well as any improper bingo ball calls or placements, during a bingo occasion. In subsection (d)(2) language has been added to clarify that a bingo occasion may be conducted only on premises which are owned by a governmental agency when there is no charge to the licensed authorized organization for use of the premises. At new subsections (e) and (f), language has been added regarding conducting bingo games and awarding of prizes within days and times specified on the bingo license and stating that pull-tab bingo event tickets may not be sold after the occurrence of the event unless the licensed authorized organization's house rules address the sale of pull-tab event tickets after the event occurred. The words "or other non-cash prize" have been added to the first sentence of subsection (g) to clarify that items other than what is normally considered as merchandise may be awarded as a bingo prize. New language regarding prize fees is added to the end of subsection (g). Existing subsection (h) has been deleted, and new subsection (h) has been added regarding donation of bingo prizes. New subsection (i) has been added and sets forth the minimum requirements that licensed authorized organizations must follow to ensure fair conduct of bingo, and includes requirements regarding information that must be displayed during bingo occasions. Existing subsection (f) has been deleted. New subsection (k) sets forth bingo worker requirements. New subsection (l) sets forth bingo caller requirements. Additional language regarding verification requirements has been added to what is now subsection (m). Finally, new subsection (n) requires each licensed authorized organization to establish and adhere to written procedures that address disputes and availability of those procedures to the players.

Kathy Pyka, Controller, has determined that for each year of the first five years the amendments would be in effect, enforcing or

administering the rule does not have foreseeable implications related to cost or revenues of the state or local governments. Ms. Pyka has also determined that there will be no adverse economic effect on small businesses, micro businesses, or local or state employment. Furthermore, an Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendments will not have an economic effect on small businesses as defined in Tex. Govt. Code §2006.001(2). All entities subject to the proposed amendments are non-profit organizations.

Philip D. Sanderson, Director of the Charitable Bingo Operations Division, has determined that for each year of the first five years the proposed amendments would be in effect, the public benefit expected from the adoption of the proposed amendments is providing interested parties with information about the conduct of a bingo game in a manner that is fair. Mr. Sanderson has also determined there will be no additional economic cost to persons required to comply with the amendments as proposed. The Commission requests comments on the proposed amendments from any interested person. Comments may be submitted to Sandra Joseph, Special Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at www.legal.input@lottery.state.tx.us. The Commission will hold a public hearing on this proposal at 10:00 a.m. on Tuesday, September 9, 2008, at 611 E. 6th Street, Austin, Texas 78701. Comments must be received within 30 days after publication of this proposal in order to be considered.

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

The amendments implement the Texas Occupations Code, Chapter 2001.

§402.200. *General Restrictions on the Conduct of Bingo.*

(a) A bingo occasion that is fairly conducted by a licensed authorized organization is one that is impartial, honest, and free from prejudice or favoritism. It is also conducted competitively, free of corrupt and criminal influences, and follows applicable provisions of the Bingo Enabling Act and Charitable Bingo Administrative Rules.

(b) ~~[(a)]~~ Advertising. Any advertising or promotion of a bingo occasion shall ~~[clearly]~~ identify the licensed authorized organization(s) by name. ~~[conductor, by name as shown exactly as it is shown on the license.]~~

(c) ~~[(b)]~~ Inspection and use of equipment~~[, tampering prohibited].~~

(1) All bingo equipment is subject to inspection at any time by any representative of the Commission. No licensee or worker of a licensed authorized organization may tamper with or modify or allow others to tamper with or modify any bingo equipment in any manner which would affect the randomness of numbers chosen or which changes the numbers or symbols appearing on the face of a bingo card. A licensed authorized organization has a continuing responsibility to ensure that all bingo equipment used by it is in proper working condition.

(2) A registered bingo worker must inspect the bingo balls prior to the first game of each bingo occasion, making sure all of the balls are present and not damaged or otherwise compromised.

(3) Bingo balls that are missing, damaged, or otherwise compromised shall be replaced in complete sets or individually if the bingo balls are of the same type and design. The replacement of the set or individual bingo ball(s) must be documented on the bingo ball inspection log.

(4) A registered bingo worker must inspect the bingo console and flashboard to ensure proper working order prior to the first game of each bingo occasion.

(5) The organization must maintain a log of each bingo ball, bingo console and flashboard inspection signed by the registered worker conducting the inspection.

(6) The organization must establish and adhere to a written procedure that addresses problems during a bingo occasion concerning:

(A) bingo equipment malfunctions; and

(B) improper bingo ball calls or placements.

(d) ~~[(e)]~~ Location of bingo occasion. A bingo occasion may be conducted only on premises which are:

(1) owned by a licensed authorized organization ~~[the conductor];~~

(2) owned by a governmental agency when there is no charge to the licensed authorized organization for use of the premises;

(3) leased, or used only by the holder of a temporary license; or

(4) owned or leased by a licensed commercial lessor.

(e) All bingo games must be conducted and prizes awarded on the days and within the times specified on the license to conduct bingo.

(f) Pull-tab bingo event tickets may not be sold after the occurrence of the event unless the organization has a policy and procedure in their house rules addressing the sale and redemption of pull-tab bingo event tickets after the event has taken place.

(g) ~~[(d)]~~ Merchandise prizes. Any merchandise or other non-cash prize awarded as a bingo prize ~~[in a bingo occasion]~~ shall be valued at its current retail price. Prize fees must be collected on merchandise and non-cash prizes. ~~[If a merchandise prize is donated to a licensed organization, it may not be reported as an expenditure for any purpose.]~~

(h) Donated Bingo Prizes. Only licensed authorized organizations holding a non-annual temporary license may accept and/or award donated bingo prizes.

(i) The licensed authorized organization is responsible for ensuring the following minimum requirements are met to conduct a bingo occasion in a manner that is fair:

~~[(e) Notice of law and regulation.]~~

(1) Each licensed authorized organization ~~[conductor]~~ shall obtain, maintain, keep current and make available for review to any person upon request a copy of the Bingo Enabling Act and the Charitable Bingo Administrative Rules.

(2) The licensed authorized organization must make the following information available to players prior to the play of a pull-tab bingo event ticket game:

(A) how the game will be played; and

(B) how the winner(s) will be determined.

(3) Each licensed authorized organization shall conspicuously display during all bingo occasions a sign indicating the name of the licensed authorized organization and the operator in charge of the occasion.

(A) The letters on the sign shall be no less than one inch tall.

(B) The sign shall inform the players that they should direct any questions or complaints regarding the conduct of the bingo occasion to the operator or licensed authorized organization listed on the sign.

(C) The sign should further state that if the player is not satisfied with the response given by the operator or the licensed authorized organization that the player has the right to contact the Commission and file a formal complaint.

(4) The following information shall be available to all patrons:

(A) the games to be played;

(B) the order in which the games will be played;

(C) the patterns needed to win;

(D) the prize(s) to be paid for each game;

(E) whether the prize payout is based on sales or attendance;

(F) the entrance fee and the number of cards associated with the entrance fee, if any; and

(G) the price of each type of bingo card offered for sale.

(5) The operator shall announce to players any change to information required by paragraph (4) of this subsection.

~~[(f) Notification of name of operator. Each conductor shall conspicuously display during all bingo occasions a sign indicating the name of the operator in charge of the occasion. The letters on the sign shall be no less than one inch tall. The sign shall inform the players at that location that they should direct any questions or complaints regarding the conduct of the bingo occasion to the operator listed on the sign. The sign should further state that if the player is not satisfied with the response given by the operator that the player has the right to contact the Commission and file a formal complaint.]~~

(j) ~~[(g)]~~ Reservation of bingo cards. Except where otherwise expressly permitted by this chapter, no licensed authorized organization ~~[conductor]~~ may reserve, or allow to be reserved, any bingo card or cards for use by a bingo player.

(k) Bingo worker requirements.

(1) Bingo staff and employees may not play bingo during an occasion in which the bingo staff or employees are conducting or assisting in the conduct of the bingo occasion.

(2) A bingo worker shall not:

(A) communicate verbally, or in any other manner, to the caller the number(s) or symbol(s) needed by any player to win a bingo game;

(B) require anything of value from players, other than payment, for bingo cards, electronic card minding devices, pull-tab bingo tickets, and supplies; or

(C) deduct any cash or portion of a winning prize other than the prize fee without the player's permission.

~~[(h) Workers and employees prohibited from playing. No bingo occasion shall be continued if, during such occasion, any worker or employee who is conducting or assisting in the conduct of the occasion participates as a player, either directly or by surrogate.]~~

(l) Caller requirements--The caller shall:

(1) be located so that one or more players can:

(A) observe the drawing of the ball from the bingo receptacle; and

(B) gain the attention of the caller when the players bingo.

(2) be the only person to handle the bingo balls during each bingo game;

(3) call all numbers and make all announcements in a manner clear and audible to all of the playing areas of the bingo premises;

(4) announce:

(A) the amount of the prize prior to the end of the game if the prize amount is based on sales or attendance;

(B) that the game, or a specific part of a multiple-part game, is closed after asking at least two (2) times whether there are any other bingos and pausing to permit additional winners to identify themselves;

(C) whether the bingo is valid and if not, that there is no valid bingo and the game shall resume. The caller shall repeat the last number called before calling any more numbers; and

(D) the number of winners and the total amount of money or prizes awarded for the game.

(5) return the bingo balls to the bingo receptacle only upon the conclusion of the game; and

(6) not use cell phones, personal digital assistants (PDAs), computers, or other personal electronic devices to communicate with anyone during the bingo occasion, except for emergency situations.

(m) [(+) Verification.

(1) [~~Verification of~~] Winning cards. The numbers appearing on the winning card must be verified at the time the winner is determined and prior to prize(s) being awarded in order to insure that the numbers on the card in fact have been drawn from the receptacle.

(A) This verification shall be done either in the immediate presence of one or more players at a table or location other than the winners, or displayed on a TV monitor visible by all of the players or by an electronic verifier system visible by all the players.

(B) After the caller closes the game, a [~~Each~~] winning disposable paper card or an electronic representation of the card for each game shall also be posted on the licensed premises where it may be viewed in detail by the players until at least 30 minutes after the completion of the last bingo game of that organization's occasion.

(2) [~~Verification of~~] Numbers drawn. Any player may request a verification of the numbers drawn at the time a winner is determined and a verification of the balls remaining in the receptacle and not drawn.

(A) Verification shall take place in the immediate presence of the operator, one or more players other than the winner, and player requesting the verification.

(B) Availability of this additional verification, done as a request from players, shall be made known either verbally prior to the

bingo occasion, printed on the playing schedule, or included with the bingo house rules.

(n) Each licensed authorized organization must establish and adhere to written procedures that address disputes. Those procedures shall be made available to the players upon request.

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

Filed with the Office of the Secretary of State on August 1, 2008.

TRD-200804013

Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

Earliest possible date of adoption: September 14, 2008

For further information, please call: (512) 344-5012



16 TAC §402.205

The Texas Lottery Commission proposes a new rule at 16 TAC §402.205 (relating to Unit Agreements). The purpose of the proposed new rule is to clarify what is required in a unit accounting agreement or a trust agreement forming a unit and how to notify the Commission of any changes to those agreements.

Kathy Pyka, Controller, has determined that for each year of the first five years the proposed new rule would be in effect, there are no foreseeable implications related to cost or revenues of the state or local governments expected as a result of enforcing or administering the rule. Ms. Pyka has also determined that there would be no adverse economic effect on small businesses, micro businesses, or local or state employment. Furthermore, an Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed new rule will not have an economic effect on small businesses as defined in Tex. Govt. Code §2006.001(2). The entities subject to the proposed new rule are non-profit organizations.

Philip D. Sanderson, Director of the Charitable Bingo Operations Division, has determined that for each year of the first five years the proposed new rule would be in effect, the public benefit anticipated is providing to licensees, specifically, what minimum information is required to be contained in a unit agreement and the specific timelines for notifying the Commission of amendments to existing unit agreements or new unit agreements. Mr. Sanderson has also determined that there would be no probable economic cost to persons required to comply with the rule.

The Commission requests comments on the proposed new rule from any interested person. Comments on the proposed new rule may be submitted to Sandra Joseph, Special Counsel, by mail to Texas Lottery, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email to www.legal.input@lottery.state.tx.us. The Commission will hold a public hearing on this proposal at 10:00 a.m. on Tuesday, September 9, 2008, at 611 E. 6th Street, Austin, Texas 78701. Comments must be received within 30 days after publication of this proposal in order to be considered.

The new rule is proposed under the Texas Occupations Code §2001.054 which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act. The new rule is also proposed under Texas Government Code, §467.102, which authorizes the Commission to adopt rules for the enforcement

and administration of the laws under the Commission's jurisdiction.

The new rule implements the Texas Occupations Code, Chapter 2001.

§402.205. Unit Agreements.

(a) Definitions. The following terms, when used in this section, shall have the following meanings:

(1) Unit Agreement--a unit accounting agreement or a trust agreement forming a unit.

(2) Act--Texas Occupations Code, Chapter 2001, entitled the Bingo Enabling Act.

(3) Rules--the Charitable Bingo Administrative Rules in effect at the time the unit agreement is submitted.

(b) A trust agreement forming a unit must contain all required elements of a unit accounting agreement as specified under §2001.431(3) of the Act.

(c) A unit must notify the Commission on a Commission-prescribed form and submit a copy of the executed unit agreement to the Commission prior to operating as a unit.

(d) A unit may apportion its net proceeds by sharing equally among the members or based on a set percentage or the number of occasions each member conducts in the given time period.

(e) A unit may appoint a designated agent who must be a natural person.

(1) A designated agent for a unit must complete training required under §2001.107 of the Act every two years on behalf of either the unit or a licensed authorized organization.

(A) If a new designated agent has not completed required training in the past two years, the designated agent must complete a training class within 45 days of when the unit agreement or amendment to a unit agreement naming the designated agent was signed.

(B) If the designated agent has not completed required training at the time of a unit's notification of a new designated agent, the designated agent must provide written notice to the Commission upon completion of the training.

(2) A bookkeeper may be a business contact for a commercial lessor and/or a designated agent for an accounting unit provided that the bookkeeper is not compensated or employed by the commercial lessor.

(3) A designated agent must provide personal information requested by the Commission on a Commission-prescribed form so that the Commission may conduct a background investigation to determine if the designated agent is an owner, officer or director of a licensed commercial lessor, employed by a commercial lessor or related to a licensed commercial lessor within the second degree by consanguinity or affinity.

(f) The unit member's taxpayer name and number on the unit agreement must match:

(1) the name on the organization's organizing instrument or the name of the organization as stated on its license to conduct bingo; and

(2) the eleven-digit taxpayer number on file with the Commission.

(g) If the unit agreement specifies that a member withdrawing from the unit is entitled to a share of the inventory or that the unit has the option to provide either payment for the member's share of the inventory or a share of the existing inventory, the unit must notify the Commission within fifteen business days of distribution of the method of distribution and/or provide a complete inventory list showing what was transferred to the withdrawing member.

(h) A unit agreement must specify the street address where the records of a dissolved unit will be maintained for the required four year retention period unless the unit agreement specifies that each unit member will receive a copy of the unit records.

(i) For a dissolved unit, the last trustee or member of a unit at the time of dissolution must notify the Commission within fifteen work days of any change in the street address of the unit's records during the required four year retention period.

(j) A unit agreement must be signed by the unit member or organization's bingo chairperson or other officer or director.

(k) An organization may sign a unit agreement prior to the effective date of its license to conduct bingo but only after the license has been issued. The effective date the organization joins the unit must be on or after the effective date of the organization's license to conduct bingo.

(l) The method a unit uses to apportion net proceeds of the bingo operations among the members of the unit must be consistent with the method a unit uses to ensure compliance with the required disbursements to charity.

(m) A unit agreement must indicate the length of time allowed for the distribution of funds, records, and inventory and allocation of authorized expenses and liabilities on dissolution or withdrawal of one or more members of the unit. In accordance with Tex. Occ. Code §2001.436(b), unexpended bingo funds must be disbursed to the bingo account of each unit member before the end of the next calendar quarter after the calendar quarter in which the unit dissolved.

(n) Prior to joining a unit, a licensed authorized organization must provide written notice to the Commission stating whether it will be transferring inventory to the unit.

(o) An organization joining a unit must provide to the Commission a complete list of the inventory it has transferred to the unit within ten business days of joining the unit. It is the responsibility of the organization to ensure that the Commission timely receives the inventory list.

(p) A written inventory of bingo equipment and supplies must include the following:
Figure: 16 TAC §402.205(p)

(q) Any amendment to any of the contents of a unit agreement requires the unit to submit a form prescribed by the Commission and a copy of the executed amendment to the unit agreement within fifteen business days of the effective date of the change.

(r) Notification of an amendment to a unit agreement must contain:

- (1) name of the unit;
- (2) effective date of the change;
- (3) specific section of the unit agreement being changed;
- (4) new terms of the agreement which are in compliance with the Act and the Rules;

(5) signature of the bingo chairperson or other officer or director for each of the current unit members; and

(6) statement which binds the amendment to the original unit agreement creating one document unless the entire unit agreement is re-stated.

(s) A unit must submit to the Commission an amended unit agreement within twenty-five business days of the effective date of any change to the Act or the Rules which would affect the agreement's compliance with the new Act or Rules.

(t) A unit is considered dissolved if the unit members do not have a playing location for more than sixty consecutive calendar days.

(u) A unit must operate by the terms of the unit agreement until the agreement is amended or the unit is dissolved.

(v) If a unit agreement or an amendment to a unit agreement is found to not be in compliance with the Act or the Rules, the unit will have fifteen business days after being notified by the Commission to provide a revised compliant unit agreement or compliant amendment to a unit agreement.

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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Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

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For further information, please call: (512) 344-5012



SUBCHAPTER D. LICENSING REQUIREMENTS

16 TAC §402.400

The Texas Lottery Commission (Commission) proposes amendments to 16 TAC §402.400 (relating to General Licensing Provisions). The purpose of the proposed amendments is to clearly set forth for organizations certain requirements and timelines for the application process.

Kathy Pyka, Controller, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no significant fiscal impact for state or local governments as a result of the proposed amendments. There will be no adverse effect on small businesses, micro businesses, or local or state employment. There will be no additional economic cost to persons required to comply with the amendments as proposed. Furthermore, an Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendments will not have an economic effect on small businesses as defined in Tex. Govt. Code §2006.001(2).

Philip D. Sanderson, Director of the Charitable Bingo Operations Division, has determined that for each year of the first five years the proposed amendments will be in effect, the public benefit anticipated is a more understandable rule that will provide organizations with information about the application process and related requirements.

The Commission requests comments on the proposed amendments from any interested person. Comments on the proposed rule may be submitted to Sandra Joseph, Special Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at www.legal.input@lottery.state.tx.us. The Commission will hold a public hearing on this proposal at 10:00 a.m. on Tuesday, September 9, 2008, at 611 E. 6th Street, Austin, Texas 78701. Comments must be received within 30 days after publication of this proposal in order to be considered.

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

The proposed amendments implement Texas Occupations Code, Chapter 2001.

§402.400. General Licensing Provisions.

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

(d) Within 15 business [~~14~~] days after the Commission has received an original [~~the~~] application, the Commission will review the application and~~;~~

~~[(1)]~~ notify the applicant if additional information is required. ~~;~~

~~[(2)]~~ notify the applicant in writing why the application is being denied; ~~or~~

~~[(3)]~~ issue the license.]

(e) If an application is incomplete, the Commission will notify the applicant. The applicant must provide the requested information within 15 business [~~14~~] days of such notification. Failure to provide the requested information within the 15 business [~~14~~] day time line may [~~will~~] result in the denial of the license application.

~~[(f)]~~ Notwithstanding the provisions of subsection (e) of this section, failure to submit all required information within 45 days from the date the application is received by the Commission will result in the denial of the application.]

(f) ~~[(g)]~~ Prior to the issuance of a license, the Commission may require an applicant to attend a pre-licensing interview. The Commission will identify the person or persons for the applicant who must attend the pre-licensing interview. The pre-licensing interview will consist of, at a minimum, the following:

(1) review of the Bingo Enabling Act;

(2) review of the Charitable Bingo Administrative Rules;

(3) licensee responsibilities;

(4) process pertaining to the different types of license application;

(5) bookkeeping and record keeping requirements as it involves bingo; and

(6) a statement from the person or persons attending the pre-licensing interview that they are aware of and [~~understand and the licensee~~] will comply with the provisions of the Bingo Enabling Act and Charitable Bingo Administrative Rules.

(g) ~~[(h)]~~ The Commission may deny an application based on information obtained that indicates non-compliance with the provisions of the Bingo Enabling Act and/or the Charitable Bingo Administrative

Rules in connection with a pre-licensing interview and/or location inspection.

~~(h)~~ ~~(+)~~ Each licensed authorized organization and organization issued a temporary authorization is required to file timely and complete required reports, as applicable to the type of current license held.

~~(i)~~ ~~(+)~~ An organization may withdraw an application at any time. Once the written request for withdrawal is received by the Commission, all processing of the application will cease and the withdrawal is considered final. If the organization wants to reapply for a license, a complete new application is required.

~~(j)~~ ~~(+)~~ Voluntary surrender of a license.

(1) A licensee may surrender its license for cancellation provided it has completed and submitted to the Commission the prescribed form. [~~"Notice of Surrender of Bingo License".~~]

(2) If surrendering a license to conduct bingo, the prescribed form must be signed by the primary operator and an officer of the organization.

(3) If surrendering any other type of license, the prescribed form must be signed by the sole owner, or by two officers, directors, limited liability corporation members, or partners of the organization.

(4) The cancellation of the license shall be final and effective upon receipt by the Charitable Bingo Operations Division of a copy of the resolution, or other authoritative statement of the licensee, requesting cancellation of the license and providing a requested effective date.

(A) The cancellation is effective as of the date identified in the letter provided that the date has not passed.

(B) If no date is identified in the letter, or the date has passed, the effective date shall be the date the Commission receives the letter.

(5) Notwithstanding cancellation of the license, the licensee must file all reports, returns and remittances required by law.

(6) The licensee shall surrender the license to the Commission on the effective date of the surrender.

(7) The Commission will send the licensee a letter confirming the surrender and resulting cancellation of the license.

~~(k)~~ ~~(+)~~ Administrative Hold. A licensed authorized organization or licensed commercial lessor that is not an association of licensed authorized organizations that jointly own or lease premises where bingo is conducted [~~licensee~~] may place its license in administrative hold.

(1) The placement of a license in administrative hold shall be effective upon receipt by the Commission of a copy of the resolution, or other authoritative statement of the licensee, requesting administrative hold and citing a requested effective date.

(2) The licensee shall submit the license, or a certified statement that the license is not available, to the Commission on the effective date of the placement of the license in administrative hold.

(3) Once the license has been placed in administrative hold, all bingo activity (i.e. leasing, conducting bingo) must cease until the licensee files an amendment and the amended license is issued by the Commission and received by the licensee.

(4) ~~(+)~~ Notwithstanding placement of the license in administrative hold, the licensee must file all reports, returns and remittances required by law. The licensee must also file a timely and complete

application for renewal of the license each time the license is ripe for renewal.

~~(l)~~ ~~(+)~~ Each person required to be named in an application for license under the Bingo Enabling Act other than a temporary license will have a criminal record history inquiry at state and/or national level conducted. Such inquiry may require submission of fingerprint card(s). FBI fingerprint cards are required for an individual listed in an application for a distributor, system service provider, or manufacturer's license and for an individual listed on an application who is not a Texas resident. A criminal record history inquiry at the state and/or national level may be conducted on the operator and officer or director required to be named in an application for a non-annual temporary license under the Bingo Enabling Act.

~~(m)~~ ~~(+)~~ Timely Renewal of License.

(1) An annual bingo license expires one calendar year from date of issuance.

(2) Each licensee is solely responsible for the timely renewal of its annual license.

(3) Failure of the licensee to receive the renewal notice(s) mailed by the Commission is not a mitigating circumstance in timely renewal. The renewal notice is merely a reminder and not a prerequisite to a licensee's ability to submit a renewal application.

(4) A licensee that has not submitted a renewal application timely must cease all bingo activity until properly licensed.

(5) Notwithstanding any other provision in the Charitable Bingo Administrative Rules, to be considered timely, the renewal application must be filed with the Commission no later than the license expiration date. [~~A licensee may mail the renewal application but the postmark must clearly show a date that is no later than the license expiration date.~~] To be timely filed, the application's [~~Commission must receive the mailed application within seven days of the postmarked date of the mailed application and the~~] postmarked date must clearly show a date that is no later than the license expiration date. [~~Additionally, if the Commission does not receive the renewal application within seven days of the postmarked date of the mailed application, the renewal application is not timely filed.~~] In computing the period of time for filing renewal applications, the last day of the period so computed is to be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday.

~~(p)~~ Notification of changes. Each licensee must promptly notify the Commission in writing within ten working days of any change to information contained in a filed application regardless of whether the cause of the change is because information filed with the Commission has become inaccurate, or additions or deletions are necessary to reflect changes in the circumstances of the licensee. Examples of such changes may include the names of the organizational officers; the amount of rent charged for leased premises; the name of a member responsible for the conduct of games; or the name of an individual connected with a commercial lessor that would affect its eligibility to hold a license and; in the case of lessors; the name of a new authorized organization that intends to lease premises from it for the purpose of conducting bingo.

~~(n)~~ ~~(+)~~ Representation; personal receipt of documents. For purposes of this subsection, an individual shall be recognized by the Commission as an applicant or licensee's authorized representative only if the applicant or licensee has filed with the Commission a form prescribed by the Commission identifying the individuals currently listed as directors, officers, or operators, or if they are identified on the completed form "Schedule E Authorization of Representation". A

person is not an authorized representative of the applicant or licensee unless specifically named on a form prescribed by the Commission as part of the application, or in the "Schedule E Authorization of Representation" that is on file with the Commission. Only those persons specifically named on a form prescribed by the Commission or in the "Schedule E Authorization of Representation" as an authorized representative shall be recognized by the Commission concerning any matter relating to the licensing process or license. Only the applicant or licensee or its authorized representative may receive from the Commission documents relating to the application or license without being required to submit a request under the Public Information Act.

(o) [(+)] Eligibility determination pending identification of playing location, days, times, and starting date.

(1) An organization may submit an original application for a license to conduct bingo without including information on intended playing location, days, times, and starting date if requesting a determination of eligibility status.

(2) All other information requested on the application and the accompanying schedules, except Schedule F-Bingo Financial Summary, must be complete and in compliance with all other requirements of the Act and Rules before the Commission determines eligibility status.

(3) An organization requesting a determination of eligibility status must submit with its application \$100 to be applied towards the organization's license fee.

(4) Upon a determination that the requirements in paragraph (2) and (3) of this subsection have been met, the Commission will provide to the authorized organization written notice of the eligibility status of the applicant.

(5) Within 180 days of the date the Commission provides notice of the eligibility status of an applicant, the authorized organization must inform the Commission on a form prescribed by the Commission of the intended playing location, days, times, and starting date of the occasions. If the authorized organization fails to provide the information to the Commission within 180 days, the Commission will proceed with denial of the application.

(6) After review of the applicant's submitted intended playing location, days, times, starting date, and Schedule F-Bingo Financial Summary, and upon request by the applicant, the Commission may issue temporary authorization to conduct bingo for a period of 60 days if the Commission determines that the intended playing location, days, times, and starting date comply with the Bingo Enabling Act.

(7) In order to receive a regular license to conduct bingo, an authorized organization that has received an eligibility determination and informed the Commission of its intended playing location, days, times, and starting date of the occasions must also submit the required bond or security, any remainder of the appropriate license fee, a Texas Request for Licensure for Eligible Organization form, Schedule B3-Registered Workers for License to Conduct Bingo, certified meeting minutes stating that the organization voted to conduct bingo at the licensed location, and confirmation of the accuracy of information provided on the application to conduct bingo. The Commission will notify the applicant of the required license fee and bond amounts within 14 calendar days of receipt of the organization's intended playing location, days, times, and starting date.

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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Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

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For further information, please call: (512) 344-5012



16 TAC §402.442

The Texas Lottery Commission (Commission) proposes a new rule at 16 TAC §402.442 (relating to Amendment to a Commercial Lessor License). The purpose of the new rule is to clarify what is required of a licensed commercial lessor in order to amend information contained in their application on file with the commission.

Kathy Pyka, Controller, has determined that for each year of the first five years the new rule will be in effect, there will be no significant fiscal impact for state or local governments as a result of the proposed new rule. There will be no adverse effect on small businesses, micro businesses, or local or state employment. There will be no additional economic cost to persons required to comply with the new rule as proposed. Furthermore, an Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed new rule will not have an economic effect on small businesses as defined in Tex. Govt. Code §2006.001(2).

Philip D. Sanderson, Director of the Charitable Bingo Operations Division, has determined that for each year of the first five years the proposed new rule would be in effect, the public benefit expected from the adoption of the new rule is providing to licensees specific information about what minimum documentation the organization is required to provide when amending their commercial lessor license.

The Commission requests comments on the proposed new rule from any interested person. Comments may be submitted to Sandra Joseph, Special Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at www.legal.input@lottery.state.tx.us. The Commission will hold a public hearing on this proposal at 10:00 a.m. on Tuesday, September 9, 2008, at 611 E. 6th Street, Austin, Texas 78701. Comments must be received within 30 days after publication of this proposal in order to be considered.

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

The new rule implements the Texas Occupations Code, Chapter 2001.

§402.442. Amendment to a Commercial Lessor License.

(a) During the license term, a commercial lessor may apply to amend its licensed location or organization name.

(b) To amend its license, a commercial lessor shall submit to the Commission the following:

(1) completed application form prescribed by the Commission;

(2) \$10 amendment application fee;

(3) original, current license except when the Commission is maintaining the license in administrative hold. A commercial lessor shall display a copy of its license at its licensed location if it has submitted the original license with an amendment application;

(4) When amending organization name, additional documents if applicable as follows:

(A) a copy of relevant amended organizing instruments reflecting the change in organization name;

(B) if commercial lessor is also licensed to conduct bingo, an association of licensed authorized organizations that jointly own or lease premises, a corporation, or a limited liability company, a signed copy of the meeting minutes when the organization voted to change its name.

(5) When amending location, additional forms as follows:
Figure: 16 TAC §402.442(b)(5)

(c) The Commission may inspect the proposed location prior to approving an amendment application.

(d) The Commission will not approve an application for an amendment to change location by a commercial lessor who also holds a license to conduct bingo unless its license to conduct bingo is approved for the same location.

(e) All licensed authorized organizations that will be leasing from the commercial lessor at the new location must notify the Commission of the change in commercial lessor and the lease amount to be paid before the commercial lessor license may be amended. Notification may include:

(1) an annual license or amendment application filed with the Commission;

(2) licensed Conductor Notification Form prescribed by the Commission; or

(3) written statement of the change.

(f) If the playing location is not presently licensed, the license will not be issued until at least one authorized organization that will be leasing from the commercial lessor meets all licensing requirements to conduct bingo.

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 August 1, 2008.

TRD-200804016

Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

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For further information, please call: (512) 344-5012



TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 7. DEGREE GRANTING COLLEGES AND UNIVERSITIES OTHER THAN TEXAS PUBLIC INSTITUTIONS SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §7.3

The Texas Higher Education Coordinating Board proposes an amendment to §7.3, relating to Definitions. New Chapter 7 rules were approved by the Board at the April 24, 2008 meeting. Several non-substantive changes were approved by the Board at the July 24, 2008 meeting. Specifically, the change to §7.3 (Definitions) is needed to more accurately define the Classification of Instructional Programs (CIP) Code. The current definition may theoretically harm students by limiting the educational level attainable to the associate degree-level only. Although the likelihood of this occurrence is small, it is important that we err on the side of caution and eliminate the possibility. This change clarifies that the CIP Code may reflect any and all educational and/or workforce degree-level programs.

Dr. Mary E. Smith, Acting Assistant Commissioner for Academic Affairs and Research, has determined that for each year of the first five years the amendment is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the amendment.

Dr. Smith has also determined that for each year of the first five years the amendment is in effect, the public benefit anticipated as a result of administering the amendment will be a more effective and more appropriate Board response to the requirements and needs of institutions wishing to operate in Texas. There is no effect on small or micro businesses. There are no anticipated economic costs to persons who are required to comply with the amendment as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Mary E. Smith, Acting Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or Mary.Smith@thehb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendment is proposed under the Texas Education Code, Chapter 61, Subchapter G, which provides the Coordinating Board with the authority to regulate the awarding or offering of degrees, credit toward degrees, and the use of certain terms.

The amendment affects implementation of Texas Education Code, Subchapter G, §§61.301 - 61.319.

§7.3. Definitions.

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

(1) - (16) (No change.)

(17) Classification of Instructional Programs (CIP) Code-- The four (4)- or six (6)-digit code assigned to an approved [associate] degree program in accordance with the CIP manual published by the U.S. Department of Education, National Center for Education Statistics. CIP codes define the authorized teaching field of the specified degree program, based upon the occupation(s) for which the program is designed to prepare its graduates.

(18) - (35) (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 August 1, 2008.

TRD-200804005

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Proposed date of adoption: October 23, 2008

For further information, please call: (512) 427-6114



PART 2. TEXAS EDUCATION AGENCY

CHAPTER 101. ASSESSMENT

SUBCHAPTER B. DEVELOPMENT AND ADMINISTRATION OF TESTS

19 TAC §101.33

The State Board of Education (SBOE) proposes an amendment to §101.33, concerning release of tests. The section addresses the required release of state assessment instruments. The proposed amendment would implement Senate Bill (SB) 1031, 80th Texas Legislature, 2007, which requires the Texas Education Agency (TEA) to release state assessment instruments every three years under rules adopted by the SBOE.

Section 101.33 was adopted to be effective November 15, 2001. In September 2003, the SBOE adopted an amendment to 19 TAC §101.33 to comply with requirements set forth in House Bill 3459, 78th Texas Legislature, 2003, requiring the release of assessment items every other year. In May 2004, the SBOE adopted an amendment to 19 TAC §101.33 requiring the release of all tests for the Texas Assessment of Knowledge and Skills (TAKS), State-Developed Alternative Assessment (SDAA), and the Reading Proficiency Tests in English (RPTE) in the 2003-2004 school year and in every even-numbered year thereafter. In December 2005, the SBOE adopted an amendment to 19 TAC §101.33 to require the release of the SDAA II tests and answer keys beginning in 2005 and subsequent odd-numbered years.

The 80th Texas Legislature enacted SB 1031 in 2007. Among its many provisions, the bill amends TEC, §39.023(e), requiring the TEA to release state assessment instruments every three years under rules adopted by the SBOE. Language in the current rule requires the TEA to release certain assessments every other year. The proposed amendment would add language to specify that all test items and answer keys for assessments authorized under the TEC, §39.023(a), (b), (c), (d), or (l), would be released every third year beginning in 2009 with the 2008-2009 school year. The proposed amendment would also address the release of field test items.

Criss Cloudt, associate commissioner for assessment, accountability, and data quality, has determined that for the first five-year period the amendment is in effect there will be fiscal implications for state government as a result of enforcing or administering the amendment. For fiscal year 2009, the estimated savings to the state for moving from the previous release plan (every other year) to the current plan under SB 1031 (three-year release), which allowed for the elimination of the 2009 stand-alone TAKS

field tests, is a reduction of approximately \$1.7 million. An estimated additional cost for fiscal year 2009 of \$250,000 would be incurred for releasing selected items from the item bank, for a total estimated savings in fiscal year 2009 of \$1.675 million. For fiscal year 2010, an additional cost of \$250,000 is estimated for releasing selected items from the item bank. In subsequent fiscal years (2011, 2012, and 2013), it is anticipated that if the provisions under the SB 1031 release plan are in place, an estimated cost savings of \$1.4 million per year will be realized. There are no fiscal implications for local government.

Dr. Cloudt has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment would be the release of tests every third year and the release of field test items in the non-release years, which will provide the public additional access to Texas assessment materials. There is no anticipated economic cost to persons who are required to comply with the proposed amendment. In addition, there is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

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

The amendment is proposed under the Texas Education Code, §39.023(e), which authorizes the State Board of Education to adopt rules relating to the release of certain statewide assessments and answer keys every third year.

The amendment implements the Texas Education Code, §39.023(e).

§101.33. Release of Tests.

Beginning in 2009 [2004] with the 2008-2009 [2003-2004] school year and each subsequent third school year, [subsequent even-numbered school years,] the Texas Education Agency [(TEA)] shall release all test items and answer keys for each assessment instrument administered under the Texas Education Code, §39.023(a), (b), (c), (d), and (l). In the non-release years, field test items that are at least four years old and that are no longer eligible for inclusion on a subsequent test form [the Texas Assessment of Knowledge and Skills (TAKS) and the Reading Proficiency Tests in English (RPTE). Beginning with the 2005 assessment administered in the 2004-2005 school year and subsequent odd-numbered school years, the TEA shall release all test items and answer keys for the State-Developed Alternative Assessment II (SDAA II). After a period of five years, each test item that has been field-tested but not used on a test] will be released.

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 August 4, 2008.

TRD-200804024

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Earliest possible date of adoption: September 14, 2008

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



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

The State Board of Education (SBOE) proposes amendments to §§128.1, 128.21, and 128.41; new §§128.10 - 128.18 and 128.30 - 128.32; and repeal of §§128.23 - 128.26 and 128.44 - 128.66, concerning Texas essential knowledge and skills (TEKS) for Spanish language arts and reading and English as a second language. The proposed amendments, new sections, and repeals would establish revised Spanish language arts and reading TEKS for Kindergarten-Grade 6 and English I-II for Speakers of Other Languages for implementation beginning with the 2009-2010 school year.

The refinement and alignment of English language arts and reading, Spanish language arts, and English as a second language TEKS began in 2005 with the same process used for mathematics TEKS. The review process included gathering input from stakeholders throughout Texas and review of the TEKS by a work group of SBOE nominees. The draft refinements were placed on the Texas Education Agency (TEA) website in the form of a survey to collect feedback from the public for 30 days beginning in February 2006. In June 2006, the SBOE directed agency staff to reconvene the review committees for further revision of the English language arts and reading TEKS. The committee was charged with making the TEKS more grade-level specific, less repetitive, and measurable at the state or local level. In keeping with the alignment of the TEKS for English language arts and reading, Spanish language arts, and English as a second language, changes proposed for 19 TAC Chapter 110, Texas Essential Knowledge and Skills for English Language Arts and Reading, drive the changes proposed for 19 TAC Chapter 128, Texas Essential Knowledge and Skills for Spanish Language Arts and Reading and English as a Second Language.

Upon approval of the proposed revisions to 19 TAC Chapter 110 for first reading and filing authorization at the March 2008 meeting, work to incorporate corresponding changes to 19 TAC Chapter 128 began in order to present the proposed revisions for first reading and filing authorization. Proposed revisions to 19 TAC Chapter 110 were adopted by the SBOE during the May 2008 meeting. The teacher review committee for Spanish language arts and reading was reconvened on June 19 and 20, 2008, to prepare proposed revisions to 19 TAC Chapter 128 in alignment with recently adopted revisions to 19 TAC Chapter 110. The committee also met on July 9, 2008.

The proposed revisions recommend an implementation date of the 2009-2010 school year for the revised Spanish language arts TEKS in order to allow districts to begin preparing for implementation. Included in the revisions will be amendments to specify that existing TEKS would be superseded by the revised TEKS once implemented.

Adoption of instructional materials under Proclamation 2010, based on the revised TEKS in 19 TAC Chapter 128, is scheduled for the November 2009 SBOE meeting.

Sharon Jackson, associate commissioner for standards and programs, has determined that for the first five-year period the amendments, new sections, and repeals are in effect there will be fiscal implications for state and local government as a result of enforcing or administering the rule actions.

The proposed rule actions would revise the TEKS for Spanish language arts and reading in Kindergarten-Grade 6 and English I-II for Speakers of Other Languages. Due to the significance of the revisions, a need for the development and implementation of professional development to help teachers and administrators understand the new TEKS is anticipated. It is not possible to determine the exact fiscal implication to the state until input is received from districts regarding potential needs.

There are anticipated fiscal implications for school districts to comply with implementation of the new TEKS, which may include the need for professional development and revisions to district-developed databases, curriculum, and scope and sequence documents. Since curriculum and instruction decisions are made at the local district level, it is difficult to estimate the fiscal impact on any given district.

Dr. Jackson has determined that for each year of the first five years the amendments, new sections, and repeals are in effect the public benefit anticipated as a result of enforcing the rule actions would be better alignment of the TEKS and coordination of the TEKS revision with the textbook adoption process. There is no anticipated economic cost to persons who are required to comply with the proposed rule actions.

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

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

SUBCHAPTER A. ELEMENTARY

19 TAC §§128.1, 128.10 - 128.16

The amendment and new sections are proposed under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements, §28.002, which authorizes the SBOE to by rule identify the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating textbooks and addressed on the assessment instruments, and §28.005 and §29.051, which establishes bilingual education and special language programs in the public schools to ensure students' reasonable proficiency in the English language and ability to achieve academic success.

The amendment and new sections implement the Texas Education Code, §7.102(c)(4), 28.002, 28.005, and 29.051.

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

The provisions of §§128.2-128.7 of this subchapter shall be superseded by §§128.11-128.16 of this subchapter beginning with the 2009-2010 school year [implemented by school districts September 1, 1998, and at that time, shall supersede §75.24 of this title (relating to Primary Language for Bilingual Education) and §75.25(a)-(b) of this title (relating to English as a Second Language)].

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

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

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

Figure: 19 TAC §128.10(b)

§128.11. Spanish Language Arts and Reading, Kindergarten, Beginning with School Year 2009-2010.

(a) Introduction.

(1) The Spanish Language Arts and Reading Texas Essential Knowledge and Skills (TEKS) reflect language arts standards that are authentic to the Spanish language and Spanish literacy, not mere translations from English. The Spanish Language Arts and Reading TEKS are organized into the following strands: Reading, where students read and understand a wide variety of literary and informational texts; Writing, where students compose a variety of written texts with a clear controlling idea, coherent organization, and sufficient detail; Research, where students are expected to know how to locate a range of relevant sources and evaluate, synthesize, and present ideas and information; Listening and Speaking, where students listen and respond to the ideas of others while contributing their own ideas in conversations and in groups; and Oral and Written Conventions, where students learn how to use the oral and written conventions of the Spanish language in speaking and writing. The Reading strand is structured to reflect major topic areas of the National Reading Panel Report as well as other current and relevant research on Spanish literacy development. In Kindergarten, students engage in activities that build on their natural curiosity and prior knowledge to develop their reading, writing, and oral language skills.

(2) Research consistently shows that literacy development in the student's native language facilitates learning in English (Collier & Thomas, 1997; Cummins, 2001). Students can develop cognition, learn, and achieve best when they can understand the language of instruction (August, Calderon, & Carlo, 2003). Students who have strong literacy skills in their primary language can be expected to transfer those skills to English and *progress rapidly* in learning in English. Although English and Spanish look very similar on the surface (i.e., similar alphabets; directionality; cognates) the conventions of each language presuppose the reading process in that language. Consequently, systematic instruction in the appropriate sequence of skills is critical. For this reason, the Spanish Language Arts and Reading TEKS reflect language arts standards that are authentic to the Spanish language and not mere translations from English.

(A) Spanish, as opposed to English, has a closer letter-sound relationship and clearly defined syllable boundaries. The syllable in Spanish is a more critical unit of phonological awareness

than in English because of the consistent phoneme-grapheme correspondence. Syllables are important units for Spanish because of their strong effect in visual word recognition (Carreiras et al., 1993) and their major role in predicting Spanish reading success. In addition, Spanish presents a much higher level of orthographic transparency than English and does not rely on sight words for decoding. This orthographic transparency accelerates the decoding process, and the focus quickly moves to fluency and comprehension. Spanish uses frequency words that are identified by the rate of occurrence in grade appropriate text and used to build on fluency and comprehension. However, in English, "sight" words are used because of words that are not decodable such as "are" or "one." In Spanish, decoding issues are not as prevalent as issues of comprehension. These specific features of the Spanish language will influence reading methodology and development.

(B) Spanish instruction maximizes access to English content. Students with strong literacy skills in Spanish phonemic awareness, phonics, vocabulary, and reading comprehension can be expected to transfer those skills to English. The "transfer" of knowledge and skills from one language to another refers to the metalinguistic and metacognitive processes and awareness that students gain in developing literacy in two languages. Current research on bilingual instruction (e.g., August & Shanahan, 2006; Genesse et al., 2006) shows how students use native literacy knowledge when learning to read and write in another language.

(C) The effective transfer of skills transpires as students develop their metalinguistic skills and as they engage in a contrastive analysis of the Spanish and English languages (Cummins, 2007). Transfer matters occur within fundamentals of language that are common to Spanish and English; within fundamentals that are similar, but not exact in both languages; and in fundamentals specific to each language and not applicable to the other language. The strength of learning through formal instruction in Spanish determines the extent of transfer in English (August, Calderon, & Carlo, 2000; Slavin & Calderon, 2001; Garcia, 2001). In other words, for transfer to occur, comprehension of the "rules" and the realization of their applicability to the new language specific tasks are necessary.

(D) The concept of transfer necessitates the use of some of both languages in which both (Spanish and English) *co-exist with flexibility*. As a result of working within two language systems, students' metalinguistic and metacognitive skills are enhanced when they learn about the similarities and differences between languages. This is *reliant* on the type of bilingual program model being used (See Texas Education Code, §29.066).

(3) To meet Public Education Goal 1 of the Texas Education Code, §4.002, which states, "The students in the public education system will demonstrate exemplary performance in the reading and writing of the English language," students will accomplish the essential knowledge, skills, and student expectations at Kindergarten as described in subsection (b) of this section.

(4) To meet Texas Education Code, §28.002(h), which states, ". . . each school district shall foster the continuation of the tradition of teaching United States and Texas history and the free enterprise system in regular subject matter and in reading courses and in the adoption of textbooks," students will be provided oral and written narratives as well as other informational texts that can help them to become thoughtful, active citizens who appreciate the basic democratic values of our state and nation.

(b) Knowledge and skills.

(1) Reading/Beginning Reading Skills/Print Awareness. Students understand how Spanish is written and printed. Students are expected to:

(A) recognize that spoken words can be represented by print for communication;

(B) identify upper- and lower-case letters;

(C) demonstrate the one-to-one correspondence between a spoken word and a printed word in text;

(D) recognize the difference between a letter and a printed word;

(E) recognize that sentences are comprised of words separated by spaces and demonstrate the awareness of word boundaries (e.g., through kinesthetic or tactile actions such as clapping and jumping);

(F) hold a book right side up, turn its pages correctly, and know that reading moves from top to bottom and left to right; and

(G) identify different parts of a book (e.g., front and back covers, title page).

(2) Reading/Beginning Reading Skills/Phonological Awareness. Students display phonological awareness. Students are expected to:

(A) identify a sentence made up of a group of words;

(B) identify syllables in spoken words;

(C) orally generate rhymes in response to spoken words (e.g., "¿Qué rima con mesa?");

(D) distinguish orally presented rhyming pairs of words from non-rhyming pairs;

(E) recognize spoken alliteration or groups of words that begin with the same spoken onset or initial sound (e.g., "Pepe Pecas pica papas");

(F) blend spoken phonemes to form syllables and words (e.g., /m/.../a/ says ma);

(G) isolate the initial syllabic sound in spoken words (e.g., /pa/ta, /la/ta, /ra/ta); and

(H) separate spoken multi-syllabic words into two to three syllables (e.g., /to/ /ma/ /te/).

(3) Reading/Beginning Reading Skills/Phonics. Students use the relationships between letters and sounds and morphological analysis to decode written Spanish. Students are expected to:

(A) use phonological knowledge to match sounds to individual letters and syllables, including hard and soft consonants such as "r," "c," and "g";

(B) use letter-sound correspondence to become familiar with mono- and multi-syllabic words;

(C) identify the vowel sounds including the sound of "y" when used as a conjunction, as in "mamá y papá";

(D) become familiar with the concept that "h" is silent;

(E) become familiar with the digraphs /ch/, /rr/;

(F) become familiar with the concept that "ll" and "y" have the same sound (e.g., llave, ya);

(G) use knowledge of consonant/vowel sound relationships to decode syllables and words in text and independent of content; and

(H) recognize that new words are created when syllables are changed, added, or deleted.

(4) Reading/Beginning Reading/Strategies. Students comprehend a variety of texts drawing on useful strategies as needed. Students are expected to:

(A) predict what might happen next in text based on the cover, title, and illustrations; and

(B) ask and respond to questions about texts read aloud.

(5) Reading/Vocabulary Development. Students understand new vocabulary and use it correctly when reading and writing. Students are expected to:

(A) identify and use words that name actions, directions, positions, sequences, and locations;

(B) become familiar with grade appropriate vocabulary including content and function words;

(C) recognize that compound words are made by putting two words together (e.g., saca + puntas = sacapuntas);

(D) identify and sort pictures of objects into conceptual categories (e.g., colors, shapes, textures); and

(E) use a picture dictionary to find words.

(6) Reading/Comprehension of Literary Text/Theme and Genre. Students analyze, make inferences and draw conclusions about theme and genre in different cultural, historical, and contemporary contexts and provide evidence from the text to support their understanding. Students are expected to:

(A) identify elements of a story including setting, character, and key events;

(B) discuss the big idea (theme) of a well-known folktale or fable and connect it to personal experience;

(C) recognize sensory details; and

(D) recognize recurring phrases and characters in traditional fairy tales, lullabies, and folktales from various cultures.

(7) Reading/Comprehension of Literary Text/Poetry. Students understand, make inferences and draw conclusions about the structure and elements of poetry and provide evidence from text to support their understanding. Students are expected to respond to rhythm and rhyme in poetry through identifying a regular beat and similarities in word sounds.

(8) Reading/Comprehension of Literary Text/Fiction. Students understand, make inferences and draw conclusions about the structure and elements of fiction and provide evidence from text to support their understanding. Students are expected to:

(A) retell a main event from a story read aloud; and

(B) describe characters in a story and the reasons for their actions.

(9) Reading/Comprehension of Informational Text/Culture and History. Students analyze, make inferences and draw conclusions about the author's purpose in cultural, historical, and contemporary contexts and provide evidence from the text to support their understanding. Students are expected to identify the topic of an informational text heard.

(10) Reading/Comprehension of Informational Text/Expository Text. Students analyze, make inferences and draw conclusions about expository text, and provide evidence from text to support their understanding. Students are expected to:

(A) identify the topic and details in expository text heard or read, referring to the words and/or illustrations;

(B) retell important facts in a text, heard or read;

(C) discuss the ways authors group information in text; and

(D) use titles and illustrations to make predictions about text.

(11) Reading/Comprehension of Informational Text/Procedural Texts. Students understand how to glean and use information in procedural texts and documents. Students are expected to:

(A) follow pictorial directions (e.g., recipes, science experiments); and

(B) identify the meaning of specific signs (e.g., traffic signs, warning signs).

(12) Reading/Media Literacy. Students use comprehension skills to analyze how words, images, graphics, and sounds work together in various forms to impact meaning. Students continue to apply earlier standards with greater depth in increasingly more complex texts. Students (with adult assistance) are expected to:

(A) identify different forms of media (e.g., advertisements, newspapers, radio programs); and

(B) identify techniques used in media (e.g., sound, movement).

(13) Writing/Writing Process. Students use elements of the writing process (planning, drafting, revising, editing, and publishing) to compose text. Students (with adult assistance) are expected to:

(A) plan a first draft by generating ideas for writing through class discussion;

(B) develop drafts by sequencing the action or details in the story;

(C) revise drafts by adding details or sentences;

(D) edit drafts by leaving spaces between letters and words; and

(E) share writing with others.

(14) Writing/Literary Texts. Students write literary texts to express their ideas and feelings about real or imagined people, events, and ideas. Students are expected to:

(A) dictate or write sentences to tell a story and put the sentences in chronological sequence; and

(B) write short poems.

(15) Writing/Expository and Procedural Texts. Students write expository and procedural or work-related texts to communicate ideas and information to specific audiences for specific purposes. Students are expected to dictate or write information for lists, captions, or invitations.

(16) Oral and Written Conventions/Conventions. Students understand the function of and use the conventions of academic language when speaking and writing. Students continue to apply earlier standards with greater complexity. Students are expected to:

(A) understand and use the following parts of speech in the context of reading, writing, and speaking (with adult assistance):

(i) verbs, including commands and past and future tenses when speaking;

(ii) nouns (singular/plural);

(iii) descriptive words;

(iv) prepositions and simple prepositional phrases appropriately when speaking or writing (e.g., en, de, por la tarde, en la mañana); and

(v) pronouns (e.g., yo, usted);

(B) speak in complete sentences to communicate; and

(C) use complete simple sentences.

(17) Oral and Written Conventions/Handwriting, Capitalization, and Punctuation. Students write legibly and use appropriate capitalization and punctuation conventions in their compositions. Students are expected to:

(A) form upper- and lower-case letters legibly using the basic conventions of print (left-to-right and top-to-bottom progression);

(B) capitalize the first letter in a sentence; and

(C) use punctuation at the beginning (when appropriate) and at the end of a sentence.

(18) Oral and Written Conventions/Spelling. Students spell correctly. Students are expected to:

(A) use phonological knowledge to match sounds to individual letters and in syllables;

(B) use letter-sound correspondences to spell mono- and multi-syllabic words;

(C) use "y" to represent /i/ when it is a conjunction;

(D) write one's own name;

(E) become familiar with spelling of words using orthographic rules, including:

(i) words that use syllables with hard /r/ spelled as "r" or "rr," as in ratón and carro;

(ii) words that use syllables with soft /r/ spelled as "r" and always between two vowels, as in pero and perro;

(iii) words that use syllables with silent "h" with increased accuracy, as in hora and ahora;

(iv) words that use syllables que-, qui-, as in queso and quito; gue-, gui-, as in guiso and juguete; and güe-, güi-, as in paragüero and agüita; and

(v) spell words that have the same sound represented by different letters with increased accuracy (e.g., "r" and "rr," as in ratón and perro; "ll" and "y," as in llave and yate; "g" and "j," as in gigante and jirafa; "c," "k," and "q," as in casa, kilo, and quince; "c," "s," and "z," as in cereal, semilla, and zapato; "j" and "x," as in cojín and México; "i" and "y," as in imán and doy; "b" and "v," as in burro and vela);

(F) become familiar with use of orthographic patterns and rules such as using "n" before "v," "m" before "b," "m" before "p," and changing "z" to "c" when adding -es;

(G) use knowledge of syllabic sounds, word parts, word segmentation, and syllabication to spell;

(H) become familiar with the use of accent marks including:

(i) words that have a prosodic or orthographic accent on the last syllable (palabras agudas) (e.g., feliz, canción);

(ii) words that have a prosodic or orthographic accent on the second-to-last syllable (palabras graves) (e.g., casa, árbol); and

(iii) words that have an orthographic accent on the third-to-last syllable (palabras esdrújulas) (e.g., último, cómico, mecánico);

(I) use accents appropriately on words commonly used in questions and exclamations (e.g., cuál, dónde, cómo); and

(J) use print and electronic resources to find and check correct spellings.

(19) Research/Research Plan. Students ask open-ended research questions and develop a plan for answering them. Students (with adult assistance) are expected to:

(A) ask questions about topics of class-wide interest; and

(B) decide what sources or people in the classroom, school, library, or home can answer these questions.

(20) Research/Gathering Sources. Students determine, locate, and explore the full range of relevant sources addressing a research question and systematically record the information they gather. Students (with adult assistance) are expected to:

(A) gather evidence from provided text sources; and

(B) use pictures in conjunction with writing when documenting research.

(21) Listening and Speaking/Listening. Students use comprehension skills to listen attentively to others in formal and informal settings. Students continue to apply earlier standards with greater complexity. Students are expected to:

(A) listen attentively by facing speakers and asking questions to clarify information; and

(B) follow oral directions that involve a short related sequence of actions.

(22) Listening and Speaking/Speaking. Students speak clearly and to the point, using the conventions of language. Students continue to apply earlier standards with greater complexity. Students are expected to share information and ideas by speaking audibly and clearly using the conventions of language.

(23) Listening and Speaking/Teamwork. Students work productively with others in teams. Students continue to apply earlier standards with greater complexity. Students are expected to follow agreed-upon rules for discussion, including taking turns and speaking one at a time.

§128.12. Spanish Language Arts and Reading, Grade 1, Beginning with School Year 2009-2010.

(a) Introduction.

(1) The Spanish Language Arts and Reading Texas Essential Knowledge and Skills (TEKS) reflect language arts standards that are authentic to the Spanish language and Spanish literacy, not mere translations from English. The Spanish Language Arts and Reading TEKS are organized into the following strands: Reading, where students read and understand a wide variety of literary and informational texts; Writing, where students compose a variety of written texts with a clear controlling idea, coherent organization, and sufficient detail; Research, where students are expected to know how to locate a range of relevant sources and evaluate, synthesize, and present ideas and information; Listening and Speaking, where students listen and respond to

the ideas of others while contributing their own ideas in conversations and in groups; and Oral and Written Conventions, where students learn how to use the oral and written conventions of the Spanish language in speaking and writing. The Reading strand is structured to reflect major topic areas of the National Reading Panel Report as well as other current and relevant research on Spanish literacy development. In first grade, students will engage in activities that build on their prior knowledge and skills in order to strengthen their reading, writing, and oral language skills. Students should write and read (or be read to) on a daily basis.

(2) Research consistently shows that literacy development in the student's native language facilitates learning in English (Collier & Thomas, 1997; Cummins, 2001). Students can develop cognition, learn, and achieve best when they can understand the language of instruction (August, Calderon, & Carlo, 2003). Students who have strong literacy skills in their primary language can be expected to transfer those skills to English and progress rapidly in learning in English. Although English and Spanish look very similar on the surface (i.e., similar alphabets; directionality; cognates) the conventions of each language presuppose the reading process in that language. Consequently, systematic instruction in the appropriate sequence of skills is critical. For this reason, the Spanish Language Arts and Reading TEKS reflect language arts standards that are authentic to the Spanish language and not mere translations from English.

(A) Spanish, as opposed to English, has a closer letter-sound relationship and clearly defined syllable boundaries. The syllable in Spanish is a more critical unit of phonological awareness than in English because of the consistent phoneme-grapheme correspondence. Syllables are important units for Spanish because of their strong effect in visual word recognition (Carreiras et al., 1993) and their major role in predicting Spanish reading success. In addition, Spanish presents a much higher level of orthographic transparency than English and does not rely on sight words for decoding. This orthographic transparency accelerates the decoding process and the focus quickly moves to fluency and comprehension. Spanish uses frequency words that are identified by the rate of occurrence in grade appropriate text and used to build on fluency and comprehension. However, in English, "sight" words are used because of words that are not decodable such as "are" or "one." In Spanish, decoding issues are not as prevalent as issues of comprehension. These specific features of the Spanish language will influence reading methodology and development.

(B) Spanish instruction maximizes access to English content. Students with strong literacy skills in Spanish phonemic awareness, phonics, vocabulary, and reading comprehension can be expected to transfer those skills to English. The "transfer" of knowledge and skills from one language to another refers to the metalinguistic and metacognitive processes and awareness that students gain in developing literacy in two languages. Current research on bilingual instruction (e.g., August & Shanahan, 2006; Genesee et al., 2006) shows how students use native literacy knowledge when learning to read and write in another language.

(C) The effective transfer of skills transpires as students develop their metalinguistic skills and as they engage in a contrastive analysis of the Spanish and English languages (Cummins, 2007). Transfer matters occur within fundamentals of language that are common to Spanish and English; within fundamentals that are similar, but not exact in both languages; and in fundamentals specific to each language and not applicable to the other language. The strength of learning through formal instruction in Spanish determines the extent of transfer in English (August, Calderon, & Carlo, 2000; Slavin & Calderon, 2001; Garcia, 2001). In other words, for transfer to occur,

comprehension of the "rules" and the realization of their applicability to the new language specific tasks are necessary.

(D) The concept of transfer necessitates the use of some of both languages in which both (Spanish and English) *co-exist with flexibility*. As a result of working within two language systems, students' metalinguistic and metacognitive skills are enhanced when they learn about the similarities and differences between languages. This is *reliant* on the type of bilingual program model being used (See Texas Education Code, §29.066).

(3) To meet Public Education Goal 1 of the Texas Education Code, §4.002, which states, "The students in the public education system will demonstrate exemplary performance in the reading and writing of the English language," students will accomplish the essential knowledge, skills, and student expectations in Grade 1 as described in subsection (b) of this section.

(4) To meet Texas Education Code, §28.002(h), which states, ". . . each school district shall foster the continuation of the tradition of teaching United States and Texas history and the free enterprise system in regular subject matter and in reading courses and in the adoption of textbooks," students will be provided oral and written narratives as well as other informational texts that can help them to become thoughtful, active citizens who appreciate the basic democratic values of our state and nation.

(b) Knowledge and skills.

(1) Reading/Beginning Reading Skills/Print Awareness. Students understand how Spanish is written and printed. Students are expected to:

(A) recognize that spoken words are represented in written Spanish by specific sequences of letters;

(B) identify upper- and lower-case letters;

(C) sequence the letters of the alphabet;

(D) recognize the distinguishing features of a sentence (e.g., capitalization of first word, beginning and ending punctuation);

(E) read texts by moving from top to bottom of the page and tracking words from left to right with return sweep; and

(F) identify the information that different parts of a book provide (e.g., title, author, illustrator, table of contents).

(2) Reading/Beginning Reading Skills/Phonological Awareness. Students display phonological awareness. Students are expected to:

(A) orally generate a series of original rhyming words using a variety of phonograms (e.g., -ita, -osa, -ión);

(B) recognize the change in a spoken word when a specified syllable or phoneme is added, changed, or removed (e.g., "me-sa" to "ma-sa"; "to-mo" to "co-mo");

(C) blend spoken phonemes to form syllables and words (e.g., sol, tres);

(D) distinguish orally presented rhyming pairs of words from non-rhyming pairs;

(E) identify syllables in spoken words, including diphthongs and *hiatus* (le-er, rí-o; quie-ro, vio); and

(F) separate spoken multi-syllabic words into three to four syllables (e.g., má-qui-na, te-lé-fo-no).

(3) Reading/Beginning Reading Skills/Phonics. Students use the relationships between letters and sounds to decode written

Spanish. Students will continue to apply earlier standards with greater depth in increasingly more complex texts. Students are expected to:

(A) decode the vowel sounds;

(B) decode syllables;

(C) use phonological knowledge to match sounds to individual letters and syllables including hard and soft consonants such as "r," "c," and "g";

(D) use letter-sound correspondence to identify mono- and multi-syllabic words;

(E) decode the written "y" when used as a conjunction, as in "mamá y papá";

(F) decode words in context and in isolation by applying the knowledge of letter-sound relationships in different syllabic structures including:

(i) consonant blends (e.g., bla-, fra-);

(ii) diagraphs (e.g., cha-, lla-, -rro);

(iii) diphthongs (e.g., viernes, pie, fui); and

(iv) words with an orthographic accent (e.g., papá, papa);

(G) decode words with the silent "h";

(H) decode words that use syllables que-, qui-, as in queso and quito; gue-, gui-, as in guiso and juguete; and güe-, güi-, as in paragüero and agüita;

(I) decode words that have the same sounds represented by different letters with increased accuracy (e.g., "r" and "rr," as in ratón and perro; "ll" and "y," as in llave and yate; "g" and "j," as in gigante and jirafa; "c," "k," and "q," as in casa, kilo, and quince; "c," "s," and "z," as in cereal, semilla, and zapato; "j" and "x," as in cojín and México; "i" and "y," as in imán and doy; "b" and "v," as in burro and vela);

(J) use knowledge of syllabication to identify the syllable that is stressed (*sílaba tónica*); and

(K) use knowledge of the meaning of base words to identify and read common compound words (e.g., sacapuntas, rascacielos, superhéroe).

(4) Reading/Beginning Reading/Strategies. Students comprehend a variety of texts drawing on useful strategies as needed. Students are expected to:

(A) confirm predictions about what will happen next in text by "reading the part that tells";

(B) ask relevant questions, seek clarification, and locate facts and details about stories and other texts; and

(C) establish purpose for reading selected texts and monitor comprehension, making corrections and adjustments when that understanding breaks down (e.g., identifying clues, using background knowledge, generating questions, re-reading a portion aloud).

(5) Reading/Fluency. Students read grade-level text with fluency and comprehension. Students are expected to read aloud grade-level appropriate text with fluency (rate, accuracy, expression, appropriate phrasing) and comprehension.

(6) Reading/Vocabulary Development. Students understand new vocabulary and use it when reading and writing. Students are expected to:

(A) identify words that name actions (verbs) and words that name persons, places, or things (nouns);

(B) determine the meaning of compound words using knowledge of the meaning of their individual component words (e.g., paraguas);

(C) determine what words mean from how they are used in a sentence, either heard or read;

(D) identify and sort words into conceptual categories (e.g., opposites, living things); and

(E) alphabetize a series of words to the first or second letter and use a dictionary to find words.

(7) Reading/Comprehension of Literary Text/Theme and Genre. Students analyze, make inferences and draw conclusions about theme and genre in different cultural, historical, and contemporary contexts and provide evidence from the text to support their understanding. Students are expected to:

(A) connect the meaning of a well-known story or fable to personal experiences; and

(B) explain the function of recurring phrases (e.g., "Habia una vez" or "Colorin Colorado, este cuento se ha acabado") in traditional folk- and fairy tales.

(8) Reading/Comprehension of Literary Text/Poetry. Students understand, make inferences and draw conclusions about the structure and elements of poetry and provide evidence from text to support their understanding. Students are expected to respond to and use rhythm, rhyme, and alliteration in poetry.

(9) Reading/Comprehension of Literary Text/Fiction. Students understand, make inferences and draw conclusions about the structure and elements of fiction and provide evidence from text to support their understanding. Students are expected to:

(A) describe the plot (problem and solution) and retell a story's beginning, middle, and end with attention to the sequence of events; and

(B) describe characters in a story and the reasons for their actions and feelings.

(10) Reading/Comprehension of Literary Text/Literary Nonfiction. Students understand, make inferences and draw conclusions about the varied structural patterns and features of literary nonfiction and respond by providing evidence from text to support their understanding. Students are expected to determine whether a story is true or a fantasy and explain why.

(11) Reading/Comprehension of Literary Text/Sensory Language. Students understand, make inferences and draw conclusions about how an author's sensory language creates imagery in literary text and provide evidence from text to support their understanding. Students are expected to recognize sensory details in literary text.

(12) Reading/Comprehension of Text/Independent Reading. Students read independently for sustained periods of time and produce evidence of their reading. Students are expected to read independently for a sustained period of time.

(13) Reading/Comprehension of Informational Text/Culture and History. Students analyze, make inferences and draw conclusions about the author's purpose in cultural, historical, and contemporary contexts and provide evidence from the text to support their understanding. Students are expected to identify the topic and explain the author's purpose in writing the text.

(14) Reading/Comprehension of Informational Text/Expository Text. Students analyze, make inferences and draw conclusions about expository text and provide evidence from text to support their understanding. Students are expected to:

(A) restate the main idea, heard or read;

(B) identify important facts or details in text, heard or read;

(C) retell the order of events in a text by referring to the words and/or illustrations; and

(D) use text features (e.g., title, tables of contents, illustrations) to locate specific information in text.

(15) Reading/Comprehension of Informational Text/Procedural Texts. Students understand how to glean and use information in procedural texts and documents. Students are expected to:

(A) follow written multi-step directions with picture cues to assist with understanding; and

(B) explain the meaning of specific signs and symbols (e.g., map features).

(16) Reading/Media Literacy. Students use comprehension skills to analyze how words, images, graphics, and sounds work together in various forms to impact meaning. Students continue to apply earlier standards with greater depth in increasingly more complex texts. Students are expected to:

(A) recognize different purposes of media (e.g., informational, entertainment) (with adult assistance); and

(B) identify techniques used in media (e.g., sound, movement).

(17) Writing/Writing Process. Students use elements of the writing process (planning, drafting, revising, editing, and publishing) to compose text. Students are expected to:

(A) plan a first draft by generating ideas for writing (e.g., drawing, sharing ideas, listing key ideas);

(B) develop drafts by sequencing ideas through writing sentences;

(C) revise drafts by adding or deleting a word, phrase, or sentence;

(D) edit drafts for grammar, punctuation, and spelling using a teacher-developed rubric; and

(E) publish and share writing with others.

(18) Writing/Literary Texts. Students write literary texts to express their ideas and feelings about real or imagined people, events, and ideas. Students are expected to:

(A) write brief stories that include a beginning, middle, and end; and

(B) write short poems that convey sensory details.

(19) Writing/Expository and Procedural Texts. Students write expository and procedural or work-related texts to communicate ideas and information to specific audiences for specific purposes. Students are expected to:

(A) write brief compositions about topics of interest to the student;

(B) write short letters that put ideas in a chronological or logical sequence and use appropriate conventions (e.g., date, salutation, closing); and

(C) write brief comments on literary or informational texts.

(20) Oral and Written Conventions/Conventions. Students understand the function of and use the conventions of academic language when speaking and writing. Students continue to apply earlier standards with greater complexity. Students are expected to:

(A) understand and use the following parts of speech in the context of reading, writing, and speaking:

(i) verbs in the past, present, and future in the indicative mode (canto, canté);

(ii) nouns (singular/plural, common/proper);

(iii) adjectives (e.g., descriptive: verde, alto);

(iv) adverbs (e.g., time: before, next);

(v) prepositions and prepositional phrases;

(vi) pronouns (e.g., yo, mi); and

(vii) time-order transition words (e.g., primero, luego, después);

(B) speak in complete sentences with correct article-noun agreement (e.g., la pelota, el mapa, el agua, la mano, el águila); and

(C) identify and read abbreviations (e.g., Sr., Sra.).

(21) Oral and Written Conventions/Handwriting, Capitalization, and Punctuation. Students write legibly and use appropriate capitalization and punctuation conventions in their compositions. Students are expected to:

(A) form upper- and lower-case letters legibly in text, using the basic conventions of print (left-to-right and top-to-bottom progression), including spacing between words and sentences;

(B) recognize and use basic capitalization for:

(i) the beginning of sentences; and

(ii) names of people; and

(C) recognize and use punctuation marks at the beginning and end of exclamatory and interrogative sentences and at the end of declarative sentences.

