TEXAS REGISTER

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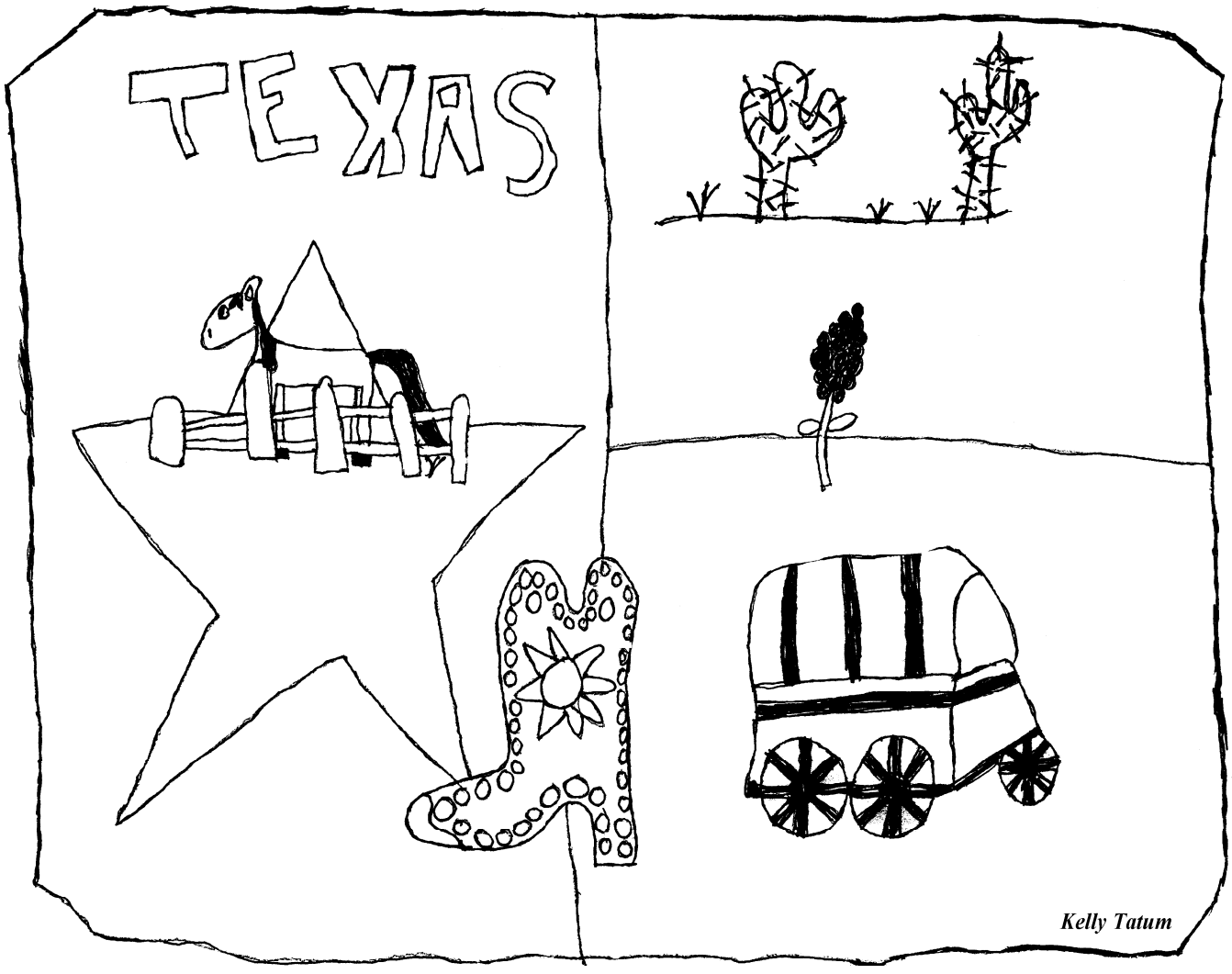

Kelly Tatum

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

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

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IN THIS ISSUE

WITHDRAWN RULES

ADOPTED RULES

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 August 26, 2009

Appointed to the Texas Commission on Environmental Quality, effective August 31, 2009, for a term to expire August 31, 2015, Carlos Rubinstein of Austin (replacing Larry Soward of Austin whose term expired).

Designating Bryan W. Shaw as presiding officer of the Texas Commission on Environmental Quality, effective September 10, 2009, for a term at the pleasure of the Governor. Dr. Shaw is replacing H. S. Buddy Garcia of Austin as presiding officer.

Rick Perry, Governor

TRD-200903809

♦ ♦ ♦

Executive Order

RP 72

Relating to the American Recovery and Reinvestment Act of 2009 and federal funding for Texas.

WHEREAS, Texas strongly believes in accountable and transparent government; and

WHEREAS, Congressional enactment of the American Recovery and Reinvestment Act of 2009 (ARRA) will provide federal funding for Texas; and

WHEREAS, many Texas state agencies and institutions of higher education shall act as stewards and administrators of a large share of these funds; and

WHEREAS, guidelines with regard to expenditure of ARRA funds necessitate implementation of additional controls by state agencies and institutions of higher education; and

WHEREAS, the federal government has mandated requirements on how job creation and retention is to be counted under the ARRA; and

WHEREAS, the 81st Texas Legislature has placed certain requirements on state agencies relating to the expenditure and reporting of ARRA funds;

NOW, THEREFORE, I, RICK PERRY, Governor of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas as the Chief Executive Officer, do hereby direct the following:

Goals. All state agencies and institutions of higher education that engage in the management and administration of ARRA funds are directed to:

• maintain transparency and accountability in all cases throughout the processes involving receipt, deployment, management, administration and reporting of ARRA funds; and

• develop strategies that maximize the use of ARRA funds without creating ongoing expenses to the state or localities after stimulus funds expire; and

• adhere to all state and federal statutes, rules and policies relating to ARRA and maintain current and proficient knowledge of them, including any training necessary to certify compliance with state and federal law.

Requirements. All state agencies and institutions of higher education that engage in the management and administration of ARRA funds are directed to:

• require that grant recipients and sub-recipients certify that ARRA funds will be used in accordance with state and federal laws as a condition of receiving funds; and

• require that grant recipients and sub-recipients track all ARRA funds and their projected statuses separately from all other funds, and comply with Section 1512 of the ARRA and other state and federal reporting requirements; and

• submit plans for expenditure of ARRA funds to the Office of the Governor and the Legislative Budget Board, as directed in Article XII of the General Appropriations Act, Senate Bill No. 1, Acts of the 81st Legislature, Regular Session, 2009; and

• report all ARRA-related grant applications of state agencies and institutions of higher education to the Comptroller of Public Accounts, using a database created by that office.

Job Creation Numbers. In accordance with federal mandates, each state agency or institution of higher education involved in the management and administration of ARRA funds shall report job creation and retention numbers attributed solely to ARRA funds in a manner that neither inflates nor underreports those numbers.

Coordination and reporting. All state agencies and institutions of higher education that engage in the management and administration of ARRA funds are directed to:

• designate responsible and qualified individuals as points of contact with the governor or his designee to maintain a flow of current information relating to the receipt, deployment, management and use of funds received by the state and any of its political subdivisions or contractors under ARRA; and

• confer regularly with the Office of the Governor and other appropriate state and federal entities regarding the use, management and administration of ARRA funds with the intent of establishing sound strategies, coordinated approaches and cooperative communication; and

• post all ARRA-funded job openings in state agencies and institutions of higher education on WorkinTexas.com and distinguish ARRA-funded positions from positions funded through other sources of revenue; and

• encourage all sub-recipients of ARRA funds to post all ARRA-funded job openings on WorkinTexas.com and distinguish ARRA-funded positions from positions funded through other sources of revenue; and

• report all job creation and retention resulting from expenditure of ARRA funds as specified by Section 1512 of the ARRA and subsequent guidance from the federal Office of Management and Budget and or other federal oversight agencies.

This executive order supersedes all previous orders on this matter that are in conflict or inconsistent with its terms, including Executive Order RP-70, and this order shall remain in effect and in full force until modified, amended, rescinded or superseded by me or a succeeding governor.

Given under my hand this the 25th day of August, 2009.

Rick Perry, Governor

TRD-200903789

♦ ♦ ♦

EMERGENCY RULES

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

TITLE 22. EXAMINING BOARDS

PART 11. TEXAS BOARD OF NURSING

CHAPTER 213. PRACTICE AND PROCEDURE

22 TAC §213.32

The Texas Board of Nursing (Board) adopts, on an emergency basis, amendments and new paragraphs to §213.32, concerning Schedule of Administrative Fine(s), to take effect on September 1, 2009. The Board is authorized by the Government Code §2001.034(a) to adopt an emergency rule without prior notice or hearing if a requirement of state or federal law requires the adoption of a rule on fewer than 30 days' notice. An emergency rule adopted under the Government Code §2001.034 may be effective for not longer than 120 days and may be renewed once for not longer than 60 days.

The 81st Texas Legislature, Regular Session, enacted Senate Bill (SB) 1415, which adds new Subchapter N to the Occupations Code Chapter 301. SB 1415 authorizes the Board to impose a corrective action, which is a non-disciplinary action consisting of a fine, remedial education, or any combination of a fine or remedial education, on an individual who violates a provision of Chapter 301 or a rule or order adopted under Chapter 301. SB 1415 requires the Board to adopt, by rule, guidelines for the types of violations for which a corrective action may be imposed under new Subchapter N. SB 1415 becomes effective on September 1, 2009. SB 1415 does not identify the specific types of violations for which a corrective action may be imposed by the Board or the specific procedures and/or requirements that must be met by an individual in order to be eligible to receive a corrective action. As a result, the provisions of SB 1415 cannot be fully implemented by the Board without the adoption of such guidelines. The adoption of the emergency rules permits the Board to comply with the effective date of SB 1415 so that the requirements of SB 1415 may be fully implemented on September 1, 2009.

The adopted amendments and new paragraphs identify the six specific violations for which a corrective action may be imposed by the Board. Further, the adopted amendments and new paragraphs prohibit an individual from being eligible to receive a corrective action (i) if the individual has committed one of the specified violations more than one time or (ii) if the individual has committed more than one of the specified violations. The adopted amendments and new paragraphs establish a $500 fine that may be imposed as part of a corrective action. The adopted amendments and new paragraphs also clarify that (i) the Executive Director of the Board has the sole discretion to offer an individual a corrective action and (ii) an individual may not receive a corrective action as the result of a contested case proceeding conducted under the Government Code Chapter 2001. Further, the adopted amendments and new paragraphs distinguish a corrective action, which is a non-disciplinary action comprised of a fine, remedial education, or a combination of a fine and remedial education, from a disciplinary action under the Occupations Code Chapter 301 Subchapter J, which may also be comprised of a fine and/or remedial education. The adopted amendments and new paragraphs also authorize the Executive Director to offer and accept a corrective action without ratification by the Board and require the Executive Director to report such cases to the Board at its regular meetings. Finally, the adopted amendments appropriately re-designate the remaining paragraphs of §213.32.

The amendments and new paragraphs are adopted on an emergency basis under the Occupations Code §§301.453(a), 301.4531, 301.466(a) and (b), 301.501, 301.502, 301.651 - 301.657, and 301.151. The Occupations Code §301.453(a) provides that, if the Board determines that a person has committed an act listed in §301.452(b), the Board shall enter an order imposing one or more of the following: (1) denial of the person's application for a license, license renewal, or temporary permit; (2) issuance of a written warning; (3) administration of a public reprimand; (4) limitation or restriction of the person's license, including limiting to or excluding from the person's practice one or more specified activities of nursing or stipulating periodic board review; (5) suspension of the person's license for a period not to exceed five years; (6) revocation of the person's license; or (7) assessment of a fine. The Occupations Code §301.4531(a) states that the Board by rule shall adopt a schedule of the disciplinary sanctions that the Board may impose under Chapter 301. In adopting the schedule of sanctions, the Board shall ensure that the severity of the sanction imposed is appropriate to the type of violation or conduct that is the basis for disciplinary action. The Occupations Code §301.4531(b) states, in determining the appropriate disciplinary action, including the amount of any administrative penalty to assess, the Board shall consider: (i) whether the person is being disciplined for multiple violations of either Chapter 301 or a rule or order adopted under Chapter 301 or has previously been the subject of disciplinary action by the Board and has previously complied with Board rules and Chapter 301; (ii) the seriousness of the violation; (iii) the threat to public safety; and (iv) any mitigating factors. The Occupations Code §301.4531(c) provides that, in the case of a person described by §301.4531(b)(1)(A), the Board shall consider taking a more severe disciplinary action, including revocation of the person's license, than the disciplinary action that would be taken for a single violation; and in the case of a person described by §301.4531(b)(1)(B), the Board shall consider taking a more severe disciplinary action, including revocation of the person's license, than the disciplinary action that would be taken for a person who has not previously been the subject of disciplinary action by the Board. The Occupations Code §301.466(a) provides that a complaint and investigation concerning a nurse under Subchapter J and all information and material compiled by the Board in connection with the complaint and investigation are confidential and not subject to disclosure under the Government Chapter 552 and not subject to disclo-

sure, discovery, subpoena, or other means of legal compulsion for release to anyone other than the Board or a Board employee or agent involved in license holder discipline. The Occupations Code §301.466(b) provides that, notwithstanding §301.466(a), information regarding a complaint and an investigation may be disclosed to: (i) a person involved with the Board in a disciplinary action against the nurse; (ii) a nursing licensing or disciplinary Board in another jurisdiction; (iii) a peer assistance program approved by the Board under the Health and Safety Code Chapter 467; (iv) a law enforcement agency; or (v) a person engaged in bona fide research, if all information identifying a specific individual has been deleted. The Occupations Code §301.501 provides that the Board may impose an administrative penalty on a person licensed or regulated under Chapter 301 who violates Chapter 301 or a rule or order adopted under Chapter 301. The Occupations Code §301.502(a) states that the amount of the administrative penalty may not exceed $5,000 for each violation. Further, each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. The Occupations Code §301.502(b) states that the amount of the penalty shall be based on: (i) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts and the hazard or potential hazard created to the health, safety, or economic welfare of the public; (ii) the economic harm to property or the environment caused by the violation; (iii) the history of previous violations; (iv) the amount necessary to deter a future violation; (v) efforts made to correct the violation; and (vi) any other matter that justice may require. The Occupations Code §301.651 provides that "corrective action" means a fine or remedial education imposed under §301.652. The Occupations Code §301.652(a) states that the Board may impose a corrective action on a person licensed or regulated under Chapter 301 who violates Chapter 301 or a rule or order adopted under Chapter 301. The corrective action: (i) may be a fine, remedial education, or any combination of a fine or remedial education; (ii) is not a disciplinary action under Subchapter J; and (iii) is subject to disclosure only to the extent a complaint is subject to disclosure under §301.466. The Occupations Code §301.652(b) authorizes the Board to adopt guidelines for the types of violations for which a corrective action may be imposed. The Occupations Code §301.653 states that, if the Executive Director determines that a person has committed a violation for which a corrective action may be imposed under the guidelines adopted under §301.652(b), the Executive Director may give written notice of the determination and recommendation for corrective action to the person subject to the corrective action. The notice may be given by certified mail. The notice must: (i) include a brief summary of the alleged violation; (ii) state the recommended corrective action; and (iii) inform the person of the person's options in responding to the notice. The Occupations Code §301.654 states that, not later than the 20th day after the date the person receives the notice under §301.653, the person may accept in writing the Executive Director's determination and recommended corrective action or reject the Executive Director's determination and recommended corrective action. The Occupations Code §301.655(a) states that, if the person accepts the Executive Director's determination and satisfies the recommended corrective action, the case is closed. The Occupations Code §301.655(b) states that, if the person does not accept the Executive Director's determination and recommended corrective action as originally proposed or as modified by the Board or fails to respond in a timely manner to the Executive Director's notice as provided by §301.654, the Executive Director shall terminate proceedings under Subchapter N and dispose of the matter as a complaint under Subchapter J. The Occupations Code §301.656 states that the Executive Director shall report periodically to the Board on the corrective actions imposed under Subchapter N, including: (i) the number of corrective actions imposed; (ii) the types of violations for which corrective actions were imposed; and (iii) whether affected nurses accepted the corrective actions. The Occupations Code §301.657(a) states that, except to the extent provided by §301.657, a person's acceptance of a corrective action under Subchapter N does not constitute an admission of a violation but does constitute a plea of nolo contendere. The Occupations Code §301.657(b) provides that the Board may treat a person's acceptance of corrective action as an admission of a violation if the Board imposes a sanction on the person for a subsequent violation of Chapter 301 or a rule or order adopted under Chapter 301. The Occupations Code §301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (1) perform its duties and conduct proceedings before the Board; (2) regulate the practice of professional nursing and vocational nursing; (3) establish standards of professional conduct for license holders Chapter 301; and (4) determine whether an act constitutes the practice of professional nursing or vocational nursing.

§213.32. Corrective Action Proceedings and Schedule of Administrative Fines [~~Fine(s)~~].

A corrective action may be imposed by the Board as specified in the following circumstances.

(1) For purposes of this section only, *corrective action* has the meaning assigned by the Occupations Code §301.651. A corrective action imposed under this section is not a disciplinary action under the Occupations Code Chapter 301, Subchapter J.

(2) Pursuant to the Occupations Code §301.652, the Board may impose a corrective action for the first occurrence of each of the following violations:

(A) practice on a delinquent license for more than six months but less than one year;

(B) failure to comply with continuing competency requirements;

(C) failure to assure licensure/credentials of personnel for whom the nurse is administratively responsible;

(D) failure to provide employers, potential employers, or the Board with complete and accurate answers to either oral or written questions on subject matters including, but not limited to: employment history, licensure history, and criminal history;

(E) failure to comply with Board requirements for change of name/address; and

(F) failure to develop, maintain, and implement a peer review plan according to statutory peer review requirements.

(3) An individual will not be eligible for a corrective action if the individual has committed more than one of the violations listed in paragraph (2) of this section. If a fine is imposed by the Board as part of a corrective action under paragraph (2) of this section, the amount of the fine shall be $500.

(4) The opportunity to enter into an agreed corrective action order is at the sole discretion of the Executive Director and is not available as a result of a contested case proceeding conducted pursuant to the Government Code Chapter 2001. [~~In disciplinary matters, the Board may assess a monetary penalty or fine in the circumstances and amounts as described.~~]

(5) [~~(1)~~] A fine, [~~The following violations may be appropriate for disposition by fine,~~] with or without remedial education [~~educational~~] stipulations, may be imposed in a disciplinary matter for the following violations in the following amounts:

(A) practice on a delinquent license for more than six months but less than two years:

(i) first occurrence: $250;

(ii) subsequent occurrence: $500;

(B) practice on a delinquent license for two to four years:

(i) first occurrence: $500;

(ii) subsequent occurrence: $1,000;

(C) practice on a delinquent license more than four years: $1,000 plus $250 for each year over four years;

(D) aiding, abetting or permitting a nurse to practice on a delinquent license:

(i) first occurrence: $100 - $500;

(ii) subsequent occurrence: $200 - $1,000;

(E) failure to comply with CE requirements:

(i) first occurrence: $100;

(ii) subsequent occurrence: $250;

(F) failure to comply with mandatory reporting requirements:

(i) first occurrence: $100 - $500;

(ii) subsequent occurrence: $200 - $1,000;

(G) failure to assure licensure/credentials of personnel for whom the nurse is administratively responsible:

(i) first occurrence: $100 - $500;

(ii) subsequent occurrence: $200 - $1,000;

(H) failure to provide employers, potential employers, or the Board with complete and accurate answers to either oral or written questions on subject matters including but not limited to: employment history, licensure history, criminal history:

(i) first occurrence: $200 - $800;

(ii) second occurrence: $500 - $1000;

(I) failure to report unauthorized practice:

(i) first occurrence: $100 - $500;

(ii) subsequent occurrence: $200 - $1,000;

(J) failure to comply with Board requirements for change of name/address:

(i) first occurrence: $100;

(ii) subsequent occurrence: $150;

(K) failure to develop, maintain and implement a peer review plan according to statutory peer review requirements:

(i) first occurrence: $100 - $1,000;

(ii) subsequent occurrence: $500 - $1,000;

(L) failure to file, or cause to be filed, complete, accurate and timely reports required by Board order:

(i) first occurrence: $100;

(ii) subsequent occurrence: $250;

(M) failure to make complete and timely compliance with the terms of any stipulation contained in a Board order:

(i) first occurrence: $100;

(ii) subsequent occurrence: $250;

(N) failure to report patient abuse to the appropriate authority of the State of Texas, including but not limited to, providing inaccurate or incomplete information when requested from said authorities:

(i) first occurrence: $500;

(ii) second occurrence: $1000 - $5000; and

(O) other non-compliance with the NPA, Board rules or orders which does not involve fraud, deceit, dishonesty, intentional disregard of the NPA, Board rules, Board orders, harm or substantial risk of harm to patients, clients or the public:

(i) first occurrence: $100 - $500;

(ii) subsequent occurrence: $200 - $1,000.

(6) [~~(2)~~] The following violations may be appropriate for disposition by fine in conjunction with one or more of the penalties/sanctions contained elsewhere [~~listed~~] in the Board's [~~these~~] rules:

(A) violations other than those listed in paragraphs (2) and (5) [~~paragraph (1)(A) - (N)~~] of this section:

(i) first occurrence: $100 - $1,000;

(ii) subsequent occurrence: $200 - $1,000; and

(B) a cluster of violations listed in paragraphs (2) and (5) [~~paragraph (1)(A) - (O)~~] of this section: $100 - $5,000.

[~~(3) Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty or fine.~~]

(7) [~~(4)~~] The executive director is authorized to dispose of violations listed in paragraphs (2) and (5) [~~paragraph (1)(A) - (O)~~] of this section[~~, by fine, or by a combination of fine and stipulations for education, which shall be effective~~] without ratification by the Board. The executive director shall report such cases to the Board at its regular meetings.

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

Filed with the Office of the Secretary of State on August 25, 2009.

TRD-200903759
James W. Johnston
General Counsel
Texas Board of Nursing
Effective Date: September 1, 2009
Expiration Date: December 29, 2009
For further information, please call: (512) 305-6811

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PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 537. PROFESSIONAL AGREEMENTS AND STANDARD CONTRACTS

22 TAC §537.30, §537.31

The Texas Real Estate Commission (TREC) adopts on an emergency basis amendments to §537.30, Standard Contract Form TREC No. 23-8 (New Home Contract (Incomplete Construction)) and §537.31, Standard Contract Form TREC No. 24-8 (New Home Contract (Complete Construction). The amendments are adopted on an emergency basis to eliminate from the new home contracts provisions required by the Texas Residential Construction Commission Act (Title 16 of the Texas Property Code) that will not be appropriate after the September 1, 2009, expiration of the Act. In §537.30 and §537.31, Standard Contract Forms TREC Nos. 23-8 and 24-8 are amended to delete from Paragraph 22 the references to the Addendum Containing Required Notices Under §§5.016, 420.001 and 420.002, Texas Property Code.

The emergency amendments are adopted under Texas Occupations Code, §1101.155, which authorizes the Texas Real Estate Commission to adopt rules in the public's best interest that require license holders to use contract forms prepared by the Texas Real Estate Broker-Lawyer Committee and adopted by the commission.

The statute affected by this emergency rule is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the amendments.

§537.30. Standard Contract Form TREC No. 23-9 [8].

The Texas Real Estate Commission adopts by reference standard contract form TREC No. 23-9 [8] approved by the Texas Real Estate Commission in 2009 [2008] for use in the sale of a new home where construction is incomplete. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.state.tx.us.

§537.31. Standard Contract Form TREC No. 24-9 [8].

The Texas Real Estate Commission adopts by reference standard contract form TREC No. 24-9 [8] approved by the Texas Real Estate Commission in 2009 [2008] for use in the sale of a new home where construction is completed. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.state.tx.us.

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

Filed with the Office of the Secretary of State on August 28, 2009.

TRD-200903818
Devon V. Bijansky
Assistant General Counsel
Texas Real Estate Commission
Effective Date: September 1, 2009
Expiration Date: December 29, 2009
For further information, please call: (512) 465-3926

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22 TAC §537.50

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

The Texas Real Estate Commission (TREC) adopts on an emergency basis the repeal of §537.50, Standard Contract Form TREC No. 43-0 (Addendum Containing Required Notices under §§5.016, 420.001 and 420.002, Texas Property Code). The repeal is adopted on an emergency basis to eliminate an addendum for new home contracts required by the Texas Residential Construction Commission Act (Title 16 of the Texas Property Code) that will not be appropriate after the September 1, 2009, expiration of the Act. The repeal of §537.50, Standard Contract Form TREC No. 43-0, repeals the Addendum Containing Required Notices Under §§5.016, 420.001 and 420.002, Texas Property Code, which will no longer be required to be provided to buyers of new homes.

The emergency repeal is adopted under Texas Occupations Code, §1101.155, which authorizes the Texas Real Estate Commission to adopt rules in the public's best interest that require license holders to use contract forms prepared by the Texas Real Estate Broker-Lawyer Committee and adopted by the commission.

The statute affected by this emergency repeal is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the repeal.

§537.50. Standard Contract Form TREC No. 43-0.

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

Filed with the Office of the Secretary of State on August 28, 2009.

TRD-200903799
Devon V. Bijansky
Assistant General Counsel
Texas Real Estate Commission
Effective Date: September 1, 2009
Expiration Date: December 29, 2009
For further information, please call: (512) 465-3926

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION

DIVISION 10. IMPLEMENTATION OF HOUSE BILL 4409

28 TAC §§5.4902 - 5.4908

The Commissioner of Insurance adopts on an emergency basis, to take immediate effect, §§5.4902 - 5.4908 implementing the requirements of HB 4409, 81st Legislature, 2009, Regular Session, relating to the Texas Windstorm Insurance Association's (Association) plan of operation concerning declinations of coverage, flood insurance, minimum retained premium, continua-

tion of coverage for persons under the pre-existing certificate of compliance approval program, a certificate of compliance transition program, and the definition of the terms *alter* and *alteration.* Each of these sections affect a person's ability to obtain Association windstorm and hail insurance coverage (insurance coverage).

These sections are necessary to provide applicants, policyholders, the Association, and other interested persons with requirements and procedures necessary for persons to secure Association insurance coverage and to conform the Association's current plan of operation set forth in §5.4001 of this title (relating to Plan of Operation) with Chapter 2210 as amended by HB 4409. The Association offers insurance coverage in the designated catastrophe area, which consists of the 14 Texas coastal counties and parts of Harris County. The catastrophe area is underserved for insurance coverage. Persons seeking insurance coverage from the Association are unable to obtain comparable insurance coverage in the voluntary insurance market. Thus, persons who obtain coverage from the Association have few, if any, other sources from which they may obtain insurance coverage. Therefore, the ability to obtain insurance coverage from the Association has a direct effect on the welfare of persons living and working in the designated catastrophe area, and the possible inability of such persons to obtain insurance coverage places them in imminent financial peril.

The legislature has found that the provision of windstorm and hail insurance is necessary for the economic welfare of the state. The legislature further determined that without that insurance, the orderly growth and development of the state would be severely impeded. Thus, the adoption of these rules will affect the economic welfare of the state and the orderly development of the state.

The Association is created by the legislature and may only engage in those activities the legislature has authorized. The Association's primary activity is writing insurance coverage on eligible structures. Insurance coverage eligibility requirements were substantially amended by HB 4409. The amended requirements must be included in the Association's plan of operation, and either amend existing plan of operation requirements or are in addition to the existing plan of operation. Compliance with these requirements as expressed in statute is essential for persons to be assured that they may obtain insurance coverage through the Association.

Thus, it is necessary to amend the plan of operation to address the declination requirement set forth in the Insurance Code §2210.202; the flood insurance requirement set forth in the Insurance Code §2210.203; the minimum retained premium requirement set forth in the Insurance Code §2210.204; the certificate of compliance waiver requirement set forth in the Insurance Code §2210.251(f); the availability of a transitional approval program as authorized in the Insurance Code §2210.251(a); and the definition of the terms alter and alteration as required in the Insurance Code §2210.008. Further, the minimum retained premium is a significant legislative requirement affecting the cost of insurance coverage for Association policyholders. Establishing this requirement in the plan of operation, including the methods of paying the required minimum retained premium and the exceptions thereto may be a determining factor as to whether many persons may be able to obtain Association insurance coverage. Undue delay in adopting these amendments to the plan of operation may result in the possible inability of persons living and working in the designated catastrophe area to obtain Association insurance coverage, placing those persons in imminent financial peril and may affect the orderly development and the economic welfare of the state.

Additionally, because §§5.4902 - 5.4908 are necessary to conform the Association's current plan of operation with the requirements in the Insurance Code Chapter 2210 as amended by HB 4409, particularly as these requirements relate to eligibility for Association insurance coverage, these rules are essential for persons in the designated catastrophe area when making decisions concerning their insurance requirements and their ability to obtain insurance coverage as of September 1, 2009 and in the future. These requirements are the provisions in HB 4409 which became effective on June 19, 2009. Failure to conform the plan of operation to the requirements in the Insurance Code Chapter 2210, as amended, may cause persons to make decisions that they otherwise would not have made if they had been provided with additional information. The possibility that these decisions could limit the ability of such persons to obtain insurance coverage places them in imminent financial peril and may affect the orderly development and the economic welfare of the state.

Further, the legislature has directed the Texas Department of Insurance (Department) to implement these rules on an emergency basis. Section 46 of HB 4409 indicates the legislative intent for adopting these rules prior to the appointment and seating of the Association's new board of directors (board) by instructing the Department to adopt rules required by Chapter 2210 as soon as possible, but not later than 30 days after the effective date of HB 4409. HB 4409 was effective June 19, 2009 for all adopted sections, except for §5.4906 and §5.4907, which are effective September 1, 2009. The Department does not consider the 30-day rule adoption requirement to create a prohibition on adopting rules after that period. Such a reading would be unreasonable because it would be inconsistent with Insurance Code §2210.008(b) (Commissioner may adopt reasonable and necessary rules); §2210.151 (Commissioner shall adopt the plan of operation by rule); and §36.001 (the Commissioner may adopt necessary and appropriate rules). Nor does the Department interpret the 30-day requirement to be a prohibition against adopting emergency rules after that date. The imminent need for rules to implement HB 4409 to protect the welfare of coastal residents and businesses did not expire in July, 2009. The need to obtain coverage exists before a catastrophic hurricane or other windstorm event occurs. Further, there is no penalty provided for failure to comply with the 30-day requirement. Therefore it is reasonable to consider that the 30-day requirement is a directive to adopt emergency rules under Government Code §2001.034. The legislative requirement is to adopt those rules as soon as possible. Consistent with this requirement, the Department has determined that it was necessary to obtain input concerning the adopted sections from various stakeholders, including legislative offices, the Association, coastal policyholder representatives, and insurers. This process was intended to reduce potential unintended consequences in the emergency rules. Additional emergency rules may follow this adoption as necessary.

Formal rule proposals subject to notice, public comment, and an opportunity for public hearing, will follow this emergency adoption. Future proposals may address the requirements stated herein and additional matters necessary to implement HB 4409. Further, HB 4409 directs the Association's board of directors to propose to the Commissioner amendments to the Association's plan of operation on or before March 1, 2010. The board's pro-

posed amendments would then be proposed as a rule subject to notice, public comment, and an opportunity for public hearing.

Based on the foregoing facts, the Commissioner has determined that to ensure that persons in the catastrophe area will be able to continue to obtain Association insurance coverage, the Association's existing plan of operation must be amended to conform with the Insurance Code Chapter 2210 as amended by HB 4409. Additionally, the Commissioner has determined that it is necessary to adopt as rules §§5.4902 - 5.4908 to amend the Association's plan of operation and establish the procedures necessary to conform the Association's existing plan of operation with the Insurance Code Chapter 2210 as amended by HB 4409. Section 46, HB 4409 directs the Commissioner to adopt required rules as soon as possible, but not later than 30 days after the effective date of HB 4409 which is consistent with the requirement for an emergency rule under Government Code §2001.034. Additionally, there is imminent financial peril to the welfare of persons in the designated catastrophe area if they cannot obtain insurance coverage from the Association, a market of last resort, and also an impediment to the economic welfare and the orderly development of the state. Therefore, it is necessary to adopt these sections on an emergency basis.

§5.4902

Section 5.4902(a) establishes that §§5.4902 - 5.4908 are adopted as part of the Association's plan of operation and control in the event of any conflict between those sections and the plan of operation set forth in §5.4001 of this title. Section 5.4902(b) provides that the requirements in §5.4903 and §5.4904 (relating to Declination of Coverage; and Flood Insurance, respectively) are in addition to other plan of operation requirements related to eligibility for coverage.

§5.4903

Section 5.4903 establishes the declination requirement as required by the Insurance Code §2210.202(a). Section 5.4903(a) recites the statutory requirement. The term *insurer authorized* is considered to be the same as the more commonly used term *authorized insurer* and means an insurer operating under a certificate of authority granted by the Department, and not a surplus lines carrier. The term *writing* is defined in §5.4903(b)(2) to mean offering new or renewal coverage.

Section 5.4903(b) defines the declination requirement. As set forth in §2210.202, the declination may either be a refusal to offer new or renewal coverage on the structure or a refusal to offer the basic insurance coverage sought by the applicant that is substantially equivalent to that offered by the Association. Several examples of factors that could be considered in determining substantially equivalent are provided; however, these examples are not exhaustive. Consideration of other potential factors such as affordability have been deferred to a formal rule proceeding.

Section 5.4903(c) addresses the requirement in the Insurance Code §2210.202(b) that the agent have proof of the declination when submitting the application for Association coverage. Under subsection (c), the agent must maintain the proof in written form and provide such proof to the Association if requested. Subsection (c) does not affect the statutory requirement for the Association to require an agent's statement on an application for new or renewal coverage. Finally, §5.4903(a) allows an agent to obtain a declination on behalf of the applicant.

5.4904

Section 5.4904 establishes the flood insurance requirement as required by the Insurance Code §2210.203(a-1). Section 5.4904(a) recites the statutory application requirement. For purposes of this adoption, the requirement applies to construction, alterations, remodeling, and enlargement beginning on and after September 1, 2009. Further, as specified in §5.4904(d), for the purposes of this adoption, the terms "constructed," "altered," "remodeled," and "enlarged" refer only to those activities that require a certificate of compliance to be eligible for Association coverage under the Insurance Code §2210.251 and §2210.258.

The Insurance Code §2210.203(a-1) does not extend the flood insurance requirement to structures being repaired. The Department's definition of repair is currently listed on the Department's website in a document entitled Texas Windstorm Insurance Requirements (TWIA) Insurability Requirements as meaning: *any reconstruction/restoration of an existing structure that is deteriorated or damaged.* This definition was originally adopted by reference as part of the 1998 Building Code for Windstorm Resistant Construction in §5.4008 of this title (relating to Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired or to Which Additions Are Made On and After September 1, 1998, and before February 1, 2003.) Further, this adoption is not intended to change any Department rules related to building code requirements.

Section 5.4904(b) designates the Zone V and other similar zones where the Association is prohibited from writing insurance coverage unless either the applicant has flood insurance or flood insurance is unavailable from the National Flood Insurance Program (NFIP). Each of these zones is designated by the NFIP as having an additional hazard of either storm-induced waves (Zone V) or storm-induced velocity wave action. Agents, applicants, and the Association may determine whether or not a structure is located within a specific zone by entering the address of the structure into the NFIP's website.

Section 5.4904(c) sets forth the amount of flood insurance that is required for a particular structure. This amount of coverage is necessary based on a determination that a structure in such zones is subject to significant flood damage. The amount is not set as being equal to Association coverage due to factors such as the available NFIP limits and inflation adjustments that might affect overall valuation of the structure. Additionally, the Department recognizes that flood insurance coverage may in certain cases be limited to actual cash value. Finally, as addressed in §5.4904(k), this requirement does not apply to movable property on or above the third floor of a structure. This requirement may be modified during additional rule proceedings related to the Association's plan of operation.

Section 5.4904(g), (h) and (j) address agent responsibilities concerning the flood insurance requirement as required by the Insurance Code §2210.202(b) and §2210.203(a-1). Section 2210.202(b) requires that the agent have proof of flood insurance coverage when submitting the application for Association coverage. Under subsection (h), the agent must maintain the proof in written form and provide such proof to the Association if requested. Thus, before the agent may submit application for Association coverage on a structure required to have flood insurance under the Insurance Code §2210.203(a-1) and §5.4904, the agent must first obtain this proof either from the agent's own work product, the applicant, or another agent. Finally, the Insurance Code §2210.203(a-1) requires that each agent soliciting Association insurance coverage in an area designated

by the Commissioner under that subsection must offer flood insurance coverage. This requirement is restated in §5.4904(j).

Future formal rule proceedings may also consider other matters related to this requirement such as the consequences of failing to maintain flood insurance.

§5.4905

Section 5.4905 establishes the minimum retained premium required by Insurance Code §2210.204(e). The statute requires the minimum retained premium be for a period of not less than 180 days. Section 2210.204 requires that at least 180 days of premium be earned upon the effective date of coverage. Section 5.4905(a) establishes that the minimum retained premium will be the greater of the premium amount equal to 180 days or $100.00. The $100.00 amount is the Association's current minimum earned premium. The minimum retained premium will be considered earned premium; however, as provided in §5.4905(f), coverage for this period will not be extended beyond the effective cancellation date. The minimum retained premium of $100 applies to those situations described in §5.4905(b).

Questions and concerns have arisen regarding this statutory requirement because the 180-day minimum premium could create an exceptionally high bar to certain persons seeking to obtain Association insurance coverage, but who need to obtain premium financing. Requiring the Association to withhold a full minimum premium would require persons financing premium to make a deposit in excess of 50% of the annual premium. This contrasts with current financing practices that may require considerably less of a deposit than 50% or more of the annual premium. A deposit of 50% or more of the annual premium may create an undue hardship for many persons.

The Department believes the intent of the amendment to Insurance Code §2210.204 was not to adversely affect persons with limited financial resources but rather to limit persons from simply buying coverage only when a storm appeared to be entering the Gulf of Mexico. Such purchases are adverse to the Association's rate structure and premium collections which attempt to spread the cost of insurance coverage over the entire year even though the risk is concentrated primarily during hurricane season.

Thus, §5.4905(c) provides that if a person who finances an Association policy has not previously canceled an Association policy after the effective date of this section, the Association shall refund the premium pro-rata in excess of $100 to the premium finance company if the policy is canceled within 180 days of its effective date. Except for those cancellations resulting from the exceptions set forth in §5.4905(b), the person would still owe the remainder of the 180-day minimum retained premium to the Association and would be ineligible to purchase future insurance coverage from the Association until the balance of the 180-day amount is paid. Additionally, on such future policies, the Association would no longer make a pro rata refund to a premium finance company in the manner described in §5.4905(c)(1).

Finally, because implementing this section may require modifications to the Association's policy forms, the implementation period is delayed.

§5.4906

Section 5.4906 sets forth how the Insurance Code §2210.251(f) will apply to persons who have obtained Association insurance coverage pursuant to the approval program initiated on April 12, 2006. The lapse provision in §5.4906(2) is meant to address those situations where a person intends to continue coverage, but for some reason a gap in coverage exists.

§5.4907

Section 5.4907 extends coverage to those persons who are not insured by the Association as of September 1, 2009, but are otherwise similarly situated. The purpose of §5.4907 is to begin the process of creating a transition plan to enable insurance coverage eligibility for these persons between September 1, 2009 and August 31, 2011.

§5.4908

Section 5.4908 defines the terms *alter* and *alteration* for the purposes of the Insurance Code Chapter 2210 as required in the Insurance Code §2210.008(c). The definition provided is the same as that currently provided on the Department's website in a document entitled Texas Windstorm Insurance Requirements (TWIA) Insurability Requirements. This definition was originally adopted by reference as part of the 1998 Building Code for Windstorm Resistant Construction in §5.4008 of this title. Because this definition is already in use, this section is not anticipated to result in any change to current Department rules or procedures.

STATUTORY AUTHORITY. Sections 5.4902 - 5.4908 are adopted on an emergency basis under the Government Code §2001.034 and the Insurance Code §§2210.008, 2210.151, 2210.202 - 2210.204, 2210.251 and 36.001 and Section 46, HB 4409, 81st Legislature, 2009, Regular Session. The Insurance Code §2210.008(b) authorizes the Commissioner to adopt reasonable and necessary rules in the manner prescribed in Subchapter A, Chapter 36, Insurance Code. The Insurance Code §2210.152 authorizes the Commissioner to adopt the Association's plan of operation by rule. The Insurance Code §2210.202(a) requires that a declination be defined in the Association's plan of operation. The Insurance Code §2210.202(b) requires the agent to possess proof of the declination described by §2201.202(a) and proof of flood insurance coverage or unavailability of that coverage as described by §2210.203(a-1). The Insurance Code §2210.203(a-1) requires the purchase of flood insurance in a Zone V area and other similar areas designated by the Commissioner under that section. The Insurance Code §2210.204(d) and (e) require that the minimum retained premium be set forth in the plan of operation and that the plan of operation specify events that reflect a significant change in the exposure or the policyholder concerning the insured property that would be exemptions from the minimum retained premium requirement. The Insurance Code §2210.251(a) authorizes the plan of operation to include an approval program for determining whether a structure is eligible for Association insurance coverage. The Insurance Code §2210.251(f) establishes that structures insured by the Association as of September 1, 2009, may continue to be considered insurable property notwithstanding the requirements of §2210.251. The Insurance Code §36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of the state. Section 46 of HB 4409, directs the Commissioner to adopt rules required by Chapter 2210 as soon as possible but not later than the 30th day after the effective date of HB 4409. The Government Code §2001.034 authorizes a state agency to adopt administrative rules on an emergency basis without prior notice and hearing under certain statutorily specified circumstances, including a finding that there is imminent peril to the public health, safety, or welfare.

§5.4902. Additional requirements.

(a) This section and §§5.4903 - 5.4908 of this title (relating to Declination of Coverage; Flood Insurance, Minimum Retained Premium, Certificate of Compliance Waiver Program, Certificate of Compliance Transition Program, and Alter and Alteration, respectively) shall be considered to be a part of the Texas Windstorm Insurance Association's (Association) plan of operation. These sections shall control over any conflicting provision in §5.4001 of this title (relating to Plan of Operation).

(b) In addition to the requirements set forth in §5.4001, including §5.4001(d)(2)(E), prior to the issuance of an Association policy on insurable property, the Association must have an application for a new or renewal Association policy that contains a statement that the agent possesses proof of:

(1) a declination of coverage from an authorized insurer writing windstorm and hail insurance as provided in §5.4903; and

(2) if applicable, flood insurance that was obtained for the property to be insured as provided for in §5.4904 or the unavailability of flood insurance for such property.

§5.4903. Declination of Coverage.

(a) To be eligible to obtain new or renewal windstorm and hail insurance coverage from the Texas Windstorm Insurance Association (Association) an applicant or applicant's agent must have received at least one declination of coverage for the property to be insured by the Association from an insurer authorized to engage in the business of, and writing, property insurance providing windstorm and hail insurance coverage in the first tier coastal counties.

(b) The following terms shall have the following meanings:

(1) "Declination" means:

(A) a refusal to offer or a refusal to renew coverage for the perils of windstorm and hail from an authorized insurer; or

(B) an offer of a policy that includes coverage for the perils of windstorm and hail that is not substantially equivalent to the coverage offered by the Association. A policy is not substantially equivalent to an Association policy if the policy that is being offered does not provide the basic coverage(s) that the applicant is seeking. For example, a policy is not substantially equivalent if the policy pays for damage to covered property on an actual cash value basis compared to an Association policy that pays for damage to covered property on a replacement cost basis or a policy that has a minimum windstorm and hail deductible that is in excess of the deductible the applicant is seeking and that is available through the Association.

(2) "Writing" shall mean offering new or renewal coverage.

(c) An agent shall maintain and submit, at the request of the Association, written documentation that indicates proof of the declination required under subsection (a) of this section.

§5.4904. Flood Insurance.

(a) This section applies to a structure constructed, altered, remodeled, or enlarged on or after September 1, 2009 that is located within the catastrophe area as designated pursuant to Insurance Code §2210.005. This section does not apply to the repair of a structure.

(b) The Texas Windstorm Insurance Association (Association) may not issue or renew a policy unless evidence is shown that a flood insurance policy is in effect for the insurable property if:

(1) all or any part of the insurable property is located in any of the following zones designated by the National Flood Insurance Program (NFIP):

(A) Zone V,

(B) Zone VE, and

(C) Zone V1 - V30; and

(2) flood insurance is available from the NFIP.

(c) The flood insurance policy must provide the following coverage:

(1) if replacement cost coverage is available through the NFIP for the property to be insured by the Association, the flood insurance policy must provide coverage for the property in an amount at least equal to the lesser of:

(A) ninety percent of the amount of insurance for the property insured under the Association policy, or

(B) the maximum coverage amount available under the NFIP for the property, or

(2) if replacement cost coverage is not available through the NFIP for the property to be insured by the Association, the flood insurance policy must provide coverage for the property in an amount at least equal to the lesser of:

(A) ninety percent of the actual cash value for the property, or

(B) the maximum coverage amount available under the NFIP for the property. Actual cash value under this subsection means the replacement cost of an insured property at the time of loss, less the value of physical depreciation for the property.

(d) In this section, the terms "constructed", "altered", "remodeled", and "enlarged" refer to any building activity or action on a structure that would require the insured or applicant to obtain a certificate of compliance under Insurance Code §2210.251 and §2210.258, prior to the structure being considered to be an insurable property eligible for insurance coverage from the Association.

(e) For purposes of this section, a flood insurance policy is considered to be in effect upon application and presentment of payment of the premium for the flood insurance policy to the NFIP or a participating "write your own company" regardless of any applicable waiting period that may apply to the flood insurance policy.

(f) A refusal by the NFIP or a participating "write your own company" to insure the insurable property shall be considered evidence that flood insurance is not available.

(g) For each new or renewal application on insurable property subject to this section, the agent shall provide confirmation to the Association that the agent has the information required under subsection (h) of this section.

(h) The agent shall maintain and at the request of the Association, submit written documentation demonstrating compliance with this section. Acceptable documentation may include a copy of the flood insurance policy declarations page, a copy of the flood insurance policy, or evidence that the flood insurance was not available. The Association may specify in its underwriting standards and post on its website additional documentation that constitutes evidence of a flood insurance policy being in effect.

(i) Flood insurance must be maintained throughout the entire period the Association policy is in effect.

(j) Each agent offering or selling a Texas windstorm and hail insurance policy in a portion of the designated catastrophe area subject to this section must offer NFIP flood insurance coverage to the prospective insured if that coverage is available.

(k) This section does not apply to corporeal movable property located on or above the third floor of a structure.

§5.4905. Minimum Retained Premium.

(a) Except as provided in this section, the minimum retained premium on a Texas Windstorm Insurance Association (Association) policy issued on an annual basis shall be the premium amount equal to the greater of 180 days of the annual policy term or $100.00. The minimum retained premium shall be fully earned on the effective date of the policy. Unearned premium in excess of the minimum retained premium set forth in this subsection shall be refunded pro-rata.

(b) An Association policy canceled due to the reasons specified in paragraphs (1) - (4) of this subsection is subject to a $100.00 minimum retained premium. The minimum retained premium shall be fully earned on the effective date of the policy. Unearned premium in excess of the minimum retained premium set forth in this subsection shall be refunded pro-rata.

(1) A change in majority ownership of the insured property, including sale of the insured property to an unrelated party, or foreclosure of the property insured in the Association policy;

(2) the replacement of the Association policy with other similar coverage in the voluntary market;

(3) the removal of the item(s) insured under an Association policy due to a total loss of the item(s), including demolition of the item(s); or

(4) the death of the policyholder.

(c) An Association policy that is canceled and that the premium is financed through a person authorized to finance premiums under the Insurance Code Chapter 651 is subject to the following:

(1) A $100.00 minimum retained premium applies, except as provided for in paragraph (3) of this subsection. The $100.00 minimum retained premium is fully earned on the effective date of the policy. The unearned premium in excess of the $100.00 minimum retained premium shall be refunded to the premium finance company on a pro-rata basis.

(2) Except as provided for under subsection (b) of this section, the named insured shall owe to the Association the unpaid balance of the minimum retained premium under subsection (a) of this section that is in excess of $100.00 and shall not be eligible for coverage until the balance is paid.

(3) Subsection (a) of this section applies to an Association policy that the premium is financed for a person that was insured under a prior Association policy effective on or after the effective date of this section and the premium for such policy was financed and the policy was canceled within 180 days of the effective date of the policy.

(d) The Association shall maintain a list of all persons that are subject to subsection (c)(2) of this section. The list may only be shared with persons authorized by the department to engage in the business of premium finance under the Insurance Code Chapter 651 and the department. A person may be removed from the list if on petition by the person to the Association, the Association determines that the cancellation resulted due to one or more of the events set forth in subsection (b) of this section.

(e) The Association shall not issue a new or renewal policy to an applicant who is indebted to the Association on a prior Association policy.

(f) The minimum retained premium shall not create or extend coverage beyond the policy's effective cancellation date. A person making a payment on a balance due as provided under subsection (e) of this section shall not be entitled to any additional coverage beyond the policy's effective cancellation date.

(g) This rule does not address or affect any requirement under statute or rule concerning the qualifications or licensure of persons engaging in the business of premium finance.

(h) This section applies to each Association policy that is issued or renewed on or after November 1, 2009.

§5.4906. Certificate of Compliance Approval Program.

This section applies to each residential structure insured by the Texas Windstorm Insurance Association (Association) under a policy in effect as of 12:01 a.m., September 1, 2009 that was issued in accordance with the approval program initiated April 12, 2006. For the purposes of this section, a residential structure will be considered insured by the Association if as of 12:01 a.m., September 1, 2009 there was a lapse in coverage on the structure and the lapse in coverage was for a period of less than 30 days. An insured may continue to obtain insurance through the Association for that structure subject to the following requirements:

(1) the insured must comply with:

(A) the mandatory building code requirement under Insurance Code §2210.258, effective June 19, 2009;

(B) the declination requirement under Insurance Code §2210.202 and §5.4902 and §5.4903 of this title (relating to Additional Requirements and Declinations, respectively);

(C) If applicable, the flood insurance requirement under Insurance Code §2210.203 and §5.4902 and §5.4904 of this title (relating to Flood Insurance); and

(D) all other Association underwriting requirements, including maintaining the structure in an insurable condition and payment of premium.

(2) there may not be a lapse in coverage on the structure for a period of 30 days or more. If coverage for the structure lapses for a period of 30 days or more, the insured will be required to demonstrate that the structure has been inspected and issued a certificate of compliance under the applicable building code in accordance with Insurance Code §2210.251 and §2210.258 in order to obtain coverage from the Association.

§5.4907. Certificate of Compliance Transition Program.

(a) Except as provided in §5.4906 of this title (relating to Certificate of Compliance Waiver Program) after 12:01 a.m. September 1, 2009 and until expiration of this section, an applicant may obtain insurance through the Texas Windstorm Insurance Association (Association) for a residential structure without a certificate of compliance if:

(1) within the twelve-month period prior to the date of application for Association coverage, the structure has been insured on an annual basis under a property policy that included windstorm and hail coverage;

(2) the insurer that underwrote the policy on the structure:

(A) discontinues providing windstorm and hail insurance under the policy; or

(B) the insurer that underwrote the policy on the structure discontinues providing residential property insurance in the portion of the catastrophe area where the structure is located; and

(3) the applicant complies with:

(A) the mandatory building code requirement under Insurance Code §2210.258, effective June 19, 2009;

(B) the declination requirement under Insurance Code §2210.202 and §5.4902 and §5.4903 of this title;

(C) if applicable, the flood insurance requirement under Insurance Code §2210.203 and §5.4902 and §5.4904 of this title (relating to Flood Insurance); and

(D) all other Association underwriting requirements, including maintaining the structure in an insurable condition and payment of premium.

(b) Coverage issued under this section that expires prior to the expiration of this section, may be renewed one time during the duration of the transition program provided the policyholder complies with all statutory requirements and Association underwriting standards as provided in subsection (a)(3) of this section.

(c) This section expires on August 31, 2011. No person may obtain insurance through the Association under the certificate of compliance transition program described in this section after that date.

§5.4908. Alter and Alteration.

For the purposes of Insurance Code Chapter 2210, the term "alter" and "alteration" shall mean any modification that physically changes the exterior of a structure without increasing the square footage of area of the structure.

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

Filed with the Office of the Secretary of State on August 31, 2009.

TRD-200903842
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Effective Date: August 31, 2009
Expiration Date: December 28, 2009
For further information, please call: (512) 463-6327

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 3. TEXAS YOUTH COMMISSION

CHAPTER 91. PROGRAM SERVICES
SUBCHAPTER D. HEALTH CARE SERVICES

Texas Youth Commission (the commission) adopts on an emergency basis the repeal of §91.87 (concerning suicide alert explanation of terms), §91.88 (concerning suicide alert for secure programs), §91.89 (concerning suicide alert for non-secure programs), and §91.90 (concerning suicide alert for parole). TYC also adopts on an emergency basis new §91.87 (concerning suicide alert definitions), §91.88 (concerning suicide alert for high restriction facilities), §91.89 (concerning suicide alert for medium restriction facilities), and §91.90 (concerning suicide prevention for parole).

The repeal of §§91.87 - 91.90 will allow for new rules to be published in their place.

New §91.87 will establish definitions of terms used in TYC's suicide prevention policies.

New §91.88 will establish the process for suicide prevention by identification, assessment, treatment, and protection of youth that may be at risk for suicide at the orientation and assessment units and other high restriction facilities.

New §91.89 will establish the process for suicide prevention at medium restriction facilities by identification, assessment, treatment, and protection of youth that may be at risk for suicide.

New §91.90 will establish responsibilities for providing suicide prevention resources for youth on parole.

The repealed and new rules are adopted on an emergency basis to ensure that youth who may be at risk for suicide are immediately and appropriately identified, monitored, treated, and housed. The new rules establish a more comprehensive suicide screening process, require more frequent assessments by mental health professionals for at-risk youth, and enhance monitoring procedures for direct care staff. The new rules also provide for the monitoring and treatment of potentially suicidal youth in their regular program whenever possible, rather than routine use of temporary confinement in security units. The commission believes that these changes should be implemented without delay in order to provide enhanced protections against self-harm and suicide for the youth in its care.

37 TAC §§91.87 - 91.90

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

The repeals are adopted on an emergency basis under Human Resources Code §61.034, which provides the commission with the authority to make rules appropriate to the proper accomplishment of its functions.

§91.87. Suicide Alert Explanation of Terms.

§91.88. Suicide Alert for Secure Programs.

§91.89. Suicide Alert for Non-Secure Programs.

§91.90. Suicide Alert for Parole.

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

Filed with the Office of the Secretary of State on August 31, 2009.

TRD-200903847
Cheryln K. Townsend
Executive Commissioner
Texas Youth Commission
Effective Date: August 31, 2009
Expiration Date: December 28, 2009
For further information, please call: (512) 424-6014

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37 TAC §§91.87 - 91.90

The new rules are adopted on an emergency basis under Human Resources Code §61.034, which provides the commission with the authority to make rules appropriate to the proper accomplishment of its functions. The new rules are also adopted under §61.075, which provides the commission with the authority to order a committed child's confinement under conditions it

believes best designed for the child's welfare and the interests of the public, as well as §61.076, which provides the commission with the responsibility to provide any medical or psychiatric treatment that is necessary.

§91.87. Suicide Alert Definitions.

(a) Purpose. The purpose of this rule is to establish definitions of terms used in the Texas Youth Commission's (TYC) suicide prevention policies as established by §§91.88, 91.89, and 91.90 of this title.

(b) Definitions.

(1) Constant Motion Check--a type of room check in which a staff member walks through the housing unit in an irregular pattern at random intervals to prevent youth from "timing" room checks. Constant motion checks are to be performed in addition to regular room checks and documented on the regular room check log.

(2) Critical Incident Review Committee--a multidisciplinary review team convened to critically review the circumstances surrounding a death or serious incident.

(3) Critical Incident Support Team--a team used to provide support to youth, employees, and families involved in or adversely affected by the death of a TYC youth or staff member.

(4) Designated Mental Health Professional (DMHP)--a doctoral level psychologist who has primary responsibility and accountability for the evaluation, monitoring, and treatment of youth referred for suicide risk in high restriction facilities. In the absence of a doctoral level psychologist due to position vacancy, an MHP may be appointed to serve as the acting DMHP with the approval of the central office division director over treatment services.

(5) Mental Health Professional (MHP)--a doctoral level psychologist, masters level associate psychologist, licensed professional counselor, or a licensed clinical social worker.

(6) Morbidity and Mortality Review--an assessment of the overall clinical care provided and the circumstances leading up to a life-threatening suicide attempt or death. Its purpose is to identify program strengths and opportunities for improvement in clinical care and/or system policies and procedures.

(7) Protective Custody--a temporary program in high restriction facilities designed for the placement of youth who cannot be safely managed in the current dorm/living unit due to risk of self-harm, as determined by an MHP after a face-to-face assessment.

(8) Psychiatric Provider--a psychiatrist or psychiatric midlevel practitioner licensed to practice in the state of Texas.

(9) Rescue Kit--an emergency medical treatment kit carried by designated employees or placed in designated secure locations that contains items such as a CPR pocket mask, latex gloves, and a tool capable of cutting ligatures.

(10) Suicidal Behavior--includes suicide attempts, suicidal gestures, intentional self-injurious behavior, or development of a plan or strategy for committing suicide. Suicidal behavior generally involves some overt action or clear indication of the development of a specific plan or strategy to injure or kill oneself.

(A) Life Threatening Suicide Attempt--a suicide attempt that a health care professional determines would have resulted in death except for circumstances beyond the youth's control.

(B) Suicide Attempt--an act apparently intended to end one's life. A suicide attempt is a type of suicidal behavior.

(C) Self-Injurious Behavior--behavior that causes harm, such as self-laceration, self-battering, taking overdoses, or exhibiting deliberate recklessness. Self-injurious behavior is considered a type of suicidal behavior for reporting purposes.

(11) Suicidal Ideation--thoughts of engaging in suicide-related behavior. This means a youth expresses thoughts or fantasies about committing suicide or expresses a desire to kill himself/herself, but lacks a specific plan or strategy to carry it out. Suicidal ideation is not considered a type of suicidal behavior for reporting purposes.

(12) Suicide Alert--a status that begins following a face-to-face suicide risk assessment by an MHP indicating that a youth is at risk to attempt suicide or self-injury and is in need of increased supervision.

(13) Suicide Observation Folder--a folder containing suicide observation logs/check sheets and any other pertinent information as determined by an MHP. The staff directly responsible for monitoring the youth will possess the folder at all times while the youth is on suicide alert.

(14) Suicide Observation Level--levels of observation determined by an MHP to provide enhanced supervision for youth who are awaiting a suicide risk assessment or placed on suicide alert. General criteria for determining the appropriate level of observation are provided in subparagraphs (A) - (C) of this paragraph, however the MHP may assign any level of observation deemed appropriate under the circumstances based on his/her clinical judgment.

(A) One-to-One Observation is generally considered appropriate for a youth who is actively suicidal, either by threatening or engaging in self-injury, and who may require emergency psychiatric placement. One-to-one observation includes the following:

(i) Assigned staff may not have any other concurrent duties.

(ii) Assigned staff is within six feet of the youth and maintains continuous, direct visual observation of the youth at all times, including while the youth is in his/her room or while sleeping.

(iii) Assigned staff will document the youth's status at least once every ten minutes.

(iv) Assigned staff must be formally relieved by another staff or by the discontinuation of the 1:1 status.

(v) Doors to individual rooms will remain unlocked, except when a youth presents an imminent danger to staff due to aggressive behavior. Procedures for obtaining approval to lock the door for such behavior are set forth in §97.45 of this title.

(B) Constant Observation is generally considered the appropriate level of observation for a youth who is actively suicidal, either by threatening or engaging in self-injury, but does not appear to require emergency psychiatric placement. Constant observation includes the following:

(i) For youth not placed in a security unit or the Corsicana Stabilization Unit:

(I) During waking hours, youth is within 12 feet and within sight of assigned staff at all times. Staff may have concurrent duties if the duties do not interfere with observation of the youth. The assigned staff will document the youth's status at least once every ten minutes.

(II) During sleeping hours, assigned staff will observe and document youth's status at least once every five minutes and will perform constant motion checks at least once every hour.

(ii) For youth who are placed in a security unit or the Corsicana Stabilization Unit:

(I) Assigned staff will observe and document the youth's status at least once every five minutes and will perform constant motion checks at least once every 30 minutes.

(II) Doors to individual rooms will be locked.

(C) Close Observation is generally considered the appropriate level of observation for a youth who is not actively suicidal and would be considered a lower risk for suicide, but expresses suicidal ideation and/or has a recent history of self-injurious behavior. In addition, close observation would be appropriate for a youth who denies suicidal ideation or does not threaten suicide, but demonstrates other concerning behavior (through actions, current circumstances, or recent history) indicating the potential for self-injury. Close observation includes the following:

(i) Assigned staff will observe and document youth's status at least once every ten minutes and will perform constant motion checks at least once every hour. Staff will generally be involved in concurrent duties that do not interfere with required observation of the youth.

(ii) This level of observation may not be applied to youth who are placed in a security unit or the Corsicana Stabilization Unit.

(15) Suicide Resistant Room--a room which provides a safe environment and has no obvious materials/possessions that can be used in self-injurious behavior or any item which may be used for hanging. The room is free of all obvious protrusions and any items that provide an easy anchoring device for hanging. Lighting is tamper-proof and there are no switches or electrical outlets in the room. The door of the room has a heavy gauge clear panel which allows staff an unobstructed view of the room.