(22) Oral and Written Conventions/Spelling. Students spell correctly. Students are expected to:

(A) use phonological knowledge to match sounds to syllables to construct words;

(B) use syllable-sound patterns to generate a series of original rhyming words using a variety of ending patterns (e.g., -ción, -illa, -ita, -ito);

(C) spell words with consonant blends (e.g., bri-, dra-);

(D) blend phonemes to form syllables and words (e.g., mismo, tarde);

(E) spell words using orthographic rules including:

(i) words that use syllables with hard /r/ spelled as "r" or "rr," as in ratón and carro;

(ii) words that use syllables with soft /r/ spelled as "r" and always between two vowels, as in pero and perro; and

(iii) words that use syllables with silent "h" with increased accuracy, as in hora and ahora;

(F) words that use syllables que-, qui-, as in queso and quite; gue-, gui-, as in guiso and juguete; and güe-, güi-, as in paraguero and agüita;

(G) words that have the same sound represented by different letters with increased accuracy (e.g., "r" and "rr," as in ratón and perro; "l" and "y," as in llave and yate; "g" and "j," as in gigante and jirafa; "c," "k," and "q," as in casa, kilo, and quince; "c," "s," and "z," as in cereal, semilla, and zapato; "j" and "x," as in cojín and México; "i" and "y," as in imán and doy; "b" and "v," as in burro and vela);

(H) write with more proficient use of orthographic patterns and rules such as using n before "v," "m" before "b," and "m" before "p," and changing "z" to "c" when adding -es;

(I) use knowledge of syllabic sounds, word parts, word segmentation, and syllabication to spell;

(J) write with increasing accuracy using accent marks including:

(i) words that have a prosodic or orthographic accent on the last syllable (palabras agudas) (e.g., feliz, canción);

(ii) words that have a prosodic or orthographic accent on the second-to-last syllable (palabras graves) (e.g., casa, árbol); and

(iii) words that have an orthographic accent on the third-to-last syllable (palabras esdrújulas) (e.g., último, cómico, mecánico);

(K) become familiar with the concept of hiato and diphthongs and the implications for orthographic accents (le-er, ri-o; quie-ro, vio);

(L) use accents appropriately on words commonly used in questions and exclamations (e.g., cuál, dónde, cómo);

(M) differentiate the meaning or function of a word based on the diacritical accent (e.g., se/sé, el/él, mas/más);

(N) mark accents appropriately when conjugating verbs in simple and imperfect past, perfect, conditional, and future tenses (e.g., corrió, jugó, tenía, gustaría, vendrá); and

(O) use resources to find correct spellings.

(23) Research/Research Plan. Students ask open-ended research questions and develop a plan for answering them. Students (with adult assistance) are expected to:

(A) generate a list of topics of class-wide interest and formulate open-ended questions about one or two of the topics; and

(B) decide what sources of information might be relevant to answer these questions.

(24) Research/Gathering Sources. Students determine, locate, and explore the full range of relevant sources addressing a research question and systematically record the information they gather. Students (with adult assistance) are expected to:

(A) gather evidence from available sources (natural and personal) as well as from interviews with local experts;

(B) use text features (e.g., table of contents, alphabetized index) in age-appropriate reference works (e.g., picture dictionaries) to locate information; and

(C) record basic information in simple visual formats (e.g., notes, charts, picture graphs, diagrams).

(25) Research/Synthesizing Information. Students clarify research questions and evaluate and synthesize collected information. Students (with adult assistance) are expected to revise the topic as a result of answers to initial research questions.

(26) Research/Organizing and Presenting Ideas. Students organize and present their ideas and information according to the purpose of the research and their audience. Students (with adult assistance) are expected to create a visual display or dramatization to convey the results of the research.

(27) Listening and Speaking/Listening. Students use comprehension skills to listen attentively to others in formal and informal settings. Students continue to apply earlier standards with greater complexity. Students are expected to:

(A) listen attentively to speakers and ask relevant questions to clarify information; and

(B) follow, restate, and give oral instructions that involve a short related sequence of actions.

(28) Listening and Speaking/Speaking. Students speak clearly and to the point, using the conventions of language. Students continue to apply earlier standards with greater complexity. Students are expected to share information and ideas about the topic under discussion, speaking clearly at an appropriate pace, using the conventions of language.

(29) Listening and Speaking/Teamwork. Students work productively with others in teams. Students continue to apply earlier standards with greater complexity. Students are expected to follow agreed-upon rules for discussion, including listening to others, speaking when recognized, and making appropriate contributions.

§128.13. Spanish Language Arts and Reading, Grade 2, Beginning with School Year 2009-2010.

(a) Introduction.

(1) The Spanish Language Arts and Reading Texas Essential Knowledge and Skills (TEKS) reflect language arts standards that are authentic to the Spanish language and Spanish literacy, not mere translations from English. The Spanish Language Arts and Reading TEKS are organized into the following strands: Reading, where students read and understand a wide variety of literary and informational texts; Writing, where students compose a variety of written texts with a clear controlling idea, coherent organization, and sufficient detail; Research, where students are expected to know how to locate a range of relevant sources and evaluate, synthesize, and present ideas and information; Listening and Speaking, where students listen and respond to the ideas of others while contributing their own ideas in conversations and in groups; and Oral and Written Conventions, where students learn how to use the oral and written conventions of the Spanish language in speaking and writing. The Reading strand is structured to reflect major topic areas of the National Reading Panel Report as well as other current and relevant research on Spanish literacy development. In second grade, students will engage in activities that build on their prior knowledge and skills in order to strengthen their reading, writing, and oral language skills. Students should write and read (or be read to) on a daily basis.

(2) Research consistently shows that literacy development in the student's native language facilitates learning in English (Col-

lier & Thomas, 1997; Cummins, 2001). Students can develop cognition, learn, and achieve best when they can understand the language of instruction (August, Calderon, & Carlo, 2003). Students who have strong literacy skills in their primary language can be expected to transfer those skills to English and progress rapidly in learning in English. Although English and Spanish look very similar on the surface (i.e., similar alphabets; directionality; cognates) the conventions of each language presuppose the reading process in that language. Consequently, systematic instruction in the appropriate sequence of skills is critical. For this reason, the Spanish Language Arts and Reading TEKS reflect language arts standards that are authentic to the Spanish language and not mere translations from English.

(A) Spanish, as opposed to English, has a closer letter-sound relationship and clearly defined syllable boundaries. The syllable in Spanish is a more critical unit of phonological awareness than in English because of the consistent phoneme-grapheme correspondence. Syllables are important units for Spanish because of their strong effect in visual word recognition (Carreiras et al., 1993) and their major role in predicting Spanish reading success. In addition, Spanish presents a much higher level of orthographic transparency than English and does not rely on sight words for decoding. This orthographic transparency accelerates the decoding process and the focus quickly moves to fluency and comprehension. Spanish uses frequency words that are identified by the rate of occurrence in grade appropriate text and used to build on fluency and comprehension. However, in English, "sight" words are used because of words that are not decodable such as "are" or "one." In Spanish, decoding issues are not as prevalent as issues of comprehension. These specific features of the Spanish language will influence reading methodology and development.

(B) Spanish instruction maximizes access to English content. Students with strong literacy skills in Spanish phonemic awareness, phonics, vocabulary, and reading comprehension can be expected to transfer those skills to English. The "transfer" of knowledge and skills from one language to another refers to the metalinguistic and metacognitive processes and awareness that students gain in developing literacy in two languages. Current research on bilingual instruction (e.g., August & Shanahan, 2006; Genesse et al., 2006) shows how students use native literacy knowledge when learning to read and write in another language.

(C) The effective transfer of skills transpires as students develop their metalinguistic skills and as they engage in a contrastive analysis of the Spanish and English languages (Cummins, 2007). Transfer matters occur within fundamentals of language that are common to Spanish and English; within fundamentals that are similar, but not exact in both languages; and in fundamentals specific to each language and not applicable to the other language. The strength of learning through formal instruction in Spanish determines the extent of transfer in English (August, Calderon, & Carlo, 2000; Slavin & Calderon, 2001; Garcia, 2001). In other words, for transfer to occur, comprehension of the "rules" and the realization of their applicability to the new language specific tasks are necessary.

(D) The concept of transfer necessitates the use of some of both languages in which both (Spanish and English) co-exist with flexibility. As a result of working within two language systems, students' metalinguistic and metacognitive skills are enhanced when they learn about the similarities and differences between languages. This is reliant on the type of bilingual program model being used (See Texas Education Code, §29.066).

(3) To meet Public Education Goal 1 of the Texas Education Code, §4.002, which states, "The students in the public education system will demonstrate exemplary performance in the reading and writing of the English language," students will accomplish the essential

knowledge, skills, and student expectations at Grade 2 as described in subsection (b) of this section.

(4) To meet Texas Education Code, §28.002(h), which states, ". . . each school district shall foster the continuation of the tradition of teaching United States and Texas history and the free enterprise system in regular subject matter and in reading courses and in the adoption of textbooks," students will be provided oral and written narratives as well as other informational texts that can help them to become thoughtful, active citizens who appreciate the basic democratic values of our state and nation.

(b) Knowledge and skills.

(1) Reading/Beginning Reading Skills/Print Awareness. Students understand how Spanish is written and printed. Students are expected to distinguish features of a sentence (e.g., capitalization of first word, beginning and ending punctuation, commas, quotation marks, and em dash).

(2) Reading/Beginning Reading Skills/Phonics. Students use the relationships between letters and sounds and spelling based on orthographic rules to decode written Spanish. Students will continue to apply earlier standards with greater depth in increasingly more complex texts. Students are expected to:

(A) use orthographic rules to segment and combine syllables including vowel diphthongs (e.g., na-die, ra-dio);

(B) use "y" as a conjunction with increasing accuracy;

(C) decode words with silent "h" with increasing accuracy;

(D) become familiar with words that use syllables que-, qui-, as in queso and quito; gue-, gui-, as in guiso and juguete; and güe-, güi-, as in paragüero and agüita;

(E) decode words that have same sounds represented by different letters with increased accuracy (e.g., "r" and "rr," as in ratón and perro; "ll" and "y," as in llave and yate; "g" and "j," as in gigante and jirafa; "c," "k," and "q," as in casa, kilo, and quince; "c," "s," and "z," as in cereal, semilla, and zapato; "j" and "x," as in cojín and México; "i" and "y," as in imán and doy; "b" and "v," as in burro and vela);

(F) read words with common prefixes (e.g., in-, des-) and suffixes (e.g., -mente, -dad, -oso); and

(G) identify and read abbreviations (e.g., Sr., Dra.).

(3) Reading/Beginning Reading/Strategies. Students comprehend a variety of texts drawing on useful strategies as needed. Students are expected to:

(A) use ideas (e.g., illustrations, titles, topic sentences, key words, and foreshadowing) to make and confirm predictions;

(B) ask relevant questions, seek clarification, and locate facts and details about stories and other texts and support answers with evidence from text; and

(C) establish purpose for reading selected texts and monitor comprehension, making corrections and adjustments when that understanding breaks down (e.g., identifying clues, using background knowledge, generating questions, re-reading a portion aloud).

(4) Reading/Fluency. Students read grade-level text with fluency and comprehension. Students are expected to read aloud grade-level appropriate text with fluency (rate, accuracy, expression, appropriate phrasing) and comprehension.

(5) Reading/Vocabulary Development. Students understand new vocabulary and use it when reading and writing. Students are expected to:

(A) use prefixes and suffixes to determine the meaning of words (e.g., componer/descomponer; obedecer/desobedecer);

(B) use context to determine the relevant meaning of unfamiliar words or multiple-meaning words;

(C) identify and use common words that are opposite (antonyms) or similar (synonyms) in meaning; and

(D) alphabetize a series of words and use a dictionary or a glossary to find words.

(6) Reading/Comprehension of Literary Text/Theme and Genre. Students analyze, make inferences and draw conclusions about theme and genre in different cultural, historical, and contemporary contexts and provide evidence from the text to support their understanding. Students are expected to:

(A) identify moral lessons as themes in well-known fables, legends, myths, or stories; and

(B) compare different versions of the same story in traditional and contemporary folktales with respect to their characters, settings, and plot.

(7) Reading/Comprehension of Literary Text/Poetry. Students understand, make inferences and draw conclusions about the structure and elements of poetry and provide evidence from text to support their understanding. Students are expected to describe how rhyme, rhythm, and repetition interact to create images in poetry.

(8) Reading/Comprehension of Literary Text/Drama. Students understand, make inferences and draw conclusions about the structure and elements of drama and provide evidence from text to support their understanding. Students are expected to identify the elements of dialogue and use them in informal plays.

(9) Reading/Comprehension of Literary Text/Fiction. Students understand, make inferences and draw conclusions about the structure and elements of fiction and provide evidence from text to support their understanding. Students are expected to:

(A) describe similarities and differences in the plots and settings of several works by the same author; and

(B) describe main characters in works of fiction, including their traits, motivations, and feelings.

(10) Reading/Comprehension of Literary Text/Literary Nonfiction. Students understand, make inferences and draw conclusions about the varied structural patterns and features of literary nonfiction and respond by providing evidence from text to support their understanding. Students are expected to distinguish between fiction and nonfiction.

(11) Reading/Comprehension of Literary Text/Sensory Language. Students understand, make inferences and draw conclusions about how an author's sensory language creates imagery in literary text and provide evidence from text to support their understanding. Students are expected to recognize that some words and phrases have literal and non-literal meanings (e.g., take steps).

(12) Reading/Comprehension of Text/Independent Reading. Students read independently for sustained periods of time and produce evidence of their reading. Students are expected to read independently for a sustained period of time and paraphrase what the reading was about, maintaining meaning.

(13) Reading/Comprehension of Informational Text/Culture and History. Students analyze, make inferences and draw conclusions about the author's purpose in cultural, historical, and contemporary contexts and provide evidence from the text to support their understanding. Students are expected to identify the topic and explain the author's purpose in writing the text.

(14) Reading/Comprehension of Informational Text/Expository Text. Students analyze, make inferences and draw conclusions about and understand expository text and provide evidence from text to support their understanding. Students are expected to:

(A) identify the main idea in a text and distinguish it from the topic;

(B) locate the facts that are clearly stated in a text;

(C) describe the order of events or ideas in a text; and

(D) use text features (e.g., table of contents, index, headings) to locate specific information in text.

(15) Reading/Comprehension of Informational Text/Procedural Text. Students understand how to glean and use information in procedural texts and documents. Students are expected to:

(A) follow written multi-step directions; and

(B) use common graphic features to assist in the interpretation of text (e.g., captions, illustrations).

(16) Reading/Media Literacy. Students use comprehension skills to analyze how words, images, graphics, and sounds work together in various forms to impact meaning. Students continue to apply earlier standards with greater depth in increasingly more complex texts. Students are expected to:

(A) recognize different purposes of media (e.g., informational, entertainment);

(B) describe techniques used to create media messages (e.g., sound, graphics); and

(C) identify various written conventions for using digital media (e.g., e-mail, website, video game).

(17) Writing/Writing Process. Students use elements of the writing process (planning, drafting, revising, editing, and publishing) to compose text. Students are expected to:

(A) plan a first draft by generating ideas for writing (e.g., drawing, sharing ideas, listing key ideas);

(B) develop drafts by sequencing ideas through writing sentences;

(C) revise drafts by adding or deleting words, phrases, or sentences;

(D) edit drafts for grammar, punctuation, and spelling using a teacher-developed rubric; and

(E) publish and share writing with others.

(18) Writing/Literary Texts. Students write literary texts to express their ideas and feelings about real or imagined people, events, and ideas. Students are expected to:

(A) write brief stories that include a beginning, middle, and end; and

(B) write short poems that convey sensory details.

(19) Writing/Expository and Procedural Texts. Students write expository and procedural or work-related texts to communicate

ideas and information to specific audiences for specific purposes. Students are expected to:

(A) write brief compositions about topics of interest to the student;

(B) write short letters that put ideas in a chronological or logical sequence and use appropriate conventions (e.g., date, salutation, closing); and

(C) write brief comments on literary or informational texts.

(20) Writing/Persuasive Texts. Students write persuasive texts to influence the attitudes or actions of a specific audience on specific issues. Students are expected to write persuasive statements about issues that are important to the student for the appropriate audience in the school, home, or local community.

(21) Oral and Written Conventions/Conventions. Students understand the function of and use the conventions of academic language when speaking and writing. Students continue to apply earlier standards with greater complexity. Students are expected to:

(A) understand and use the following parts of speech in the context of reading, writing, and speaking:

(i) regular and irregular verbs (past, present, and future in the indicative mode);

(ii) nouns (singular/plural, common/proper);

(iii) adjectives (e.g., descriptive: viejo, maravilloso);

(iv) articles (e.g., un, una, la, el);

(v) adverbs (e.g., time: antes, después; manner: cuidadosamente);

(vi) prepositions and prepositional phrases;

(vii) pronouns (e.g., él, su); and

(viii) time-order transition words; and

(B) distinguish among declarative, interrogative, exclamatory, and imperative sentences.

(22) Oral and Written Conventions/Handwriting, Capitalization, and Punctuation. Students write legibly and use appropriate capitalization and punctuation conventions in their compositions. Students are expected to:

(A) write legibly leaving appropriate margins for readability;

(B) use capitalization for:

(i) proper nouns; and

(ii) the salutation and closing of a letter;

(C) understand that months and days of the week are not capitalized;

(D) recognize and use punctuation marks, including beginning and ending punctuation in sentences; and

(E) identify and read abbreviations (e.g., Srta., Dr.).

(23) Oral and Written Conventions/Spelling. Students spell correctly. Students are expected to:

(A) spell words using orthographic rules including:

(i) words that use syllables with hard /r/ spelled as "r" or "rr," as in ratón and carro;

(ii) words that use syllables with soft /r/ spelled as "r" and always between two vowels, as in *pero* and *perro*;

(iii) words that use syllables with silent "h" with increased accuracy, as in *hora* and *ahora*;

(iv) words that use syllables *que-*, *qui-*, as in *queso* and *quito*; *gue-*, *gui-*, as in *guiso* and *juguete*; and *güe-*, *güi-*, as in *paragüero* and *agüita*; and

(v) words that have the same sound represented by different letters with increased accuracy (e.g., "r" and "rr," as in *ratón* and *perro*; "ll" and "y," as in *llave* and *yate*; "g" and "j," as in *gigante* and *jirafa*; "c," "k," and "q," as in *casa*, *kilo*, and *quince*; "c," "s," and "z," as in *cereal*, *semilla*, and *zapato*; "j" and "x," as in *cojín* and *México*; "i" and "y," as in *imán* and *doy*; "b" and "v," as in *burro* and *vela*);

(B) write with more proficient use of orthographic patterns and rules such as using "n" before "v," "m" before "b," and "m" before "p," and changing "z" to "c" when adding -es;

(C) use knowledge of syllabic sounds, word parts, word segmentation, and syllabication to spell;

(D) write with increasing accuracy using accent marks including:

(i) words that have a prosodic or orthographic accent on the last syllable (*palabras agudas*) (e.g., *feliz*, *canción*);

(ii) words that have a prosodic or orthographic accent on the second-to-last syllable (*palabras graves*) (e.g., *casa*, *árbol*); and

(iii) words that have an orthographic accent on the third-to-last syllable (*palabras esdrújulas*) (e.g., *último*, *cómico*, *mecánico*);

(E) become familiar with the concept of hiatos and diphthongs and the implications for orthographic accents (*le-er*, *ri-o*; *quie-ro*, *vio*);

(F) use accents appropriately on words commonly used in questions and exclamations (e.g., *cuál*, *dónde*, *cómo*);

(G) differentiate the meaning or function of a word based on the diacritical accent (e.g., *se/sé*, *el/él*, *mas/más*);

(H) mark accents appropriately when conjugating verbs in the past, present, and future in the indicative modes (e.g., *corrió*, *jugó*, *gustaría*, *vendrá*);

(I) replace "z" with "c" when adding -es to words ending in "z" to make them plural (e.g., *lápiz*, *lápices*; *feliz*, *felices*);

(J) identify and read abbreviations (e.g., Sr., Dra.); and

(K) use resources to find correct spellings.

(24) Research/Research Plan. Students ask open-ended research questions and develop a plan for answering them. Students are expected to:

(A) generate a list of topics of class-wide interest and formulate open-ended questions about one or two of the topics; and

(B) decide what sources of information might be relevant to answer these questions.

(25) Research/Gathering Sources. Students determine, locate, and explore the full range of relevant sources addressing a research question and systematically record the information they gather. Students are expected to:

(A) gather evidence from available sources (natural and personal) as well as from interviews with local experts;

(B) use text features (e.g., table of contents, alphabetized index, headings) in age-appropriate reference works (e.g., picture dictionaries) to locate information; and

(C) record basic information in simple visual formats (e.g., notes, charts, picture graphs, diagrams).

(26) Research/Synthesizing Information. Students clarify research questions and evaluate and synthesize collected information. Students are expected to revise the topic as a result of answers to initial research questions.

(27) Research/Organizing and Presenting Ideas. Students organize and present their ideas and information according to the purpose of the research and their audience. Students (with adult assistance) are expected to create a visual display or dramatization to convey the results of the research.

(28) Listening and Speaking/Listening. Students use comprehension skills to listen attentively to others in formal and informal settings. Students continue to apply earlier standards with greater complexity. Students are expected to:

(A) listen attentively to speakers and ask relevant questions to clarify information; and

(B) follow, restate, and give oral instructions that involve a short related sequence of actions.

(29) Listening and Speaking/Speaking. Students speak clearly and to the point, using the conventions of language. Students continue to apply earlier standards with greater complexity. Students are expected to share information and ideas that focus on the topic under discussion, speaking clearly at an appropriate pace, using the conventions of language.

(30) Listening and Speaking/Teamwork. Students work productively with others in teams. Students continue to apply earlier standards with greater complexity. Students are expected to follow agreed-upon rules for discussion, including listening to others, speaking when recognized, and making appropriate contributions.

§128.14. *Spanish Language Arts and Reading, Grade 3, Beginning with School Year 2009-2010.*

(a) Introduction.

(1) The Spanish Language Arts and Reading Texas Essential Knowledge and Skills (TEKS) reflect language arts standards that are authentic to the Spanish language and Spanish literacy, not mere translations from English. The Spanish Language Arts and Reading TEKS are organized into the following strands: Reading, where students read and understand a wide variety of literary and informational texts; Writing, where students compose a variety of written texts with a clear controlling idea, coherent organization, and sufficient detail; Research, where students are expected to know how to locate a range of relevant sources and evaluate, synthesize, and present ideas and information; Listening and Speaking, where students listen and respond to the ideas of others while contributing their own ideas in conversations and in groups; and Oral and Written Conventions, where students learn how to use the oral and written conventions of the Spanish language in speaking and writing. The standards are cumulative--students will continue to address earlier standards as needed while they attend to standards for their grade. In third grade, students will engage in activities that build on their prior knowledge and skills in order to strengthen their reading, writing, and oral language skills. Students should read and write on a daily basis.

(2) Research consistently shows that literacy development in the student's native language facilitates learning in English (Collier & Thomas, 1997; Cummins, 2001). Students can develop cognition, learn, and achieve best when they can understand the language of instruction (August, Calderon, & Carlo, 2003). Students who have strong literacy skills in their primary language can be expected to transfer those skills to English and *progress rapidly* in learning in English. Although English and Spanish look very similar on the surface (i.e., similar alphabets; directionality; cognates) the conventions of each language presuppose the reading process in that language. Consequently, systematic instruction in the appropriate sequence of skills is critical. For this reason, the Spanish Language Arts and Reading TEKS reflect language arts standards that are authentic to the Spanish language and not mere translations from English.

(A) Spanish, as opposed to English, has a closer letter-sound relationship and clearly defined syllable boundaries. The syllable in Spanish is a more critical unit of phonological awareness than in English because of the consistent phoneme-grapheme correspondence. Syllables are important units for Spanish because of their strong effect in visual word recognition (Carreiras et al., 1993) and their major role in predicting Spanish reading success. In addition, Spanish presents a much higher level of orthographic transparency than English and does not rely on sight words for decoding. This orthographic transparency accelerates the decoding process and the focus quickly moves to fluency and comprehension. Spanish uses frequency words that are identified by the rate of occurrence in grade appropriate text and used to build on fluency and comprehension. However, in English, "sight" words are used because of words that are not decodable such as "are" or "one." In Spanish, decoding issues are not as prevalent as issues of comprehension. These specific features of the Spanish language will influence reading methodology and development.

(B) Spanish instruction maximizes access to English content. Students with strong literacy skills in Spanish phonemic awareness, phonics, vocabulary, and reading comprehension can be expected to transfer those skills to English. The "transfer" of knowledge and skills from one language to another refers to the metalinguistic and metacognitive processes and awareness that students gain in developing literacy in two languages. Current research on bilingual instruction (e.g., August & Shanahan, 2006; Genesse et al., 2006) shows how students use native literacy knowledge when learning to read and write in another language.

(C) The effective transfer of skills transpires as students develop their metalinguistic skills and as they engage in a contrastive analysis of the Spanish and English languages (Cummins, 2007). Transfer matters occur within fundamentals of language that are common to Spanish and English; within fundamentals that are similar, but not exact in both languages; and in fundamentals specific to each language and not applicable to the other language. The strength of learning through formal instruction in Spanish determines the extent of transfer in English (August, Calderon, & Carlo, 2000; Slavin & Calderon, 2001; Garcia, 2001). In other words, for transfer to occur, comprehension of the "rules" and the realization of their applicability to the new language specific tasks are necessary.

(D) The concept of transfer necessitates the use of some of both languages in which both (Spanish and English) *co-exist with flexibility*. As a result of working within two language systems, students' metalinguistic and metacognitive skills are enhanced when they learn about the similarities and differences between languages. This is *reliant* on the type of bilingual program model being used (See Texas Education Code, §29.066).

(3) To meet Public Education Goal 1 of the Texas Education Code, §4.002, which states, "The students in the public education

system will demonstrate exemplary performance in the reading and writing of the English language," students will accomplish the essential knowledge, skills, and student expectations at Grade 3 as described in subsection (b) of this section.

(4) To meet Texas Education Code, §28.002(h), which states, ". . . each school district shall foster the continuation of the tradition of teaching United States and Texas history and the free enterprise system in regular subject matter and in reading courses and in the adoption of textbooks," students will be provided oral and written narratives as well as other informational texts that can help them to become thoughtful, active citizens who appreciate the basic democratic values of our state and nation.

(b) Knowledge and skills.

(1) Reading/Beginning Reading Skills/Phonics. Students use the relationships between letters and sounds and spelling based on orthographic rules to decode written Spanish. Students will continue to apply earlier standards with greater depth in increasingly more complex texts. Students are expected to:

(A) use orthographic rules to segment and combine syllables including diphthongs (e.g., na-die, ra-dio);

(B) use "y" as a conjunction with increasing accuracy;

(C) decode words with silent "h" with increasing accuracy;

(D) become familiar with words that use syllables que-, qui-, as in queso and quito; gue-, gui-, as in guiso and juguete; and güe-, güi-, as in paragüero and agüita;

(E) decode words that have the same sounds represented by different letters with increased accuracy (e.g., "r" and "rr," as in ratón and perro; "ll" and "y," as in llave and yate; "g" and "j," as in gigante and jirafa; "c," "k," and "q," as in casa, kilo, and quince; "c," "s," and "z," as in cereal, semilla, and zapato; "j" and "x," as in cojín and México; "i" and "y," as in imán and doy; "b" and "v," as in burro and vela);

(F) read words with common prefixes (e.g., in-, des-) and suffixes (e.g., -mente, -dad, -oso); and

(G) use knowledge of syllabication to identify the syllable that is stressed (*sílaba tónica*).

(2) Reading/Beginning Reading/Strategies. Students comprehend a variety of texts drawing on useful strategies as needed. Students are expected to:

(A) use ideas (e.g., illustrations, titles, topic sentences, key words, and foreshadowing clues) to make and confirm predictions;

(B) ask relevant questions, seek clarification, and locate facts and details about stories and other texts and support answers with evidence from text; and

(C) establish purpose for reading selected texts and monitor comprehension, making corrections and adjustments when that understanding breaks down (e.g., identifying clues, using background knowledge, generating questions, re-reading a portion aloud).

(3) Reading/Fluency. Students read grade-level text with fluency and comprehension. Students are expected to read aloud grade-level appropriate text with fluency (rate, accuracy, expression, appropriate phrasing) and comprehension.

(4) Reading/Vocabulary Development. Students understand new vocabulary and use it when reading and writing. Students are expected to:

(A) identify the meaning of common prefixes (e.g., ex-, dis-) and suffixes (e.g., -era, -oso), and know how they change the meaning of roots;

(B) use context to determine the relevant meaning of unfamiliar words or distinguish among multiple meaning words and homographs;

(C) identify and use antonyms, synonyms, and homophones;

(D) identify and apply playful uses of language (e.g., tongue twisters, palindromes, riddles); and

(E) alphabetize a series of words to the third letter and use a dictionary or a glossary to determine the meanings, syllabication, and pronunciation of unknown words.

(5) Reading/Comprehension of Literary Text/Theme and Genre. Students analyze, make inferences and draw conclusions about theme and genre in different cultural, historical, and contemporary contexts and provide evidence from the text to support their understanding. Students are expected to:

(A) paraphrase the themes and supporting details of fables, legends, myths, or stories; and

(B) compare and contrast the settings in myths and traditional folktales.

(6) Reading/Comprehension of Literary Text/Poetry. Students understand, make inferences and draw conclusions about the structure and elements of poetry and provide evidence from text to support their understanding. Students are expected to describe the characteristics of various forms of poetry and how they create imagery (e.g., narrative poetry, lyrical poetry, humorous poetry, free verse).

(7) Reading/Comprehension of Literary Text/Drama. Students understand, make inferences and draw conclusions about the structure and elements of drama and provide evidence from text to support their understanding. Students are expected to explain the elements of plot and character as presented through dialogue in scripts that are read, viewed, written, or performed.

(8) Reading/Comprehension of Literary Text/Fiction. Students understand, make inferences and draw conclusions about the structure and elements of fiction and provide evidence from text to support their understanding. Students are expected to:

(A) sequence and summarize the plot's main events and explain their influence on future events;

(B) describe the interaction of characters including their relationships and the changes they undergo; and

(C) identify whether the narrator or speaker of a story is first or third person.

(9) Reading/Comprehension of Literary Text/Literary Nonfiction. Students understand, make inferences and draw conclusions about the varied structural patterns and features of literary nonfiction and respond by providing evidence from text to support their understanding. Students are expected to explain the difference in point of view between a biography and autobiography.

(10) Reading/Comprehension of Literary Text/Sensory Language. Students understand, make inferences and draw conclusions about how an author's sensory language creates imagery in literary text and provide evidence from text to support their understanding. Students are expected to identify language that creates a graphic visual experience and appeals to the senses.

(11) Reading/Comprehension of Text/Independent Reading. Students read independently for sustained periods of time and produce evidence of their reading. Students are expected to read independently for a sustained period of time and paraphrase what the reading was about, maintaining meaning and logical order (e.g., generate a reading log or journal; participate in book talks).

(12) Reading/Comprehension of Informational Text/Culture and History. Students analyze, make inferences and draw conclusions about the author's purpose in cultural, historical, and contemporary contexts and provide evidence from the text to support their understanding. Students are expected to identify the topic and locate the author's stated purposes in writing the text.

(13) Reading/Comprehension of Informational Text/Expository Text. Students analyze, make inferences and draw conclusions about expository text and provide evidence from text to support their understanding. Students are expected to:

(A) identify the details or facts that support the main idea;

(B) draw conclusions from the facts presented in text and support those assertions with textual evidence;

(C) identify explicit cause and effect relationships among ideas in texts; and

(D) use text features (e.g., bold print, captions, key words, italics) to locate information and make and verify predictions about contents of text.

(14) Reading/Comprehension of Informational Text/Persuasive Text. Students analyze, make inferences and draw conclusions about persuasive text and provide evidence from text to support their analysis. Students are expected to identify what the author is trying to persuade the reader to think or do.

(15) Reading/Comprehension of Informational Text/Procedural Texts. Students understand how to glean and use information in procedural texts and documents. Students are expected to:

(A) follow and explain a set of written multi-step directions; and

(B) locate and use specific information in graphic features of text.

(16) Reading/Media Literacy. Students use comprehension skills to analyze how words, images, graphics, and sounds work together in various forms to impact meaning. Students will continue to apply earlier standards with greater depth in increasingly more complex texts. Students are expected to:

(A) understand how communication changes when moving from one genre of media to another;

(B) explain how various design techniques used in media influence the message (e.g., shape, color, sound); and

(C) compare various written conventions used for digital media (e.g., language in an informal e-mail vs. language in a web-based news article).

(17) Writing/Writing Process. Students use elements of the writing process (planning, drafting, revising, editing, and publishing) to compose text. Students are expected to:

(A) plan a first draft by selecting a genre appropriate for conveying the intended meaning to an audience and generating ideas through a range of strategies (e.g., brainstorming, graphic organizers, logs, journals);

(B) develop drafts by categorizing ideas and organizing them into paragraphs;

(C) revise drafts for coherence, organization, use of simple and compound sentences, and audience;

(D) edit drafts for grammar, mechanics, and spelling using a teacher-developed rubric; and

(E) publish written work for a specific audience.

(18) Writing/Literary Texts. Students write literary texts to express their ideas and feelings about real or imagined people, events, and ideas. Students are expected to:

(A) write imaginative stories that build the plot to a climax and contain details about the characters and setting; and

(B) write poems that convey sensory details using the conventions of poetry (e.g., rhyme, meter, patterns of verse).

(19) Writing. Students write about their own experiences. Students are expected to write about important personal experiences.

(20) Writing/Expository and Procedural Texts. Students write expository and procedural or work-related texts to communicate ideas and information to specific audiences for specific purposes. Students are expected to:

(A) create brief compositions that:

(i) establish a central idea in a topic sentence;

(ii) include supporting sentences with simple facts, details, and explanations; and

(iii) contain a concluding statement;

(B) write letters whose language is tailored to the audience and purpose (e.g., a thank you note to a friend) and that use appropriate conventions (e.g., date, salutation, closing); and

(C) write responses to literary or expository texts that demonstrate an understanding of the text.

(21) Writing/Persuasive Texts. Students write persuasive texts to influence the attitudes or actions of a specific audience on specific issues. Students are expected to write persuasive essays for appropriate audiences that establish a position and use supporting details.

(22) Oral and Written Conventions/Conventions. Students understand the function of and use the conventions of academic language when speaking and writing. Students continue to apply earlier standards with greater complexity. Students are expected to:

(A) use and understand the function of the following parts of speech in the context of reading, writing, and speaking:

(i) regular and irregular verbs (past, present, future, and perfect tenses in the indicative mode; present and past in the subjunctive mode);

(ii) nouns (singular/plural, common/proper);

(iii) adjectives (e.g., descriptive: dorado, rectangular; limiting: este, ese, aquel);

(iv) articles (e.g., un, una, lo, la, el, los, las);

(v) adverbs (e.g., time: luego, antes; manner: cuidadosamente);

(vi) prepositions and prepositional phrases;

(vii) possessive pronouns (e.g., su, sus, mi, mis, suyo);

and (viii) coordinating conjunctions (e.g., y, o, pero);

(ix) time-order transition words and transitions that indicate a conclusion;

(B) use the complete subject and the complete predicate in a sentence;

(C) use complete simple and compound sentences; and

(D) identify and read abbreviations (e.g., Sr., Dra., Atte.).

(23) Oral and Written Conventions/Handwriting, Capitalization, and Punctuation. Students write legibly and use appropriate capitalization and punctuation conventions in their compositions. Students are expected to:

(A) write legibly in cursive script with spacing between words in a sentence;

(B) use capitalization for:

(i) geographical names and places;

(ii) historical periods; and

(iii) official titles of people;

(C) recognize and use punctuation marks including commas in series and dates; and

(D) use correct mechanics including paragraph indentations or "sangrias."

(24) Oral and Written Conventions/Spelling. Students spell correctly. Students are expected to:

(A) spell words using orthographic rules, including:

(i) words that use syllables with hard /r/ spelled as "r" or "rr," as in ratón and carro;

(ii) words that use syllables with soft /r/ spelled as "r" and always between two vowels, as in pero and perro;

(iii) words that use syllables with silent "h" with increased accuracy, as in hora and ahora;

(iv) words that use syllables que-, qui-, as in queso and quite; gue-, gui-, as in guiso and juguete; and güe-, güi-, as in paraguero and agüita; and

(v) words that have the same sound represented by different letters with increased accuracy (e.g., "r" and "rr," as in ratón and perro; "ll" and "y," as in llave and yate; "g" and "j," as in gigante and jirafa; "c," "k," and "q," as in casa, kilo, and quince; "c," "s," and "z," as in cereal, semilla, and zapato; "j" and "x," as in cojín and México; "i" and "y," as in imán and doy; "b" and "v," as in burro and vela);

(B) write with more proficient use of orthographic patterns and rules such as using "n" before "v," "m" before "b," and "m" before "p," and changing "z" to "c" when adding -es;

(C) use knowledge of syllabic sounds, word parts, word segmentation, and syllabication to spell;

(D) write with increasing accuracy using accent marks including:

(i) words that have a prosodic or orthographic accent on the last syllable (palabras agudas) (e.g., feliz, canción);

(ii) words that have a prosodic or orthographic accent on the second-to-last syllable (palabras graves) (e.g., casa, árbol); and

(iii) words that have an orthographic accent on the third-to-last syllable (palabras esdrújulas) (e.g., último, cómico, mecánico);

(E) become familiar with the concept of hiato and diphthongs and the implications for orthographic accents (e.g., le-er, rí-o; quie-ro, vio);

(F) use accents appropriately on words commonly used in questions and exclamations (e.g., cuál, dónde, cómo);

(G) differentiate the meaning or function of a word based on the diacritical accent (e.g., se/sé, el/él, mas/más);

(H) mark accents appropriately when conjugating verbs in simple and imperfect past, perfect, conditional, and future tenses (e.g., corrió, jugó, tenía, gustaría, vendrá); and

(I) use print and electronic resources to find and check correct spellings.

(25) Research/Research Plan. Students ask open-ended research questions and develop a plan for answering them. Students are expected to:

(A) generate research topics from personal interests or by brainstorming with others, narrow to one topic, and formulate open-ended questions about the major research topic; and

(B) generate a research plan for gathering relevant information (e.g., surveys, interviews, encyclopedias) about the major research question.

(26) Research/Gathering Sources. Students determine, locate, and explore the full range of relevant sources addressing a research question and systematically record the information they gather. Students are expected to:

(A) follow the research plan to collect information from multiple sources of information, both oral and written, including:

(i) student-initiated surveys, on-site inspections, and interviews;

(ii) data from experts, reference texts, and online searches; and

(iii) visual sources of information (e.g., maps, timelines, graphs) where appropriate;

(B) use skimming and scanning techniques to identify data by looking at text features (e.g., bold print, captions, key words, italics);

(C) take simple notes and sort evidence into provided categories or an organizer;

(D) identify the author, title, publisher, and publication year of sources; and

(E) differentiate between paraphrasing and plagiarism and identify the importance of citing valid and reliable sources.

(27) Research/Synthesizing Information. Students clarify research questions and evaluate and synthesize collected information. Students are expected to improve the focus of research as a result of consulting expert sources (e.g., reference librarians and local experts on the topic).

(28) Research/Organizing and Presenting Ideas. Students organize and present their ideas and information according to the purpose of the research and their audience. Students are expected to draw conclusions through a brief written explanation and create a works-cited page from notes, including the author, title, publisher, and publication year for each source used.

(29) Listening and Speaking/Listening. Students use comprehension skills to listen attentively to others in formal and informal settings. Students continue to apply earlier standards with greater complexity. Students are expected to:

(A) listen attentively to speakers, ask relevant questions, and make pertinent comments; and

(B) follow, restate, and give oral instructions that involve a series of related sequences of action.

(30) Listening and Speaking/Speaking. Students speak clearly and to the point, using the conventions of language. Students continue to apply earlier standards with greater complexity. Students are expected to speak coherently about the topic under discussion, employing eye contact, speaking rate, volume, enunciation, and the conventions of language to communicate ideas effectively.

(31) Listening and Speaking/Teamwork. Students work productively with others in teams. Students continue to apply earlier standards with greater complexity. Students are expected to participate in teacher- and student-led discussions by posing and answering questions with appropriate detail and by providing suggestions that build upon the ideas of others.

§128.15. Spanish Language Arts and Reading, Grade 4, Beginning with School Year 2009-2010.

(a) Introduction.

(1) The Spanish Language Arts and Reading Texas Essential Knowledge and Skills (TEKS) reflect language arts standards that are authentic to the Spanish language and Spanish literacy, not mere translations from English. The Spanish Language Arts and Reading TEKS are organized into the following strands: Reading, where students read and understand a wide variety of literary and informational texts; Writing, where students compose a variety of written texts with a clear controlling idea, coherent organization, and sufficient detail; Research, where students are expected to know how to locate a range of relevant sources and evaluate, synthesize, and present ideas and information; Listening and Speaking, where students listen and respond to the ideas of others while contributing their own ideas in conversations and in groups; and Oral and Written Conventions, where students learn how to use the oral and written conventions of the Spanish language in speaking and writing. The standards are cumulative--students will continue to address earlier standards as needed while they attend to standards for their grade. In fourth grade, students will engage in activities that build on their prior knowledge and skills in order to strengthen their reading, writing, and oral language skills. Students should read and write on a daily basis.

(2) Research consistently shows that literacy development in the student's native language facilitates learning in English (Collier & Thomas, 1997; Cummins, 2001). Students can develop cognition, learn, and achieve best when they can understand the language of instruction (August, Calderon, & Carlo, 2003). Students who have strong literacy skills in their primary language can be expected to transfer those skills to English and progress rapidly in learning in English. Although English and Spanish look very similar on the surface (i.e., similar alphabets; directionality; cognates) the conventions of each language presuppose the reading process in that language. Consequently, systematic instruction in the appropriate sequence of skills is critical.

For this reason, the Spanish Language Arts and Reading TEKS reflect language arts standards that are authentic to the Spanish language and not mere translations from English.

(A) Spanish, as opposed to English, has a closer letter-sound relationship and clearly defined syllable boundaries. The syllable in Spanish is a more critical unit of phonological awareness than in English because of the consistent phoneme-grapheme correspondence. Syllables are important units for Spanish because of their strong effect in visual word recognition (Carreiras et al., 1993) and their major role in predicting Spanish reading success. In addition, Spanish presents a much higher level of orthographic transparency than English and does not rely on sight words for decoding. This orthographic transparency accelerates the decoding process, and the focus quickly moves to fluency and comprehension. Spanish uses frequency words that are identified by the rate of occurrence in grade appropriate text and used to build on fluency and comprehension. However, in English, "sight" words are used because of words that are not decodable such as "are" or "one." In Spanish, decoding issues are not as prevalent as issues of comprehension. These specific features of the Spanish language will influence reading methodology and development.

(B) Spanish instruction maximizes access to English content. Students with strong literacy skills in Spanish phonemic awareness, phonics, vocabulary, and reading comprehension can be expected to transfer those skills to English. The "transfer" of knowledge and skills from one language to another refers to the metalinguistic and metacognitive processes and awareness that students gain in developing literacy in two languages. Current research on bilingual instruction (e.g., August & Shanahan, 2006; Genesse et al., 2006) shows how students use native literacy knowledge when learning to read and write in another language.

(C) The effective transfer of skills transpires as students develop their metalinguistic skills and as they engage in a contrastive analysis of the Spanish and English languages (Cummins, 2007). Transfer matters occur within fundamentals of language that are common to Spanish and English; within fundamentals that are similar, but not exact in both languages; and in fundamentals specific to each language and not applicable to the other language. The strength of learning through formal instruction in Spanish determines the extent of transfer in English (August, Calderon, & Carlo, 2000; Slavin & Calderon, 2001; Garcia, 2001). In other words, for transfer to occur, comprehension of the "rules" and the realization of their applicability to the new language specific tasks are necessary.

(D) The concept of transfer necessitates the use of some of both languages in which both (Spanish and English) *co-exist with flexibility*. As a result of working within two language systems, students' metalinguistic and metacognitive skills are enhanced when they learn about the similarities and differences between languages. This is *reliant* on the type of bilingual program model being used (See Texas Education Code, §29.066).

(3) To meet Public Education Goal 1 of the Texas Education Code, §4.002, which states, "The students in the public education system will demonstrate exemplary performance in the reading and writing of the English language," students will accomplish the essential knowledge, skills, and student expectations at Grade 4 as described in subsection (b) of this section.

(4) To meet Texas Education Code, §28.002(h), which states, ". . . each school district shall foster the continuation of the tradition of teaching United States and Texas history and the free enterprise system in regular subject matter and in reading courses and in the adoption of textbooks," students will be provided oral and written narratives as well as other informational texts that can help

them to become thoughtful, active citizens who appreciate the basic democratic values of our state and nation.

(b) Knowledge and skills.

(1) Reading/Fluency. Students read grade-level text with fluency and comprehension. Students are expected to read aloud grade-level stories with fluency (rate, accuracy, expression, appropriate phrasing) and comprehension.

(2) Reading/Vocabulary Development. Students understand new vocabulary and use it when reading and writing. Students are expected to:

(A) determine the meaning of grade-level academic Spanish words derived from Latin, Greek, or other linguistic roots and affixes;

(B) use the context of the sentence (e.g., in-sentence example or definition) to determine the meaning of unfamiliar words or multiple meaning words;

(C) complete analogies using knowledge of antonyms and synonyms (e.g., boy:girl as male: or girl:woman as boy:);

(D) identify the meaning of common idioms; and

(E) use a dictionary or glossary to determine the meanings, spelling, and syllabication of unknown words.

(3) Reading/Comprehension of Literary Text/Theme and Genre. Students analyze, make inferences and draw conclusions about theme and genre in different cultural, historical, and contemporary contexts and provide evidence from the text to support their understanding. Students are expected to:

(A) summarize and explain the lesson or message of a work of fiction as its theme; and

(B) compare and contrast the adventures or exploits of characters (e.g., the trickster) in traditional and classical literature.

(4) Reading/Comprehension of Literary Text/Poetry. Students understand, make inferences and draw conclusions about the structure and elements of poetry and provide evidence from text to support their understanding. Students are expected to explain how the structural elements of poetry (e.g., rhyme, meter, stanzas, line breaks) relate to form (e.g., lyrical poetry, free verse).

(5) Reading/Comprehension of Literary Text/Drama. Students understand, make inferences and draw conclusions about the structure and elements of drama and provide evidence from text to support their understanding. Students are expected to describe the structural elements particular to dramatic literature.

(6) Reading/Comprehension of Literary Text/Fiction. Students understand, make inferences and draw conclusions about the structure and elements of fiction and provide evidence from text to support their understanding. Students are expected to:

(A) sequence and summarize the plot's main events and explain their influence on future events;

(B) describe the interaction of characters including their relationships and the changes they undergo; and

(C) identify whether the narrator or speaker of a story is first or third person.

(7) Reading/Comprehension of Literary Text/Literary Nonfiction. Students understand, make inferences and draw conclusions about the varied structural patterns and features of literary

nonfiction and provide evidence from text to support their understanding. Students are expected to identify similarities and differences between the events and characters' experiences in a fictional work and the actual events and experiences described in an author's biography or autobiography.

(8) Reading/Comprehension of Literary Text/Sensory Language. Students understand, make inferences and draw conclusions about how an author's sensory language creates imagery in literary text and provide evidence from text to support their understanding. Students are expected to identify the author's use of similes and metaphors to produce imagery.

(9) Reading/Comprehension of Text/Independent Reading. Students read independently for sustained periods of time and produce evidence of their reading. Students are expected to read independently for a sustained period of time and paraphrase what the reading was about, maintaining meaning and logical order (e.g., generate a reading log or journal; participate in book talks).

(10) Reading/Comprehension of Informational Text/Culture and History. Students analyze, make inferences and draw conclusions about the author's purpose in cultural, historical, and contemporary contexts and provide evidence from the text to support their understanding. Students are expected to explain the difference between a stated and an implied purpose for an expository text.

(11) Reading/Comprehension of Informational Text/Expository Text. Students analyze, make inferences and draw conclusions about expository text and provide evidence from text to support their understanding. Students are expected to:

(A) summarize the main idea and supporting details in text in ways that maintain meaning;

(B) distinguish fact from opinion in a text and explain how to verify what is a fact;

(C) describe explicit and implicit relationships among ideas in texts organized by cause-and-effect, sequence, or comparison; and

(D) use multiple text features (e.g., guide words, topic and concluding sentences) to gain an overview of the contents of text and to locate information.

(12) Reading/Comprehension of Informational Text/Persuasive Text. Students analyze, make inferences and draw conclusions about persuasive text and provide evidence from text to support their analysis. Students are expected to explain how an author uses language to present information to influence what the reader thinks or does.

(13) Reading/Comprehension of Informational Text/Procedural Texts. Students understand how to glean and use information in procedural texts and documents. Students are expected to:

(A) determine the sequence of activities needed to carry out a procedure (e.g., following a recipe); and

(B) explain factual information presented graphically (e.g., charts, diagrams, graphs, illustrations).

(14) Reading/Media Literacy. Students use comprehension skills to analyze how words, images, graphics, and sounds work together in various forms to impact meaning. Students continue to apply earlier standards with greater depth in increasingly more complex texts. Students are expected to:

(A) explain the positive and negative impacts of advertisement techniques used in various genres of media to impact consumer behavior;

(B) explain how various design techniques used in media influence the message (e.g., pacing, close-ups, sound effects); and

(C) compare various written conventions used for digital media (e.g., language in an informal e-mail vs. language in a web-based news article).

(15) Writing/Writing Process. Students use elements of the writing process (planning, drafting, revising, editing, and publishing) to compose text. Students are expected to:

(A) plan a first draft by selecting a genre appropriate for conveying the intended meaning to an audience and generating ideas through a range of strategies (e.g., brainstorming, graphic organizers, logs, journals);

(B) develop drafts by categorizing ideas and organizing them into paragraphs;

(C) revise drafts for coherence, organization, use of simple and compound sentences, and audience;

(D) edit drafts for grammar, mechanics, and spelling using a teacher-developed rubric; and

(E) revise final draft in response to feedback from peers and teacher and publish written work for a specific audience.

(16) Writing/Literary Texts. Students write literary texts to express their ideas and feelings about real or imagined people, events, and ideas. Students are expected to:

(A) write imaginative stories that build the plot to a climax and contain details about the characters and setting; and

(B) write poems that convey sensory details using the conventions of poetry (e.g., rhyme, meter, patterns of verse).

(17) Writing. Students write about their own experiences. Students are expected to write about important personal experiences.

(18) Writing/Expository and Procedural Texts. Students write expository and procedural or work-related texts to communicate ideas and information to specific audiences for specific purposes. Students are expected to:

(A) create brief compositions that:

(i) establish a central idea in a topic sentence;

(ii) include supporting sentences with simple facts, details, and explanations; and

(iii) contain a concluding statement;

(B) write letters whose language is tailored to the audience and purpose (e.g., a thank you note to a friend) and that use appropriate conventions (e.g., date, salutation, closing); and

(C) write responses to literary or expository texts and provide evidence from the text to demonstrate understanding.

(19) Writing/Persuasive Texts. Students write persuasive texts to influence the attitudes or actions of a specific audience on specific issues. Students are expected to write persuasive essays for appropriate audiences that establish a position and use supporting details.

(20) Oral and Written Conventions/Conventions. Students understand the function of and use the conventions of academic language when speaking and writing. Students continue to apply earlier standards with greater complexity. Students are expected to:

(A) use and understand the function of the following parts of speech in the context of reading, writing, and speaking:

(i) regular and irregular verbs (past, present, future, and perfect tenses in the indicative mode; present and past in the subjunctive mode);

(ii) nouns (singular/plural, common/proper);

(iii) adjectives (e.g., descriptive, including adjective phrases: vestido de domingo) and their comparative and superlative forms (e.g., más que, la más);

(iv) adverbs (e.g., frequency: usualmente, a veces; intensity: casi, mucho);

(v) prepositions and prepositional phrases to convey location, time, direction, or to provide details;

(vi) reflexive pronouns (e.g., me, te, se, nos);

(vii) correlative conjunctions (e.g., o/o, ni/ni); and

(viii) use time-order transition words and transitions that indicate a conclusion;

(B) use the complete subject and the complete predicate in a sentence; and

(C) use complete simple and compound sentences with correct subject-verb agreement.

(21) Oral and Written Conventions/Handwriting, Capitalization, and Punctuation. Students write legibly and use appropriate capitalization and punctuation conventions in their compositions. Students are expected to:

(A) write legibly by selecting cursive script or manuscript printing as appropriate;

(B) use capitalization for:

(i) historical events and documents; and

(ii) the first words of titles of books, stories, and essays;

(C) recognize and use punctuation marks including commas in compound sentences; colons, semi-colons, ellipses, *guion corto*, and *guion largo*; and

(D) identify and read abbreviations (e.g., Sr., Atte.).

(22) Oral and Written Conventions/Spelling. Students spell correctly. Students are expected to:

(A) spell words using orthographic rules including:

(i) words that use syllables with hard /r/ spelled as "r" or "rr," as in *ratón* and *carro*;

(ii) words that use syllables with soft /r/ spelled as "r" and always between two vowels, as in *pero* and *perro*;

(iii) words that use syllables with silent "h" with increased accuracy, as in *hora* and *ahora*;

(iv) words that use syllables *que-*, *qui-*, as in *queso* and *quito*; *gue-*, *gui-*, as in *guiso* and *juguete*; and *güe-*, *güi-*, as in *paragüero* and *agüita*; and

(v) words that have the same sound represented by different letters with increased accuracy (e.g., "r" and "rr," as in *ratón* and *perro*; "ll" and "y," as in *llave* and *yate*; "g" and "j," as in *gigante* and *jirafa*; "c," "k," and "q," as in *casa*, *kilo*, and *quince*; "c," "s," and "z," as in *cereal*, *semilla*, and *zapato*; "j" and "x," as in *cojín* and *México*; "i" and "y," as in *imán* and *doy*; "b" and "v," as in *burro* and *vela*);

(B) write with more proficient use of orthographic patterns and rules such as using "n" before "v," "m" before "b," and "m" before "p," and changing "z" to "c" when adding -es;

(C) use knowledge of syllabic sounds, word parts, word segmentation, and syllabication to spell;

(D) write with increasing accuracy using accent marks including:

(i) words that have a prosodic or orthographic accent on the last syllable (*palabras agudas*) (e.g., *feliz*, *canción*);

(ii) words that have a prosodic or orthographic accent on the second-to-last syllable (*palabras graves*) (e.g., *casa*, *árbol*); and

(iii) words that have an orthographic accent on the third-to-last syllable (*palabras esdrújulas*) (e.g., *último*, *cómico*, *mecánico*);

(E) become familiar with the concept of hiato and diphthongs and the implications for orthographic accents (*le-er*, *ri-o*; *quie-ro*, *vio*);

(F) spell base words and roots with affixes (e.g., *ex-*, *pre-*, *post-*, *-able*);

(G) use accents appropriately on words commonly used in questions and exclamations (e.g., *cuál*, *dónde*, *cómo*);

(H) differentiate the meaning or function of a word based on the diacritical accent (e.g., *se/sé*, *el/él*, *mas/más*);

(I) mark accents appropriately when conjugating verbs in simple and imperfect past, perfect, conditional, and future tenses (e.g., *corrió*, *jugó*, *tenía*, *gustaría*, *vendrá*); and

(J) use spelling patterns and rules and print and electronic resources to determine and check correct spellings.

(23) Research/Research Plan. Students ask open-ended research questions and develop a plan for answering them. Students are expected to:

(A) generate research topics from personal interests or by brainstorming with others, narrow to one topic, and formulate open-ended questions about the major research topic; and

(B) generate a research plan for gathering relevant information (e.g., surveys, interviews, encyclopedias) about the major research question.

(24) Research/Gathering Sources. Students determine, locate, and explore the full range of relevant sources addressing a research question and systematically record the information they gather. Students are expected to:

(A) follow the research plan to collect information from multiple sources of information both oral and written, including:

(i) student-initiated surveys, on-site inspections, and interviews;

(ii) data from experts, reference texts, and online searches; and

(iii) visual sources of information (e.g., maps, timelines, graphs) where appropriate;

(B) use skimming and scanning techniques to identify data by looking at text features (e.g., bold print, italics);

(C) take simple notes and sort evidence into provided categories or an organizer;

(D) identify the author, title, publisher, and publication year of sources; and

(E) differentiate between paraphrasing and plagiarism and identify the importance of citing valid and reliable sources.

(25) Research/Synthesizing Information. Students clarify research questions and evaluate and synthesize collected information. Students are expected to improve the focus of research as a result of consulting expert sources (e.g., reference librarians and local experts on the topic).

(26) Research/Organizing and Presenting Ideas. Students organize and present their ideas and information according to the purpose of the research and their audience. Students are expected to draw conclusions through a brief written explanation and create a works-cited page from notes, including the author, title, publisher, and publication year for each source used.

(27) Listening and Speaking/Listening. Students use comprehension skills to listen attentively to others in formal and informal settings. Students continue to apply earlier standards with greater complexity. Students are expected to:

(A) listen attentively to speakers, ask relevant questions, and make pertinent comments; and

(B) follow, restate, and give oral instructions that involve a series of related sequences of action.

(28) Listening and Speaking/Speaking. Students speak clearly and to the point, using the conventions of language. Students continue to apply earlier standards with greater complexity. Students are expected to express an opinion supported by accurate information, employing eye contact, speaking rate, volume, and enunciation, and the conventions of language to communicate ideas effectively.

(29) Listening and Speaking/Teamwork. Students work productively with others in teams. Students continue to apply earlier standards with greater complexity. Students are expected to participate in teacher- and student-led discussions by posing and answering questions with appropriate detail and by providing suggestions that build upon the ideas of others.

§128.16. Spanish Language Arts and Reading, Grade 5, Beginning with School Year 2009-2010.

(a) Introduction.

(1) The Spanish Language Arts and Reading Texas Essential Knowledge and Skills (TEKS) are organized into the following strands: Reading, where students read and understand a wide variety of literary and informational texts; Writing, where students compose a variety of written texts with a clear controlling idea, coherent organization, and sufficient detail; Research, where students are expected to know how to locate a range of relevant sources and evaluate, synthesize, and present ideas and information; Listening and Speaking, where students listen and respond to the ideas of others while contributing their own ideas in conversations and in groups; and Oral and Written Conventions, where students learn how to use the oral and written conventions of the Spanish language in speaking and writing. The standards are cumulative--students will continue to address earlier standards as needed while they attend to standards for their grade. In fifth grade, students will engage in activities that build on their prior knowledge and skills in order to strengthen their reading, writing, and oral language skills. Students should read and write on a daily basis.

(2) Research consistently shows that literacy development in the student's native language facilitates learning in English (Collier & Thomas, 1997; Cummins, 2001). Students can develop cognition, learn, and achieve best when they can understand the language

of instruction (August, Calderon, & Carlo, 2003). Students who have strong literacy skills in their primary language can be expected to transfer those skills to English and progress rapidly in learning in English. Although English and Spanish look very similar on the surface (i.e., similar alphabets; directionality; cognates) the conventions of each language presuppose the reading process in that language. Consequently, systematic instruction in the appropriate sequence of skills is critical. For this reason, the Spanish Language Arts and Reading TEKS reflect language arts standards that are authentic to the Spanish language and not mere translations from English.

(A) Spanish, as opposed to English, has a closer letter-sound relationship and clearly defined syllable boundaries. The syllable in Spanish is a more critical unit of phonological awareness than in English because of the consistent phoneme-grapheme correspondence. Syllables are important units for Spanish because of their strong effect in visual word recognition (Carreiras et al., 1993) and their major role in predicting Spanish reading success. In addition, Spanish presents a much higher level of orthographic transparency than English and does not rely on sight words for decoding. This orthographic transparency accelerates the decoding process and the focus quickly moves to fluency and comprehension. Spanish uses frequency words that are identified by the rate of occurrence in grade appropriate text and used to build on fluency and comprehension. However, in English, "sight" words are used because of words that are not decodable such as "are" or "one." In Spanish, decoding issues are not as prevalent as issues of comprehension. These specific features of the Spanish language will influence reading methodology and development.

(B) Spanish instruction maximizes access to English content. Students with strong literacy skills in Spanish phonemic awareness, phonics, vocabulary, and reading comprehension can be expected to transfer those skills to English. The "transfer" of knowledge and skills from one language to another refers to the metalinguistic and metacognitive processes and awareness that students gain in developing literacy in two languages. Current research on bilingual instruction (e.g., August & Shanahan, 2006; Genesse et al., 2006) shows how students use native literacy knowledge when learning to read and write in another language.

(C) The effective transfer of skills transpires as students develop their metalinguistic skills and as they engage in a contrastive analysis of the Spanish and English languages (Cummins, 2007). Transfer matters occur within fundamentals of language that are common to Spanish and English; within fundamentals that are similar, but not exact in both languages; and in fundamentals specific to each language and not applicable to the other language. The strength of learning through formal instruction in Spanish determines the extent of transfer in English (August, Calderon, & Carlo, 2000; Slavin & Calderon, 2001; Garcia, 2001). In other words, for transfer to occur, comprehension of the "rules" and the realization of their applicability to the new language specific tasks are necessary.

(D) The concept of transfer necessitates the use of both languages in which both (Spanish and English) co-exist with flexibility. As a result of working within two language systems, students' metalinguistic and metacognitive skills are enhanced when they learn about the similarities and differences between languages. This is reliant on the type of bilingual program model being used (See Texas Education Code, §29.066).

(3) To meet Public Education Goal 1 of the Texas Education Code, §4.002, which states, "The students in the public education system will demonstrate exemplary performance in the reading and writing of the English language," students will accomplish the essential knowledge, skills, and student expectations at Grade 5 as described in subsection (b) of this section.

(4) To meet Texas Education Code, §28.002(h), which states, ". . . each school district shall foster the continuation of the tradition of teaching United States and Texas history and the free enterprise system in regular subject matter and in reading courses and in the adoption of textbooks," students will be provided oral and written narratives as well as other informational texts that can help them to become thoughtful, active citizens who appreciate the basic democratic values of our state and nation.

(b) Knowledge and skills.

(1) Reading/Fluency. Students read grade-level text with fluency and comprehension. Students are expected to read aloud grade-level stories with fluency (rate, accuracy, expression, appropriate phrasing) and comprehension.

(2) Reading/Vocabulary Development. Students understand new vocabulary and use it when reading and writing. Students are expected to:

(A) determine the meaning of grade-level academic Spanish words derived from Latin, Greek, or other linguistic roots and affixes;

(B) use context (e.g., in-sentence restatement) to determine or clarify the meaning of unfamiliar or multiple meaning words;

(C) produce analogies with known antonyms and synonyms;

(D) identify and explain the meaning of common idioms, adages, and other sayings; and

(E) use a dictionary, a glossary, or a thesaurus (printed or electronic) to determine the meanings, syllabication, spelling, alternate word choices, and parts of speech of words.

(3) Reading/Comprehension of Literary Text/Theme and Genre. Students analyze, make inferences and draw conclusions about theme and genre in different cultural, historical, and contemporary contexts and provide evidence from the text to support their understanding. Students are expected to:

(A) compare and contrast the themes or moral lessons of several works of fiction from various cultures;

(B) describe the phenomena explained in origin myths from various cultures; and

(C) explain the effect of a historical event or movement on the theme of a work of literature.

(4) Reading/Comprehension of Literary Text/Poetry. Students understand, make inferences and draw conclusions about the structure and elements of poetry and provide evidence from text to support their understanding. Students are expected to analyze how poets use sound effects (e.g., alliteration, internal rhyme, onomatopoeia, rhyme scheme) to reinforce meaning in poems.

(5) Reading/Comprehension of Literary Text/Drama. Students understand, make inferences and draw conclusions about the structure and elements of drama and provide evidence from text to support their understanding. Students are expected to analyze the similarities and differences between an original text and its dramatic adaptation.

(6) Reading/Comprehension of Literary Text/Fiction. Students understand, make inferences and draw conclusions about the structure and elements of fiction and provide evidence from text to support their understanding. Students are expected to:

(A) describe incidents that advance the story or novel, explaining how each incident gives rise to or foreshadows future events;

(B) explain the roles and functions of characters in various plots, including their relationships and conflicts; and

(C) explain different forms of third-person points of view in stories.

(7) Reading/Comprehension of Literary Text/Literary Nonfiction. Students understand, make inferences and draw conclusions about the varied structural patterns and features of literary nonfiction and provide evidence from text to support their understanding. Students are expected to identify the literary language and devices used in biographies and autobiographies, including how authors present major events in a person's life.

(8) Reading/Comprehension of Literary Text/Sensory Language. Students understand, make inferences and draw conclusions about how an author's sensory language creates imagery in literary text and provide evidence from text to support their understanding. Students are expected to evaluate the impact of sensory details, imagery, and figurative language in literary text.

(9) Reading/Comprehension of Text/Independent Reading. Students read independently for sustained periods of time and produce evidence of their reading. Students are expected to read independently for a sustained period of time and summarize or paraphrase what the reading was about, maintaining meaning and logical order (e.g., generate a reading log or journal; participate in book talks).

(10) Reading/Comprehension of Informational Text/Culture and History. Students analyze, make inferences and draw conclusions about the author's purpose in cultural, historical, and contemporary contexts and provide evidence from the text to support their understanding. Students are expected to draw conclusions from the information presented by an author and evaluate how well the author's purpose was achieved.

(11) Reading/Comprehension of Informational Text/Expository Text. Students analyze, make inferences and draw conclusions about expository text and provide evidence from text to support their understanding. Students are expected to:

(A) summarize the main ideas and supporting details in a text in ways that maintain meaning and logical order;

(B) determine the facts in text and verify them through established methods;

(C) analyze how the organizational pattern of a text (e.g., cause-and-effect, compare-and-contrast, sequential order, logical order, classification schemes) influences the relationships among the ideas;

(D) use multiple text features and graphics to gain an overview of the contents of text and to locate information; and

(E) synthesize and make logical connections between ideas within a text and across two or three texts representing similar or different genres.

(12) Reading/Comprehension of Informational Text/Persuasive Text. Students analyze, make inferences and draw conclusions about persuasive text and provide evidence from text to support their analysis. Students are expected to:

(A) identify the author's viewpoint or position and explain the basic relationships among ideas (e.g., parallelism, comparison, causality) in the argument; and

(B) recognize exaggerated, contradictory, or misleading statements in text.

(13) Reading/Comprehension of Informational Text/Procedural Texts. Students understand how to glean and use information in procedural texts and documents. Students are expected to:

(A) interpret details from procedural text to complete a task, solve a problem, or perform procedures; and

(B) interpret factual or quantitative information presented in maps, charts, illustrations, graphs, timelines, tables, and diagrams.

(14) Reading/Media Literacy. Students use comprehension skills to analyze how words, images, graphics, and sounds work together in various forms to impact meaning. Students continue to apply earlier standards with greater depth in increasingly more complex texts. Students are expected to:

(A) explain how messages conveyed in various forms of media are presented differently (e.g., documentaries, online information, televised news);

(B) consider the difference in techniques used in media (e.g., commercials, documentaries, news);

(C) identify the point of view of media presentations; and

(D) analyze various digital media venues for levels of formality and informality.

(15) Writing/Writing Process. Students use elements of the writing process (planning, drafting, revising, editing, and publishing) to compose text. Students are expected to:

(A) plan a first draft by selecting a genre appropriate for conveying the intended meaning to an audience, determining appropriate topics through a range of strategies (e.g., discussion, background reading, personal interests, interviews), and developing a thesis or controlling idea;

(B) develop drafts by choosing an appropriate organizational strategy (e.g., sequence of events, cause-effect, compare-contrast) and building on ideas to create a focused, organized, and coherent piece of writing;

(C) revise drafts to clarify meaning, enhance style, include simple and compound sentences, and improve transitions by adding, deleting, combining, and rearranging sentences or larger units of text after rethinking how well questions of purpose, audience, and genre have been addressed;

(D) edit drafts for grammar, mechanics, and spelling; and

(E) revise final draft in response to feedback from peers and teacher and publish written work for appropriate audiences.

(16) Writing/Literary Texts. Students write literary texts to express their ideas and feelings about real or imagined people, events, and ideas. Students are expected to:

(A) write imaginative stories that include:

(i) a clearly defined focus, plot, and point of view;

(ii) a specific, believable setting created through the use of sensory details; and

(iii) dialogue that develops the story; and

(B) write poems using:

(i) poetic techniques (e.g., alliteration, onomatopoeia);

and
(ii) figurative language (e.g., similes, metaphors);

(iii) graphic elements (e.g., capital letters, line length).

(17) Writing. Students write about their own experiences. Students are expected to write a personal narrative that conveys thoughts and feelings about an experience.

(18) Writing/Expository and Procedural Texts. Students write expository and procedural or work-related texts to communicate ideas and information to specific audiences for specific purposes. Students are expected to:

(A) create multi-paragraph essays to convey information about the topic that:

(i) present effective introductions and concluding paragraphs;

(ii) guide and inform the reader's understanding of key ideas and evidence;

(iii) include specific facts, details, and examples in an appropriately organized structure; and

(iv) use a variety of sentence structures and transitions to link paragraphs;

(B) write formal and informal letters that convey ideas, include important information, demonstrate a sense of closure, and use appropriate conventions (e.g., date, salutation, closing); and

(C) write responses to literary or expository texts and provide evidence from the text to demonstrate understanding.

(19) Writing/Persuasive Texts. Students write persuasive texts to influence the attitudes or actions of a specific audience on specific issues. Students are expected to write persuasive essays for appropriate audiences that establish a position and include sound reasoning, detailed and relevant evidence, and consideration of alternatives.

(20) Oral and Written Conventions/Conventions. Students understand the function of and use the conventions of academic language when speaking and writing. Students continue to apply earlier standards with greater complexity. Students are expected to:

(A) use and understand the function of the following parts of speech in the context of reading, writing, and speaking:

(i) regular and irregular verbs (past, present, future, and perfect tenses in the indicative mode; present, past, and future tenses in the subjunctive mode);

(ii) collective nouns (e.g., class, public);

(iii) adjectives (e.g., descriptive, including those expressing origin (gentilicios): *auto francés*, *dólar americano*) and their comparative and superlative forms (e.g., *bueno*, *mejor*, *la mejor*);

(iv) adverbs (e.g., frequency: *usualmente*, *a veces*; intensity: *casi*, *mucho*);

(v) prepositions and prepositional phrases to convey location, time, direction, or to provide details;

(vi) indefinite pronouns (e.g., *todos*, *juntos*, *nada*, *cualquier*);

(vii) subordinating conjunctions (e.g., *mientras*, *porque*, *aunque*, *si*); and

(viii) transitional words (e.g., también, por lo tanto);

(B) use the complete subject and the complete predicate in a sentence;

(C) use complete simple and compound sentences with correct subject-verb agreement; and

(D) identify and read abbreviations (e.g., Sr., Atte.).

(21) Oral and Written Conventions/Handwriting, Capitalization, and Punctuation. Students write legibly and use appropriate capitalization and punctuation conventions in their compositions. Students are expected to:

(A) use capitalization for:

(i) abbreviations;

(ii) initials and acronyms; and

(iii) organizations;

(B) recognize and use punctuation marks including:

(i) commas in compound sentences; and

(ii) proper punctuation and spacing for quotations and em dash; and

(C) use proper mechanics including italics and underlining for titles and emphasis.

(22) Oral and Written Conventions/Spelling. Students spell correctly. Students are expected to:

(A) spell words with more advanced orthographic patterns and rules including:

(i) words that have a prosodic or orthographic accent on the last syllable (palabras agudas) (e.g., feliz, canción);

(ii) words that have a prosodic or orthographic accent on the second-to-last syllable (palabras graves) (e.g., casa, árbol);

(iii) words that have an orthographic accent on the third-to-last syllable (palabras esdrújulas) (e.g., último, cómico, mecánico); and

(iv) words that have a prosodic or orthographic accent on the fourth-to-last syllable (palabras sobresdrújulas);

(B) spell words with:

(i) Greek Roots (e.g., tele, foto, grafo, metro);

(ii) Latin Roots (e.g., spec, scribe, rupt, port, dict);

(iii) Greek suffixes (e.g., -ología, -fobia, -ismo, -ista); and

(iv) Latin derived suffixes (e.g., -able, -ible; -ancia);

(C) become familiar with the concept of hiato and diphthongs and the implications for orthographic accents (e.g., le-er, rí-o; quie-ro, vio);

(D) differentiate between commonly confused terms (e.g., asimismo, así mismo; sino, si no; también, tan bien);

(E) use spelling patterns and rules and print and electronic resources to determine and check correct spellings; and

(F) know how to use the spell-check function in word processing while understanding its limitations.

(23) Research/Research Plan. Students ask open-ended research questions and develop a plan for answering them. Students are expected to:

(A) brainstorm, consult with others, decide upon a topic, and formulate open-ended questions to address the major research topic; and

(B) generate a research plan for gathering relevant information about the major research question.

(24) Research/Gathering Sources. Students determine, locate, and explore the full range of relevant sources addressing a research question and systematically record the information they gather. Students are expected to:

(A) follow the research plan to collect data from a range of print and electronic resources (e.g., reference texts, periodicals, web pages, online sources) and data from experts;

(B) differentiate between primary and secondary sources;

(C) record data, utilizing available technology (e.g., word processors) in order to see the relationships between ideas, and convert graphic/visual data (e.g., charts, diagrams, timelines) into written notes;

(D) identify the source of notes (e.g., author, title, page number) and record bibliographic information concerning those sources according to a standard format; and

(E) differentiate between paraphrasing and plagiarism and identify the importance of citing valid and reliable sources.

(25) Research/Synthesizing Information. Students clarify research questions and evaluate and synthesize collected information. Students are expected to:

(A) refine the major research question, if necessary, guided by the answers to a secondary set of questions; and

(B) evaluate the relevance, validity, and reliability of sources for the research.

(26) Research/Organizing and Presenting Ideas. Students organize and present their ideas and information according to the purpose of the research and their audience. Students are expected to synthesize the research into a written or an oral presentation that:

(A) compiles important information from multiple sources;

(B) develops a topic sentence, summarizes findings, and uses evidence to support conclusions;

(C) presents the findings in a consistent format; and

(D) uses quotations to support ideas and an appropriate form of documentation to acknowledge sources (e.g., bibliography, works cited).

(27) Listening and Speaking/Listening. Students use comprehension skills to listen attentively to others in formal and informal settings. Students continue to apply earlier standards with greater complexity. Students are expected to:

(A) listen to and interpret a speaker's messages (both verbal and nonverbal) and ask questions to clarify the speaker's purpose or perspective;

(B) follow, restate, and give oral instructions that include multiple action steps; and

(C) determine both main and supporting ideas in the speaker's message.

(28) Listening and Speaking/Speaking. Students speak clearly and to the point, using the conventions of language. Students continue to apply earlier standards with greater complexity. Students are expected to give organized presentations employing eye contact, speaking rate, volume, enunciation, natural gestures, and conventions of language to communicate ideas effectively.

(29) Listening and Speaking/Teamwork. Students work productively with others in teams. Students continue to apply earlier standards with greater complexity. Students are expected to participate in student-led discussions by eliciting and considering suggestions from other group members and by identifying points of agreement and disagreement.

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 August 4, 2008.

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Director, Policy Coordination

Texas Education Agency

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



SUBCHAPTER B. MIDDLE SCHOOL

19 TAC §§128.17, 128.18, 128.21

The new sections and amendment are proposed under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements, §28.002, which authorizes the SBOE to by rule identify the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating textbooks and addressed on the assessment instruments, and §28.005 and §29.051, which establishes bilingual education and special language programs in the public schools to ensure students' reasonable proficiency in the English language and ability to achieve academic success.

The new sections and amendment implement the Texas Education Code, §§7.102(c)(4), 28.002, 28.005, and 29.051.

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

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

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

Figure: 19 TAC §128.17(b)

§128.18. Spanish Language Arts and Reading, Grade 6, Beginning with School Year 2009-2010.

(a) Introduction.

(1) The Spanish Language Arts and Reading Texas Essential Knowledge and Skills (TEKS) are organized into the following

strands: Reading, where students read and understand a wide variety of literary and informational texts; Writing, where students compose a variety of written texts with a clear controlling idea, coherent organization, and sufficient detail; Research, where students are expected to know how to locate a range of relevant sources and evaluate, synthesize, and present ideas and information; Listening and Speaking, where students listen and respond to the ideas of others while contributing their own ideas in conversations and in groups; and Oral and Written Conventions, where students learn how to use the oral and written conventions of the Spanish language in speaking and writing. The standards are cumulative--students will continue to address earlier standards as needed while they attend to standards for their grade. In sixth grade, students will engage in activities that build on their prior knowledge and skills in order to strengthen their reading, writing, and oral language skills. Students should read and write on a daily basis.

(2) Research consistently shows that literacy development in the student's native language facilitates learning in English (Collier & Thomas, 1997; Cummins, 2001). Students can develop cognition, learn, and achieve best when they can understand the language of instruction (August, Calderon, & Carlo, 2003). Students who have strong literacy skills in their primary language can be expected to transfer those skills to English and progress rapidly in learning in English. Although English and Spanish look very similar on the surface (i.e., similar alphabets; directionality; cognates) the conventions of each language presuppose the reading process in that language. Consequently, systematic instruction in the appropriate sequence of skills is critical. For this reason, the Spanish Language Arts and Reading TEKS reflect language arts standards that are authentic to the Spanish language and not mere translations from English.

(A) Spanish, as opposed to English, has a closer letter-sound relationship and clearly defined syllable boundaries. The syllable in Spanish is a more critical unit of phonological awareness than in English because of the consistent phoneme-grapheme correspondence. Syllables are important units for Spanish because of their strong effect in visual word recognition (Carreiras et al., 1993) and their major role in predicting Spanish reading success. In addition, Spanish presents a much higher level of orthographic transparency than English and does not rely on sight words for decoding. This orthographic transparency accelerates the decoding process and the focus quickly moves to fluency and comprehension. Spanish uses frequency words that are identified by the rate of occurrence in grade appropriate text and used to build on fluency and comprehension. However, in English, "sight" words are used because of words that are not decodable such as "are" or "one." In Spanish, decoding issues are not as prevalent as issues of comprehension. These specific features of the Spanish language will influence reading methodology and development.

(B) Spanish instruction maximizes access to English content. Students with strong literacy skills in Spanish phonemic awareness, phonics, vocabulary, and reading comprehension can be expected to transfer those skills to English. The "transfer" of knowledge and skills from one language to another refers to the metalinguistic and metacognitive processes and awareness that students gain in developing literacy in two languages. Current research on bilingual instruction (e.g., August & Shanahan, 2006; Genesse et al., 2006) shows how students use native literacy knowledge when learning to read and write in another language.

(C) The effective transfer of skills transpires as students develop their metalinguistic skills and as they engage in a contrastive analysis of the Spanish and English languages (Cummins, 2007). Transfer matters occur within fundamentals of language that are common to Spanish and English; within fundamentals that are similar, but not exact in both languages; and in fundamentals specific to each

language and not applicable to the other language. The strength of learning through formal instruction in Spanish determines the extent of transfer in English (August, Calderon, & Carlo, 2000; Slavin & Calderon, 2001; Garcia, 2001). In other words, for transfer to occur, comprehension of the "rules" and the realization of their applicability to the new language specific tasks are necessary.

(D) The concept of transfer necessitates the use of both languages in which both (Spanish and English) *co-exist with flexibility*. As a result of working within two language systems, students' metalinguistic and metacognitive skills are enhanced when they learn about the similarities and differences between languages. This is *reliant* on the type of bilingual program model being used (See Texas Education Code, §29.066).

(3) To meet Public Education Goal 1 of the Texas Education Code, §4.002, which states, "The students in the public education system will demonstrate exemplary performance in the reading and writing of the English language," students will accomplish the essential knowledge, skills, and student expectations at Grade 6 as described in subsection (b) of this section.

(4) To meet Texas Education Code, §28.002(h), which states, ". . . each school district shall foster the continuation of the tradition of teaching United States and Texas history and the free enterprise system in regular subject matter and in reading courses and in the adoption of textbooks," students will be provided oral and written narratives as well as other informational texts that can help them to become thoughtful, active citizens who appreciate the basic democratic values of our state and nation.

(b) Knowledge and skills.

(1) Reading/Fluency. Students read grade-level text with fluency and comprehension. Students are expected to adjust fluency when reading aloud grade-level text based on the reading purpose and the nature of the text.

(2) Reading/Vocabulary Development. Students understand new vocabulary and use it when reading and writing. Students are expected to:

(A) determine the meaning of grade-level academic Spanish words derived from Latin, Greek, or other linguistic roots and affixes;

(B) use context (e.g., cause and effect or compare and contrast organizational text structures) to determine or clarify the meaning of unfamiliar or multiple meaning words;

(C) complete analogies that describe part to whole or whole to part (e.g., ink:pen as page: _____ or pen:ink as book: _____);

(D) explain the meaning of foreign words and phrases commonly used in written Spanish (e.g., *RSVP*, *ok*); and

(E) use a dictionary, a glossary, or a thesaurus (printed or electronic) to determine the meanings, syllabication, spelling, alternate word choices, and parts of speech of words.

(3) Reading/Comprehension of Literary Text/Theme and Genre. Students analyze, make inferences and draw conclusions about theme and genre in different cultural, historical, and contemporary contexts and provide evidence from the text to support their understanding. Students are expected to:

(A) infer the implicit theme of a work of fiction, distinguishing theme from the topic;

(B) analyze the function of stylistic elements (e.g., magic helper, rule of three) in traditional and classical literature from various cultures; and

(C) compare and contrast the historical and cultural settings of two literary works.

(4) Reading/Comprehension of Literary Text/Poetry. Students understand, make inferences and draw conclusions about the structure and elements of poetry and provide evidence from text to support their understanding. Students are expected to explain how figurative language (e.g., personification, metaphors, similes, hyperbole) contributes to the meaning of a poem.

(5) Reading/Comprehension of Literary Text/Drama. Students understand, make inferences and draw conclusions about the structure and elements of drama and provide evidence from text to support their understanding. Students are expected to explain the similarities and differences in the setting, characters, and plot of a play and those in a film based upon the same story line.

(6) Reading/Comprehension of Literary Text/Fiction. Students understand, make inferences and draw conclusions about the structure and elements of fiction and provide evidence from text to support their understanding. Students are expected to:

(A) summarize the elements of plot development (e.g., rising action, turning point, climax, falling action, denouement) in various works of fiction;

(B) recognize dialect and conversational voice and explain how authors use dialect to convey character; and

(C) describe different forms of point-of-view, including first- and third-person.

(7) Reading/Comprehension of Literary Text/Literary Nonfiction. Students understand, make inferences and draw conclusions about the varied structural patterns and features of literary nonfiction and provide evidence from text to support their understanding. Students are expected to identify the literary language and devices used in memoirs and personal narratives and compare their characteristics with those of an autobiography.

(8) Reading/Comprehension of Literary Text/Sensory Language. Students understand, make inferences and draw conclusions about how an author's sensory language creates imagery in literary text and provide evidence from text to support their understanding. Students are expected to explain how authors create meaning through stylistic elements and figurative language emphasizing the use of personification, hyperbole, and refrains.

(9) Reading/Comprehension of Informational Text/Culture and History. Students analyze, make inferences and draw conclusions about the author's purpose in cultural, historical, and contemporary contexts and provide evidence from the text to support their understanding. Students are expected to compare and contrast the stated or implied purposes of different authors writing on the same topic.

(10) Reading/Comprehension of Informational Text/Expository Text. Students analyze, make inferences and draw conclusions about expository text and provide evidence from text to support their understanding. Students are expected to:

(A) summarize the main ideas and supporting details in text, demonstrating an understanding that a summary does not include opinions;

(B) explain whether facts included in an argument are used for or against an issue;

(C) explain how different organizational patterns (e.g., proposition-and-support, problem-and-solution) develop the main idea and the author’s viewpoint; and

(D) synthesize and make logical connections between ideas within a text and across two or three texts representing similar or different genres.

(11) Reading/Comprehension of Informational Text/Persuasive Text. Students analyze, make inferences and draw conclusions about persuasive text and provide evidence from text to support their analysis. Students are expected to:

(A) compare and contrast the structure and viewpoints of two different authors writing for the same purpose, noting the stated claim and supporting evidence; and

(B) identify simply faulty reasoning used in persuasive texts.

(12) Reading/Comprehension of Informational Text/Procedural Texts. Students understand how to glean and use information in procedural texts and documents. Students are expected to:

(A) follow multi-tasked instructions to complete a task, solve a problem, or perform procedures; and

(B) interpret factual, quantitative, or technical information presented in maps, charts, illustrations, graphs, timelines, tables, and diagrams.

(13) Reading/Media Literacy. Students use comprehension skills to analyze how words, images, graphics, and sounds work together in various forms to impact meaning. Students will continue to apply earlier standards with greater depth in increasingly more complex texts. Students are expected to:

(A) explain messages conveyed in various forms of media;

(B) recognize how various techniques influence viewers’ emotions;

(C) critique persuasive techniques (e.g., testimonials, bandwagon appeal) used in media messages; and

(D) analyze various digital media venues for levels of formality and informality.

(14) Writing/Writing Process. Students use elements of the writing process (planning, drafting, revising, editing, and publishing) to compose text. Students are expected to:

(A) plan a first draft by selecting a genre appropriate for conveying the intended meaning to an audience, determining appropriate topics through a range of strategies (e.g., discussion, background reading, personal interests, interviews), and developing a thesis or controlling idea;

(B) develop drafts by choosing an appropriate organizational strategy (e.g., sequence of events, cause-effect, compare-contrast) and building on ideas to create a focused, organized, and coherent piece of writing;

(C) revise drafts to clarify meaning, enhance style, include simple and compound sentences, and improve transitions by adding, deleting, combining, and rearranging sentences or larger units of text after rethinking how well questions of purpose, audience, and genre have been addressed;

(D) edit drafts for grammar, mechanics, and spelling;
and

(E) revise final draft in response to feedback from peers and teacher and publish written work for appropriate audiences.

(15) Writing/Literary Texts. Students write literary texts to express their ideas and feelings about real or imagined people, events, and ideas. Students are expected to:

(A) write imaginative stories that include:

(i) a clearly defined focus, plot, and point of view;

(ii) a specific, believable setting created through the use of sensory details; and

(iii) dialogue that develops the story; and

(B) write poems using:

(i) poetic techniques (e.g., alliteration, onomatopoeia);

(ii) figurative language (e.g., similes, metaphors);
and

(iii) graphic elements (e.g., capital letters, line length).

(16) Writing. Students write about their own experiences. Students are expected to write a personal narrative that has a clearly defined focus and communicates the importance of or reasons for actions and/or consequences.

(17) Writing/Expository and Procedural Texts. Students write expository and procedural or work-related texts to communicate ideas and information to specific audiences for specific purposes. Students are expected to:

(A) create multi-paragraph essays to convey information about a topic that:

(i) present effective introductions and concluding paragraphs;

(ii) guide and inform the reader’s understanding of key ideas and evidence;

(iii) include specific facts, details, and examples in an appropriately organized structure; and

(iv) use a variety of sentence structures and transitions to link paragraphs;

(B) write informal letters that convey ideas, include important information, demonstrate a sense of closure, and use appropriate conventions (e.g., date, salutation, closing);

(C) write responses to literary or expository texts and provide evidence from the text to demonstrate understanding; and

(D) produce a multimedia presentation involving text and graphics using available technology.

(18) Writing/Persuasive Texts. Students write persuasive texts to influence the attitudes or actions of a specific audience on specific issues. Students are expected to write persuasive essays for appropriate audiences that establish a position and include sound reasoning, detailed and relevant evidence, and consideration of alternatives.

(19) Oral and Written Conventions/Conventions. Students understand the function of and use the conventions of academic language when speaking and writing. Students will continue to apply earlier standards with greater complexity. Students are expected to:

(A) use and understand the function of the following parts of speech in the context of reading, writing, and speaking:

(i) regular and irregular verbs (past, present, future, and perfect tenses in the indicative mode; present, past, and future tenses in the subjunctive mode);

(ii) non-count nouns (e.g., rice, paper);

(iii) predicate adjectives (Ella es *inteligente*.) and their comparative forms (e.g., muchos, más);

(iv) conjunctive adverbs (e.g., consecuentemente, además, de hecho);

(v) prepositions and prepositional phrases to convey location, time, direction, or to provide details;

(vi) indefinite pronouns (e.g., todos, juntos, nada, cualquier);

(vii) subordinating conjunctions (e.g., mientras, porque, aunque, si); and

(viii) transitional words and phrases that demonstrate an understanding of the function of the transition related to the organization of the writing (e.g., por el contrario, además de);

(B) differentiate between the active and passive voice and know how to use them both; and

(C) use complete simple and compound sentences with correct subject-verb agreement.

(20) Oral and Written Conventions/Handwriting, Capitalization, and Punctuation. Students write legibly and use appropriate capitalization and punctuation conventions in their compositions. Students are expected to:

(A) use capitalization for:

(i) abbreviations;

(ii) initials and acronyms; and

(iii) organizations;

(B) recognize and use punctuation marks including:

(i) commas in compound sentences;

(ii) proper punctuation and spacing for quotations and em dash; and

(iii) parentheses, brackets, and ellipses (to indicate omissions and interruptions or incomplete statements); and

(C) use proper mechanics including italics and underlining for titles of books.

(21) Oral and Written Conventions/Spelling. Students spell correctly. Students are expected to:

(A) differentiate between commonly confused terms (e.g., tampoco, tan poco; mediodía, medio día; quehacer, que hacer);

(B) use spelling patterns and rules and print and electronic resources to determine and check correct spellings; and

(C) know how to use the spell-check function in word processing while understanding its limitations.

(22) Research/Research Plan. Students ask open-ended research questions and develop a plan for answering them. Students are expected to:

(A) brainstorm, consult with others, decide upon a topic, and formulate open-ended questions to address the major research topic; and

(B) generate a research plan for gathering relevant information about the major research question.

(23) Research/Gathering Sources. Students determine, locate, and explore the full range of relevant sources addressing a research question and systematically record the information they gather. Students are expected to:

(A) follow the research plan to collect data from a range of print and electronic resources (e.g., reference texts, periodicals, web pages, online sources) and data from experts;

(B) differentiate between primary and secondary sources;

(C) record data, utilizing available technology (e.g., word processors) in order to see the relationships between ideas, and convert graphic/visual data (e.g., charts, diagrams, timelines) into written notes;

(D) identify the source of notes (e.g., author, title, page number) and record bibliographic information concerning those sources according to a standard format; and

(E) differentiate between paraphrasing and plagiarism and identify the importance of citing valid and reliable sources.

(24) Research/Synthesizing Information. Students clarify research questions and evaluate and synthesize collected information. Students are expected to:

(A) refine the major research question, if necessary, guided by the answers to a secondary set of questions; and

(B) evaluate the relevance and reliability of sources for the research.

(25) Research/Organizing and Presenting Ideas. Students organize and present their ideas and information according to the purpose of the research and their audience. Students are expected to synthesize the research into a written or an oral presentation that:

(A) compiles important information from multiple sources;

(B) develops a topic sentence, summarizes findings, and uses evidence to support conclusions;

(C) presents the findings in a consistent format; and

(D) uses quotations to support ideas and an appropriate form of documentation to acknowledge sources (e.g., bibliography, works cited).

(26) Listening and Speaking/Listening. Students will use comprehension skills to listen attentively to others in formal and informal settings. Students will continue to apply earlier standards with greater complexity. Students are expected to:

(A) listen to and interpret a speaker's messages (both verbal and nonverbal) and ask questions to clarify the speaker's purpose and perspective;

(B) follow and give oral instructions that include multiple action steps; and

(C) paraphrase the major ideas and supporting evidence in formal and informal presentations.

(27) Listening and Speaking/Speaking. Students speak clearly and to the point, using the conventions of language. Students will continue to apply earlier standards with greater complexity. Students are expected to give an organized presentation with a specific point of view, employing eye contact, speaking rate, volume, enunciations,

ation, natural gestures, and conventions of language to communicate ideas effectively.

(28) Listening and Speaking/Teamwork. Students work productively with others in teams. Students will continue to apply earlier standards with greater complexity. Students are expected to participate in student-led discussions by eliciting and considering suggestions from other group members and by identifying points of agreement and disagreement.

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

The provisions of §128.22 of this subchapter shall be superseded by §128.18 of this subchapter beginning with the 2009-2010 school year [implemented by school districts beginning September 1, 1998, and at that time shall supersede §75.25(e) of this title (relating to English as Second Language) and §75.52 of this title (relating to English as a Second Language)].

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 August 4, 2008.

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Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Earliest possible date of adoption: September 14, 2008

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



19 TAC §§128.23 - 128.26

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

The repeals are proposed under Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements, §28.002, which authorizes the SBOE to by rule identify the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating textbooks and addressed on the assessment instruments, and §28.005 and §29.051, which establishes bilingual education and special language programs in the public schools to ensure students' reasonable proficiency in the English language and ability to achieve academic success.

The repeals implement the Texas Education Code, §§7.102(c)(4), 28.002, 28.005, and 29.051.

§128.23. English as a Second Language (ESL), Grade 7.

§128.24. English as a Second Language (ESL), Grade 8.

§128.25. English as a Second Language (ESL), Reading (Elective Credit).

§128.26. English as a Second Language (ESL), Speech (Elective Credit).

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

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SUBCHAPTER C. HIGH SCHOOL

19 TAC §§128.30 - 128.32, 128.41

The new sections and amendment are proposed under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to by rule identify the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating textbooks and addressed on the assessment instruments; §28.025, which authorizes the SBOE to by rule determine curriculum requirements for the minimum, recommended, and advanced high school programs that are consistent with the required curriculum under §28.002; and §28.005 and §29.051, which establishes bilingual education and special language programs in the public schools to ensure students' reasonable proficiency in the English language and ability to achieve academic success.

The new sections and amendment implement the Texas Education Code, §§7.102(c)(4), 28.002, 28.005, 28.025, and 29.051.

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

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

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

Figure: 19 TAC §128.30(b)

§128.31. English I for Speakers of Other Languages (One Credit), Beginning with School Year 2009-2010.

(a) Introduction.

(1) For students whose first language is other than English, the native language serves as the foundation for English language acquisition. Cognitive skills transfer from one language to another, and students literate in their first language will apply these skills and other academic proficiencies to the second language.

(A) The development of receptive (listening/reading) and expressive (speaking/writing) skills in second language learners may be at different stages. In some instances, second language learners undergo silent periods of varying durations when they first begin to learn a new language. Students often understand more than they can produce and may repeat words in sentences that they do not entirely understand. Second language learners may also draw upon the resources of their language and culture as they acquire a new language and culture.

(B) It is important to understand that limited knowledge of English structure and vocabulary is neither related to the students' intellectual capabilities nor their ability to use higher-order thinking

skills. Literacy development across the content areas is essential in building academic skills in a second language and can accelerate the learning of both English language skills and higher-order thinking skills.

(C) Some English for speakers of other languages (ESOL) students exhibit additional first language and/or academic needs due to their previous educational experiences that may include interrupted and/or limited schooling. In addition, there are ESOL students who have achieved oral proficiency in English but need additional academic competency skills. These needs as well as acculturation issues should be considered when making programmatic and instructional decisions.

(2) ESOL students are at different stages of language acquisition. The following general proficiency levels are not grade specific: Beginning, Intermediate, Advanced, and Advanced High. The ESOL student may exhibit different proficiency levels within the four language components: listening, speaking, reading, and writing. An ESOL student may exhibit oral skills at the advanced level, reading skills at the intermediate level, and writing skills at the beginning level. Any combination of these components is possible and is affected by opportunities for interaction in and outside of school.

(A) Beginning ESOL students associate utterances with meaning as they make inferences based on actions, visuals, text, tone of voice, and inflections. Receptive language with some comprehension is acquired earlier than oral production. Beginning ESOL students produce spoken English with increasing accuracy and fluency to convey appropriate meaning. They read English using graphophonic cues, syntax, visuals, the context of the text, and their prior knowledge of language and structure of text.

(B) Intermediate ESOL students use the listening process to improve comprehension and oral skills in English. Through listening and speaking in meaningful interactions, they clarify, distinguish, and evaluate ideas and responses in a variety of situations. Intermediate ESOL students participate successfully in academic, social, and work contexts in English using the process of speaking to create, clarify, critique, and evaluate ideas and responses. Intermediate ESOL students read English using and applying developmental vocabulary to increase comprehension and produce written text to address a variety of audiences and purposes.

(C) Advanced ESOL students, through developmental listening skills, actively expand their vocabulary to evaluate and analyze spoken English for a variety of situations and purposes. These students participate in a variety of situations using spoken English to create, clarify, critique, and evaluate ideas and responses. Advanced ESOL students continually develop reading skills for increasing reading proficiency in content area texts for a variety of purposes and generate written text for different audiences in a variety of modes to convey appropriate meaning according to their level of proficiency.

(D) Advanced High ESOL students' reading, speaking, and writing abilities are comparable to those of their native English speaking peers. They understand grade appropriate English as it is used in academic and social settings. These students use language skills on their grade level in the academic subject areas with minimal interruptions and they use abstract and content based vocabulary effectively. Advanced High students continually use the English language to build additional foundational reading skills such as fluency and prosody as well as higher-order comprehension skills. These students have a strong command of English language structures necessary to address writing at appropriate grade levels.

(3) Students enrolled in English I for Speakers of Other Languages continue to increase and refine their communication skills.

High school students are expected to plan, draft, and complete written compositions on a regular basis. Students edit their papers for clarity, engaging language, and the correct use of the conventions and mechanics of written English and produce final, error-free drafts. In English I, students practice all forms of writing. An emphasis is placed on organizing logical arguments with clearly expressed related definitions, thesis, and evidence. Students write to persuade and to report and describe. English I students read extensively in multiple genres from world literature such as reading selected stories, dramas, novels, and poetry originally written in English or translated to English from oriental, classical Greek, European, African, South American, and North American cultures. Students learn literary forms and terms associated with selections being read. Students interpret the possible influences of the historical context on a literary work.

(4) The essential knowledge and skills as well as the student expectations for English I for Speakers of Other Languages are described in §74.4 of this title (relating to English Language Proficiency Standards) as well as subsection (b) of this section and are identical to the knowledge and skills and student expectations in Chapter 110 of this title (relating to Texas Essential Knowledge and Skills for English Language Arts and Reading) with additional expectations for English language learners. All expectations apply equally to English language learners; however, it is imperative to recognize critical processes and features of second language acquisition and to provide appropriate instruction to enable students to meet these standards. The knowledge and skills and/or student expectations that are applicable specifically to English language learners are indicated in §74.4 of this title as well as in subsection (b) of this section. It is recommended that the ESOL I student be at the Beginning or Intermediate proficiency level to enroll.

(5) To meet Public Education Goal 1 of the Texas Education Code, §4.002, which states, "The students in the public education system will demonstrate exemplary performance in the reading and writing of the English language," students will accomplish the essential knowledge and skills as well as the student expectations in English I as described in subsection (b) of this section.

(6) To meet Texas Education Code, §28.002(h), which states, ". . . each school district shall foster the continuation of the tradition of teaching United States and Texas history and the free enterprise system in regular subject matter and in reading courses and in the adoption of textbooks," students will be provided oral and written narratives as well as other informational texts that can help them to become thoughtful, active citizens who appreciate the basic democratic values of our state and nation.

(b) Knowledge and skills.

(1) Reading/Vocabulary Development. Students understand new vocabulary and use it when reading and writing. Students are expected to:

(A) determine the meaning of grade-level technical academic English words in multiple content areas (e.g., science, mathematics, social studies, the arts) derived from Latin, Greek, or other linguistic roots and affixes;

(B) analyze textual context (within a sentence and in larger sections of text) to distinguish between the denotative and connotative meanings of words;

(C) produce analogies that describe a function of an object or its description;

(D) describe the origins and meanings of foreign words or phrases used frequently in written English (e.g., *caveat emptor*, *carte blanche*, *tete a tete*, *pas de deux*, *bon appetit*, *quid pro quo*); and

(E) use a dictionary, a glossary, or a thesaurus (printed or electronic) to determine or confirm the meanings of words and phrases, including their connotations and denotations, and their etymology.

(2) Reading/Comprehension of Literary Text/Theme and Genre. Students analyze, make inferences and draw conclusions about theme and genre in different cultural, historical, and contemporary contexts and provide evidence from the text to support their understanding. Students are expected to:

(A) analyze how the genre of texts with similar themes shapes meaning;

(B) analyze the influence of mythic, classical and traditional literature on 20th and 21st century literature; and

(C) relate the figurative language of a literary work to its historical and cultural setting.

(3) Reading/Comprehension of Literary Text/Poetry. Students understand, make inferences and draw conclusions about the structure and elements of poetry and provide evidence from text to support their understanding. Students are expected to analyze the effects of diction and imagery (e.g., controlling images, figurative language, understatement, overstatement, irony, paradox) in poetry.

(4) Reading/Comprehension of Literary Text/Drama. Students understand, make inferences and draw conclusions about the structure and elements of drama and provide evidence from text to support their understanding. Students explain how dramatic conventions (e.g., monologues, soliloquies, dramatic irony) enhance dramatic text.

(5) Reading/Comprehension of Literary Text/Fiction. Students understand, make inferences and draw conclusions about the structure and elements of fiction and provide evidence from text to support their understanding. Students are expected to:

(A) analyze non-linear plot development (e.g., flashbacks, foreshadowing, sub-plots, parallel plot structures) and compare it to linear plot development;

(B) analyze how authors develop complex yet believable characters in works of fiction through a range of literary devices, including character foils;

(C) analyze the way in which a work of fiction is shaped by the narrator's point of view; and

(D) demonstrate familiarity with works by authors from non-English-speaking literary traditions with emphasis on classical literature.

(6) Reading/Comprehension of Literary Text/Literary Nonfiction. Students understand, make inferences and draw conclusions about the varied structural patterns and features of literary nonfiction and provide evidence from text to support their understanding. Students are expected to analyze how literary essays interweave personal examples and ideas with factual information to explain, present a perspective, or describe a situation or event.

(7) Reading/Comprehension of Literary Text/Sensory Language. Students understand, make inferences and draw conclusions about how an author's sensory language creates imagery in literary text and provide evidence from text to support their understanding. Students are expected to explain the role of irony, sarcasm, and paradox in literary works.

(8) Reading/Comprehension of Informational Text/Culture and History. Students analyze, make inferences and draw conclusions

about the author's purpose in cultural, historical, and contemporary contexts and provide evidence from the text to support their understanding. Students are expected to explain the controlling idea and specific purpose of an expository text and distinguish the most important from the less important details that support the author's purpose.

(9) Reading/Comprehension of Informational Text/Expository Text. Students analyze, make inferences and draw conclusions about expository text and provide evidence from text to support their understanding. Students are expected to:

(A) summarize text and distinguish between a summary that captures the main ideas and elements of a text and a critique that takes a position and expresses an opinion;

(B) differentiate between opinions that are substantiated and unsubstantiated in the text;

(C) make subtle inferences and draw complex conclusions about the ideas in text and their organizational patterns; and

(D) synthesize and make logical connections between ideas and details in several texts selected to reflect a range of viewpoints on the same topic and support those findings with textual evidence.

(10) Reading/Comprehension of Informational Text/Persuasive Text. Students analyze, make inferences and draw conclusions about persuasive text and provide evidence from text to support their analysis. Students are expected to:

(A) analyze the relevance, quality, and credibility of evidence given to support or oppose an argument for a specific audience; and

(B) analyze famous speeches for the rhetorical structures and devices used to convince the reader of the authors' propositions.

(11) Reading/Comprehension of Informational Text/Procedural Texts. Students understand how to glean and use information in procedural texts and documents. Students are expected to:

(A) analyze the clarity of the objective(s) of procedural text (e.g., consider reading instructions for software, warranties, consumer publications); and

(B) analyze factual, quantitative, or technical data presented in multiple graphical sources.

(12) Reading/Media Literacy. Students use comprehension skills to analyze how words, images, graphics, and sounds work together in various forms to impact meaning. Students will continue to apply earlier standards with greater depth in increasingly more complex texts. Students are expected to:

(A) compare and contrast how events are presented and information is communicated by visual images (e.g., graphic art, illustrations, news photographs) versus non-visual texts;

(B) analyze how messages in media are conveyed through visual and sound techniques (e.g., editing, reaction shots, sequencing, background music);

(C) compare and contrast coverage of the same event in various media (e.g., newspapers, television, documentaries, blogs, Internet); and

(D) evaluate changes in formality and tone within the same medium for specific audiences and purposes.

(13) Writing/Writing Process. Students use elements of the writing process (planning, drafting, revising, editing, and publishing) to compose text. Students are expected to:

(A) plan a first draft by selecting the correct genre for conveying the intended meaning to multiple audiences, determining appropriate topics through a range of strategies (e.g., discussion, background reading, personal interests, interviews), and developing a thesis or controlling idea;

(B) structure ideas in a sustained and persuasive way (e.g., using outlines, note taking, graphic organizers, lists) and develop drafts in timed and open-ended situations that include transitions and the rhetorical devices used to convey meaning;

(C) revise drafts to improve style, word choice, figurative language, sentence variety, and subtlety of meaning after rethinking how well questions of purpose, audience, and genre have been addressed;

(D) edit drafts for grammar, mechanics, and spelling;
and

(E) revise final draft in response to feedback from peers and teacher and publish written work for appropriate audiences.

(14) Writing/Literary Texts. Students write literary texts to express their ideas and feelings about real or imagined people, events, and ideas. Students are responsible for at least two forms of literary writing. Students are expected to:

(A) write an engaging story with a well-developed conflict and resolution, interesting and believable characters, and a range of literary strategies (e.g., dialogue, suspense) and devices to enhance the plot;

(B) write a poem using a variety of poetic techniques (e.g., structural elements, figurative language) and a variety of poetic forms (e.g., sonnets, ballads); and

(C) write a script with an explicit or implicit theme and details that contribute to a definite mood or tone.

(15) Writing/Expository and Procedural Texts. Students write expository and procedural or work-related texts to communicate ideas and information to specific audiences for specific purposes. Students are expected to:

(A) write an analytical essay of sufficient length that includes:

(i) effective introductory and concluding paragraphs and a variety of sentence structures;

(ii) rhetorical devices, and transitions between paragraphs;

(iii) a controlling idea or thesis;

(iv) an organizing structure appropriate to purpose, audience, and context; and

(v) relevant information and valid inferences;

(B) write procedural or work-related documents (e.g., instructions, e-mails, correspondence, memos, project plans) that include:

(i) organized and accurately conveyed information;
and

(ii) reader-friendly formatting techniques;

(C) write an interpretative response to an expository or a literary text (e.g., essay or review) that:

(i) extends beyond a summary and literal analysis;

(ii) addresses the writing skills for an analytical essay and provides evidence from the text using embedded quotations; and

(iii) analyzes the aesthetic effects of an author's use of stylistic or rhetorical devices; and

(D) produce a multimedia presentation (e.g., documentary, class newspaper, docudrama, infomercial, visual or textual parodies, theatrical production) with graphics, images, and sound that conveys a distinctive point of view and appeals to a specific audience.

(16) Writing/Persuasive Texts. Students write persuasive texts to influence the attitudes or actions of a specific audience on specific issues. Students are expected to write an argumentative essay to the appropriate audience that includes:

(A) a clear thesis or position based on logical reasons supported by precise and relevant evidence;

(B) consideration of the whole range of information and views on the topic and accurate and honest representation of these views;

(C) counter-arguments based on evidence to anticipate and address objections;

(D) an organizing structure appropriate to the purpose, audience, and context; and

(E) an analysis of the relative value of specific data, facts, and ideas.

(17) Oral and Written Conventions/Conventions. Students understand the function of and use the conventions of academic language when speaking and writing. Students will continue to apply earlier standards with greater complexity. Students are expected to:

(A) use and understand the function of the following parts of speech in the context of reading, writing, and speaking:

(i) more complex active and passive tenses and verbals (gerunds, infinitives, participles);

(ii) restrictive and nonrestrictive relative clauses;
and

(iii) reciprocal pronouns (e.g., each other, one another);

(B) identify and use the subjunctive mood to express doubts, wishes, and possibilities; and

(C) use a variety of correctly structured sentences (e.g., compound, complex, compound-complex).

(18) Oral and Written Conventions/Handwriting, Capitalization, and Punctuation. Students write legibly and use appropriate capitalization and punctuation conventions in their compositions. Students are expected to:

(A) use conventions of capitalization; and

(B) use correct punctuation marks including:

(i) quotation marks to indicate sarcasm or irony;

(ii) comma placement in nonrestrictive phrases, clauses, and contrasting expressions; and

(iii) dashes to emphasize parenthetical information.

(19) Oral and Written Conventions/Spelling. Students spell correctly. Students are expected to spell correctly, including using various resources to determine and check correct spellings.

(20) Research/Research Plan. Students ask open-ended research questions and develop a plan for answering them. Students are expected to:

(A) brainstorm, consult with others, decide upon a topic, and formulate a major research question to address the major research topic; and

(B) formulate a plan for engaging in research on a complex, multi-faceted topic.

(21) Research/Gathering Sources. Students determine, locate, and explore the full range of relevant sources addressing a research question and systematically record the information they gather. Students are expected to:

(A) follow the research plan to compile data from authoritative sources in a manner that identifies the major issues and debates within the field of inquiry;

(B) organize information gathered from multiple sources to create a variety of graphics and forms (e.g., notes, learning logs); and

(C) paraphrase, summarize, quote, and accurately cite all researched information according to a standard format (e.g., author, title, page number).

(22) Research/Synthesizing Information. Students clarify research questions and evaluate and synthesize collected information. Students are expected to:

(A) modify the major research question as necessary to refocus the research plan;

(B) evaluate the relevance of information to the topic and determine the reliability, validity, and accuracy of sources (including Internet sources) by examining their authority and objectivity; and

(C) critique the research process at each step to implement changes as the need occurs and is identified.

(23) Research/Organizing and Presenting Ideas. Students organize and present their ideas and information according to the purpose of the research and their audience. Students are expected to synthesize the research into a written or an oral presentation that:

(A) marshals evidence in support of a clear thesis statement and related claims;

(B) provides an analysis for the audience that reflects a logical progression of ideas and a clearly stated point of view;

(C) uses graphics and illustrations to help explain concepts where appropriate;

(D) uses a variety of evaluative tools (e.g., self-made rubrics, peer reviews, teacher and expert evaluations) to examine the quality of the research; and

(E) uses a style manual (e.g., *Modern Language Association, Chicago Manual of Style*) to document sources and format written materials.

(24) Listening and Speaking/Listening. Students will use comprehension skills to listen attentively to others in formal and informal settings. Students will continue to apply earlier standards with greater complexity. Students are expected to:

(A) listen responsively to a speaker by taking notes that summarize, synthesize, or highlight the speaker's ideas for critical reflection and by asking questions related to the content for clarification and elaboration;

(B) follow and give complex oral instructions to perform specific tasks, answer questions, solve problems, and complete processes; and

(C) evaluate the effectiveness of a speaker's main and supporting ideas.

(25) Listening and Speaking/Speaking. Students speak clearly and to the point, using the conventions of language. Students will continue to apply earlier standards with greater complexity. Students are expected to give presentations using informal, formal, and technical language effectively to meet the needs of audience, purpose, and occasion, employing eye contact, speaking rate (e.g., pauses for effect), volume, enunciation, purposeful gestures, and conventions of language to communicate ideas effectively.

(26) Listening and Speaking/Teamwork. Students work productively with others in teams. Students will continue to apply earlier standards with greater complexity. Students are expected to participate productively in teams, building on the ideas of others, contributing relevant information, developing a plan for consensus-building, and setting ground rules for decision-making.

(27) Second language acquisition/learning strategies. The ESOL student uses language learning strategies to develop an awareness of his/her own learning processes in language arts and all content areas. The following expectations apply to the second language learner at his/her level of proficiency in English. Students are expected to:

(A) use prior knowledge and experiences to understand meanings in English;

(B) monitor oral and written language production and employ self-corrective techniques or other resources;

(C) use strategic learning techniques such as concept mapping, drawing, memorizing, comparing, contrasting, and reviewing to acquire basic and grade-level vocabulary;

(D) speak using learning strategies such as requesting assistance, employing non-verbal cues, and using synonyms and circumlocution (conveying ideas by defining or describing when exact English words are not known);

(E) internalize new basic and academic language by using and reusing it in meaningful ways in speaking and writing activities that build concept and language attainment;

(F) use accessible language and learn new and essential language in the process;

(G) demonstrate an increasing ability to distinguish between formal and informal English and an increasing knowledge of when to use each one commensurate with grade-level learning expectations;

(H) develop and expand repertoire of learning strategies such as reasoning inductively or deductively, looking for patterns in language, and analyzing sayings and expressions commensurate with grade-level learning expectations; and

(I) make connections across content areas and use and reuse language and concepts in different ways.

(28) Second language acquisition/listening. The ESOL student listens to a variety of speakers, including teachers, peers, and electronic media, to gain an increasing level of comprehension and appreciation for newly acquired language in language arts and all content areas. The following expectations apply to the second language learner at his/her level of proficiency in English. Students are expected to:

(A) distinguish sounds and intonation patterns of English with increasing ease;

(B) recognize elements of the English sound system in newly acquired vocabulary such as long and short vowels, silent letters, and consonant clusters;

(C) learn new language structures, expressions, and basic and academic vocabulary heard during classroom instruction and interactions;

(D) monitor understanding of spoken language during classroom instruction and interactions and seek clarification as needed;

(E) use visual, contextual, and linguistic support to enhance and confirm understanding of increasingly complex and elaborated spoken language;

(F) listen to and derive meaning from a variety of media such as audio tape, video, DVD, and CD ROM to build and reinforce concept and language attainment;

(G) understand the general meaning, main points, and important details of spoken language ranging from situations in which topics, language, and contexts are familiar to unfamiliar;

(H) understand implicit ideas and information in increasingly complex spoken language commensurate with grade-level learning expectations;

(I) demonstrate listening comprehension of increasingly complex spoken English by following directions, retelling or summarizing spoken messages, responding to questions and requests, collaborating with peers, and taking notes commensurate with content and grade-level needs;

(J) understand basic structures, expressions, and vocabulary such as school environment, greetings, questions, and directions;

(K) analyze and evaluate spoken discourse for appropriateness of purpose with a variety of audiences such as formal, consultative, casual, and intimate language registers; and

(L) infer meaning by making associations of utterances with actions, visuals, and the context of the situation.

(29) Second language acquisition/speaking. The ESOL student speaks in a variety of modes for a variety of purposes with an awareness of different language registers (formal/informal) using developmental vocabulary with increasing fluency and accuracy in language arts and all content areas. The following expectations apply to the second language learner at his/her level of proficiency in English. Students are expected to:

(A) practice producing sounds of newly acquired vocabulary such as long and short vowels, silent letters, and consonant clusters to pronounce English words in a manner that is increasingly comprehensible;

(B) expand and internalize initial English vocabulary by learning and using high-frequency English words necessary for identifying and describing people, places, objects, events, and basic concepts such as numbers, days of the week, food, occupations, and time by retelling simple stories and basic information represented or supported by pictures, and by learning and using routine language needed for classroom communication;

(C) speak using a variety of grammatical structures, sentence lengths, sentence types, and connecting words with increasing accuracy and ease as more English is acquired;

(D) speak using grade-level content area vocabulary in context to internalize new English words and build academic language proficiency;

(E) share information in cooperative learning interactions;

(F) ask and give information ranging from using a very limited bank of high-frequency, high-need, concrete vocabulary, including key words and expressions needed for basic communication in academic and social contexts such as directions and address as well as name, age, and nationality, to using abstract and content-based vocabulary during extended speaking assignments;

(G) express opinions, ideas, and feelings ranging from communicating single words and short phrases to participating in extended discussions on a variety of social and grade-appropriate academic topics;

(H) narrate, describe, and explain with increasing specificity and detail as more English is acquired;

(I) adapt spoken language appropriately for formal and informal purposes;

(J) respond orally to information presented in a wide variety of print, electronic, audio, and visual media to build and reinforce concept and language attainment;

(K) share prior knowledge with peers and others to facilitate communication and to foster respect for others; and

(L) describe the immediate surroundings such as classroom, school, and home.

(30) Second language acquisition/reading. The ESOL student reads a variety of texts for a variety of purposes with an increasing level of comprehension in language arts and all content areas. The following expectations apply to the second language learner at his/her level of proficiency in English. Students are expected to:

(A) learn relationships between sounds and letters of the English language and decode (sound out) words using a combination of skills such as recognizing sound-letter relationships and identifying cognates, affixes, roots, and base words;

(B) recognize directionality of English reading such as left to right and top to bottom;

(C) develop basic sight vocabulary, derive meaning of environmental print, and comprehend English vocabulary and language structures used routinely in written classroom materials;

(D) use prereading supports such as graphic organizers, illustrations, and pre-taught topic-related vocabulary and other prereading activities to enhance comprehension of written text;

(E) read linguistically accommodated content area material with a decreasing need for linguistic accommodations as more English is learned;

(F) use visual and contextual support and support from peers and teachers to read grade-appropriate content area text, enhance and confirm understanding, and develop vocabulary, grasp of language structures, and background knowledge needed to comprehend increasingly challenging language;

(G) demonstrate comprehension of increasingly complex English by participating in shared reading, retelling or summarizing material, responding to questions, and taking notes commensurate with content area and grade level needs;

(H) read silently with increasing ease for longer periods;

(I) demonstrate English comprehension and expand reading skills by employing basic reading skills such as demonstrating understanding of supporting ideas and details in text and graphic sources, summarizing text, and distinguishing main ideas from details commensurate with content area needs;

(J) demonstrate English comprehension and expand reading skills by employing inferential skills such as predicting, making connections between ideas, drawing inferences and conclusions from text and graphic sources, and finding supporting text evidence commensurate with content area needs;

(K) demonstrate English comprehension and expand reading skills by employing analytical skills such as evaluating written information and performing critical analyses commensurate with content area and grade-level needs;

(L) read authentic literature and use kinesthetic visual support to develop vocabulary, structures, and build background knowledge needed to comprehend increasingly-challenging language;

(M) use verbal cueing strategies such as pauses and exaggerated intonation for key words and non-verbal cueing strategies such as facial expressions and gestures to enhance the reading experience; and

(N) retell, role-play, and/or visually illustrate the order of events.

(31) Second language acquisition/writing. The ESOL student writes in a variety of forms with increasing accuracy to effectively address a specific purpose and audience in language arts and all content areas. The following expectations apply to the second language learner at his/her level of proficiency in English. Students are expected to:

(A) learn relationships between sounds and letters of the English language to represent sounds when writing in English;

(B) write using newly acquired basic vocabulary and content-based grade-level vocabulary;

(C) spell familiar English words with increasing accuracy and employ English spelling patterns and rules with increasing accuracy as more English is acquired;

(D) edit writing for standard grammar and usage, including subject-verb agreement, pronoun agreement, and appropriate verb tenses commensurate with grade-level expectations as more English is acquired;

(E) employ increasingly complex grammatical structures in content area writing commensurate with grade-level expectations such as:

(i) using correct verbs, tenses, auxiliaries, and pronouns/antecedents;

(ii) using nominative, objective, and possessive case (apostrophe s) correctly;

(iii) demonstrating knowledge of parts of speech; and

(iv) using negatives and contractions correctly;

(F) write using a variety of grade-appropriate sentence lengths, patterns, and connecting words to combine phrases, clauses, and sentences in increasingly accurate ways as more English is acquired;

(G) narrate, describe, and explain with increasing specificity and detail to fulfill content area writing needs as more English is acquired;

(H) use basic capitalization and punctuation correctly such as capitalizing names and first letters in sentences and using periods, question marks, and exclamation points;

(I) use graphic organizers as pre-writing activity to demonstrate prior knowledge, to add new information, and to prepare to write;

(J) write with more proficient use of orthographic patterns such as digraphs and consonant blends with the initial s- and rules such as "qu" together, consonant doubling, dropping final "e," and changing "y" to "i"; and

(K) develop drafts by categorizing ideas, organizing them into sentences and paragraphs, and blending paragraphs within larger units of text.

(32) Second language acquisition/viewing and representing. The ESOL student understands, interprets, analyzes, critiques, and produces a variety of visual representations with increasing effectiveness in language arts and all content areas. The following expectations apply to the second language learner at his/her level of proficiency in English. Students are expected to:

(A) describe how illustrations support written texts or tell a story;

(B) tell important events and ideas gleaned from video segments, graphic art, or technology presentations;

(C) respond to media such as film, print, and technological presentations by explaining likes, dislikes, and supporting opinions with examples;

(D) distinguish the purposes of various media forms such as information, entertainment, and persuasion;

(E) produce visuals for his/her own messages, stories, and other kinds of communication;

(F) explore and describe how color, shape, and line influence the message; and

(G) produce communications using technology or appropriate media.

§128.32. English II for Speakers of Other Languages (One Credit), Beginning with School Year 2009-2010.

(a) Introduction.

(1) Students enrolled in English II for Speakers of Other Languages continue to increase and refine their communication skills. High school students are expected to plan, draft, and complete written compositions on a regular basis. Students edit their papers for clarity, engaging language, and the correct use of the conventions and mechanics of written English and produce final, error-free drafts. In English II, students practice all forms of writing. An emphasis is placed on persuasive forms of writing such as logical arguments, expressions of opinion, and personal forms of writing. These personal forms of writing may include a response to literature, a reflective essay, or an autobiographical narrative. English II students read extensively in multiple genres from world literature such as reading selected stories, dramas, novels, and poetry originally written in English or translated to English from oriental, classical Greek, European, African, South American, and North American cultures. Students learn literary forms and terms associated with selections being read. Students interpret the possible influences of the historical context on a literary work.

(2) For students whose first language is other than English, the native language serves as the foundation for English language acquisition. Cognitive skills transfer from one language to another, and students literate in their first language will apply these skills and other academic proficiencies to the second language.

(A) The development of receptive (listening/reading) and expressive (speaking/writing) skills in second language learners may be at different stages. In some instances, second language learners undergo silent periods of varying durations when they first begin to learn a new language. Students often understand more than they can produce and may repeat words in sentences that they do not entirely understand. Second language learners may also draw upon the resources of their language and culture as they acquire a new language and culture.

(B) It is important to understand that limited knowledge of English structure and vocabulary is neither related to the students' intellectual capabilities nor their ability to use higher-order thinking skills. Literacy development across the content areas is essential in building academic skills in a second language and can accelerate the learning of both English language skills and higher-order thinking skills.

(3) English for speakers of other languages (ESOL) students are at different stages of language acquisition. The following general proficiency levels are not grade specific: Beginner, Intermediate, Advanced. The ESOL student may exhibit different proficiency levels within the four language components: listening, speaking, reading, and writing. An ESOL student may exhibit oral skills at the advanced level, reading skills at the intermediate level, and writing skills at the beginning level. Any combination of these components is possible and is affected by opportunities for interaction in and outside of school.

(A) Intermediate ESOL students use the listening process to improve comprehension and oral skills in English. Through listening and speaking in meaningful interactions, they clarify, distinguish, and evaluate ideas and responses in a variety of situations. Intermediate ESOL students participate successfully in academic, social, and work contexts in English using the process of speaking to create, clarify, critique, and evaluate ideas and responses. Intermediate ESOL students read English using and applying developmental vocabulary to increase comprehension and produce written text to address a variety of audiences and purposes.

(B) Advanced ESOL students, through developmental listening skills, actively expand their vocabulary to evaluate and analyze spoken English for a variety of situations and purposes. These students participate in a variety of situations using spoken English to create, clarify, critique, and evaluate ideas and responses. Advanced ESOL students continually develop reading skills for increasing reading proficiency in content area texts for a variety of purposes and generate written text for different audiences in a variety of modes to convey appropriate meaning according to their level of proficiency.

(C) Some ESOL students exhibit additional first language and/or academic needs due to their previous educational experiences, which may include interrupted and/or limited schooling. In addition, there are ESOL students who have achieved oral proficiency in English but need additional academic competency skills. These needs as well as acculturation issues should be considered when making programmatic and instructional decisions.

(4) The essential knowledge and skills as well as the student expectations for English II for Speakers of Other Languages are described in subsection (b) of this section and are identical to the knowledge and skills and student expectations in Chapter 110 of this

title (relating to Texas Essential Knowledge and Skills for English Language Arts and Reading) with additional expectations for students of English as a Second Language. All expectations apply equally to second language learners; however, it is imperative to recognize critical processes and features of second language acquisition and to provide appropriate instruction to enable students to meet these standards. It is recommended that the ESOL student be at the Intermediate or Advanced level to enroll.

(5) To meet Public Education Goal 1 of the Texas Education Code, §4.002, which states, "The students in the public education system will demonstrate exemplary performance in the reading and writing of the English language," students will accomplish the essential knowledge and skills as well as the student expectations in English II as described in subsection (b) of this section.

(6) To meet Texas Education Code, §28.002(h), which states, ". . . each school district shall foster the continuation of the tradition of teaching United States and Texas history and the free enterprise system in regular subject matter and in reading courses and in the adoption of textbooks," students will be provided oral and written narratives as well as other informational texts that can help them to become thoughtful, active citizens who appreciate the basic democratic values of our state and nation.

(b) Knowledge and skills.

(1) Reading/Vocabulary Development. Students understand new vocabulary and use it when reading and writing. Students are expected to:

(A) determine the meaning of grade-level technical academic English words in multiple content areas (e.g., science, mathematics, social studies, the arts) derived from Latin, Greek, or other linguistic roots and affixes;

(B) analyze textual context (within a sentence and in larger sections of text) to distinguish between the denotative and connotative meanings of words;

(C) infer word meaning through the identification and analysis of analogies and other word relationships;

(D) show the relationship between the origins and meaning of foreign words or phrases used frequently in written English and historical events or developments (e.g., *glasnost*, *avant-garde*, *coup d'état*); and

(E) use a dictionary, a glossary, or a thesaurus (printed or electronic) to determine or confirm the meanings of words and phrases, including their connotations and denotations, and their etymology.

(2) Reading/Comprehension of Literary Text/Theme and Genre. Students analyze, make inferences and draw conclusions about theme and genre in different cultural, historical, and contemporary contexts and provide evidence from the text to support their understanding. Students are expected to:

(A) compare and contrast differences in similar themes expressed in different time periods;

(B) analyze archetypes (e.g., journey of a hero, tragic flaw) in mythic, traditional and classical literature; and

(C) relate the figurative language of a literary work to its historical and cultural setting.

(3) Reading/Comprehension of Literary Text/Poetry. Students understand, make inferences and draw conclusions about the structure and elements of poetry and provide evidence from text

to support their understanding. Students are expected to analyze the structure or prosody (e.g., meter, rhyme scheme) and graphic elements (e.g., line length, punctuation, word position) in poetry.

(4) Reading/Comprehension of Literary Text/Drama. Students understand, make inferences and draw conclusions about the structure and elements of drama and provide evidence from text to support their understanding. Students are expected to analyze how archetypes and motifs in drama affect the plot of plays.

(5) Reading/Comprehension of Literary Text/Fiction. Students understand, make inferences and draw conclusions about the structure and elements of fiction and provide evidence from text to support their understanding. Students are expected to:

(A) analyze isolated scenes and their contribution to the success of the plot as a whole in a variety of works of fiction;

(B) analyze differences in the characters' moral dilemmas in works of fiction across different countries or cultures;

(C) evaluate the connection between forms of narration (e.g., unreliable, omniscient) and tone in works of fiction; and

(D) demonstrate familiarity with works by authors from non-English-speaking literary traditions with emphasis on 20th century world literature.

(6) Reading/Comprehension of Literary Text/Literary Nonfiction. Students understand, make inferences and draw conclusions about the varied structural patterns and features of literary nonfiction and provide evidence from text to support their understanding. Students are expected to evaluate the role of syntax and diction and the effect of voice, tone, and imagery on a speech, literary essay, or other forms of literary nonfiction.

(7) Reading/Comprehension of Literary Text/Sensory Language. Students understand, make inferences and draw conclusions about how an author's sensory language creates imagery in literary text and provide evidence from text to support their understanding. Students are expected to explain the function of symbolism, allegory, and allusions in literary works.

(8) Reading/Comprehension of Informational Text/Culture and History. Students analyze, make inferences and draw conclusions about the author's purpose in cultural, historical, and contemporary contexts and provide evidence from the text to support their understanding. Students are expected to analyze the controlling idea and specific purpose of a passage and the textual elements that support and elaborate it, including both the most important details and the less important details.

(9) Reading/Comprehension of Informational Text/Expository Text. Students analyze, make inferences and draw conclusions about expository text and provide evidence from text to support their understanding. Students are expected to:

(A) summarize text and distinguish between a summary and a critique and identify non-essential information in a summary and unsubstantiated opinions in a critique;

(B) distinguish among different kinds of evidence (e.g., logical, empirical, anecdotal) used to support conclusions and arguments in texts;

(C) make and defend subtle inferences and complex conclusions about the ideas in text and their organizational patterns; and

(D) synthesize and make logical connections between ideas and details in several texts selected to reflect a range of viewpoints on the same topic and support those findings with textual evidence.

(10) Reading/Comprehension of Informational Text/Persuasive Text. Students analyze, make inferences and draw conclusions about persuasive text and provide evidence from text to support their analysis. Students are expected to:

(A) explain shifts in perspective in arguments about the same topic and evaluate the accuracy of the evidence used to support the different viewpoints within those arguments; and

(B) analyze contemporary political debates for such rhetorical and logical fallacies as appeals to commonly held opinions, false dilemmas, appeals to pity, and personal attacks.

(11) Reading/Comprehension of Informational Text/Procedural Texts. Students understand how to glean and use information in procedural texts and documents. Students are expected to:

(A) evaluate text for the clarity of its graphics and its visual appeal; and

(B) synthesize information from multiple graphical sources to draw conclusions about the ideas presented (e.g., maps, charts, schematics).

(12) Reading/Media Literacy. Students use comprehension skills to analyze how words, images, graphics, and sounds work together in various forms to impact meaning. Students will continue to apply earlier standards with greater depth in increasingly more complex texts. Students are expected to:

(A) evaluate how messages presented in media reflect social and cultural views in ways different from traditional texts;

(B) analyze how messages in media are conveyed through visual and sound techniques (e.g., editing, reaction shots, sequencing, background music);

(C) examine how individual perception or bias in coverage of the same event influences the audience; and

(D) evaluate changes in formality and tone within the same medium for specific audiences and purposes.

(13) Writing/Writing Process. Students use elements of the writing process (planning, drafting, revising, editing, and publishing) to compose text. Students are expected to:

(A) plan a first draft by selecting the correct genre for conveying the intended meaning to multiple audiences, determining appropriate topics through a range of strategies (e.g., discussion, background reading, personal interests, interviews), and developing a thesis or controlling idea;

(B) structure ideas in a sustained and persuasive way (e.g., using outlines, note taking, graphic organizers, lists) and develop drafts in timed and open-ended situations that include transitions and rhetorical devices used to convey meaning;

(C) revise drafts to improve style, word choice, figurative language, sentence variety, and subtlety of meaning after rethinking how well questions of purpose, audience, and genre have been addressed;

(D) edit drafts for grammar, mechanics, and spelling;

and
(E) revise final draft in response to feedback from peers and teacher and publish written work for appropriate audiences.

(14) Writing/Literary Texts. Students write literary texts to express their ideas and feelings about real or imagined people, events, and ideas. Students are responsible for at least two forms of literary writing. Students are expected to:

(A) write an engaging story with a well-developed conflict and resolution, interesting and believable characters, a range of literary strategies (e.g., dialogue, suspense) and devices to enhance the plot, and sensory details that define the mood or tone;

(B) write a poem using a variety of poetic techniques (e.g., structural elements, figurative language) and a variety of poetic forms (e.g., sonnets, ballads); and

(C) write a script with an explicit or implicit theme and details that contribute to a definite mood or tone.

(15) Writing/Expository and Procedural Texts. Students write expository and procedural or work-related texts to communicate ideas and information to specific audiences for specific purposes. Students are expected to:

(A) write an analytical essay of sufficient length that includes:

(i) effective introductory and concluding paragraphs and a variety of sentence structures;

(ii) rhetorical devices, and transitions between paragraphs;

(iii) a thesis or controlling idea;

(iv) an organizing structure appropriate to purpose, audience, and context;

(v) relevant evidence and well-chosen details; and

(vi) distinctions about the relative value of specific data, facts, and ideas that support the thesis statement;

(B) write procedural or work-related documents (e.g., instructions, e-mails, correspondence, memos, project plans) that include:

(i) organized and accurately conveyed information;

(ii) reader-friendly formatting techniques; and

(iii) anticipation of readers' questions;

(C) write an interpretative response to an expository or a literary text (e.g., essay or review) that:

(i) extends beyond a summary and literal analysis;

(ii) addresses the writing skills for an analytical essay and provides evidence from the text using embedded quotations; and

(iii) analyzes the aesthetic effects of an author's use of stylistic and rhetorical devices; and

(D) produce a multimedia presentation (e.g., documentary, class newspaper, docudrama, infomercial, visual or textual parodies, theatrical production) with graphics, images, and sound that conveys a distinctive point of view and appeals to a specific audience.

(16) Writing/Persuasive Texts. Students write persuasive texts to influence the attitudes or actions of a specific audience on specific issues. Students are expected to write an argumentative essay to the appropriate audience that includes:

(A) a clear thesis or position based on logical reasons supported by precise and relevant evidence;

(B) consideration of the whole range of information and views on the topic and accurate and honest representation of these views (i.e., in the author's own words and not out of context);

(C) counter-arguments based on evidence to anticipate and address objections;

(D) an organizing structure appropriate to the purpose, audience, and context;

(E) an analysis of the relative value of specific data, facts, and ideas; and

(F) a range of appropriate appeals (e.g., descriptions, anecdotes, case studies, analogies, illustrations).

(17) Oral and Written Conventions/Conventions. Students understand the function of and use the conventions of academic language when speaking and writing. Students will continue to apply earlier standards with greater complexity. Students are expected to:

(A) use and understand the function of the following parts of speech in the context of reading, writing, and speaking:

(i) more complex active and passive tenses and verbals (gerunds, infinitives, participles);

(ii) restrictive and nonrestrictive relative clauses; and

(iii) reciprocal pronouns (e.g., each other, one another);

(B) identify and use the subjunctive mood to express doubts, wishes, and possibilities; and

(C) use a variety of correctly structured sentences (e.g., compound, complex, compound-complex).

(18) Oral and Written Conventions/Handwriting, Capitalization, and Punctuation. Students write legibly and use appropriate capitalization and punctuation conventions in their compositions. Students are expected to:

(A) use conventions of capitalization; and

(B) use correct punctuation marks including:

(i) comma placement in nonrestrictive phrases, clauses, and contrasting expressions;

(ii) quotation marks to indicate sarcasm or irony; and

(iii) dashes to emphasize parenthetical information.

(19) Oral and Written Conventions/Spelling. Students spell correctly. Students are expected to spell correctly, including using various resources to determine and check correct spellings.

(20) Research/Research Plan. Students ask open-ended research questions and develop a plan for answering them. Students are expected to:

(A) brainstorm, consult with others, decide upon a topic, and formulate a major research question to address the major research topic; and

(B) formulate a plan for engaging in research on a complex, multi-faceted topic.

(21) Research/Gathering Sources. Students determine, locate, and explore the full range of relevant sources addressing a research question and systematically record the information they gather. Students are expected to:

(A) follow the research plan to compile data from authoritative sources in a manner that identifies the major issues and debates within the field of inquiry;

(B) organize information gathered from multiple sources to create a variety of graphics and forms (e.g., notes, learning logs); and

(C) paraphrase, summarize, quote, and accurately cite all researched information according to a standard format (e.g., author, title, page number).

(22) Research/Synthesizing Information. Students clarify research questions and evaluate and synthesize collected information. Students are expected to:

(A) modify the major research question as necessary to refocus the research plan;

(B) evaluate the relevance of information to the topic and determine the reliability, validity, and accuracy of sources (including Internet sources) by examining their authority and objectivity; and

(C) critique the research process at each step to implement changes as the need occurs and is identified.

(23) Research/Organizing and Presenting Ideas. Students organize and present their ideas and information according to the purpose of the research and their audience. Students are expected to synthesize the research into a written or an oral presentation that:

(A) marshals evidence in support of a clear thesis statement and related claims;

(B) provides an analysis for the audience that reflects a logical progression of ideas and a clearly stated point of view;

(C) uses graphics and illustrations to help explain concepts where appropriate;

(D) uses a variety of evaluative tools (e.g., self-made rubrics, peer reviews, teacher and expert evaluations) to examine the quality of the research; and

(E) uses a style manual (e.g., *Modern Language Association, Chicago Manual of Style*) to document sources and format written materials.

(24) Listening and Speaking/Listening. Students will use comprehension skills to listen attentively to others in formal and informal settings. Students will continue to apply earlier standards with greater complexity. Students are expected to:

(A) listen responsively to a speaker by taking notes that summarize, synthesize, or highlight the speaker's ideas for critical reflection and by asking questions related to the content for clarification and elaboration;

(B) follow and give complex oral instructions to perform specific tasks, answer questions, solve problems, and complete processes; and

(C) evaluate how the style and structure of a speech support or undermine its purpose or meaning.

(25) Listening and Speaking/Speaking. Students speak clearly and to the point, using the conventions of language. Students will continue to apply earlier standards with greater complexity. Students are expected to advance a coherent argument that incorporates a clear thesis and a logical progression of valid evidence from reliable sources and that employs eye contact, speaking rate (e.g., pauses for effect), volume, enunciation, purposeful gestures, and conventions of language to communicate ideas effectively.

(26) Listening and Speaking/Teamwork. Students work productively with others in teams. Students will continue to apply earlier standards with greater complexity. Students are expected to participate productively in teams, building on the ideas of others, contributing relevant information, developing a plan for consensus-building, and setting ground rules for decision-making.

(27) Second language acquisition/learning strategies. The ESOL student uses language learning strategies to develop an awareness of his/her own learning processes in language arts and all content areas. The following expectations apply to the second language learner at his/her level of proficiency in English. Students are expected to:

(A) use prior knowledge and experiences to understand meanings in English;

(B) monitor oral and written language production and employ self-corrective techniques or other resources;

(C) use strategic learning techniques such as concept mapping, drawing, memorizing, comparing, contrasting, and reviewing to acquire basic and grade-level vocabulary;

(D) speak using learning strategies such as requesting assistance, employing non-verbal cues, and using synonyms and circumlocution (conveying ideas by defining or describing when exact English words are not known);

(E) internalize new basic and academic language by using and reusing it in meaningful ways in speaking and writing activities that build concept and language attainment;

(F) use accessible language and learn new and essential language in the process;

(G) demonstrate an increasing ability to distinguish between formal and informal English and an increasing knowledge of when to use each one commensurate with grade-level learning expectations;

(H) develop and expand repertoire of learning strategies such as reasoning inductively or deductively, looking for patterns in language, and analyzing sayings and expressions commensurate with grade-level learning expectations; and

(I) make connections across content areas and use and reuse language and concepts in different ways.

(28) Second language acquisition/listening. The ESOL student listens to a variety of speakers, including teachers, peers, and electronic media, to gain an increasing level of comprehension and appreciation for newly acquired language in language arts and all content areas. The following expectations apply to the second language learner at his/her level of proficiency in English. Students are expected to:

(A) distinguish sounds and intonation patterns of English with increasing ease;

(B) recognize elements of the English sound system in newly acquired vocabulary such as long and short vowels, silent letters, and consonant clusters;

(C) learn new language structures, expressions, and basic and academic vocabulary heard during classroom instruction and interactions;

(D) monitor understanding of spoken language during classroom instruction and interactions and seek clarification as needed;

(E) use visual, contextual, and linguistic support to enhance and confirm understanding of increasingly complex and elaborated spoken language;

(F) listen to and derive meaning from a variety of media such as audio tape, video, DVD, and CD ROM to build and reinforce concept and language attainment;

(G) understand the general meaning, main points, and important details of spoken language ranging from situations in which topics, language, and contexts are familiar to unfamiliar;

(H) understand implicit ideas and information in increasingly complex spoken language commensurate with grade-level learning expectations;

(I) demonstrate listening comprehension of increasingly complex spoken English by following directions, retelling or summarizing spoken messages, responding to questions and requests, collaborating with peers, and taking notes commensurate with content and grade-level needs;

(J) understand basic structures, expressions, and vocabulary such as school environment, greetings, questions, and directions;

(K) analyze and evaluate spoken discourse for appropriateness of purpose with a variety of audiences such as formal, consultative, casual, and intimate language registers; and

(L) infer meaning by making associations of utterances with actions, visuals, and the context of the situation.

(29) Second language acquisition/speaking. The ESOL student speaks in a variety of modes for a variety of purposes with an awareness of different language registers (formal/informal) using developmental vocabulary with increasing fluency and accuracy in language arts and all content areas. The following expectations apply to the second language learner at his/her level of proficiency in English. Students are expected to:

(A) practice producing sounds of newly acquired vocabulary such as long and short vowels, silent letters, and consonant clusters to pronounce English words in a manner that is increasingly comprehensible;

(B) expand and internalize initial English vocabulary by learning and using high-frequency English words necessary for identifying and describing people, places, objects, events, and basic concepts such as numbers, days of the week, food, occupations, and time by retelling simple stories and basic information represented or supported by pictures, and by learning and using routine language needed for classroom communication;

(C) speak using a variety of grammatical structures, sentence lengths, sentence types, and connecting words with increasing accuracy and ease as more English is acquired;

(D) speak using grade-level content area vocabulary in context to internalize new English words and build academic language proficiency;

(E) share information in cooperative learning interactions;

(F) ask and give information ranging from using a very limited bank of high-frequency, high-need, concrete vocabulary, including key words and expressions needed for basic communication in academic and social contexts such as directions and address as well as name, age, and nationality, to using abstract and content-based vocabulary during extended speaking assignments;

(G) express opinions, ideas, and feelings ranging from communicating single words and short phrases to participating in extended discussions on a variety of social and grade-appropriate academic topics;

(H) narrate, describe, and explain with increasing specificity and detail as more English is acquired;

(I) adapt spoken language appropriately for formal and informal purposes;

(J) respond orally to information presented in a wide variety of print, electronic, audio, and visual media to build and reinforce concept and language attainment;

(K) share prior knowledge with peers and others to facilitate communication and to foster respect for others; and

(L) describe the immediate surroundings such as classroom, school, and home.

(30) Second language acquisition/reading. The ESOL student reads a variety of texts for a variety of purposes with an increasing level of comprehension in language arts and all content areas. The following expectations apply to the second language learner at his/her level of proficiency in English. Students are expected to:

(A) learn relationships between sounds and letters of the English language and decode (sound out) words using a combination of skills such as recognizing sound-letter relationships and identifying cognates, affixes, roots, and base words;

(B) recognize directionality of English reading such as left to right and top to bottom;

(C) develop basic sight vocabulary, derive meaning of environmental print, and comprehend English vocabulary and language structures used routinely in written classroom materials;

(D) use prereading supports such as graphic organizers, illustrations, and pre-taught topic-related vocabulary and other prereading activities to enhance comprehension of written text;

(E) read linguistically accommodated content area material with a decreasing need for linguistic accommodations as more English is learned;

(F) use visual and contextual support and support from peers and teachers to read grade-appropriate content area text, enhance and confirm understanding, and develop vocabulary, grasp of language structures, and background knowledge needed to comprehend increasingly challenging language;

(G) demonstrate comprehension of increasingly complex English by participating in shared reading, retelling or summarizing material, responding to questions, and taking notes commensurate with content area and grade level needs;

(H) read silently with increasing ease for longer periods;

(I) demonstrate English comprehension and expand reading skills by employing basic reading skills such as demonstrating understanding of supporting ideas and details in text and graphic sources, summarizing text, and distinguishing main ideas from details commensurate with content area needs;

(J) demonstrate English comprehension and expand reading skills by employing inferential skills such as predicting, making connections between ideas, drawing inferences and conclusions from text and graphic sources, and finding supporting text evidence commensurate with content area needs;

(K) demonstrate English comprehension and expand reading skills by employing analytical skills such as evaluating written information and performing critical analyses commensurate with content area and grade-level needs;

(L) read authentic literature and use kinesthetic visual support to develop vocabulary, structures, and build background knowledge needed to comprehend increasingly-challenging language;

(M) use verbal cueing strategies such as pauses and exaggerated intonation for key words and non-verbal cueing strategies such as facial expressions and gestures to enhance the reading experience; and

(N) retell, role-play, and/or visually illustrate the order of events.