(16) Suicide Risk Assessment--standardized face-to-face assessment by an MHP that contains specific lines of inquiry regarding suicide risk, a mental status examination, and clinical observations and recommendations.

(17) Suicide Risk Screening--a standardized face-to-face interview by an MHP or trained designated staff in consultation with an MHP to determine the appropriate suicide observation level until a suicide risk assessment is conducted.

(18) Trained Designated Staff--staff trained to conduct a suicide risk screening. In TYC programs this will include at a minimum the superintendent, assistant superintendent, administrative duty officer, program specialists, case managers, on-duty supervisor, placement coordinators, principal, and Juvenile Corrections Officer (JCO) V or VI.

§91.88. Suicide Alert for High Restriction Facilities.

(a) Purpose. The purpose of this rule is to establish procedures for suicide prevention by identification, assessment, treatment, and protection of youth that may be at risk for suicide.

(b) Applicability. This rule applies to all youth currently assigned to placement in high restriction facilities operated by the Texas Youth Commission (TYC).

(c) Definitions. Definitions pertaining to this rule are under §91.87 of this title.

(d) General Provisions.

(1) Treatment for youth determined to be at risk for suicide will be provided within the least restrictive environment necessary to ensure safety.

(2) Youth determined to be at risk for suicide will participate in regular programming to the extent possible, as determined by a mental health professional (MHP). Only an MHP may make exceptions to the provision of regular programming, housing placement, or clothing.

(3) Designated staff will carry rescue kits at all times while on duty for use in the event of a medical emergency caused by a suicide attempt. Rescue kits will also be placed in designated buildings or areas of the campus not accessible to youth.

(4) Immediately, not to exceed two hours, TYC staff will notify a youth's parent/guardian after a life-threatening suicide attempt or suicide.

(e) Intake Screening and Assessment.

(1) Upon Initial Admission to TYC.

(A) Upon arrival to a TYC orientation and assessment unit, designated intake staff will keep youth within direct line of sight supervision until the youth is screened or assessed for suicide risk.

(B) Within one hour of the youth's arrival to a TYC orientation and assessment unit, an MHP will conduct an initial mental health screening and document the results on the agency-approved form.

(C) If the youth is identified by the MHP as potentially at-risk for suicide, the youth will immediately be referred for a suicide risk assessment, to be conducted by an MHP within four hours after referral. In the interim, the youth will be on constant observation.

(D) Within 14 days after a youth's arrival at the orientation and assessment unit, all youth will receive a comprehensive mental health evaluation conducted by an MHP. The mental health evaluation will include a suicide risk assessment if one has not already been completed.

(E) The suicide risk assessment will include:

(i) a mental status exam;

(ii) a review of all mental health and medical records submitted from the courts, county juvenile detention facilities, or any other medical or mental health provider, to include any assessments by MHPs relating to prior suicide alerts during confinement;

(iii) a review of all other screenings and assessments that are available; and

(iv) referrals for follow up treatment or further assessment, as indicated.

(F) The designated mental health professional (DMHP) will sign the suicide risk assessment, acknowledging his/her review.

(2) Upon Admission at a Subsequent Placement (Intrasystem Transfers).

(A) Upon arrival of a youth who is not currently on suicide alert, a nurse will complete an intrasystem health screening, including questions relating to suicidal ideation and behavior.

(B) If the youth is identified by the screening as potentially at-risk for suicide, the nurse will make an immediate referral to an MHP for completion of a suicide risk assessment.

(C) An MHP will conduct a suicide risk assessment within:

(i) four hours after the youth's arrival if referred by the nurse; or

(ii) seven calendar days after the youth's arrival for all other youth.

(3) Upon Return to TYC.

(A) Within one hour of a youth's arrival at a high restriction facility following a period of at least 48 hours spent out of TYC's physical custody (e.g., revocation of parole, return from bench warrant), a trained designated staff member or MHP will initiate a suicide risk screening. The youth will be kept within direct line of sight supervision until the youth is screened. If the screening is conducted by a trained designated staff member, he/she will immediately contact an MHP to communicate the results of the screening.

(B) Based on the results of the screening, an MHP will conduct a suicide risk assessment within:

(i) four hours if the MHP determines the youth is actively suicidal;

(ii) 24 hours if the MHP determines the youth does not appear to be actively suicidal but may otherwise be at-risk for suicidal behavior; or

(iii) seven calendar days if the MHP determines the youth does not appear to be at risk for suicide.

(f) Responding to Suicidal Behavior/Ideation.

(1) If any staff member has reason to believe that a youth has demonstrated suicidal behavior or ideation, the employee must:

(A) for medical emergencies, immediately use the rescue kit if appropriate and seek medical attention;

(B) verbally engage the youth;

(C) provide constant observation unless an MHP directs a higher observation level;

(D) begin a suicide observation log to document youth status checks;

(E) immediately notify the on-duty supervisor or the duty officer;

(F) document the notification of the on-duty supervisor or duty officer in the dorm/shift log; and

(G) for suicidal behavior, document the incident on an incident report.

(2) As soon as possible, but no later than one hour after notification, the on-duty supervisor or duty officer will ensure a trained designated staff member or MHP initiates a suicide risk screening. If the screening is conducted by a trained designated staff member, he/she will immediately communicate the results of the screening to the MHP.

(3) An MHP shall conduct a face-to-face suicide risk assessment within:

(A) four hours after the screening if the youth engaged in a suicide attempt or is actively suicidal; or

(B) 24 hours after the screening if the youth did not engage in a suicide attempt and does not appear to be actively suicidal, but engaged in some other type of suicidal behavior or ideation.

(4) The suicide risk assessment will include:

(A) a mental status exam;

(B) a review of the youth's masterfile and medical record, as indicated;

(C) referrals for follow up treatment or further assessment, as indicated;

(D) a determination of whether to place the youth on suicide alert, assignment of an observation level, and designation of appropriate precautions; and

(E) a review of the assessment by the DMHP.

(5) Whenever possible, suicide risk screenings and assessments will be conducted in a suitable environment, free from distractions.

(g) Actions Taken Upon Completion of Suicide Risk Assessment.

(1) Documentation Requirements.

(A) Upon completion of a suicide risk assessment, the MHP will document the results of the assessment, including any changes in the youth's observation level, on the agency-approved form(s).

(B) If the youth is placed on suicide alert, the MHP will ensure that the youth's name is placed on the facility's suicide alert list and the updated list is distributed to facility staff.

(2) Notification of Assessment Results.

(A) If the youth is placed on suicide alert:

(i) the MHP will immediately notify infirmary staff, the youth's case manager, dorm staff, and the on-duty supervisor of the youth's observation level and any additional instructions.

(ii) the youth's case manager will notify the youth's parent/guardian as soon as possible after the youth is placed on suicide alert.

(B) If the youth is not placed on suicide alert, the MHP will notify the referring staff and the youth's case manager that the youth was assessed but not placed on suicide alert.

(3) Assignment of Staff to Monitor Youth. If the youth is placed on suicide alert, the on-duty supervisor will assign a specific staff member to monitor the youth and carry the suicide observation folder.

(h) Supervision of Youth on Suicide Alert.

(1) Unless the youth is already placed in a suicide resistant room, the on-duty supervisor will coordinate a search of the youth's room or personal area and remove any potentially dangerous items.

(2) The suicide observation folder must be in the possession of the monitoring staff member at all times while the youth is on suicide alert.

(A) At no time may the youth possess the suicide observation folder.

(B) Each time the youth is transferred to the supervision of another staff member, the receiving staff member must take possession of the folder and document the transfer of supervision in the folder.

(3) As required by the youth's assigned suicide observation level, the monitoring staff member must:

(A) maintain direct visual observation of the youth; and/or

(B) document the youth's status at the required interval.

(4) For youth assigned to one-to-one or constant observation, the monitoring staff member must not leave the youth unattended or let the youth out of his/her sight.

(A) When the youth is in the bathroom or shower, the monitoring staff must remain within six feet of the youth, and:

(i) observe at least a portion of the youth's body (i.e., head, feet, or other observable parts excluding genitalia); and/or

(ii) maintain verbal contact.

(B) When the youth is engaged in regular programming (e.g., education, group counseling, recreation, etc), the monitoring staff will accompany the youth to the activity and remain within the required distance (i.e., six or 12 feet). If the youth cannot be maintained within the required distance without disrupting the program, the MHP must be consulted to consider possible modifications to the youth's supervision plan or scheduled routine to ensure that the youth can be appropriately monitored.

(5) Removal of a youth's clothing and issuance of suicide-resistant clothing, as well as cancellation of programming and routine privileges, will be avoided whenever possible and only utilized as a last resort for periods during which the youth is physically engaging in self-injurious behavior. Decisions regarding issuance of suicide-resistant clothing and restrictions in programming and/or routine privileges may only be made by the MHP.

(6) Unless approved by the DMHP in consultation with the facility administrator, youth on suicide alert are not allowed access to off-campus activities or non-medical appointments. Decisions regarding off-campus medical appointments will be made by medical staff.

(i) Treatment and Reassessment of Youth on Suicide Alert.

(1) An MHP will develop a written treatment plan (or revise an existing care plan) that includes treatment goals and specific interventions designed to address and reduce suicidal ideation and threats, self-injurious behavior, and suicidal threats perceived to be based upon attention-seeking or manipulative behavior. The treatment plan will describe:

(A) signs, symptoms, and circumstances under which the risk for suicide or other self-injurious behavior is likely to recur;

(B) how recurrence of suicidal and other self-injurious behavior can be avoided; and

(C) actions both the youth and staff can take if the suicidal and other self-injurious behavior do occur.

(2) The MHP will consult with the youth's case manager to recommend modifications to the youth's individual case plan based on issues identified in the treatment plan. The MHP will consult with direct care staff regarding the youth's progress.

(3) While the youth is on suicide alert, the MHP will assess the youth at least once every 48 hours, unless the youth is placed on one-to-one observation, in which case the MHP will assess the youth at least once every 24 hours.

(4) For each assessment, the MHP will:

(A) review the contents of the suicide observation folder, as well as progress notes from other MHPs as applicable;

(B) determine whether any changes should be made to the youth's observation level or other precautions, in consultation with the DMHP;

(C) document any changes in the observation level or other safety precautions in the suicide observation folder; and

(D) document the assessment as a progress note that provides a sufficient description of the youth's emotional status, observed behavior, recommended observation level, justification for decision, and any special instructions for staff.

(5) Each time a change is made to the youth's observation level or other safety precautions, the MHP will notify direct care staff and ensure an updated suicide alert list is distributed to facility staff, including infirmary staff.

(6) During routine meetings between the psychology department and the psychiatric provider, the DMHP or designee will discuss information concerning youth on suicide alert with the psychiatric provider.

(j) Protective Custody or Emergency Psychiatric Placement.

(1) If an MHP, in consultation with the DMHP, determines that the youth is a serious and immediate danger to himself/herself and cannot be safely managed in the living unit, the MHP may initiate placement in a suicide resistant room by referring the youth to the protective custody program in accordance with §97.45 of this title. All treatment, re-assessment, and observation requirements established in this rule will continue to apply while the youth is assigned to protective custody, unless otherwise noted in §97.45 of this title.

(2) If the DMHP or psychiatric provider determines that the youth is in serious and imminent risk of self-injury and cannot be safely or appropriately managed in protective custody, the DMHP or psychiatric provider may seek emergency psychiatric placement. The youth will be placed on one-to-one observation until received at the emergency placement. The DMHP or psychiatric provider will seek placement in the following order:

(A) the Corsicana Stabilization Unit, in accordance with §87.67 of this title;

(B) the nearest state hospital, in accordance with §87.69 of this title; or

(C) as a last resort and only with the approval of the appropriate administrator, a private psychiatric facility in accordance with §87.71 of this title.

(k) Intrasystem Transfer of Youth on Suicide Alert.

(1) Prior to transferring a youth on suicide alert to another high restriction facility:

(A) within 24 hours prior to transfer, the MHP at the sending facility will:

(i) forward a summary of the youth's suicidal behavior, assessments, and treatment via email to the DMHP and facility administrator or designee at the receiving facility and any transitional facilities en route to the receiving facility;

(ii) call the DMHP at the receiving and any transitional facilities to communicate the observation level of the youth and any other pertinent information; and

(iii) notify the health services administrator at the sending facility, who will communicate the observation level of the youth and any other pertinent information to the receiving facility's infirmary; and

(B) direct care staff will provide the suicide observation folder to the transporting staff.

(2) An MHP at the receiving facility will:

(A) as soon as possible, but no later than four hours after the youth's arrival, review the transfer summary and meet with the youth;

(B) notify direct care and nursing staff of the youth's suicide observation level prior to assignment of the youth to a dorm/living unit;

(C) place the youth on the facility's suicide alert list;

(D) ensure the suicide observation log is provided to the staff assigned to monitor the youth;

(E) consult with the DMHP regarding the plan for treatment and assessment.

(l) Release or Discharge of Youth on Suicide Alert.

(1) Prior to releasing or discharging a youth on suicide alert to a community placement (medium restriction or home placement), the MHP will:

(A) provide the youth (or parent/guardian if youth is under age 18) with a referral for follow-up care;

(B) coordinate with appropriate clinical staff to schedule a follow-up appointment;

(C) identify emergency resources, if needed; and

(D) notify the youth's parole officer, as applicable.

(2) The MHP will forward mental health records to the receiving mental health provider upon request.

(m) Reduction of Observation Level and Removal from Suicide Alert.

(1) The level of observation for a youth on suicide alert may be modified or discontinued only after a face-to-face assessment by an MHP, in consultation with the DMHP.

(2) The MHP may reduce the youth's suicide observation level by no more than one level every 24 hours, unless otherwise approved by the DMHP on a case-by-case basis.

(3) Only an MHP or the DMHP may authorize removal of a youth's name from the suicide alert list. Only youth on close observation may be removed from suicide alert.

(4) The MHP will notify dorm staff and infirmary staff when a youth's observation level is reduced and when a youth is removed from suicide alert. Infirmary staff will notify the psychiatric provider of all such changes.

(5) The youth's case manager will notify the youth's parent/guardian when the youth is removed from suicide alert.

(6) Upon removal from suicide alert, the MHP will identify in the treatment plan any needed follow-up mental health services.

(n) Training.

(1) All staff who have direct contact with youth (including security, direct care, nursing, mental health, and education staff) will receive initial training in suicide prevention and response during preservice training. Training will address topics including, but not limited to:

(A) identifying the warning signs and symptoms of suicidal behavior;

(B) high risk periods for suicide;

(C) juvenile suicide research, to include the demographic and cultural parameters of suicidal behavior, incidence and precipitating factors;

(D) responding to suicidal and depressed youth;

(E) communication between correctional and health care personnel;

(F) referral procedures;

(G) housing, observation, and suicide alert procedures; and

(H) follow-up monitoring of youth who engage in suicidal behavior or ideation.

(2) All personnel who have direct contact with youth will receive annual suicide prevention training.

(3) Staff designated to conduct suicide screenings receive training from an MHP regarding suicide alert policy, suicide indicators, and suicide screening.

(o) Post-Incident Debriefing and Analysis for Completed Suicides and Life-Threatening Attempts.

(1) The facility administrator or designee will coordinate a debriefing with appropriate facility staff as soon as possible after the situation has been stabilized, in accordance with agency procedures.

(2) The chief executive officer or designee may dispatch a critical incident support team to provide counseling for youth and staff, coordination of facility activities, and assistance with follow-up care.

(3) The medical director will conduct a morbidity and mortality review in coordination with appropriate clinical staff.

(4) A cross-divisional central office critical incident review committee will convene to examine all relevant information, determine if the incident reveals system-wide deficiencies, and recommend improvements to agency policies, operational procedures, physical plant, and/or training requirements.

(5) In the event of a suicide, all actions, notifications, and reports required under §99.51 of this title will be completed.

§91.89. Suicide Alert for Medium Restriction Facilities.

(a) Purpose. The purpose of this rule is to establish procedures for suicide prevention by identification, assessment, treatment, and protection of youth that may be at risk for suicide.

(b) Applicability. This rule applies to all youth currently assigned to placement in medium restriction facilities operated by the Texas Youth Commission (TYC).

(c) Definitions. Definitions pertaining to this rule are under §91.87 of this title. For purposes of this rule, the definition of mental health professional (MHP) may also include psychiatric providers.

(d) General Provisions.

(1) Treatment for youth determined to be at risk for suicide will be provided within the least restrictive environment necessary to ensure safety.

(2) Youth determined to be at risk for suicide will participate in regular programming to the extent possible, as determined by an MHP. Only an MHP may make exceptions to the provision of regular programming, community access, housing placement, or clothing.

(3) Rescue kits for use in medical emergencies will be placed in designated locations within the facility not accessible to youth.

(4) Immediately, not to exceed two hours, TYC staff will notify the parent/guardian after a suicide attempt or suicide.

(e) Intake Screening.

(1) Upon a youth's admission to a medium restriction facility, a trained staff will administer a health screening, which includes a review of the youth's file and questions relating to suicidal ideation and behavior. The results of the health screening will be documented on the agency-approved form.

(2) If a youth is identified during the screening as potentially at-risk for suicide:

(A) the trained staff will immediately notify the facility administrator or designee;

(B) the facility administrator or designee will contact an MHP to conduct a suicide risk assessment; and

(C) the facility administrator or designee will assign a suicide observation level. If possible, the administrator will consult with an MHP in determining the appropriate level.

(3) The suicide risk assessment must be completed as soon as possible, not to exceed 72 hours.

(f) Responding to Suicidal Behavior/Ideation.

(1) If any staff member has reason to believe that a youth has demonstrated suicidal behavior or ideation, the employee must:

(A) for medical emergencies, immediately seek medical attention;

(B) verbally engage the youth;

(C) immediately notify the facility administrator or designee;

(D) provide constant observation unless the facility administrator or designee directs a higher observation level;

(E) document the notification of the facility administrator or designee in the appropriate shift log; and

(F) for suicidal behavior, document the incident on an incident report.

(2) Upon notification by a staff member, the facility administrator or designee will begin a suicide observation log to document youth status checks.

(3) Within one hour after notification, a trained designated staff will initiate a suicide risk screening. The trained staff will immediately communicate the results of the screening to the facility administrator or designee.

(4) The facility administrator or designee will assign an observation level, based on the results of the suicide screening. If possible, the administrator will consult with an MHP in determining the appropriate level.

(A) For youth engaging in suicidal behavior, the administrator will ensure the youth remains on one-to-one observation until an MHP conducts a face-to-face suicide risk assessment.

(B) For youth engaging in suicidal ideation only, the administrator will ensure the youth remains on at least constant observation until an MHP conducts a face-to-face suicide risk assessment.

(C) Youth who are waiting for a suicide risk assessment are not allowed community access (e.g., community service, employment, academic attendance) unless TYC staff supervise the youth on at least constant observation.

(5) The facility administrator or designee will contact an MHP to conduct a face-to-face suicide risk assessment. The assessment must be completed within:

(A) four hours if the youth engaged in a suicide attempt; or

(B) as soon as possible, but not to exceed 72 hours, if the youth engaged in any other type of suicidal behavior or ideation.

(6) If the time required for an MHP to conduct a suicide risk assessment is exceeded, the youth will be maintained on at least constant observation until assessed. If necessary, the facility administrator or designee may secure emergency psychiatric care to obtain an evaluation of the youth.

(g) Actions Taken Upon Completion of Suicide Risk Assessment.

(1) Documentation Requirements. Upon completion of a suicide risk assessment, the MHP will document the results of the assessment, including any changes in the youth's observation level.

(2) Notification of Assessment Results.

(A) Upon completion of a suicide risk assessment, the MHP will communicate the results of the assessment to the facility administrator or designee.

(B) If the youth is placed on suicide alert:

(i) the facility administrator or designee will immediately notify facility staff of the youth's placement on suicide alert, the youth's observation level, and any additional instructions; and

(ii) the youth's case manager will notify the youth's parent/guardian as soon as possible after the youth is placed on suicide alert.

(C) If the youth is not placed on suicide alert, the facility administrator or designee will notify the referring staff that the youth was assessed and not placed on suicide alert.

(3) Assignment of Staff to Monitor Youth. If the youth is placed on suicide alert, the facility administrator or designee will assign a specific staff member to monitor the youth and document status checks.

(h) Supervision of Youth on Suicide Alert.

(1) The facility administrator or designee will coordinate a search of the youth's room and remove any potentially dangerous items.

(2) A suicide observation monitoring sheet must be in the possession of the monitoring staff member with direct supervisory responsibility for the youth at all times while the youth is on suicide alert.

(A) At no time may the youth possess the suicide observation sheet.

(B) Each time the youth is transferred to the supervision of another staff member, the receiving staff member must take possession of the observation sheet and document the transfer of supervision.

(3) As required by the youth's assigned suicide observation level, the monitoring staff member must:

(A) maintain direct visual observation of the youth; and/or

(B) document the youth's status at the required interval.

(4) For youth assigned to one-to-one or constant observation, the monitoring staff member must not leave the youth unattended

or let the youth out of his/her sight. When the youth is in the bathroom or shower, the monitoring staff must remain within six feet of the youth, and:

(A) observe at least a portion of the youth's body (i.e., head, feet, or other observable parts excluding genitalia); and/or

(B) maintain verbal contact.

(5) Unless approved by the MHP in consultation with the facility administrator, youth on suicide alert are not allowed access to off-site activities or appointments. In such cases, the youth must be supervised on at least constant observation.

(i) Treatment and Reassessment of Youth on Suicide Alert.

(1) An MHP will prepare a written treatment plan for each youth on suicide alert, updating or revising the plan as necessary. The treatment plan will include:

(A) identification of the crisis stabilization issues to be addressed in ongoing assessment sessions;

(B) a plan of action to address these issues; and

(C) the degree of community restriction necessary to provide for the youth's safety.

(2) The MHP will consult with facility staff to recommend modifications to the youth's individual case plan based on issues identified in the treatment plan.

(3) While the youth is on suicide alert, the MHP will reassess the youth as needed, but at least once every five calendar days.

(4) During each assessment, the MHP will:

(A) review relevant suicide alert documentation and information;

(B) determine whether any changes should be made to the youth's observation level or other precautions; and

(C) document any changes in the observation level, community restrictions, or other safety precautions.

(5) Each time a change is made to the youth's observation level or other safety precautions, the facility administrator or designee will ensure the changes are documented and facility staff are notified.

(6) If the youth is receiving psychiatric services, the facility administrator or designee will ensure the psychiatric provider is notified of the youth's placement on suicide alert and any relevant information concerning the youth's treatment and supervision while on suicide alert.

(j) Youth Who Cannot Be Safely Managed in Current Placement.

(1) If the facility administrator or an MHP determines that a youth cannot be safely managed within the structure of the current placement due to behavior that indicates imminent risk of serious self-injury, the facility administrator or designee will:

(A) ensure one-to-one observation for the youth until an emergency psychiatric placement is obtained;

(B) obtain emergency placement at the Corsicana Stabilization Unit (CSU) or, if the CSU is not able to receive the youth, placement in a local state hospital, or as a last resort, a private psychiatric facility. For youth not on parole status, the administrator may seek temporary admission to protective custody in a high restriction TYC facility pending emergency psychiatric placement if none of the above placements are immediately available; and

(C) maintain communication with staff at the emergency placement to obtain current mental status information and assess the length and suitability of the current placement. If the emergency placement exceeds five days, the administrator will initiate alternate placement in a more secure facility.

(2) For youth maintained on constant and/or one-to-one observation longer than seven days in a medium restriction facility, the facility administrator or designee will pursue an alternative placement with longer-term stabilization, clinical resources, and increased supervision where the youth may be safely managed.

(k) Reduction of Observation Level and Removal from Suicide Alert.

(1) The level of observation for a youth on suicide alert may be modified or discontinued only after a face-to-face assessment by an MHP.

(2) The facility administrator or designee will notify facility staff when a youth's observation level is reduced and when a youth is removed from suicide alert. Designated facility staff will notify the psychiatric provider of all such changes.

(3) The youth's case manager will notify the youth's parent/guardian when the youth is removed from suicide alert.

(l) Release or Discharge of Youth on Suicide Alert. Prior to releasing or discharging a youth on suicide alert to a community placement (another non-secure placement or home placement), the MHP, in coordination with the youth's case manager, will:

(1) provide the youth (or parent/guardian if youth is under age 18) with a referral for follow-up care;

(2) coordinate with appropriate clinical staff to schedule a follow-up appointment;

(3) identify emergency resources, if needed; and

(4) forward mental health records to the receiving mental health provider upon request.

(m) Training.

(1) All direct care staff will receive initial training in suicide prevention and response during pre-service training, as well as annual updates during in-service training. Training will address topics including, but not limited to:

(A) identifying the warning signs and symptoms of suicidal behavior;

(B) high risk periods for suicide;

(C) juvenile suicide research, to include the demographic and cultural parameters of suicidal behavior, incidence and precipitating factors;

(D) responding to suicidal and depressed youth;

(E) communication between correctional and health care personnel;

(F) referral procedures;

(G) housing, observation, and suicide alert procedures; and

(H) follow-up monitoring of youth who engage in suicidal behavior or ideation.

(2) Staff designated to conduct suicide screenings receive training from an MHP regarding suicide alert policy, suicide indicators, and suicide screening.

(n) Post-Incident Debriefing and Analysis for Completed Suicides and Life-Threatening Attempts.

(1) The facility administrator or designee will coordinate a debriefing with appropriate facility staff as soon as possible after the situation has been stabilized, in accordance with agency procedures.

(2) The chief executive officer or designee may dispatch a critical incident support team to provide counseling for youth and staff, coordination of facility activities, and assistance with follow-up care.

(3) The medical director will conduct a morbidity and mortality review in coordination with appropriate clinical staff.

(4) A cross-divisional central office critical incident review committee will convene to examine all relevant information, determine if the incident reveals system-wide deficiencies, and recommend improvements to agency policies, operational procedures, physical plant, and/or training requirements.

(5) In the event of a suicide, all actions, notifications, and reports required under §99.51 of this title will be completed.

§91.90. Suicide Prevention for Parole.

(a) Purpose. The purpose of this rule is to establish procedures for the protection of youth that may be at risk for suicide within the community while on parole.

(b) Applicability. This rule applies to all youth under the jurisdiction of the Texas Youth Commission (TYC) who are assigned to parole in the community.

(c) Definitions. Definitions pertaining to this rule are under §91.87 of this title.

(d) General Provisions.

(1) Any staff member who observes a youth engaging in suicidal behavior or ideation must immediately respond in a manner that protects youth safety.

(2) If a staff member observes or becomes aware of a youth engaging in suicidal ideation, the staff member will:

(A) immediately ensure that the youth's parent/legal guardian and parole officer have been notified of the youth's behavior; and

(B) provide community resource information regarding where a mental health professional may be consulted.

(3) If a staff member observes or becomes aware of a youth engaging in suicidal behavior, the staff member will:

(A) immediately ensure that local law enforcement and the youth's parent/legal guardian and parole officer have been notified of the youth's behavior;

(B) provide community resource information regarding where a mental health professional may be consulted; and

(C) if the staff member determines, in consultation with the appropriate administrator, that the youth is in imminent danger of serious self-injury and is not receiving adequate treatment and supervision in the community, refer the youth for emergency psychiatric placement in accordance with §87.71 of this title.

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

Filed with the Office of the Secretary of State on August 31, 2009.

TRD-200903848

Cheryln K. Townsend
Executive Commissioner
Texas Youth Commission
Effective Date: August 31, 2009
Expiration Date: December 28, 2009
For further information, please call: (512) 424-6014

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CHAPTER 97. SECURITY AND CONTROL
SUBCHAPTER A. SECURITY AND CONTROL

Texas Youth Commission (the commission) adopts on an emergency basis the repeal of §97.45 (concerning protective custody), and new §97.45 (concerning protective custody for youth at risk of self-harm).

The repeal of §97.45 will allow for a rewritten rule to be published in its place. New §97.45 will provide for a protective custody program operated in TYC security units for the temporary placement of youth who, as determined by a mental health professional, are at risk of serious harm to themselves and cannot be safely managed in their current housing unit.

The repealed and new rule are adopted as part of the commission's suicide prevention program on an emergency basis to ensure that youth who may be at risk for suicide are immediately and appropriately identified, monitored, treated, and housed. The new rule provides increased oversight of the program by the head of the local psychology department, as well as from divisional leadership in the commission's central office. The new rule also limits the amount of time a youth may spend in this program without direct authorization from the central office. A youth's right to appeal placement in protective custody has also been restructured to provide an expedited response. The commission believes that these changes should be implemented without delay in order to provide enhanced protections against self-harm and suicide for the youth in its care.

37 TAC §97.45

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

The repeal is adopted on an emergency basis under Human Resources Code §61.034, which provides the commission with the authority to make rules appropriate to the proper accomplishment of its functions.

§97.45. Protective Custody.

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

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Cheryln K. Townsend
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For further information, please call: (512) 424-6014

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37 TAC §97.45

The new rule is adopted on an emergency basis under Human Resources Code §61.075, which provides the commission with the authority to order a committed child's confinement under conditions it believes best designed for the child's welfare and the interests of the public.

§97.45. Protective Custody for Youth at Risk of Self-Harm.

(a) Purpose. The purpose of this rule is to provide for a protective custody program for the temporary placement of youth who are determined to be at risk of serious harm to themselves.

(b) Applicability. This rule only applies to high restriction facilities operated by TYC.

(c) Definitions. Definitions pertaining to this rule are under §91.87 of this title.

(d) General Provisions.

(1) The protective custody program is administered in the security unit. All standard security unit service delivery and programming requirements as set forth in §97.40 of this title, unless otherwise noted herein, will be observed while the youth is in the security unit.

(2) Placement of youth in protective custody will be used only as a last resort when a mental health professional (MHP) determines that the youth cannot be safely managed in his/her assigned living unit and no appropriate less restrictive placements are immediately available. Protective custody will be used only as a temporary placement until the youth can be safely returned to his/her assigned living unit or another appropriate housing or facility assignment can be arranged.

(3) Youth in protective custody will be monitored, assessed, and treated in accordance with procedures set forth in §91.88 of this title for youth on suicide alert, unless otherwise noted herein.

(e) Referral for Placement in Protective Custody.

(1) Only an MHP may authorize the referral of a youth to the security unit for possible placement in protective custody. The referral may be made only:

(A) after a trained designated staff member completes a suicide risk screening, as described in §91.88 of this title;

(B) after the MHP has consulted with the staff member concerning the results of the screening; and

(C) if the MHP determines that the youth is in imminent risk of serious self-injury and cannot be safely managed in his/her assigned living unit.

(2) The youth may be held in the security unit on referral for up to four hours, pending the completion of a face-to-face suicide risk assessment by an MHP.

(3) Once referred to the security unit, the youth will be placed on one-to-one observation until assessed by the MHP. Doors will not be locked while the youth is awaiting the suicide risk assessment, unless the youth presents an imminent danger to staff due to aggressive behavior. In such cases, doors may be locked in accordance with subsection (g)(2) of this section.

(4) The youth's suicide observation folder will be transferred to the security staff who will continue documenting the youth's status at the required interval.

(f) Admission Criteria. Only an MHP, in consultation with the facility's designated mental health professional (DMHP), may admit a youth to protective custody due to suicide risk. A youth may be placed in protective custody only if the MHP has conducted a face-to-face suicide risk assessment as described in §91.88 of this title, and the MHP has determined that:

(1) based on the youth's actions, statements, or mental status, the youth is a serious and immediate physical danger to himself/herself; and

(2) confinement in the security unit is necessary to protect the youth from self-harm, and there is no less restrictive setting that provides the necessary level of security and staff supervision.

(g) Program Requirements.

(1) Youth will be placed in suicide resistant rooms. Except for youth assigned to one-to-one observation, individual room doors will remain locked.

(2) For youth assigned to one-to-one observation, individual room doors will remain unlocked, except when a youth presents an imminent danger to staff due to aggressive behavior. In such cases, the youth's room door may be locked provided that the MHP determines (in consultation with the DMHP) that locking the door is necessary to manage the youth's aggressive behavior and still allows adequate supervision to ensure the youth's safety.

(3) In accordance with requirements established under §91.88 of this title, the MHP will develop an individualized treatment plan that identifies crisis stabilization issues to be addressed and includes a plan of action to address the issues.

(4) The MHP will conduct a face-to-face assessment of the youth at least once every 24 hours while the youth is admitted to the protective custody program. As part of the assessment, the MHP will determine if the youth continues to be a serious and immediate physical danger to himself/herself and if continued confinement is necessary to prevent self-harm.

(5) At least once every 48 hours following the youth's admission into protective custody, the DMHP will review the documentation relating to protective custody, including the youth's treatment plan and any other documentation relating to the youth's stay in protective custody.

(6) A youth may not remain in the protective custody program for more than five calendar days without written approval from the division director over treatment programming or designee. Such approval must be obtained for every 24-hour period thereafter.

(h) Review of Admission and Extensions. The director of security or designee will review each admission and 24-hour extension decision within one workday to determine if policy and procedure were followed. If it is determined that a youth is being held in violation of policy, the director of security or designee will:

(1) immediately notify the facility administrator or duty officer;

(2) unless otherwise instructed by the facility administrator or duty officer, return the youth to the general population; and

(3) ensure the youth remains on one-to-one observation until an MHP conducts a face-to-face suicide risk assessment.

(i) Release Criteria. The youth will be released from protective custody when:

(1) an MHP, in consultation with the DMHP, determines the youth may return to the general population with appropriate supervision and monitoring;

(2) an MHP, in consultation with the DMHP, determines that the youth meets criteria for transfer to a facility providing specialized mental health treatment, the Corsicana Stabilization Unit, or a psychiatric hospital;

(3) the division director over treatment programming or designee disapproves an extension request; or

(4) a review of the admission or extension in protective custody reveals that the youth is being held in violation of policy.

(j) Appeals. The youth may appeal his/her placement in protective custody to the facility administrator or designee. The facility administrator or designee will consult with the DMHP when reviewing the appeal.

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

Filed with the Office of the Secretary of State on August 31, 2009.

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Cheryln K. Townsend
Executive Commissioner
Texas Youth Commission
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For further information, please call: (512) 424-6014

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PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 10. DEPARTMENT OF INFORMATION RESOURCES

CHAPTER 213. ELECTRONIC AND INFORMATION RESOURCES

The Texas Department of Information Resources (department) proposes amendments to §§213.17, 213.18, and 213.38, concerning Electronic and Information Resources.

The amendments to §213.17, concerning Compliance Exceptions and Exemptions, add content to standardize language within the rule. The change to the proposed rule applies to state agencies.

The amendments to §213.18 and §213.38, concerning Procurements, replace in one instance, and delete in a second instance, a non-functioning URL. The amendment also adds content to §213.38 to standardize language within the rule. The changes to the proposed rules apply to both state agencies and institutions of higher education.

Subchapter B. Accessibility Standards for State Agencies

In §213.17 the department proposes paragraph (3)(C) be modified to add content that was inadvertently omitted after the initial posting for comment appeared in the June 6, 2008, issue of the *Texas Register* (33 TexReg 4418), and prior to its approval by the department Board of Directors on August 26, 2008.

In §213.18 the department proposes an amendment to subsection (a)(1) to delete the non-functioning URL and replace it with a text equivalent; and subsection (a)(3) to delete the non-functioning URL.

Subchapter C. Accessibility Standards for Institutions of Higher Education

In §213.38 the department proposes subsection (a)(1) be modified to delete the non-functioning URL and replacing it with a text equivalent; subsection (a)(3) be modified to delete the non-functioning URL; and subsection (b)(2) be modified to add content to standardize language within the rule.

IMPACT ON STATE AGENCIES AND INSTITUTIONS OF HIGHER EDUCATION

The amendments should have a minimal impact because they are limited to non-material, clarifying corrections to existing provisions. This assessment of the impact on institutions of higher education has been prepared in consultation with the Information Technology Council for Higher Education in compliance with §2054.121(b), Texas Government Code.

FISCAL NOTE

Ginger Salone, Deputy Executive Director of Statewide Technology Service Delivery, has determined that for the first five-year period the rules are in effect there will be no fiscal impact to state agencies and institutions of higher education related to the proposed changes. There is no impact on local government as a result of enforcing or administering the proposed changes to the rules.

PUBLIC BENEFIT

The department is committed to making electronic and information resources usable by people of all abilities and disabilities. The department worked in collaboration with other government entities to develop these proposed rule changes. The amendments clarify the requirement that an exception request approved by the executive director of an agency must include a justification for the exception including relevant cost avoidance estimates for each development or procurement, including outsourced development, which does not comply with the standards and specifications described in Chapter 206 and/or Chapter 213 of this title, pursuant to §2054.460, Texas Government Code. Additionally, the amendments clarify the source of the Voluntary Product Accessibility Template.

There are no anticipated economic costs to persons or small businesses required to comply with the proposed rules.

Comments on the proposed rules may be submitted to Martin Zelinsky, Assistant General Counsel, Department of Information Resources, 300 West 15th Street, Suite 1300, Austin, Texas 78701, *martin.zelinsky@dir.state.tx.us* for 30 days following publication.

SUBCHAPTER B. ACCESSIBILITY STANDARDS FOR STATE AGENCIES

1 TAC §213.17, §213.18

The amendments are proposed under §2054.052(a) and §2054.453, Texas Government Code.

No other statutes are affected by this proposal.

§213.17. Compliance Exceptions and Exemptions.

Effective September 1, 2006, all electronic and information resources developed, procured or changed by a state agency shall comply with the standards and specifications of Chapter 206 and/or Chapter 213 of this title, unless an exception is approved by the executive director of the agency, or an exemption is granted by the department.

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

(3) An approved exception shall include the following:

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

(C) justification for the exception including relevant cost avoidance estimates; and

(D) (No change.)

(4) - (8) (No change.)

§213.18. Procurements.

(a) The department, in establishing commodity procurement contracts for state agencies and institutions of higher education, and in compliance with the State of Texas Accessibility requirements (based on the federal standards established under §508 of the Rehabilitation Act), shall require vendors make accessibility information available for every product under contract through one of the following methods:

(1) the URL to a completed Voluntary Product Accessibility Template (VPAT) (Refer to the Resources web page of the Information Technology Industry Council (ITI) website for a sample VPAT) [~~(http://www.access-star.org/ITI-VPAT-v1.2.html)~~];

(2) (No change.)

(3) an electronic document that addresses the same accessibility criteria in substantively the same format as the VPAT [~~(http://www.access-star.org/ITI-VPAT-v1.2.html)~~]; or

(4) (No change.)

(b) (No change.)

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

Filed with the Office of the Secretary of State on August 28, 2009.

TRD-200903835
Renee Mauzy
General Counsel
Department of Information Resources
Earliest possible date of adoption: October 11, 2009
For further information, please call: (512) 475-4750

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SUBCHAPTER C. ACCESSIBILITY STANDARDS FOR INSTITUTIONS OF HIGHER EDUCATION

1 TAC §213.38

The amendments are proposed under §2054.052(a) and §2054.453, Texas Government Code.

No other statutes are affected by this proposal.

§213.38. Procurements.

(a) The department, in establishing commodity procurement contracts for state agencies and institutions of higher education, and in compliance with the State of Texas Accessibility requirements (based on the federal standards established under §508 of the Rehabilitation Act), shall require vendors make accessibility information available for every product under contract through one of the following methods:

(1) the URL to a completed Voluntary Product Accessibility Template (VPAT) (Refer to the Resources web page of the Information Technology Industry Council (ITI) website for a sample VPAT) [~~(http://www.access-star.org/ITI-VPAT-v1.2.html)~~];

(2) (No change.)

(3) an electronic document that addresses the same accessibility criteria in substantively the same format as the VPAT [~~(http://www.access-star.org/ITI-VPAT-v1.2.html)~~]; or

(4) (No change.)

(b) Each institution of higher education shall include in its accessibility policy standards and processes for making agency procurement decisions pursuant to §2054.453, Texas Government Code.

(1) (No change.)

(2) Institutions of higher education may develop a procurement accessibility policy for making procurement decisions. Such policy must be approved by the president or chancellor. In the absence of an approved procurement accessibility policy, institutions of higher education shall use either the Voluntary Product Accessibility Template (VPAT) or the Buy Accessible Wizard to assess the degree of accessibility of a given product when making procurement decisions according to the agency's accessibility policy.

(3) - (5) (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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Renee Mauzy
General Counsel
Department of Information Resources
Earliest possible date of adoption: October 11, 2009
For further information, please call: (512) 475-4750

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CHAPTER 216. PROJECT MANAGEMENT PRACTICES

SUBCHAPTER A. DEFINITIONS

1 TAC §216.1

The Texas Department of Information Resources (department) proposes amendments to §216.1, concerning Applicable Terms and Technologies for Project Management Practices, to revise content within the rule. The amendments are necessary due to statutory changes to definitions within the rule. The change to the rule applies to state agencies and institutions of higher education.

Subchapter A. Definitions

In §216.1 the department proposes paragraph (8) be modified to provide the same language resulting from amendment of §2054.003(12), Texas Government Code, in §2.01 of House Bill 1705 (81st Legislature Regular Session).

In §216.1 the department proposes paragraph (9) be modified to provide the same language resulting from amendment of §2054.152, Texas Government Code, in §2.04 of House Bill 1705 (81st Legislature Regular Session).

IMPACT ON STATE AGENCIES AND INSTITUTIONS OF HIGHER EDUCATION

The rule changes should have a minimal impact because they are limited to non-material corrections to existing provisions.

This assessment of the impact on institutions of higher education has been prepared in consultation with the Information Technology Council for Higher Education in compliance with §2054.121(b), Texas Government Code.

FISCAL NOTE

Ginger Salone, Deputy Executive Director of Statewide Technology Service Delivery, has determined that for the first five-year period the rule is in effect there will be no fiscal impact to state agencies and institutions of higher education related to the proposed changes. There is no impact on local government as a result of enforcing or administering the proposed changes to the rule.

PUBLIC BENEFIT

The department is committed to helping improve the value of services delivered by Texas state government through technology projects. The amendment aligns the definitions of "project" and "project management practices" within the rule with recently enacted statutory changes so that the rule will be in compliance with the law. There is no direct benefit to the public.

There are no anticipated economic costs to persons or small businesses required to comply with the proposed rule.

Comments on the proposed rule may be submitted to Martin Zelinsky, Assistant General Counsel, Department of Information Resources, 300 West 15th Street, Suite 1300, Austin, Texas 78701, *martin.zelinsky@dir.state.tx.us* for 30 days following publication.

The amendments are proposed under §2054.052(a), Texas Government Code and the amendments in House Bill 1705, §2.01 to §2054.003(12) and §2054.095(b), Texas Government Code.

No other statutes are affected by this proposal.

§216.1. Applicable Terms and Technologies for Project Management Practices.

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

(1) - (7) (No change.)

(8) Project--An initiative that provides [~~A program to provide~~] information resources technologies and creates products, services, or results [~~support to functions~~] within or among elements of a state agency; and is [~~, which should be~~] characterized by well-defined parameters, specific objectives, common benefits, planned activities, a scheduled completion date, and an established budget with a specified source of funding.

(9) Project management practices--Documented and repeatable activities through which [~~methods that~~] a state agency applies [~~uses to apply~~] knowledge, skills, tools, and techniques to satisfy project activity requirements.

(10) (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 28, 2009.

TRD-200903837

Renee Mauzy
General Counsel
Department of Information Resources
Earliest possible date of adoption: October 11, 2009
For further information, please call: (512) 475-4750

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS
SUBCHAPTER J. COSTS, RATES AND TARIFFS

16 TAC §26.227

The Public Utility Commission of Texas (commission) proposes an amendment to §26.227, relating to Procedures Applicable to Nonbasic Services and Pricing Flexibility for Basic and Nonbasic Services for Chapter 58 Electing Companies. The proposed amendment will streamline the tariff filing requirements for telecommunications companies required to file switched-access rates concurrent with federal tariffed rates. Project Number 36622 is assigned to this proceeding.

John Costello, Senior Rate Analyst, Rate Regulation Division, has determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Costello has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be a streamlined tariff filing process. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this section. Therefore, no regulatory flexibility analysis is required. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

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

The commission staff will conduct a public hearing on this rulemaking, if requested, pursuant to the Administrative Procedure Act, Texas Government Code §2001.029 at the commission's offices, located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. The request for a public hearing must be received within 10 days after publication.

Comments on the proposed amendment may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 14 days after publication. Sixteen copies of comments to the proposed amendment are required to be filed pursuant to §22.71(c) of this title. Comments should be organized in a manner consistent with the organization of the proposed rule(s). The

commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should refer to Project Number 36622.

This amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007 and Supp. 2008) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and, specifically PURA §52.251 and Chapter 65, Subchapter E pertaining to reduction of switched access rates.

Cross Reference to Statutes: PURA §14.002, §52.251; and PURA Chapter 65, Subchapter E.

§26.227. Procedures Applicable to Nonbasic Services and Pricing Flexibility for Basic and Nonbasic Services for Chapter 58 Electing Companies.

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

(c) Informational notice filing and notice requirements related to pricing flexibility and nonbasic services, including new services.

(1) Notice requirements:

[~~(A)~~] [~~General notice requirements.~~] An electing company shall provide the informational notice in compliance with this section to the commission, to the Office of Public Utility Counsel (OPC), and to any person who holds a certificate of operating authority in the electing company's certificated area or areas, or who has an effective interconnection agreement with the electing company.

[~~(B) Additional notice requirements for an electing company serving more than five million access lines. In addition to the notice requirements in subparagraph (A) of this paragraph, an electing company serving more than five million access lines in this state shall:~~]

[~~*(i)* comply with the following notice requirements when proposing any changes in the generally available prices and terms under which the electing company offers basic or nonbasic telecommunications services regulated by the commission at retail rates to subscribers that are not telecommunications providers, including:~~]

[~~*(I)* introduction of any new nonbasic services;~~]

[~~*(II)* new features or functions of nonbasic services;~~]

[~~*(III)* promotional offerings of nonbasic services; or~~]

[~~*(IV)* discontinuation of then-current features or services.~~]

[~~*(ii)* Notice shall be provided to any person who~~]

[~~*(I)* holds a certificate of operating authority in the electing company's certificate area or areas; or~~]

[~~*(II)* has an effective interconnection agreement with the electing company.~~]

[~~*(iii)* The following timelines shall apply to the provisions of notice pursuant to this subsection:~~]

[~~*(I)* If the electing company is required to give notice to the commission, at the same time the company provides that notice; or~~]

[~~*(II)* If the electing company is not required to give notice to the commission, at least 45 days before the effective date of a price change or 90 days before the effective date of a change other than a price change, unless the commission determines that the notice should not be given.~~]

[~~(C) The requirement for additional notice under subparagraph (B) of this paragraph expires on September 1, 2003.~~]

(2) Filing requirements:

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

(D) Format of filing. An informational notice under this section must include the following elements:

(i) - (iv) (No change.)

(v) new and/or revised tariff pages, written in plain language and conforming with §26.207 of this title (relating to Form and Filing of Tariffs), governing the form and filing of tariffs; except that an informational notice filing that cross-references the Federal Communications Commission (FCC) website for rates, terms, and/or conditions of the utility's interstate tariff for an equivalent service may be considered sufficient. To incorporate a FCC tariff for a Texas tariff filing, the utility shall reference the FCC website, reference the uniform resource locator (URL or worldwide web address) specific to the tariff, and provide a detailed explanation of how to locate the concurring tariff rates, terms and/or conditions on the URL for each applicable tariff sheet of the filing. Further, the utility must state in a cover letter to the filing that it is incorporating a FCC tariff and specifically identify the affected rate schedules. A utility that files an intrastate tariff by reference to a FCC-approved tariff must notify the commission, in an informational filing, within 10 business days of any changes to the referenced interstate rates or any changes to the applicable URL. If switched-access rates are no longer required to concur with federal rates, a new tariff must be filed;

(vi) - (xiv) (No change.)

(d) - (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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PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 70. INDUSTRIALIZED HOUSING AND BUILDINGS

The Texas Department of Licensing and Regulation (Department) proposes amendments to §§70.10, 70.20 - 70.23, 70.30, 70.50, 70.51, 70.60, 70.62 - 70.65, 70.70, 70.71, 70.73 - 70.75, 70.77, 70.80, 70.100, 70.102, and 70.103; new rules §§70.24, 70.25, 70.61, 70.72, and 70.79; and the repeal of §70.61

and §70.72, regarding the industrialized housing and building program.

Texas Occupations Code, Chapter 1202 has provided regulatory authority to the Department for buildings defined as 'industrialized housing' and 'industrialized buildings'. These buildings traditionally have been constructed as modules constructed at a manufacturing plant and installed on site at a commercial or residential location. Currently, Texas Education Code §46.008(b) provides that any portable, modular building capable of being relocated that is purchased or leased after September 1, 2007, for use as a school facility, regardless of whether the building is an industrialized building as defined by Texas Occupations Code §1202.003, must be inspected as provided by Texas Occupations Code, Chapter 1202, Subchapter E, to ensure compliance with the mandatory building codes or approved designs, plans, and specifications.

House Bill (HB) 2763 (81st Legislature, Regular Session, 2009) repealed Texas Education Code §46.008(b), Code, and created, among other things, new regulatory authority over buildings utilized as relocatable educational facilities (REFs), for those REFs leased or purchased after January 1, 2010, whether built as an 'industrialized building' in modules, or 'site built' in a manner of open construction which would not have previously given regulatory authority to the Department. The REFs that were constructed as modules are currently regulated as 'industrialized buildings'; therefore, the primary area of new regulation is with the site built REFs that are not built as modules constructed and are built at the commercial site. Additionally, the bill modifies how an industrialized building's height is measured when qualifying for an exemption. The bill further adds language which clarifies that an owner of an industrialized building designed to be transported, which is also decaled and altered after the council adopts a new mandatory building code, must ensure the building complies with the most recent edition of the International Existing Building Code adopted by the council. The bill also deleted the language that tied the extent of the alterations to the value of the building altered.

These proposed rules are also necessary to implement changes recommended by staff and the Industrialized Housing and Building Council Task Force during rule review as required by Texas Government Code §2001.039.

The proposed amendments to §§70.10 - 70.25 add definitions for newly-created registrants and terms pursuant to HB 2763, such as for the builder of the site built REFs and expands the application, fee, and education requirements to include these new registrants. Additionally, new criteria and qualifications were created for inspectors to inspect the site built REFs and new requirements added for design review agencies to review the plans and construction documents for the site built REFs.

Section 70.22 reorganizes the criteria for design review agencies, and §70.23 reorganizes the registration criteria for third party inspection agencies and inspectors. Section 70.24 establishes criteria for approval of third party site inspectors who will be performing installation inspections of industrialized housing and buildings and inspections of site built REFs located outside a municipality or area with local building code officials. Section 70.25 creates a classification for certain permits to be obtained from the Department by persons who will be purchasing industrialized housing or buildings for their own use, or who will be altering an industrialized building for their own use.

The proposed rule changes in §§70.50 - 70.65 clarify the reporting requirements for manufacturers and industrialized builders, clarify the inspection requirements for certification inspections, and clarifies inspection requirements for municipalities. Section 70.51 further adds a requirement that the site built REFs be inspected. Section 70.61 is repealed and the requirements relocated to §70.72 and a new §70.61 relocates requirements for monitoring inspections by the Department and adds requirements for monitoring inspections of REF builders including requirements for reimbursement to the Department for the inspections. Section 70.62 adds a new requirement that a local building official inspect the construction of a site built REF within the jurisdiction of the municipality. Section 70.63 provides that the council will resolve certain disputes between registrants, code compliance, and that the council's decision is binding on all parties. Section 70.65 adds some new language regarding reciprocity agreements with other states, and criteria to determine whether signing a reciprocity agreement is appropriate.

Sections 70.70 - 70.103 clarify the responsibilities of the registrants. A new title is proposed for §70.70 and the amendments add requirements for REF builders to have construction documents reviewed for compliance with the mandatory building codes, and approved by a design review agency. Section 70.71 is expanded to include REF builders' requirements to attach data plates to a site built REF. Section 70.72 is repealed and new §70.72 is a revised section which is from §70.61 which provides criteria for an in-plant inspection to be performed by a third party inspection agency.

Section 70.73 clarifies responsibilities of the industrialized builder for foundation and installations of industrialized housing and buildings. The section further clarifies the responsibilities of inspectors within and outside of a municipality with building code officials. A new subsection (g) was relocated from §70.70. New subsection (h) prohibits the use of ground anchors in the installation of industrialized housing or buildings. Section 70.74 was revised to remove the requirement that the value of the building and the cost of the alterations be submitted to a DRA. Section 70.75 is expanded to include the requirements that an REF builder provide the owner of the site built REF certain information, including the REF builder's name, registration number, address of the builder and location of the decals.

Section 70.77 was reorganized and is expanded to include that a decal is the appropriate labeling method for the site built REF. Section 70.77 was reorganized to differentiate between the requirements for manufacturers and builders and subsection (c)(1) expressly states that a site built REF is subject to regulation as an industrialized building upon attachment of the decal or decals.

Section 70.79 is a new section which details the responsibilities of the REF builder both within and outside of a municipality with local building officials. This section details the phases of construction and inspection for a site built REF. Section 70.80 adds a registration fee for the REF builder of $750, and adds a $25 fee for duplicating or revising a registration certification.

Section 70.100 is expanded to add the language from HB 2763 requiring that alterations of industrialized buildings shall comply with the requirements of the International Existing Building Code effective September 1, 2009. Section 70.102 is expanded to include that site built REFs shall be constructed to meet or exceed relevant mandatory building code standards. Section 70.103 is expanded to include REF builders in the requirements for approval of alternate materials or methods of construction.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the proposed amendments, repeals, and new rules are in effect there may be fiscal impact on local governments as a result of enforcing or administering the proposed rules, as school districts will need to anticipate certain costs to REF builders for their registration, plan review, site review, inspections and decals. It is difficult to anticipate at this time, how many buildings will be leased and purchased after January 1, 2010. The Department estimates that there will most likely be more of these facilities built within municipalities with local building officials, who would perform the inspections, and therefore, the costs would not change significantly from how this process has been conducted; however, the facilities which are built outside a municipality with a building official would have costs associated with not only design review, but a phased inspection process. The cost to the Department in administering the rules should be offset by the revenue generated.

Mr. Kuntz also has determined that for each year of the first five-year period the amendments are in effect, the public benefit would include the assurance that all relocatable, portable classrooms which are required to teach a specific curriculum will be constructed and regulated in a uniform manner, irrespective of the method or location of construction. The benefit from the rule review would include rules which clarify the responsibilities of registrants and the Department.

There may be some economic costs to small or micro-businesses and to persons who are required to comply with this proposal. It is anticipated that the REF builders may be small businesses or 'micro-businesses' as defined in Texas Government Code §2006.001(1). It is anticipated that these builders or contractors will be facing some new costs to register, have their design plans reviewed, construction inspected and decals placed, in order to build the site built REFs, though they will most likely build those costs into their bids. Again, the Department estimates most of these buildings will be within a municipality.

Since the new rules may have economic impact on small businesses or micro businesses, the Department is required to analyze alternatives to reduce the adverse effect, pursuant to Texas Government Code §2006.002(b). These alternatives range from establishing alternative compliance or exempting small business entirely from the regulation. The Department is of the opinion that, at least in the situation where the site built REF would be built outside a municipal area with a building code official, the REF builder would be the most appropriate person or entity to ensure that construction is performed in accordance with building codes, and would be the appropriate person to ultimately attach the decal. Therefore, since the statute now requires that all of these facilities be regulated, the Department sees no other viable alternative than to have some regulation over the builders. The Department considered reducing the REF builder's registration fee from $750 annually, and considered a type of permitting system for those who would only construct a few of these buildings in a year, however, the REF builder is likened to a manufacturer in that he will be ultimately responsible for the construction, inspection and decaling of the building. Additionally, it is important to note that most likely a majority of these buildings will be built inside a municipality, thus cutting down on the inspection costs.

Comments on the proposal may be submitted by mail to Caroline Jackson, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or by facsimile to 512/475-3032, or electronically to erule.comments@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register.*

16 TAC §§70.10, 70.20 - 70.25, 70.30, 70.50, 70.51, 70.60 - 70.65, 70.70 - 70.75, 70.77, 70.79, 70.80, 70.100, 70.102, 70.103

The amendments and new rules are the result of a rule review conducted in accordance with Texas Government Code §2001.039. The amendments and new rules are proposed under Texas Occupations Code, §51.201(b) and §51.203, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement Chapter 51 and any other law establishing a program regulated by the Department. Also, the amendments and new rules are proposed under Texas Occupations Code, Chapter 1202 which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body to adopt rules as necessary to implement this chapter.

The statutory provisions affected by the proposed amendments and new rules are those set forth in Texas Occupations Code, Chapters 51 and 1202. No other statutes, articles, or codes are affected by the proposal.

§70.10. Definitions.

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

(1) Alteration--Any construction, other than ordinary repairs of the house or building, to an existing industrialized house or building after affixing of the decal by the manufacturer or REF builder. Industrialized housing or buildings that have not been maintained shall be considered altered.

(2) Alteration decal--The approved form of certification issued by the department to an industrialized builder to be permanently affixed to an industrialized building [~~a~~] module or site built REF indicating that alterations [~~to the industrialized building module~~] have been constructed to meet or exceed the code requirements and in compliance with this chapter.

(3) Building site--A lot, the entire tract, subdivision, or parcel of land on which industrialized housing or buildings are sited.

(4) Building system--The design and/or method of assembly of modules or modular components represented in the plans, specifications, and other documentation which may include structural, electrical, mechanical, plumbing, fire protection, and other systems affecting health and safety.

(5) Chapter 1202--Texas Occupations Code, Chapter 1202, Industrialized Housing and Buildings.

(6) Closed construction--That condition where any industrialized housing or building, modular component, or portion thereof is manufactured in such a manner that all portions cannot be readily inspected at the site without disassembly or destruction thereof.

(7) Commercial structure--An industrialized building classified by the mandatory building codes for occupancy and use groups other than residential for one or more families.

(8) Compliance Control Program--The manufacturer's system, documentation, and methods of assuring that industrialized housing, buildings, and modular components, including their manufacture, storage, handling, and transportation conform with Chapter 1202 and this chapter.

(9) Construction Documents--The aggregate of all plans, specifications, calculations, and other documentation required to be submitted to the design review agency for compliance review to the mandatory building code.

(10) Component--A sub-assembly, subsystem, or combination of elements for use as a part of a building system or part of a modular component that is not structurally independent, but may be part of structural, plumbing, mechanical, electrical, fire protection, or other systems affecting life safety.

(11) Decal--The approved form of certification issued by the department to the manufacturer or REF builder to be permanently affixed to the module or to a site-built REF indicating that it has been constructed to meet or exceed the code requirements and in compliance with this chapter.

(12) Design package--The aggregate of all plans, designs, specifications, and documentation required by these sections to be submitted by the manufacturer to the design review agency, or required by the design review agency for compliance review, including the compliance control manual and the on-site construction documentation. Unique or site specific foundation drawings and special on-site construction details prepared for specific projects are not a part of the design package [~~except as expressly set forth in §70.74~~].

(13) Design review agency--An approved organization, private or public, determined by the council to be qualified by reason of facilities, personnel, experience, demonstrated reliability to review designs, plans, specifications, and building systems documentation, and to certify compliance to these sections evidenced by affixing the council's stamp. [~~Chapter 1202 designates the department as a design review agency.~~]

(14) IAS--International Accreditation Service.

(15) ICC--International Code Council, Inc.

(16) ICC ES--International Code Council Evaluation Services.

(17) Industrialized builder--A person who is engaged in the assembly, connection, and on-site construction and erection of modules or modular components at the building site or who is engaged in the purchase of industrialized housing or buildings or of modules or modular components from a manufacturer or from another industrialized builder for sale or lease to the public. An industrialized builder also includes a person who assembles site-built REFs that are moved from the initial construction site. [~~; a subcontractor of an industrialized builder is not a builder for purposes of this chapter.~~]

(18) Insignia--The approved form of certification issued by the department to the manufacturer to be permanently affixed to the modular component indicating that it has been constructed to meet or exceed the code requirements and in compliance with the sections in this chapter.

(19) Installation--On-site construction of industrialized housing or buildings. (see paragraph (29)).

[~~(20) Installation permit--A registration issued by the department to a person who purchases an industrialized house or building for his/her own use and who assumes responsibility for the installation of the industrialized house or building. A person who applies for an installation permit may not be engaged in the purchase of industrialized housing or buildings or of modules or modular components for sale or lease to the public. A subcontractor of an installation permit holder is not an industrialized builder for the purposes of this chapter.~~]

(20) [~~(21)~~] Lease, or offer to lease--A contract or other instrument by which a person grants to another the right to possess and use industrialized housing or buildings for a specified period of time in exchange for payment of a stipulated price.

(21) [~~(22)~~] Local building official--The agency or department of a municipality or other local political subdivision with authority to make inspections and to enforce the laws, ordinances, and regulations applicable to the construction, alteration, or repair of residential and commercial structures.

(22) [~~(23)~~] Manufacturer--A person who constructs or assembles modules or modular components at a manufacturing facility which are offered for sale or lease, sold or leased, or otherwise used.

(23) [~~(24)~~] Manufacturing facility--The place other than the building site, at which machinery, equipment, and other capital goods are assembled and operated for the purpose of making, fabricating, constructing, forming, or assembly of industrialized housing, buildings, modules, or modular components.

(24) [~~(25)~~] Model--A specific design of an industrialized house, building, or modular component which is based on size, room arrangement, method of construction, location, arrangement, or size of plumbing, mechanical, or electrical equipment and systems therein in accordance with an approved design package.

(25) [~~(26)~~] Module--A three dimensional section of industrialized housing or buildings, designed and approved to be transported as a single section independent of other sections, to a site for on-site construction with or without other modules or modular components.