(31) Second language acquisition/writing. The ESOL student writes in a variety of forms with increasing accuracy to effectively address a specific purpose and audience in language arts and all content areas. The following expectations apply to the second language learner at his/her level of proficiency in English. Students are expected to:

(A) learn relationships between sounds and letters of the English language to represent sounds when writing in English;

(B) write using newly acquired basic vocabulary and content-based grade-level vocabulary;

(C) spell familiar English words with increasing accuracy and employ English spelling patterns and rules with increasing accuracy as more English is acquired;

(D) edit writing for standard grammar and usage, including subject-verb agreement, pronoun agreement, and appropriate verb tenses commensurate with grade-level expectations as more English is acquired;

(E) employ increasingly complex grammatical structures in content area writing commensurate with grade-level expectations such as:

(i) using correct verbs, tenses, auxiliaries, and pronouns/antecedents;

(ii) using nominative, objective, and possessive case (apostrophe *s*) correctly;

(iii) demonstrating knowledge of parts of speech;
and

(iv) using negatives and contractions correctly;

(F) write using a variety of grade-appropriate sentence lengths, patterns, and connecting words to combine phrases, clauses, and sentences in increasingly accurate ways as more English is acquired;

(G) narrate, describe, and explain with increasing specificity and detail to fulfill content area writing needs as more English is acquired;

(H) use basic capitalization and punctuation correctly such as capitalizing names and first letters in sentences and using periods, question marks, and exclamation points;

(I) use graphic organizers as pre-writing activity to demonstrate prior knowledge, to add new information, and to prepare to write;

(J) write with more proficient use of orthographic patterns such as digraphs and consonant blends with the initial s- and

rules such as "qu" together, consonant doubling, dropping final "e," and changing "y" to "i"; and

(K) develop drafts by categorizing ideas, organizing them into sentences and paragraphs, and blending paragraphs within larger units of text.

(32) Second language acquisition/viewing and representing. The ESOL student understands, interprets, analyzes, critiques, and produces a variety of visual representations with increasing effectiveness in language arts and all content areas. The following expectations apply to the second language learner at his/her level of proficiency in English. Students are expected to:

(A) describe how illustrations support written texts or tell a story;

(B) tell important events and ideas gleaned from video segments, graphic art, or technology presentations;

(C) respond to media such as film, print, and technological presentations by explaining likes, dislikes, and supporting opinions with examples;

(D) distinguish the purposes of various media forms such as information, entertainment, and persuasion;

(E) produce visuals for his/her own messages, stories, and other kinds of communication;

(F) explore and describe how color, shape, and line influence the message; and

(G) produce communications using technology or appropriate media.

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

The provisions of §128.42 and §128.43 of this subchapter shall be superseded by §128.31 and §128.32 of this subchapter beginning with the 2009-2010 school year [implemented by school districts September 1, 1998, and at that time, shall supersede §75.61(tt) of this title (relating to English as a Second Language)].

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 August 4, 2008.

TRD-200804028

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Earliest possible date of adoption: September 14, 2008

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



19 TAC §§128.44 - 128.66

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

The repeals are proposed under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to by rule identify the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating text-

books and addressed on the assessment instruments; §28.025, which authorizes the SBOE to by rule determine curriculum requirements for the minimum, recommended, and advanced high school programs that are consistent with the required curriculum under §28.002; and §28.005 and §29.051, which establishes bilingual education and special language programs in the public schools to ensure students' reasonable proficiency in the English language and ability to achieve academic success.

The repeals implement the Texas Education Code, §§7.102(c)(4), 28.002, 28.005, 28.025, and 29.051.

- §128.44. *English III (One Credit).*
- §128.45. *English IV (One Credit).*
- §128.46. *Independent Study in English (One-Half to One Credit).*
- §128.47. *Reading I, II, III (One-Half to Three Credits).*
- §128.48. *Reading Application and Study Skills (One-Half Credit).*
- §128.49. *Analysis of Visual Media (One-Half Credit).*
- §128.50. *Media Literacy-Speech (One Credit).*
- §128.51. *Literary Genres (One-Half to One Credit).*
- §128.52. *Creative and Imaginative Writing (One-Half to One Credit).*
- §128.53. *Research and Technical Writing (One-Half to One Credit).*
- §128.54. *Practical Writing Skills (One-Half to One Credit).*
- §128.55. *Humanities (One Credit).*
- §128.56. *Speech Communication (One Credit).*
- §128.57. *Public Speaking I, II, III (One-Half to One Credit).*
- §128.58. *Communication Applications (One-Half Credit).*
- §128.59. *Oral Interpretation I, II, III (One to Three Credits).*
- §128.60. *Debate I, II, III (One to Three Credits).*
- §128.61. *Independent Study in Speech (One-Half to One Credit).*
- §128.62. *Journalism (One-Half to One Credit).*
- §128.63. *Independent Study in Journalism (One-Half to One Credit).*
- §128.64. *Advanced Broadcast Journalism I, II, III (One-Half Credit to One Credit).*
- §128.65. *Photojournalism (One-Half to One Credit).*
- §128.66. *Advanced Journalism: Yearbook I, II, III/Newspaper I, II, III/Literary Magazine (One-Half to One Credit).*

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

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 21. TRADE PRACTICES

SUBCHAPTER B. INSURANCE

ADVERTISING, CERTAIN TRADE PRACTICES, AND SOLICITATION

28 TAC §21.103, §21.114

The Texas Department of Insurance proposes amendments to §21.103(c)(5) and §21.114(7)(C), relating to required form and content of insurance advertisements and rules pertaining specifically to life insurance and annuity advertising. The proposed amendments are necessary to correct clerical errors contained in Commissioner's Order No. 07-1050 entered and dated November 20, 2007, and published in the November 30, 2007, edition of the *Texas Register* (32 TexReg 8830), effective December 9, 2007.

Amendment to §21.103(c)(5). It is necessary to amend §21.103(c)(5) because it contains an erroneous internal reference. Section 21.103 specifies certain required form and content of advertisements that insurers are allowed to use in Texas to advertise their insurance products to Texas consumers. Commissioner's Order No. 07-1050 adopted an amendment to §21.103(c) to implement the provision of HB 2251, 80th Legislature, Regular Session, effective September 1, 2007, codified as Insurance Code §541.082(c). Section 541.082(c) allows the Commissioner of Insurance to permit specified disclosures required in Internet advertising to be made through links to web pages containing the required disclosures. The adopted amendment was also necessary to require that such a link be clearly labeled and conspicuously placed near the relevant information to which it relates. The adopted amendment further identifies certain specific disclosures in new §21.103(c)(1) - (5) which may be satisfied through such links. In Commissioner's Order No. 07-1050, §21.103(c)(5) refers to "§21.114 (3)(A) of this subchapter (relating to Rules Pertaining Specifically to Life Insurance and Annuity Advertising)." This reference to §21.114(3)(A) is intended to be a reference to the "identification of policy disclosure" that requires the form number or numbers of a policy advertised to be clearly identified in an invitation to contract. Instead, §21.114(3)(A) refers to advertising requirements for the description of premiums and costs paid for individual insurance and annuities. The correct reference is §21.114(1)(A). Therefore, it is necessary to amend §21.103(c)(5) to reference §21.114(1)(A), the proper reference to the identification of the policy form number disclosure.

Amendment to §21.114(7)(C). It is necessary to amend §21.114(7)(C) to include subclause (i) and (ii) because both clauses were in the existing text prior to the adoption of amendments to §21.114 in Commissioner's Order No. 07-1050 but were inadvertently omitted from the adoption order. Section 21.114(7)(C) specifies that an advertisement by an insurer may not state or imply an offer of a policy is an introductory, initial, special, or limited offer and that applicants will receive advantages by accepting the offer or that such advantages will not be available at a later date unless it is a fact. Additionally, the provision specifies that an advertisement may not contain phrases describing an enrollment period as "special" or "limited" if the insurer uses such enrollment periods as the usual method of advertising. In Commissioner's Order No. 07-1050, the only amendment to §21.114(9)(C) (relating to Deception as to introductory, initial, or special offers) that was intended to be adopted was the re-designation of §21.114(9)(C) to §21.114(7)(C). However, in Commissioner's Order No. 07-1050, in addition to §21.114(9)(C) being re-designated as §21.114(7)(C), subclauses (i) and (ii) were inadvertently omitted. It was not the intent of the Commissioner to delete these subclauses. There were no proposed amendments to delete these subclauses in the notice of the proposed rule published in the September 28, 2007 issue of the Texas Register (32 TexReg 6730). Commissioner's Order No. 07-1050 also does not contain any explanation or mention of the Commissioner's intent to make such deletions. This proposal amends existing §21.114(7)(C) to restore the omitted subclauses into §21.114(7)(C) consistent with the intent of the Commissioner.

FISCAL NOTE. Audrey Selden, Senior Associate Commissioner for the Consumer Protection Division, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no fiscal impact to state government as a result of the enforcement or administration of the proposal. There will be no measurable effect on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT/COST NOTE. Ms. Selden also has determined that for each year of the first five years that the proposed amendments are in effect, the public benefit anticipated as a result of the proposed amendments will be a correct internal reference in §21.103(c)(5) that will result in easier use and readability of the rule and the restoration of inadvertently omitted text in §21.114(7)(C)(i) and (ii) that will result in a rule consistent with the intent of the proposal that is adopted in Commissioner's Order No. 07-1050. Because the sole purpose of the proposal is to correct clerical errors, there will be no economic cost to any individuals, insurers, or other Department regulated entities, regardless of size, as a result of the proposed amendments.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. In accordance with the Government Code §2006.002(c), the Department has determined that the proposed amendments will not have an adverse economic effect on small businesses or micro businesses. This is because the sole purpose of the proposal is to correct clerical errors. The proposal simply corrects an inadvertent incorrect internal reference and corrects an inadvertent omission of text and does not impose any new requirements or costs with which small or micro businesses must comply. Therefore, in accordance with the Government Code §2006.002(c), the Department is not required to prepare a regulatory flexibility analysis.

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

REQUEST FOR PUBLIC COMMENT. To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on September 15, 2008 to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment must be simultaneously submitted to Jack Evins, Director of the Advertising Unit, Consumer Protection Division, Mail Code 111-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any request for a public hearing must be submitted separately to the Office of 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.

STATUTORY AUTHORITY. The amendments are proposed pursuant to §36.001 of the Insurance Code which authorizes the Commissioner of Insurance to 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 STATUTE. The following statutes are affected by this proposal: Insurance Code §36.001.

§21.103. Required Form and Content of Advertisements.

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

(c) All information required to be disclosed by these sections will be set out conspicuously and in close conjunction with the statements to which the information relates or with appropriate captions of such prominence that required information is not minimized, rendered obscure, or presented in an ambiguous fashion, or intermingled with the context of the advertisement so as to be confusing or misleading. Regarding Internet advertising, the disclosures required by the sections referenced in paragraphs (1) - (5) of this subsection may be provided through a conspicuous and clearly labeled link, provided that the link must be placed near the relevant information to which it relates, and must connect directly to the information necessary to comply with the applicable requirements:

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

(5) §21.114(1)(A) [~~§21.114(3)(A)~~] of this subchapter (relating to Rules Pertaining Specifically to Life Insurance and Annuity Advertising).

(d) (No change.)

§21.114. Rules Pertaining Specifically to Life Insurance and Annuity Advertising.

As can be made applicable and as necessary the same or similar test or standard as is stated hereafter within paragraph (1)(B) of this section is to be used as the standard in the interpretation of the provisions of this section.

(1) - (6) (No change.)

(7) Deception as to introductory, initial, or special offers.

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

(C) An advertisement by an insurer may not state or imply, that a policy or combination of policies is an introductory, initial,

special, or limited offer and that applicants will receive advantages by accepting the offer or that such advantages will not be available at a later date unless such is the fact. An advertisement may not contain phrases describing an enrollment period as "special," "limited," or similar words or phrases if the insurer uses such enrollment periods as the usual method of advertising insurance.

(i) An enrollment period during which "a particular insurance product" may be purchased on an individual basis may not be offered within this state unless there has been a lapse of not less than three months between the close of the immediately preceding enrollment period for the same or substantially the same product and the opening of the new enrollment period. The advertisement shall indicate the date by which the applicant must mail the application which may not be less than 10 days and not more than 40 days from the date that such enrollment period is advertised for the first time. This section applies to all advertising media: i.e., mail, newspaper, radio, television, magazine, and periodicals. It is inapplicable to solicitation of employees or members of a particular group or association which otherwise would be eligible under specific provisions of the Insurance Code for group, blanket, or franchise insurance. This section applies to all affiliated companies under common management or control. The phrase "a particular insurance product" as used herein is an insurance policy that provides substantially different benefits than those contained in any other policy. Different terms of renewability, an increase or decrease in the dollar amounts of benefits, or an increase or decrease in any elimination period or waiting period from those available during an enrollment period for another policy are not sufficient to constitute the product being offered as a different product eligible for concurrent or overlapping enrollment periods.

(ii) There may not be a statement or implication to the effect that only a specific number of policies will be sold, or that a time is fixed for the discontinuance of the sale of the particular policy advertised because of special advantages available in the policy.

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-200803937

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

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For further information, please call: (512) 463-6327



PART 6. OFFICE OF INJURED EMPLOYEE COUNSEL

CHAPTER 276. GENERAL ADMINISTRATION

The Office of Injured Employee Counsel (OIEC) proposes amendments to §276.2 concerning OIEC's mission and §276.10 to OIEC's Ombudsman Program and Continuing Education. The proposed amendments to §276.2 are necessary to provide clarity to OIEC's statutory mission. The proposed amendments to §276.10 are necessary to implement Texas Labor Code §404.151 and §404.152 which is necessary to more closely align the Ombudsman Program to the agency's enabling statute, Chapter 404 of the Texas Labor Code.

Proposed amendments to §276.2 are needed to establish and clarify OIEC's statutory mission to assist, educate, and advocate for injured employees in the workers' compensation system. This section is necessary to clarify OIEC's statutory obligation to the injured employees of Texas and to other workers' compensation system participants.

Proposed amendments to §276.10 are needed to encompass the additional resources that OIEC was given as a result of the 80th Texas Legislature, Regular Session, 2007.

Mr. Brian White, Deputy Public Counsel, has determined that for each year of the first five years the amended sections shall be in effect, there shall be no fiscal impact to state and local governments as a result of the enforcement or administration of the rules. There shall be no measurable effect on local employment or the local economy as a result of these proposed amendments.

Mr. White has determined that for each year of the first five years amended §276.2 are in effect, the public benefits anticipated as a result of the proposed sections shall be clear understanding of OIEC's statutory mission to more accurately align itself with the agency's enabling statute (Chapter 404 of the Texas Labor Code) and to more clearly delineate the agency's mission to assist, educate, advocate on behalf of injured employees of Texas. Although OIEC continues to build relationships with and seeks feedback from other workers' compensation stakeholders, the agency's mission was redefined to emphasize representation of interests of injured employees over the goal of creating a balanced system, which is more properly a goal of the regulatory agency. OIEC believes that an agency that clearly serves as a voice for injured employees in the workers' compensation system results in a more balanced system that serves Texans and is subject to Texas Department of Insurance (TDI) regulation.

Mr. White has also determined that for each year of the first five years amended §276.10 are in effect the public benefits anticipated as a result of the proposed sections shall be a more comprehensive Ombudsman education and training program. Injured employees shall benefit from an Ombudsman Program where Ombudsmen provide assistance to injured employees in both informal and formal workers' compensation proceedings. Both injured employees and Ombudsmen will benefit from the existence of Regional Staff Attorneys who will provide legal research and advice to Ombudsmen assisting injured employees as required by §404.103(b) of the Texas Labor Code.

It is anticipated that all system participants will benefit from a workers' compensation system where unrepresented injured employees receive a higher level of assistance in benefit review conferences and contested case hearings. An increased level of Ombudsmen education and training is likely to result in a workers' compensation system that provides increased access to assistance, narrows the information disparity in proceedings where an injured employee's right to benefits is at stake, and provides additional information and education on the injured employee's rights and responsibilities in the workers' compensation system. Further, an increased Ombudsmen education and training program is anticipated to provide Ombudsmen with a skill set and resources to provide a more efficient level of assistance for Texas' injured employees.

The proposed sections provide consistency with Chapter 404 of the Texas Labor Code and clarify that OIEC is the State agency that offers Ombudsman assistance to unrepresented injured employees in the Texas Workers' Compensation System. The probable economic cost to persons required to comply with

the sections shall be OIEC's costs of obtaining and renewing an Ombudsman's adjuster's license. OIEC's cost to obtain an adjuster's license from the Texas Department of Insurance for an Ombudsman is \$50 with an additional \$50 biennial cost to maintain the adjuster's license. However, the requirement for Ombudsman to obtain an adjuster's license is not a new requirement and poses no new costs. There are no additional costs as a result of the proposed repeal, new, or amended sections.

Further, any additional economic costs either exist under current rules or result from the enactment of HB 7 and are not a result of the adoption, enforcement, or administration of the proposed sections. Based upon the cost of labor per hour, there is no disproportionate economic impact on small or micro businesses. Even if the proposed sections would have an adverse effect on small or micro businesses, it is neither legal nor feasible to waive the provisions of the proposed sections for small or micro businesses because the Texas Labor Code requires equal application of these provisions to all affected individuals. However, it has been determined that approximately 163 small business carriers will not have an adverse economic impact. The number of small business carriers comes from the Texas Workforce Commission data for the second quarter 2007.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on September 13, 2008 to Brian White, Deputy Public Counsel, Office of Injured Employee Counsel, Mail Code 50, 7551 Metro Center Drive, Austin, Texas 78744. A request for a public hearing should be submitted separately to the Deputy Public Counsel.

SUBCHAPTER A. GENERAL PROVISIONS

28 TAC §276.2

The amended sections are proposed pursuant to Texas Labor Code §§404.151, 404.152, 404.154, 404.006, 404.103 and 404.105. Section 404.151 requires OIEC to maintain Ombudsman program. Section 404.152 explains the designation of Ombudsman; eligibility, training, and continuing education. Section 404.154 provides that OIEC shall widely disseminate information about the Ombudsman program. Section 404.006 provides that the public counsel shall adopt rules as necessary to implement Chapter 404 of the Texas Labor Code. Section 404.103 provides for the operation of the Ombudsman Program. Section 404.105 provides the authority to assist individual injured employees in administrative procedures. The following sections are affected by this proposal: Texas Labor Code §§404.151; 404.152; 404.154; 404.103; 404.105; and 404.006.

§276.2. *The Mission of the Office of Injured Employee Counsel.*

(a) The Office of Injured Employee Counsel (OIEC) is a State [state] agency with a mission to assist, educate, and advocate on behalf of injured employees of Texas.[-

~~{(1) educate and assist injured employees and advocate for them as a class in order to protect the rights of all injured employees in Texas; and}~~

~~{(2) to provide quality services and assistance to guide injured employees through the workers' compensation system.}~~

(b) OIEC offers injured employees educational materials, assistance in the workers' compensation administrative dispute resolution process, customer service, and provides referrals to appropriate local, State [state], and federal agencies. On behalf of the injured employees of Texas, OIEC shall:

(1) provide assistance to injured employees in the workers' compensation system;

(2) act as an advocate on behalf of injured employees as a class in the Texas Department of Insurance and the Division of Workers' Compensation rulemaking processes;

(3) assist injured employees with contacting appropriate licensing boards to file complaints;

(4) assist injured employees with referrals to local, state, and federal financial assistance, rehabilitation, work placement programs, and other appropriate social services;

(5) monitor the performance and operation of the workers' compensation system with a focus on the system's effect on the return to work of injured employees;

(6) assist injured employees, through the Ombudsman program, with:

(A) the workers' compensation administrative dispute resolution system; and

(B) the resolution of complaints pending at the Texas Department of Insurance.

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 July 29, 2008.

TRD-200803946

Brian M. White

Deputy Public Counsel

Office of Injured Employee Counsel

Earliest possible date of adoption: September 14, 2008

For further information, please call: (512) 804-4182



SUBCHAPTER B. OMBUDSMAN PROGRAM

28 TAC §276.10

The amended sections are proposed pursuant to Texas Labor Code §§404.151, 404.152, 404.154, 404.006, 404.103 and 404.105. Section 404.151 requires OIEC to maintain Ombudsman program. Section 404.152 explains the designation of Ombudsman; eligibility, training, and continuing education. Section 404.154 provides that OIEC shall widely disseminate information about the Ombudsman program. Section 404.006 provides that the public counsel shall adopt rules as necessary to implement Chapter 404 of the Texas Labor Code. Section 404.103 provides for the operation of the Ombudsman Program. Section 404.105 provides the authority to assist individual injured employees in administrative procedures. The following sections are affected by this proposal: Texas Labor Code §§404.151; 404.152; 404.154; 404.103; 404.105; and 404.006.

§276.10. *Ombudsmen Training [~~Program~~] and Continuing Education.*

(a) Definitions. The following words and phrases shall have the following meaning in this section unless the context clearly indicates otherwise:

(1) Adjuster's license: A workers' compensation license issued by the Texas Department of Insurance.

(2) Continuing education: A formal training program required for all ombudsmen in this state that includes continuing education for obtaining and retaining an adjuster's license.

(3) Ombudsmen education and training program: The training required by the Office of Injured Employee Counsel (OIEC) to serve as an ombudsman, which results in certification upon completion.

(b) Purpose. OIEC shall establish and maintain the ombudsmen education and training program to ensure consistent, quality, and thorough training of ombudsmen staff. The ombudsmen education and training program applies to every ombudsman, regardless of hire date. The ombudsmen education and training program shall include, but is not limited to:

(1) formal classroom training conducted by OIEC staff;

(2) on-the-job training monitored by a supervising ombudsman, senior ombudsman, and regional staff attorneys;

(3) observations of ombudsmen by supervising ombudsman, senior ombudsman, and regional staff attorneys;

(4) professional skill development and legal education on workers' compensation laws, rules, advisories, and appeals panel decisions by the regional attorneys; ~~and~~

(5) resource meetings with OIEC's central staff to discuss current and pending issues instrumental to providing assistance to injured employees in informal and formal proceedings; ~~and~~[-]

(6) practical skills training and legal assistance provided by the regional staff attorneys.

(c) OIEC staff's responsibilities regarding education and training. OIEC staff shall maintain the knowledge and skills needed to properly assist unrepresented injured employees in the workers' compensation system.

(1) Ombudsman Services [~~Injured Employee Services~~] is the division within OIEC that is responsible for the overall management of the ombudsmen education and training program. Ombudsman [~~Injured Employee~~] Services' responsibilities include, but are not limited to:

(A) educating ombudsmen about the workers' compensation laws, rules, advisories, appeals panel decisions, dispute resolution, OIEC policies and procedures, and application of such information to specific cases or factual situations;

(B) selecting team lead supervisors, training ombudsmen, and senior ombudsmen to observe, supervise, train, and provide feedback to ombudsmen on a daily basis;

(C) notifying regional staff attorneys if guidance, instruction, or legal research on technical areas is needed;

(D) establishing on-going training schedules for ombudsmen and evaluating the performance of ombudsmen's progress through the education and training program;

(E) maintaining documentation to monitor the effectiveness of the ombudsman program and coordinating with OIEC's Legal Services division to develop education and training materials to address systematic issues to enhance ombudsmen's effectiveness;

(F) examining the proficiency and competency of each ombudsman by conducting technical observations and identifying areas for professional improvement;

(G) providing targeted training to individual ombudsman for professional development and incorporating the technical observations and evaluations into the performance evaluation process;

(H) providing continuing education and training, at least annually, to ombudsmen on workers' compensation laws, rules, advisories, appeals panel decisions, dispute resolution, OIEC policies and procedures; and

(I) assigning a staff attorney to each ombudsman who will advise the ombudsman on providing assistance to injured employees and preparing for informal and formal proceedings.

(2) An ombudsman's responsibilities shall include, but is not limited to:

(A) obtaining and maintaining a valid workers' compensation adjusters' license issued by the Texas Department of Insurance and submitting a copy of the license to OIEC's central office;

(B) completing the ombudsmen education and training program;

(C) participating in OIEC conferences;

(D) completing all continuing education requirements;

(E) maintaining the technical and professional skills to perform all the duties of an ombudsman; and

(F) assisting and serving as an advocate for injured employees throughout the workers' compensation system.

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

Filed with the Office of the Secretary of State on July 29, 2008.

TRD-200803947

Brian M. White

Deputy Public Counsel

Office of Injured Employee Counsel

Earliest possible date of adoption: September 14, 2008

For further information, please call: (512) 804-4182



TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 1. CENTRAL ADMINISTRATION

SUBCHAPTER A. PRACTICE AND PROCEDURES

DIVISION 2. LEGAL SERVICES BOND DIVISION

34 TAC §1.53, §1.57

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

The Comptroller of Public Accounts proposes the repeal of §1.53, concerning bonds of school districts and junior colleges, and §1.57, concerning expenses incurred during registration

outside of Austin. These sections are being repealed to reflect changes in practice. The proposed repeals are a result of a rules review of Texas Administrative Code, Title 34, Part 1, Chapter 1, Subchapter A, Division 2, conducted by the comptroller. The rules review was performed under Government Code, §2001.039, and concluded that the reasons for adopting the rules no longer exist.

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 proposed repeal would benefit the public by removing obsolete references from the comptroller's administrative rules relating to the registration of public securities. The proposed amendment would have no significant fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the repeals may be submitted to Tom Smelker, Director, Treasury Division, Rusk Building, 208 East 10th Street, Austin, Texas 78701-2407.

The repeals are proposed under Government Code, §1203.026 and §2001.039. Government Code, §1203.026, provides the comptroller with the authority to adopt rules for the registration of public securities. Government Code, §2001.039, authorizes a state agency to repeal rules that are no longer necessary as a result of a rule review performed under that section.

The repeals implement Government Code, §2001.039.

§1.53. Bonds of School Districts and Junior Colleges.

§1.57. Expenses Incurred During Registration Outside of Austin.

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 July 31, 2008.

TRD-200803996

Martin Cherry

General Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: September 14, 2008

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



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 3. TEXAS YOUTH COMMISSION

CHAPTER 93. YOUTH RIGHTS AND REMEDIES

37 TAC §93.37

The Texas Youth Commission (TYC) proposes new §93.37, concerning Alleged Sexual Abuse. The new section establishes TYC's zero-tolerance policy toward any type of sexual abuse of youth under TYC custody. The new section also establishes standards for reporting and investigating alleged sexual abuse,

as well as provisions for screening, medical and mental health treatment, and housing assignments.

Robin McKeever, Chief Financial Officer, has determined that for the first five-year period the new section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the new section.

Leticia Peña-Martinez, Deputy Commissioner for Planning and Policy, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the protection of youth against any form of sexual abuse, as well as compliance with SB 103 (80th Legislature), which requires TYC to adopt a no-tolerance policy toward sexual abuse. There will be no effect on small businesses or micro-businesses. There is no anticipated economic cost to persons who are required to comply with the new section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted within 30 days of the publication of this notice to DeAnna Lloyd, Manager of Policy and Accreditation, Texas Youth Commission, P.O. Box 4260, Austin, Texas 78765, or email to deanna.lloyd@tyc.state.tx.us.

The new section is proposed under the Human Resources Code, §61.055, which requires the commission to adopt a zero-tolerance policy concerning the detection, prevention, and punishment of the sexual abuse, including consensual sexual contact, of children in the custody of the commission.

The proposed rule implements the Human Resources Code, §61.034.

§93.37. Alleged Sexual Abuse.

(a) Purpose. The Texas Youth Commission (TYC) has zero tolerance for any form of sexual abuse of youth under TYC jurisdiction. This rule establishes prohibited conduct and behaviors that are broader than those established by statute as violations of law. This rule sets forth standards for reporting and investigating alleged sexual abuse of TYC youth. This rule also addresses screening and housing placement procedures for youth who may be potential victims or perpetrators of sexual abuse.

(b) Applicability. This rule applies to TYC-operated and contract care residential facilities.

(c) Additional References.

(1) For reporting obligations and investigation procedures, see §93.33 of this title (relating to Alleged Abuse, Neglect, and Exploitation).

(2) For procedures regarding appeals to the chief executive officer, see §93.53 of this title (relating to Appeal to Executive Director).

(3) For procedures regarding youth orientation, see §91.15 of this title (relating to Youth Mail).

(4) For procedures regarding preservation of evidence, see §97.11 of this title (relating to Control of Unauthorized Items Seized).

(5) For youth grievance procedures, see §93.31 of this title (relating to Youth Grievance System).

(6) For restrictions on cross-gender searches, see §97.9 of this title (relating to Youth Search).

(7) For referrals to criminal court, see §95.5 of this title (relating to Referral to Criminal Court).

(8) For procedures regarding investigations of youth death, see §99.51 of this title (relating to Death of a Youth).

(9) For procedures regarding administrative disciplinary sanctions for employees, volunteers, and contract personnel, see TYC's personnel policy manual.

(d) Definitions. Sexual Abuse--Includes sexually abusive contact, sexually abusive penetration, indecent exposure, voyeurism, and sexual harassment, as defined below.

(1) Sexually Abusive Contact--touching without penetration of the genitalia, anus, groin, breast, inner thigh, or buttocks, either directly or through clothing, of another person.

(2) Sexually Abusive Penetration--contact between the penis and vagina or the penis and anus; contact between the mouth and the penis, vagina, or anus; or penetration of the anal or genital opening of another person by hand, finger, or other object.

(3) Indecent Exposure--the display by a staff member of his/her genitalia, buttocks, or breast in the presence of a youth.

(4) Voyeurism--an invasion of a youth's privacy by a staff member unrelated to official duties, such as peering at a youth who is showering or undressing in his or her cell or requiring a youth to expose him or herself for reasons unrelated to official duties.

(5) Sexual Harassment--repeated verbal statements, comments, or behaviors of a sexual nature to a youth by any individual including threats, extortion, bribery, demeaning references to gender, derogatory comments about body or clothing, or profane or obscene language, gestures, or written comments.

(e) General Provisions.

(1) It is the policy of TYC to ensure that any form of sexual activity between youth or between youth and staff/volunteers/contract employees, regardless of consensual status, is strictly prohibited. Such conduct is subject to administrative disciplinary sanctions and may result in criminal prosecution.

(2) Youth under TYC jurisdiction whose placement is in a TYC-operated residential facility or contracted residential program cannot give consent to engage in behavior defined as sexual abuse under this policy, regardless of the youth's age.

(3) Retaliation against any youth or employee who reports or assists in the investigation of alleged sexual abuse is strictly prohibited and is grounds for disciplinary action up to and including termination of employment.

(4) The facility administrator is the person responsible for the implementation and enforcement of this rule.

(f) Reporting of Sexual Abuse.

(1) Any TYC employee, volunteer, or contractor who has cause to believe that a youth in any program or facility under TYC jurisdiction has been or may be subjected to an act or threat of sexual abuse or receives a report of sexual abuse or possible sexual abuse, whether verbally or in writing, must immediately notify the proper authorities in accordance with agency policy and state law.

(2) Any youth or person advocating on behalf of a youth may report an act or threat of sexual abuse to:

(A) the TYC Office of Inspector General 24-hour Incident Reporting Center (hotline);

(B) any TYC staff member, volunteer, contract employee, or any other individual who can report the incident; or

(C) any law enforcement agency.

(g) Actions of the Facility Administrator Regarding a Report of Alleged Sexual Abuse. The facility administrator, in consultation with the appropriate law enforcement agency, will take the following actions immediately upon receipt of the report:

(1) notify the victim's parents or guardian of the report;

(2) take immediate steps to protect the victim by ensuring that the alleged victim and alleged perpetrator are physically separated pending an investigation, which may include, but is not limited to:

(A) dorm transfer or other placement within the facility;

or

(B) administrative transfer to another facility or program; and

(3) preserve evidence that may be pertinent to an investigation of the matter.

(h) Standards of Care.

(1) Screening.

(A) Within 24 hours after each of the following events, each youth will be screened for potential vulnerability to be sexually abused or tendencies of acting out with sexually aggressive behavior or the likelihood of sexually abusing others:

(i) admission to TYC; and

(ii) transfer to another TYC-operated or contract care residential facility.

(B) Youth identified as high risk for sexual victimization are monitored and counseled.

(C) Youth identified as high risk with a history of sexually abusive behavior are monitored, counseled, and provided appropriate treatment.

(2) Placement.

(A) When a youth is identified as being at risk for sexual abuse at his/her current dorm or room assignment, the screening staff will request that the facility administrator move the youth to an alternate placement within the facility.

(B) If an alternative placement cannot be arranged due to lack of available beds, the facility administrator will develop a written plan of action that provides a safe and secure environment for the victim and ensure the plan is implemented.

(C) Upon facility transfer, the receiving staff will review any previous screening regarding sexually abusive behavior or sexual victimization and make a recommendation for placement and mental health services if needed.

(D) In cases of youth-on-youth sexual abuse, the alleged perpetrator will be separated from the alleged victim pending the outcome of the investigation.

(3) Medical Services.

(A) When referred by the TYC Office of Inspector General or local law enforcement, a victim of sexually abusive penetration will be transported immediately to a hospital, clinic, emergency room, or infirmary which can provide for medical examination by a Sexual Assault Nurse Examiner (SANE) or equally qualified medical personnel.

(B) A victim of any type of sexual abuse will:

(i) receive a mental health assessment as soon as possible;
(ii) receive a medical assessment as soon as possible;
(iii) be provided protective housing as needed;
(iv) be provided emergency counseling to include independent certified rape crisis counseling, if desired by the victim.

(4) Mental Health Services.

(A) If a mental health provider (MHP), as defined in §91.87 of this title (relating to Suicide Alert Explanation of Terms), determines that a youth needs mental health services, the MHP must notify the appropriate staff of his/her recommendation.

(B) Upon notification of the MHP's recommendation for continued mental health services, the appropriate staff will implement the recommendation(s) and document accordingly.

(i) Standards for Investigations. An investigation is conducted and documented in accordance with §93.33 of this title and/or TYC Office of Inspector General criminal investigation procedures whenever sexual abuse is alleged, is threatened, or occurs.

(j) Prevention Procedures.

(1) Upon admission to TYC or when a youth's residential placement changes, the youth shall be provided with information regarding sexual abuse including prevention/intervention, self-protection, reporting, medical treatment, and mental health counseling. During orientation, the sexual abuse information shall be communicated, verbally and in writing, in a language clearly understood by the youth.

(2) To prevent sexual abuse and provide a safe and secure environment, each TYC-operated or contracted residential facility will provide the highest level of supervision of youth to prevent sexual abuse through:

(A) a staff to youth ratio as required under applicable statute or contract provisions;

(B) surveillance equipment to aid staff in detecting inappropriate behavior; and

(C) a structural facility design that allows visual supervision of youth in areas such as shower and restroom areas, dormitories, education buildings, recreational areas, etc.

(k) Annual Audit and Certification.

(1) TYC's executive commissioner or designee will annually assess safety and compliance and develop action plans to achieve full compliance with PREA standards. The approved internal assessment will be posted for publication on the agency website and provided to appropriate legislative oversight committees.

(2) TYC's executive commissioner will certify that the agency is in full compliance or has established an action plan to enable full compliance with the Prison Rape Elimination Act standards based on the results from annual audits conducted by an independent auditor.

(l) Annual Reporting. The agency will participate in the annual surveys and any other ad hoc investigations conducted by the Bureau of Justice Statistics or its contractors/designees.

(m) Record Keeping. All case records associated with claims of sexual abuse, including incident reports, investigative reports, youth information, case disposition, medical and counseling evaluation findings, and recommendation for post-release treatment and/or counseling

will be retained in accordance with the agency's record retention schedule.

(n) Training Requirements. All staff will receive annual training regarding the prevention and identification of sexual abuse.

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 August 4, 2008.

TRD-200804022

Richard Nedelkoff

Conservator

Texas Youth Commission

Earliest possible date of adoption: September 14, 2008

For further information, please call: (512) 424-6475



PART 5. TEXAS BOARD OF PARDONS AND PAROLES

CHAPTER 141. GENERAL PROVISIONS SUBCHAPTER C. SUBMISSION AND PRESENTATION OF INFORMATION AND REPRESENTATION OF OFFENDERS

37 TAC §141.60

The Texas Board of Pardons and Paroles proposes an amendment to 37 TAC §141.60 concerning the submission and presentation of information to the parole panel. The purpose of the amendment is to clarify the review period for offenders who are eligible for parole review.

Rissie Owens, Chair of the Board, determined that for each year of the first five-year period the proposed amendments are in effect, no fiscal implications exist for state or local government as a result of enforcing or administering this section.

Ms. Owens also has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amendments will be to provide a method for submission and presentation of information and representation of offenders. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended rule as proposed. No regulatory flexibility analysis required by HB 3430 is necessary.

Comments should be directed to Bettie Wells, General Counsel, Texas Board of Pardons and Paroles, 209 W. 14th Street, Suite 500, Austin, TX 78701, or by e-mail to bettie.wells@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposal.

The amended rule is proposed under §508.082 and §508.083, Government Code. Section 508.082 requires the board to adopt rules relating to the submission and presentation of information and arguments to the board, a parole panel, and the department for and in behalf of an inmate. Section 508.083 relates to representation of an inmate in a matter before the board or a parole panel.

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

§141.60. Submission and Presentation of Information.

(a) Unless otherwise provided, information and arguments in support of an offender shall be in writing.

(b) Unless otherwise provided, all information and arguments in support of an offender's release shall be submitted to the Review and Release Processing Section-TDCJ, Austin, Texas.

(c) In the event that an offender's case is in the review period, copies of all information and arguments in support of an offender's release may be submitted to members of the parole panel designated to consider the case. For this purpose, review period shall mean a period greater than two [~~four~~] months but less than six months prior to the month of the next scheduled review.

(d) For the purpose of Discretionary Mandatory Review, the review period shall mean a period greater than thirty days but less than seventy-five days prior to the projected release date.

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 August 4, 2008.

TRD-200804032

Bettie Wells

General Counsel

Texas Board of Pardons and Paroles

Earliest possible date of adoption: September 14, 2008

For further information, please call: (512) 406-5388



**CHAPTER 143. EXECUTIVE CLEMENCY
SUBCHAPTER A. FULL PARDON AND
RESTORATION OF RIGHTS OF CITIZENSHIP**

37 TAC §§143.4, 143.11, 143.12

The Texas Board of Pardons and Paroles proposes amendments to 37 TAC §§143.4, 143.11, and 143.12 concerning full pardon and restoration of rights of citizenship. The amendments to §143.4 and §143.11 are proposed to update the statutory references contained within the rules. Section 143.12 is proposed to revise the contact for proof of application.

Rissie Owens, Chair of the Board, determined that for each year of the first five-year period the proposed amendments are in effect, no fiscal implications exist for state or local government as a result of enforcing or administering this section.

Ms. Owens also has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amendments will be to provide a method of applying for a full pardon and restoration of rights of citizenship. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended rule as proposed. No regulatory flexibility analysis required by HB 3430 is necessary.

Comments should be directed to Bettie Wells, General Counsel, Texas Board of Pardons and Paroles, 209 W. 14th Street, Suite 500, Austin, TX 78701, or by e-mail to bettie.wells@tdcj.state.tx.us. Written comments from the general

public should be received within 30 days of the publication of this proposal.

The amended rules are proposed under Article IV, Section 11 of the Texas Constitution and Article 48.01, Code of Criminal Procedure, that vest the Board of Pardons and Paroles with the power to recommend clemency, including pardons, commutations of sentence, and reprieves; and under §508.036(b), Government Code, that provides the Board with authority to adopt rules relating to the decision-making processes used by the Board of Pardons and Paroles.

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

§143.4. Parolee Discharging Sentence.

Whenever any prisoner who has been paroled for an offense committed on or before August 28, 1977, has complied with the rules and conditions governing his parole until the end of the term to which he was sentenced, and without a revocation of his parole, the board may report such fact to the governor prior to the issuance of the final order of discharge. The board may, at this time, recommend to the governor a full pardon (Texas Constitution, Article IV, §11; §508.119, Government Code [Code of Criminal Procedure, Article 42.12, §24, 59th Legislature, Volume 2, Page 317, Chapter 722]).

§143.11. Request of Governor.

The board shall consider a recommendation for a full pardon or request for restoration of firearm rights in any case upon the request of the governor (§508.050, Government Code [Texas Code of Criminal Procedure, Article 42.18, §18]).

§143.12. Restoration of Firearm Rights.

The board will consider recommending restoration of the right to receive, possess, bear, and transport in commerce a firearm only in extreme and unusual circumstances which prevent the applicant from gaining a livelihood, and only if the applicant:

(1) provides either proof of clearance by a previously granted full pardon or a request for such express restoration in a pending application for a full pardon from jurisdiction(s) of the relevant conviction(s); and

(2) provides proof of application under the United States Code, Title 18, §925(c), for exemption, relief from disabilities to the attorney general [~~secretary of the treasury~~], and furnishes copies of all relevant applications and responses thereto by the attorney general [~~secretary~~] including any final actions by said attorney general [~~secretary~~].

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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Bettie Wells

General Counsel

Texas Board of Pardons and Paroles

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For further information, please call: (512) 406-5388



SUBCHAPTER B. CONDITIONAL PARDON

37 TAC §§143.21, 143.23, 143.24

The Texas Board of Pardons and Paroles proposes amendments to 37 TAC §§143.21, 143.23, and 143.24 concerning conditional pardons. The amendment to §143.21 is proposed to revise the board rule reference contained within the rule. Section 143.23 is proposed to remove the rule reference contained within the rule. Section 143.24 is proposed to update the statutory reference contained within the rule.

Rissie Owens, Chair of the Board, determined that for each year of the first five-year period the proposed amendments are in effect, no fiscal implications exist for state or local government as a result of enforcing or administering this section.

Ms. Owens also has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amendments will be to provide a method of applying for a conditional pardon. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended rule as proposed. No regulatory flexibility analysis required by HB 3430 is necessary.

Comments should be directed to Bettie Wells, General Counsel, Texas Board of Pardons and Paroles, 209 W. 14th Street, Suite 500, Austin, TX 78701, or by e-mail to bettie.wells@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposal.

The amended rules are proposed under Article IV, §11 of the Texas Constitution and Article 48.01, Code of Criminal Procedure, that vest the Board of Pardons and Paroles with the power to recommend clemency, including pardons, commutations of sentence, and reprieves; and under §508.036(b), Government Code, that provides the Board with authority to adopt rules relating to the decision-making processes used by the Board of Pardons and Paroles.

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

§143.21. Definition.

A conditional pardon is a form of executive clemency which, upon request, may be recommended by the board to the governor, except in cases of treason or impeachment, and if granted, serves to release the grantee from the conditions of his or her sentence and/or any disabilities imposed by law thereby, subject to the conditions contained in the clemency proclamation. A person released pursuant to the terms of a conditional pardon is considered for the purposes of revocation thereof to be an administrative releasee, §141.111 of this title (relating to Definitions), and all such revocation proceedings are governed by the sections for revocation of administrative release, §§146.3 - 146.12 [§§145.41-145.55] of this title (relating to Revocation of Parole or Mandatory Supervision [Administrative Release (Parole and Mandatory Supervision)]).

§143.23. Revocation of Conditional Pardon.

(a) A conditional pardon may be revoked if the terms and conditions of the clemency proclamation are breached. All such revocation proceedings shall be conducted in accordance with the sections applicable to an administrative releasee who is the subject of the revocation process.

(b) The [provisions of §145.41(a) of this title (relating to Allegation of Violations: Review and Initial Disposition) apply, except that the] board or parole panel, on order of the governor, is responsible for ordering the issuance of any warrant upon being notified by the

Pardons and Paroles Division that a violation has occurred. The warrant shall issue to appropriate law enforcement authorities, authorizing any sheriff, peace officer, or other addressee named therein to arrest and hold the named releasee until further order of the governor or the board or until such time as he may be placed in the custody of an agent of the Texas Department of Criminal Justice Institutional Division, or until further order of the governor or the board.

§143.24. Request of Governor.

The board shall consider a recommendation for conditional pardon in any case upon the request of the governor (§508.050, Government Code [Texas Code of Criminal Procedure, Article 42.18, §18]).

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 August 4, 2008.

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Bettie Wells

General Counsel

Texas Board of Pardons and Paroles

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For further information, please call: (512) 406-5388



SUBCHAPTER E. COMMUTATION OF SENTENCE

37 TAC §143.52, §143.58

The Texas Board of Pardons and Paroles proposes amendments to 37 TAC §143.52 and §143.58 concerning commutation of sentences. The amendments to §143.52 and §143.58 are proposed to update the statutory references contained within the rules.

Rissie Owens, Chair of the Board, determined that for each year of the first five-year period the proposed amendments are in effect, no fiscal implications exist for state or local government as a result of enforcing or administering this section.

Ms. Owens also has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amendments will be to provide a method of applying for a commutation of sentence. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended rule as proposed. No regulatory flexibility analysis required by HB 3430 is necessary.

Comments should be directed to Bettie Wells, General Counsel, Texas Board of Pardons and Paroles, 209 W. 14th Street, Suite 500, Austin, TX 78701, or by e-mail to bettie.wells@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposal.

The amended rules are proposed under Article IV, Section 11 of the Texas Constitution and Article 48.01, Code of Criminal Procedure, that vest the Board of Pardons and Paroles with the power to recommend clemency, including pardons, commutations of sentence, and reprieves; and under §508.036(b), Government Code, that provides the Board with authority to adopt rules relating to the decision-making processes used by the Board of Pardons and Paroles.

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

§143.52. Commutation of Sentence, Felony, or Misdemeanor.

(a) The board will consider recommending to the governor a commutation of sentence upon a request accompanied by the written recommendation of a majority of the trial officials.

(b) If the convicted person has the recommendation of two of the trial officials and no written communication is received from third trial official, the board shall give the remaining trial official at least 10 days notice that such a clemency recommendation is being considered by the board (§508.050, Government Code [~~Texas Code of Criminal Procedure, Article 42.18, §8(i)~~]).

(c) In cases tried prior to the tenure of the present office-holders, the recommendation of persons holding such offices at the time of the trial of the case may be used to bolster and support the recommendation of the present trial officials, if in compliance with the requirements of subsection (d) of this section.

(d) The requirements of a recommendation of trial officials for commutation of sentence must include the following:

(1) a statement that the penalty now appears to be excessive;

(2) a recommendation of a definite term now considered by the officials as just and proper; and

(3) a statement of the reasons for the recommendation based upon facts directly related to the facts of the cases and in existence, but not available to, the court or jury at the time of the trial, or a statutory change in penalty for the crime which would appear to make the original penalty excessive.

(e) If the convicted person is not confined in the Texas Department of Corrections, a certified copy of the judgment and sentence must be furnished.

§143.58. Request of the Governor.

The board shall investigate and consider a recommendation of commutation of sentence in any case, upon the written request of the governor (§508.050, Government Code [~~Texas Code of Criminal Procedure, Article 42.18, §18~~]).

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-200804036

Bettie Wells

General Counsel

Texas Board of Pardons and Paroles

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For further information, please call: (512) 406-5388



SUBCHAPTER F. REMISSION OF FINES AND FORFEITURES

37 TAC §143.74

The Texas Board of Pardons and Paroles proposes an amendment to 37 TAC §143.74 concerning remission of fines and forfeitures. The amendment to §143.74 is proposed to update the statutory reference contained within the rule.

Rissie Owens, Chair of the Board, determined that for each year of the first five-year period the proposed amendments are in effect, no fiscal implications exist for state or local government as a result of enforcing or administering this section.

Ms. Owens also has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amendments will be to provide a procedure for applying for remission of fines and forfeitures. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended rule as proposed. No regulatory flexibility analysis required by HB 3430 is necessary.

Comments should be directed to Bettie Wells, General Counsel, Texas Board of Pardons and Paroles, 209 W. 14th Street, Suite 500, Austin, TX 78701, or by e-mail to bettie.wells@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposal.

The amended rule is proposed under Article IV, Section 11 of the Texas Constitution and Article 48.01, Code of Criminal Procedure, that vest the Board of Pardons and Paroles with the power to recommend clemency, including pardons, commutations of sentence, and reprieves; and under §508.036(b), Government Code, that provides the Board with authority to adopt rules relating to the decision-making processes used by the Board of Pardons and Paroles.

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

§143.74. Request of Governor.

The board shall consider a recommendation for remission of fine or forfeiture in any case upon the request of the governor (§508.050, Government Code [~~Texas Code of Criminal Procedure, Article 42.18, §18~~]).

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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Bettie Wells

General Counsel

Texas Board of Pardons and Paroles

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For further information, please call: (512) 406-5388



CHAPTER 145. PAROLE SUBCHAPTER A. PAROLE PROCESS

37 TAC §145.12, §145.17

The Texas Board of Pardons and Paroles proposes amendments to 37 TAC §145.12 and §145.17 concerning the parole process. The amendment to §145.12 is proposed to add the statutory reference to the rule. Section 145.17 is proposed to clarify the procedures regarding subsequent reviews of parole panel votes to deny release to parole or mandatory supervision.

Rissie Owens, Chair of the Board, determined that for each year of the first five-year period the proposed amendments are in effect, no fiscal implications exist for state or local government as a result of enforcing or administering this section.

Ms. Owens also has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amendments will be to provide procedures related to the parole review process. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended rule as proposed. No regulatory flexibility analysis required by HB 3430 is necessary.

Comments should be directed to Bettie Wells, General Counsel, Texas Board of Pardons and Paroles, 209 W. 14th Street, Suite 500, Austin, TX 78701, or by e-mail to bettie.wells@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposal.

The amended rules are proposed under §§508.036, 508.0441, and 508.141, Government Code. Section 508.036 provides the board with the authority to adopt rules relating to the decision-making processes used by the board and parole panels. Section 508.0441 provides the board with the authority to adopt reasonable rules as proper or necessary relating to the eligibility of an inmate for release on parole or release to mandatory supervision. Section 508.141 provides the board authority to adopt policy establishing the date on which the board may reconsider for release an inmate who has previously been denied release.

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

§145.12. Action upon Review.

A case reviewed by a parole panel for parole consideration may be:

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

(5) any person released to parole after completing a TDCJ treatment program as a prerequisite for parole, must participate in and complete any required post-release program. A parole panel shall require as a condition of release on parole or release to mandatory supervision that an offender who immediately before release is a participant in the program established under §501.0931, Government Code, participate as a releasee in a drug or alcohol abuse continuum of care treatment program;

(6) (No change.)

§145.17. Action upon Special Review--Release Denied.

(a) - (e) (No change.)

(f) Requests for special review shall be considered in the following circumstances:

~~[(1) a parole panel denied release to parole or mandatory supervision and a parole panel member who voted with the majority on that panel desires to have the decision reconsidered prior to the next review (NR) date; or]~~

(1) ~~[(2)]~~ a written request on behalf of an offender is received which cites information not previously available to the parole panel; ~~or[-]~~

(2) a parole panel denied release to parole or mandatory supervision and a parole panel member who voted with the majority on that panel desires to have the decision reconsidered prior to the next review (NR) date; or

(3) if both parole panel members who voted with the majority are no longer active board members or parole commissioners, ~~[and]~~ the presiding officer (chair) places the case ~~[decision]~~ in the special review process to be reconsidered prior to the NR date.

(g) - (j) (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 August 4, 2008.

TRD-200804039

Bettie Wells

General Counsel

Texas Board of Pardons and Paroles

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For further information, please call: (512) 406-5388

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SUBCHAPTER B. TERMS AND CONDITIONS OF PAROLE

37 TAC §145.23, §145.24

The Texas Board of Pardons and Paroles proposes amendments to 37 TAC §145.23 and §145.24 concerning terms and conditions of parole. The amendments to §145.23 and §145.24 are proposed to update the statutory references contained within the rules.

Rissie Owens, Chair of the Board, determined that for each year of the first five-year period the proposed amendments are in effect, no fiscal implications exist for state or local government as a result of enforcing or administering this section.

Ms. Owens also has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amendments will be to provide a requirement for offenders to abide by the terms and conditions of parole for Texas offenders in other states and out of state offenders in Texas. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended rule as proposed. No regulatory flexibility analysis required by HB 3430 is necessary.

Comments should be directed to Bettie Wells, General Counsel, Texas Board of Pardons and Paroles, 209 W. 14th Street, Suite 500, Austin, TX 78701, or by e-mail to bettie.wells@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposal.

The amended rules are proposed under §508.036 and §508.044, Government Code. Section 508.036 authorizes the board to promulgate rules relating to the board's decision-making processes, and §508.044, Government Code, provides the board with the authority to adopt rules relating to the eligibility of an inmate for release on parole or mandatory supervision.

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

§145.23. Texas Parolees Supervised in Other States.

Texas parolees accepted for supervision in other states under the terms of the Interstate Parole Compact (Chapter 510, Government Code [Texas Code of Criminal Procedure, Article 42.11]) are required to abide by both the rules of parole for Texas as set forth in §145.22 of this title (relating to Terms and Conditions of Parole) and the rules of parole of the receiving state.

§145.24. Out-of-State Parolees Supervised in Texas.

Parolees from outside the State of Texas accepted in Texas for supervision by the Division of Parole Supervision under the terms of the Interstate Parole Compact (Chapter 510, Government Code [Code of Criminal Procedure, Article 42.11]) are required to abide by both the rules of parole for Texas parolees as set forth in §145.22 of this title (relating to Terms and Conditions of Parole) and the rules of parole of the sending state.

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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Bettie Wells

General Counsel

Texas Board of Pardons and Parole

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For further information, please call: (512) 406-5388



CHAPTER 146. REVOCATION OF PAROLE OR MANDATORY SUPERVISION

37 TAC §146.6, §146.8

The Texas Board of Pardons and Paroles proposes amendments to 37 TAC §146.6 and §146.8 concerning revocation of parole or mandatory supervision. The amendments to §146.6 and §146.8 are proposed to update the statutory references contained within the rules.

Rissie Owens, Chair of the Board, determined that for each year of the first five-year period the proposed amendments are in effect, no fiscal implications exist for state or local government as a result of enforcing or administering this section.

Ms. Owens also has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amendments will be to provide a procedure for scheduling preliminary or revocation hearings. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended rule as proposed. No regulatory flexibility analysis required by HB 3430 is necessary.

Comments should be directed to Bettie Wells, General Counsel, Texas Board of Pardons and Paroles, 209 W. 14th Street, Suite 500, Austin, TX 78701, or by e-mail to bettie.wells@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposal.

The amended rules are proposed under §§508.0441, 508.045, 508.281, and 508.283, Government Code. Section 508.0441 vests the Board with the authority to determine the continuation, modification, and revocation of parole or mandatory supervision. Section 508.045 provides parole panels with the authority to grant, deny, or revoke parole, or revoke mandatory supervision. Sections 508.281 and 508.283 relate to hearings to determine violations of the releasee's parole or mandatory supervision.

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

§146.6. Scheduling of Preliminary Hearing.

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

(d) Subsection (a)(1) of this section does not apply when a releasee is:

(1) transferred under §508.281, Government Code [Article 42.18, §13A], to a correctional facility operated by or under contract with the department; or

(2) (No change.)

(e) (No change.)

§146.8. Scheduling of Revocation Hearings.

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

(d) Subsection (b)(1) of this section does not apply when a releasee is:

(1) transferred under §508.281, Government Code [Article 42.18, §13A], to a correctional facility operated by or under contract with the department; or

(2) (No change.)

(e) - (f) (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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Bettie Wells

General Counsel

Texas Board of Pardons and Paroles

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For further information, please call: (512) 406-5388



CHAPTER 149. MANDATORY SUPERVISION SUBCHAPTER A. RULES AND CONDITIONS OF MANDATORY SUPERVISION

37 TAC §149.3

The Texas Board of Pardons and Paroles proposes an amendment to 37 TAC §149.3 concerning rules and conditions of mandatory supervision. The amendment to §149.3 is proposed to update the statutory reference contained within the rule.

Rissie Owens, Chair of the Board, determined that for each year of the first five-year period the proposed amendments are in effect, no fiscal implications exist for state or local government as a result of enforcing or administering this section.

Ms. Owens also has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amendments will be to provide a requirement for offenders to abide by the terms and conditions of mandatory supervision imposed by a parole panel. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended rule as proposed. No regulatory flexibility analysis required by HB 3430 is necessary.

Comments should be directed to Bettie Wells, General Counsel, Texas Board of Pardons and Paroles, 209 W. 14th

Street, Suite 500, Austin, TX 78701, or by e-mail to bettie.wells@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposal.

The amended rule is proposed under §508.036 and §508.044, Government Code. Section 508.036 authorizes the board to promulgate rules relating to the board's decision-making processes, and §508.044, Government Code, provides the board with the authority to adopt rules relating to the eligibility of an inmate for release on parole or mandatory supervision.

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

§149.3. *Texas Mandatory Supervision Offenders Supervised in Other States.*

Texas mandatory supervision offenders accepted for supervision in other states under the terms of the Interstate Parole Compact (§508.318, Government Code [~~Texas Code of Criminal Procedure, Article 42.11~~]) shall adhere to the conditions and rules of supervision for Texas and the receiving state.

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 August 4, 2008.

TRD-200804043

Bettie Wells

General Counsel

Texas Board of Pardons and Paroles

Earliest possible date of adoption: September 14, 2008

For further information, please call: (512) 406-5388



PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 425. FIRE SERVICE INSTRUCTORS

37 TAC §425.3

The Texas Commission on Fire Protection (the Commission) proposes amendments to Chapter 425, Fire Service Instructors, §425.3, Minimum Standards for Fire Service Instructor I Certification. The purpose of this proposed amendment in conjunction with the concurrently proposed amendments to §§425.5, 425.7, and 425.11 is to correct the numbering system so that the relative importance of the minimum standards for Fire Service Instructors I, II, and III is correctly referenced and more notable and to fix the applicable dates for equivalent training, and to update the prior certification date for the granting of IFSAC seals to persons who held Instructor I, II, and III certifications prior to March 1, 2006.

Mr. Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal impact on state or local governments.

Mr. Soteriou has also determined that for each year of the first five years the proposed amendment is in effect, an expected public benefit of enforcing the amendments is use of enforcement. There are no additional costs of compliance for small or large businesses or individuals that are required to comply with this proposed amendment.

Comments regarding this proposed amendment may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mailed to info@tcfp.state.tx.us. Comments will be reviewed and discussed at a future Commission meeting.

This amendment is proposed under Texas Government Code, §419.008, which provides the Commission the authority to propose rules for the administration of its powers and duties.

Cross reference to statute: Texas Government Code, §419.021.

§425.3. *Minimum Standards for Fire Service Instructor I Certification.*

(a) In order to become certified as a Fire Service Instructor I an individual must:

(1) have a minimum of three years of experience (as defined in §421.5(43) of this title) in fire protection in one or more or any combination of the following:

(A) a paid, volunteer, or regulated non-governmental fire department; or

(B) a department of a state agency, education institution or political subdivision providing fire protection training and related responsibilities; and

(2) ~~[(1)]~~ possess valid documentation of accreditation from the International Fire Service Accreditation Congress (IFSAC) as a Fire Instructor I or II or III; or

(3) ~~[(1)]~~ have completed the appropriate curriculum for Fire Service Instructor I contained in Chapter 8 of the Commission's Certification Curriculum Manual, or meet the equivalence as specified in §425.1(d) of this title; and

(4) ~~[(1)]~~ successfully pass the applicable Commission examination as specified in Chapter 439 of this title; and

(5) ~~[(2)]~~ have completed the field examiner orientation course as specified in Chapter 439 of this title.

(b) (No change.)

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

Filed with the Office of the Secretary of State on July 31, 2008.

TRD-200803992

Gary L. Warren, Sr.

Executive Director

Texas Commission on Fire Protection

Earliest possible date of adoption: September 14, 2008

For further information, please call: (512) 936-3838



37 TAC §425.5

The Texas Commission on Fire Protection (the Commission) proposes amendments to Chapter 425, Fire Service Instructors, §425.5, Minimum Standards for Fire Service Instructor II Certification. The purpose of this proposed amendment in conjunction with the concurrently proposed amendments to §§425.3, 425.7 and 425.11 is to correct the numbering system so that the relative importance of the minimum standards for Fire Service Instructors I, II, and III is correctly referenced and to fix the applicable date

for equivalent training for the granting of IFSAC seals to persons who held Instructor I, II, and III certifications prior to March 1, 2006.

Mr. Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal impact on state or local governments.

Mr. Soteriou has also determined that for each year of the first five years the proposed amendment is in effect, an expected public benefit of enforcing the amendments is use of enforcement. There are no additional costs of compliance for small or large businesses or individuals that are required to comply with this proposed amendment.

Comments regarding this proposed amendment may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mailed to info@tcfp.state.tx.us. Comments will be reviewed and discussed at a future Commission meeting.

This amendment is proposed under Texas Government Code, §419.008, which provides the Commission with the authority to propose rules for the administration of its powers and duties.

Cross reference to statute: Texas Government Code, §419.021.

§425.5. *Minimum Standards for Fire Service Instructor II Certification.*

(a) In order to become certified as a Fire Service Instructor II, an individual must:

(1) hold as a prerequisite a Fire Instructor I certification as defined in §425.3 of this title; and

(2) have a minimum of three years of experience (as defined in §421.5(43) of this title) in fire protection in one or more or any combination of the following:

(A) a paid, volunteer, or regulated non-governmental fire department; or

(B) a department of a state agency, education institution or political subdivision providing fire protection training and related responsibilities; and

(3) [(+)] possess valid documentation of accreditation from the International Fire Service Accreditation Congress (IFSAC) as a Fire Instructor II, or III; or

(4) [(+)] have completed the appropriate curriculum for Fire Service Instructor II contained in Chapter 8 of the Commission's Certification Curriculum Manual, or meet the equivalence as specified in §425.1(d) of this title; and

(5) [(+)] successfully pass the applicable Commission examination as specified in Chapter 439 of this title.

(b) (No change)

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

Filed with the Office of the Secretary of State on July 31, 2008.

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Gary L. Warren, Sr.

Executive Director

Texas Commission on Fire Protection

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For further information, please call: (512) 936-3838



37 TAC §425.7

The Texas Commission on Fire Protection (the Commission) proposes amendments to Chapter 425, Fire Service Instructors, §425.7, Minimum Standards for Fire Service Instructor III Certification. The purpose of this proposed amendment in conjunction with the concurrently proposed amendments to §§425.3, 425.5, and 425.11 is to correct the numbering system so that the relative importance of the minimum standards for Fire Service Instructors I, II, and III is correctly referenced and to fix the applicable date for equivalent training for the granting of IFSAC seals to persons who held Instructor I, II, and III certifications prior to March 1, 2006.

Mr. Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal impact on state or local governments.

Mr. Soteriou has also determined that for each year of the first five years the proposed amendment is in effect, an expected public benefit of enforcing the amendments is use of enforcement. There are no additional costs of compliance for small or large businesses or individuals that are required to comply with this proposed amendment.

Comments regarding this proposed amendment may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mailed to info@tcfp.state.tx.us. Comments will be reviewed and discussed at a future Commission meeting.

This amendment is proposed under Texas Government Code, §419.008, which provides the Commission with the authority to propose rules for the administration of its powers and duties.

Cross reference to statute: Texas Government Code, §419.021.

§425.7. *Minimum Standards for Fire Service Instructor III Certification.*

(a) In order to become certified as a Fire Service Instructor III an individual must:

(1) hold as a prerequisite, a Fire Instructor II Certification as defined in §425.5 of this title; and

(2) have a minimum of three years of experience (as defined in §421.5(43) of this title) in fire protection in one or more or any combination of the following:

(A) a paid, volunteer, or regulated non-governmental fire department; or

(B) a department of a state agency, education institution or political subdivision providing fire protection training and related responsibilities; and

(3) [(+)] possess valid documentation of accreditation from the International Fire Service Accreditation Congress (IFSAC) as a Fire Instructor III; or

(4) [(ii)] have completed the appropriate curriculum for Fire Service Instructor III contained in Chapter 8 of the Commission's Certification Curriculum Manual, or meet the equivalence as specified in §425.1(d) of this title; and

(5) [(iii)] successfully pass the applicable Commission examination as specified in Chapter 439 of this title; and either

(A) [(H)] hold as a prerequisite an advanced structural fire protection personnel certification, an advanced aircraft fire protection personnel certification, advanced marine fire protection personnel certification, advanced inspector certification, advanced fire investigator, or advanced arson investigator certification; or

(B) [(H)] have 60 college hours from a regionally accredited educational institution; or

(C) [(H)] hold an associate's degree from a regionally accredited educational institution.

(b) (No change.)

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

Filed with the Office of the Secretary of State on July 31, 2008.

TRD-200803994

Gary L. Warren, Sr.

Executive Director

Texas Commission on Fire Protection

Earliest possible date of adoption: September 14, 2008

For further information, please call: (512) 936-3838



37 TAC §425.11

The Texas Commission on Fire Protection (the Commission) proposes amendments to Chapter 425, Fire Service Instructors, §425.11, International Fire Service Accreditation Congress Seal. The purpose of this proposed amendment in conjunction with the concurrently proposed amendments to §§425.3, 425.5, and 425.7 is to correct the numbering system so that the relative importance of the minimum standards for Fire Service Instructors I, II, and III is correctly referenced and to fix the applicable date for equivalent training for the granting of IFSAC seals to persons who held Instructor I, II, and III certifications prior to March 1 2006.

Mr. Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal impact on state or local governments.

Mr. Soteriou has also determined that for each year of the first five years the proposed amendment is in effect, an expected public benefit of enforcing the amendments is use of enforcement. There are no additional costs of compliance for small or large businesses or individuals that are required to comply with this proposed amendment.

Comments regarding this proposed amendment may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mailed to info@tcfp.state.tx.us. Comments will be reviewed and discussed at a future Commission meeting.

This amendment is proposed under Texas Government Code, §419.008, which provides the Commission with the authority to propose rules for the administration of its powers and duties.

Cross reference to statute: Texas Government Code, §419.021.

§425.11. *International Fire Service Accreditation Congress Seal.*

(a) Individuals who held an equivalent Instructor I certification prior to March 1, 2006 or individuals completing a Commission-approved Fire Service Instructor I training program and passing the applicable state examination after the effective date of this chapter, may be granted an IFSAC seal for Instructor I by making application to the Commission and paying the applicable fee.

(b) Individuals who held an equivalent Instructor II certification prior to March 1, 2006 or individuals holding an IFSAC Instructor I certification, completing a Commission-approved Fire Service Instructor II training program, and passing the applicable state examination after the effective date of this chapter, may be granted an IFSAC seal for Instructor II by making application to the Commission and paying the applicable fee.

(c) Individuals who held an equivalent Instructor III certification prior to March 1, 2006 or individuals holding an IFSAC Instructor II certification, completing a Commission-approved Fire Service Instructor III training program, and passing the applicable state examination after the effective date of this chapter, may be granted an IFSAC seal for Instructor III by making application to the Commission and paying the applicable 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 July 31, 2008.

TRD-200803995

Gary L. Warren, Sr.

Executive Director

Texas Commission on Fire Protection

Earliest possible date of adoption: September 14, 2008

For further information, please call: (512) 936-3838



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 700. CHILD PROTECTIVE SERVICES

SUBCHAPTER H. ADOPTION ASSISTANCE PROGRAM

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), amendments to §700.801 and §700.880; and new §700.806 and §700.807, concerning enhanced adoption assistance, in its Child Protective Services chapter. The purpose of the amendments and new sections is to implement enhanced adoption assistance, as required by Senate Bill 758, Section 4, 80th Legislative Session, which added subsection (g) to §162.304 of the Texas Family Code. The statute requires the executive commissioner of the Health and Human Services

Commission to provide, by rule, that the maximum adoption subsidy that may be paid to an adoptive parent of a child under an adoption assistance agreement is an amount that is equal to the amount that would have been paid to the foster parent of the child, based on the child's foster care service level on the date DFPS and the adoptive parent enter into the adoption assistance agreement.

The amendment to §700.801 defines adoptive placement agreement.

New §700.806 defines enhanced adoption assistance.

New §700.807 lists the eligibility criteria for enhanced adoption assistance.

The amendment to §700.880 establishes criteria for the right to appeal a denial by DFPS for enhanced adoption assistance. A person who has been identified as an appropriate prospective adoptive parent of the child may request a fair hearing to appeal the denial of adoption assistance if all of the objective criteria in §700.807(1) - (3) are met.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed sections will be in effect there will be fiscal implications for state government as a result of enforcing or administering the sections. The effect on state government for the first five-year period the proposal will be in effect is an estimated reduction in total cost of \$2,925 for fiscal year (FY) 2009; \$12,024 for FY 2010; \$19,825 for FY 2011; \$27,624 for FY 2012; and \$35,425 for FY 2013. The effect on state funds is an increased cost of \$38,200 for FY 2009; \$157,044 for FY 2010; \$258,911 for FY 2011; \$360,778 for FY 2012; and \$462,644 for FY 2013. There will be no fiscal implications for local government as a result of enforcing or administering the sections.

Ms. Brown also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be an increase in the number of children adopted from foster care who have specialized or intense service level needs, and a decrease in the number of children who age out of foster care, thereby effecting improved outcomes. There will be no effect on large, small, or micro-businesses because the proposed change does not impose new requirements on any business and does not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

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

Questions about the content of the proposal may be directed to Audrey Jackson at (512) 438-4136 in DFPS's Child Protective Services Division. Electronic comments may be submitted to Marianne.Mcdonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-385, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

DIVISION 1. PROGRAM DESCRIPTION AND DEFINITIONS

40 TAC §§700.801, 700.806, 700.807

The amendment and new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment and new sections implement Senate Bill 758, Section 4, 80th Legislative Session.

§700.801. What do certain pronouns, words, and terms in this subchapter mean?

(a) (No change.)

(b) The words and terms used in this subchapter have the following meanings, unless otherwise specified or the context clearly indicates otherwise:

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

(3) Adoptive Placement Agreement--A written agreement between DFPS or a LCPA and the prospective adoptive parent(s) that documents when a child in DFPS conservatorship is placed for the purpose of adoption and defines the duties of the parties from that date until the adoption is consummated.

(4) [~~3~~] AFDC eligible--A child qualified for aid under the Texas State IV-A Plan (as in effect on July 16, 1996), with the exception that the child's family maximum resource limit is \$10,000. Requirements include that the child must live with a parent or specified relative and be deprived of parental support. Parental deprivation exists if one of the child's parents is dead, absent from the home, or has a mental or physical incapacity that prevents the parent from supporting or caring for the child, or principal wage earner parent is unemployed.