(26) Modular building--Industrialized housing and buildings as defined in Texas Occupations Code §1202.002 and §1202.003, and any relocatable, educational facility as defined in §1202.004, regardless of the location of construction of the facility.

(27) NFPA--National Fire Protection Association[~~, Batterymarch Park, Quincy, Massachusetts 02269~~].

(28) Non site-specific [~~Nonsite specific~~] building--An industrialized house or building for which the permanent site location is unknown at the time of construction.

(29) On-site construction--Preparation of the site, foundation construction, assembly and connection of the modules or modular components, affixing the structure to the permanent foundation, connecting the structures together, completing all site-related construction in accordance with designs, plans, specifications, and on-site construction documentation.

(30) Open construction--That condition where any house, building, or portion thereof is constructed in such a manner that all parts or processes of manufacture can be readily inspected at the building site without disassembly, damage to, or destruction thereof.

(31) Permanent foundation system--A foundation system for industrialized housing or buildings designed to meet the applicable building code as set forth in §§70.100, 70.101, and 70.102.

(32) Permanent industrialized building--An industrialized building that is not designed to be transported from one commercial site to another commercial site.

(33) Permit, Alteration--A registration issued by the department to a person who is responsible for the alteration construction of industrialized housing, buildings or site-built REFs and who is not also registered as an industrialized builder or REF builder.

(34) Permit, Commercial Installation--A registration issued by the department to a person who purchases an industrialized

building for the person's own use and who assumes responsibility for the installation of the industrialized building.

(35) Permit, Residential Installation--A registration issued by the department to a person who purchases an industrialized house for the person's own use and who assumes responsibility for all or part of the construction relating to the installation of the industrialized house.

(36) [~~(33)~~] Person--An individual, partnership, company, corporation, association, or any other legal entity, however organized.

~~[(34) Price--The quantity of an item that is exchanged or demanded in the sale or lease for another.]~~

(37) [~~(35)~~] Public--The people of the state as a whole to include individuals, companies, corporations, associations or other groups, however organized, and governmental agencies.

(38) REF, Site-built--A relocatable educational facility (REF) as defined by Texas Occupations Code §1202.004 that is constructed at the first installation site by an REF builder.

(39) REF Builder--A person who constructs REFs at the first installation site. A person who assembles REFs constructed in a manufacturing facility is not an REF builder.

(40) [~~(36)~~] Registrant--A person who, or which, is registered with the department pursuant to the rules of this chapter as a manufacturer, a REF builder, an industrialized builder, a design review agency, a third party inspection agency, a [~~or~~] third party inspector, a third party site inspector, or a permit holder.

(41) [~~(37)~~] Residential structure--Industrialized housing designed for occupancy and use as a residence by one or more families.

(42) [~~(38)~~] Sale, sell, offer to sell, or offer for sale--Includes any contract of sale or other instrument of transfer of ownership of property, or solicitation to offer to sell or otherwise transfer ownership of property.

(43) [~~(39)~~] Site or building site--A lot, the entire tract, subdivision, or parcel of land on which industrialized housing or buildings are sited.

(44) [~~(40)~~] Special conditions and/or limitations--On-site construction documentation which alerts the local building official of items, such as [~~handicapped accessibility or~~] placement of the building on the property or the requirements for roof ventilation, which may need to be verified by the local building official for conformance to the mandatory building codes.

(45) [~~(41)~~] Structure--An industrialized house or building that results from the complete assemblage of the modules or modular components designed to be used together to form a completed unit.

(46) Third party inspection agency (TPIA)--An approved person or agency, private or public, determined by the council to be qualified by reason of facilities, personnel, experience, demonstrated reliability, and independence of judgment to inspect industrialized housing, building, and portions thereof for compliance with the approved plans, documentation, compliance control program, and applicable codes.

(47) [~~(42)~~] Third party inspector (TPI)--An approved person [~~or agency, private or public,~~] determined by the council to be qualified by reason of [~~facilities, personnel,~~] experience, demonstrated reliability, and independence of judgment to inspect industrialized housing, buildings, and portions thereof for compliance with the approved plans, documentation, compliance control program, and applicable code. A third party inspector works under the direction of a third party inspection agency or TPIA.

(48) Third party site inspector (TPSI)--An approved person determined by the council to be qualified by reason of experience, demonstrated reliability, and independence of judgment to inspect construction of REFs or the foundation and installation of industrialized housing, buildings, and portions thereof for compliance with the approved plans or engineered plans and the applicable code.

(49) Unique on-site construction details--Construction details that are not part of, or that differ from, the manufacturer's approved on-site construction details or REF builder's approved construction plans. Unique on-site construction details include additions that may affect the code compliance of the house or building such as car ports, garages, porches, decks, and stairs.

(b) Other definitions may be set forth in the text of the sections in this chapter. For purposes of these sections, the singular means the plural, and the plural means the singular.

(c) Where terms are not defined in this section or in other sections in this chapter and are defined in the mandatory building codes as referenced in §70.100, such terms shall have the meanings ascribed to them in these codes unless the context as the term is used clearly indicates otherwise. Where terms are not defined in this section or other sections in this title or in the mandatory building codes, such terms shall have ordinarily accepted meanings such as the context implies.

§70.20. Registration of Manufacturers, REF Builders, and Industrialized Builders.

Manufacturers, REF builders, and industrialized builders shall not engage in any business activity relating to the construction or location of industrialized housing or buildings without being registered with the department.

(1) An application for registration shall be submitted on a form supplied by the department, and shall contain such information as may be required by the department. The application shall be signed [~~must be verified under oath~~] by the owner of a sole proprietorship, the managing partner of a partnership, or an [~~the~~] officer of a corporation. The application must be accompanied by the fee set forth in §70.80.

(2) A manufacturer may not construct for Texas until the facility has been certified in accordance with §70.60.

(3) Application requirements for REF builders are as follows.

(A) An REF builder shall certify at the time of registration that the construction and foundation of all REFs built under this registration shall be constructed in accordance with the approved construction documents, the mandatory building codes, the engineered plans, and department rules and shall be inspected in accordance with §70.79 and the inspection procedures established by the council.

(B) Subcontractors or persons responsible for the electrical, plumbing, and HVAC construction required to complete the construction shall be licensed as required by the applicable state statutes and are not required to be registered as REF builders.

(4) [~~(2)~~] Application requirements for industrialized builders are as follows.

(A) The industrialized builder shall certify [~~verify under oath~~] at the time of registration that the alteration, foundation and installation of all units installed under this registration shall be constructed in accordance with the mandatory building codes, the engineered plans, and department rules, and shall be inspected in accordance with §70.73, §70.74, and the inspection procedures established by the council [~~Texas Industrialized Building Code Council~~].

(B) Subcontractors or persons responsible for the electrical, plumbing, and HVAC construction required to complete the installation or alteration shall be licensed as required by the applicable state statutes and are not required to be registered as industrialized builders.

(5) [~~(3)~~] A person who purchases an industrialized house or building, or modular component, for his/her own use and who assumes responsibility for all or part of the construction relating to the installation or alteration of the industrialized house or building may file for a [~~an installation~~] permit in lieu of registering as an industrialized builder in accordance with §70.25. [~~A person who purchases an industrialized housing or buildings, or modular components, for sale or lease to the public may not file for an installation permit. The application shall be submitted on a form supplied by the department and shall contain such information as may be required by the department. A separate application must be submitted for each building containing industrialized housing and buildings modules or modular components. The application must be accompanied by the fee set forth in §70.80.~~]

(6) [~~(4)~~] The registration of a manufacturer a REF builder or industrialized builder shall be valid for 12 months and must be renewed annually.

(A) [~~Every corporate entity must be separately registered.~~] Each separate manufacturing facility must be registered; a manufacturing facility is separate if it is not on property that is contiguous to a registered manufacturing facility.

(B) A REF builder must register their main office location but is not required to register each job location.

(C) An industrialized builder must register each separate sales office but is not required to register each job location.

(7) [~~(5)~~] A registered manufacturer, a REF builder, or an industrialized builder shall notify the department in writing within 10 days if:

(A) the corporate or firm name is changed;

(B) the main address of the registrant is changed;

(C) there is a change in 25% or more of the ownership interest of the company within a 12-month period. A change in ownership will require a new registration if the new owners do not accept responsibility for units constructed under the previous owners;

(D) the location of any manufacturing facility is changed;

(E) a new manufacturing facility is established;

(F) there are changes in principal officers of the firm; [~~or~~]

(G) an industrialized builder transfers or sells a module or modular component to another industrialized builder; or[~~.~~]

(H) an industrialized manufacturer takes possession of units previously reported as shipped to an industrialized builder.

(8) [~~(6)~~] An application for original registration or renewal may be rejected if any information contained on, or submitted with, the application is incorrect or incomplete. The certificate of registration may be revoked or suspended or a penalty or fine may be imposed for any violation of Chapter 1202, the rules and regulations in this chapter or administrative orders of the department, or the instructions and determinations of the council in accordance with §70.90 [~~and §70.91~~].

§70.21. Registration of Design Review Agencies, [~~and~~] Third Party Inspection Agencies and Inspectors, and Third Party Site Inspectors.

(a) Pursuant to the criteria established by the council as set forth in §§70.22, 70.23, and 70.24 [~~and §70.23~~] the executive director will recommend qualified design review agencies, third party inspection agencies, [~~and~~] third party inspectors, and third party site inspectors to the council for approval. An application for approval shall be submitted in writing to the executive director for consideration and recommendation to the council.

(1) The application shall be on the form, and contain such information, as may be required by the department and the council.

(2) The application shall be accompanied by the fee set forth in §70.80.

(3) The application will be reviewed by department staff for compliance to the criteria for approval outlined in this section. Applicants that meet the criteria for approval will be recommended to the council for approval at the next meeting. The department may issue interim approval to applicants found to comply with the criteria for approval.

(b) If the application is approved by the council, it shall be filed with the department as the registration of the applicant as a design review agency, a third party inspection agency, [~~or~~] a third party inspector, or a third party site inspector to perform specific functions. The department shall issue a certificate of registration that [~~which~~] shall state the specific functions that [~~which~~] the registrant is approved to perform. The certificate of registration shall be valid for a 12-month period [~~on receipt of the application and the registration fee by the department~~]. This registration shall be a continuous registration so long as:

(1) the information required by this section is updated in accordance with subsection (c) [~~of this section~~];

(2) the registration is renewed annually and the annual fee is paid;

(3) the applicant continues to comply with the criteria for approval established by the council as set forth in §§70.22, 70.23, and 70.24; [~~and §70.23;~~]

(4) the applicant certifies [~~presents evidence~~] at the time of renewal of his registration that the code certifications required by §§70.22, 70.23, or 70.24 [~~or §70.23~~] are current with the International Code Council (ICC). Participation in the ICC Renewal Program or Certification Maintenance Program is required to keep an ICC code certification current. The applicant will be required to submit evidence of current certification at the request of the department; and

(5) the applicant submits an up-to-date organization chart in accordance with §70.22 and §70.23 at the time of renewal.

(c) Design review agencies, third party inspection agencies, [~~and~~] third party inspectors, and third party site inspectors shall notify the department in writing within 10 days if:

(1) the name of the registrant is changed;

(2) the address of the registrant is changed;

(3) a partnership or corporation is created or exists or there is a change in 25% or more of the ownership of the business entity within a 12-month period;

(4) there are changes in principal officers or key supervisory personnel of the business entity; or

(5) there are changes in the key technical personnel of the agency or changes in the certifications of the technical personnel. Changes in the technical personnel of an agency or changes in the certifications may require review by the department to assure that the

person still meets the criteria for approval as outlined in §§70.22, 70.23, and 70.24 [~~of the agency~~].

(d) An application for original registration or renewal may be rejected if any information contained on, or submitted with, the application is incorrect or incomplete. The certificate of registration may be revoked or suspended or a penalty or fine may be imposed for any violation of Chapter 1202, the rules and regulations in this chapter or administrative orders of the department, or the instructions and determinations of the council in accordance with §70.90 and §70.92.

(e) If a third party site inspector, third party inspector, third party inspection agency, or design review agency is not approved, the department shall forward a written explanation to the applicant setting forth the council's reasons for the disapproval and that the applicant may request an administrative hearing to determine if the application should be denied.

§70.22. Criteria for Approval of Design Review Agencies.

(a) An agency seeking council approval as a design review agency (DRA) shall submit a written application to the executive director. The application will indicate the agency's name, address, and the telephone number of each office in which design review services are to be performed.

(b) The application will include the following information.[~~:~~]

(1) An organizational chart indicating the names of the managerial and [~~or~~] technical personnel responsible for design review functions within the agency. The chart must indicate the area or areas of review for with the technical personnel are responsible.[~~;~~]

(2) A resume for each person listed in the organizational chart indicating academic and professional qualifications, experience in related areas, and specific duties within the agency. All certifications shall be current with ICC.

(3) Complete documentation, including, but not limited to:

(A) examples of data sheets or other forms used to analyze construction and equipment;

(B) preliminary and final reports; and

(C) an agency compliance assurance manual to substantiate the agency's ability to evaluate building systems and compliance control manuals for compliance with standards. Evidence must be presented in the areas of structural, mechanical, electrical, plumbing, building planning, and fire safety. The documentation should include an example of a building system or compliance control manual which the agency has evaluated for compliance with a code or set of standards.

(4) A statement of certification signed by the agency manager or chief executive officer that:

(A) its board of directors, as a body, and its managerial and technical personnel, as individuals, are free to exercise independence of judgment in the performance of their duties within the agency;

(B) its activities pursuant to the discharge of responsibility as a design review agency will not result in financial benefit to the agency via stock ownership or other financial interest in any producer, supplier, or vendor of products involved, other than through standard fees for services rendered;

(C) the agency will consistently and uniformly implement the policies and determinations of the council with regard to interpretations of the standards and rules;

(D) the agency will not provide design services or prepare compliance control manuals for manufacturers for whom it acts as a design review agency;

(E) all information contained in the application for approval as a design review agency is true, timely, and correct; and

(F) all future changes will be immediately communicated to the department.

(5) A list of states in which the agency is currently approved to provide similar services.

(c) The minimum personnel requirements and qualifications shall be as follows.

(1) [~~(A)~~] The manager or chief executive officer shall have:

(A) a minimum of four years of plans examination, design, construction, or manufacturing experience in the building industry, or any combination thereof;[~~,~~] and

(B) licensure as a professional engineer or architect in the State of Texas. The [~~(NOTE: The~~] applicant's license number must be included on the resume[~~)~~].

(2) [~~(B)~~] Technical staff members may qualify for more than one discipline. The [~~Therefore, the~~] agency does not need to [~~not~~] have an individual staff member for each discipline. The technical staff shall consist of the following positions.

(A) [~~(i)~~] The structural reviewer shall have:

(i) a bachelor's degree with specialized course work in structures in civil, structural, or architectural engineering or service equivalent in accordance with subsection (c)(3) [~~subparagraph (C) of this paragraph~~];

(ii) a minimum of one year structural engineering experience related to buildings; and

(iii) certification as a building plans examiner as granted by ICC. [~~Certification must be current with ICC.~~]

(B) [~~(ii)~~] The mechanical reviewer shall have:

(i) a bachelor's degree in engineering with specialized course work in HVAC Systems or service equivalent in accordance with subsection (c)(3) [~~subparagraph (C) of this paragraph~~];

(ii) a minimum of one year mechanical engineering experience related to buildings; and

(iii) certification as a commercial mechanical inspector as granted by ICC. [~~Certification must be current with ICC~~].

(C) [~~(iii)~~] The electrical reviewer shall have:

(i) a bachelor's degree in engineering with specialized course work in electrical engineering or service equivalent in accordance with subsection (c)(3) [~~subparagraph (C) of this paragraph~~];

(ii) a minimum of one year electrical engineering experience related to buildings; and

(iii) certification as a commercial electrical inspector as granted by ICC. [~~Certification must be current with ICC.~~]

(D) [~~(iv)~~] The plumbing reviewer shall have:

(i) a bachelor's degree in engineering with specialized course work in hydraulics or service equivalent in accordance with subsection (c)(3) [~~subparagraph (C) of this paragraph~~];

(ii) a minimum of one year plumbing experience related to buildings; and

(iii) certification as a plumbing inspector as granted by ICC. [~~Certification must be current with ICC.~~]

(E) [~~(v)~~] The building planning reviewer shall have:

(i) a bachelor's degree in engineering or architecture or service equivalent in accordance with subsection (c)(3) [~~subparagraph (C) of this paragraph~~];

(ii) a minimum of one year experience related to building planning; and

(iii) certification as a building plans examiner as granted by ICC. [~~Certification must be current with ICC.~~]

(F) [~~(vi)~~] The fire safety reviewer shall have:

(i) a bachelor's degree in engineering or architecture or service equivalent in accordance with subsection (c)(3) [~~subparagraph (C) of this paragraph~~];

(ii) a minimum of one year experience in fire protection engineering related to buildings; and

(iii) certification as a building plans examiner as granted by ICC. [~~Certification must be current with ICC.~~]

(G) [~~(vii)~~] The accessibility reviewer shall have:

(i) a bachelor's degree in engineering or architecture or service equivalent in accordance with subsection (c)(3) [~~subparagraph (C) of this paragraph~~];

(ii) a minimum of one year experience in accessibility reviews related to buildings;

(iii) completed [~~satisfactory completion of~~] the Texas Accessibility Academy and passed [~~pass~~] an examination approved by the department.

(3) [~~(C)~~] A minimum of eight years of creditable experience in engineering or architectural practice indicative of growth in engineering or architectural competency and responsibility is an acceptable service equivalent for academic requirements. This experience may be counted concurrently for those wishing to show service equivalency in more than one field. To be considered creditable, experience must satisfy the requirements outlined in the Texas Board of Professional Engineers Board Rules concerning the Practice of Engineering and Professional Engineering Licensure, or the Texas Board of Architectural Examiner Rules and Regulations of the Board Regulating the Practice of Architecture.

~~[(D) In lieu of a license number issued by the Texas Board of Professional Engineers, an applicant currently licensed in some other state and applying for registration in Texas under the provisions of the Texas Occupations Code, Chapter 1001, Engineering Practice Act, may satisfy the requirement by providing a copy of an application for licensure and a letter from the Board acknowledging receipt and authorizing interim practice;]~~

~~[(3) complete documentation, including examples of data sheets or other forms used to analyze construction and equipment; preliminary and final reports; and an agency compliance assurance manual to substantiate the agency's ability to evaluate building systems and compliance control manuals for compliance with standards. Evidence must be presented in the areas of structural, mechanical, electrical, plumbing, building planning, and fire safety. The documentation should include an example of a building system or compliance control manual which the agency has evaluated for compliance with a code or set of standards;]~~

~~[(4) a properly notarized statement of certification signed by the agency manager or chief executive officer that:]~~

~~[(A) its board of directors, as a body, and its managerial and technical personnel, as individuals, are free to exercise independence of judgment in the performance of their duties within the agency;]~~

~~[(B) its activities pursuant to the discharge of responsibility as a design review agency will not result in financial benefit to the agency via stock ownership or other financial interest in any producer, supplier, or vendor of products involved, other than through standard fees for services rendered;]~~

~~[(C) the agency will consistently and uniformly implement the policies and determinations of the council with regard to interpretations of the standards and rules;]~~

~~[(D) the agency will not provide design services or prepare compliance control manuals for manufacturers for whom it acts as a design review agency;]~~

~~[(E) all information contained in the application for approval as a design review agency is true, timely, and correct; and]~~

~~[(F) all future changes will be immediately communicated to the department;]~~

~~[(5) A list of states in which the agency is currently approved to provide similar services.]~~

§70.23. Criteria for Approval of Third Party Inspection Agencies and Inspectors.

(a) An agency seeking council approval as a third party inspection agency shall submit a written application to the executive director. The application will indicate the agency name, address, and telephone number of each office through which third party inspections will be coordinated.

(b) The application will include the following information.[:]

(1) An [~~an~~] organizational chart shall be submitted showing the names of managerial and technical personnel responsible for in-plant and on-site construction inspections.[;]

(2) A [~~a~~] resume for each person listed in the organizational chart shall be submitted indicating academic and professional qualifications, experience in related areas, and specific duties within the agency. All certifications must be current with ICC.

(3) Complete documentation to substantiate the agency's ability to perform in-plant and on-site construction inspections and follow-up inspections to determine the compliance of a building manufacturer with the standards and rules shall be submitted. The application will include a formal description of the agency's supervision and training program for inspectors, performance records of manufacturers, examples of inspection reports, agreements or contracts with manufacturers, and any other pertinent information;

(4) A statement of certification shall be submitted, signed by the agency manager or chief executive officer, that:

(A) its board of directors, as a body, and its managerial and inspection personnel, as individuals, are free to exercise independence of judgment in the performance of their duties within the agency;

(B) its activities pursuant to the discharge of responsibilities as a third party inspection agency will not result in financial benefit to the agency via stock ownership or other financial interests in any producer, supplier, or vendor of products involved, other than through standard fees for services rendered;

(C) the agency will consistently and uniformly implement the policies and determinations of the council with regard to interpretations of the standards and rules;

(D) the agency will not provide design services or prepare compliance control manuals for manufacturers for whom it acts as a third party inspection agency;

(E) all information contained in the application for approval as a third party inspection agency is true, timely, and correct; and

(F) all future changes will be immediately communicated to the department;

(5) A list of states in which the agency is currently approved to provide product certification or validation or third party inspection services and a complete description of each system and program involved shall be submitted.

(c) The minimum personnel requirements and qualifications are as follows. [~~An agency seeking council approval as a third party inspection agency shall submit a written application to the executive director. The application will indicate the agency name, address, and telephone number of each office through which third party inspections will be coordinated. The application will include the following information:~~]

(1) [~~(A)~~] The manager or chief executive officer shall have:

(A) a minimum of five years experience in building code enforcement or compliance control of building systems;[~~,~~]

(B) a minimum of one year experience in responsible technical project planning and management;[~~,~~] and

(C) licensure as a professional engineer or architect in the State of Texas. The [~~(note: the~~] applicant's license number must be included on the resume.[~~)~~.]

(2) [~~(B)~~] The supervisor of inspections shall have:

(A) a high school diploma or equivalent;

(B) a minimum of five years experience as an inspector in manufactured buildings or related compliance control or equivalent; [~~and~~]

(C) certification as a residential energy inspector/plans examiner [~~inspector~~] as granted by ICC, as a commercial energy inspector as granted by ICC, and as:

(i) a residential combination inspector as granted by ICC; or

(ii) a commercial combination inspector as granted by ICC; or

(iii) a combination inspector as granted by ICC.

(3) [~~(C)~~] Each [~~The~~] inspector shall submit a written application to the executive director. The application shall include the following. [~~have~~]

(A) A resume that includes the inspector's academic and professional qualifications, experience in related areas, and relevant ICC certifications. Each inspector shall have:

(i) a high school diploma or equivalent;

(ii) a minimum of one year experience in building code enforcement, compliance control inspection, or building experience.[~~; and~~]

(B) Evidence of certification as a residential energy inspector as granted by ICC or[~~,~~] as a commercial energy inspector as granted by ICC or both. The inspector must have a residential energy certification to inspect housing and a commercial energy certification to inspect buildings.[~~, and as:~~]

(C) Evidence of certification as:

(i) a residential combination inspector as granted by ICC; or

(ii) a commercial combination inspector as granted by ICC; or

(iii) a combination inspector as granted by ICC; or

(iv) one of each of the individual certifications from ICC that comprise the combination certifications referenced in clauses (i), (ii), and (iii) provided that the inspector has one in each area: building, mechanical, plumbing, and electrical. [~~a commercial building inspector, commercial mechanical inspector, commercial electrical inspector, and/or commercial plumbing inspector as granted by ICC. One inspector is not required to have certifications in all four areas of inspection. However, all four areas of certification must be represented unless the agency employs inspectors whose certifications are in accordance with clauses (i), (ii), or (iii) of this subparagraph. Inspectors may only inspect in the area for which they are certified, i.e., a mechanical inspector inspects mechanical, electrical inspects electrical, etc.~~]

[~~(D) In lieu of a license number issued by the Texas Board of Professional Engineers, an applicant currently licensed in some other state and applying for licensure in Texas under the provisions of the Texas Occupations Code, Chapter 1001, Engineering Practice Act may satisfy the requirement by providing a copy of an application for licensure and a letter from the board acknowledging receipt and authorizing interim practice;~~]

[~~(3) complete documentation to substantiate the agency's ability to perform in-plant and on-site construction inspections and follow-up inspections to determine the compliance of a building manufacturer with the standards and rules. The application will include a formal description of the agency's supervision and training program for inspectors, performance records of manufacturers, examples of inspection reports, agreements or contracts with manufacturers, and any other pertinent information;~~]

[~~(4) a properly notarized statement of certification signed by the agency manager or chief executive officer that:~~]

[~~(A) its board of directors, as a body, and its managerial and inspection personnel, as individuals, are free to exercise independence of judgment in the performance of their duties within the agency;~~]

[~~(B) its activities pursuant to the discharge of responsibilities as a third party inspection agency will not result in financial benefit to the agency via stock ownership or other financial interests in any producer, supplier, or vendor of products involved, other than through standard fees for services rendered;~~]

[~~(C) the agency will consistently and uniformly implement the policies and determinations of the council with regard to interpretations of the standards and rules;~~]

[~~(D) the agency will not provide design services or prepare compliance control manuals for manufacturers for whom it acts as a third party inspection agency;~~]

[~~(E) all information contained in the application for approval as a third party inspection agency is true, timely, and correct; and~~]

[~~(F) all future changes will be immediately communicated to the department;~~]

~~[(5) a list of states in which the agency is currently approved to provide product certification or validation or third party inspection services and a complete description of each system and program involved.]~~

§70.24. Criteria for Approval of Third Party Site Inspectors.

(a) A person seeking approval as a third party site inspector shall submit a written application to the executive director. The application will include the following information.

(1) A resume that includes the inspector's academic and professional qualifications, experience in related areas, and relevant ICC certifications.

(2) Evidence of current ICC certifications required for approval by the council.

(3) A statement signed by the inspector certifying that:

(A) the inspector's activities pursuant to the discharge of responsibilities as a third party site inspector will not result in financial benefit to the inspector via stock ownership or other financial interests in any producer, supplier, or vendor of products involved other than through standard fees for services rendered;

(B) the inspector will consistently and uniformly implement the policies and determinations of the council with regard to interpretations of the mandatory building codes and rules;

(C) the inspector will not provide design services for anyone for whom he performs inspections;

(D) all information contained in the application for approval as a third party site inspector is true, timely, and correct; and

(E) all future changes will be immediately communicated to the department.

(b) The minimum qualifications for a third party site inspector are as follows:

(1) a high school diploma or equivalent;

(2) a minimum of three years experience in building code enforcement, building inspections, or building experience. At least one year of experience shall be in the performance of building inspections; and

(3) one of the following energy code certifications: certification as a residential energy inspector/plans examiner, as a commercial energy inspector, or both. The inspector must have a residential energy certification to inspect housing and a commercial energy certification to inspect buildings.

(4) one of the following code certification combinations:

(A) a residential combination inspector as granted by ICC. In lieu of a residential combination inspector the inspector may have one of each of the individual certifications that are needed for certification as a residential combination inspector, commercial combination inspector, or combination inspector. Inspectors with residential inspector certifications may only perform site inspections for industrialized housing complying with the International Residential Code; or

(B) a commercial combination inspector as granted by ICC. In lieu of a commercial combination inspector the inspector may have one of each of the individual certifications that are needed for certification as a commercial combination inspector or a combination inspector. Inspectors with a commercial inspector certification may only perform site inspections for industrialized buildings; or

(C) a combination inspector as granted by ICC. In lieu of a combination inspector the inspector may have one of each of the individual certifications that are needed for certification as a combination inspector. Inspectors with this certification may perform site inspections for any industrialized housing or buildings.

§70.25. Permits.

(a) General.

(1) A person who engages in the assembly, connection, and on-site construction and erection of modules or modular components at the building site for persons other than themselves, or who purchases industrialized housing or buildings, or modular components, for sale or lease to the public, may not file for a permit.

(2) The application shall be submitted on a form supplied by the department and shall contain such information as may be required by the department. A person who applies for a permit certifies at the time of application that all construction shall be in compliance with the mandatory building codes, the approved and/or engineered plans and department rules, and shall be inspected in accordance with the inspection procedures established by the council.

(3) Subcontractors of a person holding a permit are not required to be registered as industrialized builders. Subcontractors or persons responsible for the electrical, plumbing, and HVAC construction shall be licensed as required by the applicable state statutes.

(4) The application shall be accompanied by the fee set forth in §70.80.

(b) Installation Permit--Residential.

(1) A person who purchases an industrialized house or residential modular component from an industrialized builder for the person's own use and who is responsible for some aspect of the construction related to the installation of the house may file for a residential installation permit in lieu of registering as an industrialized builder.

(2) A person who purchases an industrialized house or residential modular component from a manufacturer for the person's own use and who is responsible for all of the construction related to the installation of the house may file for a residential installation permit in lieu of registering as an industrialized builder.

(3) A separate application shall be submitted for each building that contains industrialized housing or residential modular components.

(4) The installation permit application shall identify all construction to be completed by the permit holder. Any construction completed by the permit holder on the installation site that affects the code compliance of the industrialized house shall be identified on the installation permit application. Construction may include, but is not limited to, grading of the property to assure code compliant drainage, completion of the plumbing systems, completion of the electrical systems, completion of the HVAC system, addition of porches, steps, decks, and railings, and addition of an attached garage or carport.

(5) The installation permit shall be posted at the installation site.

(c) Installation Permit--Commercial

(1) A person who purchases an industrialized building or modular component for the person's own use and who is responsible for construction related to the installation of the building may file for a commercial installation permit in lieu of registering as an industrialized builder.

(2) A separate application shall be submitted for each building that contains industrialized building modules or modular components.

(3) The installation permit shall be posted at the installation site for all buildings that are required to have site inspections in accordance with §70.73(b).

(d) Alteration Permit

(1) A person who is not registered as an industrialized builder, who will alter the construction of industrialized housing or buildings for the person's own use, and who is responsible for the alteration construction of the house or building may file for an alteration permit in lieu of registering as an industrialized builder.

(A) Alteration permits are required for alterations of portable industrialized buildings.

(B) Alteration permits are required for alterations of industrialized housing or permanent industrialized buildings during installation outside the jurisdiction of a municipality. Alterations of industrialized housing or permanent industrialized buildings after installation do not fall under the jurisdiction of the department.

(C) Alteration permits are not required for alterations of industrialized housing or permanent industrialized buildings during installation inside the jurisdiction of a municipality.

(2) A separate application shall be submitted for each project address.

(3) The alteration permit shall be posted at the site where the construction will be performed.

§70.30. Exemptions.

(a) The scope of this chapter is limited by Chapter 1202; accordingly, it does not apply to:

(1) mobile homes or HUD-code manufactured homes as defined in Texas Occupations Code [~~code~~], Chapter 1201;

(2) housing or buildings:

(A) of open construction;

(B) that are constructed of sectional or panelized systems not utilizing modular components; or

(C) that are built of modules or modular components that are constructed at the installation site.

(D) Exception: Relocatable educational facilities purchased or leased on or after January 1, 2010 are required to be certified regardless of where the facility is built.

(3) ready-built homes which are constructed so that the entire living area is contained in a single unit or section at a temporary location for the purpose of selling it and moving it to another location, provided that modular components are not used in the construction of the ready-built home. A temporary location would include a lumber yard, a vacant lot, or other similar area that is not used exclusively for the construction of buildings;

(4) any residential or commercial structure which is in excess of three stories or 49 feet in height [~~as measured from the finished grade elevation at the entrance of the structure to the peak of the roof~~];

(5) a commercial building or structure that is:

(A) installed in a manner other than on a permanent foundation; and

(B) either:

(i) is not open to the public; or

(ii) is less than 1,500 square feet in total area and used other than as a school or a place of religious worship;

(6) buildings that are specifically referenced in the mandatory building codes as exempt from permits; or

(7) construction site buildings.[~~; or~~]

[~~(8) any open construction.~~]

(b) The installation of an industrialized house or a permanent industrialized building that is moved from the first installation site to a new installation site is subject to the permitting and approval requirements of the local authorities.

§70.50. Manufacturer's and Industrialized Builder's Monthly Reports.

(a) The manufacturer shall submit a monthly report to the department, of all industrialized housing, buildings, modules, and modular components that were constructed and to which decals and insignia were attached [~~applied~~] during the month.

(1) The report shall be filed in a format required by the department by no later than the 10th day of the following month.

(2) The manufacturer shall keep a copy of the monthly report on file for a minimum of five years.

(3) Any corrections to reports previously filed shall clearly indicate the corrections to be made and the month and date of the report that is being corrected.

(4) The report shall contain:

(A) the serial or identification number of the units;

(B) the decal or insignia number attached to each identified unit;

(C) the name and registration number of the industrialized builder (as assigned by the department), or the installation permit number (as assigned by the department) of the person, to whom the units were sold, consigned, and shipped. The requirements contained in §70.20(3) shall apply when an installation permit is reported in lieu of the registration number of an industrialized builder;

(D) the date the decal or insignia was attached to the unit;

(E) an identification of the use of the structure for which the units are designed. For example, will the complete structure be used as a single family residence, a classroom or school, a duplex, a church, a restaurant, an equipment shelter, a bank building, a hazardous storage building, etc. Modular building, kiosk and similar terms are not to be used to describe the use of the completed building;

(F) any other information the department may require; and

(G) an indication of zero units if there was no activity for the reporting month.

(5) A manufacturer that takes possession of units that have not been installed, but that were previously reported as shipped, shall report the disposition of those units on the manufacturer's monthly report.

(b) Each industrialized builder shall keep records of all industrialized housing, buildings, modules, and modular components that were sold, leased, or installed.

(1) These records shall be kept for a minimum of ten years from the date of successful completion of the final site inspection and shall be made available to the department for review upon request. If the industrialized builder is not responsible for the installation, then the

records shall be maintained for a period of 5 years from the date of sale or lease and shall be made available to the department upon request.

(2) An annual audit of units sold, leased, or installed by industrialized [~~the~~] builders shall be conducted by the department [~~Department~~]. The audit will identify the modules or modular components by the name and Texas registration number of the manufacturer of each unit and the assigned Texas decal or insignia numbers and the corresponding identification, or serial numbers, as assigned by the manufacturer. The industrialized builder shall report, or provide, the following information to the department [~~Department~~] for each unit identified in the audit within the timeframe set by the audit.

(A) [~~(1)~~] Evidence of compliance with §70.75.

(B) [~~(2)~~] The address where each unit was installed. If the industrialized builder is not responsible for the installation, then the address to where each unit was delivered. If the unit has not been installed, then the address where the unit is stored.

(C) Date construction began at the installation site.

(D) Date of occupation by owners or leasers or date released to owners or leasers for occupation.

(E) [~~(3)~~] The occupancy use of each building containing modules or modular components. For example, is the building used as a [~~, i.e.,~~] classroom or school, a[~~,~~] restaurant, a bank, an equipment shelter, a single-family residence, etc.

(F) [~~(4)~~] If the industrialized builder is responsible for the installation and site work, then the industrialized builder:

(i) [~~(A)~~] shall[~~, for units installed outside the jurisdiction of a municipality,~~] keep a copy of the foundation plans;

(ii) shall keep a copy of any unique on-site construction plans;

(iii) shall [~~and~~] keep a copy of the site inspection report in accordance with §70.73 or evidence of the city responsible for the site inspection, such as a permit number or copy of a certificate of occupancy; and[~~. A~~]

(iv) give a copy of these documents or information [~~shall be made available~~] to the department upon request.[~~; or~~]

(G) If the industrialized builder is not responsible for all of the construction related to the installation and site work, then the industrialized builder:

(i) shall keep a copy of the engineered construction plans for that portion of the construction work for which he is responsible;

(ii) shall keep a copy of the site inspection report for that portion of the construction work for which he is responsible in accordance with §70.73 or evidence of the city responsible for the site inspection, such as a permit number or copy of a certificate of occupancy; and

(iii) shall give a copy of these documents or information to the department upon request.

~~[(B) shall, if installed within the jurisdiction of a municipality, provide the name of the city responsible for the site inspection. The department may also request a copy of the foundation plans as part of the audit.]~~

(H) [~~(5)~~] If the industrialized builder is not responsible for the installation and site work, or if the industrialized builder has transferred or sold the unit to another person, then the industrialized builder shall provide identification of the installation permit number, assigned by the department [~~Department~~], or industrialized builder registration number, assigned by the department [~~Department~~], of the person responsible.

(c) Each REF builder shall keep records of all REFs constructed for a minimum of 10 years and provide a copy of these records to the department upon request. At a minimum the records shall include copies of the approved construction documents, inspection reports, and construction address for each REF.

~~[(c) The manufacturer's monthly reports must be filed with the department no later than the 10th day of the following month.]~~

(d) An installation permit holder shall keep a copy of the foundation plans and other construction plans and, for units installed outside the jurisdiction of a municipality, the site inspection report in accordance with §70.73 for a period of ten years from the date of successful completion of the final inspection of the industrialized house or building. A copy of these records shall be provided to the department upon request.

~~[(e) A manufacturer that takes possession of units previously reported as shipped shall report the disposition of those units on the manufacturer's monthly report in accordance with subsection (a) of this section.]~~

§70.51. Third Party Inspection Reports.

(a) In-plant inspections. A third party inspector or third party inspection agency shall file inspection reports on the forms and in the format required by the department [~~When performing in-plant inspections at a manufacturing facility or performing inspections at the building site, the third party inspector must file reports on the forms and in the format the department may require by written instruction~~] (in accordance with any requirements set by the council).

(1) The TPIA [~~TPIA/TPI~~] must keep on file, for a minimum of 5 [~~five~~] years, a copy of all inspection reports for inspections performed by the TPIA/TPI.

(2) [~~(b)~~] Reports shall [~~Original reports must~~] be filed with the department each week or at such other intervals as the department may require pursuant to council instructions.

(b) On-site inspections--construction of REFs. A third party inspector, inspection agency, or site inspector shall file inspection reports on the forms and in the format required by the department (in accordance with any requirements set by the council).

(1) The TPIA or TPSI shall keep a copy of all inspection reports for a minimum of 5 years from the date each unit covered by the inspection report receives a Texas decal.

(2) Reports shall be filed with the department each week or at such intervals as the department may require pursuant to council instructions.

(c) On-site inspections--installation of industrialized housing and buildings. A third party inspector, inspection agency, or site inspector shall document inspections on the forms and in the format required by the department (in accordance with any requirements set by the council).

(1) The TPIA or TPSI shall keep a copy of all inspection reports for a minimum of 5 years from the date of successful completion of each phase of a site inspection.

(2) The TPIA or TPSI shall make a copy of the inspection report available to the department upon request.

(3) The TPIA or TPSI shall forward a copy of each site inspection report to the department whenever the industrialized builder

or installation permit holder fails to call for final inspection within 180 days of the start of construction as required by §70.73.

(4) The TPIA or TPSI shall forward a copy of each site inspection report to the department whenever the industrialized builder or installation permit holder fails to correct deviations prior to occupation of the industrialized house or building.

§70.60. Responsibilities of the Department--Plant Certification.

(a) Each separate [~~Prior to being issued decals or insignia, each~~] manufacturing facility will go through [~~undergo~~] a certification inspection before decals or insignia will be released to the manufacturer. A change in address of a certified manufacturer will require review and possible recertification or partial certification inspection of the plant at the new location.

(b) The plant certification inspection will be conducted by a certification team designated by the department. The team shall consist of:

(1) a team leader, who is either a department employee, an engineer, or other qualified person as determined by procedures established by the council [~~Texas Industrialized Building Code Council~~]; and

(2) one or more department inspectors or third party inspectors.

(c) [~~(b)~~] The team leader may not be an employee of the third party inspection agency (TPIA) responsible for regular in-plant inspections of the manufacturer or the design review agency (DRA) responsible for review of the manufacturer's design package. The following persons may not solicit, offer, or agree to provide future design review or in-plant inspection services for the manufacturer prior to the manufacturer completing all certification requirements:

(1) an agency other than the manufacturer's current TPIA or DRA that provides a certification team member; and

(2) any team member that is not employed by the manufacturer's current TPIA or DRA.

(d) [~~(c)~~] The inspection shall be conducted in accordance with the procedures established by the council [~~Texas Industrialized Building Code Council~~]. A certification inspection has two primary purposes:

(1) to verify that the manufacturer is capable of producing modules or modular components that comply with the law and the rules, mandatory building codes, and approved design package; and

(2) to verify that the manufacturer's approved compliance control program will ensure compliance now and in the future.

(e) [~~(d)~~] The team will become familiar with all aspects of the manufacturer's approved design package. Structures on the production line will be checked to assure that failures to conform located by the certification team are being located by the plant compliance control program and are being corrected by the plant personnel. The certification team will work closely with the plant compliance control personnel to assure that the approved design package and compliance control manuals for the facility are clearly understood and followed. If deemed necessary by the certification team, a representative of the design review agency must be present during the inspection. At least one module or modular component containing all systems, or a combination of modules or modular components containing all systems, shall be observed during all phases of construction. The team must inspect all modules or modular components in the production line for Texas during the certification. The plant certification inspection will terminate when the certification team has fully evaluated all aspects of the manufacturing facility.

(f) [~~(e)~~] The certification team will issue a plant certification, or facility evaluation, report to the manufacturer when the department has determined that the manufacturer has met the requirements for certification. A copy of the plant certification report will also be forwarded to the third party inspection agency responsible for in-plant inspections. The manufacturer and third party inspection agency will be responsible for ensuring that all conditions of certification as outlined in the certification report are met. The manufacturer must keep a copy of this report in their permanent records. The report will contain, at a minimum, the following information:

(1) the name and address of the manufacturer;

(2) the names and titles of personnel performing the certification inspection;

(3) the serial or identification numbers of the modules or modular components inspected;

(4) a list of nonconformances observed on the modules or modular components inspected (with appropriate design package references) and corrective action taken in each case;

(5) a list of deviations from the approved compliance control procedures (with section or manual references) observed during the certification inspection with the corrective action taken in each case;

(6) a list of conditions of certification with which the manufacturer must comply to maintain the certification;

(7) the date of certification;

(8) the following statement: "This report concludes that (name of agency), after evaluating the facility, certifies that (name of factory) of (city) is capable of producing (industrialized housing and buildings or modular components) in accordance with the approved building system and compliance control manuals on file in the manufacturing facility and in compliance with the requirements of the Texas Industrialized Building Code Council"; and

(9) the signature of an authorized department employee.

(g) [~~(f)~~] If the department determines that the manufacturer is not capable of meeting the certification requirements or that the manufacturer is unable to complete the certification inspection requirements, then the certification team will issue a non-compliance report. The non-compliance report will detail the specific areas in which the manufacturer was found to be deficient and may make recommendations for improvement.

(h) [~~(g)~~] If any personnel of a design review agency or third party inspection agency participate as members of a certification team, the agency is considered a participant in the certification team and is responsible for compliance with Texas Occupations Code, Chapter 1202, rules adopted by the commission, and decision, actions, and interpretations of the council in performing the certification, inspection and related activities.

§70.61. Responsibilities of the Department--Monitoring Inspections.

(a) The department shall monitor and evaluate the performance of third party inspection agencies, third party inspectors, third party site inspectors, and design review agencies in accordance with procedures set by the council, and make performance reports and recommendations to the council as may be necessary.

(b) The manufacturer shall reimburse the department an hourly monitoring fee for expenses incurred outside headquarters in

monitoring the performance of the third party inspection agency or third party inspector.

(c) The industrialized builder or the REF builder shall reimburse the department an hourly monitoring fee for expenses incurred outside headquarters in monitoring the performance of the third party inspection agency, third party inspector, or third party site inspector.

(d) The design review agency shall reimburse the department an hourly monitoring fee for expenses incurred outside headquarters in monitoring the performance of the agency.

§70.62. Responsibilities of the Local Building Official--[~~Building Site~~] Inspections.

(a) Installation inspections. When the installation [~~building~~] site is within a municipality that has a building inspection agency or department, the local building official will inspect all on-site construction and the attachment of the structure to the foundation to assure completion and attachment in accordance with the approved design package, the engineered foundation system, any unique on-site details, and the mandatory building codes. [~~and any unique foundation system or on-site details.~~] As a minimum the local building official shall:

(1) perform an overall visual inspection for obvious nonconformity to the approved design manual, the engineered foundation system, any unique on-site details, and the mandatory building code; [~~applicable code,~~]

(2) require final inspections along with any tests that [~~which~~] are required by the approved installation instructions, on-site construction documentation, and/or the mandatory building code; [~~applicable code, and~~]

(3) require the correction of deficiencies identified by the tests or discovered in [~~final~~] inspections; and

(4) issue a certificate of occupancy in accordance with locally adopted rules and regulations.

(b) Site built REFs. When an REF is constructed within a municipality that has a building inspection agency or department, the local building official will inspect all construction to assure completion in accordance with the approved construction documents in accordance with §70.70(b) and other construction documentation in accordance with §70.70(e).

[~~(2) notify the executive director of any damage to a module or modular component resulting from transportation to, or handling at, the building site which is not corrected by the industrialized builder; notify the executive director of any noncompliance to, or deviation from, the approved building system or applicable code; and report to the executive director any violation of these rules and regulations. These notices and reports shall be submitted by certified mail.~~]

§70.63. Council's Responsibilities--Compliance Disputes.

(a) The council shall resolve any dispute, disagreement, or difference of opinion between the design review agency (or department when acting as a design review agency) and a local building official as to whether the approved design package meets or exceeds the requirements of the mandatory building codes set forth in this chapter. The council's decision [~~shall be timely made and~~] shall be binding on all parties.

(b) Questions concerning the code compliance of an approved design package shall be raised prior to issuance of a building permit. The local building official shall forward in writing to the executive director any instances where it is found that the approved design package for a building to be located within his municipality does not meet the mandatory building codes adopted in this chapter. The documentation shall specify the code sections and the reasons why the design package fails to meet the mandatory building codes.

(1) If the approved design package is found to be in compliance, then the executive director shall notify all concerned parties and the local building official shall issue a building permit.

(2) If the approved design package is not in compliance, then the executive director shall notify all concerned parties and the industrialized builder or manufacturer shall bring the building into compliance with the mandatory building codes.

(3) If the building official, industrialized builder, or manufacturer disagrees with the decision of the executive director, then the council shall determine at the next scheduled meeting if the approved design package complies with the mandatory building codes. The decision of the council shall be binding on all parties.

[~~(b) If the local building official thinks the approved design package or unique on-site construction documentation does not meet the code requirements of this chapter, this opinion shall be forwarded in writing to the executive director at the department's Austin office within seven working days following the filing of an application for a building permit and prior to issuance of the building permit. This written opinion shall set forth specifically those code sections for which the noncompliance allegedly exists and the specific reasons the local building official thinks the design package or unique on-site construction documentation fails to meet the code requirements. The local building official shall submit 15 copies of the written opinion. The executive director will submit the local building official's opinion and reasons to the council within three working days following receipt. The council shall determine at the next scheduled meeting, not to exceed 45 days, whether or not the design package or unique on-site construction documentation meets the mandatory state code requirements and shall notify the local building official and the executive director in writing. If the design package or on-site construction documentation is determined by the council to meet the code requirements, the local building official shall issue a building permit. Questions concerning the code compliance of a design package or on-site construction documentation must be raised prior to the issuance of a building permit and, once a local building permit is issued, the local building official shall not stop any on-site construction due to questions about the approved design package or on-site construction documentation.~~]

(c) The executive director shall attempt to resolve [~~If~~] a dispute or difference of opinion concerning the code compliance of an approved design package or a unit under construction [~~arises~~] between a [~~the~~] manufacturer and the third party inspector during an in-plant inspection. Disputes or differences of opinion that cannot be resolved by the executive director shall be forwarded [~~as to whether the construction meets or exceeds the approved design package, the dispute or differences shall be resolved by the executive director. If the executive director is unable to resolve the dispute, then he will forward it~~] to the council for resolution at their next scheduled meeting. The decision of the council shall be binding on all parties.

(d) The executive director shall attempt to resolve a dispute or difference of opinion between an industrialized builder or installation permit holder and a local building official or third party inspector or third party site inspector concerning the code compliance of the construction of the foundation or installation of an industrialized house or building. Disputes or differences of opinion that cannot be resolved shall be forwarded to the council at their next scheduled meeting. The decision of the council shall be binding on all parties.

[~~(d) If a dispute or difference of opinion arises between the industrialized builder and a local building official or third party inspector as to whether the on-site construction meets or exceeds the approved~~

~~design package or unique on-site construction documentation, the dispute or difference of opinion shall be resolved by the executive director. If the executive director is unable to resolve the dispute, then he will forward it to the council for resolution.~~]

§70.64. Responsibilities of the Department--Proprietary Information Protected.

(a) All designs, plans, specifications, compliance control programs, manuals, on-site construction instructions and documentation, information relating to alternate methods or materials, or any other documents submitted by a manufacturer, industrialized builder, or REF builder to the council, the department, or local building official are proprietary information and shall only be used for purposes of assuring compliance with the provisions of the Industrialized Housing and Buildings statute [~~Act (the Act)~~] and this chapter.

(b) The items and information set forth in subsection (a) [~~of this section~~] furnished by the manufacturer, industrialized builder or REF builder to the council, the department, or local building official, shall not be copied or distributed to any other person except with the manufacturer's, industrialized builder's or REF builder's written permission except as needed to assure compliance with the provisions of the Act, or under the direction of the Texas attorney general pursuant to the Texas Public Information Act, Texas Government Code, Chapter 552.

§70.65. Responsibilities of the Commission--Reciprocity.

(a) Industrialized housing and buildings designed and constructed by a manufacturer in this state for delivery and placement on a building site in another state are not subject to this chapter unless the units are constructed under the terms of a reciprocity agreement with the other state.

(b) [~~(a)~~] The [~~If the commission finds that the standards prescribed by the statute or rules and regulations of another state meet the objectives of Chapter 1202 and are satisfactorily enforced by that state or its agents, then the~~] commission may enter a reciprocal agreement with another [~~that~~] state to authorize building inspections of industrialized housing [~~houses~~] or buildings constructed in that state to be performed by an inspector of the equivalent regulatory agency of that state provided that:[~~.~~]

(1) the commission finds that the standards prescribed by the statute or rules of the other state meet the objectives of Texas Occupations Code, Chapter 1202;

(2) the commission finds that the standards are satisfactorily enforced by the other state or its agents; and

(3) the [~~The~~] standards of the other [~~another~~] state shall not be deemed to be adequately enforced unless the other state provides for immediate written notification to the executive director of suspensions or revocations of approvals of manufacturers by the other state.

(c) [~~(b)~~] If the commission enters a reciprocity agreement with another state, then the commission will accept industrialized housing and buildings which have been inspected by the reciprocal state and which have the appropriate decal, label, or insignia of the reciprocal state. Manufacturers in the reciprocal state who construct industrialized housing and buildings for Texas will be subject to the following.

(1) Manufacturers must be registered in Texas in accordance with §70.20. The manufacturer must submit evidence that its building system and compliance control program have been approved by the reciprocal state. The executive director shall verify the approval and maintain a list of manufacturers approved under the terms of the reciprocity agreement.

(2) Industrialized housing, buildings, modules, and modular components will be constructed in accordance with the codes referenced in §70.100 and any amendments to those codes in accordance with §70.101. The code used will be determined in accordance with §70.102.

(3) Review and approval of the manufacturer's design package will be in accordance with §70.70 except that the reciprocity agreement with the reciprocal state will accept the compliance control program approved by the reciprocal state for that manufacturer. All inspections performed by the reciprocal state must be in accordance with documents reviewed and approved by a council approved design review agency or the department when acting as a design review agency.

(4) The manufacturer will assign a Texas decal or insignia to each module or modular component for Texas in accordance with §70.77. The Texas decal or insignia will be placed in the vicinity of the decal, label, or insignia of the reciprocal state.

(5) The manufacturer will permanently attach a data plate to each industrialized house or building in accordance with §70.71.

(6) The manufacturer will submit a monthly report to the executive director in accordance with §70.50.

(d) [~~(c)~~] If the commission determines that the standards for the manufacture and inspection of industrialized housing and buildings in a reciprocal state, with which the commission has entered a reciprocal agreement, do not meet the objectives of Chapter 1202 or are not being enforced by the reciprocal state, then the commission shall suspend or revoke the reciprocal agreement. The reciprocal state and affected manufacturers will receive written notification of the reasons for the suspension or revocation of the agreement.

§70.70. Responsibilities of the Registrants--Manufacturer's Design Package.

(a) Review and approval. The manufacturer's design package and the REF builder's construction documents must be reviewed and approved in accordance with the following.

(1) The manufacturer or REF builder shall [~~must~~] select a council approved design review agency (DRA) to perform all required review and evaluation of plans, designs, specifications, compliance control, and on-site construction documentation, etc. This selection shall be made in writing to the executive director and will state the name, address, and registration number of the design review agency selected.

(2) An approved DRA shall review all designs, plans, specifications, calculations, compliance control programs, on-site construction documentation or specifications, and other documents as necessary to assure compliance with the mandatory building codes in accordance with the interpretations, instructions, and determinations of the council.

(A) The reviews are to be performed or directly supervised by the DRA's certified plans reviewers for the discipline (electrical, plumbing, mechanical, structural, building planning, or fire safety) as listed and approved in the agency's organizational chart. A DRA's plans reviewers must be certified pursuant to the criteria established by the council as set forth in §70.22.

(B) The [~~department or~~] DRA will obtain from the manufacturer or REF builder all [~~such~~] information [~~as is~~] necessary to assure that the manufacturer's designs and procedures are in compliance with the mandatory building codes and the sections in this chapter.

(3) All documents shall have [~~all~~] pages numbered and arranged in accordance with a table of contents. The floor plans shall have no scale smaller than 1/8th inch equals one foot. All documents shall be identified to indicate the manufacturer's or REF builder's name and registered physical address.

(4) The DRA will signify approval of a drawing, specification, calculation, or any other document, including revisions and additions, in the manufacturer's design package and in the REF builder's construction documents by applying the council's stamp to each page.

(A) An alternate council stamp as approved by the council may be used on all designs, plans, specifications, calculations, and other documentation with the exception of the first or cover page and the table of contents or index pages of the design package.

(B) The original council stamp with original signature will be required on the first or cover page and the table of contents or index pages of the design package [~~these pages~~].

(C) The signature on the original council stamp must be the signature of the manager or chief executive officer of the DRA. The manager or chief executive officer of the DRA must be licensed in the State of Texas as a professional engineer or architect in accordance with the criteria for approval of DRA's established by the council.

(D) The stamp shall not be placed on any designs, plans, or specifications that [~~which~~] do not meet the requirements of the applicable mandatory building codes or the requirements of these sections.

(E) The DRA shall forward a copy of all approved documents to the department within 5 days of approval and shall forward one approved copy to the manufacturer or the REF builder.

(F) The [~~manufacturer and the~~] DRA shall keep copies of all [~~the~~] approved documents for a minimum of 5 years from the date that these documents are superseded by adoption of later editions of the mandatory building codes and make a copy of these documents available to the department upon request.

(G) The manufacturer shall keep a copy of all approved documents for a minimum of ten years from the date the last unit constructed from the documents is shipped and make a copy of these documents available to the department [~~Department~~] upon request. [~~The DRA shall keep a copy on file of all approved documents for a minimum of five years from the date that these documents are superseded by adoption of later editions of the mandatory building codes and make a copy of these documents available to the Department upon request.~~]

(H) The REF builder shall keep a copy of all approved construction documents for a minimum of 10 years from the date of completion of the units covered by the documents and make a copy of these documents available to the department upon request.

(I) The manufacturer or the REF builder shall make a copy of all approved documents available to the person performing [~~in-plant~~] inspections. [~~A DRA will forward one approved copy of the design package, including additions and revisions, to the department within five days of approval and will return one approved copy to the manufacturer.~~]

(5) [~~Approvals dated before the effective date of the adoption of the codes in §70.100 are not valid for industrialized housing, buildings, modules, and modular components constructed after the effective date of adoption unless steps are taken to transition the approval to the new code editions in accordance with subparagraphs (B) and (C) of this paragraph.~~] Manufacturers and REF builders will be notified of the change in code editions 180 days before the effective date of the change. Manufacturers or REF builders who wish to continue building to previously approved documents must resubmit these documents to their DRA for review and approval to the new code editions. Only documents that meet the new code editions may be approved. Approval of these documents will be evidenced by application of a new approval date and the council's stamp of approval to each document.

(A) All construction begun on or after effective date of adoption of the new code editions must comply with the new code editions and be constructed in accordance with design packages approved to the new code editions.

(B) Construction to plans approved to the old code editions begun prior to effective date of adoption of the new code editions, or prior to the manufacturer's effective transition date, must be completed, inspected by a Texas approved inspector, and labeled (TX decal must be attached to the unit) within 180 days of the adoption of the new code editions, or the unit shall not be eligible for a Texas decal.

(C) A [~~The~~] manufacturer may [~~make the~~] transition from the current code edition to the new code edition as follows [~~in any of the following ways~~].

(i) [~~(A)~~] The approval date on all documents in the manufacturer's design package will be on or after the effective date of adoption of the new edition of the codes in §70.100. Approvals dated before the effective date of adoption of the codes in §70.100 will no longer be valid for new construction by the manufacturer.

(ii) [~~(B)~~] The manufacturer may transition approval of documents in his design package any time within the 180 days prior to the effective date of the adoption of the new editions of the codes. The manufacturer must notify the department in writing of the effective date of transition. All documents approved on or after that date shall be to the new editions of the codes. All previously approved supporting documentation, such as compliance control manuals, system calculations, etc., must be resubmitted to the DRA for review and approval to the new code editions and must be approved as of the effective date of transition specified by the manufacturer. Approvals dated before the transition date of adoption of the codes in §70.100 will no longer be valid for new construction by the manufacturer.

[~~(C) The manufacturer may submit a written description of any other method of transition to the department for approval.~~]

(6) A DRA may withdraw the approval of any document whenever the approval is later found to be in violation of code requirements or the rules and regulations in this chapter. Notice of the withdrawal of the approval shall be in writing and shall set forth the reasons for the withdrawal. Any withdrawal of approval shall have prospective effect only, except for life safety items.

[~~(7) The DRA shall reimburse the department an hourly monitoring fee for expenses incurred outside headquarters in monitoring the performance of the DRA.~~]

(7) [~~(8)~~] A DRA may not revise or correct documents submitted for review and approval by the manufacturer or REF builder except as provided in this subsection. DRAs [~~or the department acting as a DRA~~] may make red ink corrections to documents provided the corrections meet all of the following criteria:

(A) limited to corrections of minor deviations;

(B) the corrected items can be verified by reference to prescriptive code requirements;

(C) the change does not involve any change of design or require design;

(D) the red ink correction is valid for 10 working days and may not be extended; and

(E) the corrections must be numbered and initialed by the DRA and the statement, "As noted with (number) corrections" shall appear near the stamp of the council with the number of corrections entered.

(b) In-plant documentation for manufacturers and construction documents for REF builders. The manufacturer and REF builder shall provide the DRA the documentation necessary to demonstrate compliance with the mandatory building codes in §70.100 and §70.101. At a minimum the documentation shall include the following [~~The manufacturer shall provide the DRA in-plant documentation that must, at the minimum, contain the following~~]:

(1) specifications or detail drawings for all materials, devices, appliances, equipment, and fasteners used in construction, including listings and evaluation reports for materials or methods of construction where required by the mandatory building code or to demonstrate compliance of an approved alternate material or method of construction in accordance with §70.103;

(2) detailed drawings of all assemblies and components (with cross-sections as necessary to identify major building components);

(3) floor plans for all models and options;

(4) electrical schematics for all models and options;

(5) water system and drain-waste-vent system drawings for all models and options;

(6) gas piping system drawings for all models and options;

(7) mechanical system drawings for all models and options;

(8) fire protection, fire safety, and exit details;

(9) energy compliance [~~thermal resistance~~] details;

(10) heating, ventilation, and air conditioning details;

(11) structural, thermal, and electrical load calculations;

(12) weather resistance details;

(13) condensation protection details;

(14) decay protection details;

(15) insect and vermin protection details;

(16) fastening schedule;

(17) assembly and connection instructions for all components, materials, devices, equipment, and appliances;

(18) together on either the floor plan or [~~on~~] the cover or title sheet for each model or project in a title block format:

(A) name and date of applicable codes;

(B) identification of permissible type of gas for appliances;

(C) maximum snow load (roof) (psf);

(D) maximum wind speed (mph) and exposure;

(E) seismic design criteria;

(F) occupancy/use group type;

(G) construction type;

(H) special conditions and/or limitations;

(I) the location of the data plate on the building or dwelling unit; and

(J) the location of the decal or insignia on each module or modular component, or for REF builders, the location of the decal on the building;

(19) compliance control manual (reference subsection (c) [~~of this section~~]); and

(20) on-site construction documentation (reference subsection (d) [~~of this section~~]).