(5) [~~4~~] Agreement or Adoption Assistance Agreement--The written contract for adoption assistance that is legally binding because both parties have signed it agreeing to all terms and conditions.

(6) [~~5~~] Authorized entity--Any entity, such as another public agency or Tribe, with whom DFPS has a Title IV-E agreement, which permits the authorized entity to receive federal funding participation under Title IV-E of the federal Social Security Act.

(7) [~~6~~] Complete application--All the forms and documents that must be filled out and received by DFPS to process a request for adoption assistance and to determine a child's eligibility.

(8) [~~7~~] Deferred agreement--The legally binding, written contract to provide adoption assistance in the future if the need develops. A deferred agreement is used when the child is eligible for adoption assistance and you are able to meet the child's current needs, but you may be unable to meet the child's needs in the future if circumstances change.

(9) [~~8~~] Licensed child-placing agency (LCPA)--An entity that is licensed or certified by the State of Texas or another state to place children for adoption.

(10) [~~9~~] Nonrecurring expenses--A type of adoption assistance benefits that are one-time expenses directly related to the completion of the adoption process. Also see §700.850 of this title (relating to How do I get reimbursement of nonrecurring expenses?).

(11) ~~[(40)]~~ Special needs child--A child who meets the definition described in §700.804 of this title (relating to Who is a special needs child?).

(12) ~~[(41)]~~ State-paid adoption assistance--The state program for adoption assistance established under Texas Family Code, §162.302.

(13) ~~[(42)]~~ Title IV-E--The federal program for adoption assistance established under Title IV-E of the Social Security Act, 42 U.S.C. §673.

§700.806. What is enhanced adoption assistance?

(a) Enhanced adoption assistance is a monthly adoption assistance payment amount that may exceed the maximum monthly payment ceiling specified in §700.844(d) of this title (relating to How are monthly payment amounts determined?) that is available only with respect to a child who meets the criteria specified in §700.807 of this title (relating to Who is eligible to receive enhanced adoption assistance?).

(b) The maximum monthly payment amount that can be paid under an adoption assistance agreement on behalf of a child who qualifies for enhanced adoption assistance is based on the foster care rate in effect on the date the adoption assistance agreement is signed and is:

(1) the minimum amount required to be paid to a foster parent for a child assigned the same service level as the child who is the subject of the adoption assistance agreement (whether an authorized current service level or one in effect prior to placement as described in §700.807(2) of this title); and

(2) does not include any amount that a child-placing agency is entitled to retain under the foster care rates.

§700.807. Who is eligible to receive enhanced adoption assistance?

Enhanced adoption assistance is available to an adoptive or prospective adoptive parent who enters into an initial adoption assistance agreement on or after January 1, 2009, for a child with special needs as described in §700.804 of this title (relating to Who is a special needs child?), who is in an approved adoptive placement, provided the child also meets each of the following criteria immediately prior to the signing of the adoptive placement agreement:

(1) The child is in the managing conservatorship of DFPS and all parental rights to the child have been terminated for at least 24 months;

(2) The child has an authorized service level of "specialized" or "intense" as defined in Subchapter W of this chapter (relating to Level-of-Care Service System), or, the child had such an authorized service level immediately prior to being placed in a facility or home operated or regulated by another state agency, such as an intermediate care facility for persons with mental retardation and/or related conditions (ICF/MR); a nursing facility, or a community-based waiver services (HCS) residential program;

(3) The child is living in:

(A) a foster care home or other residential child-care operation that is regulated by the DFPS Child Care Licensing Division and is approved under Licensing minimum standards to provide treatment services as defined in §749.61 of this title (relating to What types of services does Licensing regulate?); or

(B) a facility or home operated or regulated by another state agency in this state or in another state that provides comparable treatment services; and

(4) One of the following conditions exists:

(A) the child has not been adopted despite our having made extensive and ongoing local and national adoption recruitment efforts; or

(B) a DFPS program director or his or her designee reviews agency records, and determines that, without benefit of enhanced adoption assistance, the child will likely remain in paid foster care until at least the age of 18 years, based on factors including, but not limited to:

(i) the existence of a significant mental, emotional, physical or medical disability;

(ii) the child's age, especially adolescents; or

(iii) the number of prior foster care or adoptive placement disruptions the child has experienced.

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 July 30, 2008.

TRD-200803971

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: September 14, 2008

For further information, please call: (512) 438-3437



DIVISION 5. APPEALS AND HEARINGS

40 TAC §700.880

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements Senate Bill 758, Section 4, 80th Legislative Session.

§700.880. What are my rights to appeal a DFPS decision regarding adoption assistance benefits?

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

(d) You have the right to appeal a denial of enhanced adoption assistance only if the child qualifies as a special needs child, the child meets all eligibility criteria in §700.807(1) - (3) of this title (relating to Who is eligible to receive enhanced adoption assistance?), and DFPS has confirmed in writing that you are the appropriate prospective adoptive placement for the child.

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 July 30, 2008.

TRD-200803972

Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: September 14, 2008
For further information, please call: (512) 438-3437



CHAPTER 711. INVESTIGATIONS IN DADS MENTAL RETARDATION AND DSHS MENTAL HEALTH FACILITIES AND RELATED PROGRAMS

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), amendments to §711.3 and §711.605, concerning how are the terms in this chapter defined and who receives the investigative report, in its Investigations in DADS Mental Retardation and DSHS Mental Health Facilities and Related Programs chapter. The purpose of the amendments is to allow DFPS to release completed reports of investigations conducted in the Texas Department of Aging and Disability Services (DADS) mental retardation and the Texas Department of State Health Services (DSHS) mental health facilities and related programs to the DADS Director of State Schools and the DSHS Assistant Commissioner for Mental Health Substance Abuse Services upon request. The proposed change also states that the request for review of findings procedures remains the same and no additional right to request a review of the findings is granted to DADS and DSHS.

The amendment to §711.3 clarifies the definition of an administrator. Under the proposal, an administrator does not include the DADS Director of State Schools or the DSHS Assistant Commissioner for Mental Health Substance Abuse Services. This is necessary to make clear that forwarding a copy of the investigation as provided in §711.605(a)(6) of this title (relating to Who receives the investigative report?) does not grant the right to request a review of investigation findings from DFPS.

The amendment to §711.605 states that DFPS may release completed reports of investigations conducted in facilities regulated by each agency to the DADS Director of State Schools and the DSHS Assistant Commissioner for Mental Health Substance Abuse Services upon request.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Brown also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that investigations in DADS facilities can be used by state office staff to systemically assess and improve operations of the facilities. There will be no effect on large, small or micro-businesses because the proposed change does not impose new requirements on any business and does not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

HHSC has determined that the proposed amendments do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, there-

fore, do not constitute a taking under §2007.043, Government Code.

Questions about the content of the proposal may be directed to Leti Guevara at (512) 438-5763 in DFPS's Adult Protective Services Division. Electronic comments may be submitted to Marianne.Mcdonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-386, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

SUBCHAPTER A. INTRODUCTION

40 TAC §711.3

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §48.254 and §48.255(b).

§711.3. *How are the terms in this chapter defined?*

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

(1) Administrator--The person in charge of a facility, local authority, community center, or home and community-based services waiver program, or designee. The term does not apply to the DADS Director of State Schools or the DSHS Assistant Commissioner for Mental Health Substance Abuse Services.

(2) - (39) (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 July 30, 2008.

TRD-200803973

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: September 14, 2008

For further information, please call: (512) 438-3437



SUBCHAPTER G. RELEASE OF REPORT AND FINDINGS

40 TAC §711.605

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the

Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §48.254 and §48.255(b).

§711.605. *Who receives the investigative report?*

(a) The investigator sends a copy of the investigative report to:

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

(5) the state office of Adult Protective Services if a confirmed finding is made against a physician, dentist, pharmacist, registered nurse, licensed vocational nurse, or other licensed professional. The state office forwards a copy of the report to the appropriate licensing authority; and [-]

(6) if requested, the DADS Director of State Schools or the DSHS Assistant Commissioner for Mental Health Substance Abuse Services for investigations in state schools, state centers, or state hospitals, as applicable.

(b) (No change.)

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

Filed with the Office of the Secretary of State on July 30, 2008.

TRD-200803974

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: September 14, 2008

For further information, please call: (512) 438-3437



CHAPTER 745. LICENSING

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§745.371, 745.8447, and 745.8449, concerning can Licensing issue more than one registration for a single child-care home; what will the notification include; and what must I do if Licensing notifies me of a deficiency, in its Licensing chapter. The purpose of the amendments is to clarify rule language, ensure consistency with regulation, and delete language related to due notice. The purpose of due notice was to alert providers that their deficiencies were progressing toward corrective or adverse action. This function will be replaced by the new notifications triggered under the Weighted Enforcement System.

Section 745.371 adds language to clarify that only one listing certificate is issued for a single child-care home and the name on the certificate must be the name of the caregiver. This will eliminate the possibility of multiple listing permits being issued to the same address. This rule creates consistency in how DFPS issues listing and registration permits.

The amendment to §745.8447 deletes language related to due notice. The section explains what information is provided to a child-care provider after an inspection or investigation.

The amendment to §745.8449 also deletes language related to due notice. The section explains what action a provider must take when the agency informs the provider of a deficiency after an inspection or investigation has been conducted.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Brown also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that child-care facilities will have a clearer understanding of the rules related to notification of the results of an inspection. There will be no effect on large, small or micro-businesses because the proposed change does not impose new requirements on any business and does not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

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

Questions about the content of the proposal may be directed to Berna Miranda at (512) 438-2806 in DFPS's Licensing Division. Electronic comments may be submitted to Marianne.Mcdonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-387, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

SUBCHAPTER D. APPLICATION PROCESS DIVISION 8. DUAL AND MULTIPLE PERMITS

40 TAC §745.371

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§745.371. *Can Licensing issue more than one registration or listing for a single child-care home?*

No. We can issue only one registration or listing per ~~[for a]~~ single living unit. For a registered family home, if [H] more than one person cares for children in a single living unit or child-care home, the name on the permit must be the name of the primary caregiver. For a listed family home, the name on the permit must be the name of the caregiver.

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 July 30, 2008.

TRD-200803975

Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: September 14, 2008
For further information, please call: (512) 438-3437



SUBCHAPTER K. INSPECTIONS AND INVESTIGATIONS
DIVISION 2. NOTIFICATION

40 TAC §745.8447, §745.8449

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.0441 and §42.042.

§745.8447. What will the notification include?

The notification of the results of the inspection and/or investigation will include:

(1) - (2) (No change.)
(3) Date by which you must comply; and
{(4) Due notice if applicable. See §745.8449 of this title (relating to What must I do if Licensing notifies me of a deficiency?); and}

(4) [(5)] Your right to an administrative review to dispute the findings.

§745.8449. What must I do if Licensing notifies me of a deficiency?

You must correct all deficiencies and meet all minimum standards within the specified timeframe. [~~Due notice is given when the next step is corrective or adverse action because of a failure to correct the deficiency and comply within the specified timeframe.~~] To dispute a finding, [the findings] you may request an administrative review.

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

Filed with the Office of the Secretary of State on July 30, 2008.

TRD-200803976
Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: September 14, 2008
For further information, please call: (512) 438-3437



WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 4. AGRICULTURE

PART 13. PRESCRIBED BURNING BOARD

CHAPTER 226. STANDARDS FOR CERTIFIED PRESCRIBED BURN MANAGERS

4 TAC §226.4

The Prescribed Burning Board withdraws the proposed amendments to §226.4 which appeared in the May 23, 2008, issue of the *Texas Register* (33 TexReg 4070).

Filed with the Office of the Secretary of State on July 29, 2008.

TRD-200803952

Dolores Alvarado Hibbs

General Counsel, Texas Department of Agriculture

Prescribed Burning Board

Effective date: July 29, 2008

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



TITLE 16. ECONOMIC REGULATION

PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 34. SCHEDULE OF SANCTIONS AND PENALTIES

16 TAC §34.4

The Texas Alcoholic Beverage Commission (commission) withdraws proposed new §34.4, relating to Schedule of Sanctions and Penalties for Marketing Practices Violations, which appeared in the June 6, 2008, issue of the *Texas Register* (33 TexReg 4444). The commission has withdrawn the new section to give more consideration to the section.

Filed with the Office of the Secretary of State on August 1, 2008.

TRD-200804007

Alan Steen

Administrator

Texas Alcoholic Beverage Commission

Effective date: August 1, 2008

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



PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 402. CHARITABLE BINGO ADMINISTRATIVE RULES

SUBCHAPTER A. ADMINISTRATION

16 TAC §402.100

The Texas Lottery Commission withdraws the proposed amendments to §402.100 which appeared in the February 1, 2008, issue of the *Texas Register* (33 TexReg 826).

Filed with the Office of the Secretary of State on July 30, 2008.

TRD-200803964

Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

Effective date: July 30, 2008

For further information, please call: (512) 344-5012



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 749. CHILD-PLACING AGENCIES SUBCHAPTER S. ADOPTION SERVICES: ADOPTIVE PARENTS

DIVISION 2. PRE-ADOPTIVE HOME SCREENING

40 TAC §749.3633

The Department of Family and Protective Services withdraws the proposed amendments to §749.3633 which appeared in the May 23, 2008, issue of the *Texas Register* (33 TexReg 4128).

Filed with the Office of the Secretary of State on July 30, 2008.

TRD-200803977

Gerry Williams

General Counsel

Department of Family and Protective Services

Effective date: July 30, 2008

For further information, please call: (512) 438-3437



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 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES

SUBCHAPTER C. REIMBURSEMENT METHODOLOGY FOR NURSING FACILITIES

1 TAC §§355.307, 355.308, 355.311

The Texas Health and Human Services Commission (HHSC) adopts amendments to §355.307, Reimbursement Setting Methodology, §355.308, Direct Care Staff Rate Component, and §355.311 Medicaid Reimbursement Rates for State Veterans Homes. Sections 355.307 and 355.308 are adopted with changes to the proposed text as published in the May 23, 2008, issue of the *Texas Register* (33 TexReg 4062). The text of the rules will be republished. Section 355.311 is adopted without changes to the proposed text as published in the May 23, 2008, issue of the *Texas Register* (33 TexReg 4062) and will not be republished.

Background and Justification

These rules establish the reimbursement methodology for the Nursing Facility (NF) program, including Medicaid reimbursement rates for state veteran's homes. HHSC, under its authority and responsibility to administer and implement rates, is updating these rules to replace the Texas Index for Level of Effort (TILE) case mix system with the Resource Utilization Groups (RUG) case mix system for purposes of NF reimbursement; establish a one-year hold-harmless transition from TILE to RUG; and remove outdated language.

The TILE system is based on data from 1987 and does not reflect changes in practice patterns and resident characteristics over the past 20 years. The RUG system is a case mix classification system that uses data from the federal minimum data set (MDS) form. The RUG system is periodically updated by the federal government. At present, RUG is based on data from 1995 and 1997, and the federal Centers for Medicare and Medicaid Services (CMS) is in the midst of a data collection that will further update the RUG model in the next few years.

House Bill 867, 74th Legislature, Regular Session, 1995, mandated the use of a single resident assessment instrument in NFs. Currently, Texas uses both the federally required MDS and the Texas Care Form 3652 for assessments. The Department of Aging and Disability Services (DADS) will eliminate the Texas CARE Form 3652 and use the federal MDS in determination of Medical Necessity and reimbursement effective September 1, 2008. As a result, HHSC must convert the Texas Medicaid re-

imbursement methodology for NFs from the existing TILE case mix system to the RUG system using the MDS.

In addition, the amendment will allow payment rates for the pediatric care facility class to be determined annually on the state's fiscal year rather than biennially coincident with the state's biennium; and remove outdated language. The effect of this change will be to allow annual reviews of the costs of pediatric care facilities, which will allow rate adjustments to be made in a more timely fashion. Because there is currently only one facility in Texas that specializes in services for children and because children are such a fragile population, annual reviews of the facility's costs are required to ensure that the program is properly funded and to mitigate the inherent operating risks in such a program.

Comments

The 30-day comment period ended June 23, 2008. During this period, HHSC received comments regarding the proposed amendments to §355.307 and §355.308 from representatives of the Texas Health Care Association, the Texas Association of Homes and Services for the Aging, and the Coalition for Nurses in Advanced Practice. A summary of the comments relating to the proposed rules and HHSC's responses follows:

General Comment: The "hold-harmless" provisions as described in §355.307(f) are not truly hold harmless but instead appear to be designed simply to redefine so as to limit the magnitude of the losses incurred by providers whose revenues will be affected negatively in the transition. A true hold harmless provision would pay providers the higher of two scenarios: their current Medicaid resident census under the TILE system or the current Medicaid census under the RUGs system.

Response: It has never been the intent of HHSC to propose the type of scenario envisioned by the commenter. All discussions over the past three plus years have been based upon a hold-harmless system that compares Fiscal Year (FY) 2009 revenues under RUGs to FY 2008 revenues under TILE. The hold-harmless system as proposed ensures that no provider will receive a lower average Medicaid payment after the implementation of RUGs than they received prior to the implementation. HHSC did not change the proposed rule in response to this comment.

General Comment: Since major methodology changes occur very infrequently, changes to upgrade and modernize the fixed capital asset component should be made at the same time as the changes required to move from TILE to RUGs.

Response: HHSC recognizes that the rate methodology for the fixed capital asset cost area needs to be redesigned to adequately fund the physical plant requirements of the NF provider base. HHSC will be convening a workgroup to develop modifications to the fixed capital rate methodology to be incorporated into the 2010-11 Consolidated Budget request. There is not ad-

equate time to redesign the fixed capital rate component prior to the implementation of RUGs; as well, there is no money appropriated for FY 09 for a fixed capital rate redesign. HHSC did not change the proposed rule in response to this comment.

General Comment: Whenever these rules require a service to be ordered by a physician, the rule should be amended to allow services to be ordered by a "practitioner".

Response: This comment is not germane to the proposed rules. The purpose of the proposed rules is to allow for the transition from TILE to RUGs and to eliminate obsolete language, not to address issues pertaining to Advanced Practice Nurses. HHSC did not change the proposed rule in response to this comment.

Comment concerning Small Business and Micro-business Impact Analysis: The implementation of the proposed rule amendment may very well require changes in contracted providers' practices, as many may have to reduce staffing levels and/or staffing enhancement levels to avoid recoupment of funds at the end of the fiscal year.

Response: The staffing enhancement program is an optional program that facilities may choose to enroll in on an annual basis. The program is limited by available funding and there is no guarantee in rule or statute that the program will continue to provide funding to facilities at their current level of enhancement funding, or at all, from year to year. Facilities make their enhancement enrollment decisions in July of each year for the state fiscal year beginning in September of that year. Decisions facilities make during the July 2008 enrollment will govern their participation in the enhancement program during FY 2009 (the first year under RUGs).

During the July 2008 enrollment, HHSC made available to all facilities detailed worksheets and instructions that the facilities could use to determine their expected staffing and spending requirements under RUGs. HHSC notified all facilities by certified mail of the existence of these worksheets and how to access them. As well, HHSC provided two free training sessions during the enrollment period to explain how facilities could estimate their staffing and spending requirements under RUGs. The worksheets, instructions and training materials were all available on the HHSC website.

Facilities that accurately complete the enrollment worksheets will have the information necessary to make an appropriate enrollment decision under RUGs so that they will not be subject to a recoupment at the end of the enhancement accountability period. In addition, facilities have the right to reduce their level of participation in the enhancement or to completely withdraw from the enhancement at any time during the accountability period. Facilities are advised to use the tools provided by HHSC to monitor their compliance with their staffing and spending requirements throughout the accountability period so that they can make adjustments in their enrollment and/or staffing and spending to avoid recoupment at the end of the accountability period.

HHSC did not change the proposed rule in response to this comment.

Comment concerning §355.307(b)(1)(B): The occupancy adjustment for the General and Administration rate component should be eliminated.

Response: This comment is not germane to the proposed rules. The purpose of the proposed rules is to allow for the transition from TILE to RUGs and to eliminate obsolete language, not to revise the calculation of the General and Administration rate com-

ponent. HHSC did not change the proposed rule in response to this comment.

Comment concerning §355.307(b)(1)(C): The fixed capital reimbursement methodology should be revised to implement a true use fee reimbursement system that uses a proxy appraisal system.

Response: This comment is not germane to the proposed rules. The purpose of the proposed rules is to allow for the transition from TILE to RUGs and to eliminate obsolete language, not to revise the calculation of the Fixed Capital Asset rate component methodology. HHSC did not change the proposed rule in response to this comment.

Comment concerning §355.307(b)(1)(C)(v): This clause should be modified to allow the application of the 2.5 percent rate increase.

Response: HHSC concurs and has modified subsection (f) to allow for the application of a 2.5 percent rate increase to the fixed capital asset use fee.

Comment concerning §355.307(b)(3)(A): Relative values of direct care staff should be frozen at their original values of 1.5 RNs per LVN and .5 aides per LVN.

Response: This comment is not germane to the proposed rules. The purpose of the proposed rules is to allow for the transition from TILE to RUGs and to eliminate obsolete language, not to revise the calculation of staffing requirements under the enhancement system. HHSC did not change the proposed rule in response to this comment.

Comment concerning §355.307(b)(3)(B)(ii) - (iii): There is no need to re-determine the weights for rates for FY10 and FY11 in that the relative difference between the weights does not change regardless of the distribution of patient days. Developing updated weights each year based upon updated patient days is redundant and unnecessary. Once the weights for each of the 34 categories have been established, there is no need to change them. The only time it is necessary to revise the weights by category is if the standard time measurements change as a result of an updated time study or if there is a major swing in wage rates of LVN in relation to RN or Nurse Aide wage rates.

Response: HHSC has not changed clause (ii) in response to this comment because it believes that the weighting factor calculated in clause (ii) will be more accurate than the factor calculated in clause (i). The weighting factor calculated in clause (ii) will be based on audited assessment data while the factor calculated in clause (i) will be based on unaudited assessment data.

HHSC agrees that, in clause (iii), for the direct care staff rate component, there is no need to redetermine the statewide weighted average total adjusted minutes every rate setting cycle since the weighted average rate for this rate component is based on the 1998 cost report database inflated to the rate period. HHSC has modified §355.307(b)(3)(B)(iii) to indicate that the weighting factor will be updated to coincide with the cost reporting period only for the other recipient care rate component. HHSC believes there is a need to redetermine the weighting factor for the other recipient care component. The weighted average rate for the other recipient care rate component is based upon the most recently available, audited cost report data and the weighting factor must be based upon the same time period.

Comment concerning §355.307(b)(3)(B)(iii): This clause should apply to rates for FY 2012 and forward and should not apply to

rates for FY 2011 because rates for the 2010-11 biennium will be determined under clause (ii).

Response: HHSC concurs and has modified this clause to apply to rates for FY 2012 (effective September 1, 2011) and forward.

Comment concerning §355.307(f): This subsection should be modified to allow for a 2.5 percent rate increase for the non-resident care cost areas for FY 2009 to ease the transition from TILE to RUGs. As proposed, the subsection limits rate increases to the Direct Care and Other Resident Care cost components.

Response: HHSC concurs and has modified subsection (f) to allow for the application of a 2.5 percent rate increase in the Dietary, General/Administration and Fixed Capital Asset cost components.

Comment concerning §355.307(f): The timing of the hold harmless payments is problematic - it takes too long to get hold harmless dollars to "losers". Hold harmless payments should be based on three-month periods instead of six-month periods as proposed and should be paid within 60 days of the end of the hold harmless period.

Response: HHSC has modified this subsection to have two six month interim hold harmless payments and a final settle-up. Interim payments equal to 80 percent of the hold harmless payment amount will be made approximately 45 days after the end of each six-month hold harmless period. A final hold harmless payment for the entire fiscal year will be made 120 days after the end of the fiscal year. This payment will pay the entire Fiscal Year 2009 hold harmless amount, less the amounts already paid for the two interim hold harmless payments.

Comment concerning §355.307(f)(1) and (2): The use of two different time periods' weighted average case mix index in the calculation of the rate is inappropriate. HHSC should use the weighted average case mix index of the database (1998) from which all rates are now simply index forward.

Response: The only rate component tied to the 1998 database is the direct care staff component; all other components are tied to the most recently available, audited database. The application of the 1998 average case mix index to rate components derived from more recent databases would be inappropriate and erroneous. HHSC did not change the proposed rule in response to this comment.

Comment concerning §355.308(j)(1)(A): Relative values of direct care staff should be frozen at their original values of 1.5 RNs per LVN and .5 aides per LVN.

Response: This comment is not germane to the proposed rules. The purpose of the proposed rules is to allow for the transition from TILE to RUGs and to eliminate obsolete language, not to revise the calculation of staffing requirements under the enhancement system. HHSC did not change the proposed rule in response to this comment.

Comment concerning §355.308(j)(1)(A)(i): The minimum staffing requirement for a Medicare day of service in a Medicare-contracted bed should be set at 1.5 times the requirement for a RUG PD1.

Response: Analyses of acuity differences between Medicare and Medicaid recipients show that the average Medicare recipient has a case mix index that is 1.5 times the case mix index of the average Medicaid recipient. These analyses do not support setting the requirement for a Medicare day of service at 1.5 times

the requirement for a PD1. HHSC did not change the proposed rule in response to this comment.

Comment concerning §355.308(j)(1)(E): The proposed rule implies that the RUG-III PE1 closely approximates the acuity level of a TILE 207, yet to date no crosswalk between the RUGs system and the TILE system has been provided by HHSC staff. HHSC must produce/provide a crosswalk between the RUGs system and the TILE system to efficiently prepare for the pending transition and to fully validate the calculations imbedded within the agency's transition proposal.

Response: It is not possible to create a crosswalk between TILE and RUGs. The systems differ in the number of case mix groups (11 versus 34), the number of clinical groups (4 versus 7), the assessment forms used to classify residents (3652 versus MDS) and the definitions applied to common resident characteristics such as Activities of Daily Living, behavior, and cognition. HHSC has provided provider representatives with tables showing current case mix indices and rates for each TILE group and the case mix indices and rates for each RUG group. These materials should enable providers to perform the tasks indicated by the commenter.

Comment concerning §355.308(j)(1)(E): Private pay default minutes should be tied to the lower of the facility's required Medicaid minutes or the minutes required for a RUG PD1, rather than a RUG PE1 as proposed.

Response: HHSC concurs and has modified this subparagraph to set the staffing requirement for other days of service in Medicaid-contracted beds equal to the lower of each facility's average requirement for its Medicaid recipients and the requirement for a RUG PD1.

Comment concerning §355.308(cc): HHSC should adjust the reinvestment process such that all recouped funds are reinvested.

Response: This comment is not germane to the proposed rules. The purpose of the proposed rules is to allow for the transition from TILE to RUGs and to eliminate obsolete language, not to revise the calculation of reinvestment amounts. HHSC did not change the proposed rule in response to this comment.

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

§355.307. Reimbursement Setting Methodology.

(a) Case mix classes. The Texas Health and Human Services Commission (HHSC) reimbursement rates for nursing facilities (NFs) vary according to the assessed characteristics of the recipient. Rates are determined for 34 case mix classes of service, plus a 35th, temporary classification assigned by default when assessment data are incomplete or in error and a 36th classification assigned by default when an assessment is missing.

(b) Reimbursement determination. HHSC applies the general principles of cost determination as specified in §355.101 of this title (relating to Introduction).

(1) Rate Components. Under the case mix methodology, reimbursements are comprised of five cost-related components: the direct care staff component; the other recipient care component; the dietary component; the general/administration component; and the fixed capital asset component. The direct care staff component is calculated as specified in §355.308 of this title (relating to Direct Care Staff Rate Component).

(A) The dietary rate component is constant across all case mix classes and is calculated at the median cost (weighted by Medicaid days of service in the rate base) in the array of projected allowable per diem costs for all contracted nursing facilities included in the rate base, multiplied by 1.07.

(B) The general/administration rate component is constant across all case mix classes and is calculated at the median cost (weighted by Medicaid days of service in the rate base) in the array of projected allowable per diem costs for all contracted nursing facilities included in the rate base, multiplied by 1.07.

(C) The fixed capital asset component is constant across all case mix classes and is calculated as follows:

(i) Determine the 80th percentile in the array of allowable appraised property values per licensed bed, including land and improvements. Appraised values for this purpose are determined as follows:

(I) For proprietary facilities, tax exempt facilities provided an appraisal from their local property taxing authority, and tax exempt facilities not provided an appraisal from their local property taxing authority because of an "exempt" status whose independent appraisal is in the first year of its five-year interval as described in §355.306(g)(2)(B)(ii) of this title (relating to Cost Finding Methodology), allowable appraised values are determined as described in §355.306(g) of this title (relating to Cost Finding Methodology).

(II) For tax exempt facilities not provided an appraisal from their local property taxing authority because of an "exempt" status whose independent appraisal is not in the first year of its five-year interval as described in §355.306(g)(2)(B)(ii) of this title (relating to Cost Finding Methodology), allowable appraised values are determined by indexing the facility's allowable appraised value as determined in §355.306(g) of this title (relating to Cost Finding Methodology) to the median increase in appraised values among contracted facilities in the state as a whole from the reporting period coinciding with the first year of the facility's five-year interval to the reporting period upon which reimbursements are to be based.

(III) Those facilities that do not report an allowable appraised value as described in §355.306(g) of this title (relating to Cost Finding Methodology) are not included in the array for purposes of calculating the use fee.

(ii) Project the 80th percentile of appraised property values per bed by one-half the forecasted increase in the personal consumption expenditures (PCE) chain-type price index from the cost reporting year to the rate year.

(iii) Calculate an annual use fee per bed as the projected 80th percentile of appraised property values per bed times an annual use rate of 14%.

(iv) Calculate a per diem use fee per bed by dividing the annual use fee per bed by annual days of service per bed at the higher of 85% occupancy, or the statewide average occupancy rate during the cost reporting period.

(v) The use fee is limited to the lesser of the fee as calculated in clauses (i) - (iv) of this subparagraph, or the fee as calcu-

lated by inflating the fee from the previous rate period by the forecasted rate of change in the PCE chain-type price index.

(2) Case mix classification system. All Medicaid recipients are classified according to the Resource Utilization Group (RUG-III) 34 group classification system, Version 5.20, index maximizing, as established by the state and the Centers for Medicare and Medicaid Services (CMS). Each of the case-mix groups, including the default groups, is assigned CMS standard nursing time measurements for Registered Nurses (RNs), Licensed Vocational Nurses (LVNs) and aides (Medication Aides and Certified Nurse Aides). These measurements indicate the amount of staff time required on average to deliver care to residents in that group.

(3) Per diem rate methodology. Staff determine per diem rate recommendations for each of the RUG-III groups and for the default groups according to the following procedures:

(A) For each RUG-III group, calculate a total LVN-equivalent minute statistic by converting the CMS standard nursing time measurements for RNs, LVNs and aides into Texas-specific LVN-equivalent minutes as per §355.308(j) of this title (relating to Direct Care Staff Rate Component) and summing the converted figures.

(B) Weight the total LVN-equivalent minute statistics from subparagraph (A) of this paragraph for each RUG-III group except the default groups as follows and determine the statewide weighted average total adjusted minutes:

(i) For rates effective September 1, 2008, the total LVN-equivalent minute statistics for each RUG-III group will be weighted by the estimated statewide recipient days of service by case mix group during the period beginning the first day of December 2007 and ending the last day of February 2008.

(ii) For rates effective September 1, 2009, the total LVN-equivalent minute statistics for each RUG-III group will be weighted by the estimated statewide recipient days of service by case mix group during the period beginning the first day of September 2008 and ending the last day of February 2009.

(iii) For rates effective September 1, 2011 and thereafter, for the other recipient care rate component, the total LVN-equivalent minute statistics for each RUG-III group will be weighted by the estimated statewide recipient days of service by case mix group during the cost reporting period covered by the rate base. For the direct care rate component, the total LVN-equivalent minute statistics for each RUG-III group will be weighted by the estimated statewide recipient days of service by case mix group during the period beginning the first day of September, 2008 and ending the last day of February, 2009.

(C) Determine the standardized statewide case mix index for each of the RUG-III groups by dividing each of the total LVN-equivalent minute statistics described under subparagraph (A) of this paragraph by the statewide weighted average total adjusted minutes described under subparagraph (B) of this paragraph.

(D) The other recipient care rate component varies according to case mix class of service and is calculated as follows. Adjust the raw sum of other recipient care costs in all nursing facilities included in the rate base in order to account for disallowed costs and inflation, as specified in §355.306 of this title (relating to Cost Finding Methodology). Then divide the adjusted total by the sum of recipient days of service in all facilities in the current rate base. Multiply the resulting weighted, average per diem cost of other recipient care by 1.07. The result is the average other recipient care rate component. To calculate the other recipient care per diem rate component for each of the RUG-III case mix groups and for the default groups, multiply each of

the standardized statewide case mix indexes from subparagraph (C) of this paragraph by the average other recipient care rate component.

(E) Total case mix per diem rates vary according to case mix class of service and according to participant status in Direct Care Staff Rate enhancements described in §355.308 of this title (relating to Direct Care Staff Rate Component).

(i) For each participating facility, for each of the RUG-III case mix groups and for the default groups, the recommended total per diem rate is the sum of the following five rate components:

(I) the dietary rate component from paragraph (1)(A) of this subsection;

(II) the general/administration rate component from paragraph (1)(B) of this subsection;

(III) the fixed capital asset use fee component from paragraph (1)(C) of this subsection;

(IV) the case mix group's other recipient care per diem rate component by case mix group from subparagraph (D) of this paragraph; and

(V) the case mix group's total direct care staff rate component for that participating facility as determined in §355.308(l) of this title (relating to Direct Care Staff Rate Component).

(ii) For nonparticipating facilities, for each of the RUG-III case mix groups and for the default groups, the recommended total per diem rate is the sum of the following five rate components:

(I) the dietary rate component from paragraph (1)(A) of this subsection;

(II) the general/administration rate component from paragraph (1)(B) of this subsection;

(III) the fixed capital asset use fee component from paragraph (1)(C) of this subsection;

(IV) the case mix group's other recipient care per diem rate component by case mix group from subparagraph (D) of this paragraph; and

(V) the case mix group's total direct care staff base rate component as determined in §355.308(k) of this title (relating to Direct Care Staff Rate Component).

(F) Qualifying ventilator-dependent residents may receive a supplement to the per diem rate specified in subparagraph (E) of this paragraph.

(i) To qualify for supplemental reimbursement, a resident must require artificial ventilation for at least six consecutive hours daily and the use must be prescribed by a licensed physician.

(ii) A ventilator-dependent resource differential case mix index for the other recipient care rate component is calculated by subtracting the standardized statewide case mix index for the SE1 RUG-III case mix group from subparagraph (C) of this paragraph from 3.61. A ventilator-dependent resource differential case mix index for the direct care staff base rate component is calculated by dividing the resource differential case mix index for the other recipient care rate component by 0.9908.

(iii) The per diem rate supplement is calculated by multiplying the resource differential case mix index for the other recipient care rate component times the per diem average other recipient care rate component, as described in subparagraph (D) of this paragraph and multiplying the resource differential case mix index for the direct care staff base rate component by the average direct care staff

base rate component as described in §355.308(k) of this title (relating to Direct Care Staff Rate) and summing the products.

(iv) The supplemental reimbursement for residents requiring continuous artificial ventilation is 100% of the per diem ventilator rate supplement.

(v) The supplemental reimbursement for residents not requiring continuous artificial ventilation daily but requiring artificial ventilation for at least six consecutive hours daily is 40% of the per diem ventilator rate supplement.

(G) Qualifying children with tracheostomies requiring daily care may receive a supplement to the per diem rate specified in subparagraph (E) of this paragraph.

(i) To qualify for supplemental reimbursement, a resident must be less than 22 years of age; require daily cleansing, dressing, and suctioning of a tracheostomy; and be unable to do self care. The daily care of the tracheostomy must be prescribed by a licensed physician.

(ii) The supplemental reimbursement for children receiving daily tracheostomy care is 60% of the per diem ventilator rate supplement as specified in subparagraph (F) of this paragraph.

(H) Children with qualifying conditions as specified in subparagraphs (F) and (G) of this paragraph may receive only one of the supplemental reimbursements. Therefore, children with tracheostomies who are also ventilator-dependent are not eligible to receive both supplemental reimbursements.

(c) Special reimbursement class. HHSC may define special reimbursement classes, including experimental reimbursement classes of service to be used in research and demonstration projects on new reimbursement methods and reimbursement classes of service, to address the cost differences of a select group of recipients. Special classes may be implemented on a statewide basis, may be limited to a specific region of the state, or may be limited to a selected group of providers.

(1) Pediatric Care Facility Class. The purpose of this special class is to recognize, through the adoption of a facility-specific payment rate, the cost differences that exist in a nursing facility or distinct unit of a nursing facility that serves predominantly children.

(2) Definitions.

(A) Pediatric care facility--A pediatric care facility is an entire facility that has maintained an average daily census of 80% or more children for the six-month period prior to its entry into the pediatric care facility class based on the entire licensed facility. A pediatric care facility can also be a distinct unit of a facility that has maintained an average daily census of 85% or more children for the six-month period prior to its entry into the pediatric care facility class based on the distinct unit of the facility. To remain a pediatric care facility, the pediatric care facility must maintain an average daily census of 80% or more children if the pediatric care facility is an entire facility and 85% or more children if the pediatric care facility is a distinct unit of the facility. The contracted provider must request in writing by certified mail or by special mail delivery where the delivery can be verified to become a member of the pediatric care facility special reimbursement class. The request must be sent to the Texas Health and Human Services Commission.

(B) Distinct unit--A portion of a nursing facility that is physically separate from (beds are not commingled with) other units of the facility. The distinct unit can be an entire wing, a separate building, an entire floor, or an entire hallway. The distinct unit consists of all beds within the designated area. A distinct unit must consist of 28 or more Medicaid-contracted beds.

(C) Children--For the purposes of this pediatric care facility class, children are defined as being at or below 22 years of age.

(3) Payment rate determination. Payment rates will be determined in the following manner:

(A) Cost reports and payment rate determination for pediatric care facilities are governed by the requirements specified in Subchapter A of this chapter (relating to Cost Determination Process) except that payment rates are determined annually, coincident with the state's fiscal year, within available funds. A nursing facility that contains a pediatric care facility distinct unit must complete two cost reports: one report for the pediatric care facility distinct unit and one report for the remainder of the facility.

(B) Payment rates for this class of service will be determined on a facility-specific basis for the pediatric care facility. The total allowable costs from the most recent cost report deemed acceptable are adjusted for inflation from the cost report period to the rate period. The adjusted cost is divided by the greater of total patient days of service reported on the cost report or the days of service at 85% of contracted capacity of the pediatric care facility. The resulting cost per day is multiplied by a factor of 1.03 to determine the final facility-specific rate. If no acceptable cost report is available, the provider will be required to submit a cost report covering the time period specified by HHSC.

(C) The facility-specific payment rate from paragraph (3)(B) of this subsection will be paid for all Medicaid residents of a qualifying pediatric care facility regardless of the RUG level of the resident.

(D) Residents of the pediatric care facility will not be eligible to receive the ventilator-dependent or the children-with-tracheostomies supplemental reimbursements.

(E) Pediatric care facilities are not eligible to participate in §355.308 of this title (relating to Enhanced Direct Care Staff Rate).

(d) Nurse aide training and competency evaluation costs.

(1) DADS reimburses nursing facilities for the actual costs of training and testing nurse aides as required under the Omnibus Budget Reconciliation Act of 1987 (OBRA '87). Payments are based on cost reimbursement vouchers that are to be submitted quarterly. Allowable costs are limited to those costs incurred for training provided after October 1, 1990, for:

(A) actual training course expenses up to a set amount determined by DADS per nurse aide;

(B) competency evaluation; or

(C) supplies and materials used in the nurse aide training not already covered by the training course fee.

(2) Nurse aide salaries while in training are factored into the vendor rate and are not to be included on the reimbursement voucher.

(3) Training program costs that exceed the DADS cost ceiling must have prior approval from DADS before costs can be reimbursed. A written request to Provider Billing Services must include:

(A) name and vendor number of facility.

(B) description of training program for which the facility is seeking reimbursement approval, to include:

(i) name, telephone number and address of the nurse aide training and competency evaluation program (NATCEP);

(ii) whether the NATCEP program is facility or non-facility-based; and

(iii) name of the NATCEP program director.

(C) an explanation of why the cost for the NATCEP exceeds the reimbursement ceiling. The explanation must include:

(i) a completed nurse aide unit cost calculation form for a facility-based NATCEP; or

(ii) a breakdown of the nurse aide unit cost by the instructor fees and training materials for a non-facility-based NATCEP.

(D) an explanation of why the nursing facility cannot utilize a training program at or below the reimbursement ceiling and what steps the facility has taken to explore more cost efficient training courses. The explanation must include:

(i) the availability of NATCEPs, such as the location or the frequency of training offered, in the geographic region of the facility;

(ii) the name and address of each NATCEP that the facility has explored as a provider of nurse aide training; and

(iii) the cost per nurse aide for each NATCEP identified in clause (i) of this subparagraph, as specified in subparagraph (C)(i) or (ii) of this paragraph.

(4) All prior approval requests as outlined in paragraph (3) of this subsection must be submitted to DADS, Provider Billing Services that:

(A) may request additional information in order to evaluate a reimbursement request; and

(B) will make the final decision on a reimbursement request.

(5) All nurse aide training courses must be approved by DADS before costs associated with them can be reimbursed.

(6) Nursing facilities are responsible for tracking and documenting nurse aide training costs for each nurse aide trained. All documentation is subject to DADS audits. If substantiating documentation for amounts billed to DADS cannot be verified, DADS will immediately recoup funds paid to the facility.

(7) Individuals who have successfully completed a nurse aide training and competency evaluation program (NATCEP) may be directly reimbursed for costs incurred in completing a NATCEP. The individual must meet all of the conditions specified in subparagraphs (A) - (E) of this paragraph.

(A) The individual must not have been employed at the time of completing the NATCEP.

(B) The individual must have been employed by, or received an offer of employment from, a nursing facility not later than 12 months after successfully completing the NATCEP.

(C) The individual must have been employed by the facility for no less than six months.

(D) The nursing facility must not have claimed reimbursement for training expenses for the individual.

(E) The individual must be listed on the current Nurse Aide Registry.

(8) Individuals must submit cost reimbursement vouchers to DADS with proof that the individual has been employed by a facility for no less than six months.

(9) Individuals who leave nursing facility employment before accruing the required six months of employment, as specified in paragraph (7)(C) of this subsection, may receive 50% reimbursement as long as the individual was employed for no less than three months.

(10) Reimbursement to individuals may not exceed the reimbursement ceiling as detailed in paragraph (1)(A) of this subsection.

(e) Oxygen costs. Oxygen costs incurred on or after January 1, 1995, will not be reimbursed on cost reimbursement vouchers. Those oxygen costs must be reported as expenses on the cost report.

(f) TILE to RUG-III Hold Harmless Transition. For rates effective September 1, 2008, payment rates for the direct care staff component and the other recipient care component will be updated within available funds, payment rates for the dietary, general/administration and fixed capital asset rate components will be equal to the rates in effect on August 31, 2008 times 1.025, payment rates for the professional and general liability insurance add-on and the professional-only liability insurance add-on will be equal to the rates in effect on August 31, 2008 times 1.024, and the payment rate for the general-only liability insurance add-on will be equal to the rate in effect on August 31, 2008 times 1.018.

(1) To calculate the updated direct care staff per diem rate component for each of the RUG-III case mix groups and for the default groups, divide each of the standardized statewide case mix indexes from subsection (b)(3)(C) of this section by 0.9908, which is the weighted average TILE case mix index for the 1998 cost reporting period, multiply each quotient by the statewide average TILE case mix index for the period beginning the first day of December, 2007 and ending the last day of February, 2008 as represented in the Texas Department of Aging and Disability Services (DADS) Claims Management System (CMS) on or around June 1, 2008 and multiply each product by the average updated direct care staff rate component.

(2) To calculate the updated other recipient care per diem rate component for each of the RUG-III case mix groups and for the default groups, divide each of the standardized statewide case mix indexes from subsection (b)(3)(C) of this section by 1.0267, which is the weighted average TILE case mix index for the 2005 cost reporting period, multiply each quotient by the statewide average TILE case mix index for the period beginning the first day of December, 2007 and ending the last day of February, 2008 as represented in the Texas Department of Aging and Disability Services (DADS) Claims Management System (CMS) on or around June 1, 2008 and multiply each product by the average updated other recipient care rate component.

(3) For state fiscal year 2009 only, for each Medicaid-contracted nursing facility, HHSC will:

(A) Calculate the sum of the weighted average TILE direct care staff base rate (with no enhancements) and other recipient care rate based on the TILE rates for these cost areas in effect on August 31, 2008 and the facility's approved to be paid days of service by TILE from January 1, 2008 through June 30, 2008 as represented in the Texas Department of Aging and Disability Services (DADS) Claims Management System (CMS) on or around November 3, 2008.

(B) Calculate the sum of the weighted average RUG-III direct care staff base rate (with no enhancements) and other recipient care rate based on the RUG rates for these cost areas in effect on September 1, 2008 and the facility's approved to be paid days of service by RUG-III for those recipients paid under RUG-III from September 1, 2008 through February 28, 2009 as represented in the DADS CMS on or around March 31, 2009.

(C) Compare the sum from subparagraph (A) of this paragraph to the sum from subparagraph (B) of this paragraph. If the

sum from subparagraph (A) is greater than the sum from subparagraph (B), DADS will pay the facility 80 percent of the difference between the sum from subparagraph (A) and the sum from subparagraph (B) times the facility's approved to be paid days of service for those recipients paid under RUG-III from September 1, 2008 through February 28, 2009 as represented in the DADS CMS on or around March 31, 2009.

(D) Calculate the sum of the weighted average RUG-III direct care staff base rate (with no enhancements) and other recipient care rate based on the RUG rates for these cost areas in effect on September 1, 2008 and the facility's approved to be paid days of service by RUG-III for those recipients paid under RUG-III from March 1, 2009 through August 31, 2009 as represented in the DADS CMS on or around September 30, 2009.

(E) Compare the sum from subparagraph (A) of this paragraph to the sum from subparagraph (D) of this paragraph. If sum from subparagraph (A) is greater than the sum from subparagraph (D), DADS will pay the facility 80 percent of the difference between the sum from subparagraph (A) and the sum from subparagraph (D) times the facility's approved to be paid days of service for those recipients paid under RUG-III from March 1, 2009 through August 31, 2009 as represented in the DADS CMS on or around September 30, 2009.

(F) Calculate the sum of the weighted average RUG-III direct care staff base rate (with no enhancements) and other recipient care rate based on the RUG rates for these cost areas in effect on September 1, 2008, and the facility's approved to be paid days of service by RUG-III for those recipients paid under RUG-III from September 1, 2008, through August 31, 2009, as represented in the DADS CMS on or around January 4, 2010.

(G) Compare the sum from subparagraph (A) of this paragraph to the sum from subparagraph (F) of this paragraph.

(i) If the sum from subparagraph (A) is greater than the sum from paragraph (F), determine the difference between the sum from subparagraph (A) and the sum from subparagraph (F) times the facility's approved to be paid days of service for those recipients paid under RUG-III from September 1, 2008, through August 31, 2009, as represented in the DADS CMS on or around January 4, 2010, and subtract the hold harmless payments made under subparagraphs (C) and (E) from the product calculated in this clause.

(I) If the result is a positive number, DADS will pay the facility the difference.

(II) If the result is a negative number, DADS will recoup the difference from the facility.

(ii) If the sum from subparagraph (A) is less than the sum from paragraph (F) and the facility received a hold harmless payment under subparagraph (C) and/or (E), DADS will recoup from the facility the hold harmless payments made under these subparagraphs.

(4) "On or around" as used in this subsection means the date that the state pulls the information as described in the subsection as close to the dates specified in subsection as feasible and determined by the state. Once the state does the data pull, no other pulls will be made for the purpose of calculating the values described in this subsection. This means that once the paid days of service for a paragraph have been determined for purposes of calculating the TILE to RUG-III hold harmless transition, they will not be updated for late Minimum Data Set (MDS) submissions, Utilization Review RUG-III changes, retroactive eligibility or any other reason.

§355.308. *Direct Care Staff Rate Component.*

(a) Direct care staff cost center. This cost center will include compensation for employee and contract labor Registered Nurses

(RNs), including Directors of Nursing (DONs) and Assistant Directors of Nursing (ADONs); Licensed Vocational Nurses (LVNs), including DONs and ADONs; medication aides; and nurse aides performing nursing-related duties for Medicaid contracted beds.

(1) Compensation to be included for these employee staff types is the allowable compensation defined in §355.103(b)(1) of this title (relating to Specifications for Allowable and Unallowable Costs) that is reported as either salaries and/or wages (including payroll taxes and workers' compensation) or employee benefits. Benefits required by §355.103(b)(1)(A)(iii) of this title (relating to Specifications for Allowable and Unallowable Costs) to be reported as costs applicable to specific cost report line items are not to be included in this cost center.

(2) Direct care staff who also have administrative duties not related to nursing must properly direct charge their compensation to each type of function performed based upon daily time sheets maintained throughout the entire reporting period.

(3) Nurse aides must meet the qualifications enumerated under 40 TAC §19.1903 (relating to Required Training of Nurse Aides) to be included in this cost center. Nurse aides include certified nurse aides and nurse aides in training as per 40 TAC §94.3(k) (relating to Nurse Aide Training and Competency Evaluation Program (NATCEP) Requirements).

(4) Contract labor refers to personnel for whom the contracted provider is not responsible for the payment of payroll taxes (such as FICA, Medicare, and federal and state unemployment insurance) and who perform tasks routinely performed by employees. Allowable contract labor costs are defined in §355.103(b)(2)(C) of this title (relating to Specifications for Allowable and Unallowable Costs).

(5) For facilities receiving supplemental reimbursement for children with tracheostomies requiring daily care as described in §355.307(b)(3)(F) of this title (relating to Reimbursement Setting Methodology), staff required by 40 TAC §19.901(14)(C)(iii) (relating to Quality of Care) performing nursing-related duties for Medicaid contracted beds are included in the direct care staff cost center.

(6) For facilities receiving supplemental reimbursement for qualifying ventilator-dependent residents as described in §355.307(b)(3)(E) of this title (relating to Reimbursement Setting Methodology), Registered Respiratory Therapists and Certified Respiratory Therapy Technicians are included in the direct care staff cost center.

(7) Nursing facility administrators and assistant administrators are not included in the direct care staff cost center.

(8) Staff members performing more than one function in a facility without a differential in pay between functions are categorized at the highest level of licensure or certification they possess. If this highest level of licensure or certification is not that of an RN, LVN, medication aide, or certified nurse aide, the staff member is not to be included in the direct care staff cost center but rather in the cost center where staff members with that licensure or certification status are typically reported.

(9) Paid feeding assistants are not included in the direct care staff cost center and are not to be counted toward the staffing requirements described in subsection (j) of this section. Paid feeding assistants are intended to supplement certified nurse aides, not to be a substitute for certified or licensed nursing staff.

(b) Rate year. The standard rate year begins on the first day of September and ends on the last day of August of the following year.

(c) Open enrollment. Open enrollment for the enhanced direct care staff rates will begin on the first day of July and end on the last day

of that same July preceding the rate year for which payments are being determined unless the Texas Health and Human Services Commission (HHSC) notified providers prior to the first day of July that open enrollment has been postponed or cancelled. Should conditions warrant, HHSC may conduct additional enrollment periods during a rate year.

(d) Enrollment contract amendment. An initial enrollment contract amendment is required from each facility choosing to participate in the enhanced direct care staff rate. Participating and nonparticipating facilities may request to modify their enrollment status (i.e., a nonparticipant can request to become a participant, a participant can request to become a nonparticipant, a participant can request to change its enhancement level) during any open enrollment period. Nonparticipants and participants requesting to increase their enrollment levels will be limited to requesting increases of three or fewer enhancement levels during any single open enrollment period unless such limits are waived by HHSC. Requests to modify a facility's enrollment status during an open enrollment period must be received by HHSC Rate Analysis by the last day of the open enrollment period as per subsection (c) of this section. If the last day of the open enrollment period falls on a weekend, a national holiday, or a state holiday, then the first business day following the last day of the open enrollment period is the final day the receipt of the enrollment contract amendment will be accepted. An enrollment contract amendment that is not received by the stated deadline will not be accepted. A facility from which HHSC Rate Analysis has not received an acceptable request to modify their enrollment by the last day of the open enrollment period will continue at the level of participation in effect during the open enrollment period within available funds until the facility notifies HHSC in accordance with subsection (r) of this section that it no longer wishes to participate or until the facility's enrollment is limited in accordance with subsection (i) of this section. If HHSC determines that funds are not available to continue participation at the level of participation in effect during the open enrollment period, facilities will be notified as per subsection (ee) of this section. To be acceptable, an enrollment contract amendment must be completed according to instructions, signed by an authorized signator as per the Texas Department of Aging and Disabilities Services (DADS) Form 2031 applicable to the provider's contract or ownership type, and be legible.

(e) New facilities. For purposes of this section, for each rate year a new facility is defined as a facility delivering its first day of service to a Medicaid recipient after the first day of the open enrollment period, as defined in subsection (c) of this section, for that rate year. Facilities that underwent an ownership change are not considered new facilities. For purposes of this subsection, an acceptable enrollment contract amendment is defined as a legible enrollment contract amendment that has been completed according to instructions, signed by an authorized signator as per the DADS Form 2031 applicable to the provider's contract or ownership type, and received by HHSC within 30 days of the mailing of notification to the facility by HHSC that such an enrollment contract amendment must be submitted. New facilities will receive the direct care staff base rate as determined in subsection (k) of this section with no enhancements. For new facilities specifying their desire to participate on an acceptable enrollment contract amendment, the direct care staff rate is adjusted as specified in subsection (l) of this section, effective on the first day of the month following receipt by HHSC of the acceptable enrollment contract amendment. If the granting of newly requested enhancements was limited as per subsection (j)(3) of this section during the most recent enrollment, enrollment for new facilities will be subject to that same limitation.

(f) Staffing and Compensation Report submittal requirements. Staffing and Compensation Reports must be submitted as follows:

(1) Annual Staffing and Compensation Report. All participating facilities will provide HHSC, in a method specified by HHSC, an Annual Staffing and Compensation Report reflecting the activities of the facility while delivering contracted services from the first day of the rate year through the last day of the rate year. This report will be used as the basis for determining compliance with the staffing requirements and recoupment amounts as described in subsection (n) of this section, and as the basis for determining the spending requirements and recoupment amounts as described in subsection (o) of this section. Participating facilities failing to submit an acceptable Annual Staffing and Compensation Report within 60 days of the end of the rate year will be placed on vendor hold until such time as an acceptable report is received and processed by HHSC.

(A) When a participating facility changes ownership, the prior owner must submit a Staffing and Compensation Report covering the period from the beginning of the rate year to the date recognized by HHSC or its designee as the ownership-change effective date. This report will be used as the basis for determining any recoupment amounts as described in subsections (n) and (o) of this section. The new owner will be required to submit a Staffing and Compensation Report covering the period from the day after the date recognized by HHSC or its designee as the ownership-change effective date to the end of the rate year.

(B) Participating facilities whose contracts are terminated either voluntarily or involuntarily must submit a Staffing and Compensation Report covering the period from the beginning of the rate year to the date recognized by HHSC or its designee as the contract termination date. This report will be used as the basis for determining any recoupment amounts as described in subsections (n) and (o) of this section.

(C) Participating facilities who voluntarily withdraw from participation as per subsection (r) of this section must submit a Staffing and Compensation Report within 60 days of the date of withdrawal as determined by HHSC, covering the period from the beginning of the rate year to the date of withdrawal as determined by HHSC. This report will be used as the basis for determining any recoupment amounts as described in subsections (n) and (o) of this section.

(D) Participating facilities whose cost report year coincides with the state of Texas fiscal year as per §355.105(b)(5) of this title (relating to General Reporting and Documentation Requirements, Methods and Procedures) are exempt from the requirement to submit a separate Annual Staffing and Compensation Report. For these facilities, their cost report will be considered their Annual Staffing and Compensation Report.

(2) Other reports. HHSC may require other Staffing and Compensation Reports from all facilities as needed.

(3) Vendor hold. HHSC or its designee will place on hold the vendor payments for any participating facility that does not submit a Staffing and Compensation Report completed in accordance with all applicable rules and instructions by the due dates described in this subsection. This vendor hold will remain in effect until an acceptable Staffing and Compensation Report is received by HHSC. Participating facilities that do not submit a Staffing and Compensation Report completed in accordance with all applicable rules and instructions within 60 days of the due dates described in this subsection will become nonparticipants retroactive to the first day of the reporting period in question and will be subject to an immediate recoupment of funds related to participation paid to the facility for services provided during the reporting period in question. These facilities will remain nonparticipants and recouped funds will not be restored until they submit an acceptable

report and repay to HHSC or its designee funds identified for recoupment from subsections (n) and/or (o) of this section. If an acceptable report is not received within 365 days of the due date, the recoupment will become permanent. In addition, participating facilities with an ownership change or contract termination that do not submit a Staffing and Compensation report completed in accordance with all applicable rules within 60 days of the change in ownership or contract termination will become nonparticipants retroactive to the first day of the reporting period in question and will be subject to an immediate recoupment of funds related to participation paid to the facility for services provided during the reporting period in question. These facilities will remain nonparticipants and recouped funds will not be restored until they submit an acceptable report and repay to HHSC or its designee funds identified for recoupment from subsections (n) and/or (o) of this section. If an acceptable report is not received within 365 days of the change of ownership or contract termination date, the recoupment will become permanent.

(4) Provider-initiated amended accountability reports. Reports must be received prior to the date the provider is notified of compliance with spending and/or staffing requirements for the report in question as per subsections (n) and/or (o) of this section.

(g) Report contents. Annual Staffing and Compensation Reports will include any information required by HHSC to implement this enhanced direct care staff rate.

(h) Completion of Reports. All Staffing and Compensation Reports must be completed in accordance with the provisions of §§355.102 - 355.105 of this title (relating to General Principles of Allowable and Unallowable Costs, Specifications for Allowable and Unallowable Costs, Revenues, and General Reporting and Documentation Requirements, Methods, and Procedures) and may be reviewed or audited in accordance with §355.106 of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports). Beginning with the state fiscal year 2002 report, all Staffing and Compensation Reports must be completed by preparers who have attended the required nursing facility cost report training as per §355.102(d) of this title (relating to General Principles of Allowable and Unallowable Costs). For Staffing and Compensation Reports for even numbered state fiscal years, preparers must have attended the cost report training for that same even numbered year. For Staffing and Compensation Reports for odd numbered state fiscal years, preparers must have attended the most recent cost report training sessions provided prior to the due date of the Staffing and Compensation Report.

(i) Enrollment limitations. A facility will not be enrolled in the enhanced direct care staff rate at a level higher than the level it achieved on its most recently available, audited Staffing and Compensation Report. HHSC will issue a notification letter that informs a facility in writing of its enrollment limitations (if any) prior to the first day of the open enrollment period.

(1) Requests for revision. A facility may request a revision of its enrollment limitation if the facility's most recently available, audited Staffing and Compensation Report does not represent its current staffing levels.

(A) A request for revision of enrollment limitation must include the documentation specified in subparagraph (B) of this paragraph and must be received by HHSC Rate Analysis by hand delivery, United States mail, or special delivery mail no later than 30 calendar days from the date on the notification letter. If the 30th calendar day is a weekend day, national holiday, or state holiday, then the first business day following the 30th calendar day is the final day the receipt of the written request will be accepted. A request for revision that is not received by the stated deadline and that is not submitted on the form

specified by HHSC will not be accepted and the enrollment limitation specified in the notification letter will apply.

(B) A facility that requests a revision of its enrollment limitation must submit documentation, in the form specified by HHSC in the notification letter, which shows that, for the period beginning September 1 of the current rate year and ending April 30 of the current rate year, the facility met a higher staffing level than the notification letter indicates. In such cases, the facility's enrollment limitation will be established at the level supported by its request for revision documentation. It is the responsibility of the facility to render all required documentation at the time of its request for revision. Requests not in the form specified by HHSC in the notification letter and requests that fail to support a staffing level different than indicated in the notification letter will result in a rejection of the request and the enrollment limitation specified in the notification letter will apply.

(C) A request for revision must be signed by an individual legally responsible for the conduct of the facility or legally authorized to bind the facility, such as the sole proprietor, a partner, a corporate officer, an association officer, a governmental official, a limited liability company member, a person authorized by the applicable DADS Form 2031 for the interested party on file at the time of the request, or a legal representative for the interested party. A request for revision that is not signed by an individual legally responsible for the conduct of the interested party will not be accepted and the enrollment limitation specified in the notification letter will apply.

(D) If the facility's Staffing and Compensation Report for the rate year that included the open enrollment period described in subsection (d) of this section shows the facility staffed below the level it presented in its request for revision, HHSC will immediately recoup all enhancement payments associated with the request for revision documents and the facility will be limited to the level supported by the report for the remainder of the rate year.

(E) At no time will a facility be allowed to enroll in the enhancement program at a level higher than its current level of enrollment plus three additional levels unless otherwise instructed by HHSC Rate Analysis.

(2) New owners after a change of ownership. Enhancement levels for a new owner after a change of ownership will be determined in accordance with subsection (y) of this section. A new owner will not be subject to enrollment limitations based upon the prior owner's performance. This exemption from enrollment limitations does not apply in cases where HHSC or its designee has approved a successor-liability-agreement that transfers responsibility from the former owner to the new owner.

(3) New facilities. A new facility's enrollment will be determined in accordance with subsection (e) of this section.

(j) Determination of staffing requirements for participants. Facilities choosing to participate in the enhanced direct care staff rate agree to maintain certain direct care staffing levels above the minimum staffing levels described in paragraph (1) of this subsection. In order to permit facilities the flexibility to substitute RN, LVN and aide (Medication Aide and nurse aide) staff resources and, at the same time, comply with an overall nursing staff requirement, total nursing staff requirements are expressed in terms of LVN equivalent minutes. Conversion factors to convert RN and aide minutes into LVN equivalent minutes are based upon most recently available, reliable relative compensation levels for the different staff types.

(1) Minimum staffing levels. HHSC determines, for each participating facility, minimum LVN equivalent staffing levels as follows.

(A) Determine minimum required LVN equivalent minutes per resident day of service for various types of residents using time study data, cost report information, and other appropriate data sources.

(i) Determine LVN equivalent minutes associated with Medicare residents based on the data sources from this subparagraph adjusted for estimated acuity differences between Medicare and Medicaid residents.

(ii) Determine minimum required LVN equivalent minutes per resident day of service associated with each Resource Utilization Group (RUG-III) case mix group and additional minimum required minutes for Medicaid residents reimbursed under the RUG-III system who also qualify for supplemental reimbursement for ventilator care or pediatric tracheostomy care as described in §355.307 of this title (relating to Reimbursement Setting Methodology) based on the data sources from this subparagraph adjusted for acuity differences between Medicare and Medicaid residents and other factors.

(B) Based on most recently available, reliable utilization data, determine for each facility the total days of service by RUG-III group, days of service provided to Medicaid residents qualifying for Medicaid supplemental reimbursement for ventilator or tracheostomy care, total days of service for Medicare Part A residents in Medicaid-contracted beds, and total days of service for all other residents in Medicaid-contracted beds.

(C) Multiply the minimum required LVN equivalent minutes for each RUG-III group and supplemental reimbursement group from subparagraph (A) of this paragraph by the facility's Medicaid days of service in each RUG-III group and supplemental reimbursement group from subparagraph (B) of this paragraph and sum the products.

(D) Multiply the minimum required LVN equivalent minutes for Medicare residents by the facility's Medicare Part A days of service in Medicaid-contracted beds.

(E) Divide the sum from subparagraph (C) of this paragraph by the facility's total Medicaid days of service, with a day of service for a Medicaid RUG-III recipient who also qualifies for a supplemental reimbursement counted as one day of service, compare this result to the minimum required LVN-equivalent minutes for a RUG-III PD1 and multiply the lower of the two figures by the facility's other resident days of service in Medicaid-contracted beds.

(F) Sum the results of subparagraphs (C), (D) and (E) of this paragraph, divide the sum by the facility's total days of service in Medicaid-contracted beds, with a day of service for a Medicaid recipient who also qualifies for a supplemental reimbursement counted as one day of service. The results of these calculations are the minimum LVN equivalent minutes per resident day a participating facility must provide.

(2) Enhanced staffing levels. Facilities desiring to participate in the enhanced direct care staff rate are required to staff above the minimum requirements from paragraph (1) of this subsection. These facilities may request LVN-equivalent staffing enhancements from an array of LVN-equivalent enhanced staffing options and associated add-on payments during open enrollment under subsection (d) of this section.

(3) Granting of staffing enhancements. HHSC divides all requested enhancements, after applying any enrollment limitations from subsection (i) of this section, into two groups: pre-existing enhancements that facilities request to carry over from the prior year and newly-requested enhancements. Newly-requested enhancements may be enhancements requested by facilities that were nonparticipants in the prior year or by facilities that were participants in the prior year

desiring to be granted additional enhancements. Using the process described herein, HHSC first determines the distribution of carry-over enhancements. If HHSC determines that funds are not available to carry over some or all pre-existing enhancements, facilities will be notified as per subsection (ee) of this section. If funds are available after the distribution of carry-over enhancements, HHSC then determines the distribution of newly requested enhancements. HHSC may not distribute newly requested enhancements to facilities owing funds identified for recoupment from subsections (n) and/or (o) of this section.

(A) HHSC determines projected Medicaid units of service for facilities requesting each enhancement option, and multiplies this number by the rate add-on associated with that enhancement option as determined in subsection (l) of this section.

(B) HHSC compares the sum of the products from subparagraph (A) of this paragraph to available funds.

(i) If the product is less than or equal to available funds, all requested enhancements are granted.

(ii) If the product is greater than available funds, enhancements are granted beginning with the lowest level of enhancement and granting each successive level of enhancement until requested enhancements are granted within available funds. Based upon an examination of existing staffing levels and staffing needs, HHSC may grant certain enhancement options priority for distribution.

(4) Notification of granting of enhancements. Participating facilities are notified, in a manner determined by HHSC, as to the disposition of their request for staffing enhancements.

(k) Determination of direct care staff base rate.

(1) Determine the sum of recipient care costs from the direct care staff cost center in subsection (a) of this section in all nursing facilities included in the Texas Nursing Facility Cost Report database used to determine the nursing facility rates in effect on January 1, 2000 (hereinafter referred to as the initial database).

(2) Adjust the sum from paragraph (1) of this subsection as specified in §355.108 of this title (relating to Determination of Inflation Indices) to inflate the costs to the prospective rate year.

(3) Divide the result from paragraph (2) of this subsection by the sum of recipient days of service in all facilities in the initial database and multiply the result by 1.07. The result is the average direct care staff base rate component for all facilities.

(4) For rates effective September 1, 2009 and thereafter, to calculate the direct care staff per diem base rate component for all facilities for each of the RUG-III case mix groups and for the default groups, divide each RUG-III index from §355.307(3)(C) of this title (relating to Reimbursement Methodology) by 0.9908, which is the weighted average Texas Index for Level of Effort (TILE) case mix index associated with the initial database, and then multiply each of the resulting quotients by the average direct care staff base rate component from paragraph (3) of this subsection.

(5) The direct care staff per diem base rates will remain constant except for adjustments for inflation from paragraph (2) of this subsection. HHSC may also recommend adjustments to the rates in accordance with §355.109 of this title (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs).

(l) Determine each participating facility's total direct care staff rate. Each participating facility's total direct care staff rate will be equal to the direct care staff base rate from subsection (k) of this section plus

any add-on payments associated with enhanced staffing levels selected by and awarded to the facility during open enrollment. HHSC will determine a per diem add-on payment for each enhanced staffing level taking into consideration the most recently available, reliable data relating to LVN equivalent compensation levels.

(m) Staffing requirements for participating facilities. Each participating facility will be required to maintain adjusted LVN-equivalent minutes equal to those determined in subsection (j) of this section. Each participating facility's adjusted LVN-equivalent minutes maintained during the reporting period will be determined as follows.

(1) Determine unadjusted LVN-equivalent minutes maintained. Upon receipt of the staffing and spending information described in subsection (f) of this section, HHSC will determine the unadjusted LVN-equivalent minutes maintained by each facility during the reporting period.

(2) Determine adjusted LVN-equivalent minutes maintained. Compare the unadjusted LVN-equivalent minutes maintained by the facility during the reporting period from paragraph (1) of this subsection to the LVN-equivalent minutes required of the facility as determined in subsection (j) of this section. The adjusted LVN-equivalent minutes are determined as follows:

(A) If the number of unadjusted LVN-equivalent minutes maintained by the facility during the reporting period is greater than or equal to the number of LVN-equivalent minutes required for the facility or less than the minimum LVN-equivalent minutes required for participation as determined in subsection (j)(1) of this section; the facility's adjusted LVN-equivalent minutes maintained is equal to its unadjusted LVN-equivalent minutes; or

(B) If the number of unadjusted LVN-equivalent minutes maintained by the facility during the reporting period is less than the number of LVN-equivalent minutes required of the facility, but greater than or equal to the minimum LVN-equivalent minutes required for participation as determined in subsection (j)(1) of this section, the following steps are performed.

(i) Determine what the facility's accrued Medicaid fee-for-service direct care revenue for the reporting period would have been if their staffing requirement had been set at a level consistent with the highest LVN-equivalent minutes that the facility actually maintained, as defined in subsection (j) of this section.

(ii) Determine the facility's adjusted accrued direct care revenue by multiplying the accrued direct care revenue from clause (i) of this subparagraph by 0.85.

(iii) Determine the facility's accrued allowable Medicaid fee-for-service direct care staff expenses for the rate year.

(iv) Determine the facility's direct care spending surplus for the reporting period by subtracting the facility's adjusted accrued direct care revenue from clause (ii) of this subparagraph from the facility's accrued allowable direct care expenses from clause (iii) of this subparagraph.

(v) If the facility's direct care spending surplus from clause (iv) of this subparagraph is less than or equal to zero, the facility's adjusted LVN-equivalent minutes maintained is equal to the unadjusted LVN-equivalent minutes maintained as calculated in paragraph (1) of this subsection.

(vi) If the facility's direct care spending surplus from clause (iv) of this subparagraph is greater than zero, the adjusted LVN-equivalent minutes maintained by the facility during the reporting period is set equal to the facility's direct care spending surplus from clause (iv) of this subparagraph divided by the per diem enhancement add-on

as determined in subsection (l) of this section plus the unadjusted LVN-equivalent minutes maintained by the facility during the reporting period from paragraph (1) of this subsection. according to the following formula: (Direct Care Spending Surplus/Per Diem Enhancement Add-on for One LVN-equivalent Minute) + Unadjusted LVN-equivalent Minutes.

(C) For adjusted LVN-equivalent minutes calculated on or after March 1, 2004, requirements relating to the minimum LVN-equivalent minutes required for participation in subparagraphs (A) and (B) of this paragraph do not apply.

(n) Staffing accountability. Participating facilities will be responsible for maintaining the staffing levels determined in subsection (j) of this section. HHSC will determine the adjusted LVN-equivalent minutes maintained by each facility during the reporting period by the method described in subsection (m) of this section. HHSC or its designee will recoup all direct care staff revenues associated with unmet staffing goals from participating facilities that fail to meet their staffing requirements during the reporting period.

(o) Spending requirements for participants. Participating facilities are subject to a direct care staff spending requirement with recoupment calculated as follows:

(1) At the end of the rate year, a spending floor will be calculated by multiplying accrued Medicaid fee-for-service direct care staff revenues (net of revenues recouped by HHSC or its designee due to the failure of the facility to meet a staffing requirement as per subsection (n) of this section) by 0.85.

(2) Accrued allowable Medicaid direct care staff fee-for-service expenses for the rate year will be compared to the spending floor from paragraph (1) of this subsection. HHSC or its designee will recoup the difference between the spending floor and accrued allowable Medicaid direct care staff fee-for-service expenses from facilities whose Medicaid direct care staff spending is less than their spending floor.

(3) At no time will a participating facility's direct care rates after spending recoupment be less than the direct care base rates.

(p) Dietary and Fixed Capital Mitigation. Recoupment of funds described in subsection (o) of this section may be mitigated by high dietary and/or fixed capital expenses as follows.

(1) Calculate dietary cost deficit. At the end of the facility's rate year, accrued Medicaid dietary per diem revenues will be compared to accrued, allowable Medicaid dietary per diem costs. If costs are greater than revenues, the dietary per diem cost deficit will be equal to the difference between accrued, allowable Medicaid dietary per diem costs and accrued Medicaid dietary per diem revenues. If costs are less than revenues, the dietary cost deficit will be equal to zero.

(2) Calculate dietary revenue surplus. At the end of the facility's rate, accrued Medicaid dietary per diem revenues will be compared to accrued, allowable Medicaid dietary per diem costs. If revenues are greater than costs, the dietary per diem revenue surplus will be equal to the difference between accrued Medicaid dietary per diem revenues and accrued, allowable Medicaid dietary per diem costs. If revenues are less than costs, the dietary revenue surplus will be equal to zero.

(3) Calculate fixed capital cost deficit. At the end of the facility's rate year, accrued Medicaid fixed capital per diem revenues will be compared to accrued, allowable Medicaid fixed capital per diem costs as defined in §355.306(a)(2)(A) of this title (relating to Cost Finding Methodology). If costs are greater than revenues, the fixed capital cost per diem deficit will be equal to the difference between accrued,

allowable Medicaid fixed capital per diem costs and accrued Medicaid fixed capital per diem revenues. If costs are less than revenues, the fixed capital cost deficit will be equal to zero. For purposes of this paragraph, fixed capital per diem costs of facilities with occupancy rates below 85% are adjusted to the cost per diem the facility would have accrued had it maintained an 85% occupancy rate throughout the rate year.

(4) Calculate fixed capital revenue surplus. At the end of the facility's rate year, accrued Medicaid fixed capital per diem revenues will be compared to accrued, allowable Medicaid fixed capital per diem costs as defined in §355.306(a)(2)(A) of this title (relating to Cost Finding Methodology). If revenues are greater than costs, the fixed capital revenue per diem surplus will be equal to the difference between accrued Medicaid fixed capital per diem revenues and accrued, allowable Medicaid fixed capital per diem costs. If revenues are less than costs, the fixed capital revenue surplus will be equal to zero. For purposes of this paragraph, fixed capital per diem costs of facilities with occupancy rates below 85% are adjusted to the cost per diem the facility would have accrued had it maintained an 85% occupancy rate throughout the rate year.

(5) Facilities with a dietary per diem cost deficit will have their dietary per diem cost deficit reduced by their fixed capital per diem revenue surplus, if any. Any remaining dietary per diem cost deficit will be capped at \$2.00 per diem.

(6) Facilities with a fixed capital cost per diem deficit will have their fixed capital cost per diem deficit reduced by their dietary revenue per diem surplus, if any. Any remaining fixed capital per diem cost deficit will be capped at \$2.00 per diem.

(7) Each facility's recoupment, as calculated in subsection (o) of this section, will be reduced by the sum of that facility's dietary per diem cost deficit as calculated in paragraph (5) of this subsection and its fixed capital per diem cost deficit as calculated in paragraph (6) of this subsection.

(q) Adjusting staffing requirements. Facilities that determine that they will not be able to meet their staffing requirements from subsection (m) of this section may request a reduction in their staffing requirements and associated rate add-on. These requests will be effective on the first day of the month following approval of the request.

(r) Voluntary withdrawal. Facilities wishing to withdraw from participation must notify HHSC in writing by certified mail. Facilities voluntarily withdrawing must remain nonparticipants for the remainder of the rate year. Facilities that voluntarily withdraw from participation will have their participation end effective on the date of the withdrawal, as determined by HHSC.

(s) Notification of recoupment based on Annual Staffing and Compensation Report. Facilities will be notified, in a manner specified by HHSC, within 90 days of the determination of their recoupment amount by HHSC of the amount to be repaid to HHSC or its designee. If a subsequent review by HHSC or audit results in adjustments to the Annual Staffing and Compensation Report as described in subsection (f)(1) of this section that changes the amount to be repaid to HHSC or its designee, the facility will be notified in writing of the adjustments and the adjusted amount to be repaid. HHSC or its designee will recoup any amount owed from a facility's vendor payment(s) following the date of the notification letter.

(t) Change of ownership and contract terminations. Facilities required to submit a Staffing and Compensation Report due to a change of ownership or contract termination as described in subsection (f)(1)(A) - (B) of this section will have funds held as per 40 TAC §19.2308(2) (relating to Change of Ownership) until an accept-

able Staffing and Compensation Report is received by HHSC and funds identified for recoupment from subsections (n) and/or (o) of this section are repaid to HHSC or its designee. Informal reviews and formal appeals relating to these reports are governed by §355.110 of this title (relating to Informal Reviews and Formal Appeals). HHSC or its designee will recoup any amount owed from the facility's vendor payments that are being held. In cases where funds identified for recoupment cannot be repaid from the held vendor payments, the responsible entity from subsection (x) of this section will be jointly and severally liable for any additional payment due to HHSC or its designee. Failure to repay the amount due or submit an acceptable payment plan within 60 days of notification will result in the recoupment of the owed funds from other Medicaid contracts controlled by the responsible entity, placement of a vendor hold on all Medicaid contracts controlled by the responsible entity and will bar the responsible entity from receiving any new contracts with HHSC or its designees until repayment is made in full. The responsible entity for these contracts will be notified as described in subsection (s) of this section prior to the recoupment of owed funds, placement of vendor hold and barring of new contracts.

(u) Failure to document staff time and spending. Undocumented direct care staff and contract labor time and compensation costs will be disallowed and will not be used in the determination of direct care staff time and costs per unit of service.

(v) All other rate components. All other rate components will be calculated as specified in §355.307 of this title (relating to Reimbursement Setting Methodology) and will be uniform for all providers.

(w) Appeals. Subject matter of informal reviews and formal appeals is limited as per §355.110(a)(3)(B) of this title (relating to Informal Reviews and Formal Appeals).

(x) Responsible entities. The contracted provider, owner, or legal entity that received the revenue to be recouped upon is responsible for the repayment of any recoupment amount.

(y) Change of ownership. Participation in the enhanced direct care staff rate confers to the new owner as defined in 40 TAC §19.2308 (relating to Change of Ownership) when there is a change of ownership. The new owner is responsible for the reporting requirements in subsection (f) of this section for any reporting period days occurring after the change. If the change of ownership occurs during an open enrollment period as defined in subsection (c) of this section, then the owner recognized by HHSC or its designee on the last day of the enrollment period may request to modify the enrollment status of the facility in accordance with subsection (d) of this section.

(z) Contract cancellations. If a facility's Medicaid contract is cancelled before the first day of an open enrollment period as defined in subsection (c) of this section and the facility is not granted a new contract until after the last day of the open enrollment period, participation in the enhanced direct care staff rate as it existed prior to the date when the facility's contract was cancelled will be reinstated when the facility is granted a new contract, if it remains under the same ownership, subject to the availability of funding. Any enrollment limitations from subsection (i) of this section that would have applied to the cancelled contract will apply to the new contract.

(aa) In cases where a parent company, sole member, or governmental body controls more than one nursing facility (NF) contract participating in the enhanced direct care staff rate, the parent company, sole member, or governmental body has the option to have its participating contracts' compliance with the spending requirements detailed in subsection (o) of this section for the applicable reporting period evaluated in the aggregate. In such cases, compliance with the spending requirements will be evaluated in the aggregate for all participating NF contracts that the parent company, sole member or governmental

body controlled at the end of the rate year or at the effective date of the change of ownership or termination of its last participating NF contract. This option is called grouping. To exercise the grouping option, the parent company, sole member, or governmental body must submit a grouping request, in a manner prescribed by HHSC, at the time each Annual Staffing and Compensation Report is submitted. In limited partnerships in which the same single general partner controls all the limited partnerships, that single general partner must make this request. Other such requests will be reviewed on a case-by-case basis. A new request to have compliance with spending requirements evaluated in the aggregate must be submitted for each reporting period. NF contracts that change ownership or terminate effective after the end of the applicable reporting period, but prior to the determination of compliance with spending requirements as per subsection (o) of this section, are excluded from all aggregate spending calculations. These contracts' compliance with spending requirements will be determined on an individual basis and the costs and revenues will not be included in the aggregate spending calculation. A facility that does not participate in the enhanced direct care staff rate is excluded from all aggregate spending calculations because it is not subject to the spending requirements detailed in subsection (o) of this section.

(bb) Medicaid Swing Bed Program for Rural Hospitals. When a rural hospital participating in the Medicaid swing bed program furnishes NF nursing care to a Medicaid recipient under 40 TAC §19.2326 (relating to Medicaid Swing Bed Program for Rural Hospitals), HHSC or its designee makes payment to the hospital using the same procedures, the same case-mix methodology, and the same RUG-III rates that HHSC authorizes for reimbursing NFs receiving the direct care staff base rate with no enhancement levels. These hospitals are not subject to the staffing and spending requirements detailed in this section.

(cc) Reinvestment. HHSC will reinvest recouped funds in the enhanced direct care staff rate program, to the extent that there are qualifying facilities.

(1) Identify qualifying facilities. Facilities meeting the following criteria during the most recent completed reporting period are qualifying facilities for reinvestment purposes.

(A) The facility was a participant in the enhanced direct care staff rate or, for state fiscal years 2004 and 2005 only, had been a participant at level 0 in state fiscal year 2003 and was reclassified as a nonparticipant due to the elimination of level 0 in state fiscal year 2004.

(B) The facility's unadjusted LVN-equivalent minutes as determined in subsection (m)(1) of this section were greater than the number of LVN-minutes required of the facility as determined in subsection (j) of this section.

(C) The facility met its spending requirement as determined in subsection (o) of this section.

(D) An acceptable Annual Staffing and Compensation Report for the reporting period was received by HHSC Rate Analysis at least 30 days prior to the date distribution of available reinvestment funds was determined.

(E) The Medicaid contract that was in effect for the facility during the reinvestment reporting period is still in effect as an active contract when reinvestment is determined or, in cases where a change of ownership has occurred, HHSC or its designee has approved a Successor Liability Agreement between the contract in effect during the reinvestment reporting period and the contract in effect when reinvestment is determined.

(2) Distribution of available reinvestment funds. Available funds are distributed as described below.

(A) HHSC determines units of service provided during the most recent completed reporting period by each qualifying facility achieving, with unadjusted LVN-equivalent minutes as determined in subsection (m)(1) of this section, each enhancement option above the enhancement option awarded to the facility during the reporting period and multiplies this number by the rate add-on associated with that enhancement in effect during the reporting period.

(B) HHSC compares the sum of the products from subparagraph (A) of this paragraph to funds available for reinvestment.

(i) If the product is less than or equal to available funds, all achieved enhancements for qualifying facilities are retroactively awarded for the reporting period.

(ii) If the product is greater than available funds, retroactive enhancements are granted beginning with the lowest level of enhancement and granting each successive level of enhancement until achieved enhancements are granted within available funds.

(3) All retroactive enhancements are subject to spending requirements detailed in subsection (o) of this section. Revenue from retroactive enhancements is not eligible for mitigation of spending recoupment as described in subsection (p) of this section.

(4) Retroactively awarded enhancements do not qualify as pre-existing enhancements for enrollment purposes.

(5) Notification of reinvested enhancements. Qualifying facilities are notified in a manner determined by HHSC, as to the award of reinvested enhancements.

(dd) Disclaimer. Nothing in these rules should be construed as preventing facilities from adding direct care staff in addition to those funded by the enhanced direct care staff rate.

(ee) Notification of lack of available funds. If HHSC determines that funds are not available to continue participation for facilities from which it has not received an acceptable request to modify their enrollment by the last day of an enrollment period as per subsection (d) of this section or to fund carry-over enhancements as per subsection (j)(3) of this section, HHSC will notify providers in a manner determined by HHSC that such funds are not available.

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 August 1, 2008.

TRD-200804011

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Effective date: August 21, 2008

Proposal publication date: May 23, 2008

For further information, please call: (512) 424-6900



TITLE 4. AGRICULTURE

PART 13. PRESCRIBED BURNING BOARD

CHAPTER 226. STANDARDS FOR CERTIFIED PRESCRIBED BURN MANAGERS

4 TAC §226.6

The Prescribed Burning Board (the board) adopts amendments to Chapter 226, §226.6, concerning conducting a prescribed burn during a gubernatorial proclamation or presidential declaration, without changes to the proposal published in the May 23, 2008, issue of the *Texas Register* (33 TexReg 4070). The amendments to §226.6 are adopted to clarify the responsibilities of a certified prescribed burn manager during county burn bans and upon the issuance of a declaration of emergency or disaster and make the rule consistent with current practice. The board has elected to withdraw the proposed amendments to §226.4, relating to Insurance Requirements. The publication of that withdrawal appears in this issue of the *Texas Register*.

One comment was received in favor of the proposed amendments to §226.6 from the Gillespie Prescribed Burn Association and Edwards Plateau Prescribed Burn Association. The comment stated that §226.6(b), as written, does not allow capable certified prescribed burn managers to burn on days when conditions are ideal to conduct burns.

The amendments to §226.6 are adopted under §153.041 of the Natural Resources Code, which authorizes the board to be established within the department and to administer the prescribed burn manager certification program; §153.047, which authorizes the board to adopt standards for prescribed burning.

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 July 29, 2008.

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Dolores Alvarado Hibbs

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Prescribed Burning Board

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



TITLE 13. CULTURAL RESOURCES

PART 2. TEXAS HISTORICAL COMMISSION

CHAPTER 28. HISTORIC SHIPWRECKS

13 TAC §§28.2 - 28.9

The Texas Historical Commission (hereafter referred to as the Commission) adopts amendments to §§28.2 - 28.4 and new §§28.5 - 28.9 of the Chapter 28 Rules (Title 13, Part 2, Texas Administrative Code), concerning Historic Shipwrecks, without changes to the text as published in the June 6, 2008, issue of the *Texas Register* (33 TexReg 4439).

These amendments and new sections are being adopted in an effort to update and modify the rules associated with historically significant shipwrecks that are either submerged under the waterways or contained on, in, or under the public lands of the State of Texas. These amendments and new sections should improve the quality of underwater archeological investigations by streamlining and clarifying the responsibilities of principal investigators.

One comment was received regarding adoption of the amendments and new sections. The following is the comment, the commission's response, and any resulting change(s) to the chapter.

Comment: Regarding §28.4(a) and (d), the commenter questioned whether both high and low probability state lease tracts of land would be listed in a Commission database, and requested that the Commission make available the list low probability tracts.

Response: The Commission responded that the list of both high and low probability tracts is maintained by the General Land Office, and that the high and low probability classifications for each lease tract can be determined based on alpha character codes that are listed with each tract. No change was made as a result of this comment.

The amendments and new rules are both adopted under §442.005(q), Title 4, Chapter 442 of the Texas Government Code and §191.052, Title 9, Chapter 191 of the Texas Natural Resources Code, which provides the Texas Historical Commission with the authority to promulgate rules and conditions to reasonably affect the purposes of these chapters.

These adopted amendments and new sections implement §442.005(b) of the Texas Government Code and §191.051 of the Texas Natural Resources Code.

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

Filed with the Office of the Secretary of State on August 1, 2008.

TRD-200804020

F. Lawrence Oaks

Executive Director

Texas Historical Commission

Effective date: August 21, 2008

Proposal publication date: June 6, 2008

For further information, please call: (512) 463-1858



13 TAC §§28.5 - 28.7

The Texas Historical Commission (hereafter referred to as the Commission) adopts the repeal of §§28.5 - 28.7 of Chapter 28, Title 13, Part 2 of the Texas Administrative Code, concerning Historic Shipwrecks, without changes as published in the June 6, 2008, issue of the *Texas Register* (33 TexReg 4442).

The repeal of these sections is being adopted in an effort to update and modify the rules associated with historically significant shipwrecks that are either submerged under the waterways or contained on, in, or under the public lands of the State of Texas.

No public comments were received regarding adoption of this repeal.

The repeal of these sections is being adopted under §442.005(q), Title 4, Chapter 442 of the Texas Government Code and §191.052, Title 9, Chapter 191 of the Texas Natural Resources Code, which provides the Texas Historical Commission with the authority to promulgate rules and conditions to reasonably affect the purposes of these chapters.

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 August 1, 2008.

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F. Lawrence Oaks

Executive Director

Texas Historical Commission

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For further information, please call: (512) 463-1858



TITLE 16. ECONOMIC REGULATION

PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 34. SCHEDULE OF SANCTIONS AND PENALTIES

16 TAC §§34.1 - 34.3

The Texas Alcoholic Beverage Commission (commission) adopts new Chapter 34, titled Schedule of Sanctions and Penalties. Within this new chapter, the commission adopts new §§34.1, 34.2, and 34.3 with changes to the proposed text as published in the June 6, 2008, issue of the *Texas Register* (33 TexReg 4444). These new adopted sections are: §34.1, relating to General Provisions; §34.2, relating to Schedule of Sanctions and Penalties for Health, Safety and Welfare Violations; and §34.3, relating to Schedule of Sanctions and Penalties for Major Regulatory Violations.

The commission has withdrawn and does not adopt proposed new §34.4, relating to Schedule of Sanctions and Penalties for Marketing Practices Violations, as published in the June 6, 2008, issue of the *Texas Register* (33 TexReg 4444).

Senate Bill 904, §10, 80th Legislature, Regular Session, 2007, amended Chapter 5 of the Texas Alcoholic Beverage Code (Code) to add new §5.362 to the Code. This new section requires the commission to adopt a schedule of sanctions that may be imposed on a license or permit holder for violations of this Code or rules adopted under the Code. The schedule must:

- Impose a penalty or sanction that is appropriate for the violation that is the basis for disciplinary action;
- Include the number of days a permit or license may be suspended and the corresponding civil penalty under §11.64 for each violation;
- Consider the permit or license held by the person who violates the code;
- Consider the type of violation;
- Consider the violation history of the permit or license holder; and
- Allow for deviations for clearly established mitigating or aggravating circumstances.

The new chapter and sections are adopted to comply with the requirements of this new section of the Code.

New §34.1 sets out general provisions of the rule relating to legal authority, applicability, and implements the requirements set forth in new §5.362.

New §34.2 is a table showing the schedule of sanctions and penalties for violations relating to health, safety and welfare violations of the Code. It contains a description of the violation and the number of days and dollar amount to be assessed under the chart for the first, second, and third violation of the Code.

New §34.3 is a table showing the schedule of sanctions and penalties for violations relating to major regulatory violations of the Code. It contains a description of the violation and the number of days and dollar amount to be assessed under the chart for the first, second, and third violation of the Code.

The commission has received numerous comments from individuals and organizations in response to the proposed rule text as well as comments from agency staff. Comments were received in writing and in public meetings with commission staff. Comments on the proposed rules were received from organizations concerned with the effects of alcohol consumption on public health and safety: Texans Standing Tall, LifeSteps County Coalition, the Coalition on Underage Drinking, the City of Grand Prairie, and Mothers Against Drunk Driving (health and safety commenters collectively). Comments were also received from industry groups and individuals and organizations that represent these groups, including Brookshire Grocery Company, Kroger Food Stores, The Beer Institute, the Texas Restaurant Association, the Texas Retailer's Association, Jack Martin and Associates, the Texas Wine & Grape Growers Association, Texas Petroleum and Convenience Store Association, Texas Package Stores Association, Wholesale Beer Distributors of Texas, and numerous individuals (industry members collectively). Changes to the proposed rule text and attached charts were made as a result of these comments.

Comment: Concerning §34.4, relating to Sanctions and Penalties for Marketing Practices Violations, numerous comments and recommendations were made by industry members, both in writing and during public meeting. Generally, these commenters were interested in exploring ways to better distinguish between violations which were inadvertent, violations which did not present serious disruption or disorder to the market place, and violations that did adversely affect or disrupt the marketplace. The commenters also asked the commission to consider implementing model or voluntary compliance plans that if adopted and implemented in good faith by a permit holder could be used as a factor in assessing penalties.

Response: The commission agrees that marketing practices violations are not as well understood as other violations of the Code. The commission also agrees that further discussion and development of a plan that would incorporate expanding education and voluntary compliance relating to marketing practices is warranted. This section of the rule is withdrawn for further development and discussion with industry members.

Comment: Concerning §34.2 and §34.3, relating to the penalties for public safety and major regulatory violations, numerous comments were received from industry members expressing concern with the wide range of dollar amounts and the day ranges in both sections. Specifically, it was felt that having different dollar amounts and day ranges made the resulting penalty amounts unpredictable and generally excessive and punitive.

Comment: Also concerning §34.2 and §34.3, comments received from health and safety commenters were generally in favor of increasing the dollar amounts and the day ranges for violations, in particular for repeat violations. These commenters felt that for the rules to achieve their desired effect of deterrence,

the penalties would have to be high enough to encourage compliance with the law and effective in preventing recidivism.

Response: The commission agrees in part and disagrees in part with comments and the rule has been changed as a result of this comment. The dollar amount has been changed to \$300.00 for all violations that have a range of suspension days and a dollar amount set in lieu of suspension. The commission believes this amount is reasonable in view of the length of time the dollar amount has been set at the current level. The penalty chart was first used in 1984. At that time, the dollar amount was set at \$150.00 per day of suspension assessed. This is the minimum amount per day established by §11.64(a) of the Code.

Using the Consumer Price Index, the \$150.00 used since 1984 is the equivalent to approximately \$310.00 today. Therefore, the commission does not believe the increase is either excessive or punitive.

With regard to the days assessed, the commission has for the most part maintained the day range for the first violation. For second violation, the number of days is double that of the first violation and the number of days for the third violation is triple that of the second violation. The commission believes this will provide the necessary deterrent effect, while providing a level of predictability for the suspension assessed and the civil penalties in lieu of suspension.

Comment: Also concerning §34.2 and §34.3, industry members were concerned at the severity of penalties for second and third offenses. They indicated that for large and small retailers alike the turn-over rate of employees who serve and sell alcoholic beverages to the public is very high. As a result of this high turn-over rate, it is difficult to keep individuals adequately educated and trained. The result is a higher risk of repeat violations for the same offense within the time frames established by the rules.

Response: The commission agrees with concerns that the penalties were too severe. The second and third penalties were reduced as a result of these comments. Changes to the proposed charts were made as a result of these comments.

Comment: Concerning §34.1(d), relating to warnings, several comments were received from industry members. Generally, they felt that putting the warning provision in the rule and using it as a factor in assessing a penalty, and also making it subject to the contested case process, militates the warning beyond the common understanding of why a warning rather than a violation is issued. Another issue was the timeframe within which a warning could be used as an aggravating circumstance under the rules.

Response: The commission disagrees with this comment. The warning section was added to the rule text because warnings were deleted as an option from the penalty chart. The rule provides that a warning may be issued for any violation, not just the narrow list of violations set forth in the prior chart. The rule also expressly provides that a warning may be issued if it is believed to be an effective deterrent. If there is a subsequent violation, the effect of the warning as a deterrent has failed and the warning should, therefore, be considered in the subsequent violation. The commission has additionally added a definition of warning to clarify that it is issued for a violation of the Code, and, therefore, should be subject to the due process protection of a contested case. Regarding defining a timeframe within which a warning could be used as an aggravating circumstance, the commission believes subsection (g) timeframes apply and no separate time-

frame for warnings is necessary. No changes were made to the rule as a result of this comment.

Comment: Concerning the rules generally, some commenters expressed a concern that the increase in civil penalties will inevitably result in fewer settlements under the rules and more cases being referred to the legal division as contested cases.

Response: The commission can neither agree nor disagree with this comment. The decision of whether to settle a violation to avoid the cost and expense of litigation, and the risk of being assessed a higher penalty if the commission prevails at the hearing, have always been factors for permit holders to weigh and consider. No change to the rule was made as a result of this comment.

Comment: Concerning §34.2 and §34.3, industry members were concerned that for a large number of the violations listed, the third violation would result in cancellation of the permit or license. The commenters wanted the discretion of some penalty short of cancellation to remain an option.

Response: The commission disagrees with this comment. The violations which will result in cancellation on a third or even a second violation are violations which either present a serious health and safety risk to the public or indicate that the permit holder defies regulation. For example, under §34.2, some of the violations that require cancellation on the second violation involve violence or an unacceptable risk to public health or safety, including breach of the peace that results in serious bodily injury, death, or involving a deadly weapon, and possession sale or delivery of a controlled substance. Cancellations for a third violation include sale of an alcoholic beverage to an intoxicated person, sale of alcoholic beverages during prohibited hours, and Penal Code violations that are also violations of the Alcoholic Beverage Code. The permittee may contest the cancellation in an administrative hearing, so due process continues to be available to the permittee, giving them an opportunity to show why cancellation is not an appropriate sanction. No change was made to the rule as a result of this comment.

Comment: One commenter pointed out that two minor violations (excessive noise and violation of a city code) no longer had a range of days, when under the previous chart the range was warning to 3 days for a first violation, and also that since there was no dollar amount listed, it appeared that these required a suspension.

Response: The commission agrees with this comment and the rule has been changed to reflect both a range of days and a dollar amount that can be paid per day in lieu of suspension.

Comment: One commenter expressed concern that the policies regarding deviations from penalties assess using the penalty chart should be in place before the new rules are adopted and requested the commission to defer adoption of the new rules until such time as the internal policy regarding deviation from the chart is finalized.

Response: The commission disagrees with this comment. The policy regarding deviation from the chart is an internal policy to ensure that agents and auditors consistently apply the chart except when a deviation is justified and can be articulated in writing for approval. Section 11.64(b) and (c) and §11.641 of the Code provide the general framework for reasons that justify a deviation and the internal policy merely adopts these and sets forth the internal procedure for obtaining approval of the deviation. No change to the rules was made as a result of this comment.

Comment: One commenter expressed concern about the "look back period" for violations and how it affects due process.

Response: The commission disagrees with this comment. The commission has always used past violation history to determine what penalty will be assessed. The only thing this rule changes is the amount of the penalties, so the commission does not see the effect on due process. A permittee will always be provided with an opportunity to forgo settlement under this rule and request a contested case hearing on any violation of the Code, so due process is always provided. No change was made to the rules as a result of this comment.

The adopted new chapter and sections are authorized by §5.31 and §5.362 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 5.362 provides the specific authority to adopt these rules to establish a schedule of sanctions to be imposed on a license or permit holder for violations of the Code or rule of the Commission.

Cross Reference: Sections 5.31, 5.362, 11.64, and 11.641 of the Alcoholic Beverage Code will be affected by these actions.

§34.1. General Provisions.

(a) This rule relates to §§11.61, 11.64, 11.641 and 106.13 of the Alcoholic Beverage Code.

(b) Agents, compliance officers or other specifically designated commission personnel have authority to settle a complaint issued by the commission against a person for a violation of the Texas Alcoholic Beverage Code (Code), prior to filing a contested case under Government Code, Chapter 2001, Subchapter C (Administrative Procedure Act).

(c) A settlement authorized by this chapter must reflect the number of days a permit will be suspended or the amount of civil penalty authorized per day in lieu of suspension and shall conform to the other provisions of this chapter.

(d) A written warning may be issued for any violation if it is determined by designated commission personnel to be an effective deterrent from further violations of the Code.

(1) A written warning may be used as an aggravating circumstance for purposes of determining the appropriate sanction under §34.2.

(2) A written warning is subject to the rights and procedures of a contested case under the Administrative Procedure Act.

(3) A written warning is an administrative notice issued by a representative of the commission to the permit or license holder documenting that a violation of the TABC code or rules has occurred.

(e) Any case alleging a sale to a minor or intoxicated person in violation of Alcoholic Beverage Code §§11.61(b)(14), 61.71(a)(6) or 101.63 in which the unlawful sale or service directly or indirectly caused death or serious bodily injury shall be referred directly to the Legal Services Division by district or regional personnel without an offer of settlement or compromise provided to the permittee/licensee. For purposes of this section, "serious bodily injury" means as defined in §1.07(a)(46) of the Texas Penal Code.

(f) Each suspension of a permit or license shall run for consecutive days. A person assessed a suspension by the commission may be provided with an opportunity to pay a civil penalty in lieu of a suspension as provided by §11.64 of the Code. The commission may, in

its discretion, allow a licensee/permittee to divide an imposed sanction between civil penalty and suspension.

(g) A subsequent violation of the Code or rule will result in a sanction in the next higher violation level if the subsequent violation:

- (1) is for a health, safety and welfare violation and occurs within 36 months of the prior violation, or
- (2) is for a violation listed in the major regulatory violation category within 24 months of the prior violation, and
- (3) the person has been given written notice of the prior violation, or
- (4) the subsequent violation is issued during an undercover operation.

(h) The list of violations in §34.2 is not intended to be an exhaustive list of possible violations of the Code or rules of the commission. A sanction for a violation of the Code or rules that is not listed in §34.2 must be approved by either the assistant administrator for field operations or a division director prior to entering into a settlement.

(i) A person authorized to enter into a settlement under this section is also authorized to recommend a deviation from sanctions in §34.2 when aggravating or mitigating circumstances are found to exist.

- (1) A recommendation to deviate from sanctions in §34.2 must be made in writing.
- (2) The administrator or his designee must approve a recommendation to deviate from §34.2 before the settlement may be offered.

(j) This section does not apply to a contested case brought under Chapters C and D of the Administrative Procedure Act, or a complaint or violation referred to the legal division of the commission for resolution.

§34.2. Schedule of Sanctions and Penalties for Health, Safety and Welfare Violations.

An act or failure to act which results in a violation of the code or rules that represents a threat to the public health, safety, or welfare will be assessed sanctions and penalties as follows:
Figure: 16 TAC §34.2

§34.3. Schedule of Sanctions and Penalties for Major Regulatory Violations.

An act or failure to act which results in a violation of a major regulatory provision of the code or rules will be assessed sanctions and penalties as follows:
Figure: 16 TAC §34.3

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 August 1, 2008.
TRD-200804006
Alan Steen
Administrator
Texas Alcoholic Beverage Commission
Effective date: August 21, 2008
Proposal publication date: June 6, 2008
For further information, please call: (512) 206-3204



CHAPTER 37. LEGAL

SUBCHAPTER B. PENALTIES

16 TAC §37.60

The Texas Alcoholic Beverage Commission (commission) adopts the repeal of §37.60 as published in the May 16, 2008, issue of the *Texas Register* (33 TexReg 3866) without changes.

This rulemaking repeals §37.60, relating to the commission's standard penalty chart. New Chapter 34 titled Schedule of Sanctions and Penalties has been adopted and it entirely replaces this rule.

Comments are addressed under the Chapter 34 rule adoption.

The adopted repeal is authorized by §5.31 and §5.362 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 the Code. Section 5.362 provides the specific authority to adopt a schedule of sanctions that may be imposed for a violation of the Code.

Cross Reference: Sections 5.31, 5.362, 11.64, and 11.641 of the Alcoholic Beverage Code will be affected by these actions.

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 August 1, 2008.

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Alan Steen
Administrator
Texas Alcoholic Beverage Commission
Effective date: August 21, 2008
Proposal publication date: May 16, 2008
For further information, please call: (512) 206-3204



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

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

19 TAC §33.5

The State Board of Education (SBOE) adopts an amendment to §33.5, concerning the code of ethics policy for managing and investing the Texas Permanent School Fund (PSF). The amendment is adopted with changes to the proposed text as published in the June 13, 2008, issue of the *Texas Register* (33 TexReg 4588). The section establishes procedures and requirements for a code of ethics policy relating to the Texas PSF. The adopted amendment addresses reporting campaign contributions and business or financial transactions.

The adopted amendment to 19 TAC §33.5, Code of Ethics, includes the addition of language in new subsection (m) relating to disclosure requirements for political campaign contributions. New subsection (m) applies to PSF service providers and any person or firm responding to a request for proposals relating to the management and investment of the PSF. The political campaign contribution disclosures are semi-annual reports to be filed no later than April 15 and October 15 for the preceding six-month

reporting period. Subsequent subsections are re-lettered accordingly and a technical edit is made in re-lettered subsection (s) to include a heading.

In addition, language is added in new subsection (e)(9) requiring an SBOE member to disclose any business or financial transaction greater than \$50 in value with a PSF service provider. The business or financial transaction disclosures are quarterly reports to be filed on or before January 15, April 15, July 15, and October 15 and cover the preceding three months. Adopted language in subsection (e)(9) also specifies that the first report filed after the amendment would take effect would cover the preceding one-year period.

The new language in subsections (e)(9) and (m) includes an exemption from the provision in subsection (s) that new reports need only concern events after the effective date of an amendment.

In accordance with the TEC, §43.0031(c), a copy of the proposed amendment to 19 TAC §33.5 was submitted to the Texas Ethics Commission and the state auditor for review and comment following SBOE approval of the proposed amendment for first reading and filing authorization at the May 2008 meeting. The SBOE considered comments from the commission and state auditor prior to final adoption.

In response to comments from the commission and the state auditor, language was added to subsection (e)(9) at adoption to specify that disclosures for business or financial transactions must be submitted in writing to the commissioner of education, include transactions for a business entity in which an SBOE member has significant ownership interest, and be filed even if none of the specified transactions have occurred. Language was also added to subsection (e)(9) to establish that the commissioner will provide disclosed information to all SBOE members.

In response to comments from the commission and the state auditor, language was added to subsection (m)(1) at adoption to specify that campaign contributions must be reported in writing to the commissioner of education, include contributions to any candidate seeking election to the SBOE, and be filed even if no such contributions were made. Language was also added to subsection (m)(1) to establish that the commissioner will provide reported information to all SBOE members. Language was added to subsection (m)(2) to clarify that campaign contribution reporting is required from any person or firm responding to a request for qualification as well as a request for proposals.

Also at adoption, a technical correction was made in subsection (s) to replace the word "effect" with "affect."

As required by the TEC, §43.0031(c), the Texas Ethics Commission and state auditor reviewed the proposal to amend 19 TAC §33.5 and posed several comments and questions for consideration. The comments were reviewed by Texas Education Agency (TEA) staff and shared with the TEA ethics officer and SBOE members. Following is a summary of comments received and corresponding SBOE responses regarding the proposed amendment.

Comment. The Texas Ethics Commission recommended that information be added to specify to whom and how the reports are to be submitted.

Response. The SBOE agreed and added language in subsections (e)(9) and (m) identifying who will receive the written reports.

Comment. The Texas Ethics Commission provided an additional statutory citation that could be added to the list of laws specified in subsection (e)(1) applicable to general ethical standards.

Response. The SBOE took no action. The current proposal did not include changes to the list of applicable laws in subsection (e)(1). This comment will be taken under consideration for future changes.

Comment. The Texas Ethics Commission posed questions relating to business or financial transactions greater than \$50 in value addressed in subsection (e)(9), asking whether that amount is cumulative or non-cumulative. The Texas Ethics Commission also sought clarification relating to the due date for reports, asking if the reporting period covers calendar months from the 15th of the month or from the first of each month.

Response. The SBOE took no action. Based upon TEA staff review, the SBOE determined that no further clarification was needed at this time. These comments will be taken under consideration for future changes if further clarification in this matter is determined to be necessary.

Comment. The Texas Ethics Commission commented that it should be made clear that contribution data collected from a PSF service provider cannot be used for campaign purposes. The Texas Ethics Commission also commented that wording in the proposed rule may give the appearance that there is an expectation that contributions be made and that information reported may be considered by the SBOE in its decision-making process.

Response. The SBOE took no action. Based upon TEA staff review, the SBOE determined that no further clarification was needed at this time. These comments will be taken under consideration for future changes if further clarification in this matter is determined to be necessary.

Comment. The state auditor recommended changing the disclosure requirements in subsection (e)(9) requiring periodic disclosures even if there were no business or financial transactions during the reporting period. The state auditor recommended providing every SBOE member with disclosed information, developing and requiring the use of standard disclosure forms, clarifying more precisely the intended reporting periods, and specifying with whom the disclosure forms must be filed.

Response. The SBOE agreed and added language in subsection (e)(9) to specify that disclosures for business or financial transactions must be filed even if none of the specified transactions have occurred, that the commissioner provide disclosed information to all SBOE members, and that disclosures must be submitted in writing to the commissioner. Based upon TEA staff review, the SBOE took no action on the recommendations relating to the use of standard forms and clarifying the intended reporting period. These comments will be taken under consideration for future changes.

Comment. The state auditor suggested that clarifying language be incorporated in subsection (m)(1) and (2) requiring periodic disclosure even if the PSF service provider made no reportable political contributions during the period. The state auditor recommended providing information to all SBOE members of any political contribution made by a service provider to an SBOE member or candidate, developing and requiring the use of standard disclosure forms, clarifying more precisely the intended reporting periods, and specifying with whom the disclosure forms must be filed. The state auditor also recommended the inclusion of

required political contribution reporting by respondents to a request for qualification (RFQ).

Response. The SBOE agreed and added language in subsection (m)(1) to specify that campaign contributions must be filed even if none were made, that the commissioner provide disclosed information to all SBOE members, and that disclosures must be submitted in writing to the commissioner. The SBOE also took action to add language in subsection (m)(2) to include respondents to RFQs in the required reporting requirements. Based upon TEA staff review, the SBOE took no action on the recommendations relating to the use of standard forms and clarifying the intended reporting period. These comments will be taken under consideration for future changes.

The TEA determined that the adopted amendment will have no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

In accordance with the TEC, §7.102(f), the SBOE approved this rule action for final adoption by a vote of more than two-thirds of its members to specify an effective date earlier than the beginning of the 2009-2010 school year. The earlier effective date is necessary in order to incorporate disclosure requirement provisions in a timely manner. The effective date of the adopted amendment is 20 days after filing as adopted.

The amendment is adopted under the Texas Education Code, §43.0031, which authorizes the State Board of Education to adopt and enforce an ethics policy that provides standards of conduct relating to the management and investment of the PSF, and the Texas Constitution, Article VII, §5(f).

The amendment implements the Texas Education Code, §43.0031, and the Texas Constitution, Article VII, §5(f).

§33.5. Code of Ethics.

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

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

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

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

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

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

(B) a member of the Investment Advisory Committee;

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

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

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

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

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

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

(e) General ethical standards.

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

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

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

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

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

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

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

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

(9) An SBOE Member shall disclose in writing to the commissioner of education on a quarterly basis any business or financial transaction greater than \$50 in value between the SBOE Member, or a business entity in which the SBOE Member has a significant ownership interest, and a PSF Service Provider. A report shall be filed even if there has not been a business or financial transaction greater than \$50 in value between the SBOE Member, or a business entity in which the SBOE Member has a significant ownership interest, and a PSF service provider. Excluded from this subsection are checking accounts, savings accounts, credit cards, brokerage accounts, mutual funds, or other financial accounts that are provided to an SBOE Member under the same terms and conditions as they are provided to members of the general public. The reports shall be filed on or before January 15, April 15, July 15, and October 15 and shall cover the preceding three months. The first report filed for each SBOE Member shall cover the preceding one-year period. Subsection (s) of this section does not apply to the first report filed. The commissioner of education shall communicate the information included in the disclosure to all SBOE Members.

(f) Disclosure.

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

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

- (A) has a controlling interest in the business entity;
- (B) owns more than 10% of the voting interest in the business entity;
- (C) owns more than \$25,000 of the fair market value of the business entity;

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

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

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

(G) is an employee of the business entity.

(g) Conflicts of interest.

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

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

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

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

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

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

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

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

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

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

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

(B) be employed for two years after the end of his or her term on the SBOE with an organization in which the PSF invested,

unless the organization's stock or other evidence of ownership is traded on the public stock or bond exchanges.

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

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

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

(l) Gifts and entertainment.

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

(2) Acceptance of gifts.

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

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

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

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

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

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

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

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

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

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

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

(i) An SBOE Member may not accept:

(I) loans, cash, or negotiable instruments;

(II) travel or lodging for a pleasure trip;

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

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

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

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

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

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

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

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

(J) A PSF Service Provider shall file a report annually on April 15 of each year on the expenditure report provided in this subsection entitled "Report of Expenditures of Persons Providing Services to the State Board of Education Relating to the Management and Investment of the Permanent School Fund." The report shall be for the time period beginning on January 1 and ending on December 31 of the previous year. The expenditure report must describe in detail any expenditure of more than \$50 made by the person on behalf of:

(i) an SBOE Member;

(ii) the commissioner of education; or

(iii) an employee of the TEA or of a nonprofit corporation created under the Texas Education Code, §43.006.
Figure: 19 TAC §33.5(l)(2)(J)(iii) (No change.)

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

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

(ii) the officers of the PSF Service Provider;

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

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

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

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

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

(m) Campaign contributions.

(1) A PSF Service Provider shall, no later than April 15 and October 15, file a semi-annual report of each political contribution that the PSF Service Provider has made to an SBOE Member or a candidate seeking election to the SBOE in writing to the commissioner of education. The report shall be for the six-month time period preceding the reporting dates and include the name of each SBOE Member or candidate seeking election to the SBOE who received a contribution, the amount of each contribution, and date of each contribution. Subsection (s) of this section does not apply to the first report filed. A report shall be filed even if the PSF Service Provider made no reportable contribution during the reporting period to an SBOE Member or a candidate seeking election to the SBOE. The commissioner of education shall communicate the information included in the disclosure to all SBOE Members.

(2) Any person or firm filing a response to a request for proposals (RFP) or a request for qualification (RFQ) relating to the management and investments of the PSF shall disclose in the response whether at any time in the preceding four years from the due date of the response to the RFP or RFQ the person or firm has made a campaign contribution to a candidate for or member of the SBOE.

(n) Compliance with professional standards.

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

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

(o) Transactions between PSF Service Providers and/or consultants.

(1) PSF Service Providers or persons who act as consultants to the SBOE regarding investment and management of the PSF shall not engage in any transaction involving the assets of the PSF with another PSF Service Provider or a person who acts as a consultant to the SBOE regarding investment and management of the PSF.

(2) PSF Service Providers and/or consultants to the SBOE who provide advice regarding investment and management of the PSF shall report to the SBOE on a quarterly basis all investment transactions or trades and any fees or compensation paid or received in connection with the transactions or trades with another PSF Service Provider or a person who acts as a consultant to the SBOE regarding investment and management of the PSF.

(p) Compliance and enforcement.

(1) The SBOE will enforce this rule through its chair and vice chair and the commissioner of education.

(2) Any violation will be reported to the chair and vice chair of the SBOE and the commissioner of education and a recommended action will be presented to the SBOE. A violation of this section may result in the termination of the contract or a lesser sanction. Repeated minor violations may also result in the termination of the contract.

(3) The executive director of the PSF shall act as custodian of all statements, waivers, and reports required under this section for purposes of public disclosure requirements.

(4) The ethics officer of the TEA may respond to inquiries concerning the provisions of this section. The ethics officer may confer with the general counsel and the executive director of the PSF.

(5) No payment shall be made to a PSF Service Provider who has failed to timely file a completed report as described by subsection (k) of this section, until a completed report is filed.

(q) Ethics training. The SBOE shall receive annual training regarding state ethics laws through the Texas Ethics Commission and the TEA's ethics officer.

(r) TEA general ethical standards. The commissioner of education and PSF staff shall comply with the General Ethical Standards for the Staff of the Permanent School Fund and the Commissioner of Education.

(s) Reporting period. A new report required by an amendment to the code of ethics need only concern events after the effective date of the amendment. An amendment to a rule that presently requires a report does not affect the reporting period unless the amendment explicitly changes the reporting period.

(t) Statutory statement.

(1) A "statutory financial advisor or service provider" as defined in this subsection shall on or before April 15 file a statement as required by Texas Government Code, §2263.005, with the commissioner of education and the state auditor, for the previous calendar year. The statement will be deemed filed when it is actually received. A statutory financial advisor or service provider shall promptly file a new or amended statement with the commissioner of education and the state auditor whenever there is new information required to be reported under Texas Government Code, §2263.005(a).

(2) A "statutory financial advisor or service provider" is a member of the Investment Advisory Committee or an individual or business entity, including a financial advisor, financial consultant, money or investment manager, or broker, who is not an employee of the TEA, but who provides financial services or advice to the TEA or the SBOE or an SBOE member in connection with the management and investment of the PSF and who may reasonably be expected to receive, directly or indirectly, more than \$5,000 in compensation from the TEA or the SBOE during a fiscal year.

(3) An annual statement required to be filed under this subsection will be made using the form developed by the state auditor.

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

Filed with the Office of the Secretary of State on August 4, 2008.

TRD-200804030

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Effective date: August 24, 2008

Proposal publication date: June 13, 2008

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



CHAPTER 109. BUDGETING, ACCOUNTING, AND AUDITING

SUBCHAPTER D. UNIFORM BANK BID OR REQUEST FOR PROPOSAL AND DEPOSITORY CONTRACT

19 TAC §109.51, §109.52

The State Board of Education (SBOE) adopts amendments to §109.51 and §109.52, concerning uniform depository bank bid and contract forms. The amendments are adopted without changes to the proposed text as published in the June 13, 2008, issue of the *Texas Register* (33 TexReg 4591) and will not be republished. Section 109.51 establishes the requirement that each school district submit a blank uniform bid form to each bank located in the district and, if desired, to other banks interested in acting as depository for all funds. The section includes the bid form prescribed by the SBOE. Section 109.52 establishes the requirement that each school district select a bank as a school depository and enter into a depository contract with the bank. A school district may select and contract with more than one bank. The section includes the depository contract form with the content prescribed by the SBOE. The adopted amendments update the current rules to reflect statutory changes resulting from House Bill (HB) 2411, 80th Texas Legislature, 2007.

HB 2411, 80th Texas Legislature, 2007, amended the Texas Education Code, §45.206, requiring school districts to choose whether to select a depository through a competitive bidding process or through a request for proposal process. The decision to use a request for proposal process is entirely voluntary. Current SBOE rule provides a uniform bid blank form and uniform depository contract form for selecting a depository by competitive bidding only.

In accordance with the statutory change, the adopted amendments to 19 TAC Chapter 109, Subchapter D, revise the methods a district may choose to select a depository to include a request for proposal process. The required forms adopted in rule are also updated to include current depository services reflective of technological advances since the forms were last updated. The updated forms were developed in conjunction with stakeholder meetings with bankers and school district personnel. The adopted amendments to 19 TAC Chapter 109, Subchapter D, also change the subchapter title to read, "Uniform Bank Bid or Request for Proposal and Depository Contract." Specifically, the adopted amendments include the following.

The adopted amendment to 19 TAC §109.51 includes new language throughout to allow each school district to choose whether to select a depository through a competitive bidding process or through a request for proposal process. The adopted amendment also includes an updated uniform bid blank form (Figure: 19 TAC §109.51(c)) and a new uniform proposal blank form (Figure: 19 TAC §109.51(d)). The title of 19 TAC §109.51 and the uniform bid blank form are also updated.

The adopted amendment to 19 TAC §109.52 includes an updated uniform depository contract form (Figure: 19 TAC §109.52(b)). Minor technical changes to language in the section are adopted but no changes were made to the uniform surety bond form (Figure: 19 TAC §109.52(d)).

Not later than the 60th day before the date a school district's current depository contract expires, the district shall choose whether to select a depository through a competitive bidding process or through a request for proposal process. The school district would document its choice of method to select a depository.

The Texas Education Agency determined that the adopted amendments will have no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

In accordance with the TEC, §7.102(f), the SBOE approved this rule action for final adoption by a vote of more than two-thirds of its members to specify an effective date earlier than the beginning of the 2009-2010 school year. The earlier effective date is necessary in order to begin implementing the rule amendments before the start of the next school year. The effective date of the adopted new section is 20 days after filing as adopted.

No comments were received regarding the proposed amendments.

The amendments are adopted under the Texas Education Code, §§7.102(c)(34), 45.206, and 45.208, which authorizes the State Board of Education to prescribe a uniform bid blank form for a school district to use in selecting a depository bank and to prescribe a uniform depository contract form.

The amendments implement the Texas Education Code, §§7.102(c)(34), 45.206, and 45.208.

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 July 28, 2008.

TRD-200803936

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TITLE 22. EXAMINING BOARDS

PART 16. TEXAS BOARD OF PHYSICAL THERAPY EXAMINERS

CHAPTER 335. PROFESSIONAL TITLE

22 TAC §335.1

The Texas Board of Physical Therapy Examiners adopts amendments to §335.1, concerning Licensed Physical Therapist/Licensed Physical Therapist Assistant, without changes to the proposed text as published in the May 16, 2008, issue of the *Texas Register* (33 TexReg 3867). The amendments will clarify for licensees and the public how licensure and degree information are to be presented, and when a physical therapist may use the title "doctor."

The amendments describe proper usage of the titles PT and PTA, and formalize requirements for the use of the title "doctor" by physical therapists, based on language in the Healing Arts Identification Act.

No comments were received regarding the changes currently proposed for this section. However, the board previously proposed and withdrew amendments to this section and received comments at that time. In the previous version, PTs using the affix "Doctor" would have been required to go further in clarifying the basis for their use of the term. The Texas Physical Therapy Association (TPTA) commented unfavorably on that version of the proposed amendment. The TPTA suggested that the previous proposal exceeded the legal requirements in the Healing Arts Identification Act. It also stated that the rule was too broad, not defining what types of documents would require the written clarification. A comment was also received from the Texas Osteopathic Medical Association ("TOMA") and the American Osteopathic Association ("AOA"). TOMA and AOA stated that authorizing physical therapists with doctorates to refer to themselves as "doctors" is unwarranted, and would result in confusion among patients. In response, the Board cited §104.004 of the Healing Arts Identification Act, which gives a person with a doctoral degree the authority to use the title granted by the degree, as long as he designates the authority under which the title is used or the college or honorary degree that gives rise to the use of the title. The Board believes this current version, which uses the language from the Healing Arts Identification Act, makes it clear that the use of the title "doctor" by a PT with a doctorate requires identification of the degree, and at the same time does not place an undue burden on the PT who uses a title which has been granted by an appropriately accredited institution.

The amendments are adopted under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

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

Filed with the Office of the Secretary of State on July 28, 2008.

TRD-200803926
John P. Maline
Executive Director
Texas Board of Physical Therapy Examiners
Effective date: August 17, 2008
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For further information, please call: (512) 305-6900



CHAPTER 347. REGISTRATION OF PHYSICAL THERAPY FACILITIES

22 TAC §347.5

The Texas Board of Physical Therapy Examiners adopts amendments to §347.5, concerning Requirements for Registered Facilities, without changes to the proposed text as published in the May 16, 2008, issue of the *Texas Register* (33 TexReg 3868). The amendments make existing requirements clearer to registered facilities.

The amendments state that, in the event of a name or address change, a facility must obtain a new certificate stating the correct name and/or address from the board.

No comments were received regarding this section.

The amendments are adopted under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

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

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 65. WILDLIFE

SUBCHAPTER N. MIGRATORY GAME BIRD PROCLAMATION

31 TAC §§65.310, 65.315, 65.319

The Texas Parks and Wildlife Department (the department) adopts amendments to §§65.310, 65.315, and 65.319, concerning the Migratory Game Bird Proclamation. Section 65.315, concerning Open Seasons and Bag and Possession Limits--Early Season, is adopted with changes to the proposed text as published in the June 27, 2008, issue of the *Texas Register* (33 TexReg 4965). Section 65.310 and §65.319 are adopted without changes and will not be republished.

The change to §65.315 retains the season structure from previous years in the South Dove Zone. The rule as proposed would have removed one week of hunting opportunity from the end of the first season segment in the South Zone and added it to the end of the second season segment. Although public comment was supportive of the proposed amendment, the department has decided to retain the traditional structure because of other considerations resulting from public comment. This change also necessitates a change to §65.315(b)(4)(B) to adjust the season dates in the Special White-winged Dove Area, which is part of the South Zone.

The department received a great deal of public comment addressing opening dates and bag limits, particularly in the context of the impact of high energy prices on hunting activity. In keeping with hunter and landowner preferences, dove seasons have traditionally been opened on the earliest day legally allowed under frameworks established by the U.S. Fish and Wildlife Service, irrespective of which day of the week the date fell. Under the federal frameworks, the north and central dove zones cannot open earlier than September 1, which this year falls on a Monday. Federal frameworks also specify that the earliest day the South Dove Zone can open is September 20 (there is an exception for four days of half-day white-winged dove hunting in the Special White-winged Dove Area during the first two weekends in September), which this year falls on a Saturday. Additionally, the department has the option in each dove zone of having either a 70-day season with a 12-bird bag limit or a 60-day season with a 15-bird bag limit.

Public comment received by the department indicates a strong preference for seasons to open on a Friday, so as to create a three-day hunting opportunity to open the season. Public comment also indicates a preference for the 60-day/15-bird configuration in the South Zone. A recurrent theme was the concern that increased consumer costs, particularly transportation costs related to energy prices, make anything less than a three-day opening weekend economically unjustifiable. Similarly, proponents of the 60-day/15-bird configuration stated that economic considerations would cause them to curtail the number of times they could go hunting, leading them to prefer a higher daily bag limit. In the past, hunters and others have expressed an aversion to delaying the opening day until the first full weekend, preferring the earliest possible opener.

In evaluating the public comment, the department concluded that it should initiate an intensive effort to gauge the interest of all involved parties--hunters, landowners, outfitters, communities--in the possibility of altering traditional and longstanding dove season structures. In light of this, the department determined that rather than alter the season structure for 2008-2009 season only to possibly alter it again the following year, it was prudent to retain the current segment structure that everyone is familiar with while surveying attitudes in general about changes to dove seasons for the 2009-2010 seasons.

The amendment to §65.310, concerning Means and Methods, clarifies that lead shot is lawful for the take of migratory game birds other than waterfowl. Federal law mandates the use of specific types of non-toxic shot for the take of waterfowl. The current rules define "non-toxic shot" as any shot approved by the director of the U.S. Fish and Wildlife Service (Service). Since federal rules allow the use of lead shot for species other than waterfowl, it is therefore regarded as "non-toxic" in that context. The amendment would state this explicitly, rather than leave it to deduction. The amendment is necessary to eliminate potential confusion for hunters.

The amendment to §65.315, concerning Open Seasons and Bag and Possession Limits--Early Season, adjusts the season dates for early-season species of migratory game birds to account for calendar-shift (i.e., to ensure that seasons open on the desired day of the week, since dates from a previous year do not fall on the same days in following years).

The amendment to §65.315 also implements a 16-day statewide teal season to run September 13 - 28, 2008.

The amendment to §65.319, concerning Extended Falconry Season--Early Season Species, adjusts season dates for the take of early-season species of migratory game birds by means of falconry to reflect calendar shift.

The amendments are generally necessary to implement commission policy to provide the greatest hunter opportunity possible, consistent with hunter preference for season starting dates and segment lengths, under frameworks issued by the Service.

The amendment to §65.310 will function making it clear that lead shot is lawful for taking migratory birds other than waterfowl.

The amendment to §65.315 will function by establishing the seasons and bag limits for the hunting of early-season species of migratory game birds.

The amendment to §65.319 will function by establishing the season length and bag limits for the take of early-season species of migratory game birds by means of falconry.

The department received no comments concerning the adoption of the proposed amendment to §65.310, concerning Means and Methods.

The department received 28 comments opposed to the adoption of the proposed North Zone dove season. Of the 28 comments, 27 offered a specific reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, are as follows. The department notes that dove season structures have historically been based on hunter preference, so long as it does not conflict with sound biological management or federal law. Public comment received this year indicates a possible shift in public sentiment regarding traditional dove seasons. The department intends to conduct extensive outreach to determine if there is public support for alteration of traditional season structures, bag limits, and opening dates for future seasons.

One commenter opposed adoption and stated that all dove seasons should open on a Saturday. The department disagrees with the comment and responds that hunter preference historically has been for seasons to begin on the early date possible under federal law, irrespective of the day of the week that the opener falls on. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the season in the North Zone should start on a Saturday. The department disagrees with the comment and responds that hunter preference

historically has been for seasons to begin on the early date possible under federal law, irrespective of the day of the week that the opener falls on. No changes were made as a result of the comment.

Three commenters opposed adoption and stated that there should be a 70-day season with a 12-bird bag limit in the North Zone. The department disagrees with the comment and responds that hunter preference historically has been for a 60-day season and a 15-bird bag limit. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the season should run the month of September and one week in each of December and January. The department disagrees with the comment and responds that hunter surveys have historically indicated a preference for a continuous North Zone season and that in any event, federal law prohibits more than one split in each zone. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that there should be a late dove season in the North Zone. The department disagrees with the comments and responds that hunter surveys historically have indicated a preference for a continuous North Zone season beginning the earliest possible day under federal frameworks. No changes were made as a result of the comment.

Eight commenters opposed adoption and stated that the season should begin on August 30. The department disagrees with the comments and responds that federal law prohibits the opening of dove season in the North Zone prior to September 1. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the daily bag limit should be the same as the rest of the state. The department disagrees with the comment and responds that public comment in the past has been supportive of a higher daily bag limit in the North Zone, which necessitates a shorter season. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should be a late dove season in December or early January. The department disagrees with the comment and responds that hunter surveys historically have indicated a preference for a continuous season in the North Zone.

One commenter opposed adoption and stated that the season should begin the Saturday closest to September 1. The department disagrees with the comment and responds that since federal law prohibits the opening of any dove season before September 1 and hunter preference has historically been for the earliest possible opening day under federal frameworks, opening the season on the Saturday closest to September 1 would mean that unless September 1 fell on a Saturday, the season would always open later than September 1, which conflicts with historical hunter preference. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that bag limits should be the same statewide. The department disagrees with the comment and responds that public comment in the past has been supportive of differential bag limits between zones. No changes were made as a result of the comments.

Two commenters opposed adoption and stated that the season should open on the Saturday before Labor Day. The department disagrees with the comment and responds that since federal law prohibits the opening of any dove season before September 1 and hunter preference has historically been for the earliest pos-

sible opening day under federal frameworks, opening the season on the Saturday before Labor Day is impossible in most years. No changes were made as a result of the comment.

One commenter opposed adoption and stated that "issues should have been dealt with and published long before now," because many companies are now requiring employees to request vacation/leave time anywhere from six months to a year in advance. The commenter also stated that "waiting until August to publish and finalize season dates creates unnecessary planning difficulties for hunters." The department, while sympathetic to the comment, responds that the season dates are selected by the department from federal frameworks that are issued on an annual basis. Typically, the federal frameworks are not issued until late June. Therefore, the proposed season dates published for public comment are a) always tentative in nature and b) not published for public comment until May or June. This system has been in place for over 50 years and the department cannot modify it. No changes were made as a result of the comment.

The department received 89 comments supporting adoption of the portion of the proposed amendment affecting North Zone dove season.

The department received 55 comments opposed to the adoption of the proposed Central Zone dove season. All 55 comments offered a specific reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, are as follows.

The department received 22 comments that opposed adoption and stated that the daily bag limit should be increased to 15 birds. The department disagrees with the comments and responds that hunter preference has historically been for a longer season, even if it means a lower daily bag limit. No changes were made as a result of the comments.

Three commenters opposed adoption and stated that season should be continuous. The department disagrees with the comments and responds that hunter preference has historically been for a segmented season structure. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the season should always start on a Saturday. The department disagrees with the comment and responds that hunter preference has historically been for the earliest possible opening date, irrespective of the day of the week. No changes were made as a result of the comment.

Three commenters opposed adoption and stated that the season should start on the Friday prior to September 1. The department disagrees with the comment and responds that federal law prohibits any dove season from opening prior to September 1. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the season should run for the entire month of October, with one week in each of December and January. The department disagrees with the comment and responds that the current season structure has historically been set in such a fashion as to allow greater hunting opportunity during the Christmas break, when more people, especially youth, are able to take advantage of opportunity. Additionally, the department notes that the federal frameworks do not allow more than two segments in any zone. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the season should begin on the first Friday in September. The department

disagrees with the comment and responds that hunter preference has historically been for the earliest possible opening day, irrespective of the day of the week. Since the federal frameworks typically provide for a September 1 opener, opening the season on the first Friday in September would conflict with historical hunter preference in some if not most years. No changes were made as a result of the comment.

Four commenters stated that the season dates and bag limits should be the same in every zone. The department disagrees with the comment and responds that the federal frameworks typically allow the department to open the season on September 1 in the Central and North zones and September 20 in the South Zone. Therefore, the opening day in the North and Central zones would have to be delayed in order to provide a uniform opening day statewide, which would conflict with historical hunter preference for the earliest opening day possible under federal frameworks. No changes were made as a result of the comments.

One commenter opposed adoption and stated that seven days should be removed from the first segment to create an additional segment for Thanksgiving week and 16 additional days should be removed from the first segment and added to the current second segment. The department disagrees with the comment and responds that although the current season structure has historically been set in such a fashion as to allow greater hunting opportunity during the Christmas break, when more people, especially youth, are able to take advantage of opportunity, the federal frameworks currently in effect limit Texas to no more than two season segments in each zone. Additionally, hunter preference, though supportive of the traditional winter segment, has historically been for the first segment to run as long as possible. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the Central Zone season should be the same as the proposed South Zone dove season. The department disagrees with the comment and responds that hunter preference has historically been for the earliest opening day possible under federal frameworks. Since federal frameworks typically allow the department to open the season on September 1 in the Central Zone and September 20 in the South Zone, the Central Zone opener would have to be delayed in order to provide a uniform opening day statewide, which would conflict with historical hunter preference for the earliest opening day possible under federal frameworks. No changes were made as a result of the comment.

Sixteen commenters opposed adoption and stated that the season should begin August 30. The department disagrees with the comments and responds that federal law prohibits the opening of any dove season prior to September 1. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the season should begin the weekend before Labor Day. The department disagrees with the comment and responds that since federal law prohibits the opening of any dove season before September 1, opening the season the weekend before Labor Day is impossible in most years. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that the Central Zone should be structured like the proposed South Zone season, with one week taken from the end of the first segment and added to the second segment. The department disagrees with the comments and responds that the traditional hunter preference is for the existing season structure through the end of Oc-

tober and the remaining days during the Christmas holidays. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that the season should open the Saturday closest to September 1. The department disagrees with the comment and responds that since federal law prohibits the opening of any dove season before September 1, opening the season on the Saturday closest to September 1 would mean that unless September 1 fell on a Saturday, the season would always open later than September 1, which conflicts with historical hunter preference. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the daily bag limit should be increased to 20 or 25 birds. The department disagrees with the comment and responds that under federal frameworks the daily bag limit cannot exceed 12 birds within a 70-day season or 15 birds within a 60-day season. No changes were made as a result of the comment.

One commenter opposed adoption and stated that "the Central and South zones should always come after North and Central" because "hunting prematurely in these areas can affect the migratory bird population and hurt future hunting opportunities." The department is unable to determine the intent of the comment, and disagrees that any changes are necessary because of it. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the season should start the last Saturday in August. The department disagrees with the comment and responds that federal law prohibits the opening of any dove season prior to September 1. No changes were made as a result of the comment.

The department received 92 comments supporting adoption of the proposed amendment affecting dove seasons in the Central Zone.

The department received 95 comments opposed to the adoption of the proposed South Zone dove season. Of the 95 comments, 93 offered a specific reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, are as follows.

Thirty-two commenters opposed adoption and stated that the season should open on Friday, not a Saturday. The department disagrees with the comment and responds that under the federal frameworks, the regular South Zone season cannot open earlier than September 20, which this year falls on a Saturday. Traditional hunter comment has opposed delaying the opening until Friday, September 16. No changes were made as a result of the comments.

Seven commenters opposed adoption and stated that the season should open September 1. The department disagrees with the comments and responds that under the federal frameworks, the regular South Zone season cannot open earlier than September 20, which this year falls on a Saturday. No changes were made as a result of the comments.

Six commenters opposed adoption and stated that the season should start earlier. The department disagrees with the comments and responds that under the federal frameworks, the regular South Zone season cannot open earlier than September 20, which this year falls on a Saturday. No changes were made as a result of the comments.

Two commenters opposed adoption and stated that the season should always start on the third Friday in September. The de-

partment disagrees with the comments and responds that under the federal frameworks, the regular South Zone season cannot open earlier than September 20, which in most years falls later than the third Friday in September. No changes were made as a result of the comments.

Two commenters opposed adoption and stated that all zones should have the same opening day. The department disagrees with the comment and responds that the federal frameworks typically allow the department to open the season on September 1 in the Central and North zones and September 20 in the South Zone. Therefore, the opening day in the North and Central zones would have to be delayed in order to provide a uniform opening day statewide, which would conflict with historical hunter preference for the earliest opening day possible under federal frameworks. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the season should be all of November and one week in each of December and January. The department disagrees with the comment and responds that under the federal frameworks there can be no more than two segments in any zone. No changes were made as a result of the comment.

Fifteen commenters opposed adoption and stated that the daily bag limit should be 15 birds. The department disagrees with the comments and responds that hunter preference has historically been for a longer season, even if it means a lower bag limit. No changes were made as a result of the comment.

Five commenters opposed adoption and stated that bag and possession should be the same for all zones. The department disagrees with the comments and responds that public comment and hunter preference in the past has been supportive of differential bag limits between zones. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the second segment should end on a weekend instead of mid-week. The department disagrees with the comment and responds that the federal frameworks limit Texas to a maximum of 70 days of hunting opportunity if a 12-bird bag limit is selected. By ending the segment on a weekend, the department would in effect be curtailing hunter opportunity at the end of the first segment. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the South Zone should be a continuous season. The department disagrees with the comment and responds that the current season structure has historically been set in such a fashion as to allow greater hunting opportunity during the Christmas break, when more people, especially youth, are able to take advantage of opportunity. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should be three season segments in the South Zone so there could be hunting later in January. The department disagrees with the comment and responds that under the federal frameworks Texas is allowed to have a maximum of two season segments in each zone. No changes were made as a result of the comment.

One commenter opposed adoption and stated that all zones should open September 1 and close January 4. The department disagrees with the comment and responds that under the federal frameworks, the regular South Zone season cannot open earlier than September 20 and may not extend continuously for more than 70 days. No changes were made as a result of the comment.

Nineteen commenters opposed adoption and stated specific opposition to the proposal to move one week of hunting opportunity from the first season segment and add it to the end of the second segment. Those comments varied in rationale as follows:

Five commenters opposed adoption and stated that the current season structure should be left in place. The department agrees with the comments and has made changes accordingly.

Three commenters opposed adoption and stated that the proposal would conflict with other activities such as deer hunting. The department disagrees with the comments but responds that the traditional season structure is being retained for other reasons.

Three commenters opposed adoption and stated that an extra week should be taken from the second segment and added to the end of the first segment. The department disagrees with the comments and responds that the current season structure is being retained for reasons explained earlier in this preamble.

Two commenters opposed adoption and stated that the week should be taken from the front of the first segment rather than the end of the first segment. The department disagrees with the comments and responds that the current season structure is being retained for reasons explained earlier in this preamble.

One commenter opposed adoption and stated that there are no birds in northern South Texas in December. The department disagrees with the comment but responds that the current season structure is being retained for reasons explained earlier in this preamble.

One commenter opposed adoption and stated that January 12 is late enough. The department disagrees with the comment but responds that the current season structure is being retained for reasons explained earlier in this preamble.

One commenter opposed adoption and stated that a later season will limit the white-winged harvest. The department disagrees with the comment but responds that the current season structure is being retained for reasons explained earlier in this preamble.

One commenter opposed adoption and stated that it should occur only if public dove hunting areas are also available for the late season. The department disagrees with the comment but responds that the current season structure is being retained for reasons explained earlier in this preamble.

Two commenters who indicated that they opposed the proposal indicated in their comments that they were actually in favor of the segment reallocation. The department agrees with the comments but responds that the current season structure is being retained for reasons explained earlier in this preamble.

The department received 123 comments supporting adoption of the proposed amendment.

The department received 16 comments opposed to the adoption of the proposed dove season in the Special White-winged Dove Area. Of the 16 comments, 14 offered a specific reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, are as follows.

Six commenters opposed adoption and stated that the special white-winged dove season should be eliminated. The department disagrees with the comment and responds that the special white-winged dove season enjoys a very long history in Texas and has been very popular with hunters. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the season should begin September 1. The department disagrees with the comment and responds that the traditional preference of hunters is for the first two weekends in September. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that the special white-winged dove season should be opened the Labor Day weekend every year. The department disagrees with the comments and responds that the traditional preference of hunters is for the first two weekends in September. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the season should be September 5, 6, 7, 12, 13, and 14, 2008. The department disagrees with the comment and responds that under the federal frameworks, the special white-winged dove season is restricted to no more than 4 days from September 1 - 19. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the weekends of September 20 and 27 should be added to the proposed season dates. The department disagrees with the comment and responds that federal frameworks authorize the opening of the South Zone dove season on September 20 and hunter preference has historically been for the season to open on the earliest possible date under the federal frameworks. No changes were made as a result of the comment.

The department received several comments opposing adoption of the proposed amendment for reasons unrelated to season structures or bag limits within specific zones.

One commenter opposed adoption and stated that legal shooting hours should be afternoons only. The department disagrees with the comment and responds that hunter surveys indicate a preference for all-day dove hunting. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the bag limit is too high. The department disagrees with the comment and responds that the maximum bag limit available to the states under the federal frameworks is calculated as part of an annual analysis of the abundance of birds, number of hunters, and other factors, and is established at a level deemed to present no biological danger to populations. The commission's policy is to adopt the most liberal hunting opportunity possible under the federal frameworks. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the southern boundary of the Central Zone should follow US Highway 59 from Laredo to Houston and then follow Interstate 10 to the Texas/Louisiana boundary. The department disagrees with the comment and responds that the department cannot alter zone boundaries without the prior approval of the U.S. Fish and Wildlife Service. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the possession limit should be three daily bag limits. The department disagrees with the comment and responds that by federal law the possession limit is twice the daily bag limit, which cannot be eliminated or increased by the department. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the zone boundary should be moved to eastward to Interstate 37. The department disagrees with the comment and responds that

the department cannot alter zone boundaries without the prior approval of the U.S. Fish and Wildlife Service. No changes were made as a result of the comment.

The department received 87 comments supporting adoption of the portion of the proposed amendment to §65.315 concerning the Special White-winged Dove Area.

The department received 16 comments opposing adoption of the Proposed September Teal-only Season. Of the 16 comments, 15 offered a specific reason or explanation for opposing adoption. Those comments, accompanied by the department's response to each, are as follows.

Two commenters opposed adoption and stated that the teal season should include whistling ducks. The department disagrees with the comments and responds that under the federal frameworks the special September season for teal is restricted to teal ducks. No changes were made as a result of the comments.

Four commenters opposed adoption and stated that there should be a higher daily bag limit for teal. The department disagrees with the comments and responds that the bag limit as adopted is the maximum allowable under federal frameworks. No changes were made as a result of the comments.