(c) Compliance control program for manufacturers. The utilization of mass production techniques and assembly line methods in the construction of industrialized housing, buildings, modules, and modular components along with the fact that a large part of such construction cannot be inspected at the ultimate building site, requires manufacturers to develop an adequate compliance control program to assure that these structures meet or exceed mandatory code requirements and are in compliance with the rules and regulations of this chapter. The compliance control program shall be documented in the form of a manual that must be approved by the design review agency [~~or the department~~]. The council may waive the compliance control program as set forth in the rules upon written request from the manufacturer. Waiver of the compliance control program shall require that each module or modular component be individually inspected at each and every stage of the manufacturing process. The manufacturer shall provide the design review agency a compliance control manual that must, at the minimum, contain the following:

(1) a table of contents;

(2) a chart indicating the manufacturer's organizational structure to assure compliance and to assure that the compliance control staff shall maintain independence from the production personnel;

(3) a statement that defines the obligation, responsibility, and authority for the manufacturer's compliance control program;

(4) identification of compliance control personnel, their accountability by position, responsibility for inspections, method of marking nonconformances observed, and system for assuring corrections are made;

(5) materials handling methods, including inspection checklists, for receiving materials and methods for marking and removing rejected materials both upon receipt and from the production line. The area for rejected materials must be clearly indicated to assure that such material is not used;

(6) a description of an identification system to mark each individual module, or modular component, at the first stage of production to assure appropriate inspection and rechecking of any deviation corrections;

(7) a diagram of the manufacturing sequence with the plant layout, including a description of the activities to be performed along with a listing of those that may be performed at one or more stations;

(8) an inspection checklist including:

(A) a list of inspections to be made at each production station; and

(B) accept/reject criteria (each significant dimension and component should be given tolerances);

(C) an energy compliance checklist that enumerates the energy code-compliance features of the module or modules and includes a signature space for the compliance control inspector or man-

ager. A copy of this checklist shall be shipped with the module or modules.

(9) step-by-step test procedures, a description of the station at which each production test is performed, a description of required testing equipment, and procedures for periodic checking, recalibration, and readjustment of test equipment. Procedures shall be included for, but not limited to, electrical tests as specified in the National Electrical Code, Article 550-17, gas supply pressure tests, water supply pressure tests, drain-waste-vent system tests, concrete slump tests, and concrete strength tests;

(10) storage procedures for completed structures at the plant and for any other locations prior to installation;

(11) a statement indicating the person who is responsible for compliance control at each manufacturing facility and who will assume responsibility for decals and insignia, application of the decals and insignia, and the reporting procedure;

(12) a procedure for maintaining reliable, retrievable records of the inspections performed, decal and insignia numbers assigned, the deficiencies and how they were corrected, and the site to which the modules or modular components were transported;

(13) procedures and information to demonstrate how the modules and modular components are to be transported to the building site so that damage will not occur or that compliance deviations will not result (actual transportation without damage or deviation is evidence sufficient to justify the method); and

(14) procedures that assure that the compliance control procedures are complied with on all regulated structures. As a minimum, regulated structures must be identified prior to commencing construction.

(d) On-site construction specifications or documentation for manufacturers. All work to be performed on the building site shall be specifically identified and distinguished from construction to be performed in the manufacturing facility, e.g., assembly and connection of all modules, modular components, systems, equipment, and appliances and attachment to the foundation system. The work to be performed on-site shall be described in detail in documents (architectural sheets, specifications, instructions, etc.) which shall be made available to the builder for use at the site and provided as required for review and inspection to the agency having local authority. The manufacturer shall provide the design review agency on-site construction documentation which must, at the minimum, contain the following:

(1) critical load points for attachment of the house or building or component to the foundation;

(2) details for module to module or modular component assembly and connection;

(3) minimum requirements for connection and attachment of all modules and modular components to the foundation system;

(4) firestopping and draftstopping details;

(5) details for fire exits, balconies, walkways, and other site-built attachments;

(6) exterior weatherproofing details;

(7) details for thermal, condensation, decay, corrosion, and insect protection;

(8) electrical, mechanical, heating, cooling, and plumbing system completion details;

(9) electrical, mechanical, heating, cooling, and plumbing system test procedures;

(10) fire safety provisions; and

(11) specifications and instructions for cooling equipment, and complete information necessary to calculate sensible heat gain along with information on the sizing of the air distribution system, if applicable, and the R values of insulation in the ceiling, walls, and floors.

(e) Other construction documentation for REF builders. Construction documentation for the foundation and site specific elements, such as ramps and stairs, of the site built REFs shall be reviewed and approved by the DRA, the local building official, or, in areas where the building site is outside a municipality or within a municipality with no building department or agency, by the school district. At a minimum the documentation shall include all construction documentation necessary to complete the building at the first commercial site including a foundation system design meeting the requirements of §70.73(g). The use of ground anchors shall comply with §70.73(h).

~~[(e) Foundation system designs. A licensed professional engineer (or architect for one and two family dwellings or buildings having one story and total floor area of 5,000 square feet or less) shall design and seal the foundation systems for each industrialized house or building. Review by a DRA is not needed or required. A municipality that regulates the on-site construction or installation of industrialized housing or buildings may require and review the foundation system design for compliance with the mandatory building code. Foundation system designs shall comply with the mandatory building code referenced in §70.100 and §70.101 and shall contain complete details for the construction and attachment of the house or building on the foundation, including, but not limited to the following:]~~

~~[(1) address or area for which the foundation is suitable;]~~

~~[(2) minimum load specifications, including wind loads, seismic design loads, soil bearing capacity, and if the foundation is designed for expansive soils;]~~

~~[(3) site preparation details;]~~

~~[(4) material specifications;]~~

~~[(5) requirements for corrosion resistance, protection against decay, and termite resistance;]~~

~~[(6) size, configuration, and depth below grade of all footings, piers, and slabs including, but not limited to, details of concrete reinforcement, spacing of footings and piers, capping of piers, and mortar or concrete fill requirements for piers;]~~

~~[(7) fastening requirements, including, but not limited to, size, spacing, and corrosion resistance;]~~

~~[(8) requirements for surface drainage; and]~~

~~[(9) details for enclosure of the crawl space, including details for ventilation and access.]~~

~~[(f) Unique on-site details. If the industrialized builder will add unique on-site details, or if the details provided by the manufacturer for completing a house or building on site are incomplete or not suitable for the installation site, then a licensed Texas professional engineer (or architect for one and two family dwellings or buildings having one story and total floor area of 5,000 square feet or less) shall design and seal the unique on-site details and review by a DRA is not needed or required. Unique on-site details shall comply with the mandatory building code referenced in §70.100 and §70.101. A municipality that regulates the on-site construction or installation of industrialized hous-~~

~~ing or buildings may require and review the unique on-site details for compliance with the mandatory building code.~~]

(f) [~~(g)~~] Non-site specific buildings. Whenever the manufacturer does not know, at the time of construction, where the building is to be placed, in lieu of providing the site specific construction details or typical site construction details as required in subsection (d) [~~of this section~~], the manufacturer may provide special conditions and/or limitations on the placement of the building. These special conditions and/or limitations will serve to alert the local building official of items, such as handicapped accessibility and placement of the building on the property, which the local building official may need to verify for conformance to the mandatory building codes. Certain site-related details, such as module to module connections, must still be provided by the manufacturer. It is the responsibility of the DRA to verify that such site-related details are included in the manufacturer's approved design package.

§70.71. Responsibilities of the Registrants--Data Plates.

(a) The manufacturer shall [~~will~~] attach a data plate to each dwelling unit of a residential structure containing industrialized housing and buildings modules and to each appropriate unit of a commercial structure containing industrialized housing and buildings modules.

(b) The REF builder shall attach a data plate to each site built REF.

(c) The data plate shall [~~must~~] be made of a material that will not deteriorate over time and be permanently placed so that it cannot be removed without destruction. The data plate shall be placed in an easily accessible location as designated on the floor plan or on the cover or title sheet for each model or project. The data plate shall not be located on any readily removable item such as a cabinet door or similar component. Location of the data plate on the cover of the electrical distribution panel is acceptable.

(d) [~~(b)~~] The data plate must contain, as a minimum, the following information:

(1) the manufacturer's or REF builder's name, registration number, and address;

(2) for manufacturers, the serial or identification number of the unit; for REF builders an identification or project number for the building;

(3) the State decal numbers;

(4) the name and date of applicable codes;

(5) an identification of permissible type of gas for appliances;

(6) the maximum snow load (roof) (psf);

(7) the maximum wind speed (mph) and exposure;

(8) the seismic design criteria;

(9) the occupancy/use group type;

(10) the construction type; and

(11) special conditions and/or limitations.

(e) [~~(c)~~] All modular components shall be marked with, or otherwise have permanently affixed, a data plate containing the following information:

(1) the manufacturer's name, registration number, and address;

(2) the serial or identification number of the component or components;

(3) the State insignia number or numbers;

(4) the name and date of applicable codes;

(5) the design loads for the component; and

(6) any special conditions of use for the component.

(f) [~~(d)~~] The information required in subsection (c) [~~of this section~~] may be placed in the crate in which the component or components are shipped or on a tag attached to the crate or to the component if the component is such that the information may not be marked or permanently affixed to the component.

§70.72. Responsibilities of the Registrants--In-plant Inspection.

(a) The manufacturer shall designate in writing to the department the third party inspection agency that will be performing in-plant inspections. A manufacturer may designate more than one third party inspection agency to perform in-plant inspections. However, once an agency has begun the in-plant inspection on the modules for a project or building, the manufacturer may not change inspection agencies for that project or building

(b) The TPIA/TPI shall conduct announced or unannounced inspections at the manufacturing facility at reasonable, but varying, intervals to review any and all aspects of the manufacturer's production and compliance control program. It is the manufacturer's responsibility to assure that the inspections are accomplished as outlined in this subsection. The department will determine the frequency of modular component inspections.

(1) The TPIA/TPI shall conduct inspections in accordance with procedures established by the council.

(2) Inspection of every visible aspect of every module shall normally be made at least at one point prior to completion of the structural, plumbing, mechanical, or electrical phases. The department will determine the frequency of modular component inspections.

(3) Inspection of system testing shall be made at least once every third inspection. Inspection of a of the energy compliance design shall be made at every inspection. Exception: For buildings that are not required to meet the envelope requirements of the mandatory energy code, inspection of the energy compliance design shall be made at least once every 3rd inspection.

(c) Inspections at the manufacturing facility shall be increased in frequency as required by procedures established by the council or as necessary to assure that the manufacturer is performing in accordance with the approved compliance control manual.

(d) Third party inspection agencies shall provide the department a written schedule of inspections a minimum of seven days prior to the inspection. If the inspection must be rescheduled for any reason, the TPIA must immediately inform the department of the schedule change.

(e) The TPI/TPIA shall notify the manufacturer when an inspection shows that the manufacturer is not constructing structures or portions of structures in accordance with the approved design package or conducting compliance control inspections in accordance with the procedures in the approved design package. All deviations shall be documented by the TPI on the in-plant inspection report in accordance with the procedures approved by the council.

(f) The TPIA shall furnish the manufacturer a copy of the inspection report upon completion of the in-plant inspection. The report must be kept in the manufacturer's file at least five years and a copy shall be provided to the department upon request.

§70.73. Responsibilities of the Registrants--Building Site Construction and Inspections.

(a) Industrialized housing shall be installed on a permanent foundation system.

(b) The initial construction and inspection of a site built REF at the 1st commercial site falls under the provisions of §70.79. Subsequent installation of REFs shall comply with this section.

(c) Responsibility for building site construction. The industrialized builder or installation permit holder shall be responsible for assuring that the foundation and the installation of an industrialized house, building, or site built REF complies with the manufacturer's or REF builder's on-site construction specifications or documentation that have been approved in accordance with §70.70, any unique on-site construction details, the engineered foundation design, and the mandatory building codes.

(1) The industrialized builder or installation permit holder is responsible for assuring that all sub-contractors are licensed as required by applicable state law.

(2) The industrialized builder is not responsible for construction performed by the installation permit holder as specified on the installation permit application submitted to the department. Construction not covered by the installation permit is the responsibility of the industrialized builder.

(3) The installation permit holder is responsible only for the construction specified on the installation permit application submitted to the department.

(d) [~~(a)~~] Responsibility for inspections within jurisdiction of a municipality. When the building site is within a municipality that has a building inspection agency or department, the local building official will inspect all on-site construction done at the site and the attachment of the structure to the [~~permanent~~] foundation to assure completion and attachment in accordance with the documents approved in accordance with §70.70, [~~design package, the on-site construction documentation,~~] the foundation system design, [~~and~~] any unique on-site construction details, and the mandatory building codes.

(1) A municipality that regulates the on-site construction or installation of industrialized housing or buildings may require and review, for compliance with the mandatory building codes, a complete set of plans and specifications, including the foundation system design and any unique on-site construction details.

(2) The industrialized builder or installation permit holder shall not permit occupation of, or release for occupation, the industrialized house or building unless approved by the municipality.

(e) [~~(b)~~] Responsibility for inspections outside the jurisdiction of a municipality or within a municipality without a building inspection agency or department. When the building site is outside a municipality, or within a municipality that has no building department or agency, a third party inspector or site inspector will perform the required inspections in accordance with this section and the inspection procedures established by the council [~~Texas Industrialized Building Code Council~~] to assure completion and attachment in accordance with the documents approved in accordance with §70.70, [~~design package, the on-site construction documentation,~~] the foundation system design, and any unique on-site construction details.

(1) The on-site inspection is normally accomplished in three phases: foundation inspection, set inspection, and final inspection. The foundation inspection shall be performed before the concrete is poured.

(2) The final inspection shall be completed within 180 days of the start of construction. The department may grant an extension upon receipt of a written request that demonstrates a justifiable cause.

(3) [~~(1)~~] Site inspections are required for the first installation of all industrialized housing and permanent industrialized buildings [~~installed outside the jurisdiction of a municipality~~]. Exception: Site inspections are not required for the installation of unoccupied industrialized buildings not open to the public, such as communication equipment shelters, that are not also classified as a hazardous occupancy by the mandatory building code.

(4) [~~(2)~~] Site inspections are required for industrialized buildings that are designed to be moved from one commercial site to another commercial site [~~and that are installed outside the jurisdiction of a municipality~~] if the buildings are used as a school or place of religious worship.

(5) Site inspections are required for subsequent installations of site built REFs.

(6) [~~(3)~~] The industrialized builder, or installation permit holder, is responsible for scheduling each phase of the inspection with the [~~third party~~] inspector. Additional inspections will be scheduled as required for larger structures and to correct discrepancies. The industrialized builder, or installation permit holder, may utilize a different [~~third party~~] inspector for different projects, but may not change the inspector for a project once started without the written approval of the department.

(7) The inspector shall provide the industrialized builder or installation permit holder a copy of the site inspection report upon completion of each phase of the inspection. If the inspector finds a structure, or any part thereof, does not meet the approved design package, the mandatory building codes, the engineered foundation plans, or the engineered on-site construction details, then the inspection report shall include a list of violations. The industrialized builder or installation permit holder is responsible for assuring that all violations are corrected.[~~, shall keep a copy for a minimum of five years from the date of successful completion of the final inspection, and make a copy of the inspection report available to the department upon request. The report shall be on the form and in the format required by the department and the Texas Industrialized Building Code Council.~~]

(8) The industrialized builder, or installation permit holder, shall not permit occupancy, or release the house or building for occupation, until a successful final inspection has been completed. A final inspection report shall be issued showing no outstanding violations prior to occupation, or release for occupation, of the house or building. Exception: Occupancy of the house or building may be allowed provided the outstanding violations are not life safety issues or are non-structural in nature and the industrialized builder or installation permit holder agrees to correct the outstanding violations within 90 days of occupancy. Examples of life safety issues may include violations related to the structural adequacy of the house, building or foundation, plumbing violations, and violations related to the installation of the HVAC equipment.

(A) A successful final inspection means that all on-site construction has been completed, that all violations have been corrected, and that the construction has been found to be in compliance with the mandatory building codes, the approved on-site construction documentation, the engineered foundation system, and the engineered on-site construction documents.

(B) The industrialized builder or installation permit holder shall maintain a copy of each site inspection report for a minimum of ten years from the date of successful final inspection and make

a copy of the report available to the department upon request. The report shall include a list of all violations and documentation from the inspector showing that all outstanding violations have been corrected.

(C) A copy of all site inspection reports shall be given to the owner of the house or building.

(f) [~~(e)~~] Destructive disassembly shall not be performed at the site in order to conduct tests or inspections, nor shall there be imposed standards or test criteria different from those required by the approved installation instructions, on-site construction documentation, and the applicable mandatory building code. Nondestructive disassembly may be performed only to the extent of opening access panels and cover plates.

(g) Foundation system designs. A licensed professional engineer (or architect for one and two family dwellings or buildings having one story and total floor area of 5,000 square feet or less) shall design and seal the foundation systems for each industrialized house or building. Review by a DRA is not needed or required. A municipality that regulates the on-site construction or installation of industrialized housing or buildings may review the foundation system design for compliance with the mandatory building code. Foundation system designs shall comply with the mandatory building code referenced in §70.100 and §70.101 and shall contain complete details for the construction and attachment of the house or building on the foundation, including, but not limited to the following:

(1) address or area for which the foundation is suitable;

(2) minimum load specifications, including wind loads, seismic design loads, soil bearing capacity, and if the foundation is designed for expansive soils;

(3) site preparation details;

(4) material specifications;

(5) requirements for corrosion resistance, protection against decay, and termite resistance;

(6) size, configuration, and depth below grade of all footings, piers, and slabs including, but not limited to, details of concrete reinforcement, spacing of footings and piers, capping of piers, and mortar or concrete fill requirements for piers;

(7) fastening requirements, including, but not limited to, size, spacing, and corrosion resistance;

(8) requirements for surface drainage; and

(9) details for enclosure of the crawl space, including details for ventilation and access.

(h) Ground anchors. The use of ground anchors in the installation of industrialized housing is not permitted. The use of ground anchors in the installation of industrialized buildings is allowed if deemed appropriate by a municipality or other political subdivision. The foundation design shall be prepared by a licensed professional engineer and shall contain complete details for the construction and attachment of the building on the foundation, including, but not limited to the following:

(1) address or area for which the foundation is suitable, including a soil investigative report prepared by a qualified engineer or a description of the soil type for which the anchoring system is suitable;

(2) minimum load specifications, including wind loads, seismic design loads, soil bearing capacity, and if the foundation is designed for expansive soils;

(3) site preparation details;

(4) material specifications;

(5) requirements for corrosion resistance, protection against decay, and termite resistance;

(6) size, configuration, and depth below grade of all footings and piers including spacing of footings and piers;

(7) specification and installation requirements for the tie-down anchoring system, including specifications for corrosion resistance for the ground anchors and associated tie-down system;

(8) requirements for surface drainage; and

(9) details for enclosure of the crawl space, including details for ventilation and access.

(i) Unique on-site construction details. Unique on-site construction details as defined by §70.10(a) shall be designed and sealed by a licensed Texas professional engineer (or architect for one and two family dwellings or buildings having one story and total floor area of 5,000 square feet or less) and review by a DRA is not needed or required. The unique on-site construction details shall comply with the mandatory building codes referenced in §70.100 and §70.101. A municipality that regulates the on-site construction or installation of industrialized housing or buildings may require and review the unique on-site details for compliance with the mandatory building code.

[~~(d) If an inspector finds a structure, or any part thereof, at the building site to be in violation of the approved design package and/or the unique on-site plans and specifications, the inspector shall immediately post a deviation notice and notify the industrialized builder or installation permit holder. The industrialized builder, or installation permit holder, is responsible for assuring that all deviations are corrected and inspected prior to occupation of the building.~~]

[~~(e) The industrialized builder, or installation permit holder, shall not permit occupancy of a structure until a successful final inspection has been completed and a certificate of occupancy issued by the local authorities. For industrialized housing and buildings installed outside the jurisdiction of a municipality, the industrialized builder, or installation permit holder, shall keep a copy of the completed inspection report for the site inspection for a minimum of ten years from the date of successful completion of the final inspection and make a copy of the inspection report available to the department upon request.~~]

§70.74. Responsibilities of the Registrants--Alterations.

(a) The manufacturer shall not alter construction of the industrialized house or building from the approved design package. Industrialized builders or installation permit holders shall not alter construction performed at the installation from the approved on-site construction documentation except in accordance with this section or §70.73(g) [~~§70.70(e)~~]. Alterations of industrialized housing or buildings shall be as specified in this section.

(b) An alteration of an industrialized house or building prior to, or during installation, that results in a structure that does not comply with the mandatory building codes is prohibited. An alteration after installation of an industrialized building that is designed to be moved from one commercial site to another commercial site that does not comply with the mandatory building codes is prohibited. Alterations after installation of industrialized housing or permanent industrialized buildings shall be in accordance with the requirements of the local building code authorities.

(c) Ordinary repairs and work exempt from permit requirements as specified in the mandatory building codes referenced in §70.100 and §70.101 shall not be considered alterations. Ordinary repairs shall include the removal and replacement of the covering of existing materials, elements, equipment, or fixtures using like or the

same new materials, elements, equipment, or fixtures that serve the same purpose.

(d) Alteration decals are used to recertify industrialized buildings designed to be moved from one commercial site to another commercial site. Each decal is assigned to a specific module or modular component. The control of the decals shall remain with the department. The department will issue alteration decals to the third party inspection agency responsible for the inspections of the alterations upon application and payment of the fee for the decal by the industrialized builder. By affixing the decal the industrialized builder and third party inspection agency certify that the module has been altered and inspected in accordance with the mandatory building codes and this section. The third party inspector shall not affix the decal to any module where inspection reveals that the building does not comply with the approved recertification or alteration construction documents or the mandatory building codes.

(e) Alterations of industrialized housing and permanent industrialized buildings.

(1) *Prior to, or during, installation outside the jurisdiction of a municipality.* The industrialized builder, or installation permit holder, shall submit the original approved construction documents for the house or building, as reference, along with a complete set of construction documents describing a proposed alteration to a design review agency for approval prior to construction in accordance with the procedures established by the council [~~Texas Industrialized Building Code Council~~]. The design review agency responsible for review and approval of alteration construction documents for a project, industrialized house, or permanent industrialized building may not be changed without the written approval of the department. Alterations on the house or building shall not begin prior to approval of the construction documents and shall be performed only by persons licensed to perform this work. Inspections of alterations shall be performed by a third party inspector in accordance with procedures established by the council [~~Texas Industrialized Building Code Council~~]. The third party inspection agency responsible for inspections for a project may not be changed without the written approval of the department.

(A) An alteration data plate shall be affixed to any house or building where the alteration results in a reclassification of the occupancy group or construction type, a change in the permissible type of gas required for appliances, or a change in the wind speed and exposure, maximum snow (roof) load, seismic design criteria, or special conditions or limitations. The data plate shall contain such information as specified in subsection (g).

(B) All records pertinent to the alteration, including a copy of the alteration data plate, shall be retained by the industrialized builder or installation permit holder for a minimum of 10 years from the date of successful completion of the final inspection and be made available to the department upon request.

(C) All records pertinent to the review and approval of the alteration construction documents shall be retained by the DRA for a minimum of 5 years from the date of approval and shall be made available to the department [~~Department~~] upon request.

(D) All records pertinent to the alteration inspections shall be retained by the TPIA for a minimum of 5 years from the completion of the alteration construction and inspections and shall be made available to the department upon request.

(2) *Prior to installation within the jurisdiction of a municipality.* Alterations prior to installation within a jurisdiction shall be in accordance with paragraph (1) [~~of this subsection~~].

(3) *During, or after, installation within the jurisdiction of a municipality.* Approval of plans and inspection of alterations shall be in accordance with the permitting and inspection procedures of the municipality.

(f) Recertification of industrialized buildings designed to be moved from one commercial site to another commercial site. An industrialized building that has been certified by application of a Texas decal in accordance with §70.77 and that is designed to be moved from one commercial site to another commercial site may be recertified in accordance with this section. A copy of the data plate on each building to be recertified shall be submitted to the DRA responsible for the plan review and approval of recertification and alteration documents. Repairs, other than ordinary repairs as defined by the mandatory building codes, shall be considered alterations. The industrialized builder shall purchase an alteration decal from the department [~~Department~~] to affix to each module that is recertified or altered. The alteration decal shall be released only to the third party inspection agency responsible for the alteration inspections.

(1) Recertification class 1: [~~to recertify a building that is to be altered where~~] original approved construction documents exist and the building has not been previously altered. The industrialized builder shall:

[~~(A) provide the design review agency the current value of the building and a cost estimate for the alteration. With knowledge of the penalties for false statements the industrialized builder shall certify that the current value of the building and the cost estimate are true and accurate;~~]

(A) [~~(B)~~] submit a copy of the original approved construction documents for the building to the design review agency for reference purposes;

(B) [~~(C)~~] submit a copy of the construction documents for alteration of the building to the design review agency for review and approval in accordance with the requirements established by the council [~~Texas Industrialized Building Code Council~~] and subsection (f)(6) [~~of this section~~]. The construction documents shall include the serial number assigned by the manufacturer and the Texas decal number or insignia number of each module or modular component;

(C) [~~(D)~~] not begin construction of the alteration of the building prior to the approval of the construction documents by the design review agency. Construction shall be performed only by persons licensed to perform this work; and

(D) [~~(E)~~] have the construction inspected by a third-party inspector in accordance with the procedures established by the council [~~Texas Industrialized Building Code Council~~] and subsection (f)(7) [~~of this section~~]. A minimum of one rough in inspection and a final inspection of the alteration construction shall be required.

(2) Recertification class 2: [~~to recertify a building where~~] original approved construction documents do not exist. The industrialized builder shall:

(A) have a structural analysis of the existing building made by an engineer licensed to practice in Texas to determine the adequacy of the structural systems in accordance with Chapter 16 of the current edition of the International Building Code adopted in §70.100. The industrialized builder shall submit a copy of this analysis and a set of plans depicting the as built construction of the building to the design review agency for review and approval in accordance with the requirements established by the council [~~Texas Industrialized Building Code Council~~] and with subsection (f)(6) [~~of this section~~]. These documents shall include the serial number assigned by the manufacturer and the

Texas decal or insignia number of each module or modular component contained in the building;

(B) bring into compliance those areas of the building identified by the structural analysis and the design review agency as not in compliance with the mandatory building code. The industrialized builder shall submit construction documents to bring the building into compliance to the design review agency for review and approval in accordance with the requirements established by the council [~~Texas Industrialized Building Code Council~~] and with subsection (f)(6) [~~of this section~~];

[~~(C) if alterations are planned, then provide the DRA the current value of the building and a cost estimate in accordance with subsection (f)(1)(A) of this section and submit a copy of the construction documents for alteration of the building to the DRA in accordance with subsection (f)(1)(C) of this section;~~]

(C) [~~(D)~~] have the building inspected by a third party inspector in accordance with the procedures established by the council [~~Texas Industrialized Building Code Council~~] and subsection (f)(7) [~~of this section~~] to verify that the building complies with the approved as built construction documents;

(D) [~~(E)~~] not begin construction to bring the building into compliance, or to alter the building, prior to approval of the construction documents. The construction shall be performed only by persons licensed to perform this work; and

(E) [~~(F)~~] have the construction to bring the building into compliance, and to alter the building, inspected by a third-party inspector in accordance with the procedures established by the council [~~Texas Industrialized Building Code Council~~] and subsection (f)(7) [~~of this section~~]. A minimum of one rough in inspection and a final inspection of the construction shall be required.

(3) Recertification class 3: [~~to recertify a building where~~] original approved construction documents exist, but the building has been altered from those plans and the building has not been recertified in accordance with other paragraphs in this section. The industrialized builder shall:

(A) submit a copy of the original approved construction documents for the building to the design review agency for reference;

(B) submit a copy of construction documents that depict the alterations or repairs to the building to the DRA for review and approval in accordance with the requirements established by the council [~~Texas Industrialized Building Code Council~~] and with subsection (f)(6) [~~of this section~~]. Where structural elements have been altered, a structural analysis of the existing building made by an engineer licensed to practice in Texas to determine the adequacy of the structural systems in accordance with Chapter 16 of the current edition of the International Building Code adopted in §70.100 shall also be submitted. The construction documents shall include the serial number assigned by the manufacturer and the Texas decal or insignia number of each module or modular component contained in the building;

[~~(C) if additional alterations are planned, then provide the DRA the current value of the building and a cost estimate in accordance with subsection (f)(1)(A) of this section and submit a copy of the construction documents for alteration of the building to the DRA in accordance with subsection (f)(1)(C) of this section;~~]

(C) [~~(D)~~] bring into compliance those areas of the building identified by the structural analysis or the design review agency as not in compliance with the mandatory building codes. The industrialized builder shall submit construction documents to bring the building into compliance to the design review agency for review and approval in accordance with the requirements established by the council [~~Texas Industrialized Building Code Council~~] and with subsection (f)(6) [~~of this section~~];

(D) [~~(E)~~] have the building inspected by a third party inspector in accordance with the procedures established by the council [~~Texas Industrialized Building Code Council~~] and subsection (f)(7) [~~of this section~~] to verify that the building complies with the approved as built construction documents;

(E) [~~(F)~~] not begin construction to bring the building into compliance, or to alter the building, prior to approval of the construction documents. The construction shall be performed only by persons licensed to perform this work; and

(F) [~~(G)~~] have the construction to bring the building into compliance, and to alter the building, inspected by a third-party inspector in accordance with the procedures established by the council [~~Texas Industrialized Building Code Council~~] and subsection (f)(7) [~~of this section~~]. A minimum of one rough in inspection and a final inspection of the construction shall be required.

(4) Recertification class 4: buildings that are to be altered again after recertification. The industrialized builder shall:

(A) submit a copy of all previous recertification construction documents, including original and as built construction documents where applicable, to the design review agency in accordance with the requirements established by the council [~~Texas Industrialized Building Code Council~~] and subsection (f)(6) [~~of this section~~];

(B) include the alteration decal numbers from previous recertifications on the construction documents for altering the building; and

(C) comply with subsections (f)(1)(B) - (f)(1)(D) [~~(f)(1)(A) and (f)(1)(C) through (f)(1)(E) of this section~~].

(5) Emergency repairs. Equipment replacement and repairs, which do not qualify as ordinary repairs in accordance with the mandatory building codes, that must be performed in an emergency situation may be performed prior to recertification of the building. The industrialized builder shall submit documents as necessary to recertify the building in accordance with the requirements of subsections (f)(1) - [~~through~~] (f)(3) within the next working business day with the following exceptions.

(A) The industrialized builder shall have 10 working days to submit as built construction documents for the entire building where required by the recertification requirements of subsections (f)(1) - [~~through~~] (f)(4).

(B) The industrialized builder shall have 10 working days to submit a structural analysis performed by an engineer licensed to work in Texas where required by the recertification requirements of subsection (f)(1) - [~~through~~] (f)(4).

(6) The industrialized builder shall choose an approved DRA to perform the review and evaluation of all construction documents for the recertification of an industrialized building. The builder may choose a different DRA for different projects or buildings, but may not change DRA's for a project or building once the plan review has begun without prior written approval from the department.

(A) Construction documents submitted to the DRA shall include all information pertinent to assuring compliance with the mandatory building code and shall include structural, thermal, and electrical load calculations.

(B) As built construction documents shall be reviewed to determine the existence of any potential nonconformance with

the provisions of the mandatory building codes. The review and approval of construction documents to recertify a building shall comply with the requirements of §§70.70(a)(2) - [through] 70.70(a)(4) and §§70.70(a)(6) - [through] 70.70(a)(8) with the following exceptions.

(i) [(A)] Based on the engineering analysis and the DRA's review of the as built construction documents, the DRA will prepare a report to the industrialized builder that describes the nonconformances of the building to be recertified.

(ii) [(B)] The DRA will signify approval of a drawing, specification, calculation, or any other document submitted for review and approval by the application of the council's stamp of approval for altered or recertified buildings.

(iii) [(C)] The design review agency shall complete a recertification transmittal form in accordance with the requirements of the council [Texas Industrialized Building Code Council] and forward a completed copy of the form to the department. A copy of all documents pertinent to the recertification of the building shall be supplied to the department upon request.

(iv) [(D)] The design review agency shall forward a completed copy of the recertification transmittal form and one approved copy of the construction documents to the industrialized builder.

(v) [(E)] The design review agency shall keep a copy on file of the original approved documents, the engineering analysis, and approved construction documents for recertification of the building for 5 years from the latest date of approval of the recertification or alteration construction documents.

(7) The third party inspector shall affix the alteration decal to each industrialized building module or modular component upon completion of the construction and successful completion of all required inspections in accordance with this section and the requirements of the council. Successful completion of all required inspections means that all construction has been completed, that all violations have been corrected, and that the construction has been found to be in compliance of the applicable mandatory building codes and the approved construction documents [Texas Industrialized Building Code Council].

(A) The decal shall be affixed in the vicinity of the original decal or insignia on the module or modular component as depicted on the approved construction documents.

(B) The industrialized builder may not change the third party inspection agency for a project or building once started without prior written approval of the department.

(C) [(A)] All plans pertinent to the alteration or recertification shall be available for use by the third party inspector during the inspection. A copy of the mandatory building codes shall be available for the inspector's use during the inspection.

(D) [(B)] A rough-in inspection shall be scheduled by the industrialized builder while construction is still open to inspection. The inspector shall begin the inspection by verifying that the units to be inspected are those depicted in the original approved, the approved as built, or the previously approved recertification construction documents and shall verify the original decal and serial number of each unit to be inspected. The third party inspector may require the industrialized builder to uncover portions of the building as necessary to verify compliance.

(i) The inspection shall be terminated and the alteration decals returned to the department if inspection reveals that the units have been altered from the original approved, the approved as built, or the previously approved recertification construction documents.

(ii) The inspection shall be terminated and the alteration decals returned to the department if inspection reveals that the units are not those identified by serial number and decal number in the approved construction documents.

(E) [(C)] A final inspection shall be scheduled by the owner or industrialized builder after construction is completed.

(F) [(D)] Inspection of system testing shall be scheduled by the industrialized builder as necessary to assure that tests required by the mandatory building code are witnessed by the third party inspector.

(G) [(E)] The industrialized builder shall schedule a reinspection with the third party inspector wherever a deviation from the approved plans is identified that cannot be corrected and inspected during the rough-in or final inspection.

(H) [(F)] The inspector shall complete a recertification inspection report on the forms and in the format required by the department and the council [Texas Industrialized Building Code Council]. A copy of the inspection report shall be provided to the industrialized builder for his records and submitted to the department upon request. The third party inspection agency shall maintain records of all recertification inspection reports for five years from the date of successful completion of inspections for a building or project.

(I) [(G)] Only one inspection shall be required where a building is recertified in accordance with subsection (f)(2) or (f)(3) [of this section] and no construction is required to bring the building into compliance or to complete alterations on the building.

(i) The third party inspector shall verify that the units to be inspected are those depicted in the approved construction documents and shall verify the original decal and serial number of each unit to be inspected.

(ii) The third party inspector may require the industrialized builder to uncover portions of the building as necessary to verify compliance.

(iii) The inspection shall be terminated, and the alteration decals returned to the department, if inspection reveals that the units have been altered from the approved construction documents.

(J) [(H)] Only one inspection shall be required where emergency repairs are performed in accordance with subsection (f)(5) [of this section] and where further construction is not required to bring the building into compliance with the mandatory building code.

(i) The inspector shall verify that the units to be inspected are those depicted in the approved construction documents and shall verify the original decal and serial number of each unit to be inspected.

(ii) The third party inspector may require the industrialized builder to uncover portions of the building as necessary to verify compliance.

(iii) The inspection shall be terminated, and the alteration decals returned to the department, if inspection reveals that the units have been altered from the approved construction documents.

(iv) The inspection shall be terminated and the alteration decals returned to the department if inspection reveals that the units are not those identified by serial number and decal number in the approved construction documents.

(8) An alteration data plate shall be attached to the altered building as required by subsection (g) [affixed to any building, in the vicinity of the original data plate on the building, and as depicted on the approved construction documents, where the alteration or recertification results in a reclassification of the occupancy group or construction type, a change in the type of gas required for appliances, or a change in the wind speed and exposure, maximum snow (roof) load, seismic design criteria, or special conditions or limitations. The data plate shall contain such information as specified in subsection (g) of this section. A copy of the data plate shall be retained by the industrialized builder and be made available to the Department upon request].

(9) The industrialized builder shall maintain all records pertinent to the recertification and make these records available to the department [Department] upon request. Records shall be maintained for as long as the building remains a part of the inventory for that builder.

(10) Buildings constructed on or after October 31, 2006 [July 1, 2004] may not [only] be recertified in accordance with subsections (f)(1) or (f)(4) without prior written authorization from the department.

(g) A recertification or alteration data plate shall be placed by the third party inspector on each altered or recertified house or building as required by this section. The data plate shall be supplied by the industrialized builder or installation permit holder.

(1) An alteration data plate shall be affixed to any building where the alteration or recertification results in a reclassification of the occupancy group or construction type, a change in the type of gas required for appliances, or a change in the wind speed and exposure, maximum snow (roof) load, seismic design criteria, or special conditions or limitations.

(2) A copy of the data plate shall be retained by the industrialized builder and be made available to the department upon request.

(3) An alteration data plate shall be made of a material that will not deteriorate over time and shall be permanently placed so that it cannot be removed without destruction.

(4) The data plate shall be placed adjacent to the original data plate in an easily accessible location as designated in the alteration plans, but shall not be located on any readily removable item such as a cabinet door or similar component. Location of the data plate on the cover of the electrical distribution panel is acceptable.

(5) An alteration data plate shall contain, as a minimum, the information required on a manufacturer's data plate as required by §70.71(d)(2) - (11) plus the following information:

(A) [(1)] the name, address, and registration number assigned by the department of the industrialized builder, or the name, address, and installation permit number assigned by the department of the owner of the [house or] building; and

(B) [(2)] the Texas alteration decal numbers.

§70.75. Responsibilities of the Registrants--Permit/Owner Information.

(a) The manufacturer shall provide the industrialized builder, or a person who has obtained an installation permit in accordance with §70.20, [with] the following information:

(1) the name, Texas registration number, and address of the manufacturer of the building;

(2) the location of the decal(s) or insignia on the modules or modular components;

(3) [a description of] the location of the data plate and explanation of the information thereon;

(4) a set of approved plans, in accordance with §70.70, as necessary to obtain a building permit and as necessary to complete construction of the house or building at the installation site. The documents shall include critical load points for attachment of the house or building to the foundation, the floor plan of the building, and drawings of the plumbing, electrical, and heating/ventilation systems;

[(5) the floor plan of the building and schematic drawings of the plumbing, electrical, and heating/ventilation systems for the owner of the building;]

(5) [(6)] a completed signed copy of the energy compliance checklist (reference subsection (c)(8)(C) of §70.70); and

(6) [(7)] the information required by §70.78(b).

(b) The REF builder shall provide the owner of the REF the following information:

(1) the name, Texas registration number, and address of the REF builder;

(2) the location of the decal(s) on the REF;

(3) the location of the data plate;

(4) a set of approved plans, in accordance with §70.70;

(5) other construction documentation in accordance with §70.70(e); and

(6) the information required by §70.78(b).

(c) [(b)] The industrialized builder shall provide the purchaser (owner) or installation permit holder of any industrialized house or building the following information:

(1) the name, Texas registration number, and address of the manufacturer or REF builder and industrialized builder;

(2) [a description of] the location of the data plate and explanation of the information thereon;

(3) a copy of the site inspection reports in accordance with §70.73; [the floor plan of the building and schematic drawings of the plumbing, electrical, and heating/ventilation systems;]

(4) a complete set of approved plans and specifications in accordance with §70.70, including all records pertinent to alterations of the house or building in accordance with §70.74;

(5) a copy of the foundation system design and any unique on-site details in accordance with §70.73; [§70.70;]

(6) the location of the decal(s) or insignia on the module, [or] modular components, or site built REF;

(7) a site plan showing the on-site location of all utilities and utility taps;

(8) a completed signed copy of the energy compliance checklist (reference subsection (a)(5) [(a)(6) of this section]); and

(9) the information required by §70.78(b).

(d) [(c)] The manufacturer shall maintain evidence for a minimum of 5 years [must have written proof] that the information in subsection (a) [of this section] was delivered to the industrialized builder or installation permit holder and provide a copy of the evidence to the department upon request [keep this proof in the manufacturer's files for a minimum of five years].

(e) The REF builder shall maintain evidence for a minimum of 5 years that the information in subsection (b) was delivered to the owner or lessee of the REF and provide a copy of the evidence to the department upon request.

(f) [~~(d)~~] The industrialized builder shall maintain evidence for a minimum of 5 years [~~must have written proof~~] that the information in subsection (c) [~~(b) of this section~~] was delivered to the purchaser (owner) or installation permit holder and provide a copy of the evidence to the department upon request [~~keep this proof in the industrialized builder's files for a minimum of five years~~].

§70.77. Responsibilities of the Registrants--Decals and Insignia for New Construction.

(a) Decals are used for module and site built REF certification and insignia are used for modular component certification.

(1) Decals and insignia shall be ordered on a form supplied by the department and shall contain such information as may be required by the department.

(2) The department will issue decals and insignia to a [~~the~~] manufacturer on application and payment of the fee following certification of the manufacturing facility in accordance with §70.60.

(3) The department will issue decals to a REF builder on application and payment of the fee following successful completion of all construction in accordance with §70.78. [~~It is the manufacturer's responsibility to assure that a certification inspection has been accomplished as outlined in §70.60. Each module or modular component of industrialized housing or buildings shall have the decal or insignia affixed thereto before leaving the manufacturing facility. It is the manufacturer's responsibility to assure that the in-plant inspection has been performed as outlined in §70.61 prior to affixing the decal or insignia. It is the manufacturer's responsibility to assure that the house or building is released only to an industrialized builder registered with this department or a person who has obtained an installation permit from this department. The decal or insignia shall be placed in a visible location as designated on the floor plan or on the cover or title sheet for each model or project in the on-site construction documentation and shall be permanently attached so that it cannot be removed without destruction. Decals or insignia shall not be placed on any readily removable item such as a cabinet door or other similar component. Location of the decal on the cover of the electrical distribution panel is acceptable.~~]

(b) By attaching the decal or insignia the manufacturer or REF builder certifies that:

(1) the module, modular component, or site built REF is constructed in accordance with the approved design package or construction documents and the mandatory building codes; and

(2) the module, modular component, or site built REF has been inspected in accordance with §70.72 or §70.79.

(c) The control of the decals and insignia shall remain with the department.

(1) Decals shall be confiscated by the department or the third party inspector or inspection agency if a manufacturer fails to correct violations identified during an inspection or for failure to abide by the approved compliance control procedures.

(A) Decals or insignia that are confiscated for construction violations shall not be returned to the manufacturer until the violations have been corrected.

(B) Decals or insignia that are confiscated for compliance control violations shall be released for each building in accordance with the inspection procedures approved by the council. Control of the decals or insignia shall not be returned to the manufacturer until the TPI/TPIA determines that the problems have been corrected.

(C) New decals or insignia shall not be issued until the manufacturer has shown evidence of compliance.

(2) Decals shall not be released to a REF builder or attached to a REF until all construction is complete and all violations identified during an inspection have been corrected.

(d) [~~(b)~~] Responsibilities of the manufacturer. It is the manufacturer's responsibility to assure that the certification inspection has been accomplished as outlined in §70.60 prior to attaching the decal or insignia. It is the manufacturer's responsibility to assure that the in-plant inspection has been performed as outlined in §70.72 prior to attaching the decal or insignia. Each decal or insignia shall be attached [~~assigned~~] to a specific module or modular component before leaving the manufacturing facility.[~~, and the~~]

(1) The manufacturer shall assure that the house or building is released only to an industrialized builder registered with this department or to a person who has obtained an installation permit from this department.

(2) The decal or insignia shall be placed in a visible location as designated on the floor plan or on the title or cover sheet for each model or project in the approved design package. The decal or insignia shall be permanently attached so that it cannot be removed without destruction and shall not be placed on any readily removable item such as a cabinet door or other similar component. Location of the decal on the cover of the electrical distribution panel is acceptable.

(3) The manufacturer shall keep records as necessary to show, by decal or insignia number, the module or modular component (by identification number) to which the decal or insignia was attached. [~~assigned.~~] The manufacturer shall keep complete records of all decals and insignia received, decals and insignia used, and those which are on-hand. The manufacturer shall maintain these records for a minimum of 5 years from the date the building is reported shipped in accordance with §70.50 and the [~~. These~~] records shall be made available to the department or in-plant inspector on request.

(4) Decals or insignia may not be transferred from one manufacturing facility to another without prior written approval from the department. Decals or insignia that are transferred without department approval [~~Assigned decals or insignia are not transferable and~~] are void and shall [~~when not affixed as assigned. All decals or insignia which are voided must~~] be returned to, or shall be confiscated by, the department.

(5) Decals or insignia that have been attached to a module or modular component may not be transferred to another module or modular component. Decals or insignia that are removed from the module or modular component to which they were attached are void and shall be returned to, or shall be confiscated by, the department.

(6) Decals or insignia that have not been attached to a module or modular component shall be returned to the department if the manufacturer does not renew the registration in accordance with §70.20.

(7) Decals or insignia that have been reported in accordance with §70.50(a) shall be returned to the department if the module or modular component is damaged or destroyed.

(8) Decals or insignia that have been attached to a module or modular component prior to inspection in accordance with §70.72 are void and shall be returned to the department, or shall be confiscated by the department or third party inspection agency.

(9) Decals or insignia that are attached to a module or modular component before all construction is complete and before all inspections by the facility's compliance control personnel have been completed are void and shall be returned to the department, or shall be confiscated by the department or third party inspection agency.

(e) Responsibilities of the REF builder. A REF builder shall assure that all construction documents are approved as required by §70.70 and that all required inspections have been performed in accordance with §70.79 before the decal or decals are attached to the site built REF.

(1) A site built REF becomes an industrialized building upon attachment of the decal or decals.

(2) Decals shall be purchased for each separate REF building. Each separate REF building shall be assigned a unique identification or project number. The name of the school district, the project address, and the unique identification number for each separate REF will be reported to the department on the decal order form.

(3) Decals may not be transferred to another REF project without prior written consent of the department. Decals that are transferred to another site built REF project without written consent are void and shall be returned to, or confiscated by, the department.

(4) Decals that have been attached to a site built REF may not be transferred to another site built REF. Decals that are removed from the site built REFs to which they were attached are void and shall be returned to, or confiscated by, the department.

(5) Decals shall or be returned to the department if the site built REF is damaged or destroyed.

~~[(e) By affixing the decal or insignia, the manufacturer certifies that the module or modular component is constructed and inspected in accordance with the approved design package, the mandatory building codes, and §70.62.]~~

~~[(d) The control of the decals and insignia shall remain with the department. Should inspection reveal that the manufacturer is not constructing structures or any portion thereof in accordance with the approved design package, the manufacturer will be notified of the specific deviations. Deviations shall be corrected at a point in the construction process before they are covered or hidden by additional construction. Otherwise, the department (or third party inspector) shall confiscate any decals or insignia previously issued and presently on-hand at the manufacturing facility. In addition, new decals or insignia will not be issued until the manufacturer has shown proof of compliance.]~~

§70.79. Responsibilities of the Registrants--Site Built REF Construction and Inspection.

(a) Responsibility for construction. The REF builder shall be responsible for assuring that the foundation and all construction pertaining to the REF complies with the approved construction documentation required by §§70.70(b) and 70.70(e) and the mandatory building codes. The REF builder is responsible for assuring that all sub-contractors are licensed as required by applicable state law.

(b) Responsibility for inspections within jurisdiction of a municipality. When the building site is within a municipality that has a building inspection agency or department, the local building official will inspect all construction to assure that it complies with the approved construction documents and the mandatory building codes.

(1) The municipality may require and review, for compliance with the mandatory building codes, a complete set of construction documents, and any other construction documents necessary to complete construction of the REF in accordance with §70.70(e).

(2) The REF builder shall not permit occupation of the building until a certificate of occupancy has been issued.

(c) Responsibility for inspections outside the jurisdiction of a municipality. When the building site is outside a municipality, or within a municipality that has no building inspection department, a third party inspector or third party site inspector shall perform the required inspections in accordance with this section and the inspection procedures of the council to assure completion in accordance with the approved construction documents, other construction documentation approved in accordance with §70.70(c), and the mandatory building codes.

(1) The REF builder is responsible for scheduling inspections and assuring that the inspector is given a minimum of 48 hours notice before each inspection. The REF builder may utilize a different inspector for different projects, but may not change the inspector for a project once started without prior written approval of the department.

(2) The REF builder shall assure that the following inspections are completed in accordance with the inspection procedures of the council. Inspections may be combined where appropriate and the third party inspection agency or third party site inspector determines that the completion of one stage does not does not interfere with the inspection of another stage. These inspections are minimum requirements and shall not limit the scope of the inspections that may be necessary to adequately inspect the building. Additional inspections may also be required to assure compliance of actions taken to correct violations.

(A) First inspection--Temporary or construction power.

(B) Second Inspection--Plumbing rough/Water and sewer.

(C) Third inspection--Foundation and reinforcement/Water supply lines/Building drain lines.

(D) Fourth inspection--Frame and exterior sheathing/Plumbing top-out/Mechanical rough/Electrical rough/Lead test.

(E) Fifth inspection--Frame re-inspection and or insulation/Energy compliance.

(F) Sixth inspection--Wallboard.

(G) Seventh inspection--Gas lines/Electrical meter loop.

(H) Eighth inspection--Building final/Mechanical final/Plumbing final/Electrical final/Attachment of decal.

(3) The inspector shall provide the REF builder a copy of the inspection reports upon completion of each phase of the inspection. If the inspection finds that the construction does not meet the mandatory building codes, the approved construction documents, or other construction documents in accordance with §70.70(c), then the inspection report shall include a list of violations. The REF builder is responsible for assuring that all violations are corrected and inspected prior to occupation of the building or attachment of the decal or decals.

(4) The REF builder shall not permit occupancy, or release the building for occupation, until a successful final inspection has been completed. A final inspection report shall be issued showing no outstanding violations prior to occupation or release of the building for occupation. Exception: Occupancy of the building may be allowed provided the outstanding violations are not life safety issues or are non-structural in nature and the industrialized builder or installation permit holder agrees to correct the outstanding violations within 90 days of occupancy. Examples of life safety issues may include violations related to the structural adequacy of the house, building, or foundation, plumbing violations, and violations related to the installation of the HVAC equipment.

(A) A successful final inspection means that all construction has been completed, that all violations have been corrected, and that the construction has been found to comply with the mandatory building codes and all construction documents.

(B) The REF builder shall maintain a copy of each inspection report for a minimum of 10 years from the date of successful final inspection and make a copy of the report available to the department upon request.

(C) The REF builder shall not attach the decal or decals until a successful final inspection has been completed.

§70.80. Commission Fees.

(a) The manufacturer's registration fee is $750 annually.

(b) The REF builder's registration fee is $750 annually.

(c) [~~(b)~~] The industrialized builder's registration fee is $325 annually.

(d) [~~(c)~~] The design review agency's registration fee is $300 annually.

(e) [~~(d)~~] The third party inspection agency's registration fee is $159 per firm and $100 per inspector annually.

(f) [~~(e)~~] The registration fee shall be paid before the certificate of registration is issued and annually thereafter.

(g) [~~(f)~~] The fee for department personnel for certification inspections at a manufacturing facility shall be $40 per hour. Travel and per diem costs shall be reimbursed by the manufacturer in accordance with the current rate as established in the current Appropriations Act. The department shall present a billing statement to the manufacturer at the completion of the inspection that is payable upon receipt.

(h) [~~(g)~~] When the department acts as a design review agency, the fee for such serviced is $40 per hour. The manufacturer for whom the services are performed shall pay the fee before the approval of the designs, plans, specifications, compliance control documents, and installation manuals and before the release of the documents to the manufacturer. Travel and per diem costs shall be reimbursed by the manufacturer in accordance with the current rate as established in the current Appropriations Act.

(i) [~~(h)~~] The fees for issuing decals and insignia are:

(1) modules and site built REFs (decals): $0.07 per square foot of gross floor area, with a minimum of $25 for each decal; and

(2) modular component (insignia): $0.02 per square foot of gross surface area with a minimum of $0.60 for each insignia or $0.07 per square foot of gross floor area with a minimum of $15 for each insignia.

(j) [~~(i)~~] The fee for department personnel for special inspections shall be $40 per hour. A special inspection is any inspection for industrialized housing and buildings that is not covered by other fees. The department [~~Department~~] will present a billing statement at the conclusion of the inspection that is payable upon receipt. Travel and per diem costs shall be reimbursed in accordance with the current rate as established in the current Appropriations Act.

(k) [~~(j)~~] The fee for department monitoring of design review agencies and third party inspection agencies outside headquarters shall be $40.00 per monitor hour. Travel and per diem costs shall be reimbursed in accordance with the current rate as established in the current Appropriations Act. The department will present the agency or manufacturer a statement at the conclusion of the monitoring trip, and it is payable upon receipt.

(l) [~~(k)~~] Thee fee for an installment permit shall be $75 for each building containing industrialized housing and buildings modules or modular components. A separate application must be submitted for each building containing industrialized housing and buildings modules or modular components.

(m) [~~(l)~~] The fee for issuing an alteration decal is $50 for each decal.

§70.100. Mandatory Building Codes.

(a) Effective October 31, 2008 all industrialized housing and buildings, modules, and modular components, shall be constructed in accordance with the following codes as amended by §70.101;

(1) National Fire Protection Association--National Electrical Code, 2008 Edition.

(2) the International Building Code, 2006 edition, including appendices C, F, and K, published by the International Code Council;

(3) the International Fuel Gas Code, 2006 edition, published by the International Code Council;

(4) the International Plumbing Code, 2006 edition, including appendices C, E, F, and G, published by the International Code Council;

(5) the International Mechanical Code, 2006 edition, published by the International Code Council; and

(6) the International Residential Code, 2006 edition, including appendix K, published by the International Code Council.

(b) Effective September 1, 2009, all industrialized buildings that are altered in accordance with §70.74(f) shall comply with the International Existing Building Code, 2006 Edition, published by the International Code Council.

(c) [~~(b)~~] Other codes referenced in any of the mandatory building codes adopted in subsection (a) shall be considered part of the requirements of these codes to the prescribed extent of each such reference.

(d) [~~(c)~~] The effective dates of adoption of past editions of the mandatory building codes are as follows:
Figure: 16 TAC §70.100(d)
[~~Figure: 16 TAC §70.100(c)~~]

§70.102. Use and Construction of Codes.

(a) Industrialized housing, buildings, and site built REFs [~~or buildings~~] shall be constructed to meet or exceed the mandatory building code standards and requirements referenced in §70.100 and §70.101 in effect at the time of construction. A building that has not been previously occupied or used for its intended purpose shall comply with the provisions of the mandatory building codes referenced in §70.100 and §70.101 for new construction in effect at the time of construction. Industrialized housing and buildings shall be installed in accordance with the mandatory building code standards and requirements referenced in §70.100 and §70.101.

(b) Alterations of industrialized housing and permanent industrialized buildings shall be in accordance with §70.74 and shall comply with the provisions of the codes referenced in §70.100 and §70.101 for new structures.

(c) Industrialized buildings designed to be moved from one commercial site to another commercial site shall be recertified or altered in accordance with the mandatory building code standards and requirements referenced in §70.100 and §70.101 and in accordance

with §70.74. Alterations of buildings shall comply with the standards and requirements of the following codes for each type of recertification class.

(1) Recertification class 1 and class 4: Alterations shall comply with the International Existing Building Code as referenced in §70.101. Alterations of buildings that have not been previously occupied or used for their intended purpose shall comply with the provisions of the codes referenced in §70.100 and §70.101 for new construction.

(2) Recertification class 2 and class 3: The existing building as altered, and additional alterations to the building, shall comply with the provisions of the International Existing Building Code as referenced in §70.101.

(d) The codes adopted in §70.100 and §70.101 shall be construed to conform to the intent of Chapter 1202 and these rules and regulations. For example, where reference is made in any of the codes to the building official, the plumbing or mechanical official, or the administrative authority or enforcement official, such reference shall be construed pursuant to Chapter 1202 and the sections in this chapter to mean, where applicable, the council, the local building official, or the department.

§70.103. Alternate Materials and Methods.

(a) Alternate materials or methods of construction other than as authorized by the mandatory codes set forth in §70.100 must be approved by the council.

(b) Manufacturers, REF builders, or industrialized builders shall submit descriptions of alternate methods or materials required to be approved by the council to the executive director for consideration by the council. The submittal shall include either 15 legible hard copies of drawings, specifications, and substantiating evidence for each such alternate method or material or all supporting documentation shall be submitted electronically and be in a format that will allow for electronic disbursement of these materials to the council.

(c) The following types of alternate materials or methods of construction have been approved by the council and do not require the manufacturer, REF builder, or industrialized builder to submit descriptions to the council for approval. Materials or methods of construction shall be used and identified in accordance with the applicable code or product evaluation report or listing.

(1) Alternate materials or methods with a current code evaluation report from ICC ES. An industrialized house or building or site built REF with a code evaluation report is not exempt from the requirements of Texas Occupations Code, Chapter 1202.

(2) Alternate materials or methods of construction with a current product evaluation report or listing from a product certification agency accredited by the IAS that shows compliance with the applicable mandatory building codes. An industrialized house or building or site built REF with a product evaluation report or listing is not exempt from the requirements of Texas Occupations Code, Chapter 1202.

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 31, 2009.

TRD-200903859
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: October 11, 2009
For further information, please call: (512) 463-7348

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16 TAC §70.61, §70.72

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

The proposed repeal is the result of a rule review conducted in accordance with Texas Government Code §2001.039. The repeal is proposed under Texas Occupations Code, §51.201(b) and §51.203, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement Chapter 51 and any other law establishing a program regulated by the Department. Also, the repeal is proposed under Texas Occupations Code, Chapter 1202 which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body to adopt rules as necessary to implement this chapter.

The statutory provisions affected by the proposed repeal are those set forth in Texas Occupations Code, Chapters 51 and 1202. No other statutes, articles, or codes are affected by the proposal.

§70.61. Responsibilities of the Department--In-plant Inspection.

§70.72. Responsibilities of the Registrants--Delivery to Other States.

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 31, 2009.

TRD-200903860
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: October 11, 2009
For further information, please call: (512) 463-7348

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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 21. STUDENT SERVICES

SUBCHAPTER NN. EXEMPTION PROGRAM FOR VETERANS AND THEIR DEPENDENTS (THE HAZLEWOOD ACT)

19 TAC §21.2101, §21.2102

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §21.2101 and §21.2102, concerning the Exemption Program for Veterans and their Dependents (The Hazlewood Act).

Specifically, the amendment to §21.2101 is proposed to clarify that certain institutions may establish fees for programs having extraordinary costs and may determine that the exemption does not apply to these fees. The amendment to §21.2102 is proposed to implement a provision of Senate Bill 93, 81st Texas

Legislature, which deletes the requirement that an eligible veteran cannot be in default on a federal student loan. Previously, veterans were ineligible if they were in default on a federal education loan if the default prevented them from qualifying for other federal education benefits for veterans. Senate Bill 93 only references defaults on state education loans and not federal education loans.

Ms. Lois Hollis, Special Assistant to the Deputy Commissioner, in keeping with the Legislative Budget Board's fiscal note for Senate Bill 93, has determined that for each year of the first five years the amendments are in effect, there will be no significant fiscal implications to state or local government as a result of enforcing or administering the rules.

Ms. Hollis has also determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of administering the sections will be more consistent administration of the program among participating institutions. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, lois.hollis@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendments are proposed under the Texas Education Code, §54.203, which provides the Coordinating Board with the authority to adopt any rules necessary to administer Texas Education Code, Chapter 54, Subchapter D.

The amendments affect Texas Education Code, §54.203.

§21.2101. Hazlewood Act Exemption.

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

(g) The governing board of a public junior college, public technical institute, or public state college as those terms are defined by Texas Education Code §61.003, may establish a fee for extraordinary costs associated with a specific course or program and may determine that the exemption does not apply to this fee.

(h) (No change.)

§21.2102. Eligible Veterans.

In order to be eligible to receive a Hazlewood Act Exemption, a veteran shall demonstrate that he or she:

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

(4) is not in default on an education loan made or guaranteed by the State of Texas [~~and is not in default on a federal loan if that default is the reason the student cannot use his or her federal veterans' benefits~~];

(5) - (7) (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 26, 2009.

TRD-200903763
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: October 29, 2009
For further information, please call: (512) 427-6114

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TITLE 22. EXAMINING BOARDS

PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

CHAPTER 153. RULES RELATING TO PROVISIONS OF THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT

22 TAC §153.5

The Texas Appraiser Licensing and Certification Board (TALCB) proposes amendments to §153.5, Fees. The proposed amendments would create a fee of $30 for prospective applicants for a license or certification who request an evaluation of their criminal history pursuant to House Bill 963 (81st Legislature), which created a process by which applicants for occupational licenses may seek a determination regarding their criminal history prior to filing an application for licensure. The proposed amendments would also increase licensing fees by $50/year, as follows: the fee to apply for or renew a (two-year) general certification will increase from $260 to $360, the fee to apply for or renew a (two-year) residential certification will increase from $210 to $310, the fee to apply for or renew a (two-year) license (including provisional licenses) will increase from $185 to $285, and the fee to apply for or renew a (one-year) appraiser trainee approval will increase from $105 to $155.

Karen Alexander, Staff Services Director, has determined that for the first five-year period the amendments to §153.5 are in effect there will be fiscal implications for the state, but not to units of local government as a result of enforcing or administering the amendments as proposed. The amendments would increase the certified general appraiser, certified residential appraiser, state licensed appraiser, provisional license, and trainee applications by $100 and renewals of same by $100 per two-year license.

Approximately 2,500 licensees and 360 applicants may be required to pay the increased fees in Fiscal Year (FY) 2010 and each year in the five-year period for total estimated revenue of 231,459 for FY 2010, and $277,750 per year for the remaining four years (FY 2011-2014).