Two commenters opposed adoption and stated that the season should be longer. The department disagrees with the comments and responds that the season length is the maximum allowable under the federal frameworks. No changes were made as a result of the comments.

Four commenters opposed adoption if it included a nine-day season. The department disagrees with the comments and responds that the department can only adopt what the federal frameworks authorize; however, federal frameworks this year authorize a 16-day season, which is being adopted.

One commenter opposed adoption and stated that there should be a six-bird limit and a nine-day season. The department disagrees with the comment and responds that the policy of the department is to adopt the most liberal seasons and bag limits possible under the federal frameworks, which this year authorize a 16-day season and a four-bird bag limit. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the possession limit should be three daily bag limits. The department disagrees with the comment and responds that by federal law the possession limit is twice the daily bag limit, which cannot be eliminated or increased by the department. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the season should open prior to September 13. The department disagrees with the comment and responds that the department selects teal season dates based on when the majority of teal are expected to be in the state, and that the season as adopted is consonant with hunter preference. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the season should begin one week later. The department disagrees with the comment and responds that department selects teal season dates based on when the majority of teal are expected to be in the state, and that the season as adopted is consonant with hunter preference. No changes were made as a result of the comment.

Three commenters opposed adoption and stated that the season should begin Labor Day weekend. The department disagrees with the comments and responds that the federal frameworks do not authorize teal hunting prior to September 1. No changes were made as a result of the comments.

The department received 106 comments in support of the adoption of the proposed amendment addressing teal ducks.

The department received two comments opposing adoption of the portion of the proposed amendment to §65.315 concerning woodcock seasons. Those comments, accompanied by the department's response to each, are as follows.

One commenter opposed adoption and stated that the woodcock season should be concurrent with the quail season. The department disagrees with the comment and responds that under federal frameworks, woodcock season cannot exceed 45 days in length and must take place between September 20 and January 31. Therefore, woodcock season cannot be concurrent with quail season, which runs from the Saturday closest to September 28 until the last Sunday in February. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the woodcock season should be expanded. The department disagrees with the comment and responds that the season length is the maximum allowed under federal frameworks. No changes were made as a result of the comment.

The department received 38 comments in support of the adoption of the proposed amendment addressing woodcock.

The department received two comments opposing adoption of the portion of the proposed amendment to §65.315 concerning snipe. Those comments, accompanied by the department's response to each, are as follows.

One commenter opposed adoption and stated that there should be a longer season with smaller bag limit. The department disagrees with the comment and responds that the season length and bag limit as adopted are the maximum allowed under federal frameworks. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the season should open in mid-October. The department disagrees with the comment and responds that hunter preference has historically been for a snipe season opening day in November. No changes were made as a result of the comment.

The department received 47 comments in support of the adoption of the proposed amendment addressing snipe.

The department received no comments opposing adoption of the portion of the proposed amendment to §65.315 concerning rail seasons.

The department received 37 comments supporting adoption of the portion of the proposed amendment to §65.315 concerning rail seasons.

The department received no comments opposing adoption of the portion of the proposed amendment to §65.315 concerning gallinule seasons.

The department received 35 comments supporting adoption of the portion of the proposed amendment to §65.315 concerning gallinule seasons.

The department received no comments concerning adoption of the proposed amendment to §65.319, concerning the take of early species of migratory game birds by means of falconry.

The amendments are adopted under Parks and Wildlife Code, Chapter 64, which authorizes the Commission and the Executive Director to provide the open season and means, methods, and devices for the hunting and possessing of migratory game birds.

§65.315. Open Seasons and Bag and Possession Limits--Early Season.

(a) Rails.

(1) Dates: September 13 - 28, 2008 and November 1 - December 24, 2008.

(2) Daily bag and possession limits:

(A) king and clapper rails: 15 in the aggregate per day; 30 in the aggregate in possession.

(B) sora and Virginia rails: 25 in the aggregate per day; 25 in the aggregate in possession.

(b) Dove seasons.

(1) North Zone.

(A) Dates: September 1 - October 30, 2008.

(B) Daily bag limit: 15 mourning doves, white-winged doves, and white-tipped (white-fronted) doves in the aggregate, including no more than two white-tipped doves per day;

(C) Possession limit: 30 mourning doves, white-winged doves, and white-tipped doves in the aggregate, including no more than four white-tipped doves in possession.

(2) Central Zone.

(A) Dates: September 1 - October 30, 2008 and December 26, 2008 - January 4, 2009.

(B) Daily bag limit: 12 mourning doves, white-winged doves, and white-tipped (white-fronted) doves in the aggregate, including no more than two white-tipped doves per day;

(C) Possession limit: 24 mourning doves, white-winged doves, and white-tipped doves in the aggregate, including no more than four white-tipped doves in possession.

(3) South Zone.

(A) Dates: Except in the special white-winged dove area as defined in §65.314 of this title (relating to Zones and Boundaries for Early Season Species), September 20 - November 9, 2008 and December 26, 2008 - January 13, 2009.

(B) Daily bag limit: 12 mourning doves, white-winged doves, and white-tipped (white-fronted) doves in the aggregate, including no more than two white-tipped doves per day;

(C) Possession limit: 24 mourning doves, white-winged doves, and white-tipped doves in the aggregate, including no more than four white-tipped doves in possession.

(4) Special white-winged dove area.

(A) Dates: September 6, 7, 13, and 14, 2008.

(i) Daily bag limit: 12 white-winged doves, mourning doves, and white-tipped (white-fronted) doves, in the aggregate to include no more than four mourning doves and two white-tipped doves per day;

(ii) Possession limit: 24 white-winged doves, mourning doves, and white-tipped doves in the aggregate to include no more than eight mourning doves and four white-tipped doves in possession.

(B) Dates: September 20 - November 9, 2008 and December 26, 2008 - January 9, 2009.

(i) Daily bag limit: 12 white-winged doves, mourning doves, and white-tipped (white-fronted) doves, in the aggregate to include no more than two white-tipped doves per day;

(ii) Possession limit: 24 white-winged doves, mourning doves, and white-tipped doves in the aggregate to include no more than four white-tipped doves in possession.

(c) Gallinules.

(1) Dates: September 13 - 28, 2008 and November 1 - December 24, 2008.

(2) Daily bag and possession limits: 15 in the aggregate per day; 30 in the aggregate in possession.

(d) September teal-only season.

(1) Dates: September 13 - 28, 2008.

(2) Daily bag and possession limits: four in the aggregate per day; eight in the aggregate in possession.

(e) Red-billed pigeons, and band-tailed pigeons. No open season.

(f) Shorebirds. No open season.

(g) Woodcock: December 18, 2008 - January 31, 2009. The daily bag limit is three. The possession limit is six.

(h) Wilson's snipe (Common snipe): November 1, 2008 - February 15, 2009. The daily bag limit is eight. The possession limit is 16.

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 July 31, 2008.

TRD-200804001

Ann Bright

General Counsel

Texas Parks and Wildlife Department

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For further information, please call: (512) 389-4775



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 421. STANDARDS FOR CERTIFICATION

37 TAC §421.5

The Texas Commission on Fire Protection (the Commission) adopts with changes an amendment to Chapter 421, Stan-

dards for Certification, §421.5, Definitions. This amendment is adopted with changes to the proposed text as published in the June 6, 2008, issue of the *Texas Register* (33 TexReg 4498).

At adoption, a non-substantive change was made to the text of paragraph (36), the word "certification" was removed in error and needs to be re-entered. Paragraph (40) has a grammatical correction in the word "commission," the letter "c" needs to be capitalized and the words "commission" and "approved" need to be hyphenated and various punctuation throughout this document.

No comments were received from the public regarding this proposed amendment.

This amendment is adopted under the Texas Government Code, §419.008, which provides the Commission with the authority to propose rules for the administration of its powers and duties.

§421.5. Definitions.

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

(1) Admission to employment--An entry-level, full-time employee of a local government entity in one of the categories of fire protection personnel.

(2) Appointment--The designation or assignment of a person to a discipline regulated by the Commission. The types of appointments are:

(A) Permanent appointment--The designation or assignment of certified fire protection personnel or certified part-time fire protection employees to a particular discipline (See Texas Government Code, §419.032); and

(B) Probationary or temporary appointment--The designation or assignment of an individual to a particular discipline, except for head of a fire department, for which the individual has passed the Commission's certification and has met the medical requirement of §423.1(b) of this title, if applicable, but has not yet been certified. (See Texas Government Code, §419.032.)

(3) Approved training--Any training used for a higher level of certification must be approved by the Commission and assigned to either the A-List or the B-List. The training submission must be in a manner specified by the Commission and contain all information requested by the Commission. The Commission will not grant credit twice for the same subject content or course. Inclusion on the A-List or B-List does not preclude the course-approval process as stated elsewhere in the Standards Manual.

(4) Assigned/work--A fire protection personnel or a part-time fire protection employee shall be considered "assigned working" in a position, any time the individual is receiving compensation and performing the duties that are regulated by the Texas Commission on Fire Protection certification and has been permanently appointed, as defined in this section, to the particular discipline.

(5) Assistant fire chief--The officer occupying the first position subordinate to the head of a fire department.

(6) Auxiliary fire fighter--A volunteer fire fighter.

(7) Benefits--Benefits shall include, but are not limited to, inclusion in group insurance plans (such as health, life, and disability) or pension plans, stipends, free water usage, and reimbursed travel expenses (such as meals, mileage, and lodging).

(8) Chief Training Officer--The individual, by whatever title he or she may be called, who coordinates the activities of a certified-training facility.

(9) Class hour--Defined as not less than 50 minutes of instruction, also defined as a contact hour; a standard for certification of fire protection personnel.

(10) Code--The official legislation creating the Commission.

(11) College credits--Credits earned for studies satisfactorily completed at a regionally accredited institution of higher education and including National Fire Academy (NFA) open learning program colleges, or courses recommended for college credit by the American Council on Education (ACE) or delivered through the National Emergency Training Center (both EMI and NFA) programs. A course of study satisfactorily completed and identified on an official transcript from a college or in the ACE National Guide that is primarily related to Fire Service, Emergency Medicine, Emergency Management, or Public Administration is defined as applicable for Fire Science college credit, and is acceptable for higher levels of certification.

(12) Commission--Texas Commission on Fire Protection.

(13) Commission-recognized training--A curriculum or training program which carries written approval from the Commission, or credit hours that appear on an official transcript from an accredited college or university, or any fire service training received from a nationally recognized source, i.e., the National Fire Academy.

(14) Compensation--Compensation is to include wages, salaries, and "per-call payment" (for attending drills, meetings or answering emergencies).

(15) Expired--Any certification that has not been renewed on or before the end of the certification period.

(16) Federal fire fighter--A person as defined in the Texas Government Code, §419.084(h).

(17) Fire chief--The head of a fire department.

(18) Fire department--A department of a local government that is staffed by one or more fire protection personnel or part-time fire protection employees.

(19) Fire protection personnel--Any person who is a permanent full-time employee of a fire department or governmental entity and who is appointed duties in one of the following categories/disciplines: fire suppression, fire inspection, fire and arson investigation, marine fire fighting, aircraft rescue fire fighting, fire training, fire education, fire administration and others employed in related positions necessarily or customarily appertaining thereto.

(20) Fire suppression duties--Engaging in the controlling or extinguishment of a fire of any type or performing activities which are required for and directly related to the control and extinguishment of fires or standing by on the employer's premises or apparatus or nearby in a state of readiness to perform these duties.

(21) Full-time--An officer or employee is considered full-time if the employee works an average of 40 hours a week or averages 40 hours per week or more during a work cycle in a calendar year. For the purposes of this definition, paid leave will be considered time worked.

(22) Government entity--The local authority having jurisdiction as employer of full-time fire protection personnel in a state agency, incorporated city, village, town or county, education institution or political subdivision.

(23) High school--A school accredited as a high school by the Texas Education Agency or equivalent accreditation agency from another jurisdiction.

(24) Immediately dangerous to life or health (IDLH)--An atmosphere that poses an immediate threat to life, would cause irreversible adverse health effects, or would impair an individual's ability to escape from a dangerous atmosphere.

(25) Incipient stage fire--A fire which is in the initial or beginning stage and which can be controlled or extinguished by portable fire extinguishers, Class II standpipe or small hose systems without the need for protective clothing or breathing apparatus.

(26) Interior structural fire fighting--The physical activity of fire suppression, rescue or both, inside of buildings or enclosed structures which are involved in a fire situation beyond the incipient stage. (See 29 CFR §1910.155)

(27) Lead instructor--An individual qualified as an instructor to deliver fire-protection training.

(28) Municipality--Any incorporated city, village, or town of this state and any county or political subdivision or district in this state. Municipal pertains to a municipality as herein defined.

(29) National Fire Academy semester credit hours--The number of hours credited for attendance of National Fire Academy courses is determined as recommended in the most recent edition of the "National Guide to Educational Credit for Training Programs," and American Council on Education (ACE).

(30) Non-self-serving affidavit--A sworn document executed by someone other than the individual seeking certification.

(31) Participating volunteer fire fighter--An individual who voluntarily seeks certification and regulation by the Commission under the Government Code, Chapter 419, Subchapter D.

(32) Participating volunteer fire service organization--A fire department that voluntarily seeks regulation by the Commission under the Government Code, Chapter 419, Subchapter D.

(33) Part-time fire protection employee--An individual who is appointed as a part-time fire protection employee and who receives compensation, including benefits and reimbursement for expenses. A part-time fire protection employee is not full time as defined in this section.

(34) Personal alert safety system (PASS)--Devices that are certified as being compliant with NFPA 1982, and that automatically activates an alarm signal (which can also be manually activated) to alert and assist others in locating a fire fighter or emergency services person who is in danger.

(35) Political subdivision--A political subdivision of the State of Texas that includes, but is not limited to the following:

- (A) city;
- (B) county;
- (C) school district;
- (D) junior college district;
- (E) levee improvement district;
- (F) drainage district;
- (G) irrigation district;
- (H) water improvement district;
- (I) water control and improvement district;

- (J) water control and preservation district;
- (K) freshwater supply district;
- (L) navigation district;
- (M) conservation and reclamation district;
- (N) soil conservation district;
- (O) communication district;
- (P) public health district;
- (Q) river authority;
- (R) municipal utility district;
- (S) transit authority;
- (T) hospital district;
- (U) emergency services district;
- (V) rural fire prevention district; and
- (W) any other governmental entity that:

(i) embraces a geographical area with a defined boundary;

(ii) exists for the purpose of discharging functions of the government; and

(iii) possesses authority for subordinate self-government through officers selected by it.

(36) Reciprocity for IFSAC seals--Valid documentation of accreditation from the International Fire Service Accreditation Congress used for TCFP certification may only be used for obtaining an initial certification.

(37) Recognition of training--A document issued by the Commission stating that an individual has completed the training requirements of a specific phase level of the Basic Fire Suppression Curriculum.

(38) School--Any school, college, university, academy, or local training program which offers fire service training and included within its meaning the combination of course curriculum, instructors, and facilities.

(39) Structural fire protection personnel--Any person who is a permanent full-time employee of a government entity who engages in fire fighting activities involving structures and may perform other emergency activities typically associated with fire fighting activities such as rescue, emergency medical response, confined space rescue, hazardous materials response, and wildland fire fighting.

(40) Trainee--An individual who is participating in a Commission-approved training program.

(41) Volunteer fire protection personnel--Any person who has met the requirements for membership in a volunteer fire service organization, who is assigned duties in one of the following categories: fire suppression, fire inspection, fire and arson investigation, marine fire fighting, aircraft rescue fire fighting, fire training, fire education, fire administration and others in related positions necessarily or customarily appertaining thereto.

(42) Volunteer fire service organization--A volunteer fire department or organization not under mandatory regulation by the Texas Commission on Fire Protection.

(43) Years of experience--For purposes of higher levels of certification or fire service instructor certification:

(A) Except as provided in subparagraph (B) of this paragraph, years of experience is defined as full years of full-time, part-time or volunteer fire service while holding:

(i) a Texas Commission on Fire Protection certification as a full-time, or part-time employee of a government entity, a member in a volunteer fire service organization, and/or an employee of a regulated nongovernmental fire department; or

(ii) a State Firemen's and Fire Marshals' Association advanced fire fighter certification and have successfully completed, as a minimum, the requirements for an Emergency Care Attendant (ECA) as specified by the Department of State Health Services (DSHS), or its successor agency, or its equivalent; or

(iii) an equivalent certification as a full-time fire protection personnel of a governmental entity from another jurisdiction, including the military or while a member in a volunteer fire service organization from another jurisdiction, and have, as a minimum, the requirements for an Emergency Care Attendant (ECA) as specified by the Department of State Health Services (DSHS), or its successor agency, or its equivalent; or

(iv) for fire service instructor eligibility only, a State Firemen's and Fire Marshals' Association Level II Instructor Certification, or an equivalent instructor certification from the Texas Department of State Health Services (DSHS) or the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE). Documentation of at least three years of experience as a volunteer in the fire service shall be in the form of a non self-serving sworn affidavit.

(B) For fire service personnel certified as required in subparagraph (A) of this paragraph on or before October 31, 1998, years of experience includes the time from the date of employment or membership to date of certification not to exceed one year.

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-200803930

Gary L. Warren, Sr.

Executive Director

Texas Commission on Fire Protection

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For further information, please call: (512) 936-3838



CHAPTER 429. MINIMUM STANDARDS FOR FIRE INSPECTORS

SUBCHAPTER A. MINIMUM STANDARDS FOR FIRE INSPECTOR CERTIFICATION BASED ON REQUIREMENTS IN EFFECT PRIOR TO JANUARY 1, 2005

37 TAC §429.3

The Texas Commission on Fire Protection (the Commission) adopts with changes an amendment to Chapter 429, Minimum Standards for Fire Inspectors, Subchapter A, Minimum Standards for Fire Inspector Certification Based on Requirements in Effect Prior to January 1, 2005, §429.3, Minimum Standards for

Basic Fire Inspector Certification. This amendment is adopted with changes to the proposed text as published in the May 30, 2008, issue of the *Texas Register* (33 TexReg 4291).

At adoption a non-substantive change was made to the first sentence. The Commission is changing the sentence to read "must" have completed in order to make it more of a requirement to have completed a Commission examination.

No comments were received from the public regarding this proposed amendment.

This amendment is adopted under the Texas Government Code, §419.008, which provides the Commission with the authority to propose rules for the administration of its powers and duties.

§429.3. Minimum Standards for Basic Fire Inspector Certification.

In order to be certified by the Commission as a Basic Fire Inspector an individual must have completed a Commission-approved Basic Fire Inspector Curriculum dated prior to January 1, 2005, and successfully pass the Commission examination as specified in Chapter 439 of this title (relating to Examinations for Certification).

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 July 28, 2008.

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Gary L. Warren, Sr.

Executive Director

Texas Commission on Fire Protection

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For further information, please call: (512) 936-3838



SUBCHAPTER B. MINIMUM STANDARDS FOR FIRE INSPECTOR CERTIFICATION

37 TAC §429.203

The Texas Commission on Fire Protection (the Commission) adopts without changes an amendment to Chapter 429, Minimum Standards for Fire Inspectors, Subchapter B, Minimum Standards for Fire Inspector Certification, §429.203, Minimum Standards for Basic Fire Inspector Certification--New Track. This amendment is adopted without changes to the proposed text as published in the May 30, 2008, issue of the *Texas Register* (33 TexReg 4292) and will not be republished.

The purpose of this amendment is to delete unnecessary and confusing language concerning the certification of part-time fire inspectors, and to correct grammatical errors.

No comments were received from the public regarding this proposed amendment.

This amendment is adopted under the Texas Government Code, §419.008, which provides the Commission with the authority to propose rules for the administration of its powers and duties.

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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Gary L. Warren, Sr.

Executive Director

Texas Commission on Fire Protection

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For further information, please call: (512) 936-3838



CHAPTER 431. FIRE INVESTIGATION SUBCHAPTER A. MINIMUM STANDARDS FOR ARSON INVESTIGATOR CERTIFICATION

37 TAC §431.3

The Texas Commission on Fire Protection (the Commission) adopts without changes an amendment to Chapter 431, Fire Investigation, Subchapter A, Minimum Standards for Arson Investigator Certification, §431.3, Minimum Standards for Basic Arson Investigator Certification. This amendment is adopted without changes to the proposed text as published in the May 30, 2008, issue of the *Texas Register* (33 TexReg 4293) and will not be republished.

The purpose of this amendment is to delete unnecessary and confusing language concerning the certification of part-time investigators and to correct grammatical errors.

No comments were received from the public regarding this proposed amendment.

This amendment is adopted under the Texas Government Code, §419.008, which provides the Commission with the authority to propose rules for the administration of its powers and duties.

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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Gary L. Warren, Sr.

Executive Director

Texas Commission on Fire Protection

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For further information, please call: (512) 936-3838



SUBCHAPTER B. MINIMUM STANDARDS FOR FIRE INVESTIGATOR CERTIFICATION

37 TAC §431.203

The Texas Commission on Fire Protection (the Commission) adopts without changes an amendment to Chapter 431, Fire Investigation, Subchapter B, Minimum Standards for Fire Investigator Certification, §431.203, Minimum Standards for Fire Investigator Certification. This amendment is adopted without changes to the proposed text as published in the May 30, 2008, issue of the *Texas Register* (33 TexReg 4293) and will not be republished.

The purpose of this amendment is to delete unnecessary and confusing language concerning the certification of part-time investigators and to correct grammatical errors.

No comments were received from the public regarding this proposed amendment.

This amendment is adopted under the Texas Government Code, §419.008, which provides the Commission with the authority to propose rules for the administration of its powers and duties.

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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Gary L. Warren, Sr.

Executive Director

Texas Commission on Fire Protection

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For further information, please call: (512) 936-3838



CHAPTER 435. FIRE FIGHTER SAFETY

37 TAC §435.3

The Texas Commission on Fire Protection (the Commission) adopts without changes an amendment to Chapter 435, Fire Fighter Safety, §435.3, Self-Contained Breathing Apparatus. This amendment is adopted without changes to the proposed text as published in the May 30, 2008, issue of the *Texas Register* (33 TexReg 4294) and will not be republished.

The purpose of this amendment is to delete unnecessary and confusing language concerning the certification of part-time investigators, and to correct grammatical errors.

No comments were received from the public regarding this proposed amendment.

This amendment is adopted under the Texas Government Code, §419.008, which provides the Commission with the authority to propose rules for the administration of its powers and duties.

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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Gary L. Warren, Sr.

Executive Director

Texas Commission on Fire Protection

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For further information, please call: (512) 936-3838



CHAPTER 439. EXAMINATIONS FOR CERTIFICATION

SUBCHAPTER A. EXAMINATIONS FOR ON-SITE DELIVERY TRAINING

37 TAC §439.15

The Texas Commission on Fire Protection (the Commission) adopts without changes an amendment to Chapter 439, Examinations for Certification, Subchapter A, Examinations for On-Site Delivery Training, §439.15, Testing for Proof of Proficiency. This amendment is adopted without changes to the proposed text as published in the May 30, 2008, issue of the *Texas Register* (33 TexReg 4295) and will not be republished.

The purpose of this amendment is to delete unnecessary and confusing language concerning the certification of part-time investigators, and to correct grammatical errors.

No comments were received from the public regarding this amendment.

This amendment is adopted under the Texas Government Code, §419.008, which provides the Commission with the authority to propose rules for the administration of its powers and duties.

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 July 28, 2008.

TRD-200803928

Gary L. Warren, Sr.

Executive Director

Texas Commission on Fire Protection

Effective date: August 17, 2008

Proposal publication date: May 30, 2008

For further information, please call: (512) 936-3838



37 TAC §439.17

The Texas Commission on Fire Protection (the Commission) adopts without changes an amendment to Chapter 439, Examinations for Certification, Subchapter A, Examinations for On-Site Delivery Training, §439.17, Testing for Certification Status. This amendment is adopted without changes to the proposed text as published in the May 30, 2008, issue of the *Texas Register* (33 TexReg 4295) and will not be republished.

The purpose of this amendment is to delete unnecessary and confusing language concerning the certification of part-time investigators, and to correct grammatical errors.

No comments were received from the public regarding this amendment.

This amendment is adopted under the Texas Government Code, §419.008, which provides the Commission with the authority to propose rules for the administration of its powers and duties.

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 July 28, 2008.

TRD-200803929

Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Effective date: August 17, 2008
Proposal publication date: May 30, 2008
For further information, please call: (512) 936-3838



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 12. TEXAS BOARD OF OCCUPATIONAL THERAPY EXAMINERS

CHAPTER 375. FEES

40 TAC §375.1

The Texas Board of Occupational Therapy Examiners adopts the amendment to §375.1 concerning Fees without changes to the proposed text as published in the May 9, 2008, issue of the *Texas Register* (33 TexReg 3726) and will not be republished.

The amended section is adopted to clarify where to access the published fees.

No comments were received.

The amendment is adopted under the Occupational Therapy Act, Title 3, Subchapter H, Chapter 454, Occupations Code, which provides Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subchapter H, Chapter 454 of the Occupations Code is affected by this amended section.

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

Filed with the Office of the Secretary of State on August 4, 2008.

TRD-200804035
John Maline
Executive Director
Texas Board of Occupational Therapy Examiners
Effective date: August 24, 2008
Proposal publication date: May 9, 2008
For further information, please call: (512) 305-6900



CHAPTER 376. REGISTRATION OF FACILITIES

40 TAC §376.3

The Texas Board of Occupational Therapy Examiners adopts the amendment to §376.3 concerning Requirements for Registration Application without changes to the proposed text as published in the May 9, 2008, issue of the *Texas Register* (33 TexReg 3727) and will not be republished.

The amended section is adopted to clarify the Therapist in Charge form.

No comments were received from individuals.

The amendment is adopted under the Occupational Therapy Act, Title 3, Subchapter H, Chapter 454, Occupations Code, which provides Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subchapter H, Chapter 454 of the Occupations Code is affected by this amended section.

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

Filed with the Office of the Secretary of State on August 4, 2008.

TRD-200804038
John Maline
Executive Director
Texas Board of Occupational Therapy Examiners
Effective date: August 24, 2008
Proposal publication date: May 9, 2008
For further information, please call: (512) 305-6900



40 TAC §376.4

The Texas Board of Occupational Therapy Examiners adopts the amendment to §376.4 concerning Requirements for Registered Facilities without changes to the proposed text as published in the May 9, 2008, issue of the *Texas Register* (33 TexReg 3728) and will not be republished.

The amended section is adopted to clarify when new facility registration and/or renewal forms must be ordered.

No comments were received from individuals.

The amendment is adopted under the Occupational Therapy Act, Title 3, Subchapter H, Chapter 454, Occupations Code, which provides Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subchapter H, Chapter 454 of the Occupations Code is affected by this amended section.

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

Filed with the Office of the Secretary of State on August 4, 2008.

TRD-200804040
John Maline
Executive Director
Texas Board of Occupational Therapy Examiners
Effective date: August 24, 2008
Proposal publication date: May 9, 2008
For further information, please call: (512) 305-6900



PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 700. CHILD PROTECTIVE SERVICES
SUBCHAPTER M. SUBSTITUTE-CARE SERVICES

40 TAC §700.1340

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), an amendment to §700.1340, without changes to the proposed text published in the May 23, 2008, issue of the *Texas Register* (33 TexReg 4125).

The justification for the amendment is to change the process for obtaining court approval for travel outside the United States, as required by the enactment of Texas Family Code §264.122, Court Approval Required for Travel Outside the United States by Child in Foster Care. The amendment also simplifies the language regarding a child's travel out of state and requires DFPS to notify the court and to follow any local rules of administration before permitting the child to travel out of state. The agency's name is also updated.

The amendment will function by ensuring that the judicial systems resources will be used more efficiently while assuring the safety of children traveling who are in DFPS conservatorship.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements Texas Family Code, §264.122.

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 July 30, 2008.

TRD-200803970

Gerry Williams

General Counsel

Department of Family and Protective Services

Effective date: September 1, 2008

Proposal publication date: May 23, 2008

For further information, please call: (512) 438-3437



CHAPTER 748. GENERAL RESIDENTIAL OPERATIONS AND RESIDENTIAL TREATMENT CENTERS

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS),

amendments to §748.131 and §748.1705, in its General Residential Operations and Residential Treatment Centers chapter. The amendment to §748.131 is adopted with a change to the proposed text published in the May 23, 2008, issue of the *Texas Register* (33 TexReg 4127). The amendment to §748.1705 is adopted without changes to the proposed text and will not be re-published.

The justification for the amendments is to clarify language.

The amendment to §748.131 clarifies language regarding the make-up of the governing body and more clearly addresses the persons that have a conflict of interest.

The amendment to §748.1705 allows physicians to plan a child's tube feeding diet. The rule currently only allows dieticians to plan these diets. This revision is consistent with the corresponding rule in §749.3073 of this title relating to What are the nutrition requirements for a child with primary medical needs?, which already allows physicians to plan a tube feeding diet.

The amendments will function by ensuring that residential child-care operations have a clearer understanding of what is required in minimum standard rules, and children placed in residential care will benefit as a result of this increased clarity.

During the comment period, DFPS received one comment from Canyon Lakes Residential Treatment Center questioning how the change to §748.131 would apply to their treatment center. DFPS is adopting §748.131 with a formatting change that clarifies the rule.

SUBCHAPTER C. ORGANIZATION AND ADMINISTRATION

DIVISION 2. GOVERNING BODY

40 TAC §748.131

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§748.131. What are the specific responsibilities of the governing body?

- (a) The governing body is responsible for:
 - (1) Ensuring the operation remains fiscally sound;
 - (2) Overseeing and ensuring the management of the operation's services and programs in compliance with your policies;
 - (3) Approving and having authority over the operational policies and activities which must comply with rules of this chapter;
 - (4) Complying with the law, including Chapters 42 and 43 of the Human Resources Code, the applicable rules of this chapter, and other applicable rules in the Texas Administrative Code;
 - (5) Ensuring that the majority of the voting members of the governing body consist of persons who do not have a conflict of

interest that would potentially interfere with objective decision making. Persons who have such a conflict of interest include the following:

(A) Family members of:

- (i) An officer;
- (ii) A director; or
- (iii) A person with a controlling interest in the entity's stock; or

(B) If the governing body is a non-profit entity, persons who benefit financially from the operation, including but not limited to persons employed by or working at the operation, paid consultants, subcontractors, or vendors.

(6) Carrying out governing body responsibilities assigned in the policies and procedures.

(b) Regarding subsection (a)(5) of this section:

(1) Operations granted a permit by us before January 1, 2007, have two years to comply with this paragraph; and

(2) Operations granted a permit by us after January 1, 2007, have two years from the date the operation is licensed by us to comply with this paragraph.

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 July 30, 2008.

TRD-200803965

Gerry Williams

General Counsel

Department of Family and Protective Services

Effective date: September 1, 2008

Proposal publication date: May 23, 2008

For further information, please call: (512) 438-3437



SUBCHAPTER J. CHILD CARE

DIVISION 7. NUTRITION AND HYDRATION

40 TAC §748.1705

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

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 July 30, 2008.

TRD-200803966

Gerry Williams

General Counsel

Department of Family and Protective Services

Effective date: September 1, 2008

Proposal publication date: May 23, 2008

For further information, please call: (512) 438-3437



CHAPTER 749. CHILD-PLACING AGENCIES

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§749.131, 749.1415, and 749.3503, in its Child-Placing Agencies chapter. The amendment to §749.131 is adopted with changes to the proposed text published in the May 23, 2008, issue of the *Texas Register* (33 TexReg 4128). The amendments to §749.1415 and §749.3503 are adopted without changes to the proposed text and will not be republished. DFPS is withdrawing the proposed changes to §749.3633, which were published with these rules in the May 23, 2008, issue of the *Texas Register*.

The justification for the amendments is to ensure consistency with legislation, clarify language, and add flexibility to rule requirements.

Section 749.131 clarifies the language regarding the make-up of the governing body and more clearly addresses the persons that have a conflict of interest.

Section 749.1415 is revised so that requirements related to diseases "that may be spread through casual contact" apply only to diseases that are "reportable to the DSHS." This proposed change recognizes that foster parents require the flexibility to be present in their own home and take part in activities at the home even when they are ill with a disease that is spread through casual contact, such as a cold or the flu. Specific precautions in this rule would apply only when the disease is reportable to DSHS, such as tuberculosis or HIV/AIDS.

Section 749.3503 is revised to comply with House Bill 3997 of the 80th Legislature. HB 3997 of the 80th Legislature states, in part, that attempting to locate an alleged father is not required under certain circumstances. This rule currently requires reasonable efforts to locate an absent father. Therefore, this rule is amended to be consistent with the new law. The amendment also includes clarifying language to make the rule grammatically correct.

The amendments will function by ensuring that residential child-care operations have a clearer understanding of what is required in minimum standard rules, and children placed in residential care will benefit as a result of this increased clarity.

During the public comment period, DFPS received comments from Aggieland Pregnancy Outreach, Inc., Children's Hope International, Christian Homes & Family Services, and Lutheran Social Services. All commenters disagreed with the proposed changes to §749.3633. As a result of the comments, DFPS is withdrawing the proposed changes to §749.3633 in order to further research the issue and gain more consensus from affected child-placing agencies.

DFPS is adopting §749.131 with minor formatting changes to clarify the rule.

SUBCHAPTER C. ORGANIZATION AND ADMINISTRATION

DIVISION 2. GOVERNING BODY

40 TAC §749.131

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§749.131. *What are the specific responsibilities of the governing body?*

- (a) The governing body is responsible for:
 - (1) Ensuring the agency remains fiscally sound;
 - (2) Overseeing and ensuring the management of the agency's services and programs in compliance with your policies;
 - (3) Approving and having authority over the agency's operational policies and activities which must comply with rules of this chapter;
 - (4) Complying with the law, including Chapters 42 and 43 of the Human Resources Code, the applicable rules of this chapter, and other applicable rules in the Texas Administrative Code;
 - (5) Ensuring that the majority of the voting members of the governing body consist of persons who do not have a conflict of interest that would potentially interfere with objective decision making. Persons who have such a conflict of interest include the following:
 - (A) Family members of:
 - (i) An officer;
 - (ii) A director; or
 - (iii) A person with a controlling interest in the entity's stock; or
 - (B) If the governing body is a non-profit entity, persons who benefit financially from the operation, including but not limited to persons employed by or working at the operation, paid consultants, subcontractors, or vendors.
- (6) Carrying out governing body responsibilities assigned in the agency's policies and procedures.

(b) Regarding subsection (a)(5) of this section:

- (1) Operations granted a permit by us before January 1, 2007, have two years to comply with this paragraph; and
- (2) Operations granted a permit by us after January 1, 2007, have two years from the date the operation is licensed by us to comply with this paragraph.

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 July 30, 2008.
TRD-200803967

Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: September 1, 2008
Proposal publication date: May 23, 2008
For further information, please call: (512) 438-3437



SUBCHAPTER J. FOSTER CARE SERVICES: MEDICAL AND DENTAL DIVISION 1. MEDICAL AND DENTAL CARE 40 TAC §749.1415

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

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 July 30, 2008.

TRD-200803968
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: September 1, 2008
Proposal publication date: May 23, 2008
For further information, please call: (512) 438-3437



SUBCHAPTER R. ADOPTION SERVICES: BIRTH PARENTS DIVISION 1. BIRTH PARENT PREPARATION 40 TAC §749.3503

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042. and Texas Family Code §161.002(c-1), as enacted by House Bill 3997, 80th Session.

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 July 30, 2008.

TRD-200803969

Gerry Williams

General Counsel

Department of Family and Protective Services

Effective date: September 1, 2008

Proposal publication date: May 23, 2008

For further information, please call: (512) 438-3437



TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 15. TRANSPORTATION PLANNING AND PROGRAMMING

SUBCHAPTER N. STATE HIGHWAY PROJECTS FINANCED THROUGH THE ISSUANCE OF BONDS AND OTHER PUBLIC SECURITIES

43 TAC §§15.170 - 15.173

The Texas Department of Transportation (department) adopts amendments to §15.170, purpose, §15.171, definitions, §15.172, applicability, and §15.173, state highway improvement projects, concerning state highway projects financed through the issuance of certain bonds and other public securities. The amendments to §§15.170 - 15.173 are adopted without changes to the proposed text as published in the May 9, 2008, issue of the *Texas Register* (33 TexReg 3728) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

The amendments conform 43 TAC Chapter 15, Subchapter N to the changes made to Transportation Code, §222.003 by Senate Bill 792, 80th Legislature, 2007. Senate Bill 792 increased the annual bond issuance limit for bonds and other public securities secured by the state highway fund from \$1 billion to \$1.5 billion; increased the maximum aggregate issuance limitation from \$3 billion to \$6 billion; and increased the amount allocated to highway safety projects from \$600 million to \$1.2 billion. By deleting from the rules the amounts specified by the statute, the amendments remove the current and potential future discrepancies between the rules and statute, particularly with respect to the amount of bonds that the department may issue under 43 TAC Chapter 15, Subchapter N. Additionally, minor wording changes have been made to clarify the rules and to ensure consistency in terminology.

Amendments to §15.170, Purpose, delete references to the specific dollar amounts of the annual bond issuance limit, and the maximum aggregate bond issuance limit which are specified in Transportation Code, §222.003 and subject to change by the leg-

islature. The specific amounts are replaced with a reference to the statute, thereby removing current and potential future discrepancies between the rules and statute.

Amendments to §15.171, Definitions, delete the definition of Trans-Texas Corridor because the only use of the term in the subchapter is being removed from §15.172 for the reasons set out in the explanation of amendments to that section. The amendments renumber the remaining definitions accordingly.

Amendments to §15.172, Applicability, delete references to the specific project and dollar amount limitations and insert references to relevant provisions of Transportation Code, §222.003 to more accurately reflect the prohibited uses of bond proceeds and describe the bond amount limits prescribed by the legislature. Senate Bill 792 amended Transportation Code, §222.003(d) to change the amount of the proceeds that are required to be used for highway safety projects. As a result the statute and the rules conflict, and in such a situation, the statute controls. Transportation Code, §222.003(e) prohibits the use of bond proceeds for an array of projects, of which §15.172 lists only facilities on the Trans-Texas Corridor. The amendments delete the reference to the Trans-Texas Corridor and substitute a reference to the statute thus capturing the prohibition of the use of the bond proceeds for all current and future prohibited uses.

Amendments to §15.173, State Highway Improvement Projects, delete language limiting the use of bond proceeds for projects or programs in the Unified Transportation Program to only those that would be accelerated, thereby making the funds available for use on more state highway improvement projects. Additionally, the amendments add as an eligibility criterion consideration of the potential of a project to be classified as a safety project.

COMMENTS

No comments on the proposed amendments were received.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and Transportation Code, §222.003, which requires the commission to by rule prescribe criteria for selecting projects eligible for funding under the state highway fund bond program.

CROSS REFERENCE TO STATUTE

Transportation Code, §222.003.

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 August 1, 2008.

TRD-200804004

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Effective date: August 21, 2008

Proposal publication date: May 9, 2008

For further information, please call: (512) 463-8683



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 Plans

State Board for Educator Certification

Title 19, Part 7

TRD-200804044

Filed: August 4, 2008



Boards for Lease of State-Owned Lands

Title 31, Part 5

TRD-200804046

Filed: August 4, 2008



Proposed Rule Reviews

Boards for Lease of State-Owned Lands

Title 31, Part 5

In accordance with §2001.039 Government Code, the Texas General Land Office (GLO), with the approval of The Texas Parks and Wildlife Department and Texas Department of Criminal Justice Board for Lease, submits the following notice of intent to review the rules found in 31 TAC Part 5, Chapter 201, relating to Operations of The Texas Parks and Wildlife Department and Texas Department of Criminal Justice Board for Lease, including, §§201.1 - 201.7. The review of Chapter 201 is filed in accordance with the Boards for Lease of State-Owned Land's Rule Review Plan published in this issue of the *Texas Register*.

Review of the rules under this chapter will determine whether the reasons for adoption of the rules continue to exist. This Notice of Intent to Review 31 TAC Part 5, Chapter 201, Operations of The Texas Parks and Wildlife Department and Texas Department of Criminal Justice Board for Lease, applies to the chapter in its entirety.

The GLO invites suggestions from the public during the review process and will address any comments received. Any questions or comments should be directed to Walter Talley, Texas Register Liaison, General Land Office, P.O. Box 12873, Austin, Texas 78711-2873, facsimile number (512) 463-6311 or e-mail to walter.talley@glo.state.tx.us. Written comments must be received no later than 30 days from the date of publication of this notice.

TRD-200804047

Trace Finley

Policy Director, General Land Office

Boards for Lease of State-Owned Lands

Filed: August 4, 2008

◆ ◆ ◆
Texas Board of Pardons and Paroles

Title 37, Part 5

Under the 1997 General Appropriations Act, Article IX, §167, Review of Agency Rules, the Texas Board of Pardons and Paroles files this notice of intent to review and consider for readoption, revision, or repeal, Texas Administrative Code, Title 37, Public Safety and Corrections, Part 5, Chapter 141 (General Provisions), Chapter 143 (Executive Clemency) with the exception of §143.73, Chapter 145 (Parole), Chapter 146 (Revocation of Parole or Mandatory Supervision), Chapter 147 (Hearings), Chapter 149 (Mandatory Supervision), Chapter 150 (Memorandum of Understanding and Board Policy Statements) and all the sections contained within them.

The Board undertakes its review pursuant to Government Code, §2001.039, Government Code. The Board will accept comments for 30 days following the publication of this notice in the *Texas Register* and will assess whether the reasons for adopting the sections under review continue to exist. Proposed changes to the 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 Board, in accordance with the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Any questions or written comments pertaining to this notice of intention to review should for the next 30-day comment period be directed to Bettie Wells, General Counsel, Texas Board of Pardons and Paroles, 209 W. 14th Street, Suite 500, Austin, TX 78701, or by e-mail to bettie.wells@tdcj.state.tx.us.

TRD-200804031

Bettie Wells

General Counsel

Texas Board of Pardons and Paroles

Filed: August 4, 2008



Adopted Rule Reviews

General Land Office

Title 31, Part 1

The General Land Office (GLO) files this Notice of Readoption of 31 TAC Chapter 1, relating to Executive Administration, including Subchapter B, relating to Purchase of Excess Acreage, §§1.11 - 1.14; Subchapter C, relating to Procedure for Patenting Land, §§1.21 - 1.30; Subchapter D, relating to Patents to Land Under Law, §1.41 and §1.42; and

Subchapter G, relating to Procedure for Submitting and Processing Applications for Approval of Patent Land Released by the State, §§1.90 - 1.97. This readoption of Chapter 1 is filed in accordance with the General Land Office's Intention to Review published in the May 2, 2008, issue of the *Texas Register* (33 TexReg 3651).

The GLO has assessed whether the reasons for readopting 31 TAC Chapter 1, §§1.11 - 1.14, 1.21 - 1.30, 1.41, 1.42, and 1.90 - 1.97, continue to exist. The GLO finds that the rules in Chapter 1 reflect current procedures of the GLO. The reasons for initially adopting the rules continue to exist. The GLO, therefore, readopts Chapter 1 in its entirety, relating to Surveying.

No comments were received on the proposed notice of intention to review.

Chapter 1 was adopted under authority granted to the commissioner of the GLO in §31.051, Texas Natural Resources Code, to adopt rules consistent with law.

This concludes the review of Chapter 1, Executive Administration.

TRD-200804082
Trace Finley
Policy Director
General Land Office
Filed: August 5, 2008



The General Land Office (GLO) files this Notice of Readoption of 31 TAC Chapter 2, relating to Rules of Practice and Procedure, including Subchapter A, relating to Procedures for Contested Case Hearings, §§2.1 - 2.28; Subchapter B, relating to Procedures for Non-Contested Case Hearings, §§2.31 - 2.36; Subchapter C, relating to Procedures for Special Board of Review Hearings, §§2.40 - 2.50. This readoption of Chapter 2 is filed in accordance with the General Land Office's Intention to Review published in the May 2, 2008, issue of the *Texas Register* (33 TexReg 3651).

The GLO has assessed whether the reasons for readopting 31 TAC Chapter 2, §§2.1 - 2.28, 2.31 - 2.36, 2.40 - 2.50, continue to exist. The GLO finds that the rules in Chapter 2 reflect current procedures of the GLO. The reasons for initially adopting the rules continue to exist. The GLO, therefore, readopts Chapter 2 in its entirety, relating to Rules of Practice and Procedure.

No comments were received on the proposed notice of intention to review.

Chapter 2 was adopted under authority granted to the commissioner of the GLO in §31.051, Texas Natural Resources Code, to adopt rules consistent with law.

This concludes the review of Chapter 2, Rules of Practice and Procedure.

TRD-200804083
Trace Finley
Policy Director
General Land Office
Filed: August 5, 2008



The General Land Office (GLO) files this Notice of Readoption of 31 TAC Chapter 9, relating to Exploration and Leasing of State Oil and Gas, including Subchapter A, relating to General Provisions, §9.1 and §9.2; Subchapter B, relating to Issuing Exploration Permits and Oil and Gas Leases, §§9.11, 9.21 and 9.22; Subchapter C, relating to Maintain-

ing a State Oil and Gas Lease, §§9.31 - 9.38; Subchapter D, relating to Paying Royalty to the State, §9.51; Subchapter E, relating to Pooling and Unitizing State Property, §9.81; and Subchapter F, relating to Discontinuing the Leasehold Relationship, §§9.91 - 9.95. This readoption of Chapter 9 is filed in accordance with the General Land Office's Intention to Review published in the May 2, 2008, issue of the *Texas Register* (33 TexReg 3651).

The GLO has assessed whether the reasons for readopting 31 TAC Chapter 9, §§9.1, 9.2, 9.11, 9.21, 9.22, 9.31 - 9.38, 9.51, 9.81 and 9.91 - 9.95, continue to exist. The GLO finds that the rules in Chapter 9 reflect current procedures of the GLO. The reasons for initially adopting the rules continue to exist. The GLO, therefore, readopts Chapter 9 in its entirety, relating to Exploration and Leasing of State Oil and Gas.

No comments were received on the proposed notice of intention to review.

Chapter 9 was adopted under authority granted to the commissioner of the GLO in §31.051, Texas Natural Resources Code, to adopt rules consistent with law.

This concludes the review of Chapter 9, Exploration and Leasing of State Oil and Gas.

TRD-200804085
Trace Finley
Policy Director
General Land Office
Filed: August 5, 2008



The General Land Office (GLO) files this Notice of Readoption of 31 TAC Chapter 10, relating to Exploration and Development of State Minerals Other Than Oil and Gas, §§10.1 - 10.10. This readoption of Chapter 10 is filed in accordance with the General Land Office's Intention to Review published in the May 2, 2008, issue of the *Texas Register* (33 TexReg 3652).

The GLO has assessed whether the reasons for readopting 31 TAC Chapter 10, §§10.1 - 10.10, continue to exist. The GLO finds that the rules in Chapter 10 reflect current procedures of the GLO. The reasons for initially adopting the rules continue to exist. The GLO, therefore, readopts Chapter 10 in its entirety, relating to Exploration and Development of State Minerals Other Than Oil and Gas.

No comments were received on the proposed notice of intention to review.

Chapter 10 was adopted under authority granted to the commissioner of the GLO in §31.051, Texas Natural Resources Code, to adopt rules consistent with law.

This concludes the review of Chapter 10, Exploration and Development of State Minerals Other Than Oil and Gas.

TRD-200804086
Trace Finley
Policy Director
General Land Office
Filed: August 5, 2008



The General Land Office (GLO) files this Notice of Readoption of 31 TAC Chapter 14, relating to Relationship Between Agency and Private Organizations, §§14.1 - 14.5. This readoption of Chapter 14 is filed in accordance with the General Land Office's Intention to Review

published in the May 2, 2008, issue of the *Texas Register* (33 TexReg 3652).

The GLO has assessed whether the reasons for readopting 31 TAC Chapter 14, §§14.1 - 14.5, continue to exist. The GLO finds that the rules in Chapter 14 reflect current procedures of the GLO. The reasons for initially adopting the rules continue to exist. The GLO, therefore, readopts Chapter 14 in its entirety, relating to Relationship Between Agency and Private Organizations.

No comments were received on the proposed notice of intention to review.

Chapter 14 was adopted under authority granted to the commissioner of the GLO in §31.051, Texas Natural Resources Code, to adopt rules consistent with law.

This concludes the review of Chapter 14, Relationship Between Agency and Private Organizations.

TRD-200804087

Trace Finley

Policy Director

General Land Office

Filed: August 5, 2008



The General Land Office (GLO) files this Notice of Readoption of 31 TAC Chapter 19, relating to Oil Spill Prevention and Response, Subchapter A, relating to General Provisions, §§19.1 - 19.6; Subchapter B, relating to Spill Prevention and Preparedness, §§19.11 - 19.14, 19.16, 19.19, 19.20; Subchapter C, relating to Spill Response, §§19.31 - 19.37, 19.39; Subchapter D, relating to Compensation and Liability, §§19.51 - 19.55; and Subchapter E, relating to Vessels, §§19.60 - 19.63. This re adoption of Chapter 19 is filed in accordance with the General Land Office's Intention to Review published in the April 18, 2008, issue of the *Texas Register* (33 TexReg 3303).

The GLO has assessed whether the reasons for readopting 31 TAC Chapter 19, §§19.1 - 19.6, 19.11 - 19.14, 19.16, 19.19, 19.20, 19.31 - 19.37, 19.39, 19.51 - 19.55 and 19.60 - 19.63, continue to exist. The GLO finds that the rules in Chapter 19 reflect current procedures of the GLO. The reasons for initially adopting the rules continue to exist. The GLO, therefore, readopts Chapter 19 in its entirety, relating to Oil Spill Prevention and Response.

No comments were received on the proposed notice of intention to review.

Chapter 19 was adopted under authority granted to the commissioner of the GLO in §31.051, Texas Natural Resources Code, to adopt rules consistent with law.

This concludes the review of Chapter 19, Oil Spill Prevention and Response.

TRD-200804088

Trace Finley

Policy Director

General Land Office

Filed: August 5, 2008



Texas Department of Insurance, Division of Workers' Compensation

Title 28, Part 2

Pursuant to the notice of proposed rule review published in the February 1, 2008, issue of the *Texas Register* (33 TexReg 951), the Texas Department of Insurance, Division of Workers' Compensation has reviewed and considered for re adoption, revision or repeal all sections as they existed on February 1, 2008, of the following chapter of Title 28, Part 2 of the Texas Administrative Code, in accordance with Texas Government Code §2001.039: Chapter 142, Dispute Resolution--Benefit Contested Case Hearing.

The Department considered, among other things, whether the reasons for adoption of this rule continue to exist. The Department received no written comments regarding the review of its rule.

The Department has determined that the reasons for adopting the remaining sections continue to exist and those sections are retained in their present form. However, other sections that were reviewed may be subsequently revised in accordance with the Department's internal procedures. Any such revisions will be accomplished in accordance with the Texas Administrative Procedure Act.

This concludes the Department's review of Chapter 142. The completion of the review of this chapter concludes the rule review process.

TRD-200804107

Stanton K. Strickland

Deputy Commissioner, Legal Services

Texas Department of Insurance, Division of Workers' Compensation

Filed: August 6, 2008



Pursuant to the notice of proposed rule review published in the February 1, 2008, issue of the *Texas Register* (33 TexReg 952), the Texas Department of Insurance, Division of Workers' Compensation has reviewed and considered for re adoption, revision or repeal all sections as they existed on February 1, 2008, of the following chapters of Title 28, Part 2 of the Texas Administrative Code, in accordance with Texas Government Code §2001.039: Chapter 150, Representation of Parties Before the Agency--Qualifications for Representatives and Chapter 165, Rejected Risk: Injury Prevention Services.

The Department considered, among other things, whether the reasons for adoption of these rules continue to exist. The Department received no written comments regarding the review of its rules.

The Department has determined that the reasons for adopting the remaining sections continue to exist and those sections are retained in their present form. However, other sections that were reviewed may be subsequently revised in accordance with the Department's internal procedures. Any such revisions will be accomplished in accordance with the Texas Administrative Procedure Act.

This concludes the Department's review of Chapter 150 and Chapter 165. The completion of the review of these chapters concludes the rule review process.

TRD-200804108

Stanton K. Strickland

Deputy Commissioner, Legal Services

Texas Department of Insurance, Division of Workers' Compensation

Filed: August 6, 2008



TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 16 TAC §34.2

DESCRIPTION	1st Violation	2nd Violation	3rd Violation
Minor Related Offenses			
Employing a minor to sell, serve, prepare or otherwise handle alcoholic beverages in violation of §106.09 or §61.71(a)(12), Alcoholic Beverage Code.	5-7 days \$300 per day	10-14 days \$300 per day	30-Cancel \$300 per day
Permit a minor to possess or consume an alcoholic beverage in violation of §106.13, Alcoholic Beverage Code.	3-5 days \$300 per day	6-10 days \$300 per day	18-Cancel \$300 per day
Sale of an alcoholic beverage to a minor in violation of §106.03, Alcoholic Beverage Code.	8-12 days \$300 per day	16-24 days \$300 per day	48-Cancel \$300 per day
Conducting business in a manner as to allow a simple breach of the peace with no serious bodily injury or deadly weapon involved (as defined in the Texas Penal Code) in violation of §22.12 and §28.11, Alcoholic Beverage Code.	3-5 days \$300 per day	6-10 days \$300 per day	18-Cancel \$300 per day
Conducting business in a manner as to allow an aggravated breach of the peace with a serious bodily injury, death or involving a deadly weapon (as defined in the Texas Penal Code) in violation of §§22.12, 28.11, 69.13 and 71.09, Alcoholic Beverage Code.	25-35 days \$300 per day	Cancel	Cancel
Failure to report a breach of the peace in violation of Alcoholic Beverage Code §11.61(b)(21) and §61.71(a)(31).	2-5 days \$300 per day	4-10 days \$300 per day	12-Cancel \$300 per day
Possession of, sale or delivery of, or permitting the sale or delivery of narcotics by a licensee or permittee or possession of any equipment used or designed for the administering of a narcotic in violation of §104.01, Alcoholic Beverage Code, or Title 16, §35.41(27), Texas Administrative Code.	25-35 days \$300 per day	Cancel	Cancel
The sale or service of an alcoholic beverage to an intoxicated person in violation of §§11.61(b)(14), 61.71(a)(6) or 101.63, Alcoholic Beverage Code.	8-12 days \$300 per day	16-24 days \$300 per day	Cancel

DESCRIPTION	1st Violation	2nd Violation	3rd Violation
The license or permit holder or any employee being intoxicated on a licensed premise in violation of §11.61(b)(13) or §104.01, Alcoholic Beverage Code.	17-25 days \$300 per day	34-50 days \$300 per day	Cancel
Permitting public lewdness, sexual contact or obscene acts on a licensed premises in violation of §61.71(a)(11) or §104.01, Alcoholic Beverage Code and commission rule, §35.41(1) or the exposure of a person or permitting a person to expose his person in violation of §104.01(2), Alcoholic Beverage Code.	5-7 days \$300 per day	10-14 days \$300 per day	Cancel
Creating excessive noise or having unsanitary conditions at a licensed premises in violation of §101.62 or §11.61(b)(9), Alcoholic Beverage Code.	3-5 days \$300 per day	6-10 days \$300 per day	18-30 days \$300 per day
Sell, serve or deliver alcoholic beverages during prohibited hours in violation of §105.01, et seq, Alcoholic Beverage Code. Consumption or permitted consumption of an alcoholic beverage during prohibited hours on a licensed premises in violation of §§11.61(b)(22), 61.71(a)(18) or 105.06, Alcoholic Beverage Code.	5-7 days \$300 per day	10-14 days \$300 per day	Cancel
Rudely displaying or permitting a person to rudely display a weapon in a retail establishment in violation of §104.01(3), Alcoholic Beverage Code.	5-7 days \$300 per day	10-14 days \$300 per day	30-Cancel \$300 per day

DESCRIPTION	1st Violation	2nd Violation	3rd Violation
The place and manner of operation of an establishment is such that it constitutes a violation of §§11.46 (a)(8), 11.61(b)(7), 61.42(a)(3) or 61.71(a)(17), Alcoholic Beverage Code by committing the below listed violations. Requires detail on offenses.			
Examples (not limited to the following offenses):			
Possession of any gambling paraphernalia or device;	5-7/\$300	10-14/\$300	Cancel
Gambling on a licensed premises;	8-12/\$300	16-24/\$300	Cancel
Keeping a gambling place;	13-18/\$300	26-36/\$300	Cancel
Prostitution;	5-7/\$300	10-14/\$300	Cancel
Promotion of prostitution;	13-18/\$300	26-36/\$300	Cancel
Prohibited Activities by Persons Younger Than 18 (See AB Code 106.15, Penal Code 43.05, Penal Code 43.25 or Penal Code 43.251);	Cancel	Cancel	Cancel
Obscenity.	8-12/\$300	16-24/\$300	Cancel
Violation of city codes (relating to health, safety and welfare).	3-5 days \$300 per day	6-10 days \$300 per day	18-Cancel \$300 per day

Figure: 16 TAC §34.3

DESCRIPTION	1st Violation	2nd Violation	3rd Violation
Refusing to allow an inspection of a licensed premises or interfering with an inspection of a licensed premises in violation of §§32.17(a)(2), 61.71(a)(14), 61.74(a)(7) or 101.04, Alcoholic Beverage Code.	8-13 days \$300 per day	16-26 days \$300 per day	Cancel
Operating an establishment as an illegal open saloon in violation of §32.17(a)(1) or §32.01(2), Alcoholic Beverage Code.	5-7 days \$300 per day	10-14 days \$300 per day	Cancel
Selling wine over 17% alcohol content during prohibited hours in violation of §24.07, Alcoholic Beverage Code.	3-5 days \$300 per day	6-10 days \$300 per day	18-30 days \$300 per day
Sale of alcoholic beverages while serving a suspension in violation of §§11.68, 61.71(a)(22) or 61.84, Alcoholic Beverage Code.	Original suspension plus 8-13 days \$300 per day	Original suspension plus 16-26 days \$300 per day	Cancel
Subterfuge--Permitting another person to use a license or permit other than the one it is issued to in violation of §11.05 and §109.53, Alcoholic Beverage Code.	Cancel		
Possession of distilled spirits without local distributor stamps on the container in violation of §28.15 or §32.20, Alcoholic Beverage Code.	6-8 days \$300 per day	12-16 days \$300 per day	Cancel
Possession of an empty distilled spirits container with the local distributor stamp not mutilated in violation of agency rule §41.72.	3-5 days \$300 per day	6-10 days \$300 per day	Cancel
Possession of any uninvoiced alcoholic beverages in violation of §28.06 and §32.08, Alcoholic Beverage Code and agency rule §41.50.	8-13 days \$300 per day	16-26 days \$300 per day	Cancel
Knowingly possess uninvoiced alcoholic beverages in violation of §28.06, Alcoholic Beverage Code and agency rule §41.50 or refilling distilled spirits bottles in violation of §28.08, Alcoholic Beverage Code.	Cancel		
Sale of any unauthorized alcoholic beverage in violation of §11.01, Alcoholic Beverage Code.	8-13 days \$300 per day	16-26 days \$300 per day	Cancel

DESCRIPTION	1st Violation	2nd Violation	3rd Violation
Possession of any unauthorized alcoholic beverage by a licensee or permittee or his employee in violation of §69.12 or §61.71(a)(9), Alcoholic Beverage Code.	3-5 days \$300 per day	6-10 days \$300 per day	Cancel
Consumption of or permitting consumption of an alcoholic beverage on the premises of any off-premise license or permit in violation of §§22.10, 22.11, 26.01 or 71.01, Alcoholic Beverage Code.	3-5 days \$300 per day	6-10 days \$300 per day	Cancel
Permitting an open container on the premises of any off-premise license or permit in violation of §71.01 or §24.09, Alcoholic Beverage Code.	3-5 days \$300 per day	6-10 days \$300 per day	18-30 days \$300 per day
Purchase of an alcoholic beverage from an unauthorized source in violation of §§61.71(a)(19), 61.71(a)(20), 69.09 or 71.05, Alcoholic Beverage Code.	6-8 days \$300 per day	12-16 days \$300 per day	Cancel
Sale of an alcoholic beverage by a retailer for the purpose of resale in violation of §71.05, Alcoholic Beverage Code.	8-13 days \$300 per day	16-26 days \$300 per day	Cancel
Purchasing alcoholic beverages while on the "delinquent list" in violation of §102.32(d), Alcoholic Beverage Code.	5-7 days \$300 per day	10-14 days \$300 per day	Cancel
Selling an alcoholic beverage away from a licensed premises. §61.06	3-5 days \$300 per day	6-10 days \$300 per day	18-30 days \$300 per day
Storage of alcoholic beverages off a licensed premises in violation of §69.10, Alcoholic Beverage Code.	3-5 days \$300 per day	6-10 days \$300 per day	18-30 days \$300 per day
Making false or misleading statements in original or renewal applications or making false or misleading statements in documents submitted with or attached to applications for licenses or permits in violation of §§11.46(4), 61.71(a)(4) or 61.74(a)(11), Alcoholic Beverage Code.	Cancel		
Sale or delivery of unauthorized alcoholic beverages to a non-licensed business in violation of manufacturing and wholesaler sections of the Alcoholic Beverage Code. §§11.01, 19.01, 61.01 or 62.01	6-8 days \$300 per day	12-16 days \$300 per day	Cancel

DESCRIPTION	1st Violation	2nd Violation	3rd Violation
Sale to a permittee who is on the delinquent list, failure to timely collect credit payments, or failure to report credit law violations; Failure to notify the commission of a delinquent account in violation of §102.32, Alcoholic Beverage Code; Failure to report cash law violations or failure to sell beer for cash in violation of §102.31, Alcoholic Beverage Code.	3-5 days \$300 per day	6-10 days \$300 per day	18-30 days \$300 per day
Improper record keeping in violation of agency rules §§41.49, 41.50, 41.51, 41.52 and §§32.03, 32.06, Alcoholic Beverage Code, including invoices, membership records, pool and replacement accounts.	2-4 days \$300 per day	4-8 days \$300 per day	12-24 days \$300 per day
Knowingly filed false report, application, form, or record. §§11.61, 61.71, 62.05, 64.04, or 203.09	Cancel		
Knowingly failed to keep record or file return in manner required. §§61.71, 61.74, 62.05, 64.04, 203.09, or 206.01	6-12 days \$300 per day	12-24 days \$300 per day	Cancel
Retail cash/credit laws violation of cash or credit laws by retail licensee or permittee in violation of §§61.73, 102.31 or 102.32.	2-5 days \$300 per day	4-10 days \$300 per day	12-30 days \$300 per day
Failed to present program curriculum as approved. §50.4(g).	\$450-\$600	\$900-\$1,200	Cancel
Program taught in ineffective manner. §50.4.	\$450-\$600	\$900-\$1,200	Cancel
Failed to use certified trainer. §50.6(a).	\$2,250-\$3,000	\$4,500-\$6,000	Cancel
Had more than 50 trainees in a session. §50.4(e).	\$450-\$600	\$900-\$1,200	Cancel
Failure to schedule sessions or cancel sessions in a timely manner. §50.4(a).	\$450-\$600	\$900-\$1,200	\$2,700-\$3,600
Failure to properly test. §50.4(j)-(n).	\$1,500-\$2,250	\$3,000-\$4,450	Cancel
Certifying a trainee who had not successfully completed a full session and/or passed the final test. §50.5(b)(2).	\$450-\$600	\$900-\$1,200	\$2,700-\$3,600
Licensee/Permittee programs certifying non-employees. §50.4(d).	\$450-\$600	\$900-\$1,200	\$2,700-\$3,600

DESCRIPTION	1st Violation	2nd Violation	3rd Violation
Failed to distribute certificates to trainees. §50.4(r).	\$450-\$600	\$900-\$1,200	\$2,700-\$3,600
Trainer taught in a language that was not authorized. §50.6(a).	\$450-\$600	\$900-\$1,200	\$2,700-\$3,600
Violation of requirements for school/program approval. §50.3(a)-(h).	Cancel		
Violated a provision of Section 50.5(b) (Program). §50.5(b).	Cancel		
Violated a provision of Section 50.7 (Trainer). §50.7.	Cancel		
Make false or misleading statements, reports, or representations to the Commission. §50.5(b)(2).	\$1,500-\$2,250	\$3,000-\$4,450	Cancel
Failure to timely file or properly prepare the report of seller training. §50.5(b)(4).	\$750-\$1,050	\$1,500-\$2,100	Cancel
Failure to properly prepare and issue certificates. §50.4(r).	\$450-\$600	\$900-\$1,200	Cancel

Figure: 16 TAC §402.205(p)

If...	Then...
Bingo Cards/Paper	Organization transferring from, organization transferring to, series number, serial number, #on/#up, total number of sets/sheets transferred, signature of an officer, director or the primary operator.
Bingo Equipment	Organization transferring from, organization transferring to, equipment type, manufacturer, model and/or serial number, signature of an officer, director or the primary operator.
Instant Bingo Tickets	Organization transferring from, organization transferring to, form number, name of game, series number, total number of instant bingo tickets transferred, signature of an officer, director or the primary operator.

Figure: 16 TAC §402.442(b)(5)

If the licensed commercial lessor...	Then submit...
License has been in effect since June 10, 1989.	No additional forms.
Is a licensed authorized organization that leases a location but will not have total control and exclusive use of the leased location and will not be leasing the location to another organization.	A Certification of Offer to Lease form prescribed by the Commission.
Is an association of licensed authorized organizations that jointly own or lease a location and lease only to the association members.	A Certification of Association Offer to Lease form prescribed by the Commission.
Leases the location to a single licensed authorized organization that subleases.	No additional forms.
Leases the location for the total control and exclusive use of only one licensed authorized organization as that organization's primary business office.	Certification of Total Control and Exclusive Use form prescribed by the Commission.

Figure: 19 TAC §128.10(b)
 19 TAC Chapter 128. Texas Essential Knowledge and Skills for Spanish Language Arts and Reading and English as a Second Language
 Subchapter A. Elementary
 Reading/Comprehension Skills §128.11 - §128.16

Kindergarten (§128.11 Spanish Language Arts and Reading)	First Grade (§128.12 Spanish Language Arts and Reading)	Second Grade (§128.13 Spanish Language Arts and Reading)	Third Grade (§128.14 Spanish Language Arts and Reading)	Fourth Grade (§128.15 Spanish Language Arts and Reading)	Fifth Grade (§128.16 Spanish Language Arts and Reading)
Reading/Comprehension Skills. Students use a flexible range of metacognitive reading skills in both assigned and independent reading to understand an author's message. Students will continue to apply earlier standards with greater depth in increasingly more complex texts as they become self-directed, critical readers. The student is expected to:	Reading/Comprehension Skills. Students use a flexible range of metacognitive reading skills in both assigned and independent reading to understand an author's message. Students will continue to apply earlier standards with greater depth in increasingly more complex texts as they become self-directed, critical readers. The student is expected to:	Reading/Comprehension Skills. Students use a flexible range of metacognitive reading skills in both assigned and independent reading to understand an author's message. Students will continue to apply earlier standards with greater depth in increasingly more complex texts as they become self-directed, critical readers. The student is expected to:	Reading/Comprehension Skills. Students use a flexible range of metacognitive reading skills in both assigned and independent reading to understand an author's message. Students will continue to apply earlier standards with greater depth in increasingly more complex texts as they become self-directed, critical readers. The student is expected to:	Reading/Comprehension Skills. Students use a flexible range of metacognitive reading skills in both assigned and independent reading to understand an author's message. Students will continue to apply earlier standards with greater depth in increasingly more complex texts as they become self-directed, critical readers. The student is expected to:	Reading/Comprehension Skills. Students use a flexible range of metacognitive reading skills in both assigned and independent reading to understand an author's message. Students will continue to apply earlier standards with greater depth in increasingly more complex texts as they become self-directed, critical readers. The student is expected to:
(A) discuss the purposes for reading and listening to various texts (e.g., to become involved in real and imagined events, settings, actions, and to enjoy language); (B) ask and respond to questions about text;	(A) establish purposes for reading selected texts based upon desired outcome to enhance comprehension; (B) ask literal questions of text;	(A) establish purposes for reading selected texts based upon content to enhance comprehension; (B) ask literal questions of text;	(A) establish purposes for reading selected texts based upon own or others' desired outcome to enhance comprehension; (B) ask literal, interpretive, and evaluative questions of text;	(A) establish purposes for reading selected texts based upon own or others' desired outcome to enhance comprehension; (B) ask literal, interpretive, and evaluative questions of text;	(A) establish purposes for reading selected texts based upon own or others' desired outcome to enhance comprehension; (B) ask literal, interpretive, evaluative, and universal questions of text;

Figure: 19 TAC §128.10(b)
 19 TAC Chapter 128. Texas Essential Knowledge and Skills for Spanish Language Arts and Reading and English as a Second Language
 Subchapter A. Elementary
 Reading/Comprehension Skills §128.11 - §128.16

Kindergarten (§128.11 Spanish Language Arts and Reading)	First Grade (§128.12 Spanish Language Arts and Reading)	Second Grade (§128.13 Spanish Language Arts and Reading)	Third Grade (§128.14 Spanish Language Arts and Reading)	Fourth Grade (§128.15 Spanish Language Arts and Reading)	Fifth Grade (§128.16 Spanish Language Arts and Reading)
(C) monitor and adjust comprehension (e.g., using background knowledge, creating sensory images, re-reading a portion aloud); (D) make inferences based on the cover, title, illustrations, and plot; (E) retell or act out important events in stories; and (F) make connections to own experiences, to ideas in other texts, and to the larger community and discuss textual evidence.	(C) monitor and adjust comprehension (e.g., using background knowledge, creating sensory images, re-reading a portion aloud); (D) make inferences about text and use textual evidence to support understanding; (E) retell or act out important events in stories in logical order; and (F) make connections to own experiences, to ideas in other texts, and to the larger community and discuss textual evidence.	(C) monitor and adjust comprehension (e.g., using background knowledge, creating sensory images, re-reading a portion aloud, generating questions); (D) make inferences about text using textual evidence to support understanding; (E) retell important events in stories in logical order; and (F) make connections to own experiences, to ideas in other texts, and to the larger community and discuss textual evidence.	(C) monitor and adjust comprehension (e.g., using background knowledge, creating sensory images, re-reading a portion aloud, generating questions); (D) make inferences about text and use textual evidence to support understanding; (E) summarize information in text, maintaining meaning and logical order; and (F) make connections (e.g., thematic links, author analysis) between literary and informational texts with similar ideas and provide textual evidence.	(C) monitor and adjust comprehension (e.g., using background knowledge, creating sensory images, re-reading a portion aloud, generating questions); (D) make inferences about text and use textual evidence to support understanding; (E) summarize information in text, maintaining meaning and logical order within a text and across texts; and (F) make connections (e.g., thematic links, author analysis) between literary and informational texts with similar ideas and provide textual evidence.	(C) monitor and adjust comprehension (e.g., using background knowledge, creating sensory images, re-reading a portion aloud, generating questions); (D) make inferences about text and use textual evidence to support understanding; (E) summarize and paraphrase texts in ways that maintain meaning and logical order within a text and across texts; and (F) make connections (e.g., thematic links, author analysis) between and across multiple texts of various genres and provide textual evidence.

Figure: 19 TAC §128.17(b)

19 TAC Chapter 128. Texas Essential Knowledge and Skills for Spanish Language Arts and Reading and English as a Second Language
 Subchapter B. Middle School
 Reading/Comprehension Skills §128.18

Sixth Grade <i>(§128.18 Spanish Language Arts and Reading)</i>
<p>Reading/Comprehension Skills. Students use a flexible range of metacognitive reading skills in both assigned and independent reading to understand an author's message. Students will continue to apply earlier standards with greater depth in increasingly more complex texts as they become self-directed, critical readers. The student is expected to:</p> <ul style="list-style-type: none"> (A) establish purposes for reading selected texts based upon own or others' desired outcome to enhance comprehension; (B) ask literal, interpretive, evaluative, and universal questions of text; (C) monitor and adjust comprehension (e.g., using background knowledge; creating sensory images; rereading a portion aloud; generating questions); (D) make inferences about text and use textual evidence to support understanding; (E) summarize, paraphrase, and synthesize texts in ways that maintain meaning and logical order within a text and across texts; and (F) make connections (e.g., thematic links, author analysis) between and across multiple texts of various genres, and provide textual evidence.

Figure: 19 TAC §128.30(b)

19 TAC Chapter 128. Texas Essential Knowledge and Skills for Spanish Language Arts and Reading and English as a Second Language
 Subchapter C. High School
 Reading/Comprehension Skills §128.31 - §128.32

English I for Speakers of Other Languages <i>(§128.31. English I for Speakers of Other Languages)</i>	English II for Speakers of Other Languages <i>(§128.32. English II for Speakers of Other Languages)</i>
<p>Reading/Comprehension Skills. Students use a flexible range of metacognitive reading skills in both assigned and independent reading to understand an author's message. Students will continue to apply earlier standards with greater depth in increasingly more complex texts as they become self-directed, critical readers. The student is expected to:</p> <ul style="list-style-type: none"> (A) reflect on understanding to monitor comprehension (e.g., asking questions, summarizing and synthesizing, making connections, creating sensory images); and (B) make complex inferences about text and use textual evidence to support understanding. 	<p>Reading/Comprehension Skills. Students use a flexible range of metacognitive reading skills in both assigned and independent reading to understand an author's message. Students will continue to apply earlier standards with greater depth in increasingly more complex texts as they become self-directed, critical readers. The student is expected to:</p> <ul style="list-style-type: none"> (A) reflect on understanding to monitor comprehension (e.g., asking questions, summarizing and synthesizing, making connections, creating sensory images); and (B) make complex inferences about text and use textual evidence to support understanding.

IN

ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

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 July 25, 2008, through July 31, 2008. 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 August 6, 2008. The public comment period for this project will close at 5:00 p.m. on September 5, 2008.

FEDERAL AGENCY ACTIONS:

Applicant: Sandalwood Oil and Gas, L.P.; Location: The project is located adjacent to Carancahua Bayou, on Hall's Bayou Ranch, Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Hitchcock, Texas. Approximate UTM Coordinates in NAD 83 (meters): Zone 15; Easting: 300925; Northing: 2329901. Project Description: The applicant proposes to place 4,173 cubic yards of fill into 1.42 acres of wetlands to construct a drilling pad, an access road and a production facility in order to drill for and produce petroleum resources. To compensate for impacts to wetlands, the applicant proposes to create approximately 1.42 acres of wetlands approximately 0.5 miles north and east of the proposed project area. CCC Project No.: 08-0118-F1. Type of Application: U.S.A.C.E. permit application #SWG-2007-01892 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 Railroad Commission of Texas under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Brownsville Navigation District; Location: The project is located along the Brownsville Ship Channel at the Keppel/AmFELS Inc. facility, 20000 State Highway 48, in Brownsville, Cameron County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Palmito Hill, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 664232; Northing: 2872920. Project Description: The applicant requests to amend Department of the Army Permits 19602(04) and 08624(09). The applicant proposes to combine the permits into one authorization, deepen several areas within the permit area, and construct bulkheading along the remaining non-bulkheaded portions of the facility. CCC Project No.: 08-0153-F1. Type of Application: U.S.A.C.E. permit application #SWG-2007-01007 is being evaluated under §404 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Texas Department of Transportation; Location: The project is located in Galveston Bay at the Bolivar Ferry Landing, along

State Highway 87, in Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map titled: Galveston, Texas. Approximate Latitude/Longitude Coordinates in NAD 83: Lat: 29.3614 degrees N, 94.7802 degrees W. Project Description: The applicant proposes to periodically perform maintenance dredging within the TxDOT Right-of-Way at the three Port Bolivar Ferry to maintain a depth of 22 feet below mean low tide for a period of ten years. Dredge material is proposed to be deposited in three existing placement areas. CCC Project No.: 08-0162-F1. Type of Application: U.S.A.C.E. permit application #SWG-2007-00173 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: S & G Marina LLC; Location: The project is located in and adjacent to the Laguna Madre at 101 Skipper Lane in Corpus Christi, Nueces County, Texas. The proposed placement and mitigation area is located immediately north of Stingray Street in Corpus Christi, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Oso Creek, NE, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; project site: Easting: 670900; Northing: 3061950, mitigation/placement area: Easting: 670900; Northing: 3062150. Project Description: The applicant proposes to construct new marina facilities and maintenance dredge an existing marina basin and entrance channel located on the Laguna Madre. The existing marina basin covers 1.1 acres and both the marina basin and channel would be hydraulically dredged to a depth of -4 feet mean low tide (MLT). As mitigation for the proposed impacts, the applicant would create 1.12 acres of wetlands and remove Brazilian pepper plants at a location adjacent to the proposed dredged material placement area. The constructed wetland would be designed to be self-sustaining after an initial construction, planting, and a 3-year post planting period. Tidal creeks would be constructed to allow for tidal water circulation and the creation of several pools in the wetland area. The wetland areas would be at an approximate intertidal level and a channel would allow for tidal flushing. Wetland vegetation would be transplanted from the wetlands that are to be impacted on the project site, and additional wetland plants would be obtained from commercial sources. CCC Project No.: 08-0203-F1. Type of Application: U.S.A.C.E. permit application #SWG-2007-01222 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).

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, including a copy the consistency certifications for inspection, may be obtained from Ms. Tammy Brooks, Consistency Review Coordinator, Coastal

Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200804081

Larry L. Laine

Chief Clerk/Deputy Land Commissioner, General Land Office

Coastal Coordination Council

Filed: August 5, 2008

Comptroller of Public Accounts

Notice of Request for Proposals

Pursuant to Chapter 2254, Subchapter B, and Chapter 403, Subchapter M, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces this Request for Proposals (RFP 190a) for consulting services to assist the Comptroller in reviewing the methodology of the annual Property Value Study (Study) of total school district taxable value in the state and prepare a report to the Comptroller regarding same. The successful respondent will review the current Study methodology, prepare a written report of the results of the review, and provide to Comptroller other related services in connection with the Study. The successful respondent will be expected to begin performance of the Contract on or about September 15, 2008, or as soon thereafter as practical.

Background: The Comptroller is required, under Chapter 403, §§403.302, et. seq., Government Code, to conduct an Annual Property Value Study of total taxable value in the state and report the results of the Study to the Comptroller. The Comptroller requires consulting expertise and experience to review the methodology of the current Study under the Contract. The Consultant will report the results of the review in writing to the Comptroller and provide all other reasonably-related services.

Contact: Parties interested in submitting a proposal should contact William Clay Harris, Assistant General Counsel, Contracts, Comptroller of Public Accounts, Room-201, LBJ State Office Building, 111 East 17th St., Austin, Texas 78774, telephone number: (512) 936-5854, regarding the request. The Comptroller will provide further information only to those specifically requesting it. Non-mandatory Letters of Intent and Questions must be sent in writing via facsimile to Clay Harris, Assistant General Counsel, Contracts, Comptroller of Public Accounts, facsimile number: (512) 463-3669. All Non-mandatory Letters of Intent, Questions, and inquiries must be received in writing no later than 2:00 p.m. Central Zone Time (CZT) on Monday, August 25, 2008. Official responses to questions and inquiries received by the deadline will be posted electronically on or about Wednesday, August 27, 2008, or as soon thereafter as practicable, on the Electronic State Business Daily, located at the following URL: <http://esbd.cpa.state.tx.us>. Late Letters of Intent and Questions received after the deadline will not be considered. Respondents are solely responsible for verifying timely receipt of all letters and questions in the Issuing Office on or before the deadline; late letters of intent and questions may not be accepted.

Closing Date: To be considered, all proposals must be received at the foregoing address in the issuing office on or before 2:00 p.m. CZT on Wednesday, September 3, 2008. Proposals received after this time and date will not be considered. Respondents are solely responsible for verifying timely receipt of all proposals in the Issuing Office on or before the deadline; late proposals will not be accepted.

Evaluation and Award Procedure: All proposals will be subject to evaluation by a committee based on the evaluation criteria and procedures set forth in the Request for Proposals. The Comptroller will make the

final decision. The Comptroller reserves the right to accept or reject any or all proposals submitted. The Comptroller is under no legal or other obligation to execute any contracts on the basis of this notice. The Comptroller shall pay for no costs incurred by any entity in responding to this RFP.

The anticipated schedule of events is as follows: Issuance of RFP - August 15, 2008, after 10:00 a.m. CZT; Deadline for Questions and Non-mandatory Letters of Intent - 2:00 p.m. CZT, August 25, 2008; Release of Official Responses to Questions - after 2:00 p.m. CZT, August 27, 2008, or as soon thereafter as practical; Deadline for Proposals - 2:00 p.m. CZT, September 3, 2008; Contract Execution - September 15, 2008, or as soon thereafter as practical; Commencement of Project Activities - September 15, 2008.

TRD-200804106

William Clay Harris

Assistant General Counsel, Contracts

Comptroller of Public Accounts

Filed: August 6, 2008

Concho Valley Workforce Development Board

Request for Quotes and Qualifications

Under a Regional Policy for Integrated Complaints, Hearings, and Appeals, Workforce Development Boards are requesting quotes and qualifications from individuals, entities, or organizations to perform hearing officer duties for the following programs: Child Care Services (CCS); Temporary Assistance to Needy Families (TANF) Choices; Food Stamp Employment and Training (FS E&T); Project Reintegration of Offenders (Project RIO); Workforce Investment Act (WIA) Adult, Dislocated Worker, and Youth, and Eligible Training Providers (ETP) receiving WIA funds or other funds for training services. The boards included in the Regional Policy are North Texas, Panhandle, Permian Basin, Texoma, West Central, and Concho Valley.

To request a copy of the Request for Quotes please contact Joyce Sneed at joyce.sneed@twc.state.tx.us or (325) 655-2005.

Response is due by 5:00 p.m. CDST, September 8, 2008.

TRD-200804090

Johnny Griffin

Executive Director

Concho Valley Workforce Development Board

Filed: August 5, 2008

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 08/11/08 - 08/17/08 is 18% for Consumer¹/Agricultural/Commercial²/credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 08/11/08 - 08/17/08 is 18% for Commercial over \$250,000.

The monthly ceiling as prescribed by §303.005³ for the period of 08/01/08 - 08/31/08 is 18% for Consumer/Agricultural/Commercial/credit through \$250,000.

The monthly ceiling as prescribed by §303.005 for the period of 08/01/08 - 08/31/08 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-200804060

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: August 5, 2008



Employees Retirement System of Texas

Request for Qualifications - Outside Legal Counsel

The Employees Retirement System of Texas ("ERS") seeks to identify outside counsel qualified to provide legal services in the following subject areas on a non-exclusive basis: securities/alternative investments (focusing on private equity and real estate), intellectual property, fiduciary/employee benefits, tax, and securities litigation consulting and advice ("Outside Counsel").

The aforementioned subject matter areas are independent offerings and may result in separate engagement agreements with ERS, or ERS may, at its option, combine one or more subject matter areas into one or more engagement agreements. Respondents may respond with respect to any one or more of the subject matter areas in which respondents consider their firms to be qualified. A separate, detailed response is required for each subject matter area included in the response, in the form of a separate response submission (proposal) for each subject matter area. By submitting its proposal, respondent warrants and represents that it does not have, nor shall it permit, any conflicts of interest that would impair its ability to perform the services required by the contract in the best interests of ERS, its members, annuitants and insurance plan participants, if applicable, and the state of Texas.

ERS will select the firm(s) for each engagement, if any, based upon a number of criteria, including the respondent's demonstrated competence, experience, knowledge, qualifications, written and verbal communication skills, ability and willingness to comply with ERS contracting and invoicing requirements, absence of disqualifying relationships or conflicts of interest, and reasonableness of proposed fees, among others. Respondent may be asked to travel to Austin, Texas, at respondent's expense, for an interview with ERS Legal Services Division and other key ERS staff and management to discuss respondent's experience and qualifications.

ERS reserves the right to extend any and all deadlines regarding the Request for Qualifications ("RFQ"), to reject any and all responses, to contract with one or more firms, or to issue a new RFQ at any time, in its sole discretion. Failure to provide responses in the format requested in the RFQ may result in respondent being eliminated from further consideration. All responses must be valid throughout the entire RFQ process and any resulting contract term, including extensions. ERS will not notify respondents unless they are selected for interviews or engagement.

ERS is under no legal requirement to execute a contract on the basis of the issuance of this RFQ. ERS will not pay any expenses associated with responding to this RFQ. ERS specifically reserves the right to vary all provisions set forth at any time where ERS deems it to be in its best interest.

The Office of the Attorney General of Texas ("Attorney General") must review and approve the ensuing engagement agreement. Respondents should understand that the agreement may be amended or renewed and may include additional requirements from the Attorney General.

A copy of the complete RFQ can be obtained from ERS on or after July 31, 2008. To request a copy of the RFQ or for additional information, please contact Kelly Gonzales at ERS at (512) 867-7199, or by e-mail at kelly.gonzales@ers.state.tx.us.

To be considered, responses must be received in the ERS Legal Services Division no later than 5:00 p.m. (Central Time) on September 8, 2008. ERS reserves the right and sole discretion to extend the deadline when deemed by ERS to be in the best interest of ERS. Responses must be submitted to the attention of:

Ginger Grissom, Contracts Administrator

Legal Services Division

Employees Retirement System of Texas

Physical Address: 1801 Brazos, Austin, Texas 78701

Mailing Address: Post Office Box 13207, Austin, Texas 78711-3207

TRD-200804009

Paula A. Jones

General Counsel

Employees Retirement System of Texas

Filed: August 1, 2008



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 **September 15, 2008**. 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 September 15, 2008**. 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: Robert Wayne Baze; DOCKET NUMBER: 2008-1143-WOC-E; IDENTIFIER: RN103745741; LOCATION: Tom Green County; TYPE OF FACILITY: water operator; RULE VIOLATED: 30 Texas Administrative Code (TAC) §30.5(a), by failing to obtain a required occupational license; PENALTY: \$210; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(2) COMPANY: C & L Diamond Liquor, Inc. dba Diamond Famous Fried Chicken; DOCKET NUMBER: 2008-0644-PST-E; IDENTIFIER: RN102489226; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(c)(4) and the Code, §26.3475(a), by failing to inspect and test the cathodic protection system for operability and adequacy of protection; 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor underground storage tanks (USTs) for releases; 30 TAC §334.50(b)(2) and the Code, §26.3475(a), by failing to provide proper release detection for piping; 30 TAC §334.50(b)(2)(A)(i)(III) and the Code, §26.3475(a), by failing to test the line leak detectors; and 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for the UST system; PENALTY: \$9,499; ENFORCEMENT COORDINATOR: Thomas Greimel, (512) 239-5690; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Deep Water Holdings, Inc.; DOCKET NUMBER: 2008-0900-PWS-E; IDENTIFIER: RN102688520; LOCATION: Burleson County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(c)(1)(A)(i) and Texas Health and Safety Code (THSC) §341.0315(c), by failing to meet the minimum well capacity requirement of one gallon per minute (gpm) per unit; 30 TAC §290.46(f)(2), by failing to provide the public water system's operating records for review; and 30 TAC §290.43(e) and §290.41(c)(3)(O), by failing to provide a properly constructed intruder-resistant fence; PENALTY: \$262; ENFORCEMENT COORDINATOR: Christopher Keffer, (512) 239-5610; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(4) COMPANY: Encana Oil and Gas (USA) Inc.; DOCKET NUMBER: 2008-1166-WR-E; IDENTIFIER: RN104417159; LOCATION: Johnson County; TYPE OF FACILITY: oil and gas production; RULE VIOLATED: the Code, §11.081 and §11.121, by impounding, diverting, or using state water without a required permit; PENALTY: \$350; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: Hal Jones Development LLC; DOCKET NUMBER: 2008-1165-WQ-E; IDENTIFIER: RN105524268; LOCATION: Rockport, Aransas County; TYPE OF FACILITY: construction; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit; PENALTY: \$700; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(6) COMPANY: Harris County Water Control and Improvement District Number 89; DOCKET NUMBER: 2008-0299-MWD-E; IDENTIFIER: RN101527596; LOCATION: Harris County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0012939001 Interim I Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with permitted effluent limits for total suspended solids (TSS), ammonia nitrogen (NH₃N), flow, and biochemical oxygen demand; PENALTY: \$18,000; ENFORCEMENT

COORDINATOR: Pamela Campbell, (512) 239-4493; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(7) COMPANY: Hill-Lake Gas Storage, L.P.; DOCKET NUMBER: 2008-0479-AIR-E; IDENTIFIER: RN100543024; LOCATION: Moran, Eastland County; TYPE OF FACILITY: oil and gas production plant; RULE VIOLATED: 30 TAC §116.615(2), New Source Review Standard Permit (NSRSP) Number 80006, and THSC, §382.085(b), by failing to include the operation of a thermal oxidizer in the permit representations; 30 TAC §116.615(2), NSRSP Number 80006, and THSC, §382.085(b), by failing to limit the emissions of two compressor engines; 30 TAC §122.143(4) and §122.145(2)(A), General Operating Permit Number O-02544/Oil and Gas Operating Permit Number 514, State-wide requirements (b)(1) and (2), and THSC, §382.085(b), by failing to report the occurrence of a deviation in the semi-annual deviation reports and to accurately certify compliance in the Annual Compliance Certification; 30 TAC §116.615(2), NSRSP Number 80006, and THSC, §382.085(b), by failing to limit the hours of operation of two compressor engines; 30 TAC §106.512(2)(C)(iii) and §116.620(a)(4), NSRSP Number 80006, and THSC, §382.085(b), by failing to conduct biennial engine testing; and 30 TAC §116.615(2), NSRSP Number 80006, and THSC, §382.085(b), by failing to control volatile organic compound (VOC) emissions; PENALTY: \$94,950; Supplemental Environmental Project (SEP) offset amount of \$37,980 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Unauthorized Trash Dump Clean-Up; ENFORCEMENT COORDINATOR: Terry Murphy, (512) 239-5025; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(8) COMPANY: Houston Refining LP; DOCKET NUMBER: 2008-0674-MLM-E; IDENTIFIER: RN100218130; LOCATION: Houston, Harris County; TYPE OF FACILITY: refinery and associated wastewater treatment; RULE VIOLATED: 30 TAC §115.764(a)(3) and (6), §122.143(4), Federal Operating Permit (FOP) Number O-01372, Special Terms and Conditions 1.H.(iv), and THSC, §382.085(b), by failing to operate six cooling tower heat exchange system Highly-Active VOC (HRVOC) analyzers; 30 TAC §101.20(1) and §122.143(4), 40 Code of Federal Regulations (CFR) §60.13(d)(1), FOP Number O-01372, Special Conditions (SC) 12F, THSC, §382.085(b), by failing to perform daily/zero span checks on the sulfur dioxide analyzer; 30 TAC §§101.20(1), 116.115(c), and 122.143(4), 40 CFR §60.18(c)(2), NSRP Number 2167, SC 29, FOP Number O-01372, SC 1A and 28, and THSC, §382.085(b), by failing to demonstrate that flares were operated with a continuously operating pilot light; 30 TAC §§101.20(1), 115.352(4), 116.115(c), and 122.143(4), 40 CFR §60.482-6(a)(1), NSRP Number 2167, SC 14E, FOP Number O-01372, SC 1A and 28, and THSC, §382.085(b), by failing to cap 13 open-ended valves/lines with either a cap, plug, blind flange, or other sealing device; 30 TAC §101.20(1) and §122.143(4), 40 CFR §60.692-2(a)(2), FOP Number O-01372, SC 1A and 13B, and THSC, §382.085(b), by failing to perform monthly visual inspections on individual drain systems; 30 TAC §116.115(c) and §122.143(4), NSRP Number 2167, SC 44B, FOP Number O-01372, SC 28, and THSC, §382.085(b), by failing to operate the wet gas scrubber with a minimum pressure drop across the scrubber of .91 pounds per square inch and a minimum liquid-to-gas ratio of 16 gallons per 1,000 actual cubic feet; 30 TAC §101.20(2) and §122.143(4), 40 CFR §61.354(d), FOP Number O-01372, SC 1A, and THSC, §382.085(b), by failing to change out the carbon from a carbon canister immediately after a breakthrough was discovered; 30 TAC §117.213(g)(1)(B)(ii)(I) and §122.143(4), FOP Number O-01372, SC 1A, and THSC, §382.085(b), by failing to operate a continuous run-time meter; 30 TAC §115.144(2)(C) and §122.143(4), FOP Number O-01372, SC 1A, and THSC, §382.085(b), by failing

to perform the required semi-annual seal inspection on VOC storage tanks; 30 TAC §§101.20(1), 116.115(c), and 122.143(4), 40 CFR §60.113b(b)(1)(ii), NSRP Number 2167, SC 20D, FOP Number O-01372, SC 1A and 28, and THSC, §382.085(b), by failing to perform the required seal gap inspection; 30 TAC §§101.20(2), 115.354(2)(B), and 122.143(4), 40 CFR §63.163(b)(1), FOP Number O-01372, SC 1A, and THSC, §382.085(b), by failing to perform routine leak detection and repair (LDAR) monitoring; 30 TAC §§101.20(1), 116.115(c), and 122.143(4), 40 CFR §60.482-8(c), NSRP Number 2167, SC 14I and 14H, FOP Number O-01372, SC 1A and 28, and THSC, §382.085(b), by failing to repair eight individual component leaks found during audio visual olfactory inspections; 30 TAC §§101.20(2), 115.352(2), and 122.143(4), 40 CFR §63.168(f)(1), NSRP Number 2167, SC 14I and 14H, FOP Number O-01372, SC 1A and 28, and THSC, §382.085(b), by failing to repair two leaking valves; 30 TAC §§101.20(2), 115.354(2)(C), 116.115(c), and 122.143(4), 40 CFR §63.168(f)(1), NSRP Number 2167, SC 15F, FOP Number O-01372, SC 1A and 28, and THSC, §382.085(b), by failing to conduct routine quarterly LDAR monitoring; 30 TAC §115.781(b)(3) and §122.143(4), FOP Number O-01372, SC 1.H(v), and THSC, §382.085(b), by failing to perform initial monitoring of approximately 651 connectors in HRVOC service; 30 TAC §115.781(g)(1) and §122.143(4), FOP Number O-01372, SC 1.H(v), and THSC, §382.085(b), by failing to record all the required monitoring data for 236 HRVOC-service valves; 30 TAC §115.782(b)(1) and §122.143(4), FOP Number O-01372, SC 1.H(v), and THSC, §382.085(b), by failing to repair three valves and two connectors in HRVOC service; 30 TAC §§101.20(2), 115.354(2)(C), 116.115(c), and 122.143(4), 40 CFR §63.168(d)(2), NSRP Number 2167, SC 15F, FOP Number O-01372, SC 1A and 28, and THSC, §382.085(b), by failing to monitor 406 valves on the Para-xylene Recovery Unit; 30 TAC §111.111(a)(1)(B) and §122.143(4), FOP Number O-01372, SC 3(B)(i), and THSC, §382.085(b), by failing to prevent visible emissions from a stationary vent; 30 TAC §115.725(a)(4) and §122.143(4), FOP Number O-01372, SC 1.H(ii), and THSC, §382.085(b), by failing to complete a written monitoring plan for continuous monitoring systems; 30 TAC §115.725(a)(1)(B) and §122.143(4), FOP Number O-01372, SC 1.H(i) and (ii), and THSC, §382.085(b), by failing to test 32 HRVOC analyzers on 32 HRVOC service heater stacks; 30 TAC §116.715(a), NSRP Number 2167, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; 30 TAC §101.20(b)(1)(H) and THSC, §382.085(b), by failing to properly report the amount of unauthorized nitrogen oxide emissions; 30 TAC §101.201(a)(1)(B) and THSC, §382.085(b), by failing to timely submit the initial notification for an emissions event; 30 TAC §116.715(a), NSRP Number 2167, SC 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; 30 TAC §116.715(a), NSRP Number 2167, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; and 30 TAC §305.125(1), TPDES Permit Number WQ0000392000, Effluent Limitations and Monitoring Requirements Number 1 for Outfall 001A, Numbers 1 and 2 for Outfall 002A, and Number 1 for Outfall 003A, and the Code, §26.121(a), by failing to comply with the permitted effluent limits for TSS, pH, and oil and grease; PENALTY: \$481,105; SEP offset amount of \$96,221 applied to Trust for Public Land-Galveston Bay Natural Area Acquisition and Conservation Program; SEP offset amount of \$96,221 applied to Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: Miriam Hall, (512) 239-1044; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(9) COMPANY: Terry R. James; DOCKET NUMBER: 2008-0130-LII-E; IDENTIFIER: RN105377576; LOCATION: Smithville, Bastrop County; TYPE OF FACILITY: landscape irrigation business; RULE VIOLATED: 30 TAC §30.5(a) and (b) and §344.4(a), Texas

Occupations Code, §1903.251, and the Code, §37.003, by failing to hold an irrigator license prior to selling, advertising, designing, consulting, installing, maintaining, altering, repairing, or servicing an irrigation system and representing to the public that he could perform a service for which a license is required; PENALTY: \$625; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(10) COMPANY: Ty Osmani dba Lucky Stop 2, Lucky Stop 4, and Lucky Stop 9; DOCKET NUMBER: 2008-0500-PST-E; IDENTIFIER: RN101445005, RN104400619, RN101434660; LOCATION: Denison, Grayson County; TYPE OF FACILITY: convenience stores with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form; 30 TAC §334.8(c)(5)(A)(i) and the Code, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate; 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to ensure that all USTs are monitored in a manner which will detect a release; 30 TAC §334.50(b)(2) and the Code, §26.3475(a), by failing to provide release detection for the piping associated with the USTs; 30 TAC §334.50(b)(2)(A)(i)(III) and the Code, §26.3475(a), by failing to test the line leak detectors; 30 TAC §334.45(c)(3)(A), by failing to install an emergency shutoff valve on each pressurized delivery or product line and ensure that it is securely anchored at the base of the dispenser; 30 TAC §334.49(c)(4) and the Code, §26.3475(d), by failing to have the cathodic protection system inspected and tested for operability and adequacy of protection; and 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: \$33,428; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: Leroy McBride; DOCKET NUMBER: 2008-1129-WOC-E; IDENTIFIER: RN104956214; LOCATION: Shelby County; TYPE OF FACILITY: wastewater operator; 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.

(12) COMPANY: Larry Patterson; DOCKET NUMBER: 2008-1142-WOC-E; IDENTIFIER: RN105530190; LOCATION: Argyle, Denton County; TYPE OF FACILITY: wastewater operator; 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: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(13) COMPANY: City of Plano; DOCKET NUMBER: 2007-1337-WQ-E; IDENTIFIER: RN103099156; LOCATION: Plano, Collin County; TYPE OF FACILITY: collection system; RULE VIOLATED: the Code, §26.121(a), by failing to prevent the unauthorized discharge of wastewater; PENALTY: \$11,250; SEP offset amount of \$11,250 applied to RC&D - Wastewater Treatment Assistance; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(14) COMPANY: Robert Serth; DOCKET NUMBER: 2008-1128-WOC-E; IDENTIFIER: RN105500839; LOCATION: Riviera, Kleberg County; TYPE OF FACILITY: public water supply operator; 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:

6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(15) COMPANY: Shelter Park LP; DOCKET NUMBER: 2008-1124-PST-E; IDENTIFIER: RN101768638; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: airport with fleet refueling; RULE VIOLATED: 30 TAC §334.8(c)(5)(A)(i), by failing to possess a valid TCEQ delivery certificate prior to receiving fuel; PENALTY: \$875; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 4630 50th Street, Suite 600, Lubbock, Texas 79414-3520, (806) 796-7092.

(16) COMPANY: Starr County; DOCKET NUMBER: 2008-1119-WR-E; IDENTIFIER: RN105510309; LOCATION: Starr County; TYPE OF FACILITY: construction site; RULE VIOLATED: the Code, §11.081 and §11.121, by impounding, diverting, or using state water without a required permit; PENALTY: \$350; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(17) COMPANY: The Consolidated Water Supply Corporation; DOCKET NUMBER: 2008-0046-PWS-E; IDENTIFIER: RN102684966, RN102687381, RN101281632, RN101285989; LOCATION: Houston County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(f)(5), by failing to provide a purchase water contract; 30 TAC §290.110(b)(4) and THSC, §341.0315(c), by failing to maintain the residual disinfectant concentration in the water of at least 0.5 milligrams per liter of chloramine; 30 TAC §290.46(f)(3)(A)(iv), by failing to maintain complete records of the dates dead-end mains were flushed; 30 TAC §290.45(f)(4), by failing to provide a minimum production capacity of 0.6 gpm per connection; 30 TAC §290.45(b)(1)(D)(iv) and (f)(7) and THSC, §341.0315(c), by failing to provide a pressure tank capacity of 20 gallons per connection; 30 TAC §290.110(c)(4)(B), by failing to monitor the disinfectant residual at representative locations in the distribution system; 30 TAC §290.46(n)(2), by failing to maintain an up-to-date map of the distribution system; 30 TAC §290.42(e)(4)(B), by failing to house gas chlorination equipment and cylinders in a separate building or room; 30 TAC §290.43(e), by failing to provide a properly constructed intruder-resistant fence; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices; 30 TAC §290.46(m)(4), by failing to maintain the water system and all related appurtenances in a watertight condition; 30 TAC §290.46(f)(3)(A)(i)(II) and (ii)(II), by failing to maintain all water works operation records for at least two years; and 30 TAC §290.45(b)(1)(D)(iii) and THSC, §341.0315(c), by failing to provide two or more service pumps with a total capacity of two gpm per connection; PENALTY: \$16,956; ENFORCEMENT COORDINATOR: Christopher Keffer, (512) 239-5610; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(18) COMPANY: UNITED PETROLEUM TRANSPORTS, INC.; DOCKET NUMBER: 2008-0778-PST-E; IDENTIFIER: RN103894564; LOCATION: El Paso, El Paso County; TYPE OF FACILITY: fuel distributor; RULE VIOLATED: 30 TAC §115.221(2) and §115.222(2) and THSC, §382.085(b), by failing to control displaced vapors by a vector control or vapor balance system; PENALTY: \$850; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5800; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(19) COMPANY: Viron International Corporation; DOCKET NUMBER: 2008-0122-AIR-E; IDENTIFIER: RN100223254; LOCATION: Temple, Bell County; TYPE OF FACILITY: fiberglass spray coating; RULE VIOLATED: 30 TAC §122.143(4) and §122.146(2), Air Operating Permit Number O-02745, General Terms and Conditions

(GTC), and THSC, §382.085(b), by failing to submit the annual compliance certification; 30 TAC §101.20(2) and §113.1060, 40 CFR §63.5805(b), and THSC, §382.085(b), by failing to comply with the maximum available control technology (MACT) emission limits; 30 TAC §101.20(2) and §113.1060, 40 CFR §63.5910, and THSC, §382.085(b), by failing to submit semi-annual MACT compliance certifications; 30 TAC §122.143(4) and §122.145(2)(A), Air Operating Permit Number O-02745, GTC, and THSC, §382.085(b), by failing to submit a semi-annual deviation report and include all instances of deviations; and 30 TAC §101.20(2) and §113.1060, 40 CFR §63.5910, and THSC, §382.085(b), by failing to submit a notice of compliance status; PENALTY: \$15,750; ENFORCEMENT COORDINATOR: Audra Ruble, (361) 825-3100; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(20) COMPANY: City of Weatherford; DOCKET NUMBER: 2008-0613-MWD-E; IDENTIFIER: RN101614055; LOCATION: Parker County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0010380002, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a)(1), by failing to comply with permitted effluent limits for NH₃; PENALTY: \$3,050; SEP offset amount of \$2,440 applied to Keep Texas Beautiful-Waterway Cleanup Program; ENFORCEMENT COORDINATOR: Heather Brister, (254) 751-0335; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-200804057

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: August 5, 2008



Notice of District Petition

Notice issued July 29, 2008.

TCEQ Internal Control No. 07082008-D02; David B. Hendricks and Houston Intercontinental Trade Center, L.P. (Petitioner) filed a petition for creation of Montgomery County Municipal Utility District No. 126 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner is the owner of a majority in value of the land, consisting of one tract, to be included in the proposed District; (2) there are two lien holders, Sterling Bank, and Benchmark Bank, on the property to be included in the proposed District; (3) the proposed District will contain approximately 293.49 acres located in Montgomery County, Texas; and (4) most of the land within the proposed District is within the extraterritorial jurisdiction of the City of Conroe, Texas (City) and is in the process of being annexed into the corporate limits of the City. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project and from the information available at the time, the cost of the project is estimated to be approximately \$24,375,000 for water, wastewater, and drainage facilities, and \$3,340,000 for parks and recreational facilities.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.state.tx.us/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en Español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-200804101

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: August 6, 2008



Notice of Water Quality Applications

The following notices were issued during the period of July 17, 2008 through August 5, 2008.

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

ALBEMARLE CORPORATION which operates the Albemarle Pasadena Plant which manufactures industrial organic and inorganic chemicals and accepts wastewaters for treatment from the other organic and inorganic chemicals manufacturers (Ethyl Corporation; Bigler LP; and MEMC Pasadena, Inc.), has applied for a major amendment to TPDES Permit No. WQ0000492000 to increase the permitted effluent limitations for toluene at Outfall 001. The current permit authorizes the discharge of treated process wastewater, utility wastewaters, treated domestic wastewater, storm water, certain non-storm water discharges, and previously monitored effluents from offsite facilities at a daily average flow not to exceed 6,164,000 gallons per day via Outfall 001; utility wastewaters, wash water, non-process area storm water, and certain non-storm water discharges on an intermittent and flow variable basis via Outfall 003; and utility wastewaters, non-process area storm water, and certain non-storm water discharges on an intermittent and flow variable basis via Outfall 004. The facility

is located at 2500 North South Street, approximately one mile north of State Highway 225, at the intersection of North South Street and the Houston Ship Channel, in the City of Pasadena, Harris 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.

ARCHDIOCESE OF GALVESTON HOUSTON has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. WQ0014218001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 15,000 gallons per day. The facility is located approximately seven miles southeast of the intersection of Farm-to-Market Road 1488 and State Highway 249 in Montgomery County, Texas.

BASTROP COUNTY MUNICIPAL UTILITY DISTRICT NO 1 has applied for a major amendment to Texas Land Application Permit (TLAP) No. WQ0013894001 to change the method of disposal from irrigation to discharge of treated domestic wastewater at a daily average flow not to exceed 49,500 gallons per day. The draft permit will authorize the disposal of treated effluent via irrigation of 21 acres of public access land at a daily average flow of 49,500 gallons per day in the interim phase. The current permit authorizes the disposal of treated effluent via irrigation of 32 acres of public access land at a daily average flow of 80,000 gallons per day. The facility is located approximately 1.4 miles north of the confluence of the Colorado River and Cedar Creek, and approximately 2 miles northeast of the intersection of State Highway 304 and Farm-to-Market Road 2571 in Bastrop County, Texas.

CITY OF CRAWFORD has applied for a renewal of TPDES Permit No. WQ0010656001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 90,000 gallons per day. The facility is located approximately 1,000 feet south of Farm-to-Market Road 185 and approximately 3,000 feet southeast of the intersection of State Highway 185 and State Highway 317 in the City of Crawford in McLennan County, Texas.

FORT BEND COUNTY FRESH WATER SUPPLY DISTRICT NO 2 has applied for a renewal of TPDES Permit No. WQ0014433001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 60,000 gallons per day. The facility will be located on the west side of Rustic Lane, approximately 800 feet south of E.W. Cumings Road in Fort Bend County, Texas.

FRUITVALE HOUSING AUTHORITY has applied for a renewal of TPDES Permit No. WQ0014545001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 4,300 gallons per day. The facility is located approximately 2,500 feet south-southeast of the intersection of State Highway 80 and Farm-to-Market Road 1910 and approximately 4,000 feet southwest of the intersection of State Highway 80 and Farm-to-Market Road 1110 in Van Zandt County, Texas.

HARRIS COUNTY FRESH WATER SUPPLY DISTRICT NO 51 has applied for a renewal of TPDES Permit No. WQ0010032001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 6,300,000 gallons per day. The facility is located at 14701 Woodforest Boulevard, east of Carpenters Bayou in Harris County, Texas.

METTON AMERICA INC. which operates the Metton America, Inc. La Porte plant, a liquid resins manufacturing facility, has applied for a major amendment to TPDES Permit No. WQ0002406000 to authorize the removal of Outfall 002 and addition of new storm water Outfall 004, and a change in the monitoring requirements for Outfall 001 in the

event the continuous monitoring system is inoperable. The current permit authorizes the discharge of treated process and nonprocess wastewater, and storm water at a daily average flow not to exceed 10,000 per day and the daily maximum not to exceed 20,000 gallons per day via Outfall 001, and stormwater on an intermittent and flow variable basis via Outfall 003 and 004. The facility is located at 2727 Miller Cut-Off Road in the City of La Porte, Harris County, Texas.

NEW WAVERLY VENTURES LTD CO. which operates a bark mulch bagging and bulk mulch facility, has applied for a renewal of TPDES Permit No. WQ0001905000, which authorizes the discharge of domestic wastewater, compressor condensate, log wet deck water, vehicle/equipment wash water, and storm water on an intermittent and flow variable basis via Outfall 001. The facility is located on the east side of U.S. Highway 75, approximately three miles north of the City of New Waverly, Walker County, Texas.

THE CITY OF LAVON has applied for a renewal of TPDES Permit No. WQ0014577001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 250,000 gallons per day. TCEQ received this application on March 27, 2008. The facility is located at 1055 CR 484, approximately 4,600 feet southeast of the intersection of County Road 205 and State Highway 78 and approximately 6,800 feet southwest of the intersection of County Road 483 and Farm-to-Market Road 2755 (Main Street) in Collin County, Texas.

THE CITY OF PEARLAND has applied for a renewal of TPDES Permit No. WQ0010134008, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,000,000 gallons per day. The facility is located approximately 1,000 feet north of McHard Road, approximately 1.25 miles west of the intersection of McHard Road and State Highway 288 in Brazoria 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-200804100

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: August 6, 2008



Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on July 29, 2008, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Michael Eugene French; SOAH Docket No. 582-08-0669; TCEQ Docket No. 2006-2022-MSW-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Michael Eugene French on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Melissa Chao, Office of the Chief Clerk, (512) 239-3300.

TRD-200804102

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: August 6, 2008



Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on July 29, 2008, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Liberty Waste Systems, Inc.; SOAH Docket No. 582-08-1316; TCEQ Docket No. 2007-0795-MLM-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Liberty Waste Systems, Inc. on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Melissa Chao, Office of the Chief Clerk, (512) 239-3300.

TRD-200804103

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: August 6, 2008



Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on August 1, 2008, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Wayne Orsak dba East Texas Tree Service; SOAH Docket No. 582-08-1771; TCEQ Docket No. 2007-1587-MSW-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Wayne Orsak dba East Texas Tree Service on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Melissa Chao, Office of the Chief Clerk, (512) 239-3300.

TRD-200804104

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: August 6, 2008



Texas Health and Human Services Commission

Notice of Hearing on Proposed Provider Payment Rates

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on August 22, 2008, at 9:00 a.m. to receive public comment on proposed specialized nursing payment rates

for agency and independently delivered Registered Nurse (RN) and Licensed Vocational Nurse (LVN) services in the Medically Dependent Children Program (MDCP). This program is operated by the Texas Department of Aging and Disability Services (DADS). These payment rates are proposed to be effective September 1, 2008.

The public hearing will be held in compliance with Human Resources Code §32.0282 and Title 1, Texas Administrative Code (TAC) §355.105(g), which require public notice and hearings on proposed payment rates. The public hearing will be held in the Lone Star Conference Room of the Health and Human Services Commission, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. Persons requiring American with Disabilities Act (ADA) accommodation or auxiliary aids or services should contact Kimbra Rawlings by calling (512) 491-1174, at least 72 hours prior to the hearing so appropriate arrangements can be made.

Proposal. HHSC proposes to adopt rates for the services listed above. The proposed rates will be effective September 1, 2008, and were determined in accordance with the rate setting methodologies listed below under Methodology and Justification.

Methodology and justification. The proposed rates were determined in accordance with the rate setting methodology codified at 1 TAC, Chapter 355, Subchapter F, §355.456, relating to Reimbursement Rates. Specialized nursing is a new service that will be available to MDCP consumers effective September 1, 2008, and requires rates before DADS can implement the service.

Briefing Package. A briefing package describing the proposed payment rates will be available on August 8, 2008. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Kimbra Rawlings by telephone at (512) 491-1174; by fax at (512) 491-1998; or by e-mail at Kimbra.Rawlings@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Kimbra Rawlings, Health and Human Services Commission, Rate Analysis, MC H-400, P.O. Box 85200, Austin, Texas 78708-5200. Express mail can be sent, or written comments can be hand delivered, to Kimbra Rawlings, HHSC Rate Analysis, MC H-400, Braker Center Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021. Alternatively, written comments may be sent via facsimile to Ms. Rawlings at (512) 491-1998.

TRD-200804089
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: August 5, 2008



Public Notice

The Texas Health and Human Services Commission announces its intent to submit an amendment to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed effective date for this amendment is September 1, 2008.

The proposed amendment will adjust the Nursing Facility (NF) reimbursement methodology to replace the Texas Index for Level of Effort (TILE) case mix system with the Resource Utilization Groups (RUG) case mix system for purposes of NF reimbursement; establish a one-year hold-harmless transition from TILE to RUG; and remove outdated language. The amendment will also allow payment rates for

the pediatric facility class to be determined annually on the state's fiscal year rather than biennially coincident with the state's biennium.

The proposed amendment is estimated to result in additional annual aggregate expenditures of \$10,725,489 for the remainder of federal fiscal year (FFY) 2008 (September 1, 2008, through September 30, 2008), with approximately \$6,384,883 in federal funds and approximately \$4,340,605 in state general revenue. For FFY 2009, the proposed amendment is estimated to result in additional annual aggregate expenditures of \$117,980,374, with approximately \$70,233,717 in federal funds and approximately \$47,746,657 in state general revenue.

To obtain copies of the proposed amendment or to submit written comments, interested parties may contact Pam McDonald by mail at Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, Mail Code H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1373; by facsimile at (512) 491-1998; or by e-mail at pam.mcdonald@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-200804058
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: August 5, 2008



Texas Department of Insurance

Company Licensing

Application for admission to the State of Texas by GRANITE RE, INC., a foreign fire and/or casualty company. The home office is in Oklahoma City, Oklahoma.

Application for admission to the State of Texas by PRESERVER INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Paramus, New Jersey.

Application for admission to the State of Texas by VININGS INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Atlanta, Georgia.

Application for admission to the State of Texas by ASSOCIATION INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Atlanta, Georgia.

Application to change the name of XL CAPITAL ASSURANCE INS., to SYNCORA GUARANTEE INC., a foreign fire and/or casualty company. The home office is in New York, New York.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200804099
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: August 6, 2008



Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application of PHONOSCOPE HEALTH NETWORK, INC. (using the assumed name PHONOSCOPE HEALTH TPA), a domestic third party administrator. The home office is HOUSTON, TEXAS.

Application of METHODIST HEALTHCARE SYSTEM OF SAN ANTONIO, LTD., a domestic third party administrator. The home office is SAN ANTONIO, TEXAS.

Application of J J STANIS AND COMPANY, INC., a foreign third party administrator. The home office is JERICHO, NEW YORK.

Application of COMBINED GROUP INSURANCE SERVICES, INC. (using the assumed name ANCHOR CLAIMS MANAGEMENT, a domestic third party administrator. The home office is CARROLLTON, TEXAS.

Application of ESSEX ADMINISTRATIVE SERVICES, INC., a foreign third party administrator. The home office is ST. LOUIS, MISSOURI.

Application of AXA BUSINESS SERVICES PRIVATE LIMITED, a foreign third party administrator. The home office is BANGALORE, INDIA.

Any objections must be filed within 20 days after this notice is published in the *Texas Register*, addressed to the attention of David Moskowitz, MC 305-2E, 333 Guadalupe, Austin, Texas 78701.

TRD-200804098

Gene C. Jarmon

Chief Clerk and General Counsel

Texas Department of Insurance

Filed: August 6, 2008



Texas Lottery Commission

Instant Game Number 1115 "Neon 9's"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1115 is "NEON 9'S". The play style is "other".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1115 shall be \$2.00 per ticket.

1.2 Definitions in Instant Game No. 1115.

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 red play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20 and 9 SYMBOL. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 9 SYMBOL, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$25.00, \$50.00, \$100, \$500, \$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. 1115 - 1.2D

PLAY SYMBOL	CAPTION
1 (red)	ONE
2 (red)	TWO
3 (red)	THR
4 (red)	FOR
5 (red)	FIV
6 (red)	SIX
7 (red)	SVN
8 (red)	EGT
10 (red)	TEN
11 (red)	ELV
12 (red)	TLV
13 (red)	TRN
14 (red)	FTN
15 (red)	FFN
16 (red)	SXN
17 (red)	SVT
18 (red)	ETN
20 (red)	TWY
9 SYMBOL (red)	DBL
1 (black)	ONE
2 (black)	TWO
3 (black)	THR
4 (black)	FOR
5 (black)	FIV
6 (black)	SIX
7 (black)	SVN
8 (black)	EGT
10 (black)	TEN
11 (black)	ELV
12 (black)	TLV
13 (black)	TRN
14 (black)	FTN
15 (black)	FFN
16 (black)	SXN
17 (black)	SVT
18 (black)	ETN
20 (black)	TWY
9 SYMBOL (black)	AUTO
\$2.00	TWO\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$25.00	TWY FIV
\$50.00	FIFTY
\$100	ONE HUND

\$500	FIV HUND
\$2,000	TWO THOU
\$20,000	20 THOU

E. 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.

F. Low-Tier Prize - A prize of \$2.00, \$4.00, \$5.00, \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$50.00, \$100 or \$500.

H. High-Tier Prize - A prize of \$2,000 or \$20,000.

I. 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.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1115), 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: 1115-0000001-001.

K. Pack - A pack of "NEON 9'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.

L. 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.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "NEON 9'S" Instant Game No. 1115 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 "NEON 9'S" Instant Game is determined once the latex on the ticket is scratched off to expose 20 (twenty) play symbols. If a player reveals a BLACK "9" symbol, the player wins the PRIZE shown for that symbol. If the player reveals a RED "9" symbol, the player wins DOUBLE the PRIZE shown instantly! 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 20 (twenty) 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 20 (twenty) 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 20 (twenty) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 20 (twenty) 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 in a pack will not have identical play data, spot for spot.

B. No three or more matching non-winning prize symbols will appear on a ticket.

C. No duplicate non-winning play symbols on a ticket regardless of color.

D. Non-winning prize symbols will never be the same as the winning prize symbol(s).

E. No prize amount in a non-winning spot will correspond with the play symbol (i.e. 5 and \$5).

F. Non-winning play symbols and captions will appear in both black and red imaging.

G. Winning play symbols will only appear in the color designated by the prize structure.

H. There will be a minimum of 4 red play symbols and a maximum of 7 red play symbols on a ticket unless otherwise indicated by the prize structure.

I. The "BLACK 9" (auto win) play symbol will only appear as dictated by the prize structure.

J. The "RED 9" (doubler) play symbol will only appear as dictated by the prize structure.

K. The top prize symbol will appear on every ticket unless otherwise restricted.

2.3 Procedure for Claiming Prizes.

A. To claim a "NEON 9'S" Instant Game prize of \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$100 or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$50.00, \$100 or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "NEON 9'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 "NEON 9'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; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human 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 "NEON 9'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 "NEON 9'S" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game

ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the

ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 8,040,000 tickets in the Instant Game No. 1115. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1115 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$2	578,880	13.89
\$4	771,840	10.42
\$5	96,480	83.33
\$10	112,560	71.43
\$20	48,240	166.67
\$50	33,500	240.00
\$100	12,730	631.58
\$500	950	8,463.16
\$2,000	15	536,000.00
\$20,000	9	893,333.33

*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 4.86. 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. 1115 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. 1115, 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-200804023
 Kimberly L. Kiplin
 General Counsel
 Texas Lottery Commission
 Filed: August 4, 2008



Notice of Public Comment Hearing

A public hearing to receive public comments regarding proposed amendments to 16 TAC §402.200, relating to General Restrictions on the Conduct of Bingo, proposed new 16 TAC §402.205, relating to Unit Agreements, proposed amendments to 16 TAC §402.400, relating to General Licensing Provisions, and proposed new 16 TAC §402.442, relating to Amendment to Commercial Lessor License will be held on Tuesday, September 9, 2008, at 10:00 a.m. at the Texas Lottery Commission, Commission Auditorium, First Floor, 611 E. Sixth Street, Austin, Texas 78701. Persons requiring any accommodation for a disability should notify Michelle Guerrero, Executive Assistant to the General Counsel, Texas Lottery Commission at (512) 344-5113 at least 72 hours prior to the public hearing.

TRD-200804018
 Kimberly L. Kiplin
 General Counsel
 Texas Lottery Commission
 Filed: August 1, 2008



Notice of Public Comment Hearing

A public hearing to receive public comments regarding proposed amendments to 16 TAC §401.362, relating to Retailer's Financial Responsibility for Lottery Tickets Received and Subsequently Damaged or Rendered Unsaleable, for Winning Lottery Tickets Paid and for Lottery-Related Property will be held on Thursday, September 4, 2008, at 10:00 a.m. at the Texas Lottery Commission, Commission Auditorium, First Floor, 611 E. Sixth Street, Austin, Texas 78701. Persons requiring any accommodation for a disability should notify Michelle Guerrero, Executive Assistant to the General Counsel, Texas Lottery Commission at (512) 344-5113 at least 72 hours prior to the public hearing.

TRD-200804019
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: August 1, 2008

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Texas Department of Public Safety

Notice of Award - IT Optimization Assistance in the Development of an IT Strategy and Implementation Roadmap

In accordance with §2254.030 of the Texas Government Code, the Texas Department of Public Safety (TXDPS) announces the award of the contract pursuant to Request for Qualifications for IT Optimization Assistance in the Development of an IT Strategy and Implementation Roadmap (RFQ #405-IT8-0472), which was published in the April 18, 2008, issue of the *Texas Register* (33 TexReg 3342).

A description of the work to be performed under the contract:

Gartner, Inc. will conduct a detailed assessment of the current TXDPS IT environment and develop an IT strategy and implementation plan to align the TXDPS IT environment with the TXDPS business needs.

Name and business address of the consultant selected:

Gartner, Inc. 4501 North Fairfax Drive - 8th Floor Arlington, VA 22203

The amount of the contract:

\$320,316.00

Beginning and ending dates of the contract:

The contract became effective on July 28, 2008.

Unless the parties later agree otherwise in writing, the contract terminates 12 to 16 weeks after July 28, 2008. The exact date of termination will be determined after the kickoff session, which is currently scheduled for August 4, 2008.

Date for completion of work to be performed:

Gartner, Inc. is required to deliver the final written report, as well as all other deliverables, prior to contract termination. The exact date for deliverables and termination will be determined after the kickoff session.

TRD-200804012
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Filed: August 1, 2008

◆ ◆ ◆
Public Utility Commission of Texas

Notice of Application for a Certificate to Provide Retail Electric Service

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on July 28, 2008, for retail electric provider (REP) certification, pursuant to §§39.101 - 39.109 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of Pulse Energy, Inc. for Retail Electric Provider (REP) Certification, Docket Number 35928 before the Public Utility Commission of Texas.

Applicant's requested geographic area is the area of the Electric Reliability Council of Texas.

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than August 22, 2008. 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 35928.

TRD-200803997
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 31, 2008

◆ ◆ ◆
Notice of Application for an Electric Service Area Exception within Bell County, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on July 30, 2008, for an amendment to certificated service area for a service area exception within Bell County, Texas.

Docket Style and Number: Application of Pedernales Electric Cooperative, Inc. to Amend its Certificate of Convenience and Necessity for an Electric Service Area Exception within Bell County. Docket Number 35939.

The Application: Pedernales Electric Cooperative, Inc. (PEC) filed an application for a service area boundary exception to allow PEC to provide service to a specific customer located within the certificated service area of Bartlett Electric Cooperative, Inc. (Bartlett). The customer requested 3-phase electrical service from PEC. Bartlett has provided a letter of concurrence for the proposed change.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than August 22, 2008, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 35939.

TRD-200804049
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 4, 2008

◆ ◆ ◆
Notice of Application for an Electric Service Area Exception within Crosby County, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on August 1, 2008, for an amendment to certificated service area for a service area exception within Crosby County, Texas.

Docket Style and Number: Application of Southwestern Public Service Company an Xcel Energy Company for an Amendment to a Certificate of Convenience and Necessity for an Electric Service Area Exception within Crosby County; Docket Number 35949.

The Application: Southwestern Public Service Company an Xcel Energy Company (SPS/Excel) filed an application for a service area boundary exception to allow SPS/Excel Energy to provide service to a specific customer located within the certificated service area of South Plains Electric Cooperative, Inc. The customer has requested three-phase electrical service from SPS/Excel for easier access. South Plains Electric Cooperative, Inc. has provided a letter of concurrence for the proposed change.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than August 22, 2008 by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 35949.

TRD-200804051

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 4, 2008



Notice of Application for an Electric Service Area Exception within Moore County, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on July 31, 2008, for an amendment to certificated service area for a service area exception within Moore County, Texas.

Docket Style and Number: Application of Southwestern Public Service Company for an Amendment to a Certificate of Convenience and Necessity for an Electric Service Area Exception within Moore County, Docket Number 35940.

The Application: Southwestern Public Service Company an Xcel Energy Company (SPS/Excel) filed an application for a service area boundary exception to allow SPS/Excel Energy to provide service to a specific customer located within the certificated service area of Rita Blanca Electric Cooperative, Inc. The customer requested 3-phase electrical service from SPS/Excel. Rita Blanca Electric Cooperative, Inc. has provided a letter of concurrence for the proposed change.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than August 22, 2008 by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 35940.

TRD-200804050

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 4, 2008

Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of a joint application for sale, transfer, or merger filed with the Public Utility Commission of Texas on July 30, 2008, pursuant to the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.101 and §37.154 (Vernon 2007) (PURA).

Docket Style and Number: Joint Application of AEP Texas Central Company and Electric Transmission Texas, LLC to Transfer Certificate Rights and for Approval of Transfer of Facilities in McMullen, Webb, and LaSalle Counties, Texas; Docket Number 35938.

The Application: This transaction involves the transfer from AEP Texas Central Company (AEP Texas Central) to Electric Transmission Texas, LLC (ETT) transmission facilities and associated certificate of convenience and necessity rights. The transmission facilities proposed for transfer are (1) the AEP Texas Central share of the new San Miguel to Lobo 345-kV transmission line, which is approximately 63 miles in length; (2) the new Lobo Switching Station; (3) the portion of the existing Laredo-to-Freer 69-kV transmission line that runs from the Laredo Plant Station to the new Lobo Switching Station; and (4) the portion of the existing Laredo-to-Bruni 138-kV transmission line that runs from the Laredo VFT Station to the new Lobo Switching Station, and related facilities. The portions of the existing transmission lines to be transferred from AEP Texas Central to ETT total approximately 33 miles and are located in McMullen, Webb, and LaSalle Counties.

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) 1-800-735-2989. All correspondence should refer to Docket Number 35938.

TRD-200804010

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 1, 2008



Notice of Petition for Expanded Local Calling Service

Notice is given to the public of the filing with the Public Utility Commission of Texas of a petition on July 29, 2008, for expanded local calling service (ELCS), pursuant to Chapter 55, Subchapter C of the Public Utility Regulatory Act (PURA).

Project Title and Number: Petition of the Frio Canyon Exchange for Expanded Local Calling Service, Project Number 35934.

The petitioners in the Frio Canyon exchange request ELCS to the exchanges of Kerrville, Sabinal, and Uvalde.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than October 1, 2008. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2789. All comments should reference Project Number 35934.

TRD-200804000

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 31, 2008



Notice of Proceeding for 2008 Annual Compliance Affidavit Attesting to Proper Use of Texas Universal Service Fund

Notice is given to the public of the 2008 annual compliance affidavit proceeding initiated by the Public Utility Commission of Texas for eligible telecommunications providers (ETP) to attest to the proper use of Texas universal service funds.

Project Title and Number: Annual Compliance Affidavit Attesting to Proper Use of Texas Universal Service Fund Pursuant to Public Utility Regulatory Act (PURA) §56.030. Project Number 32567.

The Public Utility Commission of Texas (commission) initiated this proceeding pursuant to PURA §56.030 and P.U.C. Substantive Rule §26.417. PURA §56.030 requires that on or before September 1 of each year, a telecommunications provider that receives disbursements from the TUSF file with the commission an affidavit certifying that the telecommunications provider complies with the requirements for receiving money from the TUSF and requirements regarding the use of money from TUSF program for which the telecommunications provider receives disbursements.

This certification requirement applies to every ETP receiving support from the TUSF. In accordance with PURA §56.030 and P.U.C. Substantive Rule §26.417, each ETP receiving TUSF support must file with the commission a sworn affidavit (using the commission prescribed form) certifying that the provider complies with the requirements for receiving money from the TUSF and the requirements regarding the use of money from each TUSF program for which the provider receives funds.

Therefore, on or before August 29, 2008, carriers designated as ETPs 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. 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. Persons contacting the commission regarding this certification proceeding should refer to Project Number 32567.

TRD-200803999
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 31, 2008



Notice of Proceeding for 2008 Annual State Certification for Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds

Notice is given to the public of the 2008 annual certification proceeding initiated by the Public Utility Commission of Texas for state certification of common carriers as eligible telecommunications carriers (ETC) to receive federal universal service funds (FUSF).

Docket Title and Number: Designation of Common Carriers as Eligible Telecommunications Carriers (ETC) to Receive Federal Universal Service Funds Pursuant to the Federal Communications Commission's Fourteenth Report and Order Adopting a State Certification Process. Docket Number 24481.

The Public Utility Commission of Texas (commission) initiated this proceeding in response to the Federal Communications Commission's (FCC) Fourteenth Report and Order adopting a state certification process. Under §254(e) of the Federal Telecommunications Act (FTA) carriers must use federal universal service support "only for the provision, maintenance, and upgrading of facilities and services for which the support was intended." The FCC concluded that it is appropriate for the state to certify that all federal high-cost funds flowing to carriers within the state of Texas are being used in a manner consistent with FTA §254(e). The commission is required to file such annual certification with the FCC and the Universal Service Administrative Company (USAC) on or before October 1 of each year. Absent such certification, carriers will not receive federal universal service support.

The certification requirement is applicable to all rural carriers and competitive eligible telecommunications carriers seeking high-cost support in the service area of a rural local exchange carrier that the state commission certifies as eligible to receive federal high-cost support during that annual period. In accordance with P.U.C. Substantive Rule §26.418(j), carriers shall certify directly to the commission in the form of a sworn affidavit executed by a corporate officer which certifies that the carrier is complying with the federal requirements for the receipt of FUSF support. All carriers within the state of Texas that request certification by the commission shall submit an affidavit on or before September 2, 2008.

Therefore, on or before September 2, 2008, carriers seeking to be certified 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. 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. Persons contacting the commission regarding this certification proceeding should refer to Docket Number 24481.

TRD-200803999
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 31, 2008



Request for Comments on an Application Form for a Certificate of Convenience and Necessity for a Proposed Transmission Line Pursuant to P.U.C. Substantive Rule §25.174

The staff of the Public Utility Commission of Texas (commission) requests comments regarding the development of a commission form for submitting an application for a proposed transmission line pursuant to P.U.C. Substantive Rule §25.174 (CREZ transmission line). The deadline for comments is until 3:00 p.m., Friday, August 22, 2008, by the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, Austin, Texas 78711-3326. Project Number 35186, *PUC Development of Application Form for a Certificate of Convenience and Necessity for a Proposed Transmission Line Pursuant to P.U.C. Subst. R. 25.174*, has been established for this proceeding. The form can be accessed on the commission's Agency Information System (AIS) under Project Number 35186.

Responses may be filed by submitting 16 copies to the Filing Clerk within seven days of the date of publication of this notice. All responses should reference Project Number 35186.

Questions concerning Project Number 35186 should be referred to Mike Lee, Infrastructure and Reliability Division, (512) 936-7348 or Felipe Alonso, Legal Division, (512) 936-7275. Hearing and

speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200804109

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: August 6, 2008

Texas Department of Transportation

Notice of Intent - United States Highway (US) 290/State Highway (SH) 71, Travis County, Texas

Pursuant to 43 TAC §2.5(e)(2), the Texas Department of Transportation (department), in cooperation with the Federal Highway Administration (FHWA), is issuing this notice to advise the public that a limited-scope Supplemental Environmental Impact Statement (SEIS) will be prepared for a proposed transportation project. The limited scope of the project is United States Highway (US) 290/State Highway (SH) 71 from Ranch-to-Market Road (RM) 1826 to east of Williamson Creek, in Travis County, Texas. This limited scope SEIS will also include improvements to SH 71 from Silvermine Drive to US 290 in Travis County.

The improvements proposed on US 290 between RM 1826 and east of Williamson Creek were originally considered in a Final Environmental Impact Statement (FEIS) covering improvements to US 290/SH 71 from RM 1826 to Farm-to-Market Road (FM) 973. A Record of Decision (ROD) was issued by FHWA on August 22, 1988. The central segment of the original project limits, between east of Williamson Creek and Riverside Drive, has been constructed. Since the issuance of the US 290/SH 71 ROD, the proposed design concept for the current project has changed as a result of changes in adjacent land use, federal and state listing of the Barton Springs salamander as endangered, changes in funding mechanisms to include tolling, a proposed shift in the alignment, and public input. The original FEIS will be supplemented to evaluate the changes in potential impacts from the proposed improvements. The proposed project limits of the US 290/SH 71 limited scope SEIS would extend beyond the limits of the original FEIS to allow for a transition back to existing US 290 west of Scenic Brook Drive and along SH 71 at Silvermine Drive.

The project is listed in the Capital Area Metro Planning Organization (CAMPO) Mobility 2030 Plan, as amended, (the long-range transportation plan) as a six-lane tolled freeway from west of Scenic Brook to east of Williamson Creek. The proposed action would include continuous non-tolled frontage roads with two to three lanes in each direction. The need for the US 290/SH 71 project, as stated in the 1988 FEIS, has resulted from congestion and low travel speeds caused by rapid population growth in the Austin metropolitan area. Crash data have also indicated safety issues as a primary need for this project. Additionally, the economic growth of the US 290/SH 71 corridor is dependent on the ability of the roadway network to accommodate both local trips created by recent nearby development as well as regional through-traffic. In order to address these needs, the purpose of the proposed project is to increase traffic flow capacities and improve mobility in the roadway corridor while enhancing safety and system interconnectivity, in compliance with the adopted CAMPO Mobility 2030 Plan, as amended.

The SEIS will evaluate potential impacts from construction and operation of this project, including, but not limited to, the following: impacts or potential displacements to residences and businesses; detours; air and noise impacts from construction equipment and operation of the project; water quality impacts from the construction area and from

roadway storm water runoff; impacts to waters of the United States; impacts to historic and archeological resources; impacts to floodplains; impacts to socio-economic resources (including environmental justice and limited English proficiency populations); indirect impacts; cumulative impacts; land use; vegetation; wildlife; and aesthetic and visual resources. The original FEIS identified impacts that include displacement of residences and businesses and increased traffic noise levels. However, the FEIS analyzed improvements to SH 71/US 290 from RM 1826 to FM 973. The current project covers a shorter segment, approximately 3.6 miles along US 290 and 1.2 miles along SH 71. To date, the department has not identified any known or potential significant impacts from the modified alignment alternative on the human environment.

The department will consider a number of alternatives intended to satisfy the identified purpose and need. The alternatives will include the no-build alternative and build alternatives. Roadway build alternatives include the 1988 FEIS alternative, a modified alignment alternative, and a parkway alternative. The 1988 alignment generally would take right-of-way from south of existing US 290 from RM 1826 to SH 71 and from the north of US 290 from SH 71 to east of Williamson Creek. The modified alignment would generally take additional right-of-way south of US 290 from west of Scenic Brook Drive to SH 71 and from the north and south of US 290 from SH 71 to east of Williamson Creek. Along SH 71, right of way generally would be taken from the west side of SH 71.

The project may require the following approvals by the federal government: United States Army Corps of Engineers (USACE) Section 404; Section 401 Water Quality Certification; and National Pollutant Discharge Elimination System (NPDES). The actual approvals required may change after the department completes field surveys and selects the alignment for the project.

The department will complete the procedures for public participation and coordination with other agencies as described in one or both the National Environmental Policy Act and state law. The department will conduct appropriate public involvement to solicit public comment during the environmental review process. Public notices will be given stating the date, time and location of the meeting or hearing and will be published in English. Provision will be made for those with special communication needs, including translation if requested. The department will also send correspondence, describing the proposed project and soliciting comments, to federal, state, and local agencies, and to organizations and individuals who have previously expressed or are known to have an interest in the project. The department invites comments and suggestions from all interested parties to ensure that the full range of issues related to the proposed project are identified and addressed. Comments or questions should be directed to the department at the address set forth below.

A proposed schedule for completion of the environmental review process is not available.

Agency Contact: Comments or questions concerning this proposed action and the EIS should be sent to Enoch N. Needham, P.E., Director, Transportation Planning and Development, Texas Department of Transportation, Austin District, P.O. Box 15426, Austin, Texas 78761-5426; phone (512) 832-7000.

TRD-200804003

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: August 1, 2008

Public Hearing Notice - Statewide Transportation Improvement Program

The Texas Department of Transportation (department) will hold a public hearing on Friday, August 29, 2008, at 11:00 a.m. at the Texas Department of Transportation, 200 East Riverside Drive, Room 2A-2, Austin, Texas to receive public comments on the August 2008 Revisions to the Statewide Transportation Improvement Program (STIP) for FY 2008 - 2011. The STIP reflects the federally funded transportation projects in the FY 2008 - 2011 Transportation Improvement Programs (TIPs) for each Metropolitan Planning Organization (MPO) in the state. The STIP includes both state and federally funded projects for the non attainment areas of Beaumont, Dallas-Fort Worth, El Paso, and Houston. The STIP also contains information on federally funded projects in rural areas that are not included in any MPO area, and other statewide programs as listed.

Title 23, United States Code, §134 and §135 require each designated MPO and the state, respectively, to develop a TIP as a condition to securing federal funds for transportation projects under Title 23 or the Federal Transit Act (49 USC §5301, et seq.).

Section 134(j) requires an MPO to develop its TIP in cooperation with the state and affected transportation operators, to provide an opportunity for interested parties to participate in the development of the program, and further requires the TIP to be updated at least once every four years and approved by the MPO and the Governor or Governor's designee. Section 135(g) requires the state to develop a STIP for all areas of the state in cooperation with the designated MPOs and, with respect to non-metropolitan areas, in consultation with affected local officials, and further requires an opportunity for participation by interested parties as well as approval by the Governor or the Governor's designee.

In accordance with 43 TAC §15.8(d), a copy of the proposed August 2008 Revisions to the FY 2008 - 2011 STIP will be available for review, at the time the notice of hearing is published, at each of the department's district offices, at the department's Transportation Planning and Programming Division offices located in Building 118, Second Floor, 118 East Riverside Drive, Austin, Texas, and on the department's website at:

www.dot.state.tx.us

Persons wishing to review the August 2008 Revisions to the FY 2008 - 2011 STIP may do so online or contact the Transportation Planning and Programming Division at (512) 486-5033.

Persons wishing to speak at the hearing may register in advance by notifying Lori Morel, Transportation Planning and Programming Division, at (512) 486-5033 not later than Thursday, August 28, 2008, or they may register at the hearing location beginning at 10:00 a.m. on the day of the hearing. Speakers will be taken in the order registered. Any interested person may appear and offer comments or testimony, either orally or in writing; however, questioning of witnesses will be reserved exclusively to the presiding authority as may be necessary to ensure a complete record. While any persons with pertinent comments or testimony will be granted an opportunity to present them during the course of the hearing, the presiding authority reserves the right to restrict testimony in terms of time or repetitive content. Groups, organizations, or associations should be represented by only one speaker. Speakers are requested to refrain from repeating previously presented testimony. Persons with disabilities who have special communication or accommodation needs or who plan to attend the hearing may contact Randall Dillard, Government and Public Affairs Division, at 125 East 11th Street, Austin, Texas 78701-2483, (512) 305-9137. Requests should be made no later than three days prior to the hearing. Every reasonable effort will be made to accommodate the needs.

Further information on the FY 2008 - 2011 STIP may be obtained from Lori Morel, Transportation Planning and Programming Division, 118 East Riverside Drive, Austin, Texas 78704, (512) 486-5033. Interested parties who are unable to attend the hearing may submit comments to James L. Randall, P.E., Director, Transportation Planning and Programming Division, 118 East Riverside Drive, Austin, Texas 78704. In order to be considered, all written comments must be received at the Transportation Planning and Programming office by Monday, September 29, 2008, at 4:00 p.m.

TRD-200804002

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: August 1, 2008

Public Notice: Texas Department of Transportation 2009 - 2013 Strategic Plan - Public Version

The Texas Department of Transportation (department) is requesting comments on the proposed text for the public version of the department's 2009 - 2013 Strategic Plan. This plan complements the Legislative Budget Board required Strategic Plan with a streamlined presentation of the department's five goals: reduce congestion, enhance safety, improve air quality, expand economic opportunity, and preserve the value of our transportation assets.

The department has posted the draft text for the public Strategic Plan on the following website:

www.txdot.gov

The plan is located under the "Inside TxDOT" heading.

Comments on the public version of the TxDOT 2009 - 2013 Strategic Plan may be submitted in writing to the Texas Department of Transportation, Government and Public Affairs Division, 125 East 11th Street, Austin, Texas 78701-2483, by facsimile transmission at (512) 416-2329, or by email at:

Email: strategicplan@dot.state.tx.us.

Comments are due by 5:00 p.m. on September 15, 2008.

TRD-200804045

Bob Jackson

General Counsel

Texas Department of Transportation

Filed: August 4, 2008

The University of Texas System

Correction to the Notice of Intent to Seek Consultant Services

In accordance with the provisions of Chapter 2254, *Texas Government Code*, The University of Texas at Health Science Center - Houston has announced an addendum to the contract for consulting services more particularly described in the Notice of Intent to Seek Consultant Services related to the marketing and branding initiative published in the *Texas Register* on August 1, 2008 (33 TexReg 6243).

This correction forms part of Contract Documents and modifies Bid Documents dated July 22, 2008 as follows:

Section 3, Submission of Proposal 3.1 Number of Copies - Proposers must submit a total of NINE (9) complete and identical copies of its entire proposal.

(The document originally stated eight (8).)

TRD-200804105

Francie A. Frederick

General Counsel to the Board of Regents

The University of Texas System

Filed: August 6, 2008



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).