Ms. Alexander has determined that there is no anticipated impact on local or state employment as a result of implementing the amendments. However, there is an anticipated impact on small businesses and micro-businesses. The Commission has approximately 5,000 licensed appraisers in Texas. It is estimated that nearly all of these entities are small businesses and many of them are micro-businesses. The projected economic impact of this rule amendment on these small businesses will be slightly negative due to the increased renewal and application fee. Under §2006.002, Texas Government Code, an agency is required to consider alternative regulatory methods only if the alternative methods would be consistent with the health, safety and environmental and economic welfare of the state. The TALCB has developed this proposed rule in accordance with a legislative mandate under contingent revenue riders for TALCB appropriations under Senate Bill 1, 81st Legislature, Regular Session (2009). Consequently, any variance from the legislative mandate would not be consistent with the health, safety, and envi-

ronmental and economic welfare of the state, and no alternative regulatory methods have been considered.

Ms. Alexander also has determine that for each year of the first five years the amendments are effect the public benefit anticipated as a result of enforcing the amendments is that the agency will raise sufficient revenue to fund the items requested by the agency in its Legislative Appropriations request and granted under Senate Bill 1, 81st Legislature, Regular Session, 2009.

Comments on the proposal may be submitted to Devon V. Bijansky, Counsel for the Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments are proposed under the Texas Occupations Code, §1103.156, Fees.

The statute affected by this proposal is Texas Occupations Code, Chapter 1103. No other statute, code, or article is affected by the proposed amendments.

§153.5. Fees.

(a) The Board shall charge and the commissioner shall collect the following fees:

(1) an application or renewal fee for a general certification of $360 [~~$260~~], for residential certification of $310 [~~$210~~], or for licensing of $285 [~~$185~~];

(2) an application or renewal fee for approval as an appraiser trainee of $155 [~~$105~~];

(3) - (19) (No change.)

(20) a fee of $5 for a Pocket ID for certified general, certified residential, state licensed, and provisional licensed appraisers; [~~and~~]

(21) a fee of $30 for evaluation of an applicant's education; and[~~.~~]

(22) a fee of $30 for evaluation of an applicant's criminal history.

(b) - (d) (No change.)

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

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Devon V. Bijansky
Counsel
Texas Appraiser Licensing and Certification Board
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For further information, please call: (512) 465-3900

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22 TAC §153.9

The Texas Appraiser Licensing and Certification Board (TALCB) withdraws and reproposes amendments to §153.9, Applications. The proposed amendments would clarify the requirements regarding education evaluations and would adopt by reference 18 new and revised application forms. The changes to the forms primarily reflect formatting changes; however, the forms also expand and clarify the criminal background questions and harmonize, when possible, the instructions and certification sections at the end of the forms. A multi-purpose application form was divided into three separate applications: Application for Appraiser License, TALCB Form AL-0; Application for Certification - Certified Residential Appraiser, TALCB Form CRA-0; and Application for Certification - Certified General Appraiser, TALCB Form CGA-0. The Request for Inactive Status (For Expired Certification of License Within One Year of Expiration Date), TALCB Form RISE-0, was also created for expired licensees and certificate holders, based on the inactive status form for currently licensed or certified appraisers. The form previously called "Supplement to Application for Certification or License by Reciprocity" was renamed "Application for Certification or License by Reciprocity" to reflect that it is a stand-alone form. Separate ACE extension request forms for provisional licensees and for other license types were combined into a single form.

In this reproposal, the amendments would also update the application and renewal fees consistent with amendments to 22 TAC §153.5 being proposed elsewhere in this issue.

Devon V. Bijansky, Counsel, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the amendments. There is no anticipated impact on local or state employment as a result of implementing the amendments. There is no anticipated impact on small businesses or micro-businesses as a result of implementing the amendments. There is no anticipated economic cost to persons who are required to comply with the amendments.

Ms. Bijansky has also determined that the anticipated public benefit as a result of these amendments is greater clarity and consistency in TALCB's application and licensing processes.

Comments on the proposed amendments may be submitted to Devon V. Bijansky, Counsel for the Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments are proposed under the Texas Occupations Code, §1103.151, Rules Relating to Certificates and Licenses.

The statute affected by this proposal is Texas Occupations Code, Chapter 1103. No other statute, code, or article is affected by the proposed amendments.

§153.9. Applications.

(a) A person desiring to be certified or licensed as an appraiser, [~~or~~] approved as an appraiser trainee, or registered as a temporary nonresident appraiser shall file an application using forms prescribed by the Board. The Board may decline to accept for filing an application that [~~which~~] is materially incomplete or that [~~which~~] is not accompanied by the appropriate fee. [~~Prior to submission of any application, an applicant shall submit the applicant's education for evaluation and approval along with the requisite education evaluation fee and must obtain a written response from the Board showing the applicant meets current education requirements for the applicable license or certification. Any such approval shall then remain valid for one year from the date of issuance.~~] Except as provided by the Act, the Board may not grant a certification, license or approval of trainee status to an applicant unless the applicant:

(1) pays the required fees [~~requested by the board~~];

(2) satisfies any experience and education requirements established by the Act or by these sections;

(3) successfully completes any qualifying examination prescribed by the board;

(4) provides all supporting documentation or information requested by the board in connection with the application;

(5) satisfies all unresolved enforcement matters and requirements with the board; and

(6) meets any additional or superseding requirements established by the Appraisal Qualifications Board.

(b) Prior to submitting an application, an applicant must submit a completed education evaluation request form along with the appropriate fee. If the Board determines that the applicant has met current education requirements for the applicable license or certification, it shall notify the applicant that his or her education has been approved. Any such approval shall then remain valid for one year from the date the Board received the education evaluation request. If the Board determines that the applicant has not completed all required education, the applicant has until one year from the date the Board received the request to meet all education requirements and submit an application for licensure or the education evaluation request will expire. If the education requirements change while the education evaluation request is pending, any evaluation issued by the Board after the new requirements take effect will be based on then-current requirements. If the education requirements change after the Board has notified the applicant that his or her education satisfies the Board's requirements but before the applicant submits an application, the applicant must meet any additional education requirements before the application will be processed.

(c) [~~(b)~~] The Texas Appraiser Licensing and Certification Board adopts by reference the following forms [~~approved by the Board and~~] published by and available from the Board, P.O. Box 12188, Austin, Texas 78711-2188, www.talcb.state.tx.us:

(1) Application for Appraiser License, TALCB Form AL-0; [~~Application for Appraiser Certification or Licensing, TALCB Form ACL 1-1 (10/07);~~]

(2) Application for Certification - Certified Residential Appraiser, TALCB Form CRA-0; [~~Application for Provisional Appraiser License, TALCB Form APL 2-1 (10/07);~~]

(3) Application for Certification - Certified General Appraiser, TALCB Form CGA-0; [~~Affidavit Declining Sponsorship, TALCB Form ADS 2A-0 (804);~~]

(4) Application for Certification or License by Reciprocity, TALCB Form CLR-0; [~~Application for Approval as an Appraiser Trainee, TALCB Form AAT 3-1 (10/07);~~]

(5) Application for Approval as an Appraiser Trainee, TALCB Form AAT-0; [~~Supplement to Application for Appraiser Certification or Licensing by Reciprocity, TALCB Form ACR 4-1 (10/07);~~]

(6) Application for Provisional Appraiser License, TALCB Form PAL-0; [~~Temporary Non-Resident Appraiser Registration, TALCB Form TRN 5-1 (10/07);~~]

(7) Affidavit Declining Sponsorship, TALCB Form ADS-0; [~~Extension of Non-Resident Temporary Practice Registration, TALCB Form NRE 5E-1 (10/07);~~]

(8) Application for Temporary Non-Resident Appraiser Registration, TALCB Form TNAR-0; [~~Appraiser Experience Affidavit, TALCB Form AEA 6-0 (804);~~]

(9) Request for Extension of Temporary Non-Resident Appraiser Registration, TALCB Form NRE-0; [~~Appraiser Experience Log, TALCB Form AEL 7-1 (10/08);~~]

(10) Request for Inactive Status (For Currently Certified or Licensed Appraisers), TALCB Form RIS-0; [~~Addition or Termination of Appraiser Trainee Sponsorship, TALCB Form TAT 8-0 (804);~~]

(11) Request for Inactive Status (For Expired Certification of License Within One Year of Expiration Date), TALCB Form RISE-0; [~~Change of Office Address, TALCB Form COA 9-0 (804);~~]

(12) Request for Active Status, TALCB Form RAS-0; [~~Request for Course Approval and Renewal, TALCB Form CAR 10.0 (804);~~]

(13) ACE Extension Request, TALCB Form AER-0; [~~Extension Request Form (For Residential/General Certified and State Licensed Appraisers) TALCB Form ExtReq 11-1 (10/07);~~]

(14) Change of Address, TALCB Form COA-0; [~~Extension Request Form for Provisional Licensee TALCB ExtReq-Provisional 12-1 (10/07);~~]

(15) Addition or Termination of Appraiser Trainee Sponsorship, TALCB Form ATS-0; [~~Request for Inactive Status Form (For Currently Certified or State Licensed Appraisers;~~]

(16) Appraiser Experience Affidavit, TALCB Form AEA-0; [~~Request for Active Status Form; and~~]

(17) Appraisal Experience Explanation, TALCB Form AEE-0; [~~Appraisal Experience Explanation, TALCB Form AEE 6A-0 (804).~~]

(18) Appraiser Experience Log, TALCB Form AEL 7-1 (10/08); and

(19) Request for Course Approval and Renewal, TALCB Form CAR 10.0 (804).

(d) [~~(c)~~] An application may be considered void and subject to no further evaluation or processing if an applicant fails to provide information or documentation within 60 days after the Board makes written request for the information or documentation.

(e) [~~(d)~~] A certification, license, or appraiser trainee approval is valid for the term for which it is issued by the Board unless suspended or revoked for cause and unless revoked, may be renewed in accordance with the requirements of §153.17 of this title (relating to Renewal of Certification, License or Trainee Approval).

(f) [~~(e)~~] The Board may deny certification, licensing, approval as an appraiser trainee, or registration for non-resident temporary practice to an applicant who fails to satisfy the board as to the applicant's honesty, trustworthiness, and integrity.

(h) [~~(g)~~] An application shall be considered void and subject to no further evaluation or processing if the applicant fails to provide acceptable documentation that all requirements for licensure, certification, or approval as an appraiser trainee have been met within one year of the date the application was received by the Board.

(i) [~~(h)~~] When an application is denied by the Board, no subsequent application will be accepted within one year of the application denial.

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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Devon V. Bijansky
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22 TAC §153.19

The Texas Appraiser Licensing and Certification Board (TALCB) proposes amendments to §153.19, Licensing and Certification for Persons with Criminal Histories. The proposed amendments would serve two primary purposes: (1) clarify that the TALCB's licensing requirements for persons with criminal histories comply with Chapter 53 of the Texas Occupations Code and (2) establish rules to implement House Bill 963's requirement that the agency issue a criminal history evaluation letter to prospective applicants for licensure or certification.

First, the amendments would more closely track the language of Chapter 53 regarding grounds for denial of or action against a license or certification. The amendments would clarify that the agency must consider the factors in subsection (d) in evaluating the qualification for licensure of every applicant with a criminal history and that automatic revocation only applies in cases in which a licensee is imprisoned.

Second, the amendments add subsection (g), which outlines the process by which a person may request and receive a criminal history evaluation letter. New subsection (g) provides that the same standards for processing license applications apply to the criminal history evaluation letter process.

Devon V. Bijansky, Counsel, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the amendments. There is no anticipated impact on local or state employment as a result of implementing the amendments. There is no anticipated impact on small businesses or micro-businesses as a result of implementing the amendments. There is no anticipated economic cost to persons who are required to comply with the amendments.

Ms. Bijansky has also determined that the anticipated public benefit as a result of these amendments is greater clarity and consistency in TALCB's application and licensing processes.

Comments on the proposed amendments may be submitted to Devon V. Bijansky, Counsel for the Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments are proposed under the Texas Occupations Code, §1103.151, Rules Relating to Certificates and Licenses.

The statute affected by this proposal is Texas Occupations Code, Chapter 1103. No other statute, code, or article is affected by the proposed amendments.

§153.19. Licensing and Certification for Persons with Criminal Histories.

(a) (No change.)

(b) The board may suspend or revoke an existing valid license or certification, disqualify an individual from receiving a license or certification, deny to a person the opportunity to be examined for a license or certification or deny any application for a license or certification, if the person has been convicted of a felony, had their felony probation revoked, had their parole revoked or had their mandatory supervision revoked. Any such action shall be made after consideration of the factors detailed in subsections (e) and (f) of this section. A person's [~~Notwithstanding the provisions of this section, the board shall suspend or revoke an existing valid license or certification, disqualify a person from receiving a license or certification, deny a person the opportunity to be examined for a license or certification or deny any application for a license or certification if the person has been convicted of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of the licensed or certified occupation. The board shall revoke the~~] license, [~~or~~] certification, [~~or~~] authorization as an appraiser trainee, or non-resident temporary practice registration shall be revoked upon the person's imprisonment following a [~~of an individual upon his~~] felony conviction, felony probation revocation, revocation of parole, or revocation of mandatory supervision.

(c) The Texas Appraiser Licensing and Certification Board considers it very important that persons who are licensed or certified, persons who are candidates to be licensed or certified, and persons who are training to be licensed or certified be honest, trustworthy, and reliable. The public necessarily reposes a great deal of trust and reliance upon licensed and certified appraisers because of the complex nature of appraisal valuation, and such relationship should not be undermined. When entering onto another's business or residential property or when representing the interests of another, an appraiser must [~~have the ability to~~] conduct himself or herself with honesty, trustworthiness, reliability, and integrity. Thus, the board deems the following felonies and misdemeanors directly related to the occupation of licensed or certified appraisers or appraiser trainees:

(1) offenses involving fraud or misrepresentation;

(2) offenses against real or personal property belonging to another, if committed knowingly or intentionally;

(3) offenses against public administration;

(4) offenses involving the sale or other disposition of real or personal property belonging to another without authorization of law;

(5) offenses involving moral turpitude; and

(6) offenses of attempting or conspiring to commit any of the foregoing offenses.

(d) (No change.)

(e) In determining the present fitness of a person who has been convicted of a crime [~~felony~~] under this section, the board shall consider the following evidence:

(1) the extent and nature of the person's past criminal activity;

(2) the age of the person at the time of the commission of the crime;

(3) the amount of time that has elapsed since the person's last criminal activity;

(4) the conduct and work activity of the person prior to and following the criminal activity;

(5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release; and

(6) other evidence of the person's present fitness including letters of recommendation from prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person; the sheriff and chief of police in the community where the person resides; and any other persons in contact with the convicted person.

(f) (No change.)

(g) Criminal History Evaluation Letter. Before applying for a license or certification under this chapter, a person with a criminal history may request that the Board issue a criminal history evaluation letter. Upon receiving such a request, the Board may request additional supporting materials. Requests will be processed under the same standards as applications for licensure or certification. In responding to a request, the Board shall address each offense listed in the 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.

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Devon V. Bijansky
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Texas Appraiser Licensing and Certification Board
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22 TAC §153.24

The Texas Appraiser Licensing and Certification Board (TALCB) proposes amendments to §153.24, Processing a Complaint. The proposed amendments would enable the Board and the commissioner to designate a staff member to sign off on dismissals of enforcement complaints.

Devon V. Bijansky, Counsel, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the amendments. There is no anticipated impact on local or state employment as a result of implementing the amendments. There is no anticipated impact on small businesses or micro-businesses as a result of implementing the amendments. There is no anticipated economic cost to persons who are required to comply with the amendments.

Ms. Bijansky has also determined that the anticipated public benefit as a result of these amendments is greater efficiency in TALCB's enforcement processes.

Comments on the proposed amendments may be submitted to Devon V. Bijansky, Counsel for the Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments are proposed under the Texas Appraiser Licensing and Certification Act, Subchapter D, Board Powers and Duties (Texas Occupations Code, Chapter 1103), which provides the board with authority to adopt rules under §1103.151, Rules Relating to Certificates and Licenses and §1103.154, Rules Relating to Professional Conduct.

The statute affected by this proposal is Texas Occupations Code, Chapter 1103. No other statute, code, or article is affected by the proposed amendments.

§153.24. Processing a Complaint.

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

(c) The Board or the commissioner may delegate to Board staff the duty to dismiss complaints under the Act and these rules. [~~If the Board's staff concludes, after completion of the written investigative report provided for in Tex. Occ. Code §1103.455, that the complaint is outside the jurisdiction of the board or is without merit, the Board's staff may recommend to the commissioner that the investigation be closed and that the complaint be dismissed. If the commissioner concurs with the recommendation, the complainant will be so notified and the investigation will be closed. The Board's staff shall write a dismissal explanation for the dismissed complaint and close the file.~~]

(d) - (g) (No change.)

(h) In determining the proper disposition of a complaint, staff shall follow the following guideline:
Figure: 22 TAC §153.24(h) (No change.)

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

(3) If, after a review of the file and completion of any investigation deemed necessary, the staff concludes that disciplinary action is not appropriate, the commissioner or a designee of the Board or the commissioner may dismiss the complaint. [~~no regulatory purposes would be served by further action, it shall recommend to the Board that the complaint be dismissed without further action.~~]

(i) - (m) (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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PART 11. TEXAS BOARD OF NURSING

CHAPTER 213. PRACTICE AND PROCEDURE

22 TAC §§213.20, 213.29, 213.30, 213.33

The Texas Board of Nursing (Board) proposes amendments to §213.20, concerning Informal Proceedings and Alternate Dispute Resolution (ADR); §213.29, concerning Criteria and Procedure Regarding Intemperate Use and Lack of Fitness in Eligibility and Disciplinary Matters; §213.30, concerning Declaratory Order of Eligibility for Licensure; and §213.33, concerning Factors Considered for Imposition of Penalties/Sanctions and/or Fines. The proposed amendments are necessary to: (i) implement House Bill (HB) 3961, enacted by the 81st Legislature, Regular Session, effective June 19, 2009, which adds new §301.4521 to the Occupations Code Chapter 301; (ii) clarify existing Board policy regarding random drug testing; (iii) revise existing provisions for internal consistency, clarity, and readability; and (iv) correct grammatical errors.

The Occupations Code §301.4521

HB 3961 adds new §301.4521 to Chapter 301, which authorizes the Board to: (i) require an individual to submit to a physical or psychological evaluation if the Board has probable cause to believe that the individual is unable to practice nursing safely due to physical impairment, mental impairment, chemical dependency, or abuse of drugs or alcohol; and (ii) request an individual to submit to a physical or psychological evaluation if the Board believes

that the individual is unable to practice nursing safely for a reason other than physical impairment, mental impairment, chemical dependency, or abuse of drugs or alcohol. If the Board requires an individual to submit to an evaluation due to physical impairment, mental impairment, chemical dependency, or abuse of drugs or alcohol, new §301.4521 requires the Board to submit its request in writing. Further, new §301.4521 requires the Board to describe its reasons for requiring the evaluation and to inform an individual that an administrative hearing will be held at the State Office of Administrative Hearings (SOAH) to determine whether probable cause for the evaluation exists if the individual refuses to submit to the evaluation. Pursuant to new §301.4521, the hearing will be limited to the issue of whether the Board has probable cause to require the individual to submit to the evaluation. At the conclusion of the hearing, an Administrative Law Judge (ALJ) will enter an order either requiring the individual to submit to the evaluation or rescinding the Board's demand for the evaluation. If an individual refuses to submit to the evaluation after the ALJ enters an order requiring the evaluation, new §301.4521 authorizes the Board to: (i) refuse to issue or renew the individual's license; (ii) suspend the individual's license; or (iii) issue an order limiting the individual's license. If the Board requests an individual to submit to an evaluation for a reason other than physical impairment, mental impairment, chemical dependency, or abuse of drugs or alcohol, new §301.4521 also requires the Board to submit its request in writing. Under new §301.4521, the Board is required to state its reasons for the evaluation; specify the type of evaluation it is requesting; explain how it may use the evaluation; inform the individual that he or she may refuse to submit to the evaluation; and explain the procedures for submitting an evaluation in a hearing regarding the issuance or renewal of the individual's license. If an individual refuses to consent to the requested evaluation, new §301.4521 prohibits the individual from introducing an evaluation into evidence at a hearing conducted by SOAH, unless the individual meets certain, specified requirements. New §301.4521 also requires the Board to (i) establish, by rule, the qualifications for a licensed practitioner to conduct an evaluation under §301.4521 and (ii) adopt guidelines for requiring or requesting an individual to submit to an evaluation under §301.4521.

The proposed amendments to §213.33(e) and (f) implement the requirements of HB 3961 by: (i) identifying the circumstances in which an evaluation may be required or requested by the Board under new §301.4521; (ii) specifying the credentials that an evaluator must possess in order to conduct an evaluation under new §301.4521; and (iii) prescribing the required components of an evaluation under new §301.4521. Although the proposed amendments implement the requirements of HB 3961, they do not substantially alter the Board's existing policies, procedures, and requirements regarding evaluations. Rather, the proposed amendments codify the Board's existing policies, procedures, and requirements regarding evaluations. Historically, the Board has requested evaluations in order to obtain additional information regarding whether a particular individual is safe to practice nursing. The Board has utilized the conclusions and recommendations of evaluators as additional factors to be considered when determining the appropriate remedy in a specific disciplinary case. The Board has recognized and approved evaluators based upon their expertise, credentials, knowledge, and experience in conducting evaluations. As such, the exact parameters of an evaluation have traditionally been dictated by the evaluator conducting the evaluation. Further, the Board has typically required each evaluator to utilize objective criteria during an evaluation to address the Board's particular areas of concern and to test the individual's psychological stability and veracity. While the Board acknowledges that information often emerges during an evaluation that is beyond the Board's knowledge prior to the evaluation, it has been the Board's experience that such additional information can be particularly helpful in determining the appropriate remedy in a particular case. This is especially true in situations where an evaluator indicates that an individual's risk to the public may be appropriately minimized through specific Board monitoring and supervision. Obtaining this additional information enables the Board to determine the appropriate remedy in a case and ensures that the necessary safeguards are implemented in order to protect the safety of the public. In this way, the Board has utilized evaluations to resolve disciplinary cases in an efficient, fair, and appropriate manner. Although the Board formally adopted its rules, policies, and procedures regarding evaluations as recently as 2007, the Board has requested physical, mental, and forensic evaluations from individuals since 1998 and has consistently applied its policies, procedures, and requirements regarding evaluations in disciplinary cases since that time. Although its policies, procedures, and requirements regarding evaluations have been refined over time, the essential substance of such policies, procedures, and requirements has not changed. These policies, procedures, and requirements are now being formally incorporated into the proposed amendments to §213.33, pursuant to the requirements of HB 3961.

The proposed amendments to §213.33(e) are necessary to prescribe the requirements that will apply to an evaluation required by the Board under new §301.4521(b), due to an individuals' physical impairment, mental impairment, chemical dependency, or abuse of drugs or alcohol. Proposed amended §213.33(e) re-iterates that the Board may require an individual to submit to an evaluation if the Board has probable cause to believe that a person is unable to practice nursing with reasonable skill and safety because of physical impairment, mental impairment, chemical dependency, or abuse of drugs or alcohol. Further, proposed amended §213.33(e) specifies (i) the credentials that a provider must possess in order to perform an evaluation under new §301.4521(b) and (ii) the conditions that must be met by an evaluator during an evaluation. Pursuant to proposed amended §213.33(e), a provider must be a Board-approved addictionologist, addictionist, treatment evaluator, physician, medical doctor, neurologist, osteopathic, psychologist, forensic psychologist, forensic psychiatrist, or psychiatrist in order to conduct an evaluation required by the Board under new §301.4521(b). Further, the proposed amendments require the provider to possess credentials that are appropriate for the specific evaluation required by the Board. Additionally, the evaluator must be familiar with the duties appropriate to the nursing profession and the evaluation must be conducted pursuant to professionally recognized standards and methods. Proposed amended §213.33(e) also requires the evaluator to utilize objective tests and instruments during the evaluation that are designed to test an individual's psychological stability, fitness to practice, professional character, and veracity. Finally, and if applicable, proposed amended §213.33(e) requires the evaluator to also review an individual's prognosis and medication regime.

The proposed amendments to §213.33(f) are necessary to prescribe the requirements that will apply to an evaluation requested by the Board under new §301.4521(f). New §301.4521(f) authorizes the Board to request an evaluation for a reason other than an individual's physical impairment, mental impairment, chemical dependency, or abuse of drugs or alcohol. Accordingly, the

proposed amendments to §213.33(f) provide that the Board may request an evaluation in circumstances where an individuals' prior criminal history, unprofessional conduct, or good professional character is at issue. The amendments to §213.33(f) also prescribe the credentials that an evaluator must possess in order to conduct an evaluation under new §301.4521(f) and the criteria that the evaluation must meet. Under the proposed amendments, a provider must be a Board-approved forensic psychologist or forensic psychiatrist who is familiar with the duties appropriate to the nursing profession. Further, the provider must utilize objective tests and instruments that are designed to test an individual's psychological stability, fitness to practice, professional character, and veracity. Under the proposed amendments to §213.33(f), an evaluator must: (i) consider an individual's behavior or prior criminal history; and (ii) provide an opinion as to whether the individual is likely to engage in the behavior or criminal activity again and whether the individual poses any danger to the public.

The proposed requirements to §213.33(e) and (f) are necessary for several reasons. The Board is charged with protecting the health, safety, and welfare of the public from the unsafe, incompetent, unethical, or illegal conduct of licensees and individuals subject to Chapter 301. An individual's impairment creates a threat to the public's safety and welfare, regardless of whether the impairment is caused by a physical or mental condition, chemical dependency, or drug or alcohol abuse. In situations involving the impairment of an individual, the Board has a responsibility to remove the individual from all nursing duties involving direct patient care until the individual is deemed safe to return to those duties. Individuals who have a substantial criminal history or who exhibit unprofessional conduct, such as misappropriation of property or falsification of documents, may also pose a serious risk to the public's safety. In these cases, the Board is particularly concerned that such conduct may be repeated in connection with the individual's practice of nursing, thereby placing vulnerable members of the public in danger and affecting the individual's ability to safely care for patients. The Board recognizes that physical and psychological evaluations are useful tools in determining whether an individual is safe to practice nursing and has relied upon evaluations in the past for such purposes. However, an evaluation must be based upon reliable, verifiable, and objective information in order to be useful to the Board in making such determinations. As such, the proposed amendments to §213.33(e) and (f) are intended to ensure that an evaluation under new §301.4521 is conducted by an appropriately trained provider who specializes in the specific area relevant to the requested evaluation. For example, a physician, medical doctor, or osteopathic who is certified by the American Society of Addiction Medicine may be appropriate to conduct an evaluation in a situation where an individual does not acknowledge that he or she abuses chemicals, but has current indicators that he or she may be at risk for abuse or dependency, such as concurrent medical issues that require frequent or long term pain medication. In another example, an addictionist who is doctorally prepared and who specializes in diagnosing and treating chemical dependency may be appropriate to conduct an evaluation in a situation where an individual does not believe or acknowledge the abuse of chemicals, but has current non-medical related indicators that suggest that he or she may be abusing chemicals. Although the circumstances in each case will vary, the proposed amendments are designed to ensure that an appropriately trained provider conducts an evaluation to address the specific circumstances in each case. Further, the proposed amendments to §213.33(e) and (f) require an evaluator to be familiar with the duties appropriate to the nursing profession. This proposed requirement is especially significant. The Board's ultimate determination in any disciplinary case is whether an individual can safely practice nursing. In order for an evaluation to be effective and useful to the Board, an evaluator must be able to form an opinion as to whether an individual can practice nursing safely. In order to reach such an opinion, an evaluator must be familiar with the duties that are relevant to the nursing profession. Patients under the care of a nurse are vulnerable by virtue of illness or injury and are dependent upon the nature of the nurse-patient relationship. Further, the nurse-patient relationship exists in settings other than a hospital, such as in home health, hospice care, or nursing home care. An evaluator must be familiar with the types of settings in which a nurse may work, the kinds of tasks that a nurse must be able to perform, and the skills and judgment that a nurse must utilize as part of his or her daily routine. Further, an evaluator must understand the complexities associated with providing direct patient care in any setting in order to be able to adequately assess an individual's ability to meet those responsibilities. The proposed amendments to §213.33(e) and (f) also require an evaluation to be conducted pursuant to professionally recognized standards and methods and to include the use of objective tests and instruments designed to test the psychological stability, fitness to practice, professional character, and veracity of the individual. These proposed requirements are necessary to assist the Board in determining whether an individual is likely to be able to comply with the Nursing Practice Act and the Board's policies and rules in the future. This is a very important factor for the Board to consider, especially in cases that involve prior criminal or unprofessional conduct. Although the Board considers all factors and circumstances in each case, the Board is especially concerned with the likelihood that an individual's dangerous or unsafe behavior may be repeated in the future. To that end, the proposed requirements are designed to ensure that evaluators utilize objective and reliable instruments to determine if an individual: (i) is being honest and forthcoming about the events that have transpired, (ii) understands the significance of the events that have transpired, (iii) has plans in place to prevent the reoccurrence of the events that have transpired; (iv) has made amends for past conduct; (v) currently possesses the physical and mental stability to practice safely, and (vi) currently possesses the professional character necessary to practice safely. If an evaluator determines that an individual may practice safely, these factors also play a large role in determining whether the individual should be subject to Board monitoring and supervision. Although the Board considers the totality of factors present in each disciplinary case, the information and data obtained during an evaluation, including an evaluator's conclusions and recommendations, are invaluable in assisting the Board in determining whether an individual is safe to practice nursing, and, if so, under what circumstances.

Remaining Amendments

The remaining proposed amendments are necessary: (i) for consistency with the proposed amendments to §213.33(e) and (f); (ii) to clarify existing Board policy regarding random drug testing; (iii) to revise existing provisions for internal consistency, clarity, and readability; and (iv) to correct grammatical errors. First, the proposed amendments to §213.20 are necessary to clarify that a mental or physical evaluation requested under existing §213.20 is not subject to the provisions of new §301.4521. This is because a physical or mental evaluation requested under existing §213.20 is not requested by the Board for the resolution of a

disciplinary matter. Rather, a physical or mental evaluation under existing §213.20 may be requested by the peer assistance program in which an individual is participating in order to properly evaluate the individual's impairment level and to plan, implement, and monitor the individual's rehabilitation and potential return to nursing practice. Decisions regarding whether an evaluation is necessary in a particular case is strictly within the purview of the peer assistance program in which the individual is participating. As such, the provisions of new §301.4521 do not apply to such evaluations. The existing language of §213.20 may be unclear in this regard, as it currently states that the Executive Director of the Board or the peer assistance program may determine whether an individual should undergo a physical or mental evaluation. In order to clarify this issue, the proposed amendments to §213.20 make clear that only the peer assistance program may determine when an evaluation is required under §213.20. The remaining amendments to §213.20 are necessary to correct a reference to the "Board of Nursing" and to correct a grammatical error. The proposed amendments to §213.29 are necessary for consistency with new §301.4521 and the proposed amendments to §213.33(e) and (f). Existing §213.29 requires an individual to obtain an evaluation in any matter before the Board that involves an allegation of chemical dependency or misuse or abuse of drugs of alcohol. An evaluation under §213.29 is subject to the requirements of new §301.4521. As such, the proposed amendments to §213.29 require an evaluation due to chemical dependency or the misuse or abuse of drugs or alcohol to meet the criteria prescribed in proposed amended §213.33. In this way, the Board is ensuring compliance with the provisions of new §301.4521 and consistency in its policies, procedures, and requirements related to evaluations. The proposed amendments to §213.29 also make clear that an individual must pay for an evaluation under §213.29. This proposed requirement is consistent with new §301.4521(i), which states that an individual must pay the costs of an evaluation conducted under §301.4521. The proposed amendments to §213.30 are also necessary for consistency with the proposed amendments to §213.33(e) and (f) and to comply with the provisions of new §301.4521. Existing §213.30(b)(3) requires an individual to obtain an evaluation if the individual's potential ineligibility is due to mental illness. Existing §213.30(b)(4) requires an individual to obtain an evaluation if the individual's potential ineligibility is due to chemical dependency, including alcohol. An evaluation under §213.30(b)(3) and (b)(4) is subject to the requirements of new §301.4521. As such, proposed amended §213.30(b)(3) requires an evaluation due to mental illness to meet the criteria prescribed in proposed amended §213.33. Proposed amended §213.30(b)(4) requires an evaluation due to chemical dependency, including alcohol, to meet the criteria prescribed in proposed amended §213.33. In this way, the Board is ensuring compliance with the provisions of new §301.4521 and consistency in its policies, procedures, and requirements related to evaluations. Finally, the proposed amendments to §213.33(a) are necessary for consistency with the proposed amendments to §213.32, which were published in the September 4, 2009, issue of the *Texas Register* (34 TexReg 6078). The proposed amendments to §213.32 distinguish a corrective action, which is a non-disciplinary action comprised of a fine, remedial education, or a combination of a fine and remedial education under the Occupations Code Chapter 301 Subchapter N, from a disciplinary action under Subchapter J. The proposed amendments to §213.30(a) clarify that the factors specified in §213.30(1) - (13) shall be considered by the Executive Director of the Board when determining the appropriate penalty/sanction in a disciplinary case. This distinction is consistent with the distinctions made between a corrective action under Subchapter N and a disciplinary action under Subchapter J in proposed amended §213.32. The proposed amendments to §213.33(g) are necessary to clarify the Board's existing policy regarding random drug testing. If an individual is placed under Board monitoring for chemical dependency or the misuse or abuse of alcohol or drugs, the Board has typically required the individual to submit to random drug screening for a specified period of time. Further, the Board tests for approximately fourteen prohibited substances, including alcohol. The Board has required its random drug screening to be verified through urinalysis since at least 1989. Over the years, the Board has found urinalysis to be a reliable method for screening for prohibited substances, including alcohol. Further, the Board contracts with a third party vendor to conduct its drug screening, and the Board's vendor utilizes urinalysis to verify the results of the screens. The proposed amendments to §213.33(g) formally codify the Board's existing policy regarding random drug testing by clarifying that all random drug testing must be verified through urinalysis. The remaining proposed amendments to §213.33 are necessary to correct grammatical errors and to implement the consistent usage of terms within the section.

The following is a section-by-section overview of the proposal. Proposed amended §213.20(h)(1)(C) provides that a nurse required to be reported under the Occupations Code §§301.401 - 301.409 may obtain informal disposition through referral to a peer assistance program, as specified in the Occupations Code §301.410, if the nurse makes a written contract with the Board of Nursing through its Executive Director promising to undergo and pay for such physical and mental evaluations as the peer assistance program determines to be reasonable and necessary to: (i) evaluate the nurse's impairment; (ii) plan, implement, and monitor the nurse's rehabilitation; and (iii) determine if, when, and under what conditions the nurse can safely return to practice. Proposed amended §213.29(c)(1) provides that if a registered or vocation nurse is reported to the Board for intemperate use, abuse of drugs or alcohol, or diagnosis of or treatment for chemical dependency, or if a person is unable to sign the certification in §213.29(b), that the following requirement applies: any matter before the Board that involves an allegation of chemical dependency, or misuse or abuse of drugs or alcohol, will require at a minimum that such person obtain for Board review an evaluation that meets the criteria of §213.33. Proposed amended §213.29(d) states that it shall be the responsibility of those persons subject to proposed amended §213.29 to submit to and pay for an evaluation that meets the criteria of §213.33. Proposed amended §213.30(b)(3) provides that a person must submit a petition or application on forms provided by the Board, which includes, if the potential ineligibility is due to mental illness, evidence of an evaluation that meets the criteria of §213.33 and evidence of treatment. Proposed amended §213.30(b)(4) provides that a person must submit a petition or application on forms provided by the Board which includes, if the potential ineligibility is due to chemical dependency, including alcohol, evidence of an evaluation that meets the criteria of §213.33, treatment, after care, and support group attendance. The proposed amended title of §213.33 reads as "Factors Considered for Imposition of Penalties/Sanctions". Proposed amended §213.33(a) specifies the factors that shall be considered by the Executive Director when determining the appropriate penalty/sanction in disciplinary cases. Further, proposed amended §213.33(a) provides that these factors shall also be used by the State Office of Administrative Hearings (SOAH) when recommending a sanction and the Board in determining the appropriate penalty/sanction in disciplinary cases.

The proposed amendments to §213.33(a)(7) and (10) replace the term "licensee" with the term "person". Proposed amended §213.33(e) provides that, if the Board has probable cause to believe that a person is unable to practice nursing with reasonable skill and safety because of physical impairment, mental impairment, chemical dependency, or abuse of drugs or alcohol, the Board may require an evaluation by a Board-approved addictionologist, addictionist, treatment evaluator, physician, medical doctor, neurologist, osteopathic, psychologist, forensic psychologist, forensic psychiatrist, or psychiatrist, with credentials appropriate for the specific evaluation requested. Further, proposed amended §213.33(e) provides that the evaluator must be familiar with the duties appropriate to the nursing profession. Proposed amended §213.33(e) also states that the evaluation must be conducted pursuant to professionally recognized standards and methods. Proposed amended §213.33(e) also provides that the evaluation must include the utilization of objective tests and instruments, which at a minimum, are designed to test the psychological stability, fitness to practice, professional character, and veracity of the person subject to evaluation. Proposed amended §213.33(e) further states that, if applicable, the evaluation must include information regarding the person's prognosis and medication regime. Proposed amended §213.33(e) also provides that the person subject to evaluation shall sign a release allowing the evaluator to review the file compiled by the Board staff and a release that permits the evaluator to release the evaluation to the Board. Proposed amended §213.33(e) also states that the person subject to evaluation should be provided a copy of the evaluation upon completion by the evaluator; and, if not, the Board will provide the person a copy. Proposed amended §213.33(f)(1) provides that, when determining evidence of present fitness to practice because of known or reported unprofessional conduct, lack of good professional character, or prior criminal history, the Board may request an evaluation conducted by a Board-approved forensic psychologist or forensic psychiatrist who (i) evaluates the behavior in question or the prior criminal history of the person subject to evaluation; (ii) seeks to predict the likelihood that the person subject to evaluation will engage in the behavior in question or criminal activity again, which may result in the person committing a second or subsequent reportable violation or receiving a second or subsequent reportable adjudication or conviction; and the continuing danger, if any, that the person poses to the community; (iii) is familiar with the duties appropriate to the nursing profession; (iv) conducts the evaluation pursuant to professionally recognized standards and methods; and (v) utilizes objective tests and instruments that, at a minimum, are designed to test the psychological stability, fitness to practice, professional character, and/or veracity of the person subject to evaluation. Proposed amended §213.33(f)(2) provides that the person subject to evaluation shall sign a release allowing the evaluator to review the file compiled by Board staff and a release that permits the evaluator to release the evaluation to the Board. Proposed amended §213.33(f)(3) provides that the person subject to evaluation should be provided a copy of the evaluation upon completion by the evaluator; and, if not, the Board will provide the person a copy. Proposed new §213.33(f)(4) states that the provisions of the Occupations Code §301.4521 apply to an evaluation requested under §213.33(f). Proposed amended §213.33(g) provides that, in accordance with the provisions of the Occupations Code and the Nursing Practice Act (NPA), and in keeping with the obligation to protect the consumer of nursing services from the unsafe, incompetent or unprofessional nurse, the Board has adopted recommended guidelines for disciplinary orders and conditions of probation for violations of the NPA. Further, proposed amended §213.33(g) states that the purpose of these guidelines is to give notice of the range of penalties which will normally be imposed for violations of the provisions in the Occupations Code Chapter 301 Subchapter J. Proposed amended §213.33(g) also provides that these disciplinary guidelines are based upon a single count violation of each provision listed. Proposed amended §213.33(g) provides that multiple violations of the same provision or rule, or other unrelated violations included in the administrative complaint, will be grounds for an enhancement of penalties subject to §301.4531(c)(1) and (2) of the NPA. Proposed amended §213.33(g) also provides that all penalties at the upper range of the sanctions set forth in the guidelines, such as suspension, revocation, or surrender, include lesser penalties, i.e., fine, remedial education, or probation, which may also be included in the final penalty at the Board's discretion. Proposed amended §213.33(g)(2) provides that the Board may, upon the finding of a violation, enter an order imposing one or more of the following disciplinary actions under the authority of §301.453(a) and (b) of the NPA: (i) denial of the person's application for a license, license renewal, reinstatement of a revoked, suspended, or surrendered license, or temporary permit; (ii) approval of the person's application for a license, license renewal, reinstatement of a revoked, suspended, or surrendered license, or temporary permit; (iii) setting reasonable probationary stipulations as a condition of the issuance, reinstatement, or renewal of the license or temporary permit, including: (A) submitting to an evaluation as outlined in §213.33(e) and (f) or pursuant to the Occupations Code §301.4521; and (B) abstaining from the unauthorized use of drugs and alcohol to be verified by random drug testing conducted through urinalysis; (iv) determining, in accordance with §301.468 of the NPA, that an order denying a license application, license renewal, or temporary permit be probated; (v) issuance of a Warning, which shall include reasonable probationary stipulations which may include abstaining from the unauthorized use of drugs and alcohol to be verified by random drug testing conducted through urinalysis; (vi) issuance of a Reprimand, which shall include reasonable probationary stipulations which may include abstaining from the unauthorized use of drugs and alcohol to be verified by random drug testing conducted through urinalysis; and (vii) suspension of the person's license, which may be: (A) enforced and active for a specific period; or (B) probated with reasonable probationary stipulations as a condition for lifting or staying the order of suspension, including submitting to an evaluation as outlined in §213.33(e) and (f) or pursuant to the Occupations Code §301.4521 and abstaining from the unauthorized use of drugs and alcohol to be verified by random drug testing conducted through urinalysis.

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

Ms. Thomas has also determined that for each year of the first five years the proposed amendments are in effect, there will be public benefits, and there will be potential costs for individuals required to comply with the proposal.

The anticipated public benefits will be the adoption of requirements that: (i) implement HB 3961; (ii) promote clarity and consistency among existing Board policies, procedures, and requirements; (iii) enable the Board to make fair and consistent determinations in disciplinary cases, which results in more

effective regulation; and (iv) ensure the protection of the public health, safety, and welfare. First, HB 3961 and the proposed amendments to §213.33(e) and (f) authorize the Board to request an individual to submit to a physical or psychological evaluation if the Board has probable cause to believe that the individual is unable to practice nursing safely due to physical impairment, mental impairment, chemical dependency, or abuse of drugs or alcohol, or in circumstances where an individuals's prior criminal history, unprofessional conduct, or good professional character is at issue. The Board is charged with protecting the health, safety, and welfare of the public from the unsafe, incompetent, unethical, or illegal conduct of licensees and individuals subject to Chapter 301. When an individual has exhibited impaired behavior, either due to chemical dependency or the abuse of alcohol or drugs, or due to a physical or mental condition, the Board has a responsibility to remove the individual from all nursing duties involving direct patient care until the individual is deemed safe to return to those duties. Further, when an individual has exhibited unprofessional character, including criminal conduct, the Board has a responsibility to ensure that the individual does not pose a risk to the public's safety. The Board is particularly concerned about an individual's impaired behavior and unprofessional character and conduct as it relates to the individual's nursing practice, as such behaviors may place vulnerable members of the public in danger and could affect the individual's ability to safely care for patients. The proposed amendments to §213.33(e) and (f), which implement the provisions and requirements of HB 3961, provide the Board with an additional tool for determining whether an individual is safe to practice nursing. The proposed amendments to §213.33(e) and (f) prescribe the specific circumstances in which the Board will request an individual to submit to a physical or mental evaluation. Further, the proposed amendments to §213.33(e) and (f) implement necessary safeguards to ensure that all evaluations are based upon reliable, verifiable, and objective information. The proposed amendments to §213.33(e) and (f) also ensure that an evaluation is conducted by an appropriately trained provider who specializes in the specific area relevant to the requested evaluation. These proposed requirements are designed to ensure that an appropriately trained provider conducts an evaluation based upon verifiable, objective data. The proposed amendments to §213.33(e) and (f) also require an evaluator to be familiar with the duties appropriate to the nursing profession. This proposed requirement is especially important because the evaluator is assessing the settings in which the individual may work, the specific tasks that the individual must be able to perform in those setting, and the skills and judgment that the individual must utilize as part of his or her daily routine. Further, the evaluator, in understanding the complexities associated with providing direct patient care in those settings, is assessing whether the individual can safely perform his or her nursing responsibilities. The proposed requirements to §213.33(e) and (f) also assist the Board in determining whether an individual is likely to be able to comply with the Nursing Practice Act and the Board's policies and rules in the future. This is a very important factor for the Board to consider, as the Board is especially concerned with the likelihood that dangerous or unsafe behavior may be repeated in the future. Further, an evaluator's recommendation regarding whether an individual should be subject to Board monitoring and supervision is also an important factor for the Board to consider. Although the Board considers the totality of factors present in each disciplinary case, the information and data obtained during an evaluation, including the evaluator's conclusions and recommendations, are invaluable in assisting the Board in determining whether the individual is safe to practice nursing, and, if so, under what circumstances. Very often, an evaluation produces information that is beyond the Board's knowledge prior to the evaluation. Such additional information permits the Board to review the totality of the circumstances in each disciplinary case, which enables the Board to make better decisions regarding the appropriate remedy in the case. When the Board is able to consider all of the factors that are relevant in a case, the Board is better able to determine if, and under what circumstances, an individual should be permitted to continuing practicing nursing. Further, the Board is better able to protect the interests of the public when it can ensure that a nurse is safe to practice and when appropriate monitoring and supervision requirements can be implemented to ensure that the individual remains safe while providing patient care. The proposed amendments to §213.33(e) and (f) allow the Board to obtain the best information available in a disciplinary matter. Further, the proposed amendments to §213.33(e) and (f) ensure that the conclusions and recommendations provided to the Board are based upon reliable, verifiable, and objective information. In this way, the Board is better able to resolve disciplinary cases in a fair and efficient manner, which results in more consistent and effective regulation. The proposed amendments to §213.33(g) are necessary to ensure consistency among Board policies, procedures, and requirements in disciplinary matters and to clarify existing Board policy regarding random drug screening. Such consistency results in fair and efficient regulation, which benefits all regulated individuals, as well as the public at large. Further, by clarifying the Board's existing policy that all random drug screening must be verified through urinalysis, the Board is providing appropriate notice to all regulated individuals of the Board's existing policies and expectations in this regard, which also results in fair and consistent regulation.

Potential Costs for Individuals Required to Comply with the Proposal.

The proposal authorizes the Board to: (i) require an individual to submit to a physical or psychological evaluation if the Board has probable cause to believe that the individual is unable to practice nursing safely due to physical impairment, mental impairment, chemical dependency, or abuse of drugs or alcohol; and (ii) request an individual to submit to a physical or psychological evaluation if the Board believes that the individual is unable to practice nursing safely for a reason other than physical impairment, mental impairment, chemical dependency, or abuse of drugs or alcohol. The proposal also (i) identifies the circumstances in which an evaluation may be required or requested by the Board under new §301.4521, (ii) specifies the credentials that an evaluator must possess in order to conduct an evaluation under new §301.4521, and (iii) prescribes the required components of an evaluation under new §301.4521. Not every individual regulated under Chapter 301 will be subject to the proposal. Only those individuals who (i) are involved in a disciplinary matter before the Board and (ii) are requested or required to submit to a physical or psychological evaluation under new §301.4521 will be affected by the proposal. There will be associated costs of compliance with the proposal for such individuals. The probable costs associated with the proposed amendments result from proposed new §213.33(e), (f), and (g).

Proposed amended §213.33(e) and (f) prescribe the credentials that an evaluator must possess in order to conduct an evaluation under new §301.4521. Further, proposed amended §213.33(e) and (f) specify the criteria that an evaluation must meet under new §301.4521. Specifically, the proposed amendments to

§213.33(e) and (f) require an evaluation under new §301.4521 to be conducted by a Board approved addictionologist, addictionist, treatment evaluator, physician, medical doctor, neurologist, osteopathic, psychologist, forensic psychologist, forensic psychiatrist, or psychiatrist. Further, the proposed amendments to §213.33(e) and (f) require the evaluator to be familiar with the duties appropriate to the nursing profession. Additionally, the proposed amendments to §213.33(e) and (f) require an evaluation to be conducted pursuant to professionally recognized standards and methods and to include the utilization of objective tests and instruments which are designed to test an individual's psychological stability, fitness to practice, professional character, and veracity. If an individual is requested to submit to an evaluation under new §301.4521, the total probable cost to comply with the proposed amendments will vary substantially among individuals, primarily based upon the cost assessed by the particular evaluator performing the requested evaluation. The Board generally estimates that an evaluation under new §301.4521 may cost between $850 - $2,000. However, the Board anticipates that the probable costs of an evaluation under new §301.4521 will vary substantially from provider to provider, based upon the following factors: (i) the type and nature of the evaluation; (ii) the type of provider that is qualified to perform the evaluation; (iii) the availability of a qualified provider to conduct the evaluation; (iv) the amount and type of objective tests utilized by an evaluator; (v) the geographic location of the individual; (vi) the geographic location of the evaluator; (vii) whether an evaluator performs evaluations on a frequent basis; (viii) the familiarity of an evaluator with the requirements of new §301.4521, the proposed amendments, and Board policies and procedures; (ix) the complexity of the issues in the case; (x) the history of the individual; (xi) the amount of time it will take for the evaluator to conduct the evaluation, including the administration of objective tests; and (xii) the amount of time it will take the evaluator to prepare his or her report. The proposed amendments to §213.33(e) and (f) establish the credentials that a provider must possess in order to perform an evaluation under new §301.4521. The proposed amendments also prescribe the criteria that an evaluation under new §301.4521 must meet. However, the Board is not requiring an individual to obtain an evaluation from a particular evaluator. Although the Board maintains a list of pre-approved evaluators who may conduct an evaluation, an individual is not obligated to obtain an evaluation from one of the listed providers. An individual may choose to obtain an evaluation from any provider, so long as the provider meets the proposed requirements of §213.33(e) and (f) and new §301.4521. As such, each individual is free to choose the most economical way to obtain an evaluation under new §301.4521 and the proposed amendments. Each individual also has the information necessary to estimate his or her own compliance costs. Further, new §301.4521(i) states that an individual shall pay the costs of an evaluation conducted under new §301.4521. Any other costs to comply with the proposal result from the enactment of the Occupations Code Chapter 301 and are not a result of the adoption, enforcement, or administration of the proposal. Proposed amended §213.33(g) clarifies that all random drug screening must be verified through urinalysis. This proposed amendment does not alter the Board's existing policy regarding random drug screening. As a result, the Board does not anticipate that the proposed amendments to §213.33(g) will alter the costs that are being incurred by individuals currently subject to random drug screening. Nevertheless, individuals who are subject to random drug screening will incur costs of compliance with proposed amended §213.33(g). The Board estimates that the probable costs of compliance with proposed amended §213.33(g) will vary from individual to individual based upon the (i) length of time that an individual must submit to random drug screening and (ii) the number of screens that an individual must submit. An individual will typically be required to submit to random drug screening for a period of 1 - 3 years. During this time, an individual will be required to test once a week for the first three month period. An individual will be required to test twice a month for the next three month period. An individual will be required to test once a month for the next six month period. An individual will be required to test once a quarter for the remainder of the testing period. The Board estimates that each test will cost $46. Based upon this estimate, the Board anticipates that a one year testing period will cost approximately $1,152; a two year testing period will cost approximately $1,336; and a three year testing period will cost approximately $1,520. Although individuals are not typically required to test beyond three years, there may be instances where a longer testing period is required. In those situations, the Board estimates that it will cost an individual an additional $184 per year to complete the required random screens. Further, if an individual is required to re-submit a screen for any reason, each screen is anticipated to cost an additional $46. Any other costs to comply with the proposal result from the enactment of the Occupations Code Chapter 301 and are not a result of the adoption, enforcement, or administration of the proposal.

As required by the Government Code §2006.002(c) and (f), the Board has determined that the proposed amendments will not have an adverse economic effect on any individual, Board regulated entity, or other entity required to comply with the proposal because no individual, Board regulated entity, or other entity required to comply with the proposal meets the definition of a small or micro business under the Government Code §2006.001(1) or §2006.001(2). The Government Code §2006.001(1) defines a micro business as a legal entity, including a corporation, partnership, or sole proprietorship that: (i) is formed for the purpose of making a profit; (ii) is independently owned and operated; and (iii) has not more than 20 employees. The Government Code §2006.001(2) defines a small business as a legal entity, including a corporation, partnership, or sole proprietorship, that: (i) is formed for the purpose of making a profit; (ii) is independently owned and operated; and (iii) has fewer than 100 employees or less than $6 million in annual gross receipts. Each of the elements in §2006.001(1) and §2006.001(2) must be met in order for an entity to qualify as a micro business or small business. The only entities subject to the proposal are individuals regulated under Chapter 301. Because such individuals are not independently owned and operated legal entities that are formed for the purpose of making a profit, no individual regulated under Chapter 301 qualifies as a micro business or small business under the Government Code §2006.001(1) or §2006.001(2). Therefore, in accordance with the Government Code §2006.002(c) and (f), the Board is not required to prepare a regulatory flexibility analysis.

The Board 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.

To be considered, written comments on the proposal or any request for a public hearing must be submitted no later than 30 days from date of publication in the *Texas Register* to James W. Johnston, General Counsel, Texas Board of Nursing, 333

Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to dusty.johnston@bon.state.tx.us, or faxed to (512) 305-8101. If a hearing is held, written and oral comments presented at the hearing will be considered.

The amendments are proposed under the Occupations Code §§301.452, 301.4521, 301.453, 301.4531, 301.501, 301.452, and 301.151. The Occupations Code §301.452(a) defines intemperate use to include practicing nursing or being on duty or on call while under the influence of alcohol or drugs. The Occupations Code §301.452(b) provides that a person is subject to denial of a license or to disciplinary action under Subchapter J for: (i) a violation of Chapter 301, a rule or regulation not inconsistent with Chapter 301, or an order issued under Chapter 301; (ii) fraud or deceit in procuring or attempting to procure a license to practice professional nursing or vocational nursing; (iii) a conviction for, or placement on deferred adjudication community supervision or deferred disposition for, a felony or for a misdemeanor involving moral turpitude; (iv) conduct that results in the revocation of probation imposed because of conviction for a felony or for a misdemeanor involving moral turpitude; (v) use of a nursing license, diploma, or permit, or the transcript of such a document, that has been fraudulently purchased, issued, counterfeited, or materially altered; (vi) impersonating or acting as a proxy for another person in the licensing examination required under §301.253 or §301.255; (vii) directly or indirectly aiding or abetting an unlicensed person in connection with the unauthorized practice of nursing; (viii) revocation, suspension, or denial of, or any other action relating to, the person's license or privilege to practice nursing in another jurisdiction; (ix) intemperate use of alcohol or drugs that the board determines endangers or could endanger a patient; (x) unprofessional or dishonorable conduct that, in the Board's opinion, is likely to deceive, defraud, or injure a patient or the public; (xi) adjudication of mental incompetency; (xii) lack of fitness to practice because of a mental or physical health condition that could result in injury to a patient or the public; or (xiii) failure to care adequately for a patient or to conform to the minimum standards of acceptable nursing practice in a manner that, in the board's opinion, exposes a patient or other person unnecessarily to risk of harm. The Occupations Code §301.452(c) provides that the Board may refuse to admit a person to a licensing examination for a ground described under §301.452(b). The Occupations Code §301.452(d) requires the Board, by rule, to establish guidelines to ensure that any arrest information, in particular information on arrests in which criminal action was not proven or charges were not filed or adjudicated, that is received by the Board under §301.452 is used consistently, fairly, and only to the extent the underlying conduct relates to the practice of nursing. The Occupations Code §301.4521(a) defines the term *applicant* as a petitioner for a declaratory order of eligibility for a license or an applicant for an initial license or renewal of a license and the term *evaluation* as a physical or psychological evaluation conducted to determine a person's fitness to practice nursing. The Occupations Code §301.4521(b) provides that the Board may require a nurse or applicant to submit to an evaluation only if the Board has probable cause to believe that the nurse or applicant is unable to practice nursing with reasonable skill and safety to patients because of: (i) physical impairment; (ii) mental impairment; or (iii) chemical dependency or abuse of drugs or alcohol. The Occupations Code §301.4521(c) provides that a demand for an evaluation under §301.4521(b) must be in writing and state: (i) the reasons probable cause exists to require the evaluation; and (ii) that refusal by the nurse or applicant to submit to the evaluation will result in an administrative hearing to be held to make a final determination of whether probable cause for the evaluation exists. The Occupations Code §301.4521(d) states that, if the nurse or applicant refuses to submit to the evaluation, the Board shall schedule a hearing on the issue of probable cause to be conducted by the State Office of Administrative Hearings. The nurse or applicant must be notified of the hearing by personal service or certified mail. The hearing is limited to the issue of whether the Board had probable cause to require an evaluation. The nurse or applicant may present testimony and other evidence at the hearing to show why the nurse or applicant should not be required to submit to the evaluation. The Board has the burden of proving that probable cause exists. At the conclusion of the hearing, the hearing officer shall enter an order requiring the nurse or applicant to submit to the evaluation or an order rescinding the Board's demand for an evaluation. The order may not be vacated or modified under the Government Code §2001.058. The Occupations Code §301.4521(e) states that, if a nurse or applicant refuses to submit to an evaluation after an order requiring the evaluation is entered under §301.4521(d), the Board may: (i) refuse to issue or renew a license; (ii) suspend a license; or (iii) issue an order limiting the license. The Occupations Code §301.452(f) provides that the Board may request a nurse or applicant to consent to an evaluation by a practitioner approved by the Board for a reason other than a reason listed in §301.4521(b). A request for an evaluation under §301.4521(f) must be in writing and state: (i) the reasons for the request; (ii) the type of evaluation requested; (iii) how the Board may use the evaluation; (iv) that the nurse or applicant may refuse to submit to an evaluation; and (v) the procedures for submitting an evaluation as evidence in any hearing regarding the issuance or renewal of the nurse's or applicant's license. The Occupations Code §301.4521(g) states that, if a nurse or applicant refuses to consent to an evaluation under §301.4521(f), the nurse or applicant may not introduce an evaluation into evidence at a hearing to determine the nurse's or applicant's right to be issued or retain a nursing license unless the nurse or applicant: (i) not later than the 30th day before the date of the hearing, notifies the Board that an evaluation will be introduced into evidence at the hearing; (ii) provides the Board the results of that evaluation; (iii) informs the Board of any other evaluations by any other practitioners; and (iv) consents to an evaluation by a practitioner that meets board standards established under §301.4521(h). The Occupations Code §301.4521(h) provides that the Board shall establish by rule the qualifications for a licensed practitioner to conduct an evaluation under §301.4521. The Board shall maintain a list of qualified practitioners. The Board may solicit qualified practitioners located throughout the state to be on the list. The Occupations Code §301.4521(i) states that a nurse or applicant shall pay the costs of an evaluation conducted under §301.4521. The Occupations Code §301.4521(j) provides that the results of an evaluation under §301.4521 are: (i) confidential and not subject to disclosure under the Government Code Chapter 552; (ii) not subject to disclosure by discovery, subpoena, or other means of legal compulsion for release to anyone, except that the results may be: (A) introduced as evidence in a proceeding before the board or a hearing conducted by the State Office of Administrative Hearings under Chapter 301; or (B) included in the findings of fact and conclusions of law in a final board order. The Occupations Code §301.4521(k) provides that, if the Board determines there is insufficient evidence to bring action against a person based on the results of any evaluation under this section, the evaluation must be expunged from the Board's records. The Occupations Code §301.4521(l) requires the Board to adopt guidelines for requiring or requesting a nurse or applicant to submit to an evaluation under §301.4521. The Occupa-

tions Code §301.4521(m) states that the authority granted to the Board under §301.4521 is in addition to the Board's authority to make licensing decisions under this chapter. The Occupations Code §301.453(a) provides that, if the Board determines that a person has committed an act listed in §301.452(b), the Board shall enter an order imposing one or more of the following: (1) denial of the person's application for a license, license renewal, or temporary permit; (2) issuance of a written warning; (3) administration of a public reprimand; (4) limitation or restriction of the person's license, including limiting to or excluding from the person's practice one or more specified activities of nursing or stipulating periodic board review; (5) suspension of the person's license for a period not to exceed five years; (6) revocation of the person's license; or (7) assessment of a fine. The Occupations Code §301.453(b) provides that, in addition to or instead of an action under §301.453(a), the Board, by order, may require the person to: (i) submit to care, counseling, or treatment by a health provider designated by the Board as a condition for the issuance or renewal of a license; (ii) participate in a program of education or counseling prescribed by the Board; (iii) practice for a specified period under the direction of a registered nurse or vocational nurse designated by the Board; or (iv) perform public service the Board considers appropriate. The Occupations Code §301.453(c) provides that the Board may probate any penalty imposed on a nurse and may accept the voluntary surrender of a license. The Board may not reinstate a surrendered license unless it determines that the person is competent to resume practice. The Occupations Code §301.453(d) states that if the Board suspends, revokes, or accepts surrender of a license, the Board may impose conditions for reinstatement that the person must satisfy before the Board may issue an unrestricted license. The Occupations Code §301.4531(a) states that the Board by rule shall adopt a schedule of the disciplinary sanctions that the Board may impose under Chapter 301. In adopting the schedule of sanctions, the Board shall ensure that the severity of the sanction imposed is appropriate to the type of violation or conduct that is the basis for disciplinary action. The Occupations Code §301.4531(b) states, in determining the appropriate disciplinary action, including the amount of any administrative penalty to assess, the Board shall consider: (i) whether the person is being disciplined for multiple violations of either Chapter 301 or a rule or order adopted under Chapter 301 or has previously been the subject of disciplinary action by the Board and has previously complied with Board rules and Chapter 301; (ii) the seriousness of the violation; (iii) the threat to public safety; and (iv) any mitigating factors. The Occupations Code §301.4531(c) provides that, in the case of a person described by §301.4531(b)(1)(A), the Board shall consider taking a more severe disciplinary action, including revocation of the person's license, than the disciplinary action that would be taken for a single violation; and in the case of a person described by §301.4531(b)(1)(B), the Board shall consider taking a more severe disciplinary action, including revocation of the person's license, than the disciplinary action that would be taken for a person who has not previously been the subject of disciplinary action by the Board. The Occupations Code §301.501 provides that the Board may impose an administrative penalty on a person licensed or regulated under Chapter 301 who violates Chapter 301 or a rule or order adopted under Chapter 301. The Occupations Code §301.502(a) states that the amount of the administrative penalty may not exceed $5,000 for each violation. Further, each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. The Occupations Code §301.502(b) states that the amount of the penalty shall be based on: (i) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts and the hazard or potential hazard created to the health, safety, or economic welfare of the public; (ii) the economic harm to property or the environment caused by the violation; (iii) the history of previous violations; (iv) the amount necessary to deter a future violation; (v) efforts made to correct the violation; and (vi) any other matter that justice may require. The Occupations Code §301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (1) perform its duties and conduct proceedings before the Board; (2) regulate the practice of professional nursing and vocational nursing; (3) establish standards of professional conduct for license holders Chapter 301; and (4) determine whether an act constitutes the practice of professional nursing or vocational nursing.

The following statutes are affected by this proposal:

Sections 213.20, 213.29, 213.30, and 213.33 - Statutes §§301.452, 301.4521, 301.453, 301.4531, 301.501, 301.502, and 301.151.

§213.20. Informal Proceedings and Alternate Dispute Resolution (ADR).

(a) - (g) (No change.)

(h) Referral to peer assistance after report to the Board.

(1) A nurse required to be reported under Texas Occupations Code Annotated §§301.401 - 301.409, may obtain informal disposition through referral to a peer assistance program as specified in Texas Occupations Code Annotated §301.410, as amended, if the nurse:

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

(C) makes a written contract with the Board of Nursing [~~Nurse Examiners~~] through its executive director promising to:

(i) undergo and pay for such physical and mental evaluations as the [~~executive director or the~~] peer assistance program determines [~~determine~~] to be reasonable and necessary to evaluate the nurse's impairment; to plan, implement and monitor the nurse's rehabilitation; and, to determine if, when and under what conditions the nurse can safely return to practice;

(ii) - (iv) (No change.)

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

(i) - (l) (No change.)

§213.29. Criteria and Procedure Regarding Intemperate Use and Lack of Fitness in Eligibility and Disciplinary Matters.

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

(c) If a registered or vocational nurse is reported to the Board for intemperate use, abuse of drugs or alcohol, or diagnosis of or treatment for chemical dependency; or if a person is unable to sign the certification in subsection (b) of this section, the following restrictions and requirements apply:

(1) Any matter before the Board that involves an allegation of chemical dependency, or misuse or abuse of drugs or alcohol, will require at a minimum that such person obtain for Board review an evaluation that meets the criteria of §213.33 of this chapter (relating to Factors Considered for Imposition of Penalties/Sanctions) [~~a chemical dependency evaluation performed by a licensed chemical dependency evaluator or other professional approved by the executive director~~];

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

(d) It shall be the responsibility of those persons subject to this rule to submit to and pay for an evaluation that meets the criteria of §213.33 of this chapter [~~by a professional approved by the executive director to determine current sobriety and fitness. The evaluation shall be limited to the conditions mentioned in subsection (b) of this section~~].

(e) - (j) (No change.)

§213.30. Declaratory Order of Eligibility for Licensure.

(a) (No change.)

(b) The person must submit a petition or application on forms provided by the Board which includes:

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

(3) if the potential ineligibility is due to mental illness, evidence of an evaluation that meets the criteria of §213.33 of this chapter (relating to Factors Considered for Imposition of Penalties/Sanctions) and [~~, including a prognosis, by a psychologist or psychiatrist,~~] evidence of treatment[~~, including any medication~~];

(4) if the potential ineligibility is due to chemical dependency including alcohol, evidence of an evaluation that meets the criteria of §213.33 of this chapter and treatment, after care and support group attendance; and

(5) (No change.)

(c) - (i) (No change.)

§213.33. Factors Considered for Imposition of Penalties/Sanctions [~~and/or Fines~~].

(a) The following factors shall be considered by the executive director when determining the appropriate penalty/sanction in disciplinary cases [~~whether to dispose of a disciplinary case by fine or by fine and stipulation and the amount of such fine~~]. These factors shall also be used by the State Office of Administrative Hearings (SOAH) when recommending a sanction and the Board in determining the appropriate penalty/sanction in disciplinary cases:

(1) - (6) (No change.)

(7) the length of time the person [~~licensee~~] has practiced;

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

(10) attempts by the person [~~licensee~~] to correct or stop the violation;

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

(b) - (d) (No change.)

(e) If the Board has probable cause to believe that a person is unable to practice nursing with reasonable skill and safety because of physical impairment, mental impairment, chemical dependency, or abuse of drugs or alcohol [~~When determining evidence of present fitness to practice~~], the Board [~~or Executive Director~~] may require an evaluation by a Board-approved addictionologist, addictionist, treatment evaluator, physician, medical doctor, neurologist, osteopathic, psychologist, forensic psychologist, forensic psychiatrist, or psychiatrist, with credentials appropriate for the specific evaluation requested [~~who is licensed by the Texas State Board of Examiners of Psychologists or the Texas Medical Board, respectively~~]. The evaluator must be familiar with the duties appropriate to the nursing profession. The evaluation must be conducted pursuant to professionally recognized standards and methods. The evaluation must include the utilization of objective tests and instruments which at a minimum are designed to test the psychological stability, fitness to practice, professional character, and veracity of the person subject to evaluation [~~applicant or licensee~~]. If applicable, the evaluation must include information regarding the person's prognosis and medication regime. The person [~~applicant or licensee~~] subject to evaluation shall sign a release allowing the evaluator to review the file compiled by the Board staff and a release that permits the evaluator to release the evaluation to the Board. The person subject to evaluation [~~applicant or licensee~~] should be provided a copy of the evaluation upon completion by the evaluator; if not, the Board will provide the person [~~individual~~] a copy.

(f) When determining evidence of present fitness to practice because of known or reported unprofessional conduct, lack of good professional character, or prior criminal history [~~by a licensee or applicant for licensure~~]:

(1) The [~~the~~] Board [~~or Executive Director~~] may request an evaluation [~~individual risk assessment~~] conducted by a Board-approved forensic psychologist or forensic psychiatrist who:

(A) evaluates the behavior in question or the prior criminal history of the [~~a~~] person; [~~and~~]

(B) seeks to predict:

(i) the likelihood that the person subject to evaluation will engage in the behavior in question or criminal activity again, which may [~~that may~~] result in the person committing a second or subsequent reportable violation or receiving a second or subsequent reportable adjudication or conviction; and

(ii) the continuing danger, if any, that the person poses to the community;[~~,~~]

(C) is familiar with the duties appropriate to the nursing profession;[~~,~~]

(D) conducts the evaluation pursuant to professionally recognized standards and methods; and

(E) utilizes objective tests and instruments that, at a minimum, are designed to test the psychological stability, fitness to practice, professional character, and/or veracity of the person subject to evaluation [~~nurse applicant or licensee~~].

(2) The person [~~applicant or licensee~~] subject to evaluation shall sign a release allowing the evaluator to review the file compiled by [~~the~~] Board staff and a release that permits the evaluator to release the evaluation to the Board.

(3) The person subject to evaluation [~~applicant or licensee~~] should be provided a copy of the evaluation upon completion by the evaluator; if not, the Board will provide the person [~~individual~~] a copy.

(4) The provisions of the Occupations Code §301.4521 apply to an evaluation requested under this subsection.

(g) In accordance with the provisions of the [~~Texas~~] Occupations Code and the Nursing Practice Act (NPA), and in keeping with the obligation to protect the consumer of nursing services from the unsafe, incompetent or unprofessional nurse, the Board [~~of Nursing~~] has adopted the following recommended guidelines for disciplinary orders and conditions of probation for violations of the NPA. The purpose of these guidelines is to give notice [~~to licensees~~] of the range of penalties which will normally be imposed for [~~upon~~] violations of the provisions in the Occupations Code Chapter 301, Subchapter J. These [~~The~~] disciplinary guidelines are based upon a single count violation of each provision listed. Multiple violations of the same provision or rule, or other unrelated violations included in the administrative complaint, will be grounds for an enhancement of penalties subject to §301.4531(c)(1) and (2)[~~,~~] of the NPA. All penalties at the upper range of the sanctions set forth in the guidelines, such as suspension, revocation, or surrender, include lesser penalties, i.e., fine, remedial education, or probation,

which may also be included in the final penalty at the Board's discretion.

(1) (No change.)

(2) The Board may, upon the finding of a violation, enter an order imposing one or more of the following disciplinary actions under the authority of §301.453(a) and (b)[~~,~~] of the NPA:

(A) Denial of the person's application for a license, license renewal, reinstatement of a revoked, suspended, or surrendered license, or temporary permit;

(B) Approval of the person's application for a license, license renewal, reinstatement of a revoked, suspended, or surrendered license, or temporary permit; and set reasonable probationary stipulations as a condition of issuance, reinstatement, or renewal of the license or temporary permit. Additionally, the Board may determine, in accordance with §301.468[~~,~~] of the NPA, that an order denying a license application, license renewal, or temporary permit be probated. Reasonable probationary stipulations may include, but are not limited to:

(i) (No change.)

(ii) submit to an evaluation as outlined in subsections [~~subsection~~] (e) and (f) of this section or pursuant to the Occupations Code §301.4521;

(iii) - (v) (No change.)

(vi) abstain from unauthorized use of drugs and alcohol to be verified by random drug testing conducted through urinalysis; or

(vii) (No change.)

(C) Issuance of a Warning. The issuance of a Warning shall include reasonable probationary stipulations which may include, but are not limited to, one or more of the following:

(i) - (iii) (No change.)

(iv) abstain from unauthorized use of drugs and alcohol to be verified by random drug testing conducted through urinalysis; or

(v) (No change.)

(D) Issuance of a Reprimand. The issuance of a Reprimand shall include reasonable probationary stipulations which may include, but are not limited to, one or more of the following:

(i) - (iii) (No change.)

(iv) abstain from unauthorized use of drugs and alcohol to be verified by random drug testing conducted through urinalysis; or

(v) (No change.)

(E) (No change.)

(F) Suspension of the person's license. The Board may determine that the order of suspension be enforced and active for a specific period or probated with reasonable probationary stipulations as a condition for lifting or staying the order of suspension. Reasonable probationary stipulations may include, but are not limited to, one or more of the following:

(i) (No change.)

(ii) submit to an evaluation as outlined in subsections [~~subsection~~] (e) and (f) of this section or pursuant to the Occupations Code §301.4521;

(iii) - (v) (No change.)

(vi) abstain from unauthorized use of drugs and alcohol to be verified by random drug testing conducted through urinalysis; or

(vii) (No change.)

(G) - (M) (No change.)

(h) (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 31, 2009.

TRD-200903844
James W. Johnston
General Counsel
Texas Board of Nursing
Earliest possible date of adoption: October 11, 2009
For further information, please call: (512) 305-6811

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PART 16. TEXAS BOARD OF PHYSICAL THERAPY EXAMINERS

CHAPTER 323. POWERS AND DUTIES OF THE BOARD

22 TAC §323.3

The Texas Board of Physical Therapy Examiners proposes an amendment to §323.3, Adoption of Rules. The amendment would update language to reflect changes made to the Physical Therapy Practice Act regarding continuing competency during the 81st legislative session, and to delete a statement regarding the specific fees to be set by the board for administration of the continuing education approval process.

John P. Maline, Executive Director, has determined that for the first five-year period this amendment is in effect there will be no additional costs to state or local governments as a result of enforcing or administering this amendment.

Mr. Maline has also determined that for each year of the first five-year period this amendment is in effect the public benefit will be consistency in the rules. Mr. Maline has determined that there will be no costs or adverse economic effects to small or micro businesses, therefore an economic impact statement or regulatory flexibility analysis is not required for the amendment.

Comments on the proposed amendment may be submitted to Nina Hurter, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701; email: nhurter@mail.capnet.state.tx.us. Comments must be received no later than 30 days from the date this proposed amendment is published in the *Texas Register*.

The amendment is proposed under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Texas 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.

Title 3, Subtitle H, Chapter 453, Texas Occupations Code is affected by this amendment.

§323.3. Adoption of Rules.

(a) The board may adopt rules consistent with the Physical Therapy Practice Act to carry out its duties in administering the Act.

(b) Continuing competence [~~education~~]. The board may adopt rules relating to the approval of continuing competence activities [~~education courses~~]. The board may establish reasonable and necessary fees for the administration of the approval of continuing competence activities [~~education programs at a minimum of $40 and not to exceed $200 per course submitted to the board for approval~~].

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 28, 2009.

TRD-200903820
John P. Maline
Executive Director
Texas Board of Physical Therapy Examiners
Earliest possible date of adoption: October 11, 2009
For further information, please call: (512) 305-6900

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CHAPTER 329. LICENSING PROCEDURE

22 TAC §329.5

The Texas Board of Physical Therapy Examiners proposes amendments to §329.5, Licensing Procedures for Foreign-Trained Applicants. The amendments would eliminate the requirement for a prescreening certificate, remove the two-year limit on the validity of a completed evaluation, delete specific details of the education evaluation requirements and make it clear that a foreign-trained applicant must meet the educational requirements as delineated in the appropriate version of the Federation of State Boards of Physical Therapy's coursework tool, establishes that the board will issue a license only to an applicant located in the US, increases the number of hours or courses for which college placement tests may be used, and makes clear that the board retains the right to make the determination of equivalency and does not delegate that authority to any other body. It also allows graduates of a foreign CAPTE-accredited program an exemption from the English language proficiency requirements and removes the requirement that an applicant provide proof of licensure in good standing in the country of education.

John P. Maline, Executive Director, has determined that for the first five-year period the amendments are in effect there will be no additional costs to state or local governments as a result of enforcing or administering the amendment.

Mr. Maline has also determined that for each year of the first five-year period the amendment is in effect the public benefit will be eligibility requirements for foreign-trained applicants which will be less onerous that the current ones, therefore making it likelier that more applicants will come to the state to practice. Mr. Maline has determined that there will be no costs or adverse economic effects to small or micro businesses; therefore, an economic impact statement or regulatory flexibility analysis is not required for the amendment. There are no anticipated costs to individuals who are required to comply with the amendment as proposed.

Comments on the proposed amendments may be submitted to Nina Hurter, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701; email: nhurter@mail.capnet.state.tx.us. Comments must be received no later than 30 days from the date the proposed amendments are published in the *Texas Register.*

The amendments are proposed under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Texas 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.

Title 3, Subtitle H, Chapter 453, Texas Occupations Code is affected by the amendments.

§329.5. Licensing Procedures for Foreign-Trained Applicants.

(a) A foreign-trained applicant must complete the license application process as set out in §329.1 of this title (relating to General Licensing Procedure), if applying for licensure by examination, or as set out in §329.6 of this title (relating to Licensure by Endorsement), if applying for licensure by endorsement.

(b) The board will issue a license only after the applicant is physically in the United States and has met all requirements for the license.

(c) Designated representative letter.

(1) An applicant may designate a person as a representative by providing in writing to the board the name, telephone number, and address of the person and by stating in the letter that the person will be the designated representative for the applicant.

(2) This letter must be notarized by a notary of the country in which the applicant resides and sent directly to the board. A copy should be sent to the representative by the applicant.

(3) A designated representative may obtain confidential information regarding the application.

(4) A designated representative of an applicant will remain so until the applicant receives his permanent license or until the board is notified in writing by the applicant that the designated representative has been eliminated or replaced. An applicant may have only one designated representative at any time.

(5) The designated representative is not required by the board to have power of attorney for the applicant. A person who does have power of attorney for an applicant may not submit any document that is required by the board to be signed by the applicant and notarized. Documents submitted by a person with power of attorney for the applicant must be submitted in accordance with all requirements set by the Act and rules regarding these documents. Any falsification of documents required for licensing submitted by a designated representative or a person with power of attorney for the applicant may result in denial of license or other penalties to the applicant.

(d) Credentials evaluation. A foreign trained applicant must submit to the board a credentials evaluation of professional education and training prepared by a Board-approved credentialing entity. The board will maintain a list of approved credentialing entities on the agency website. It is the applicant's responsibility to pay the expenses associated with the credentials evaluation.

(1) The credentials evaluation must provide evidence and documentation that the applicant's education outside a state or territory of the United States is substantially equivalent to the education of a physical therapist who graduated from a physical therapy education

program accredited by the Commission on Accreditation in Physical Therapy Education (CAPTE). The evaluation must also establish that the institution at which the applicant's received his physical therapy education is recognized by the Ministry of Education or the equivalent agency in that country.

(2) To determine substantial equivalency, the approved credentialing evaluation entity shall use the Course Work Tool (CWT) adopted by the Federation of State Boards of Physical Therapy.

(A) The entity may use the version of the CWT in place at the time the foreign-trained applicant graduated from his physical therapy program, or the latest edition of the CWT, at the request of the applicant.

(B) If the applicant's education has already been evaluated using an appropriate version of the CWT and all educational requirements were met, the board will accept a copy of the evaluation from an approved credentialing entity or a state in which the applicant holds or has held a physical therapy license.

(3) If the credentialing entity determines that the physical therapy education is substantially equivalent, but no evidence is found of specific required courses or content areas, the applicant is responsible for remedying those deficiencies. The applicant may use college credit obtained through College Level Examination Placement (CLEP) or other college advanced placement exams to complete up to 14 hours, but no more than 4 courses, of general education requirements.

(4) If the applicant received an entry-level physical therapy degree from a CAPTE-accredited program located outside the U.S., the program is considered equivalent to a domestic CAPTE-accredited physical therapy program, and the applicant is exempt from meeting the requirements of the CWT.

(5) An evaluation prepared by board-approved credentialer reflects only the findings and conclusions of the credentialer, and shall not be binding on the board. In the event that the board determines that the applicant's education is not substantially equivalent to an entry-level physical therapy program accredited by CAPTE, the board will notify the applicant in writing stating the reasons why the applicant's education is not substantially equivalent.

(e) English language proficiency. A foreign-trained applicant must demonstrate his ability to communicate in English by making the minimum score accepted by the board on the TOEFL tests administered by the Educational Testing Service (ETS). Minimum acceptable scores are as follows: Paper based TOEFL tests (pbt) - TOEFL (reading/comprehension) 580; TWE (writing/essay) 5.0; TSE (speaking) 55; Computer-based TOEFL tests (cbt) - TOEFL (reading/comprehension) 237; TWE (writing/essay) 5.0; TSE (speaking) 55; Internet-based (ibt) - Writing 24; Speaking 26; Reading Comprehension 21; Listening Comprehension 18.

(1) This requirement is waived for graduates of entry-level physical therapy programs in Australia, Canada (except Quebec), Ireland, New Zealand and the United Kingdom, and for graduates of entry-level programs accredited by the Commission on Accreditation in Physical Therapy Education (CAPTE) at time of graduation. For graduates of entry-level physical therapy programs in other countries, the Board may grant an exception to the English language proficiency requirements under the following conditions:

(A) the applicant holds a current license in physical therapy in another state and has been licensed in the another state in the U.S. for 10 years prior to application.

(B) The applicant submits satisfactory proof that he/she is a citizen or lawful permanent resident of the U.S., and has attended four or more years of secondary or post-secondary education in the U.S.

(2) With a score of 50 on the paper-based and computer-based Test of Spoken English (TSE), the board will allow the applicant to submit three original, notarized letters of recommendation from individuals who have practical knowledge of the applicant's ability to communicate successfully in spoken English. Individuals who provide this written testimony must be native English speakers, cannot be related by blood or marriage to the applicant, and at least one of the letters must be from a PT licensed to practice in the U.S. These letters must be submitted by their authors directly to the board. At the board's discretion, the letters may be considered satisfactory evidence of proficiency in spoken English.

~~[(a) The provisions of §329.1 of this title apply to foreign-trained applicants.]~~

~~[(b) If required by §343 of the U.S. Illegal Immigration Reform and Immigrant Responsibility Act, the foreign-trained applicant must present a prescreening certificate issued by a board-approved prescreening entity. The board will establish by policy a list of board-approved prescreening entities, which will be made available to foreign-trained applicants on request.]~~

~~[(c) The foreign-trained applicant's educational credentials and qualifications will be evaluated by a board-approved credentialing entity in accordance with the requirements of subsection (f) of this section. The board will establish by policy a list of approved credentialing entities. In the event that the credentialer does not adhere to the guidelines of subsection (f) of this section, the Board may override the evaluation. An evaluation by a board-approved education credentialing entity is valid for the purpose of licensing in this state for not more than two years after the date of issuance of the evaluation.]~~

~~[(d) After arrival in the United States, the applicant must submit a United States residential address and pay all remaining fees. Only after the applicant has arrived in the United States will the board approve registration for the national exam.]~~

~~[(e) Designated representative letter.]~~

~~[(1) An applicant may designate a person as a representative by providing in writing to the board the name, telephone number, and address of the person and by stating in the letter that the person will be the designated representative for the applicant.]~~

~~[(2) This letter must be notarized by a notary of the country in which the applicant resides and sent directly to the board. A copy should be sent to the representative by the applicant.]~~

~~[(3) A designated representative may obtain confidential information regarding the application.]~~

~~[(4) A designated representative of an applicant will remain so until the applicant receives his permanent license or until the board is notified in writing by the applicant that the designated representative has been eliminated or replaced. An applicant may have only one designated representative at any time.]~~

~~[(5) The designated representative is not required by the board to have power of attorney for the applicant. A person who does have power of attorney for an applicant may not submit any document that is required by the board to be signed by the applicant and notarized. Documents submitted by a person with power of attorney for the applicant must be submitted in accordance with all requirements set by the Act and rules regarding these documents. Any falsification of documents required for licensing submitted by a designated representative~~

or a person with power of attorney for the applicant may result in denial of license or other penalties to the applicant.]

[(f) Guidelines for board-approved education credentialing entities.]

[(1) The credentialing entity will review all of an applicant's post-secondary professional education credentials earned outside of the United States. The entity will evaluate allowable transfer credit for the 13th year based on recommendations of the National Council on the Evaluation of Educational Credentials or on current published reference materials. The applicant must have completed, with a passing grade of A, B, C, Pass or Credit, 60 semester hours credit or the equivalent in general education courses from an accredited institution of higher learning. This requirement may be met by credits earned at U.S. colleges or universities, by College Level Examination Program (CLEP) credits, or Advanced Placement (AP) according to standards of the American Council on Education. The number of credits earned by CLEP or AP may not exceed 12 semester credits.]

[(2) The credentialing entity must attest that the institution attended by the applicant has the recognition of the Ministry of Education or the equivalent in that country.]

[(3) All foreign-trained applicants must demonstrate the ability to communicate in English by making the minimum score accepted by the board on the TOEFL tests. This requirement is waived for graduates of entry-level physical therapy programs in Australia, Canada (except Quebec), Ireland, New Zealand and the United Kingdom, and for graduates of entry-level programs accredited by the Commission on Accreditation in Physical Therapy Education (CAPTE) at time of graduation. For graduates of entry-level physical therapy programs in other foreign countries, the Board may grant an exception to the TOEFL tests if the applicant holds a current license in physical therapy in another state and has been licensed in the U.S. for 10 years prior to application. The Board also may grant an exception to the TOEFL tests to an applicant who submits satisfactory proof that he/she is a citizen or lawful permanent resident of the United States, and has attended four or more years of secondary or post-secondary education in the U.S. Regarding the Paper-based and Computer-based TOEFL tests: If an applicant makes a score of 50 on the TSE, the board will allow the applicant to submit three original, notarized letters of recommendation from individuals who have practical knowledge of the applicant's ability to communicate successfully in spoken English. Individuals who provide this written testimony must be native English speakers, cannot be related by blood or marriage to the applicant, and at least one of the letters must be from a PT licensed to practice in the U.S. These letters must be submitted by their authors directly to the board. At the board's discretion, the letters may be considered satisfactory evidence of proficiency in spoken English. Minimum acceptable scores for the TOEFL tests are as follow:]

[(A) Paper based TOEFL tests (pbt): TOEFL (reading/comprehension) 580; TWE (writing/essay) 5.0; TSE (speaking) 55.]

[(B) Computer-based TOEFL tests (cbt): TOEFL (reading/comprehension) 237; TWE (writing/essay) 5.0; TSE (speaking) 55.]

[(C) Internet-based (ibt): Writing 24; Speaking 26; Reading Comprehension 21; Listening Comprehension 18.]

[(4) The credentialing entity must attest that the applicant is or was licensed or authorized to practice in the country in which the entry-level degree in physical therapy was granted. If there is no licensure or authorization in such country, the applicant must be eligible for unrestricted practice there. The Board may waive this requirement for an applicant who is not licensed in the country of education due to a citizenship requirement of that country.]

[(A) If the application is by examination, the license or authorization in such country must be in good standing and the licensure current.]

[(B) If the application is by endorsement, and the applicant has passed the exam according to Texas standards, the license or other authorization must have been in good standing at the time the license or authorization in such country expired.]

[(5) The credentialing entity adopts the policy of "scaling" as defined by the National Council on the Evaluation of Foreign Educational Credentials, American Association of Collegiate Registrar and Admissions Officers, Washington D.C., i.e., a year of foreign study is worth no more than a year of American study, regardless of contact hours, or general education is converted to equate to approximately 30-32 United States semester credit hours per year, and professional education to approximately 36 semester credit hours per year.]

[(6) The credentialing entity must use a method to convert classroom hours to semester units which has a ratio no greater than the following: 15 contact lecture hours = one semester unit/hour; 45 contact laboratory hours = one semester unit/hour. When lecture/lab hours are not delineated on the transcript or syllabi, the evaluator may use an appropriate ratio and indicate the ratio used in the evaluation.]

[(7) The credentialing entity must list and assign a grade for each course taken by the applicant, by assigning the grade of A, B, C, D, F, Pass, Fail, Credit or No Credit. Those grades assigned by the credentialing entity must be the grades that are converted to the U.S. equivalent, in accordance with the most current version of the National Association for Foreign Student Affairs Handbook on the Placement of Foreign Graduate Students. The credentialing entity must identify and list those courses which would not transfer to the U.S. as a C or above or Pass or Credit in accordance with the most current version of the National Association for Foreign Student Affairs Handbook on the Placement of Foreign Graduate Students. An applicant must earn a grade of A, B, C, or Pass or Credit in any professional physical therapy education courses. An applicant with a grade of D, F, Fail, or no credit appearing for a professional physical therapy education course on his/her evaluation who has not successfully retaken the course with a grade of A, B, C, Pass or Credit is not eligible for licensure in Texas.]

[(8) The credentialing entity must attest that the applicant has successfully completed an educational program substantially equivalent to U.S. programs accredited by the Commission on Accreditation in Physical Therapy Education (CAPTE) and has earned the equivalent of a minimum of 90 semester hours of professional physical therapy education. The program must be post-secondary, requiring for entry the equivalent of high school graduation in the United States; must consist of at least three years of classroom instruction; and must result in the award of the first academic diploma or degree leading to professional practice in physical therapy. The applicant must have completed courses in each of the following broad areas: basic sciences, clinical science, and physical therapy theory and procedures. The applicant must have also successfully completed United States required equivalent courses/hours in clinical education. The applicant must have successfully completed at least 15 semester credit hours in clinical education (upper division level) but will receive credit for no more than 23 semester hours. If the applicant has completed the required course work in clinical education but the transcript does not reflect the required credit hours then the credentialing entity may use the conversion formula of 60 contact hours per one semester credit.]

[(9) If the degree awarded is substantially equivalent to a degree in physical therapy as awarded by CAPTE-accredited programs

~~in regionally accredited colleges and universities in the United States, the credentialing entity must use the Coursework Evaluation Tool for Foreign Educated Physical Therapists (Coursework Evaluation Tool), as developed by the Federation of State Boards of Physical Therapy and modified by the Texas board, when evaluating an applicant's credentials. The version of the tool used must correspond at minimum to the year the entry-level degree was awarded. Deficiencies must be identified and must show the subjects and credit hours necessary to satisfy the requirements of the Coursework Evaluation Tool. If the degree received is from a CAPTE-accredited program located outside the U.S., the program is considered equivalent to a domestic CAPTE-accredited physical therapy program, and the applicant is exempt from meeting the requirements of the Coursework Evaluation Tool.]~~

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 28, 2009.

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John P. Maline
Executive Director
Texas Board of Physical Therapy Examiners
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For further information, please call: (512) 305-6900

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22 TAC §329.7

The Texas Board of Physical Therapy Examiners proposes new §329.7, Exemptions from Licensure. The new rule would reflect changes to the Physical Therapy Practice Act made during the 81st legislative session, adding categories of exemptions to the existing list of those who may practice physical therapy in Texas without being licensed by the board, and notification requirements for certain of those exempt categories.

John P. Maline, Executive Director, has determined that for the first five-year period the rule is in effect there will be no additional costs to state or local governments as a result of enforcing or administering the rule.

Mr. Maline has also determined that for each year of the first five-year period the rule is in effect the public benefit will be less administrative burden for those legitimately practicing physical therapy in the state for a short period of time under certain specific circumstances and increased public safety due to greater accountability by specific exempt categories of practitioners. Mr. Maline has determined that there will be no costs or adverse economic effects to small or micro businesses; therefore, an economic impact statement or regulatory flexibility analysis is not required for the amendment. Individuals who qualify in certain exempt categories may now be required to get a Texas license if they plan to remain in the state practicing physical therapy for more than a specific number of days in a 12 month period. They would be required to pay all applicable fees for the license, which would be a new cost incurred. However, other individuals, who heretofore were required to get a license in Texas, will no longer be required to do so if they practice in Texas no longer than the stated number of days.

Comments on the proposed rule may be submitted to Nina Hurter, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701; email: nhurter@mail.capnet.state.tx.us. Comments must be received no later than 30 days from the date the proposed rule is published in the *Texas Register.*

The rule is proposed under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Texas 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.

Title 3, Subtitle H, Chapter 453, Texas Occupations Code is affected by the rule.

§329.7. Exemptions from Licensure.

(a) The following categories of individuals practicing physical therapy in the state are exempt from licensure by the board.

(1) A person practicing physical therapy in the US armed services, US Public Health Service, or Veterans Administration in compliance with federal regulations for licensure of health care providers; and

(2) A person who is licensed in another jurisdiction of the US and who, by contract or employment, is practicing physical therapy in this state for not more than 60 days in a 12 month period for an athletic team or organization or a performing arts company temporarily competing or performing in this state.

(b) The following categories of individuals practicing physical therapy in the state are exempt from licensure by the board and must notify the board of their intent to practice in the state.

(1) A physical therapist who is licensed in good standing in another jurisdiction of the US if the person is engaging, for not more than 90 days in a 12 month period and under the supervision of a physical therapist licensed in this state, in a special project or clinic required for completion of a post-professional degree in physical therapy from an accredited college or university.

(A) The individual must submit written notification stating the following:

(i) the beginning and ending dates of the period of practice;

(ii) the name of the institution or facility in which the individual will be practicing, and

(iii) the name of the supervising physical therapist.

(B) Written notification must be received by the board prior to the start date of the practice.

(2) A physical therapist or a physical therapist assistant who is licensed in good standing in another jurisdiction of the US or authorized to practice physical therapy without restriction in another country if the person is engaging in patient contact and treatment as either an instructor or participant while attending an educational seminar or activity in this state for not more than 60 days in a 12 month period.

(A) The individual must submit written notification stating the following:

(i) the beginning and ending dates of the educational activity;

(ii) the name of the course or activity sponsor, and

(iii) the location of the educational activity.

(B) Written notification must be received by the board prior to the start date of the educational activity.

(3) A physical therapist or physical therapist assistant licensed in good standing in another jurisdiction of the US who is practicing physical therapy for not more than 60 days during a declared local, state, or national disaster or emergency.

(A) The individual must submit written notification stating the following:

(i) the beginning and ending dates of the period of practice, and

(ii) the name of the facility in which the individual will be practicing.

(B) Written notification must be received by the board prior to the start date of the practice.

(4) A physical therapist or physical therapist assistant licensed in good standing in another jurisdiction of the US who is displaced from the person's residence or place of employment due to a declared local, state, or national disaster and is practicing physical therapy in this state for not more than 60 days after the date the disaster is declared.

(A) The individual must submit written notification stating the following:

(i) the beginning and ending dates of the period of practice, and

(ii) the name of the facility in which the individual will be practicing.

(B) Written notification must be received by the board prior to the start date of the practice.

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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John P. Maline
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Texas Board of Physical Therapy Examiners
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CHAPTER 341. LICENSE RENEWAL

22 TAC §341.1

The Texas Board of Physical Therapy Examiners proposes amendments to §341.1, Requirements for Renewal. The amendments would update language to reflect changes made to the Physical Therapy Practice Act regarding continuing competency during the 81st legislative session, and add a reference to another section of the rules.

John P. Maline, Executive Director, has determined that for the first five-year period the amendments are in effect there will be no additional costs to state or local governments as a result of enforcing or administering the amendment.

Mr. Maline has also determined that for each year of the first five-year period the amendments are in effect the public benefit will be consistency in terminology throughout the rules. Mr. Maline has determined that there will be no costs or adverse economic effects to small or micro businesses; therefore, an economic impact statement or regulatory flexibility analysis is not required for the amendments. There are no anticipated costs to individuals who are required to comply with the amendments as proposed.

Comments on the proposed amendments may be submitted to Nina Hurter, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701; email: nhurter@mail.capnet.state.tx.us. Comments must be received no later than 30 days from the date the proposed amendments are published in the *Texas Register*.

The amendments are proposed under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Texas 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.

Title 3, Subtitle H, Chapter 453, Texas Occupations Code is affected by the amendments.

§341.1. Requirements for Renewal.

(a) Biennial renewal. Licensees are required to renew their licenses every two years by the end of the month in which they were originally licensed. A licensee may not provide physical therapy services without a current license or renewal certificate in hand. If a license expires after all required items are submitted, but before the licensee receives the renewal certificate, the licensee may not provide physical therapy services.

(b) General requirements. The renewal application is not complete until all required items are received by the board. The components required for license renewal are:

(1) a signed renewal application form or the online equivalent, documenting completion of board-approved continuing competence activities [~~education (CE)~~], as described in §341.2 of this title, concerning Continuing Competence Requirements [~~Education~~];

(2) the renewal fee, and any late fees which may be due; and

(3) a passing score on the jurisprudence examination.

(c) Notification of license expiration. The board will send notification to each licensee at least 30 days prior to the license expiration date. The licensee bears the responsibility for ensuring that the license is renewed.

(d) Late renewal. A renewal application is late if all required items are not postmarked prior to the expiration date of the license. Licensees who do not submit all required items prior to the expiration date are subject to late fees as described.

(1) If the license has been expired for 90 days or less, the late fee is one-half of the examination fee for the license.

(2) If the license has been expired for more than 90 days but less than one year, the late fee is equal to the examination fee for the license. Licensees who are more than 90 days late in renewing a license are not included in the audit (ref. §341.2(e) of this chapter), and must submit documentation of completion of continuing competence activities [~~continuing education~~] at time of renewal.

(3) If the license has been expired for one year or longer, the person may not renew the license. To obtain a new license, the applicant must take and pass the national examination again and comply with the requirements and procedures for obtaining an original license set by §329.1 of this title (relating to General Licensure Procedure).

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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John P. Maline
Executive Director
Texas Board of Physical Therapy Examiners
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22 TAC §341.2

The Texas Board of Physical Therapy Examiners proposes amendments to §341.2, Continuing Education Requirements. The amendments would update language to reflect changes made to the Physical Therapy Practice Act regarding continuing competency during the 81st legislative session and define continuing competence.

John P. Maline, Executive Director, has determined that for the first five-year period the amendments are in effect there will be no additional costs to state or local governments as a result of enforcing or administering the amendment.

Mr. Maline has also determined that for each year of the first five-year period the amendments are in effect the public benefit will be consistency in terminology throughout the rules. Mr. Maline has determined that there will be no costs or adverse economic effects to small or micro businesses; therefore, an economic impact statement or regulatory flexibility analysis is not required for the amendments. There are no anticipated costs to individuals who are required to comply with the amendments as proposed.

Comments on the proposed amendments may be submitted to Nina Hurter, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701; email: nhurter@mail.capnet.state.tx.us. Comments must be received no later than 30 days from the date the proposed amendments are published in the *Texas Register.*

The amendments are proposed under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Texas 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.

Title 3, Subtitle H, Chapter 453, Texas Occupations Code is affected by the amendments.

§341.2. Continuing Competence [~~Education~~] Requirements.

(a) Continuing competence is the lifelong process of maintaining and documenting competence through ongoing self-assessment, development and implementation of a personal learning plan, and subsequent reassessment.

(b) All continuing competence activities submitted to satisfy renewal requirements must be board-approved, as established in §341.3 of this title (relating to Qualifying Continuing Competence Activities).

(c) For each biennial renewal, physical therapists must complete a total of 30 continuing competence units (CCUs); physical therapist assistants must complete a total of 20 CCUs. A CCU is the relative value assigned to continuing competence activities based on specific criteria developed by the board.

(d) Continuing competence activities utilized to fulfill renewal requirements must be completed within the 24 months prior to the license expiration date.

(e) All licensees must complete two CCUs in board-approved programs in ethics and professional responsibility as part of their total continuing competence requirement. Only programs receiving a supplemental ethics approval may be used to meet the ethics/professional responsibility requirement.

(f) The executive council will conduct an audit of a random sample of licensees at least quarterly to determine compliance with continuing competence requirements. Failure to maintain accurate documentation, or failure to respond to a request to submit documentation for an audit within 30 days of the date on the request, may result in disciplinary action by the board. Licensees who are more than 90 days late in renewing a license are not included in the audit, and must submit documentation of continuing competence activities at time of renewal. The board or its committees may request proof of completion of continuing competence activities claimed for renewal purposes at any time from any licensee.

(g) The licensee must retain original completion documents, certificates, or college or university transcripts and syllabi for four years as specified in §341.3 of this title.

~~[(a) All continuing education (CE) submitted to satisfy renewal requirements must be board-approved, as established in §341.3 of this title (relating to Qualifying Continuing Education).]~~

~~[(b) For each biennial renewal, physical therapists must complete a total of 30 hours of CE; physical therapist assistants must complete a total of 20 hours of CE.]~~

~~[(c) CE taken to fulfill renewal requirements must be taken within the 24 months prior to the license expiration date.]~~

~~[(d) All licensees must take two hours of board-approved programs in ethics and professional responsibility as part of their total CE requirement. Only programs receiving a supplemental ethics approval may be used to meet the ethics/professional responsibility CE requirement.]~~

~~[(e) The executive council will conduct an audit of a random sample of licensees at least quarterly to determine compliance with CE requirements. Failure to maintain accurate documentation, or failure to respond to a request to submit documentation for an audit within 30 days of the date on the request, may result in disciplinary action by the board. Licensees who are more than 90 days late in renewing a license are not included in the audit, and must submit documentation of continuing education at time of renewal. The board or its committees may request proof of CE claimed for renewal purposes at any time from any licensee.]~~

~~[(f) The licensee must retain original completion documents, certificates, or college or university transcripts and syllabi for four years as specified in §341.3 of this title.]~~

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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22 TAC §341.3

The Texas Board of Physical Therapy Examiners proposes amendments to §341.3, Qualifying Continuing Education. The amendments would update language to reflect changes made to the Physical Therapy Practice Act regarding continuing competency during the 81st legislative session, and add information about required components for courses in ethics and professional responsibility.

John P. Maline, Executive Director, has determined that for the first five-year period the amendments are in effect there will be no additional costs to state or local governments as a result of enforcing or administering the amendment.

Mr. Maline has also determined that for each year of the first five-year period the amendments are in effect the public benefit will be consistency in language throughout the rules and the Act. Mr. Maline has determined that there will be no costs or adverse economic effects to small or micro businesses; therefore, an economic impact statement or regulatory flexibility analysis is not required for the amendments. There are no anticipated costs to individuals who are required to comply with the amendments as proposed.

Comments on the proposed amendments may be submitted to Nina Hurter, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701; email: nhurter@mail.capnet.state.tx.us. Comments must be received no later than 30 days from the date the proposed amendments are published in the *Texas Register.*

The amendments are proposed under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Texas 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.

Title 3, Subtitle H, Chapter 453, Texas Occupations Code is affected by the amendments.

§341.3. Qualifying Continuing Competence Activities [~~Education~~].

(a) Licensees may select from a variety of activities to fulfill the requirements for continuing competence. These activities include, but are not limited to: [~~Continuing education for the profession of physical therapy is a structured process of education designed or intended to support the continuous development of physical therapists and physical therapist assistants, and to maintain and enhance their professional competence. Continuing education is professional education that goes beyond their entry-level education and is applicable to the practice of physical therapy.~~]

[~~(b) Programs offered as continuing education (CE).~~]

(1) Formal continuing education (CE) courses/programs. [~~One CEU is defined as ten contact hours.~~]

(A) [~~(2)~~] Program content and structure must be approved by the board-approved organization, or be offered by a provider accredited by that organization. Programs must meet the following criteria:

(i) [~~(A)~~] Program content must be easily recognizable as pertinent to the physical therapy profession and in the areas of ethics, professional responsibility, clinical application, clinical management, behavioral science, science, or risk management.

(ii) [~~(B)~~] The content must be identified by instructional level, i.e., basic, intermediate, advanced. Program objectives must be clearly written to identify the knowledge and skills the participants should acquire and be consistent with the stated instructional level.

(iii) [~~(C)~~] The instructional methods related to the objectives must be identified and be consistent with the stated objectives.

(iv) [~~(D)~~] Programs must be presented by a licensed health care provider, or by a person with appropriate credentials and/or specialized training in the field.

(v) [~~(E)~~] Program providers are prohibited from self-promotion of programs, products, and/or services during the presentation of the program.

(vi) [~~(F)~~] The participants must evaluate the program. A summary of these evaluations must be made available to the board-approved organization upon request.

(vii) [~~(G)~~] Records of each licensee who participates in the program must be maintained for four years by the CE sponsor and must be made available to the board-approved organization upon request.

(B) [~~(3)~~] CE programs subject to this subsection include the following:

(i) [~~(A)~~] Traditional on-site CE programs.

(I) [~~(i)~~] Documentation for CE programs must include the name and license number of the licensee; the title, sponsor, date(s), and location of the course; the number of CCUs [~~CEUs~~] awarded, the signature of an authorized signer, and the accredited provider or the program approval number.

(II) [~~(ii)~~] If selected for audit, the licensee must submit the specified documentation.

(ii) [~~(B)~~] Home study CE programs (hard copy or web-based).

(I) [~~(i)~~] Documentation must include the name and license number of the licensee; the title, sponsor, date(s), and instructional format of the course; the number of CCUs [~~CEUs~~] awarded, the signature of an authorized signer, and the accredited provider or the program approval number.

(II) [~~(ii)~~] If selected for audit, the licensee must submit the specified documentation.

(iii) [~~(C)~~] Regular inservice-type CE programs over a one-year period where individual sessions are 2 hours or less.

(I) [~~(i)~~] Documentation must include the name and license number of the licensee; the title, sponsor, date(s), and location of the inservice; the signature of an authorized signer, and the accredited provider or the program approval number with the maximum CCUs [~~CEUs~~] granted and the CCU [~~CEU~~] value of each session or group of sessions specified and justified.

(II) [~~(ii)~~] Additionally, proof of attendance to any or all inservice sessions must be provided so that individual CCUs [~~CEUs~~] earned can be calculated by the program sponsor for submission to the board-approved organization.

(III) [~~(iii)~~] If selected for audit, the licensee must submit the specified documentation.

(iv) [~~(D)~~] Large conferences with concurrent CE programming.

(I) [~~(i)~~] Documentation must include the licensee's name and license number; title, sponsor, date(s); and location of the conference; the number of CE units awarded, the signature of an authorized signer, and the accredited provider or the course approval number.

(II) [~~(ii)~~] If selected for audit, the licensee must submit the specified documentation and proof of attendance.

(2) [~~(c)~~] College or university courses.

(A) [~~(1)~~] College or university courses easily recognizable as pertinent to the physical therapy profession and in the areas of ethics, professional responsibility, clinical application, clinical management, behavioral science, science, or risk management may be submitted by licensees for consideration of their CC [~~CE~~] requirement.

(i) [~~(A)~~] Documentation required for submission includes the course syllabus for each course and an official transcript. To be considered, the course must be at the appropriate educational level for the physical therapist or physical therapist assistant.

(ii) [~~(B)~~] The licensee should submit the request to the board-approved organization at least 60 days prior to the license expiration date.

(B) [~~(2)~~] One (1.0) CCU [~~CEU~~] is credited for each satisfactorily (grade of C or higher) completed credit hour. [~~If course contact hours are specified in the syllabus, 1.0 CEU is credited for every 10 contact hours in courses where the licensee earned a grade of C or higher.~~]

(C) [~~(3)~~] Documentation must include the approval letter from the board-approved organization. If selected for an audit, the licensee must submit the specified documentation.

(D) [~~(4)~~] College or university sponsored CE programs (no grade, no official transcript) must comply with paragraph (1)(A) [~~subsection (b)~~] of this subsection [~~section~~].

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

(A) [~~(1)~~] Publications.

(i) [~~(A)~~] Publication(s) pertinent to physical therapy and in the areas of ethics, professional responsibility, clinical application, clinical management, behavioral science, science, or risk management written for the professional or lay audience published within the 24 months prior to the license expiration date may be submitted by the author(s) for consideration of their CC [~~CE~~] requirement. The author(s) are prohibited from self-promotion of programs, products, and/or services in the publication.

(ii) [~~(B)~~] Publication(s) must be approved and CCU [~~CEU~~] value determined by the board-approved organization.

(iii) [~~(C)~~] Maximum CCU [~~CEU~~] values for types of original publications are as follows:

(I) [~~(i)~~] A newspaper article may be worth up to 0.3 CCU [~~CEU~~].

(II) [~~(ii)~~] A regional/national magazine article may be worth up to 1.0 CCU [~~CEU~~].

(III) [~~(iii)~~] A case study in a peer reviewed publication, monograph, or book chapter(s) may be worth up to 2 CCUs [~~CEUs~~].

(IV) [~~(iv)~~] A research article in a peer reviewed publication or an entire book may be worth up to 3.0 CCUs [~~CEUs~~].

(iv) [~~(D)~~] The request and final publication(s) should be sent to the board-approved organization at least 60 days prior to the license expiration date. In the event that the publication's release will occur in the 60 days prior to the license expiration date, the author(s) may submit the request, publication in revision form, and letter from the publisher or editor which includes the expected publication release date. In the event that the publication is an entire book or book chapter(s), the author must submit the following: title page, copyright page, entire table of contents, preface or forward if present, and one book chapter authored by the licensee.

(B) [~~(2)~~] Program/Course development, consultation, or teaching.

(i) [~~(A)~~] First time development or presentation of, and teaching or consultation in, programs such as institutes, seminars, workshops, conferences, and college or university courses which are designed to increase professional knowledge in the field of physical therapy or other related fields may be submitted for consideration of the CC [~~CE~~] requirement. CCUs [~~CEUs~~] are not available for subsequent development, consultation, or teaching of the same CE program or college or university course.

(ii) [~~(B)~~] Program/Course development, consultation, or teaching must be approved and CCU [~~CEU~~] value determined by the board-approved organization.

(iii) [~~(C)~~] Maximum CCU [~~CEU~~] value cannot exceed twice the value of the CE program or college or university course.

(iv) [~~(D)~~] The licensee should submit the request with explanation and evidence of the licensee's roles and responsibilities, along with the CE program approval number, to the board-approved organization at least 60 days prior to the license expiration date. In the event that the licensee is requesting approval for activities not associated with an approved CE program, the licensee must submit the request along with the program/course objectives, outline, date(s), and location(s).

(C) Documentation for self-study CE must include supporting evidence for application to the board-approved organization and the resulting approval letter. If selected for audit, the licensee must submit the specified documentation.

(4) [~~(3)~~] Residencies, Fellowships, Examinations, and Practice Review Tools.

(A) The successful completion of a specialty examination may be submitted for consideration for the CC [~~CE~~] requirement. A list of the specialty examinations that qualify for CC [~~CE~~] will be maintained by the board.

(B) The successful completion of an American Physical Therapy Association credentialed residency or fellowship program may be submitted for consideration for the CC [~~CE~~] requirement.

(C) The completion of a Practice Review Tool of the Federation of State Boards of Physical Therapy may be submitted for consideration for the CC [~~CE~~] requirement unless the activity is required as a part of a disciplinary action.

(D) Maximum CCU values for Residencies, Fellowships, Examinations, and Practice Review Tools shall be as follows

but shall not meet the ethics [~~Ethics CEU~~] requirement for license renewal:

(i) Successful completion of a specialty examination shall be worth up to 3.0 CCUs [~~CEUs~~].

(ii) Successful completion of an American Physical Therapy Association credentialed residency or fellowship program shall be worth up to 3.0 CCUs [~~CEUs~~].

(iii) Completion of a Practice Review Tool of the Federation of State Boards of Physical Therapy shall be worth up to 1.5 CCUs [~~CEUs~~].

(E) The licensee should submit the request to the board-approved organization with explanation and evidence designated by the Board to verify successful completion of the residency, fellowship, or examination.

~~[(4) Documentation for self-study CE must include supporting evidence for application to the board-approved organization and the resulting approval letter. If selected for audit, the licensee must submit the specified documentation.]~~

(b) In addition to the appropriate criteria noted in subsection (a), activities submitted to meet the ethics and professional responsibility requirements for license renewal shall include at a minimum the following components.

(1) The theoretical basis for ethical decision-making;

(2) APTA's Code of Ethics and Guide for Professional Conduct;

(3) Legal standards of behavior (including but not limited to the Act and Rules of the TSBPTE); and

(4) Application of content to real and/or hypothetical situations.

(c) [~~(c)~~] Accreditation of providers or approval of continuing competence activities [~~education programs, college or university courses, or self-study~~] by the board-approved organization.

(1) Pursuant to a Memorandum of Understanding (MOU) with the board, the Texas Physical Therapy Association (TPTA) shall act as the board-approved organization and shall be authorized to accredit providers and to evaluate and approve continuing competence activities [~~education programs, college or university courses, or self-study~~] for purposes of compliance with mandatory CC [~~CE~~] requirements as set by the board. This authority shall include authority to give, deny, withdraw and limit accreditation of providers and approval of competence activities [~~programs, college or university courses, or self-study~~], and to charge and collect fees as set forth in the MOU and in the statute and rules governing the board and the practice of physical therapy in Texas.

(2) To be recognized as qualifying for continuing competence credit an activity [~~continuing education, a program, college or university course, or self-study~~] must be evaluated and approved by the TPTA, or be offered by a provider accredited by the TPTA. A program may be approved before or after the licensee attends it.

(3) To apply for program approval, the licensee or program sponsor must submit a fee as approved by the board with the CC [~~CE~~] approval application and any additional documentation as specified in this section to the TPTA. Interested parties may contact the TPTA in Austin, Texas, (512) 477-1818, www.tpta.org. College or university courses are exempt from fees.

(4) Use of statements for publicity.

(A) Sponsors of approved activities [~~programs~~] may use the following statement in publicity: "This activity [~~course~~] has been approved by the Texas Board of Physical Therapy Examiners as meeting continuing competence [~~education~~] requirements for physical therapists and physical therapist assistants."

(B) Sponsors of programs receiving a supplemental ethics approval may use the following statement in publicity: "This activity [~~course~~] has been approved by the Texas Board of Physical Therapy Examiners as fulfilling ____ unit(s) [~~hour(s)~~] of the ethics and professional responsibility requirement for license renewal purposes for physical therapists and physical therapist assistants."

(C) Accredited providers may use the following statement in publicity: "This activity [~~course~~] is provided by the Texas Board of Physical Therapy Examiners Accredited Provider #_____ and meets continuing competence [~~education~~] requirements for physical therapist and physical therapist assistant licensure renewal in Texas."

(5) Interested parties may contact the TPTA to inquire if a particular activity [~~program~~] is approved. A list of approved activities [~~programs~~] is available on the TPTA web site.

(6) Pursuant to the MOU, the TPTA shall provide quarterly reports to the board of its activities. Additionally, the TPTA shall report to the board the results of periodic quality assurance follow-up or review of a representative sample of approved continuing competence activities [~~education programs~~]. In the event of sponsor noncompliance, results will be reported to the board in writing for further investigation and direction.

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 28, 2009.

TRD-200903825
John P. Maline
Executive Director
Texas Board of Physical Therapy Examiners
Earliest possible date of adoption: October 11, 2009
For further information, please call: (512) 305-6900

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22 TAC §341.5

The Texas Board of Physical Therapy Examiners proposes amendments to §341.5, Waiver of Continuing Education Units (CEUs). The amendments would update language to reflect changes made to the Physical Therapy Practice Act regarding continuing competency during the 81st legislative session.

John P. Maline, Executive Director, has determined that for the first five-year period the amendments are in effect there will be no additional costs to state or local governments as a result of enforcing or administering the amendment.

Mr. Maline has also determined that for each year of the first five-year period the amendments are in effect the public benefit will be consistency in terminology throughout the rules. Mr. Maline has determined that there will be no costs or adverse economic effects to small or micro businesses; therefore, an economic impact statement or regulatory flexibility analysis is not required for the amendments. There are no anticipated costs to individuals who are required to comply with the amendments as proposed.

Comments on the proposed amendments may be submitted to Nina Hurter, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701; email: nhurter@mail.capnet.state.tx.us. Comments must be received no later than 30 days from the date the proposed amendments are published in the *Texas Register.*

The amendments are proposed under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Texas 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.

Title 3, Subtitle H, Chapter 453, Texas Occupations Code is affected by the amendments.

§341.5. Waiver of Continuing Competence Units (CCUs) [~~Education Units (CEUs)~~].

CCUs [~~CEUs~~] required for renewal of a license may be waived by the board because of hardship for health and medical problems that prevent a licensee from obtaining the CCUs [~~CEUs~~]. Waiver requests must be submitted prior to license expiration. The license cannot be renewed until the waiver has been approved by the board [~~Board~~].

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

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John P. Maline
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Texas Board of Physical Therapy Examiners
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For further information, please call: (512) 305-6900

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22 TAC §341.8

The Texas Board of Physical Therapy Examiners proposes amendments to §341.8, Inactive Status. The amendments would update terminology to reflect changes made regarding continuing competence during the 81st legislative session.

John P. Maline, Executive Director, has determined that for the first five-year period the amendments are in effect there will be no additional costs to state or local governments as a result of enforcing or administering the amendment.

Mr. Maline has also determined that for each year of the first five-year period the amendments are in effect the public benefit will be consistency in terminology throughout the rules. Mr. Maline has determined that there will be no costs or adverse economic effects to small or micro businesses; therefore, an economic impact statement or regulatory flexibility analysis is not required for the amendments. There are no anticipated costs to individuals who are required to comply with the amendments as proposed.

Comments on the proposed amendments may be submitted to Nina Hurter, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701; email: nhurter@mail.capnet.state.tx.us. Comments must be received no later than 30 days from the date the proposed amendments are published in the *Texas Register.*

The amendments are proposed under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Texas 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.

Title 3, Subtitle H, Chapter 453, Texas Occupations Code is affected by the amendments.

§341.8. Inactive Status.

(a) Inactive status indicates the voluntary termination of the right or privilege to practice physical therapy in Texas. The board may allow a licensee who is not actively engaged in the practice of physical therapy in Texas to inactivate the license instead of renewing it at time of renewal. A licensee may remain on inactive status for no more than six consecutive years.

(b) Requirements for initiation of inactive status. The components required to put a license on inactive status are:

(1) a signed renewal application form, documenting completion of board-approved continuing competence activities [~~education (CE)~~] for the current renewal period, as described in §341.2 of this title, concerning Continuing Competence Requirements [~~Education~~];

(2) the inactive fee, and any late fees which may be due; and

(3) a passing score on the jurisprudence exam.

(c) Requirements for renewal of inactive status. An inactive licensee must renew the inactive status every two years. The components required to maintain the inactive status are:

(1) a signed renewal application form, documenting completion of board-approved continuing competence activities [~~education (CE)~~] for the current renewal period, as described in §341.2 of this title, concerning Continuing Competence Requirements [~~Education~~];

(2) the inactive renewal fee, and any late fees which may be due; and

(3) a passing score on the jurisprudence exam.

(d) Requirements for reinstatement of active status. A licensee on inactive status may request a return to active status at any time. After the licensee has submitted a complete application for reinstatement, the board will send a renewal certificate for the remainder of the current renewal period to the licensee.

(1) The components required to return to active status are:

(A) a signed renewal application form, documenting completion of board-approved continuing competence activities [~~education (CE)~~] for the current renewal period, as described in §341.2 of this title, concerning Continuing Competence Requirements [~~Education~~];

(B) the renewal fee, and any late fees which may be due; and

(C) a passing score on the jurisprudence exam.

(2) The board will allow the licensee to substitute one of the following actions for the continuing education requirements:

(A) re-take and pass the national licensure exam;

(B) attend a university review course pre-approved by the board; or

(C) complete an internship (equal to 150 hours of continuing education) pre-approved by the board.

(e) Licensees on inactive status are subject to the audit of continuing education as described in §341.2 of this title, concerning Continuing Competence Requirements [~~Education Requirements~~].

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

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John P. Maline
Executive Director
Texas Board of Physical Therapy Examiners
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22 TAC §341.9

The Texas Board of Physical Therapy Examiners proposes amendments to §341.9, Retired Status. The amendments would update language to reflect changes made to the Physical Therapy Practice Act regarding continuing competency during the 81st legislative session.

John P. Maline, Executive Director, has determined that for the first five-year period the amendments are in effect there will be no additional costs to state or local governments as a result of enforcing or administering the amendment.

Mr. Maline has also determined that for each year of the first five-year period the amendments are in effect the public benefit will be consistency in terminology throughout the rules. Mr. Maline has determined that there will be no costs or adverse economic effects to small or micro businesses; therefore, an economic impact statement or regulatory flexibility analysis is not required for the amendments. There are no anticipated costs to individuals who are required to comply with the amendments as proposed.

Comments on the proposed amendments may be submitted to Nina Hurter, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701; email: nhurter@mail.capnet.state.tx.us. Comments must be received no later than 30 days from the date the proposed amendments are published in the *Texas Register*.

The amendments are proposed under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Texas 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.

Title 3, Subtitle H, Chapter 453, Texas Occupations Code is affected by the amendments.

§341.9. Retired Status.

(a) Retired status means that a licensee is providing physical therapy services only in the domain of voluntary charity care.

(b) As used in the section:

(1) "voluntary charity care" means physical therapy services provided for no compensation as a volunteer of a charitable organization as defined in §84.003 of the Texas Civil Practice and Remedies Code. Charitable organizations include any bona fide charitable, religious, prevention of cruelty to children or animals, youth sports and youth recreational, neighborhood crime prevention or patrol, or educational organization (excluding fraternities, sororities, and secret societies), or other organization promoting the common good and general welfare for the people in a community, including these types of organizations with a §501.(c)(3) or (4) exemption from federal income tax, some chambers of commerce, and volunteer centers certified by the Department of Public Safety.

(2) "compensation" means direct or indirect payment of anything of monetary value.

(c) To be eligible for retired status, a licensee must hold a current license on active or inactive status.

(d) Requirements for initiation of retired status. The components required to put a license on retired status are:

(1) a completed and notarized retired status application form;

(2) completion of board-approved continuing competence activities[~~education (CE)~~] for the current renewal period;

(3) the retired status fee and any late fees which may be due; and

(4) a passing score on the jurisprudence exam.

(e) Requirements for renewal of retired status. A licensee on retired status must renew the retired status every two years on his/her license renewal date. The components required to renew the retired status are:

(1) a completed retired status application form;

(2) completion of six hours of board-approved continuing competence activities[~~education (CE)~~] by both PTs and PTAs;

(3) the retired status renewal fee, and any late fees which may be due; and

(4) a passing score on the jurisprudence exam.

(f) Requirements for return to active practice. A licensee who has been on retired status for less than one year must submit the regular license renewal fee and the late fee as described in §341.1, Requirements for Renewal. A licensee who has been on retired status for more than one year must retake and pass the national licensure examination to return the license to active status. The components required to return the license to active status are:

(1) a completed and notarized application;

(2) a fee equal to the license application fee;

(3) a passing score on the retake of the national examination, and

(4) a passing score on the jurisprudence exam.

(g) A license may be maintained on retired status indefinitely.

(h) A licensee on retired status may use the designation "PT, retired" or "PTA, retired", as appropriate.

(i) Licensees on retired status are subject to the audit of continuing competence activities[~~education~~] as described in §341.2 of this title, concerning Continuing Competence [~~Education~~] Requirements.

(j) Licensees providing voluntary charity care are subject to disciplinary action under the Physical Therapy Practice Act.

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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John P. Maline
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22 TAC §341.20

The Texas Board of Physical Therapy Examiners proposes amendments to §341.20, Licensees Called to Active Military Service. The amendments would update language to reflect changes made to the Physical Therapy Practice Act regarding continuing competency during the 81st legislative session.

John P. Maline, Executive Director, has determined that for the first five-year period the amendments are in effect there will be no additional costs to state or local governments as a result of enforcing or administering the amendment.

Mr. Maline has also determined that for each year of the first five-year period the amendments are in effect the public benefit will be consistency in terminology throughout the rules. Mr. Maline has determined that there will be no costs or adverse economic effects to small or micro businesses; therefore, an economic impact statement or regulatory flexibility analysis is not required for the amendments. There are no anticipated costs to individuals who are required to comply with the amendments as proposed.

Comments on the proposed amendments may be submitted to Nina Hurter, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701; email: nhurter@mail.capnet.state.tx.us. Comments must be received no later than 30 days from the date the proposed amendments are published in the *Texas Register.*

The amendments are proposed under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Texas 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.

Title 3, Subtitle H, Chapter 453, Texas Occupations Code is affected by the amendments.

§341.20. Licensees Called to Active Military Service.

(a) Renewal. A licensee who is a member of the reserves and called to active military service must submit renewal fees within 90 days after active service has ended if their license expired within the months of active service. The regular renewal month will not change. The licensee must submit official documentation of active service and its inclusive dates.

(b) Continuing competence units (CCUs) [~~education units (CEUs)~~].

(1) A licensee who is a member of the reserves and called to active military service will have his/her CCUs [~~CEUs~~] prorated in proportion to the number of months of documented active service.

(2) A licensee whose license expires during the period of active service will be given a complete waiver of CCUs [~~CEUs~~] for the past renewal period, and CCUs [~~CEUs~~] for months of documented active service in the current renewal cycle will be prorated.

(3) All licensees must take two hours of board-approved programs in ethics and professional responsibility as part of their total continuing competence [~~CE~~] requirement, which cannot be prorated.

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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John P. Maline
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CHAPTER 347. REGISTRATION OF PHYSICAL THERAPY FACILITIES

22 TAC §347.1

The Texas Board of Physical Therapy Examiners proposes amendments to §347.1, Definitions. The amendments would change the way the board defines a physical therapy facility, removing the requirement that a physical therapist providing services on an unpredictable and irregular basis in a setting or facility which he does not own or manage, and in which healthcare is not the primary service offered, register as a portable facility. It would allow a physical therapist providing services within those parameters to do so without registering the facility in which he is providing services.

John P. Maline, Executive Director, has determined that for the first five-year period the amendments are in effect there will be no additional costs to state or local governments as a result of enforcing or administering the amendment.

Mr. Maline has also determined that for each year of the first five-year period the amendment is in effect the public benefit will be greater availability of services in non-clinical settings. Mr. Maline has determined that there will be no costs or adverse economic effects to small or micro businesses; therefore, an economic impact statement or regulatory flexibility analysis is not required for the amendments. There are no anticipated costs to individuals who are required to comply with the amendments as proposed.

Comments on the proposed amendments may be submitted to Nina Hurter, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701; email: nhurter@mail.capnet.state.tx.us. Comments must be received no later than 30 days from the date the proposed amendments are published in the *Texas Register.*

The amendments are proposed under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Texas 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.

Title 3, Subtitle H, Chapter 453, Texas Occupations Code is affected by the amendments.

§347.1. Definitions.

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

(1) Physical therapy facility--A physical site, such as a building, office, or portable facility, where the practice of physical therapy takes place. A location or business is not defined as a physical therapy facility if all three of the following conditions apply: [~~An individual or company providing physical therapy services at multiple locations is considered a portable facility if all of the following conditions are met: The location or building in which physical therapy services are provided is not in the care, custody or control of the individual or company providing those services; physical therapy services are not provided on a predictable or regular basis at any one location; and healthcare delivery is not the primary purpose, activity, or business of the site where the services are provided. A physical therapy facility must be under the direction of a physical therapist licensed by the board.~~]

(A) the location or building in which physical therapy services are provided is not in the care, custody or control of the individual or company providing those services;

(B) physical therapy services are not provided on a predictable or regular basis at any one location; and

(C) healthcare delivery is not the primary purpose, activity, or business of the site where the services are provided.

(2) Physical therapist in charge--A physical therapist who is designated on the application for registration as the one who has the authority and responsibility for the facility's compliance with the Act and rules pertaining to the practice of physical therapy in the facility.

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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John P. Maline
Executive Director
Texas Board of Physical Therapy Examiners
Earliest possible date of adoption: October 11, 2009
For further information, please call: (512) 305-6900

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PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 537. PROFESSIONAL AGREEMENTS AND STANDARD CONTRACTS

22 TAC §537.30, §537.31

The Texas Real Estate Commission (TREC) proposes amendments to §537.30, Standard Contract Form TREC No. 23-8 (New Home Contract (Incomplete Construction) and §537.31, Standard Contract Form TREC No. 24-8 (New Home Contract (Complete Construction). The amendments are proposed to eliminate from the new home contracts provisions required by the Texas Residential Construction Commission Act (Title 16 of the Texas Property Code) that will not be appropriate after the September 1, 2009, expiration of the Act. In §537.30 and §537.31, Standard Contract Forms TREC Nos. 23-8 and 24-8 are amended to delete from Paragraph 22 the references to the Addendum Containing Required Notices Under §§5.016, 420.001 and 420.002, Texas Property Code, which is being proposed for repeal.

Devon V. Bijansky, Assistant General Counsel, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the proposed amendments. There is no anticipated economic cost to persons who are required to comply with the proposed amendments. There is no anticipated impact on small businesses, micro-businesses or local or state employment as a result of implementing the proposed amendments.

Ms. Bijansky also has determined that, for each year of the first five years the amendments as proposed are in effect, the public benefit anticipated as a result of enforcing the amendments will be consistency between state law and the TREC-promulgated contract forms.

Comments on the proposal may be submitted to Devon V. Bijansky, Assistant General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments are proposed under Texas Occupations Code, §1101.155, which authorizes the Texas Real Estate Commission to adopt rules in the public's best interest that require license holders to use contract forms prepared by the Texas Real Estate Broker-Lawyer Committee and adopted by the commission.

The statute affected by this proposal is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed amendments.

§537.30. Standard Contract Form TREC No. 23-9[~~8~~].
The Texas Real Estate Commission adopts by reference standard contract form TREC No. 23-9[~~8~~] approved by the Texas Real Estate Commission in 2009 [~~2008~~] for use in the sale of a new home where construction is incomplete. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.state.tx.us.

§537.31. Standard Contract Form TREC No. 24-9[~~8~~].
The Texas Real Estate Commission adopts by reference standard contract form TREC No. 24-9[~~8~~] approved by the Texas Real Estate Commission in 2009 [~~2008~~] for use in the sale of a new home where construction is completed. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.state.tx.us.

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

Filed with the Office of the Secretary of State on August 28, 2009.

TRD-200903800
Devon V. Bijansky
Assistant General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: October 11, 2009
For further information, please call: (512) 465-3926

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22 TAC §537.50

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

The Texas Real Estate Commission (TREC) proposes the repeal of §537.50, Standard Contract Form TREC No. 43-0 (Ad-

dendum Containing Required Notices under §§5.016, 420.001 and 420.002, Texas Property Code). The repeal of §537.50, Standard Contract Form TREC No. 43-0, repeals the Addendum Containing Required Notices Under §§5.016, 420.001 and 420.002, Texas Property Code, which will no longer be required to be provided to buyers of new homes.

Devon V. Bijansky, Assistant General Counsel, has determined that for the first five-year period the proposed repeal is in effect, there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the proposed repeal. There is no anticipated economic cost to persons who are required to comply with the proposed repeal. There is no anticipated impact on small businesses, micro-businesses or local or state employment as a result of implementing the proposed repeal.

Ms. Bijansky also has determined that, for each year of the first five years the repeal as proposed is in effect, the public benefit anticipated as a result of enforcing the repeal will be consistency between state law and the TREC-promulgated contract forms.

Comments on the proposed repeal may be submitted to Devon V. Bijansky, Assistant General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The repeal is proposed under Texas Occupations Code, §1101.155, which authorizes the Texas Real Estate Commission to adopt rules in the public's best interest that require license holders to use contract forms prepared by the Texas Real Estate Broker-Lawyer Committee and adopted by the commission.

The statute affected by this proposal is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed repeal.

§537.50. Standard Contract Form TREC No. 43-0.

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 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 115. CONTROL OF AIR POLLUTION FROM VOLATILE ORGANIC COMPOUNDS

SUBCHAPTER G. CONSUMER-RELATED SOURCES

DIVISION 2. PORTABLE FUEL CONTAINERS

30 TAC §§115.620 - 115.622, 115.626, 115.627, 115.629

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

The Texas Commission on Environmental Quality (TCEQ or commission) proposes the repeal of §§115.620 - 115.622, 115.626, 115.627, and 115.629.

The repealed sections will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the state implementation plan (SIP).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE REPEALED RULES

The EPA adopted a federal portable fuel container (PFC) rule (72 *Federal Register* 8432, February 26, 2007) that set a national standard for gasoline, diesel, and kerosene PFCs. All PFCs manufactured on or after January 1, 2009, are required to comply with the federal standards. The federal regulations are very similar to the revised PFC regulations adopted by the California Air Resources Board (CARB) on September 15, 2005. The current Texas PFC regulations are inconsistent with the federal standards because the state regulations were based on the previous PFC testing methods adopted by the CARB in 2001.

The design criteria requirements for PFCs and PFC spouts specified under §§115.620 - 115.622, 115.626, 115.627, and 115.629 were adopted on October 27, 2004. These PFC rules established design criteria for "no-spill" PFCs based primarily on the 2001 CARB standards. The Texas PFC regulations do differ from the 2001 CARB standards because the Texas rule does not require the control of permeation rates through the walls of the PFC. The control of permeation rates was not included in the Texas PFC regulations because the cost of compliance was expected to be large and the reduction in emissions small.

The Texas PFC rules became effective on December 31, 2005, and on January 11, 2006, the executive director received a petition for rulemaking under 30 TAC §20.15 from Mr. Jon Lips of L&W Innovations, LLC. L&W Innovations manufactures a one-time use emergency fuel carrier known as the "Gas-O-Haul." The "Gas-O-Haul" emergency fuel carrier is prohibited by regulation from sale in Texas because it does not comply with the performance standards and testing requirements of §115.622 and the labeling requirements of §115.626. In addition, the "Gas-O-Haul" emergency fuel carrier did not qualify for the exemption provided in §115.627 for one-time use containers filled by the manufacturer but are not intended for reuse, because the "Gas-O-Haul" is not a pre-filled container. On March 8, 2006, Docket Number 2006-0055-RUL, the commission approved the petition for rulemaking and instructed the executive director to initiate the rulemaking process that would allow one-time use, unfilled, emergency fuel containers to be exempt and be eligible for sale in the State of Texas. On May 1, 2006, the petitioner was granted an interim enforcement discretion waiver that is effective until the PFC rules are appropriately revised.

In December 2006, a concept memo was drafted to initiate proposed revisions to the PFC rules rulemaking. However, the rulemaking packet was put on hold while the EPA adopted the federal PFC rule. The federal rule defines a "portable fuel container" in 40 Code of Federal Regulations (CFR) §59.680 as "any reusable container." Thus, the "Gas-O-Haul" emergency fuel carrier is exempt under the federal rule because it can only be used once.

Since all PFCs manufactured on or after January 1, 2009, are required to comply with the federal standards, this action would provide a clear regulatory structure by repealing §§115.620 - 115.622, 115.626, 115.627, and 115.629.

SECTION BY SECTION DISCUSSION

The proposed repeal of §§115.620 - 115.622, 115.626, 115.627, and 115.629 would remove regulations that have become unnecessary with the EPA's implementation of the federal PFC rule (72 *Federal Register* 8432, February 26, 2007), which established a national standard for gasoline, diesel, and kerosene PFCs, and are therefore intended to eliminate duplication and provide a clear regulatory structure.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that, for the first five-year period the proposed rule repeal is in effect, no significant fiscal implications are anticipated for the agency. In addition, no fiscal impact is expected for other units of state or local governments as a result of administration or enforcement of the proposed rule repeal.

The proposed rules repeal sections in Chapter 115 relating to the design criteria of PFCs and PFC spouts that were adopted by the agency on October 27, 2004. These rules are less stringent than federal PFC rules, and are no longer valid. The EPA adopted federal rules regarding PFCs for those manufactured on or after January 1, 2009, and nationwide manufacturers are required to produce PFCs meeting federal standards.

State agencies and local governments that use PFCs will be purchasing those that meet federal rules. PFCs that meet the federal standards are not expected to cost significantly more, and the repeal of state rules is not expected to have a fiscal impact on other state agencies or local governments.

PUBLIC BENEFITS AND COSTS

Nina Chamness also determined that for each year of the first five years the proposed rule repeal is in effect, the public benefit anticipated from the changes seen in the proposed rule repeal will be consistent with federal rules that are protective of the environment.

The EPA adopted federal rules regarding PFCs for those manufactured on or after January 1, 2009, that apply nationwide. The proposed rules repeal sections in Chapter 115 concerning PFCs that are no longer valid and are less stringent. The repeal of the state rules is not expected to have a fiscal impact on businesses or individuals.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses. The proposed rules repeal sections in Chapter 115 concerning PFCs that are no longer valid since new federal rules now determine the manufacturing standards of PFCs nationwide.

SMALL BUSINESS REGULATORY FLEXIBILITY ANALYSIS

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed action repeals state rules that are no longer valid and do not adversely affect a small or micro-business in a material way for the first five years that the proposed rule repeal is in effect.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required, because the proposed rule repeal does not adversely affect a local economy in a material way for the first five years that the proposed rule repeal is in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rules do not meet the definition of a "major environmental rule". Under Texas Government Code, §2001.0225, a "major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed rule repeal is intended to more effectively focus commission resources and to update administrative and technical requirements. While the rules being repealed were originally intended to protect the environment or reduce risks to human health from environmental exposure, they are no longer necessary because the EPA has promulgated federal rules that set a national standard for gasoline, diesel, and kerosene PFCs. All PFCs manufactured on or after January 1, 2009, are required to comply with the federal standards. The proposed repeal will remove requirements for PFC manufacturers in Texas, so that they can comply with the federal standard, which will prevent companies from having to determine compliance with duplicative standards. Because this rulemaking will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state, the rulemaking does not fit the Texas Government Code, §2001.0225 definition of "major environmental rule".

Under Texas Government Code, §2001.0225, only a major environmental rule requires a regulatory impact analysis. Because this proposal does not constitute a major environmental rule, a regulatory impact analysis is not required. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

TAKINGS IMPACT ASSESSMENT

Under Texas Government Code, §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Section 17 or 19, Article I, Texas Constitution; or a governmental action that affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action and is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if governmental action is not in effect and the market value of the property determined as if the governmental action is in effect.

The commission has prepared a takings impact assessment for these rules under Texas Government Code, §2007.043. The fol-

lowing is a summary of that assessment. The commission has determined that the promulgation and enforcement of the proposed repeal will not affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The proposed repeal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. The proposed repeal is administrative and does not impose any new regulatory requirements. The changes to §§115.620 - 115.622, 115.626, 115.627, and 115.629 would remove regulations that have become unnecessary by the EPA's implementation of federal PFC standards and are therefore intended to eliminate duplication and provide a clear regulatory structure. The proposed repeal is reasonably taken to fulfill requirements of state law. Therefore, the proposed repeal will not cause a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined this rulemaking related to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended *(Texas Natural Resources Code,* §§33.201 *et seq.),* and the commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. As required by §281.45(a)(3) and 31 TAC §505.11(b)(2), relating to actions and rules subject to the CMP, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this action for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council and determined that the repeal is consistent with the applicable CMP goal expressed in 31 TAC §501.12(1) of protecting and preserving the quality and values of coastal natural resource areas, and the policy in 31 TAC §501.14(q), which requires that the commission protect air quality in coastal areas. The repeal complies with 40 CFR Part 50, National Primary and Secondary Air Quality Standards, and 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans. This rulemaking action is consistent with CMP goals and policies, in compliance with 31 TAC §505.22(e).

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on October 6, 2009, at 2:00 p.m., in Building E Room 201, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Michael Parrish, Office of Legal Services at (512) 239-2548. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Michael Parrish, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www5.tceq.state.tx.us/rules/ecomments/.* File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2008-032-115-EN. The comment period closes October 12, 2009. Copies of the proposed rulemaking can be obtained from the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html.* For further information, please contact Lisa Shuvalov, Air Quality Planning Section, at (512) 239-4484.

STATUTORY AUTHORITY

The repeal is proposed under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The repeal is also proposed under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; and §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue a permit by rule for types of facilities that will not significantly contribute air contaminants to the atmosphere.

The proposed repeal will implement Texas Health and Safety Code, §§382.002, 382.011, 382.012, and 382.051.

§115.620. Definitions.

§115.621. Applicability.

§115.622. Performance Standards and Testing Requirements.

§115.626. Labeling.

§115.627. Exemptions.

§115.629. Affected Counties and Compliance Schedules.

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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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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CHAPTER 116. CONTROL OF AIR POLLUTION BY PERMITS FOR NEW CONSTRUCTION OR MODIFICATION

The Texas Commission on Environmental Quality (TCEQ or commission) proposes new §116.20 and new §116.178.

The commission also proposes to submit these new rules to the United States Environmental Protection Agency (EPA) as a revision to the state implementation plan.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The proposed additions to Chapter 116 would revise Subchapter A, Definitions, to add new §116.20, Portable Facilities Definitions, and would also revise Subchapter B, New Source Review Permits, to add new §116.178, Relocations and Changes of Location of Portable Facilities.

House Bill 555 of the 78th Legislature, 2003, modified the Texas Health and Safety Code (THSC), §382.056(r), to state that the requirements for public notice do not apply to: 1) the relocation or change of location of a portable facility to a site where a portable facility has been located at the proposed site at any time during the previous two years; or 2) a facility located temporarily in the right-of-way, or contiguous to the right-of-way, of a public works project.

The Air Permits Division originally provided guidance regarding the proper procedures for movement of portable facilities in 2000, and updated the guidance in September 2001, May 2004, October 2006, and in September 2008. This rule package would incorporate the previously issued guidance into the TCEQ's rules.

THSC, §382.056(r) states that the requirements for public notice do not apply to the relocation or change of location of a portable facility to a site where a portable facility has been located at the proposed site at any time during the previous two years. However, without a specific definition of "portable" and specific public notice requirements for a site, it is possible to gain authorization for several portable facilities on a site without the benefit of public participation in the process. This rulemaking would define "portable" and allow a facility to relocate, with approval from the executive director, to a site that has undergone public notice.

The primary affected types of facilities that use portable permit conditions are concrete batch plants, rock crushing plants, and hot mix asphalt plants. These types of facilities are often of interest to citizens who are affected by the relocation and change of location of these facilities and the accompanying public notice requirements. In some specific cases, permit holders have relocated a portable facility to a site for which the public was never provided any notification or opportunity for comment. In these instances, the permit holder provided the required public notice in a location where there was little impact on the public, and therefore, no objections. Within a very short period of time, the permit holder relocated to an area of much greater public interest and impact; however, because the permit holder had already provided public notice at the prior site, the permit holder was not required to provide public notice in the higher impact area.

Therefore, the commission proposes these modifications to Chapter 116 to place the existing guidance into rules that would define the public notice requirements for movement of portable facilities, to ensure that affected citizens are provided the opportunity to comment on a particular site, when notice is required by TCEQ rules.

In addition to clarifying public notice requirements, the commission proposes to specifically define several terms to clarify concepts and processes relating to the relocations and changes of location of portable facilities. These definitions would assist permit holders in understanding when public notice is required for movement of facilities, what the public notice requirements are, how the commission distinguishes a portable facility from other types of facilities, and the period of time in which a facility can be considered temporary. In addition, the definitions would help to ensure that permit holders understand terms that are related to public works projects, which could be exempted from some of the rule requirements.

The TCEQ is conducting this rulemaking pursuant to its authority found in the Texas Clean Air Act and Texas Water Code (TWC). The purpose of the rulemaking is to ensure that public notice is consistently applied according to the THSC, §382.056 and 30 Texas Administrative Code (30 TAC) Chapter 39, Public Notice. The proposed definitions are consistent with the Texas Clean Air Act, TCEQ guidance, and past agency practice.

SECTION BY SECTION DISCUSSION

The commission proposes new §116.20, Portable Facilities Definitions, which defines terms used in new §116.178 regarding the movement of portable facilities. The terms defined are: change of location, portable facility, project, related project segments, relocation, right-of-way of a public works project, site, and temporary facility. As noted in this preamble, these definitions specifically relate to the movement of portable facilities.

The commission proposes new §116.178, Relocations and Changes of Location of Portable Facilities. This proposed new section, along with proposed new §116.20, would replace the guidance documents provided by the Air Permits Division in 2000 and updated in 2001, 2004, 2006, and 2008.

Proposed subsection (a) includes the requirements that apply to portable facilities. In proposed paragraph (1), the commission specifies that a portable permit must be authorized by the executive director and designated with the appropriate portable permit, portable registration, or portable account number. A portable permit or registration number is typically a five-digit number followed by an "L" and additional digits (e.g., 50000L001). A portable account number begins with a "9" (e.g., 94-1234-X). Any facility that does not have one of these types of identification is not considered a portable facility by the Air Permits Division and THSC, §382.056(r)(1) does not apply.

Proposed paragraph (2) specifies that an applicant shall not use a permit by rule or standard permit authorization as a waiver of public notice. The reason for this provision is that most commission standard permits and permits by rule either do not require public notice or require public notice that is unique to those types of authorizations, rather than meeting the agency's air quality permit public notice requirements, which are located in 30 TAC Chapter 39, Subchapters H and K, Applicability and General Provisions; and Public Notice of Air Quality Applications. Because the Air Quality Standard Permit for Concrete Batch Plants and the concrete batch plant permits by rule require the same notice as is contained in Chapter 39, permit holders who authorize under either of these two mechanisms have provided the required public notice, and are exempted under proposed paragraph (2). The concrete batch plant permit by rule notice requirements were previously located in 30 TAC §106.5, Public Notice. This section and the underlying permits by rule in §§106.201 - 106.203 were repealed in 2004 due to the creation of the Air Quality Standard Permit for Concrete Batch Plants.

Proposed paragraph (3) includes a reference to new §116.20 regarding change of location, that provides the conditions upon which the executive director will convert a permanent facility permit number to a portable designation, upon request of the per-

mit holder. A change of location requires that the permit holder meet the public notice requirements in Chapter 39, Subchapters H and K. Proposed paragraph (3) also includes the requirement that the permit holder publish notice for any change in an existing permit number, and that the notice include the new permit number and proposed location. This provision would help to ensure that affected citizens are provided notice regarding these facilities so that they will be aware of changes in permit numbers for facilities that may affect them.

Proposed subsection (b) outlines the conditions that would qualify an applicant for relocation. The proposed subsection states that the appropriate regional office or local air pollution control agency with jurisdiction, if applicable, may approve the relocation of a facility if the applicant's permit contains current special conditions that define the approval process to move. The applicant must request approval before starting construction and must also operate according to the terms of the permit. The proposed subsection further states that a relocation application cannot include a modification. The reason for this provision is that modifications require a separate application and approval process by the TCEQ Central Office in Austin, Air Permits Division.

Proposed paragraphs (1) and (2) provide the conditions under which the appropriate regional office or local air pollution control agency with jurisdiction will approve the applicant's relocation request: a permitted portable facility and associated equipment are moving to a site for support of a public works project in which the proposed site is located in or contiguous to the right-of-way of a public works project; or a portable facility is moving to a site in which a portable facility has been located at any time during the previous two years and the site was previously subject to public notice as required under Chapter 39, Subchapters H and K, the Air Quality Standard Permit for Concrete Batch Plants, or the concrete batch plant permits by rule.

Proposed subsection (c) contains 11 paragraphs that detail the information that the permit holder must provide to the commission's affected regional office or local air pollution control agency with jurisdiction to receive approval for relocation. As stated in this proposed subsection, the permit holder shall submit the written relocation request and obtain written approval before the start of construction and commencement of operations at the new site. The proposed subsection further states that the permit holder is responsible for providing proof of submittal for all relocation requests. Examples of proof of submittal include regional office or local air pollution control agency with jurisdiction date stamps on hand-delivered applications, receipts from "return receipt requested" correspondence, or certified mail receipts from the United States Postal Service.

The following information is required under proposed subsection (c): the company name, address, company contact, and telephone number; a copy of the existing permit conditions and the maximum allowable emission rates table that are in effect for the permitted facility; the regulated entity number (RN), customer reference number (CN), applicable permit or registration numbers, and if available, the TCEQ account number; the location from which the facility is moving; a location description of the proposed site (city, county, and exact physical location); a scaled plot plan that identifies the location of all equipment and stockpiles, and also indicates that the required distances to the property lines can be met; a scaled area map that identifies the distance and direction to the closest off-property receptor (if required) and clearly indicates how the proposed site is contiguous or adjacent to the right-of-way of a public works project (if required); the proposed date for start of construction and expected date for start of operation; the expected time period at the proposed site; the permit or registration number of the portable facility that was located at the proposed site any time during the last two years, and the date the facility was last located there (not necessary if the relocation request is for a public works project that is contiguous or adjacent to the right-of-way of a public works project); and proof that the proposed site had accomplished public notice, as required by Chapter 39, Subchapters H and K (not necessary if the relocation request is for a public works project that is contiguous or adjacent to the right-of-way of a public works project).

Proof of public notice may come in several forms: a copy of the notice, a copy of the publisher's affidavit, or a New Source Review permit issuance letter for a permit. The applicant may use the public files of the TCEQ to obtain proof of public notice; however, the responsibility for obtaining the proof of publication rests with the applicant.

The required information in proposed paragraphs (1) - (11) will allow staff to quickly identify the permit holder, review pertinent information concerning the permit holder's current permit conditions, and confirm that the permit holder has met agency Chapter 39 public notice requirements. The commission's intent is that all information required in proposed paragraphs (1) - (11) would be fully addressed in the permit holder's submittal, and that a complete submittal would enable the regional office or local air pollution control agency with jurisdiction to approve it and notify the permit holder of that approval within 12 business days. Relocation requests may be disapproved based on insufficient information in the application.

The permit holder's request for relocation would be considered approved if the appropriate regional office or local air pollution control agency with jurisdiction does not provide approval or denial of a complete submittal within 12 business days; however, the presumed approval does not exempt the applicant from ensuring that public notice was accomplished at the new site as required under Chapter 39, Subchapters H and K.

Proposed subsection (d) states that the appropriate regional office or local air pollution control agency with jurisdiction shall deny a permit holder's relocation request if that permit holder cannot meet the conditions of proposed subsection (c). The proposed subsection specifies that, if the permit holder cannot qualify for a relocation, then that permit holder may apply instead for a change of location. The proposed subsection references the definition in §116.20 for change of location. According to the definitions in §116.20, relocation does not require that public notice be provided under the provisions of Chapter 39, Subchapters H and K; however, a change of location does require Chapter 39 public notice.

Proposed subsection (e) provides that a permit holder shall request a permit alteration, as discussed in §116.116(c)(1)(B), Changes to Facilities, to update relocation instructions and that an applicant may, if desired, submit a relocation application simultaneously with the alteration request. Staff in the TCEQ Central Office in Austin, Air Permits Division, process relocation applications that are combined with alteration requests, and the permit holder cannot assume that approval of these actions will occur within 12 business days, as with relocation requests that are submitted alone.

Proposed paragraphs (1) and (2) specify that, along with the alteration request and relocation application, the permit holder shall include the required form and attachments and a copy of the current permit. The required form and attachments consist of a completed PI-1 Form, the existing permit special conditions and maximum allowable emission rates table, and all associated information, including a detailed plot plan and area map. The executive director does not require a fee for these types of applications. If the executive director approves the request, Air Permits Division staff will notify the permit holder in writing that the permit has been altered, including new special conditions, along with the approval to relocate. Alterations, like relocations, do not require public notice.

Proposed subsection (f) concerns changes of location, and this subsection states that the permit holder must submit the required form and attachments to the TCEQ Central Office in Austin, Air Permits Division, along with an evaluation of best available control technology (BACT) and protection of public health and welfare. A change of location requires public notice, in compliance with Chapter 39, Subchapters H and K, and a permitted facility must meet all state and federal emission requirements. The permit holder shall include a completed PI-1 Form and the applicable documents required by the PI-1. The executive director does not require a fee for these types of applications, unless the permit holder also requests an amendment to the permit along with the change of location. Once the permit holder completes public notice, and the executive director determines that the permit holder has met all state and federal regulations, Air Permits Division staff will send the permit holder an authorization letter and a new permit.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that, for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the agency or other units of state or local governments as a result of administration or enforcement of the proposed rules.

The proposed rules place existing agency guidance for portable facilities into Chapter 116 and clearly define the public notice requirements for the movement of portable facilities, ensure the public has opportunity for comment, and facilitate consistent interpretation and enforcement of rules regarding portable facility relocation.

Concrete batch plants, rock crushing plants, and hot mix asphalt plants are among the facilities that use portable permit conditions. The proposed rules are not expected to have a fiscal impact on local governments because local governments do not typically own portable facilities and current guidance already requires compliance with many provisions of the proposed rules.

PUBLIC BENEFITS AND COSTS

Nina Chamness also determined that for each year of the first five years the proposed new rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be more clarity concerning public notice requirements for the movement of portable facilities, greater opportunity for public comment, and more consistent interpretation and enforcement of rules regarding portable facility relocation. Staff estimates that there are 233 businesses statewide that are owners or operators of portable facilities. Portable facilities include concrete batch plants, rock crushers, and hot mix asphalt plants. The proposed rules, which implement current agency guidance, are not expected to have a fiscal impact on businesses that own portable facilities. However, portable facilities that have not complied with current agency guidance could experience cost increases. Costs for providing public notice could range from $200 to $2,500 per notice depending on the rates of the newspaper chosen. Required evaluation of BACT and protection of public health and welfare could cost as much as $10,000. BACT costs for concrete batch and hot mix asphalt plants will vary depending on the control update needed. Costs could be as much as $50,000 for concrete batch plants, and BACT for hot mix asphalt plants could start at $60,000. Costs for control updates for rock crushing plants are expected to be minimal.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for the estimated 204 small or micro-businesses that own portable facilities as a result of the proposed rules. The proposed rules incorporate current agency guidance for portable facilities, and it is assumed that portable facilities have been or already are in compliance with current agency guidance.

SMALL BUSINESS REGULATORY FLEXIBILITY ANALYSIS

The commission reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules do not adversely affect a small or micro-business in a material way for the first five years that the proposed rules are in effect.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rules in light of the regulatory analysis requirements of the Texas Government Code, §2001.0225, and determined that the proposed rules do not meet the criteria for a major environmental rule. A "major environmental rule" is a rule that is specifically intended to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The proposed rulemaking is not a major environmental rule because it is procedural in nature. The intent of the proposed rules is to require public notice for relocation of a portable facility if public notice has not been accomplished at that site. In addition to clarifying public notice requirements, this rulemaking will define terms to further explain the process of relocating and changing locations of portable facilities. Therefore, the specific intent of the rules is not to protect the environment or reduce risks to human health from environmental exposure.

The proposed rules will not affect in a material way the economy, a sector of the economy, productivity, jobs, the environment, or the public health and safety of the state or a sector of the state. Under the proposed rules, public notice will be accomplished when a portable facility is moved to a site at which no notice has as yet been provided. Requiring applicants to comply with the public notice procedural requirements specified by the pro-

posed rules will not have an adverse effect on the economy, the environment, or public health and safety.

Additionally, this rulemaking does not meet the definition of a major environmental rule because it does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225, only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking action, which is designed to ensure that public notice requirements are applied consistently, does not exceed an express requirement under state or federal law. There is no contract or delegation agreement that covers the topic that is the subject of this action. Furthermore, the rulemaking is not adopted solely under the general powers of the agency, but is authorized by specific sections of the THSC, Chapter 382 and the TWC, as cited to in the STATUTORY AUTHORITY portion of this preamble, including THSC, §382.051, Permitting Authority of Commission; Rules, and THSC, §382.056, Notice of Intent to Obtain Permit or Permit Review; Hearing.

The commission invites public comment on the draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS portion of this preamble.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the proposed rulemaking and made a preliminary assessment determining that the Texas Government Code, Chapter 2007, Governmental Action Affecting Private Property Rights, is not applicable. Under Texas Government Code, §2007.002(5), "taking" means a governmental action that affects private real property in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or §17 or §19, Article I, Texas Constitution; or it means a governmental action that affects an owner's private real property that is the subject of the governmental action in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action, and is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property.

The intent of the proposed rules is to require public notice for relocation of a portable facility if public notice has not been accomplished at that site. In addition to clarifying public notice requirements, this rulemaking will define terms to further explain the process of relocating and changing locations of portable facilities. Promulgation and enforcement of these proposed rules will constitute neither a statutory nor constitutional taking of private real property. The proposed rules do not restrict or limit a landowner's rights to the property or reduce the market value of the property by 25 percent. Therefore, the proposed rulemaking does not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that this rulemaking action relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq*.), and commission rules in 30 TAC Chapter 281, Subchapter B, Consistency with the Texas Coastal Management Program. As required by §281.45(a)(3) and 31 TAC §505.11(b)(2), Actions and Rules Subject to the Coastal Management Program, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council and determined that the action is consistent with the applicable CMP goals and policies.

The CMP goal applicable to this proposed rulemaking action is the goal to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(1), Goals). The proposed new rules would indirectly benefit the environment because some entities would now be required to provide public notice and meet other permitting requirements in instances in which they have not done so in the past. The proposed new rules would also allow TCEQ staff to consistently interpret and enforce the requirements regarding relocations or changes of location of a portable facility. Consistently enforced public notice and permitting requirements would help to ensure that portable facilities have fewer adverse impacts to public health and the environment. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with federal regulations in 40 Code of Federal Regulations, to protect and enhance air quality in the coastal areas (31 TAC §501.32, Policies for Emission of Air Pollutants). Therefore, in accordance with 31 TAC §505.22(e), Consistency Required for New Rules and Rule Amendments Subject to the Coastal Management Program, the commission affirms that this rulemaking action is consistent with CMP goals and policies.

Comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS portion of this preamble.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

Chapter 116 is an applicable requirement under 30 TAC Chapter 122, Federal Operating Permits Program. If the proposed new rules are adopted, owners or operators subject to the federal operating permit program must, consistent with the revision process in Chapter 122, upon the effective date of the adopted rulemaking, revise their operating permit to include the new Chapter 116 requirements.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on October 13, 2009, at 10:00 a.m. in Building E, Room 201S, at the commission's central office, located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion is not permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes before the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Charlotte Horn, Office of Legal Services, at (512) 239-0779. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Jessica Rawlings, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at *http://www5.tceq.state.tx.us/rules/ecomments/*. File size restrictions may apply to comments submitted through the eComments system. All comments should reference Rule Project Number 2008-031-116-PR. The comment period closes October 14, 2009. Copies of the proposed rule documents can be obtained from the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html*. For further information, please contact Lisa Martin, Air Permits Division, (512) 239-1966.

SUBCHAPTER A. DEFINITIONS

30 TAC §116.20

STATUTORY AUTHORITY

The new section is proposed under the authority of the following: TWC, §5.102, concerning General Powers; §5.103, concerning Rules; and §5.105, concerning General Policy, that authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and THSC, §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; THSC, §382.002, concerning Policy and Purpose, that establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; THSC, §382.051, concerning Permitting Authority of Commission; Rules, that authorizes the commission to issue a permit for numerous similar sources; and THSC, §382.056, concerning Notice of Intent to Obtain Permit or Permit Review; Hearing, that authorizes the commission to require public notice of certain permit applications and procedures for requesting hearings and responding to comments.

The proposed new section implements THSC, §§382.002, 382.011, 382.012, 382.017, 382.051, and 382.056.

§116.20. Portable Facilities Definitions.

Unless specifically defined in the Texas Clean Air Act or in the rules of the commission, the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms that are defined by the Texas Clean Air Act, and in §101.1 of this title (relating to Definitions), the following words and terms, when used in Subchapter B, Division 8 of this chapter (relating to Portable Facilities), have the following meanings, unless the context clearly indicates otherwise.

(1) Change of location--The process of gaining approval and moving a permitted facility and associated sources to a new location in which public notice is required, in accordance with the requirements of Chapter 39, Subchapters H and K of this title (relating to Applicability and General Provisions; and Public Notice of Air Quality Applications).

(2) Portable facility--A facility authorized by a permit containing special conditions that allow the facility to relocate. Portable facilities are authorized by the Texas Commission on Environmental Quality, Air Permits Division. To be a portable facility, the permit for that facility is designated with a portable permit number, portable registration number, or portable account number. These portable designations are used to facilitate the relocation of these types of facilities under specific criteria, and are not authorized under Chapter 106 of this title (relating to Permits by Rule).

(3) Project--A public works contract or series of contracts for segments of work within close proximity to each other.

(4) Related project segments--For facilities on a Texas Department of Transportation right-of-way, related project segments are one contract with multiple project locations or one contractor with multiple contracts in which separate project limits are in close proximity to each other. A facility that is sited on the right-of-way is usually within project limits. However, a facility located at an intersection or wider right-of-way outside project limits is acceptable if it can be easily associated with the project.

(5) Relocation--The process of gaining approval and moving a facility and associated sources to an approved site in which no public notice is required under Chapter 39, Subchapters H and K of this title (relating to Applicability and General Provisions; and Public Notice of Air Quality Applications).

(6) Right-of-way of a public works project--Any public works project that is associated with a right-of-way. Examples of right-of-way public works projects are public highways and roads, water and sewer pipelines, electrical transmission lines, and other similar works. A facility must be in or contiguous to the right-of-way of the public works project to be exempt from the public notice requirements listed in Texas Health and Safety Code, §382.056.

(7) Site--As defined in §122.10 of this title (relating to General Definitions).

(8) Temporary facility--A facility that will occupy a designated site for not more than 180 consecutive days or that will supply material (such as concrete, hot mix asphalt, crushed rock, etc.) for a single project (single contract or same contractor for related project segments), but not other unrelated projects.

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 28, 2009.

TRD-200903793
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: October 11, 2009
For further information, please call: (512) 239-0177

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SUBCHAPTER B. NEW SOURCE REVIEW PERMITS
DIVISION 8. PORTABLE FACILITIES

30 TAC §116.178

STATUTORY AUTHORITY

The new section is proposed under the authority of the following: TWC, §5.102, concerning General Powers; §5.103, concerning Rules; and §5.105, concerning General Policy, that authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and THSC, §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; THSC, §382.002, concerning Policy and Purpose, that establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; THSC, §382.051, concerning Permitting Authority of Commission; Rules, that authorizes the commission to issue a permit for numerous similar sources; and THSC, §382.056, concerning Notice of Intent to Obtain Permit or Permit Review; Hearing, that authorizes the commission to require public notice of certain permit applications and procedures for requesting hearings and responding to comments.

The proposed new section implements THSC, §§382.002, 382.011, 382.012, 382.017, 382.051, and 382.056.

§116.178. Relocations and Changes of Location of Portable Facilities.

(a) Portable facility requirements. The following requirements apply to portable facilities.

(1) A portable permit must be authorized by the executive director and designated with the appropriate portable permit, portable registration, or portable account number.

(2) An applicant shall not use a permit by rule or standard permit authorization as a waiver of public notice (public notice requirements as specified in subsection (b)(2) of this section) regardless of the registration number or account code assigned by the executive director. A facility authorized by the Air Quality Standard Permit for Concrete Batch Plants or concrete batch plant permits by rule for which an applicant provided public notice is an exception.

(3) The executive director will not convert a permanent facility permit number to a portable designation unless the owner or operator is requesting a change of location as defined in §116.20 of this title (relating to Portable Facilities Definitions) for the facility. The permit holder must publish notice for any change in an existing permit number. The notice must identify the new permit number and the proposed location.

(b) Relocation qualifications. The appropriate regional office or local air pollution program with jurisdiction may approve the relocation of a portable facility if the applicant's permit contains current special conditions defining the approval process to move. A relocation application cannot include a modification. Approval for relocation is based on one of the following conditions:

(1) a permitted portable facility and associated equipment are moving to a site for support of a public works project in which the proposed site is located in or contiguous to the right-of-way of the public works project; or

(2) a portable facility is moving to a site in which a portable facility has been located at the site at any time during the previous two years and the site was subject to public notice as required under Chapter 39, Subchapters H and K of this title (relating to Applicability and General Provisions; and Public Notice of Air Quality Applications), the Air Quality Standard Permit for Concrete Batch Plants, or the concrete batch plant permits by rule.

(c) Relocation request requirements. The permit holder shall submit a complete written request to the appropriate commission regional office or local air pollution control agency with jurisdiction for the new location and obtain written approval before the start of construction and commencement of operations at the new site. The permit holder is responsible for providing proof of submittal for all relocation requests. Construction may begin after receipt of approval from the appropriate commission regional office or local air pollution control agency with jurisdiction or 12 business days after the date of postmark or the date of personal delivery of the request, whichever occurs first, unless disapproval is sent within the 12 business days. The permit holder's request is considered approved if the appropriate regional office or local air pollution control agency with jurisdiction does not provide approval or denial of a complete submittal within 12 business days; however, the presumed approval does not exempt the applicant from ensuring that public notice was accomplished at the new site as required under Chapter 39, Subchapters H and K of this title. The relocation request shall contain all of the following information:

(1) the company name, address, company contact, and telephone number;

(2) a copy of the existing permit conditions and the maximum allowable emission rates table that are in effect for the permitted facility;

(3) the regulated entity number (RN), customer reference number (CN), applicable permit or registration numbers, and, if available, the Texas Commission on Environmental Quality account number;

(4) the location from which the facility is moving (current location);

(5) a location description of the proposed site (city, county, and exact physical location description);

(6) a scaled plot plan that identifies the location of all equipment and stockpiles, and also indicates that the required distances to the property lines can be met;

(7) a scaled area map that identifies the distance and direction to the closest off-property receptor (if required) and clearly indicates how the proposed site is contiguous or adjacent to the right-of-way of a public works project (if required);

(8) the proposed date for start of construction and expected date for start of operation;

(9) the expected time period at the proposed site;

(10) the permit or registration number of the portable facility that was located at the proposed site any time during the last two years, and the date the facility was last located there. This information is not necessary if the relocation request is for a public works project that is contiguous or adjacent to the right-of-way of a public works project; and

(11) proof that the proposed site had accomplished public notice, as required by Chapter 39, Subchapters H and K of this title. This proof is not necessary if the relocation request is for a public works project that is contiguous or adjacent to the right-of-way of a public works project.

(d) Denial of relocation. If the permit holder cannot qualify for a relocation, as described in subsection (c) of this section, the appropriate regional office or local air pollution control agency with juris-

diction shall deny the relocation request and the applicant may request a change of location, as defined in §116.20 of this title.

(e) Requesting changes to relocation instructions. A permit holder shall request from the executive director a permit alteration, as defined in §116.116(c)(1)(B) of this title (relating to Changes to Facilities), to update relocation instructions. The permit holder may apply for a relocation simultaneously with the alteration. The permit holder shall obtain written approval before the start of construction and commencement of operations at the new site and shall not assume approval within 12 businesses days. The permit holder shall submit the following information for any alteration request and relocation application to the TCEQ Central Office in Austin, Air Permits Division:

(1) the required form and attachments, including a detailed plot plan and area map; and

(2) a copy of the current permit.

(f) Requesting changes of location. For a change of location application, the permit holder shall submit the required form and attachments to the TCEQ Central Office in Austin, Air Permits Division. All applications must include an evaluation of best available control technology and protection of public health and welfare.

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 28, 2009.

TRD-200903794
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: October 11, 2009
For further information, please call: (512) 239-0177

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION
SUBCHAPTER II. TELECOMMUNICATIONS INFRASTRUCTURE FUND ASSESSMENT

34 TAC §3.1101

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

The Comptroller of Public Accounts proposes the repeal of §3.1101, concerning telecommunications receipts, assessment determination, due date for assessment report and payment, auditing, records, and assessments. The existing §3.1101 is being repealed pursuant to House Bill 735, 80th Legislature, 2007, which repealed the telecommunications infrastructure fund assessment as effective September 1, 2008.

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

Mr. Heleman also has determined the repeal would benefit the public by removing a non-operative rule. There would be no anticipated significant economic cost to the public. This repeal is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There are no additional costs to persons who are required to comply with the repeal.

Comments on the repeal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

This repeal is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The repeal implements the repeal of Utilities Code, §57.048.

§3.1101. Telecommunications Receipts, Assessment Determination, Due Date for Assessment Report and Payment, Auditing, Records, and Assessments.

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 27, 2009.

TRD-200903785
Martin Cherry
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: October 11, 2009
For further information, please call: (512) 475-0387

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 3. TEXAS YOUTH COMMISSION

CHAPTER 91. PROGRAM SERVICES
SUBCHAPTER D. HEALTH CARE SERVICES

The Texas Youth Commission (commission) proposes the repeal of §91.87 (concerning suicide alert explanation of terms), §91.88 (concerning suicide alert for secure programs), §91.89 (concerning suicide alert for non-secure programs), and §91.90 (concerning suicide alert for parole). TYC also proposes new §91.87 (concerning suicide alert definitions), §91.88 (concerning suicide alert for high restriction facilities), §91.89 (concerning suicide alert for medium restriction facilities), and §91.90 (concerning suicide prevention for parole).

The repeal of §§91.87-91.90 will allow for new rules to be published in their place.

New §91.87 will establish definitions of terms used in TYC's suicide prevention policies.

New §91.88 will establish the process for suicide prevention by identification, assessment, treatment, and protection of youth that may be at risk for suicide at the orientation and assessment units and other high restriction facilities.

New §91.89 will establish the process for suicide prevention at medium restriction facilities by identification, assessment, treatment, and protection of youth that may be at risk for suicide.

New §91.90 will establish responsibilities for providing suicide prevention resources for youth on parole.

Robin McKeever, Director of Administrative Services, has determined that for the first five-year period the sections are in effect, there are no anticipated significant fiscal implications for state or local government as a result of enforcing or administering the sections.

Dianne Gadow, Director of Integrated Treatment and Support, 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 a more effective, evidence-based process for screening youth for suicide risk and responding to suicidal behavior or ideation, as well as providing follow-up care and suicide prevention resources for youth on parole.

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 rules as proposed. No private real property rights are affected by adoption of these rules.

Comments on the proposal may be submitted within 30 days of the publication of this notice to Steve Roman, Policy Coordinator, Texas Youth Commission, P.O. Box 4260, Austin, Texas 78765, or email to steve.roman@tyc.state.tx.us.

37 TAC §§91.87 - 91.90

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

The repeals are proposed under Human Resources Code §61.034, which provides the commission with the authority to make rules appropriate to the proper accomplishment of its functions.

The proposed repeals implement Human Resources Code §61.034.

§91.87. Suicide Alert Explanation of Terms.

§91.88. Suicide Alert for Secure Programs.

§91.89. Suicide Alert for Non-Secure Programs.

§91.90. Suicide Alert for Parole.

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 31, 2009.

TRD-200903853
Cheryln K. Townsend
Executive Commissioner
Texas Youth Commission
Earliest possible date of adoption: October 11, 2009
For further information, please call: (512) 424-6014

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37 TAC §§91.87 - 91.90

The new rules are proposed under Human Resources Code §61.034, which provides the commission with the authority to make rules appropriate to the proper accomplishment of its functions. The new rules are also proposed under §61.075, which provides the commission with the authority to order a committed child's confinement under conditions it believes best designed for the child's welfare and the interests of the public, as well as §61.076, which provides the commission with the responsibility to provide any medical or psychiatric treatment that is necessary.

The proposed rules implement Human Resources Code, §61.034.

§91.87. Suicide Alert Definitions.

(a) Purpose. The purpose of this rule is to establish definitions of terms used in the Texas Youth Commission's (TYC's) suicide prevention policies as established by §§91.88, 91.89, and 91.90 of this title.

(b) Definitions.

(1) Constant Motion Check--a type of room check in which a staff member walks through the housing unit in an irregular pattern at random intervals to prevent youth from "timing" room checks. Constant motion checks are to be performed in addition to regular room checks and documented on the regular room check log.

(2) Critical Incident Review Committee--a multidisciplinary review team convened to critically review the circumstances surrounding a death or serious incident.

(3) Critical Incident Support Team--a team used to provide support to youth, employees, and families involved in or adversely affected by the death of a TYC youth or staff member.

(4) Designated Mental Health Professional (DMHP)--a doctoral level psychologist who has primary responsibility and accountability for the evaluation, monitoring, and treatment of youth referred for suicide risk in high restriction facilities. In the absence of a doctoral level psychologist due to position vacancy, an MHP may be appointed to serve as the acting DMHP with the approval of the central office division director over treatment services.

(5) Mental Health Professional (MHP)--a doctoral level psychologist, masters level associate psychologist, licensed professional counselor, or a licensed clinical social worker.

(6) Morbidity and Mortality Review--an assessment of the overall clinical care provided and the circumstances leading up to a life-threatening suicide attempt or death. Its purpose is to identify program strengths and opportunities for improvement in clinical care and/or system policies and procedures.

(7) Protective Custody--a temporary program in high restriction facilities designed for the placement of youth who cannot be safely managed in the current dorm/living unit due to risk of self-harm, as determined by an MHP after a face-to-face assessment.

(8) Psychiatric Provider--a psychiatrist or psychiatric midlevel practitioner licensed to practice in the state of Texas.

(9) Rescue Kit--an emergency medical treatment kit carried by designated employees or placed in designated secure locations that contains items such as a CPR pocket mask, latex gloves, and a tool capable of cutting ligatures.

(10) Suicidal Behavior--includes suicide attempts, suicidal gestures, intentional self-injurious behavior, or development of a plan or strategy for committing suicide. Suicidal behavior generally involves some overt action or clear indication of the development of a specific plan or strategy to injure or kill oneself.

(A) Life Threatening Suicide Attempt--a suicide attempt that a health care professional determines would have resulted in death except for circumstances beyond the youth's control.

(B) Suicide Attempt--an act apparently intended to end one's life. A suicide attempt is a type of suicidal behavior.

(C) Self-Injurious Behavior--behavior that causes harm, such as self-laceration, self-battering, taking overdoses, or exhibiting deliberate recklessness. Self-injurious behavior is considered a type of suicidal behavior for reporting purposes.

(11) Suicidal Ideation--thoughts of engaging in suicide-related behavior. This means a youth expresses thoughts or fantasies about committing suicide or expresses a desire to kill himself/herself, but lacks a specific plan or strategy to carry it out. Suicidal ideation is not considered a type of suicidal behavior for reporting purposes.

(12) Suicide Alert--a status that begins following a face-to-face suicide risk assessment by an MHP indicating that a youth is at risk to attempt suicide or self-injury and is in need of increased supervision.

(13) Suicide Observation Folder--a folder containing suicide observation logs/check sheets and any other pertinent information as determined by an MHP. The staff directly responsible for monitoring the youth will possess the folder at all times while the youth is on suicide alert.

(14) Suicide Observation Level--levels of observation determined by an MHP to provide enhanced supervision for youth who are awaiting a suicide risk assessment or placed on suicide alert. General criteria for determining the appropriate level of observation are provided in subparagraphs (A) - (C) of this paragraph, however the MHP may assign any level of observation deemed appropriate under the circumstances based on his/her clinical judgment.

(A) One-to-One Observation is generally considered appropriate for a youth who is actively suicidal, either by threatening or engaging in self-injury, and who may require emergency psychiatric placement. One-to-one observation includes the following:

(i) Assigned staff may not have any other concurrent duties.

(ii) Assigned staff is within six feet of the youth and maintains continuous, direct visual observation of the youth at all times, including while the youth is in his/her room or while sleeping.

(iii) Assigned staff will document the youth's status at least once every ten minutes.

(iv) Assigned staff must be formally relieved by another staff or by the discontinuation of the 1:1 status.

(v) Doors to individual rooms will remain unlocked, except when a youth presents an imminent danger to staff due to aggressive behavior. Procedures for obtaining approval to lock the door for such behavior are set forth in §97.45 of this title.

(B) Constant Observation is generally considered the appropriate level of observation for a youth who is actively suicidal, either by threatening or engaging in self-injury, but does not appear to require emergency psychiatric placement. Constant observation includes the following:

(i) For youth not placed in a security unit or the Corsicana Stabilization Unit:

(I) During waking hours, youth is within 12 feet and within sight of assigned staff at all times. Staff may have concurrent duties if the duties do not interfere with observation of the youth. The assigned staff will document the youth's status at least once every ten minutes.

(II) During sleeping hours, assigned staff will observe and document youth's status at least once every five minutes and will perform constant motion checks at least once every hour.

(ii) For youth who are placed in a security unit or the Corsicana Stabilization Unit:

(I) Assigned staff will observe and document the youth's status at least once every five minutes and will perform constant motion checks at least once every 30 minutes.

(II) Doors to individual rooms will be locked.

(C) Close Observation is generally considered the appropriate level of observation for a youth who is not actively suicidal and would be considered a lower risk for suicide, but expresses suicidal ideation and/or has a recent history of self-injurious behavior. In addition, close observation would be appropriate for a youth who denies suicidal ideation or does not threaten suicide, but demonstrates other concerning behavior (through actions, current circumstances, or recent history) indicating the potential for self-injury. Close observation includes the following:

(i) Assigned staff will observe and document youth's status at least once every ten minutes and will perform constant motion checks at least once every hour. Staff will generally be involved in concurrent duties that do not interfere with required observation of the youth.

(ii) This level of observation may not be applied to youth who are placed in a security unit or the Corsicana Stabilization Unit.

(15) Suicide Resistant Room--a room which provides a safe environment and has no obvious materials/possessions that can be used in self-injurious behavior or any item which may be used for hanging. The room is free of all obvious protrusions and any items that provide an easy anchoring device for hanging. Lighting is tamper-proof and there are no switches or electrical outlets in the room. The door of the room has a heavy gauge clear panel which allows staff an unobstructed view of the room.

(16) Suicide Risk Assessment--standardized face-to-face assessment by an MHP that contains specific lines of inquiry regarding suicide risk, a mental status examination, and clinical observations and recommendations.

(17) Suicide Risk Screening--a standardized face-to-face interview by an MHP or trained designated staff in consultation with an MHP to determine the appropriate suicide observation level until a suicide risk assessment is conducted.

(18) Trained Designated Staff--staff trained to conduct a suicide risk screening. In TYC programs this will include at a minimum the superintendent, assistant superintendent, administrative duty officer, program specialists, case managers, on-duty supervisor, placement coordinators, principal, and Juvenile Corrections Officer (JCO) V or VI.

§91.88. Suicide Alert for High Restriction Facilities.

(a) Purpose. The purpose of this rule is to establish procedures for suicide prevention by identification, assessment, treatment, and protection of youth that may be at risk for suicide.

(b) Applicability. This rule applies to all youth currently assigned to placement in high restriction facilities operated by the Texas Youth Commission (TYC).

(c) Definitions. Definitions pertaining to this rule are under §91.87 of this title.

(d) General Provisions.

(1) Treatment for youth determined to be at risk for suicide will be provided within the least restrictive environment necessary to ensure safety.

(2) Youth determined to be at risk for suicide will participate in regular programming to the extent possible, as determined by a mental health professional (MHP). Only an MHP may make exceptions to the provision of regular programming, housing placement, or clothing.

(3) Designated staff will carry rescue kits at all times while on duty for use in the event of a medical emergency caused by a suicide attempt. Rescue kits will also be placed in designated buildings or areas of the campus not accessible to youth.

(4) Immediately, not to exceed two hours, TYC staff will notify a youth's parent/guardian after a life-threatening suicide attempt or suicide.

(e) Intake Screening and Assessment.

(1) Upon Initial Admission to TYC.

(A) Upon arrival to a TYC orientation and assessment unit, designated intake staff will keep youth within direct line of sight supervision until the youth is screened or assessed for suicide risk.

(B) Within one hour of the youth's arrival to a TYC orientation and assessment unit, an MHP will conduct an initial mental health screening and document the results on the agency-approved form.

(C) If the youth is identified by the MHP as potentially at-risk for suicide, the youth will immediately be referred for a suicide risk assessment, to be conducted by an MHP within four hours after referral. In the interim, the youth will be on constant observation.

(D) Within 14 days after a youth's arrival at the orientation and assessment unit, all youth will receive a comprehensive mental health evaluation conducted by an MHP. The mental health evaluation will include a suicide risk assessment if one has not already been completed.

(E) The suicide risk assessment will include:

(i) a mental status exam;

(ii) a review of all mental health and medical records submitted from the courts, county juvenile detention facilities, or any other medical or mental health provider, to include any assessments by MHPs relating to prior suicide alerts during confinement;

(iii) a review of all other screenings and assessments that are available; and

(iv) referrals for follow up treatment or further assessment, as indicated.

(F) The designated mental health professional (DMHP) will sign the suicide risk assessment, acknowledging his/her review.

(2) Upon Admission at a Subsequent Placement (Intrasystem Transfers).

(A) Upon arrival of a youth who is not currently on suicide alert, a nurse will complete an intrasystem health screening, including questions relating to suicidal ideation and behavior.

(B) If the youth is identified by the screening as potentially at-risk for suicide, the nurse will make an immediate referral to an MHP for completion of a suicide risk assessment.

(C) An MHP will conduct a suicide risk assessment within:

(i) four hours after the youth's arrival if referred by the nurse; or

(ii) seven calendar days after the youth's arrival for all other youth.

(3) Upon Return to TYC.

(A) Within one hour of a youth's arrival at a high restriction facility following a period of at least 48 hours spent out of TYC's physical custody (e.g., revocation of parole, return from bench warrant), a trained designated staff member or MHP will initiate a suicide risk screening. The youth will be kept within direct line of sight supervision until the youth is screened. If the screening is conducted by a trained designated staff member, he/she will immediately contact an MHP to communicate the results of the screening.

(B) Based on the results of the screening, an MHP will conduct a suicide risk assessment within:

(i) four hours if the MHP determines the youth is actively suicidal;

(ii) 24 hours if the MHP determines the youth does not appear to be actively suicidal but may otherwise be at-risk for suicidal behavior; or

(iii) seven calendar days if the MHP determines the youth does not appear to be at risk for suicide.

(f) Responding to Suicidal Behavior/Ideation.

(1) If any staff member has reason to believe that a youth has demonstrated suicidal behavior or ideation, the employee must:

(A) for medical emergencies, immediately use the rescue kit if appropriate and seek medical attention;

(B) verbally engage the youth;

(C) provide constant observation unless an MHP directs a higher observation level;

(D) begin a suicide observation log to document youth status checks;

(E) immediately notify the on-duty supervisor or the duty officer;

(F) document the notification of the on-duty supervisor or duty officer in the dorm/shift log; and

(G) for suicidal behavior, document the incident on an incident report.

(2) As soon as possible, but no later than one hour after notification, the on-duty supervisor or duty officer will ensure a trained designated staff member or MHP initiates a suicide risk screening. If the screening is conducted by a trained designated staff member, he/she will immediately communicate the results of the screening to the MHP.

(3) An MHP shall conduct a face-to-face suicide risk assessment within:

(A) four hours after the screening if the youth engaged in a suicide attempt or is actively suicidal; or

(B) 24 hours after the screening if the youth did not engage in a suicide attempt and does not appear to be actively suicidal, but engaged in some other type of suicidal behavior or ideation.

(4) The suicide risk assessment will include:

(A) a mental status exam;

(B) a review of the youth's masterfile and medical record, as indicated;

(C) referrals for follow up treatment or further assessment, as indicated;

(D) a determination of whether to place the youth on suicide alert, assignment of an observation level, and designation of appropriate precautions; and

(E) a review of the assessment by the DMHP.

(5) Whenever possible, suicide risk screenings and assessments will be conducted in a suitable environment, free from distractions.

(g) Actions Taken Upon Completion of Suicide Risk Assessment.

(1) Documentation Requirements.

(A) Upon completion of a suicide risk assessment, the MHP will document the results of the assessment, including any changes in the youth's observation level, on the agency-approved form(s).

(B) If the youth is placed on suicide alert, the MHP will ensure that the youth's name is placed on the facility's suicide alert list and the updated list is distributed to facility staff.

(2) Notification of Assessment Results.

(A) If the youth is placed on suicide alert:

(i) the MHP will immediately notify infirmary staff, the youth's case manager, dorm staff, and the on-duty supervisor of the youth's observation level and any additional instructions.

(ii) the youth's case manager will notify the youth's parent/guardian as soon as possible after the youth is placed on suicide alert.

(B) If the youth is not placed on suicide alert, the MHP will notify the referring staff and the youth's case manager that the youth was assessed but not placed on suicide alert.

(3) Assignment of Staff to Monitor Youth. If the youth is placed on suicide alert, the on-duty supervisor will assign a specific staff member to monitor the youth and carry the suicide observation folder.

(h) Supervision of Youth on Suicide Alert.

(1) Unless the youth is already placed in a suicide resistant room, the on-duty supervisor will coordinate a search of the youth's room or personal area and remove any potentially dangerous items.

(2) The suicide observation folder must be in the possession of the monitoring staff member at all times while the youth is on suicide alert.

(A) At no time may the youth possess the suicide observation folder.

(B) Each time the youth is transferred to the supervision of another staff member, the receiving staff member must take possession of the folder and document the transfer of supervision in the folder.

(3) As required by the youth's assigned suicide observation level, the monitoring staff member must:

(A) maintain direct visual observation of the youth; and/or

(B) document the youth's status at the required interval.

(4) For youth assigned to one-to-one or constant observation, the monitoring staff member must not leave the youth unattended or let the youth out of his/her sight.

(A) When the youth is in the bathroom or shower, the monitoring staff must remain within six feet of the youth, and:

(i) observe at least a portion of the youth's body (i.e., head, feet, or other observable parts excluding genitalia); and/or

(ii) maintain verbal contact.

(B) When the youth is engaged in regular programming (e.g., education, group counseling, recreation, etc.), the monitoring staff will accompany the youth to the activity and remain within the required distance (i.e., six or 12 feet). If the youth cannot be maintained within the required distance without disrupting the program, the MHP must be consulted to consider possible modifications to the youth's supervision plan or scheduled routine to ensure that the youth can be appropriately monitored.

(5) Removal of a youth's clothing and issuance of suicide-resistant clothing, as well as cancellation of programming and routine privileges, will be avoided whenever possible and only utilized as a last resort for periods during which the youth is physically engaging in self-injurious behavior. Decisions regarding issuance of suicide-resistant clothing and restrictions in programming and/or routine privileges may only be made by the MHP.

(6) Unless approved by the DMHP in consultation with the facility administrator, youth on suicide alert are not allowed access to off-campus activities or non-medical appointments. Decisions regarding off-campus medical appointments will be made by medical staff.

(i) Treatment and Reassessment of Youth on Suicide Alert.

(1) An MHP will develop a written treatment plan (or revise an existing care plan) that includes treatment goals and specific interventions designed to address and reduce suicidal ideation and threats, self-injurious behavior, and suicidal threats perceived to be based upon attention-seeking or manipulative behavior. The treatment plan will describe:

(A) signs, symptoms, and circumstances under which the risk for suicide or other self-injurious behavior is likely to recur;

(B) how recurrence of suicidal and other self-injurious behavior can be avoided; and

(C) actions both the youth and staff can take if the suicidal and other self-injurious behavior do occur.

(2) The MHP will consult with the youth's case manager to recommend modifications to the youth's individual case plan based on issues identified in the treatment plan. The MHP will consult with direct care staff regarding the youth's progress.

(3) While the youth is on suicide alert, the MHP will assess the youth at least once every 48 hours, unless the youth is placed on one-to-one observation, in which case the MHP will assess the youth at least once every 24 hours.

(4) For each assessment, the MHP will:

(A) review the contents of the suicide observation folder, as well as progress notes from other MHPs as applicable;

(B) determine whether any changes should be made to the youth's observation level or other precautions, in consultation with the DMHP;

(C) document any changes in the observation level or other safety precautions in the suicide observation folder; and

(D) document the assessment as a progress note that provides a sufficient description of the youth's emotional status, observed behavior, recommended observation level, justification for decision, and any special instructions for staff.

(5) Each time a change is made to the youth's observation level or other safety precautions, the MHP will notify direct care staff and ensure an updated suicide alert list is distributed to facility staff, including infirmary staff.

(6) During routine meetings between the psychology department and the psychiatric provider, the DMHP or designee will discuss information concerning youth on suicide alert with the psychiatric provider.

(j) Protective Custody or Emergency Psychiatric Placement.

(1) If an MHP, in consultation with the DMHP, determines that the youth is a serious and immediate danger to himself/herself and cannot be safely managed in the living unit, the MHP may initiate placement in a suicide resistant room by referring the youth to the protective custody program in accordance with §97.45 of this title. All treatment, re-assessment, and observation requirements established in this rule will continue to apply while the youth is assigned to protective custody, unless otherwise noted in §97.45 of this title.

(2) If the DMHP or psychiatric provider determines that the youth is in serious and imminent risk of self-injury and cannot be safely or appropriately managed in protective custody, the DMHP or psychiatric provider may seek emergency psychiatric placement. The youth will be placed on one-to-one observation until received at the emergency placement. The DMHP or psychiatric provider will seek placement in the following order:

(A) the Corsicana Stabilization Unit, in accordance with §87.67 of this title;

(B) the nearest state hospital, in accordance with §87.69 of this title; or

(C) as a last resort and only with the approval of the appropriate administrator, a private psychiatric facility in accordance with §87.71 of this title.

(k) Intrasystem Transfer of Youth on Suicide Alert.

(1) Prior to transferring a youth on suicide alert to another high restriction facility:

(A) within 24 hours prior to transfer, the MHP at the sending facility will:

(i) forward a summary of the youth's suicidal behavior, assessments, and treatment via email to the DMHP and facility administrator or designee at the receiving facility and any transitional facilities en route to the receiving facility;

(ii) call the DMHP at the receiving and any transitional facilities to communicate the observation level of the youth and any other pertinent information; and

(iii) notify the health services administrator at the sending facility, who will communicate the observation level of the youth and any other pertinent information to the receiving facility's infirmary; and

(B) direct care staff will provide the suicide observation folder to the transporting staff.

(2) An MHP at the receiving facility will:

(A) as soon as possible, but no later than four hours after the youth's arrival, review the transfer summary and meet with the youth;

(B) notify direct care and nursing staff of the youth's suicide observation level prior to assignment of the youth to a dorm/living unit;

(C) place the youth on the facility's suicide alert list;

(D) ensure the suicide observation log is provided to the staff assigned to monitor the youth;

(E) consult with the DMHP regarding the plan for treatment and assessment.

(l) Release or Discharge of Youth on Suicide Alert.

(1) Prior to releasing or discharging a youth on suicide alert to a community placement (medium restriction or home placement), the MHP will:

(A) provide the youth (or parent/guardian if youth is under age 18) with a referral for follow-up care;

(B) coordinate with appropriate clinical staff to schedule a follow-up appointment;

(C) identify emergency resources, if needed; and

(D) notify the youth's parole officer, as applicable.

(2) The MHP will forward mental health records to the receiving mental health provider upon request.

(m) Reduction of Observation Level and Removal from Suicide Alert.

(1) The level of observation for a youth on suicide alert may be modified or discontinued only after a face-to-face assessment by an MHP, in consultation with the DMHP.

(2) The MHP may reduce the youth's suicide observation level by no more than one level every 24 hours, unless otherwise approved by the DMHP on a case-by-case basis.

(3) Only an MHP or the DMHP may authorize removal of a youth's name from the suicide alert list. Only youth on close observation may be removed from suicide alert.

(4) The MHP will notify dorm staff and infirmary staff when a youth's observation level is reduced and when a youth is removed from suicide alert. Infirmary staff will notify the psychiatric provider of all such changes.

(5) The youth's case manager will notify the youth's parent/guardian when the youth is removed from suicide alert.

(6) Upon removal from suicide alert, the MHP will identify in the treatment plan any needed follow-up mental health services.

(n) Training.

(1) All staff who have direct contact with youth (including security, direct care, nursing, mental health, and education staff) will receive initial training in suicide prevention and response during pre-service training. Training will address topics including, but not limited to:

(A) identifying the warning signs and symptoms of suicidal behavior;

(B) high risk periods for suicide;

(C) juvenile suicide research, to include the demographic and cultural parameters of suicidal behavior, incidence and precipitating factors;

(D) responding to suicidal and depressed youth;

(E) communication between correctional and health care personnel;

(F) referral procedures;

(G) housing, observation, and suicide alert procedures; and

(H) follow-up monitoring of youth who engage in suicidal behavior or ideation.

(2) All personnel who have direct contact with youth will receive annual suicide prevention training.

(3) Staff designated to conduct suicide screenings receive training from an MHP regarding suicide alert policy, suicide indicators, and suicide screening.

(o) Post-Incident Debriefing and Analysis for Completed Suicides and Life-Threatening Attempts.

(1) The facility administrator or designee will coordinate a debriefing with appropriate facility staff as soon as possible after the situation has been stabilized, in accordance with agency procedures.

(2) The chief executive officer or designee may dispatch a critical incident support team to provide counseling for youth and staff, coordination of facility activities, and assistance with follow-up care.

(3) The medical director will conduct a morbidity and mortality review in coordination with appropriate clinical staff.

(4) A cross-divisional central office critical incident review committee will convene to examine all relevant information, determine if the incident reveals system-wide deficiencies, and recommend improvements to agency policies, operational procedures, physical plant, and/or training requirements.

(5) In the event of a suicide, all actions, notifications, and reports required under §99.51 of this title will be completed.

§91.89. Suicide Alert for Medium Restriction Facilities.

(a) Purpose. The purpose of this rule is to establish procedures for suicide prevention by identification, assessment, treatment, and protection of youth that may be at risk for suicide.

(b) Applicability. This rule applies to all youth currently assigned to placement in medium restriction facilities operated by the Texas Youth Commission (TYC).

(c) Definitions. Definitions pertaining to this rule are under §91.87 of this title. For purposes of this rule, the definition of mental health professional (MHP) may also include psychiatric providers.

(d) General Provisions.

(1) Treatment for youth determined to be at risk for suicide will be provided within the least restrictive environment necessary to ensure safety.

(2) Youth determined to be at risk for suicide will participate in regular programming to the extent possible, as determined by an MHP. Only an MHP may make exceptions to the provision of regular programming, community access, housing placement, or clothing.

(3) Rescue kits for use in medical emergencies will be placed in designated locations within the facility not accessible to youth.

(4) Immediately, not to exceed two hours, TYC staff will notify the parent/guardian after a suicide attempt or suicide.

(e) Intake Screening.

(1) Upon a youth's admission to a medium restriction facility, a trained staff will administer a health screening, which includes a review of the youth's file and questions relating to suicidal ideation and behavior. The results of the health screening will be documented on the agency-approved form.

(2) If a youth is identified during the screening as potentially at-risk for suicide:

(A) the trained staff will immediately notify the facility administrator or designee;

(B) the facility administrator or designee will contact an MHP to conduct a suicide risk assessment; and

(C) the facility administrator or designee will assign a suicide observation level. If possible, the administrator will consult with an MHP in determining the appropriate level.

(3) The suicide risk assessment must be completed as soon as possible, not to exceed 72 hours.

(f) Responding to Suicidal Behavior/Ideation.

(1) If any staff member has reason to believe that a youth has demonstrated suicidal behavior or ideation, the employee must:

(A) for medical emergencies, immediately seek medical attention;

(B) verbally engage the youth;

(C) immediately notify the facility administrator or designee;

(D) provide constant observation unless the facility administrator or designee directs a higher observation level;

(E) document the notification of the facility administrator or designee in the appropriate shift log; and

(F) for suicidal behavior, document the incident on an incident report.

(2) Upon notification by a staff member, the facility administrator or designee will begin a suicide observation log to document youth status checks.

(3) Within one hour after notification, a trained designated staff will initiate a suicide risk screening. The trained staff will immediately communicate the results of the screening to the facility administrator or designee.

(4) The facility administrator or designee will assign an observation level, based on the results of the suicide screening. If possible, the administrator will consult with an MHP in determining the appropriate level.

(A) For youth engaging in suicidal behavior, the administrator will ensure the youth remains on one-to-one observation until an MHP conducts a face-to-face suicide risk assessment.

(B) For youth engaging in suicidal ideation only, the administrator will ensure the youth remains on at least constant observation until an MHP conducts a face-to-face suicide risk assessment.

(C) Youth who are waiting for a suicide risk assessment are not allowed community access (e.g., community service, employment, academic attendance) unless TYC staff supervise the youth on at least constant observation.

(5) The facility administrator or designee will contact an MHP to conduct a face-to-face suicide risk assessment. The assessment must be completed within:

(A) four hours if the youth engaged in a suicide attempt; or

(B) as soon as possible, but not to exceed 72 hours, if the youth engaged in any other type of suicidal behavior or ideation.

(6) If the time required for an MHP to conduct a suicide risk assessment is exceeded, the youth will be maintained on at least constant observation until assessed. If necessary, the facility administrator or designee may secure emergency psychiatric care to obtain an evaluation of the youth.

(g) Actions Taken Upon Completion of Suicide Risk Assessment.

(1) Documentation Requirements. Upon completion of a suicide risk assessment, the MHP will document the results of the assessment, including any changes in the youth's observation level.

(2) Notification of Assessment Results.

(A) Upon completion of a suicide risk assessment, the MHP will communicate the results of the assessment to the facility administrator or designee.

(B) If the youth is placed on suicide alert:

(i) the facility administrator or designee will immediately notify facility staff of the youth's placement on suicide alert, the youth's observation level, and any additional instructions; and

(ii) the youth's case manager will notify the youth's parent/guardian as soon as possible after the youth is placed on suicide alert.

(C) If the youth is not placed on suicide alert, the facility administrator or designee will notify the referring staff that the youth was assessed and not placed on suicide alert.

(3) Assignment of Staff to Monitor Youth. If the youth is placed on suicide alert, the facility administrator or designee will assign a specific staff member to monitor the youth and document status checks.

(h) Supervision of Youth on Suicide Alert.

(1) The facility administrator or designee will coordinate a search of the youth's room and remove any potentially dangerous items.

(2) A suicide observation monitoring sheet must be in the possession of the monitoring staff member with direct supervisory responsibility for the youth at all times while the youth is on suicide alert.

(A) At no time may the youth possess the suicide observation sheet.

(B) Each time the youth is transferred to the supervision of another staff member, the receiving staff member must take possession of the observation sheet and document the transfer of supervision.

(3) As required by the youth's assigned suicide observation level, the monitoring staff member must:

(A) maintain direct visual observation of the youth; and/or

(B) document the youth's status at the required interval.

(4) For youth assigned to one-to-one or constant observation, the monitoring staff member must not leave the youth unattended or let the youth out of his/her sight. When the youth is in the bathroom or shower, the monitoring staff must remain within six feet of the youth, and:

(A) observe at least a portion of the youth's body (i.e., head, feet, or other observable parts excluding genitalia); and/or

(B) maintain verbal contact.

(5) Unless approved by the MHP in consultation with the facility administrator, youth on suicide alert are not allowed access to off-site activities or appointments. In such cases, the youth must be supervised on at least constant observation.

(i) Treatment and Reassessment of Youth on Suicide Alert.

(1) An MHP will prepare a written treatment plan for each youth on suicide alert, updating or revising the plan as necessary. The treatment plan will include:

(A) identification of the crisis stabilization issues to be addressed in ongoing assessment sessions;

(B) a plan of action to address these issues; and

(C) the degree of community restriction necessary to provide for the youth's safety.

(2) The MHP will consult with facility staff to recommend modifications to the youth's individual case plan based on issues identified in the treatment plan.

(3) While the youth is on suicide alert, the MHP will reassess the youth as needed, but at least once every five calendar days.

(4) During each assessment, the MHP will:

(A) review relevant suicide alert documentation and information;

(B) determine whether any changes should be made to the youth's observation level or other precautions; and

(C) document any changes in the observation level, community restrictions, or other safety precautions.

(5) Each time a change is made to the youth's observation level or other safety precautions, the facility administrator or designee will ensure the changes are documented and facility staff are notified.

(6) If the youth is receiving psychiatric services, the facility administrator or designee will ensure the psychiatric provider is notified of the youth's placement on suicide alert and any relevant information concerning the youth's treatment and supervision while on suicide alert.

(j) Youth Who Cannot Be Safely Managed in Current Placement.

(1) If the facility administrator or an MHP determines that a youth cannot be safely managed within the structure of the current placement due to behavior that indicates imminent risk of serious self-injury, the facility administrator or designee will:

(A) ensure one-to-one observation for the youth until an emergency psychiatric placement is obtained;

(B) obtain emergency placement at the Corsicana Stabilization Unit (CSU) or, if the CSU is not able to receive the youth, placement in a local state hospital, or as a last resort, a private psychiatric facility. For youth not on parole status, the administrator may seek temporary admission to protective custody in a high restriction TYC facility pending emergency psychiatric placement if none of the above placements are immediately available; and

(C) maintain communication with staff at the emergency placement to obtain current mental status information and assess the length and suitability of the current placement. If the emergency placement exceeds five days, the administrator will initiate alternate placement in a more secure facility.

(2) For youth maintained on constant and/or one-to-one observation longer than seven days in a medium restriction facility, the facility administrator or designee will pursue an alternative placement with longer-term stabilization, clinical resources, and increased supervision where the youth may be safely managed.

(k) Reduction of Observation Level and Removal from Suicide Alert.

(1) The level of observation for a youth on suicide alert may be modified or discontinued only after a face-to-face assessment by an MHP.

(2) The facility administrator or designee will notify facility staff when a youth's observation level is reduced and when a youth is removed from suicide alert. Designated facility staff will notify the psychiatric provider of all such changes.

(3) The youth's case manager will notify the youth's parent/guardian when the youth is removed from suicide alert.

(l) Release or Discharge of Youth on Suicide Alert. Prior to releasing or discharging a youth on suicide alert to a community placement (another non-secure placement or home placement), the MHP, in coordination with the youth's case manager, will:

(1) provide the youth (or parent/guardian if youth is under age 18) with a referral for follow-up care;

(2) coordinate with appropriate clinical staff to schedule a follow-up appointment;

(3) identify emergency resources, if needed; and

(4) forward mental health records to the receiving mental health provider upon request.

(m) Training.

(1) All direct care staff will receive initial training in suicide prevention and response during pre-service training, as well as annual updates during in-service training. Training will address topics including, but not limited to:

(A) identifying the warning signs and symptoms of suicidal behavior;

(B) high risk periods for suicide;

(C) juvenile suicide research, to include the demographic and cultural parameters of suicidal behavior, incidence and precipitating factors;

(D) responding to suicidal and depressed youth;

(E) communication between correctional and health care personnel;

(F) referral procedures;

(G) housing, observation, and suicide alert procedures; and

(H) follow-up monitoring of youth who engage in suicidal behavior or ideation.

(2) Staff designated to conduct suicide screenings receive training from an MHP regarding suicide alert policy, suicide indicators, and suicide screening.

(n) Post-Incident Debriefing and Analysis for Completed Suicides and Life-Threatening Attempts.

(1) The facility administrator or designee will coordinate a debriefing with appropriate facility staff as soon as possible after the situation has been stabilized, in accordance with agency procedures.

(2) The chief executive officer or designee may dispatch a critical incident support team to provide counseling for youth and staff, coordination of facility activities, and assistance with follow-up care.

(3) The medical director will conduct a morbidity and mortality review in coordination with appropriate clinical staff.

(4) A cross-divisional central office critical incident review committee will convene to examine all relevant information, determine if the incident reveals system-wide deficiencies, and recommend improvements to agency policies, operational procedures, physical plant, and/or training requirements.

(5) In the event of a suicide, all actions, notifications, and reports required under §99.51 of this title will be completed.

§91.90. Suicide Prevention for Parole.

(a) Purpose. The purpose of this rule is to establish procedures for the protection of youth that may be at risk for suicide within the community while on parole.

(b) Applicability. This rule applies to all youth under the jurisdiction of the Texas Youth Commission (TYC) who are assigned to parole in the community.

(c) Definitions. Definitions pertaining to this rule are under §91.87 of this title.

(d) General Provisions.

(1) Any staff member who observes a youth engaging in suicidal behavior or ideation must immediately respond in a manner that protects youth safety.

(2) If a staff member observes or becomes aware of a youth engaging in suicidal ideation, the staff member will:

(A) immediately ensure that the youth's parent/legal guardian and parole officer have been notified of the youth's behavior; and

(B) provide community resource information regarding where a mental health professional may be consulted.

(3) If a staff member observes or becomes aware of a youth engaging in suicidal behavior, the staff member will:

(A) immediately ensure that local law enforcement and the youth's parent/legal guardian and parole officer have been notified of the youth's behavior;

(B) provide community resource information regarding where a mental health professional may be consulted; and

(C) if the staff member determines, in consultation with the appropriate administrator, that the youth is in imminent danger of serious self-injury and is not receiving adequate treatment and supervision in the community, refer the youth for emergency psychiatric placement in accordance with §87.71 of this title.

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 31, 2009.

TRD-200903854

Cheryln K. Townsend
Executive Commissioner
Texas Youth Commission
Earliest possible date of adoption: October 11, 2009
For further information, please call: (512) 424-6014

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CHAPTER 97. SECURITY AND CONTROL
SUBCHAPTER A. SECURITY AND CONTROL

The Texas Youth Commission (the commission) proposes the repeal of §97.45 (concerning protective custody) and simultaneously proposes new §97.45 (concerning protective custody for youth at risk of self-harm).

The repeal of §97.45 will allow for a new rule to be published in its place.

New §97.45 will provide for a protective custody program for the temporary placement of youth who, as determined by a mental health professional, are at risk of serious harm to themselves.

Robin McKeever, Director of Administrative Services, has determined that for the first five-year period the section is in effect, there are no anticipated significant fiscal implications for state or local government as a result of enforcing or administering the section.

Dianne Gadow, Director of Treatment and Support, 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 enhanced safety of youth through increased controls and oversight of placing youth in protective custody for risk of self-harm.

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 rule 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 Steve Roman, Policy Coordinator, Texas Youth Commission, P.O. Box 4260, Austin, Texas 78765, or email to steve.roman@tyc.state.tx.us.

37 TAC §97.45

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

The repealed rule is proposed under Human Resources Code §61.034, which provides the commission with the authority to make rules appropriate to the proper accomplishment of its functions.

The proposed repeal implements Human Resources Code §61.034.

§97.45. Protective Custody.

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 31, 2009.

TRD-200903851

Cheryln K. Townsend
Executive Commissioner
Texas Youth Commission
Earliest possible date of adoption: October 11, 2009
For further information, please call: (512) 424-6014

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37 TAC §97.45

The new rule is proposed under Human Resources Code §61.075, which provides the commission with the authority to order a committed child's confinement under conditions it believes best designed for the child's welfare and the interests of the public.

The proposed rule implements the Human Resources Code, §61.034.

§97.45. Protective Custody for Youth at Risk of Self-Harm.

(a) Purpose. The purpose of this rule is to provide for a protective custody program for the temporary placement of youth who are determined to be at risk of serious harm to themselves.

(b) Applicability. This rule only applies to high restriction facilities operated by TYC.

(c) Definitions. Definitions pertaining to this rule are under §91.87 of this title.

(d) General Provisions.

(1) The protective custody program is administered in the security unit. All standard security unit service delivery and programming requirements as set forth in §97.40 of this title, unless otherwise noted herein, will be observed while the youth is in the security unit.

(2) Placement of youth in protective custody will be used only as a last resort when a mental health professional (MHP) determines that the youth cannot be safely managed in his/her assigned living unit and no appropriate less restrictive placements are immediately available. Protective custody will be used only as a temporary placement until the youth can be safely returned to his/her assigned living unit or another appropriate housing or facility assignment can be arranged.

(3) Youth in protective custody will be monitored, assessed, and treated in accordance with procedures set forth in §91.88 of this title for youth on suicide alert, unless otherwise noted herein.

(e) Referral for Placement in Protective Custody.

(1) Only an MHP may authorize the referral of a youth to the security unit for possible placement in protective custody. The referral may be made only:

(A) after a trained designated staff member completes a suicide risk screening, as described in §91.88 of this title;

(B) after the MHP has consulted with the staff member concerning the results of the screening; and

(C) if the MHP determines that the youth is in imminent risk of serious self-injury and cannot be safely managed in his/her assigned living unit.

(2) The youth may be held in the security unit on referral for up to four hours, pending the completion of a face-to-face suicide risk assessment by an MHP.

(3) Once referred to the security unit, the youth will be placed on one-to-one observation until assessed by the MHP. Doors will not be locked while the youth is awaiting the suicide risk assess-

ment, unless the youth presents an imminent danger to staff due to aggressive behavior. In such cases, doors may be locked in accordance with subsection (g)(2) of this section.

(4) The youth's suicide observation folder will be transferred to the security staff who will continue documenting the youth's status at the required interval.

(f) Admission Criteria. Only an MHP, in consultation with the facility's designated mental health professional (DMHP), may admit a youth to protective custody due to suicide risk. A youth may be placed in protective custody only if the MHP has conducted a face-to-face suicide risk assessment as described in §91.88 of this title, and the MHP has determined that:

(1) based on the youth's actions, statements, or mental status, the youth is a serious and immediate physical danger to himself/herself; and

(2) confinement in the security unit is necessary to protect the youth from self-harm, and there is no less restrictive setting that provides the necessary level of security and staff supervision.

(g) Program Requirements.

(1) Youth will be placed in suicide resistant rooms. Except for youth assigned to one-to-one observation, individual room doors will remain locked.

(2) For youth assigned to one-to-one observation, individual room doors will remain unlocked, except when a youth presents an imminent danger to staff due to aggressive behavior. In such cases, the youth's room door may be locked provided that the MHP determines (in consultation with the DMHP) that locking the door is necessary to manage the youth's aggressive behavior and still allows adequate supervision to ensure the youth's safety.

(3) In accordance with requirements established under §91.88 of this title, the MHP will develop an individualized treatment plan that identifies crisis stabilization issues to be addressed and includes a plan of action to address the issues.

(4) The MHP will conduct a face-to-face assessment of the youth at least once every 24 hours while the youth is admitted to the protective custody program. As part of the assessment, the MHP will determine if the youth continues to be a serious and immediate physical danger to himself/herself and if continued confinement is necessary to prevent self-harm.

(5) At least once every 48 hours following the youth's admission into protective custody, the DMHP will review the documentation relating to protective custody, including the youth's treatment plan and any other documentation relating to the youth's stay in protective custody.

(6) A youth may not remain in the protective custody program for more than five calendar days without written approval from the division director over treatment programming or designee. Such approval must be obtained for every 24-hour period thereafter.

(h) Review of Admission and Extensions. The director of security or designee will review each admission and 24-hour extension decision within one workday to determine if policy and procedure were followed. If it is determined that a youth is being held in violation of policy, the director of security or designee will:

(1) immediately notify the facility administrator or duty officer;

(2) unless otherwise instructed by the facility administrator or duty officer, return the youth to the general population; and

(3) ensure the youth remains on one-to-one observation until an MHP conducts a face-to-face suicide risk assessment.

(i) Release Criteria. The youth will be released from protective custody when:

(1) an MHP, in consultation with the DMHP, determines the youth may return to the general population with appropriate supervision and monitoring;

(2) an MHP, in consultation with the DMHP, determines that the youth meets criteria for transfer to a facility providing specialized mental health treatment, the Corsicana Stabilization Unit, or a psychiatric hospital;

(3) the division director over treatment programming or designee disapproves an extension request; or

(4) a review of the admission or extension in protective custody reveals that the youth is being held in violation of policy.

(j) Appeals. The youth may appeal his/her placement in protective custody to the facility administrator or designee. The facility administrator or designee will consult with the DMHP when reviewing the appeal.

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 31, 2009.

TRD-200903852
Cheryln K. Townsend
Executive Commissioner
Texas Youth Commission
Earliest possible date of adoption: October 11, 2009
For further information, please call: (512) 424-6014

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 12. TEXAS BOARD OF OCCUPATIONAL THERAPY EXAMINERS

CHAPTER 370. LICENSE RENEWAL

40 TAC §370.2

The Texas Board of Occupational Therapy Examiners proposes an amendment to §370.2, concerning Late Renewal. The amendment will add methods for returning to licensure for late renewal and restoration of a Texas license to reflect changes made to the OT Practice Act regarding late renewal and restoration during the 81st legislative session.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Maline also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be an easier, more equitable way for former licenses to return to practice in Texas, as well as

more choices for former licensees who remained in Texas. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposed rule may be submitted to Augusta Gelfand, OT Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe Street, Suite 2-510, Austin, Texas, 78701, (512) 305-6900, or through email: augusta.gelfand@mail.capnet.state.tx.us.

The amendment is proposed under the Occupational Therapy Practice Act, Title 3, Subchapter H, Chapter 454, Occupations Code, which provides the 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.

§370.2. Late Renewal.

(a) (No change.)

(b) If the license has been expired for longer than one year the person may not renew the license. To obtain a new license, the applicant must retake and pass the national examination and comply with the requirements and procedure for obtaining an original license set by Chapter 364 of this title (relating to Requirements for Licensure).

(1) If the person's Texas license has been expired two years or less, the person shall:

(A) make application for licensure to the board on a form prescribed by the board, which includes a recent passport type photo;

(B) pass the board jurisprudence examination;

(C) submit copies of the completed continuing education showing 45 hours of continuing education as per Chapter 367 of this title (relating to Continuing Education), with a minimum of 30 hours in Type 2;

(D) pay the restoration fee; and

(E) complete all requirements for licensure within one year from the date of the application.

(2) Or; if the person's Texas license has been expired four years or less, the person shall:

(A) retake the NBCOT examination for "licensure purposes only" and have a score report sent to the board; or

(B) complete a re-entry certificate program through an Accredited Council for Occupational Therapy Education (ACOTE) accredited college or university, which includes instruction and fieldwork supervision, with a certificate sent to the board; or

(C) obtain an advanced occupational therapy degree, with a official transcript sent to the board;

(D) make application for licensure to the board on a form prescribed by the board, which includes a recent passport type photo;

(E) pass the board jurisprudence examination;

(F) pay the restoration fee;

(G) submit an official transcript;

(H) complete all requirements for licensure within one year from the date of the application.

(c) Restoration: Persons holding a license in another state, previously licensed in Texas:

(1) The board may issue a license to a person who was licensed in Texas, moved to another state, is currently licensed in the other state, and has not had a license that was granted by any other state suspended, revoked, canceled, surrendered or otherwise restricted for any reason [~~has been engaged in the practice of occupational therapy in the other state for the two years preceding the application~~] if the person meets the following requirements:

(A) make application for licensure to the board on a form prescribed by the board which includes a recent passport type photo;

(B) submits to the board verification of the current and expired license(s) in good standing from the other state(s) since leaving Texas;

[~~(C) submits the board form documenting continuous employment in occupational therapy in another state for the two years preceding the application;~~]

(C) [~~(D)~~] passes the jurisprudence exam;

(D) [~~(E)~~] pays the board approved fee; and

(E) complete all requirements for licensure within one year from the date of the application.

(2) The license shall expire at the last day of the month of the licensee's birth. The duration shall be at least two years, and licensees shall obtain the continuing education as per Chapter 367 of this title [~~(relating to Continuing Education)~~].

(d) (No change.)

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

Filed with the Office of the Secretary of State on August 28, 2009.

TRD-200903816
John P. Maline
Executive Director
Texas Board of Occupational Therapy Examiners
Earliest possible date of adoption: October 11, 2009
For further information, please call: (512) 305-6900

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 1. MANAGEMENT

The Texas Department of Transportation (department) proposes amendments to §1.2, Texas Department of Transportation, and §1.4, Public Access to Commission Meetings, all concerning management of the department.

EXPLANATION OF PROPOSED AMENDMENTS

The legislature's enactment of S.B. 970, 81st Legislature, Regular Session, 2009, and the commission's adoption of a regionalization plan for the department require changes to rules of the Texas Transportation Commission (commission) relating to the management of the department.

Amendments to §1.2, Texas Department of Transportation, change the qualifications of the executive director of the department contained in subsection (a)(1) to conform to the changes made by S.B. 970, which removed the requirements that the executive director be a registered professional engineer and be skilled in construction and maintenance and added the requirement of organizational management skills.

The amendments to §1.2 also add new subsection (e), which recognizes the consolidation of the operational and project development functions of the department's districts into four regional support centers. The creation of the regional support centers is a part of the implementation of the regionalization plan approved by the commission during its March 26, 2009 meeting, Minute Order 111738. The amendments redesignate existing subsection (e) as subsection (f).

Amendments to §1.4(f), Notice, clarify that notice of commission meetings are filed with the Secretary of State rather than with the *Texas Register.* The Secretary of State currently publishes open meeting notices on the Secretary's website rather than in the *Texas Register.*

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five years the amendments as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments.

Bob Jackson, General Counsel, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT AND COST

Mr. Jackson has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be that the current practices and statutory requirements are accurately reflected in the rules of the commission. There are no anticipated economic costs for persons required to comply with the sections as proposed. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §1.2 and §1.4 may be submitted to Bob Jackson, General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on October 12, 2009.

SUBCHAPTER A. ORGANIZATION AND RESPONSIBILITIES

43 TAC §1.2

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Transportation Code, §201.101 and §201.301(a).

§1.2. Texas Department of Transportation.

(a) Executive director.

(1) The commission will elect an executive director for the department who shall be [~~a registered professional engineer in the State of Texas experienced and~~] skilled in transportation planning[~~,~~] and development[~~, construction,~~] and in organizational management [~~maintenance~~]. The executive director, as the chief executive officer of the department, is authorized to administer the day-to-day operations of the department. The executive director may hold that position until removed by the commission.

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

(b) - (d) (No change.)

(e) Regional Support Centers. The department has four regional support centers, which provide operational and project development support functions to the districts. The regional support centers are located in Fort Worth, Houston, San Antonio, and Lubbock.

(f) [~~(e)~~] The Automobile Burglary and Theft Prevention Authority. The Automobile Burglary and Theft Prevention Authority (authority) is an independent authority within the department. The authority undertakes a variety of programs designed to reduce thefts of motor vehicles.

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 28, 2009.

TRD-200903802
Bob Jackson
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: October 11, 2009
For further information, please call: (512) 463-8683

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SUBCHAPTER B. PUBLIC MEETINGS AND HEARINGS

43 TAC §1.4

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Transportation Code, §201.101 and §201.301(a).

§1.4. Public Access to Commission Meetings.

(a) - (e) (No change.)

(f) Notice. For each commission meeting an agenda will be filed with the Office of the Secretary of State [~~Texas Register~~] in accordance with the requirements of the Open Meetings Act, Government Code, Chapter 551.

(g) - (h) (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 28, 2009.

TRD-200903803

Bob Jackson
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: October 11, 2009
For further information, please call: (512) 463-8683

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SUBCHAPTER F. ADVISORY COMMITTEES

43 TAC §§1.82, 1.84, 1.85

The Texas Department of Transportation (department) proposes amendments to §1.82, Statutory Advisory Committee Operations and Procedures, §1.84, Statutory Advisory Committees, and §1.85, Department Advisory Committees, all concerning department advisory committees. The amendments to §§1.82, 1.84, and 1.85 are proposed in conjunction with amendments to §24.13, relating to corridor planning and development.

EXPLANATION OF PROPOSED AMENDMENTS

The proposed amendments are the result of procedural changes by the Secretary of State relating to the publication of meeting notices, the Texas Transportation Commission's (commission) review of the need to continue the existence of the commission's advisory committees, and changes made by House Bill (H.B.) 2219, 81st Legislature, Regular Session, 2009, concerning the Public Transportation Advisory Committee.

Amendments to §1.82, Statutory Advisory Committee Operations and Procedures, subsection (c)(1), require that notice of advisory committee meetings be filed with the Secretary of State for publication on the Secretary's Internet website rather than having the notice published in the *Texas Register.* This change complies with the Secretary of State's current practice of publishing open meeting notices on the Secretary's website rather than in the *Texas Register.*

Amendments to §1.82(i) revise the sunset dates of commission advisory committees that are created by statute. Section 1.82 currently provides that each statutory advisory committee is abolished December 31, 2009. This sunset date was established under Government Code, §2110.008, which authorizes a state agency to establish by rule a date on which advisory committees will automatically be abolished unless continued. The commission determines that the continued existence of its statutory advisory committees are necessary for improved communication between the department and the public. Therefore, §1.82(i) is amended to revise the sunset date to December 31, 2011.

Amendments to §1.84, Statutory Advisory Committees, subsection (b)(2), remove the provisions relating to the terms and removal of the members of the Public Transportation Advisory Committee. H.B. 2219, made several changes relating to the Public Transportation Advisory Committee, including the selection of members of the committee by the governor, lieutenant governor, and speaker of the house rather than by the commission. Under H.B. 2219 members of the committee no longer serve fixed terms and may be removed only by the appointing officer.

Amendments to §1.85, Department Advisory Committees, revise the sunset date of advisory committees created by the commission. Section 1.85 provides for the creation and operating procedures of advisory committees of the commission that are not created by statute. Subsection (c) currently provides that each advisory committee created under §1.85 is abolished December 31, 2009. This sunset date was established in accordance with Government Code, §2110.008. The commission determines that each existing advisory committee created under §1.85 is necessary for improved communication between the department and the public. Therefore, §1.85(c) is amended to revise the sunset date to December 31, 2011.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five years the amendments as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments.

Bob Jackson, General Counsel, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT AND COST

Mr. Jackson has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be that continuation of the committees will result in improved communication between the department and the public and that the current practices and statutory requirements are accurately reflected in the rules of the commission. There are no anticipated economic costs for persons required to comply with the sections as proposed. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §§1.82, 1.84, and 1.85 may be submitted to Bob Jackson, General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on October 12, 2009.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Government Code, §551.048, Government Code, Chapter 2110, and Transportation Code, §455.004.

§1.82. Statutory Advisory Committee Operations and Procedures.

(a) Applicability. This section applies to statutory advisory committees and governs the operation of statutory advisory committees unless it is superceded by a specific provision in §1.84 of this subchapter (relating to Statutory Advisory Committees).

(b) (No change.)

(c) Meetings.

(1) Meeting requirements. The office designated for an advisory committee under subsection (f) of this section shall submit to the Office of the Secretary of State [~~publish~~] notice of a meeting of the advisory committee [~~in the Texas Register~~] at least 10 days before the date of the meeting. The notice must provide the date, time, place, and subject of the meeting. A meeting of an advisory committee must be open to the public. An advisory committee will follow the agenda set for each meeting under paragraph (2) of this subsection. Filing of notice of meetings with the Office of the Secretary of State shall be coordinated through the department's Office of General Counsel.

(2) - (7) (No change.)

(d) - (h) (No change.)

(i) Duration. Except as otherwise specified in this subchapter, each statutory advisory committee is abolished December 31, 2011 [~~2009~~], unless the commission amends its rules to provide for a different date.

§1.84. Statutory Advisory Committees.

(a) Aviation Advisory Committee.

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

(5) Rulemaking. Section 1.83 of this subchapter (relating to Rulemaking) does not apply to the Aviation Advisory Committee.

(b) Public Transportation Advisory Committee.

(1) (No change.)

(2) Membership. Members of the Public Transportation Advisory Committee shall be appointed and shall serve pursuant to Transportation Code, §455.004. [~~Members will be appointed for staggered three-year terms unless removed sooner at the discretion of the commission.~~]

(3) (No change.)

(4) Meetings. The committee shall meet as requested by the commission or the office designated under §1.82(f) of this subchapter (relating to Statutory Advisory Committee Operations and Procedures).

(5) (No change.)

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

§1.85. Department Advisory Committees.

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

(c) Duration. Except as otherwise specified in this section, a committee created under this section is abolished December 31, 2011 [~~2009~~], unless the commission amends its rules to provide for a different date.

(d) (No change.)

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

Filed with the Office of the Secretary of State on August 28, 2009.

TRD-200903804
Bob Jackson
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: October 11, 2009
For further information, please call: (512) 463-8683

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CHAPTER 17. VEHICLE TITLES AND REGISTRATION

SUBCHAPTER B. MOTOR VEHICLE REGISTRATION

43 TAC §17.40

The Texas Department of Transportation (department) proposes amendments to §17.40, concerning Marketing of Specialty License Plates through a Private Vendor.

EXPLANATION OF PROPOSED AMENDMENTS

The proposed amendments are necessary to update existing rules regarding specialty license plates that will be marketed by the department's new private vendor. The joint venture of Etech, Inc., and Pinnacle Technical Resources, Inc., was competitively awarded a five-year contract on August 3, 2009.

The bid by Etech, Inc., and Pinnacle Technical Resources, Inc., included a proposal to increase the array of specialty license plate designs available to the general public and to generate additional revenue for the state by creating new types of specialty plates, classified as "Freedom license plates," "Background only license plates," and "Vendor souvenir license plates." Fees for these new plate categories must be established by rule.

Senate Bill 1616, 81st Legislature, Regular Session, 2009 repealed Transportation Code, §504.101 authorizing the department to issue personalized non-specialty license plates. Under the new law, only specialty license plates will be eligible for personalization. The proposed amendments do not alter the fee for a personalized specialty plate issued by the department. The fees for "Custom license plates," "T-Plates (Premium) license plates," formerly referred to as "Premium license plates," and "Luxury license plates," which provide for personalization, are being reduced by these amendments. The reduction of fees is a result of the selection of the new specialty license plate vendor.

Amendments to §17.40(e) make minor technical corrections. The amendment to §17.40(e)(2) replaces "designee" for "designees" as the executive director is only authorized to designate one person to make the final decision on the specialty license plate application. The amendment to §17.40(e)(3) corrects the reference to the vendor to clarify that it is the vendor that is responsible to the department for the specialty license plate start up fee.

Section 17.40(h) is amended to revise the fees for "T-Plates (Premium) license plates," and "Luxury license plates," amend the fees and add a new type of license plate under "Custom license plates," and add paragraphs establishing new vendor specialty license plate types: "Freedom license plates," "Background only license plates," and "Vendor souvenir license plates." The amendments replace the term "customized" with the term "personalized" to be consistent with the statutory terminology in Transportation Code, §§504.003, 504.102, 504.851, and 504.853 indicating specific alpha and numeric patterns.

"Custom license plates," "T-Plates (Premium) license plates," and "Luxury license plates," and the new "Freedom license plates," and "Vendor souvenir license plates" may be personalized with a unique alphanumeric pattern. "Custom license plates" may be personalized with either three alpha and two or three numeric characters or two or three numeric and three alpha characters or with up to six alphanumeric characters on a generic white background license plate. "T-Plates (Premium) license plates" will be made available to coincide with extraordinary events of public interest and may be personalized with up to seven alphanumeric characters. "Luxury license plates" may be personalized with up to six alphanumeric characters. "Freedom license plates" may be personalized with up to seven alphanumeric characters. "Vendor souvenir license plates" may be personalized with up to twenty-four alphanumeric characters.

"Custom license plates," "T-Plates (Premium) license plates," "Luxury license plates," "Freedom license plates," and "Background only license plates" will be available for the following vehicle registration classes: passenger car less than or equal to 6,000 pounds; passenger car or motor home more than 6,000 pounds; light truck less than or equal to one ton; truck more than one ton; trailer; travel trailer; motorcycle; private bus less than or equal to 6,000 pounds; and private bus more than 6,000 pounds. "Vendor souvenir license plates" are replica plates and are not eligible for display on a registered vehicle.

The proposed fees reflect the vendor's recommendation. The fee structure developed by the vendor will enable the department to recoup costs associated with implementation of the program, compensate the vendor for start up costs and the risk incurred by this venture, and allow the vendor to make a profit if enough vendor-marketed plates are purchased.

The amendments to §17.40(h)(1) propose a fee for "Custom license plates" of $85 for one year, $225 for five years, and $325 for ten years. This represents a reduction in the fee of $10 for the one year plates and $70 for the five and ten year plates. The amendment also expands the types of plates offered under this category. Section 17.40(h)(1) now allows for the issuance of a generic license plate with a white background and the Texas silhouette to be personalized with up to six alphanumeric characters. The proposed fee for "T-Plates (Premium) license plates" under §17.40(h)(2) is $95 for one year, $395 for five years, and $495 for ten years. This is a reduction of $100 for each of these plates. The proposed fee for "Luxury license plates" under §17.40(h)(3) is $195 for one year, $495 for five years, and $595 for ten years. This is a reduction of $200 for each of these plates.

The new language in §17.40(h)(4) creates the "Freedom license plates" category and sets the fees at $395 for one year, $695 for five years, and $795 for ten years. The new language in §17.40(h)(5) creates the "Background only license plates" category and sets the fees at $55 for one year, $195 for five years, and $295 for ten years. New §17.40(h)(6) establishes a "Vendor souvenir license plates" category and sets the fee at $40.

Section 17.40(n) is amended to reduce the fee for each restyled plate to $55 for all categories. This represents a reduction in the fee of $40 for custom plates, $70 for premium plates, and $95 for luxury plates and is a result of the selection of a new specialty plate vendor.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five years the amendments as proposed are in effect, there will be fiscal implications for state government as a result of enforcing or administering the amendments. The vendor will be selling the existing three categories of plates at the new price points as well as the new categories of plates. The new specialty license plate marketing contract with the vendor guarantees the state a minimum return of $25 million over the initial five-year contract period. The addition of new categories of plates should expedite the minimum return and increase the overall return. The administrative and manufacturing costs are similar to the costs for existing specialty license plates and the contract allows the department to recoup costs incurred. In addition to the state's contract percentage, the vendor will pay $8 for each set of vendor-marketed specialty license plates issued or renewed, which will be deposited to the State Highway Fund for the cost recoupment. The volume of sales of vendor-marketed specialty license plates is unknown at this time and the revenue to the General Revenue Fund could exceed $25 million if the vendor's license plate sales are greater than anticipated. There will be no fiscal implications for local government as county tax assessor-collectors will continue to experience the same fiscal impact from issuance of all specialty license plates.

Rebecca Davio, Director, Vehicle Titles and Registration Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT AND COST

Ms. Davio has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be to provide new categories of vendor specialty license plates. There are no anticipated economic costs for persons required to comply with the sections as proposed. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §17.40 may be submitted to Rebecca Davio, Director, Vehicle Titles and Registration Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on October 12, 2009.

STATUTORY AUTHORITY

The amendments are proposed 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 more specifically, Transportation Code, §502.0021, which authorizes the department to adopt rules governing the issuance of motor vehicle registration and Transportation Code, §504.851, which authorizes the commission to adopt rules to establish fees for the issuance or renewal of vendor-marketed license plates.

CROSS REFERENCE TO STATUTE

Transportation Code, §§504.851 - 504.852.

§17.40. Marketing of Specialty License Plates through a Private Vendor.

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

(c) Review and approval process. The specialty license plate committee established under §17.28(i) of this subchapter (relating to Specialty License Plates, Symbols, Tabs, and Other Devices) will review vendor specialty license plate applications.

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

(d) (No change.)

(e) Final approval and specialty license plate issuance.

(1) (No change.)

(2) Application not approved. If the vendor's application is not approved by the executive director, or the executive director's designee [~~designees~~], the vendor must submit a new application and supporting documentation for the design to be considered again by the committee.

(3) Issuance of approved specialty plates.

(A) If the vendor's specialty license plate is approved, the vendor [~~applicant~~] must submit the non-refundable start-up fee before any further design and processing of the license plate.

(B) (No change.)

(f) - (g) (No change.)

(h) License plate categories and associated fees. The categories and the associated fees for vendor specialty plates are set out in this subsection.

(1) Custom license plates. The fees for issuance of custom license plates are $85 for one year, $225 for five years, and $325 for ten years. Custom license plates include: [~~Custom license plates include license plates with a variety of pre-approved background and character color combinations that may be customized with either three alpha and two numeric characters or two numeric and three alpha characters. The fees for issuance of custom license plates are $95 for one year, $295 for five years, and $395 for ten years.~~]

(A) license plates with a variety of pre-approved background and character color combinations that may be personalized with either three alpha and two or three numeric characters or two or three numeric and three alpha characters; and

(B) generic license plates on standard white sheeting with the word "Texas" and a Texas silhouette graphic element that may be personalized with up to six alphanumeric characters.

(2) T-Plates (Premium) [~~Premium~~] license plates. T-Plates (Premium) [~~Premium~~] license plates may be personalized [~~customized~~] with up to seven [~~six~~] alphanumeric characters on colored backgrounds or designs approved by the department. T-Plates (Premium) [~~Premium~~] license plates will be made available to coincide with extraordinary events of public interest to Texas registrants. The fees for issuance of T-Plates (Premium) [~~premium~~] license plates are $95 [~~$195~~] for one year, $395 [~~$495~~] for five years, and $495 [~~$595~~] for ten years.

(3) Luxury license plates. Luxury license plates may be personalized [~~customized~~] with up to six alphanumeric characters on colored backgrounds or designs approved by the department. The fees for issuance of luxury license plates are $195 [~~$395~~] for one year, $495 [~~$695~~] for five years, and $595 [~~$795~~] for ten years.

(4) Freedom license plates. Freedom license plates include license plates with a variety of pre-approved background and character color combinations that may be personalized with up to seven alphanumeric characters. The fees for issuance of freedom license plates are $395 for one year, $695 for five years, and $795 for ten years.

(5) Background only license plates. Background only license plates include non-personalized license plates with a variety of pre-approved background and character color combinations. The fees for issuance of background only license plates are $55 for one year, $195 for five years, and $295 for ten years.

(6) Vendor souvenir license plates. Vendor souvenir license plates are replicas of vendor specialty license plate designs that may be personalized with up to twenty-four alphanumeric characters. Vendor souvenir license plates are not street legal or legitimate insignias of vehicle registration. The fee for issuance of souvenir license plates is $40.

(i) - (m) (No change.)

(n) Restyled vendor specialty license plates. A person who has purchased a multi-year vendor specialty license plate may request a restyled license plate at any time during the term of the plate.

(1) (No change.)

(2) The fee for each restyled license plate is $55.[~~:~~]

[~~(A) $95 for a custom license plate as described in subsection (h)(1) of this section;~~]

[~~(B) $125 for a premium license plate as described in subsection (h)(2) of this section;~~]

[~~(C) $145 for a luxury license plate as described in subsection (h)(3) of this section.~~]

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

Filed with the Office of the Secretary of State on August 28, 2009.

TRD-200903805
Bob Jackson
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: October 11, 2009
For further information, please call: (512) 463-8683

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CHAPTER 21. RIGHT OF WAY

The Texas Department of Transportation (department) proposes new §21.24, State Participation in Gas Pipeline Relocations; amendments to §21.31, Definitions, §21.33, Applicability, §21.34, Scope, §21.36, Rights of Utilities, §21.37, Design; and new §21.42, Appeal Process, all concerning the installation and adjustment of utility facilities in state highway rights of way.

EXPLANATION OF PROPOSED AMENDMENTS AND NEW SECTIONS

Title 43, Texas Administrative Code (TAC), Chapter 21, Subchapter B, Utility Adjustment, Relocation, or Removal, was adopted to prescribe requirements for the adjustment, relocation, and removal of utility facilities on the state highway system and provide for reimbursement for the costs of that work in accordance with Transportation Code, Chapter 203, Subchapter E. Similarly, Title 43, Chapter 21, Subchapter C, Utility Accommodation, was adopted to prescribe minimum requirements for the accommodation, method, materials, and location for the installation, adjustment, and maintenance of public and private utilities within the right for way for the state highway system. House Bill 2572, 81st Legislature, Regular Session, 2009, amended Utilities Code, §181.005 and authorized gas corporations to lay and maintain gas pipelines along public roads, subject to certain conditions relating to compliance with Railroad Commission of Texas safety regulations, state and federal regulations regarding the accommodation of utility facilities, and limitations on state reimbursement for the cost of pipeline relocations caused by highway improvement projects. The proposed amendments and new sections are necessary to comply with the provisions of HB 2572 and clarify existing language.

New §21.24, establishes a procedure for determining the circumstances under which the department must reimburse a gas corporation for the adjustment, modification, relocation, or removal of the gas corporation's pipeline made necessary by an improvement to a state highway. House Bill 2572 creates a distinction among different types of gas corporations and, except for pipelines located on land in which the gas corporation has a property interest, authorizes the state to reimburse the cost of

adjusting only those gas pipelines that are owned or operated by a gas utility, as defined under Utilities Code, §181.021, or a common carrier subject to the Natural Resources Code, Chapter 111. Prior to the enactment of HB 2572, those two types of entities were already authorized to locate gas pipelines longitudinally on a state highway right of way, and the department, under Transportation Code, §203.092, was authorized to reimburse a gas utility and a common carrier for the cost of adjustment required by improvement of interstate highway or toll highway projects. Although Utilities Code, §181.005, as amended by HB 2572, increases the types of gas corporations that may locate their gas pipelines longitudinally on a state highway right of way, the additional authorized gas corporations are not entitled to state reimbursement under Transportation Code, §203.092 on interstate highway or toll highway projects.

New §21.24(a) clarifies that the limitation on reimbursement only applies to a gas pipeline owned or operated by a gas corporation authorized to act under Utilities Code, §181.005 that is located longitudinally on a state highway right of way. If the gas pipeline crosses the right of way, but is not located longitudinally, the limitation described in §21.24(b) does not apply and eligible costs would be entitled to reimbursement.

New §21.24(b) describes the general rule that the adjustment of a gas pipeline will be at the sole expense of the gas corporation. It then sets out two exceptions: (1) the owner or operator of the pipeline has a private property interest in the land occupied by the pipeline that is adjusted, or (2) the pipeline is owned or operated by a gas utility as defined in Utilities Code, §181.021, or a common carrier subject to the Natural Resources Code, Chapter 111, and also meets the requirements of Transportation Code, §203.092. This is a restatement of the statutory language in Utilities Code, §181.005.

New §21.24(c) establishes department procedure for making a determination that state reimbursement for the cost of adjusting a gas pipeline is authorized. The requesting pipeline owner or operator must provide: (1) a written certification that it is a gas utility or common carrier that qualifies for reimbursement under Utilities Code, §181.005, and (2) documentation issued by the Railroad Commission of Texas that substantiates that it is a gas utility or common carrier as described in subsection (b). The information required by this new subsection will enable the department to exercise due diligence in making a decision to reimburse the owner or operator.

Amendments to §21.31(4) delete the word "utilities" and replace it with the words "utility facilities" in the definition of "As-Built plans." This change clarifies that the definition relates to the actual lines, pipelines, conduits, cables, and their appurtenances rather than the entity that owns the utility facilities.

Amendments to §21.31(8) add the word "facility" in the definition of "Certified as-installed construction plans." This change clarifies that the definition relates to the actual lines, pipelines, conduits, cables, and their appurtenances rather than the entity that owns the utility facilities.

Amendments to §21.31(11) delete the word "utilities" and replace it with the words "utility facilities" in the definition of "Conduit." This change clarifies that the definition relates to the actual lines, pipelines, cables, and their appurtenances rather than the entity that owns the utility facilities.

A definition of "Director" is added as new §21.31(16). It identifies the chief administrative officer in charge of the Maintenance or Right of Way Divisions, or any successor divisions, as the director. There is no current definition for this term and it is important to clearly identify the person responsible for authorizing exceptions under 43 TAC §21.35 and determining appeals under new 43 TAC §21.42.

Subsequent definitions following new §21.31(16) are renumbered for consistency and clarity.

A definition of "Engineering study" is added as new §21.31(22). It refers to an engineering analysis that determines the expected impact that permitting vehicular access will have on mobility, safety, and the efficient operation of the state highway system. Use of the term is necessary for describing the conditions of establishing a utility strip under amended 43 TAC §21.31(b)(8).

Amendments to renumbered §21.31(23) add the words "or that officer's designee not below the level of assistant executive director" to the definition of "Executive director." This addition allows the executive director to expedite the decision making process by delegating responsibilities exercised under 43 TAC, Chapter 21, Subchapter C to other upper level administration employees in the department.

Amendments to renumbered §21.31(26) add the words "a" and "utility" to clarify the nature of the lines governed by the subchapter and delete the words "and is private in function and does not directly or indirectly serve the public." The change to the definition of "Gathering line" is necessary to be consistent with the expanded authority of gas corporations to place different types of gas pipelines along state highway right of way under Utilities Code, §181.005. A gathering line that is operated by a gas corporation is no longer automatically considered to be a private line.

Renumbered §21.31(39) is completely revised. Instead of the current definition of "Private utility," which focuses on the exclusive private nature of the particular lines, pipelines, conduits, cables, and their appurtenances, the new definition focuses on the nature of the utility's business. A private utility is now considered to be any business that is not a public utility as defined in renumbered 43 TAC §21.31(40). A public utility is a business that directly or indirectly serves the public and is authorized by state law to place its facilities longitudinally in state highway right of way. The change is necessary to be consistent with the expanded authority of gas corporations to place different types of gas pipelines along state highway right of way under Utilities Code, §181.005.

Amendments to renumbered §21.31(40) delete the words "for public consumption" and replace them with the words "which directly or indirectly serves the public and that is authorized by state law to operate, construct, and maintain its facilities over, under, across, on, or along highways," and in addition, add the words "that is" and "producing." This expanded definition of "Public utility" more accurately describes the legal standard for determining those types of utilities that are authorized to place utility facilities longitudinally in state highway right of way. The terms "public utility" and "private utility" are used in the context of authorizing longitudinal placement.

A definition of "Traffic impact analysis" is added as new §21.31(46). It refers to a specific type of engineering study that determines the potential current and future traffic impacts of a proposed traffic generator on the state highway system. The traffic impact analysis must be signed, sealed, and dated by an engineer licensed to practice in the state of Texas. Use of the term is necessary for describing the conditions of establishing a utility strip under 43 TAC §21.31(b)(8).

Amendments to renumbered §21.31(50) add the words "communication controller boxes and pedestals, electric boxes" to the definition of "Utility appurtenances." The change gives more examples of a utility appurtenance to clarify that it is an inclusive term that covers all types of utility facilities.

Amendments to renumbered §21.31(51) add the word "utility" to the definition of "Utility facilities". The word was mistakenly omitted in the original text and its addition clarifies the reference to lines, pipelines, conduits, cables, and their appurtenances that carry a utility product.

Amendments to the definition of "utility strip" in renumbered §21.31(52) delete the words "border width, where an assignment may be designated for a utility delineating the area of" and replace it with the following phrase: "area between the outer traveled way and the right of way line, for the nonexclusive use, occupancy, and access by one or more authorized public utilities." The change describes the area covered by the previously undefined term "border width," and clarifies that a utility strip may contain more than one utility facility.

Amendments to §21.33(d) include three changes. The first change deletes the words "or designee." Since the definition of "district engineer" already includes the district engineer's designee, the reference in this section is redundant. The other changes to §21.33(d) clarify that a special district requirement on a specific installation or adjustment of a utility facility is classified as a supplemental accommodation requirement and, if stricter than the minimum requirements of 43 TAC, Chapter 21, Subchapter C, must be detailed in writing.

Amendments to §21.34 include two changes. The first change concerns the effect of other conflicting law on the enforcement of regulations contained in Subchapter C. The existing discussion on the effect of other laws is too general and ambiguous. It does not specify the type of applicable law and implies that a conflict results in the entire subchapter being superseded. The amended language clarifies that only other federal or state law (excluding municipal ordinances and county orders) can cause a conflict, and provides that the higher degree of federal or state law protection applies only to the particular issue. Further changes to §21.34 delete references to district supplemental accommodation requirements and a utility's ability to appeal those additional district requirements. The references to district supplemental accommodation requirements are moved into 43 TAC §21.33(d) and consolidated with other special district requirements. The references to an appeal are moved into new 43 TAC §21.42 and consolidated with an expanded appeal process.

Amendments to §21.36(a) delete the word "certain" as a general modifier of the word "utilities" and replace it with the more specific and defined word "public." The word "lines" is replaced with the broader and more accurate word "facilities." These changes clarify the types of utilities that are authorized to place utility facilities longitudinally in state highway right of way and are consistent with the expanded authority of gas corporations under Utilities Code, §181.005.

Amendments to §21.36(b) delete specific references to the types of "private lines" that cannot be placed longitudinally on a highway right of way and replace the language with the more precise and defined phrase "private utility." The amended language focuses on the nature of the utility's business, as opposed to the nature of the particular utility line, and is necessary to be consistent with the expanded authority of gas corporations to place different types of gas pipelines along state highway right of way under Utilities Code, §181.005.

New §21.36(c) authorizes the department to require a utility seeking to install or adjust a utility facility longitudinally within a highway right of way to provide: (1) a written certification that it is an entity authorized by state law to place its lines along state highways, and (2) documentation issued by the applicable state regulatory agency that substantiates that the utility and its facilities are subject to public regulation. The documentation may be required by the department if the utility's legal authority for placement of its facilities longitudinally in highway right of way is not readily evident. The two listed documents provide necessary information that will assist the department in making a determination that the utility is a defined "public utility" entitled under existing law to install or adjust a utility facility longitudinally within state highway right of way. Without the state regulatory agency information, the department is not able to determine if a gas company is a "gas corporation" under Utilities Code, §181.005.

New §21.37(a)(10) adds "applicable Railroad Commission of Texas safety regulations" to the list of other regulations to which utility installations must conform. The change is necessary to be consistent with the expanded authority of gas corporations to place different types of gas pipelines along state highway right of way under Utilities Code, §181.005.

Amendments to §21.37(b)(4) add the word "overhead" and delete the reference to subsection "(c)" of 43 TAC §21.41. Title 43, Chapter 21, §21.41 concerns only overhead electric and communication lines. Subsection (c) of 43 TAC §21.41 is limited to horizontal clearance, thus it is too limiting and is incorrect for the purposes of §21.37(b)(4). These changes provide the proper cross-reference and clarify the meaning of the subparagraph.

Section 21.37(b)(5) relates to a utility's responsibility to determine whether other utility lines exist at the proposed installation area. The amendments to §21.37(b)(5) delete the word "utilities" and replaces it with the words "utility facilities." This change clarifies that the subparagraph relates to the actual lines, pipelines, conduits, cables, and their appurtenances rather than the entity that owns the utility facilities.

Section 21.37(b)(6) relates to the preferred areas for a utility's access to its facility on controlled access highways or freeways. The amendments to §21.37(b)(6) delete three references to the words "utilities" and "utility" and replace them with the words "utility facilities" and "facility." These changes clarify that the subparagraph relates to the actual lines, pipelines, conduits, cables, and their appurtenances rather than the entity that owns the utility facilities. The phrase "shall not" is also replaced with "may not" to be more grammatically correct.

Amendments to §21.37(b)(8) retain the department's authority to establish a utility strip for longitudinal installation of a utility facility within existing access denial lines of a controlled access highway or freeway without frontage roads and add specific procedures and requirements to provide a well-defined process for this alternative.

New §21.37(b)(8)(A) requires the utility to submit a written request for the installation that includes: (i) the information required by 43 TAC §21.35; (ii) survey data to identify and designate the location of the utility strip, its relationship to the existing highway facilities and right of way line; (iii) an access plan with clearly described procedures to preserve the safety and free

flow of traffic on the highway during periods of installation, maintenance, and emergency service or repair; and (iv) any additional information including an engineering study, requested by the department, that is reasonably necessary for a determination of the impact of the proposed utility facility on the controlled access highway.

New §21.37(b)(8)(B) requires the department to establish a utility strip if the utility satisfies the conditions described in 43 TAC §21.35 and §21.37(b)(8)(A). This is consistent with federal regulation 23 C.F.R. §645.209(c)(5). In establishing the utility strip, the department shall locate a utility access denial line between the proposed utility facility and the mainlanes and connecting ramps, and designate the specific area of use, occupancy, and access for installation and maintenance of the requested utility facility.

New §21.37(b)(8)(C) - (F) authorizes the department to adjust the utility access denial line of an established utility strip to accommodate any additional approved utility facilities, clarifies that the requesting utility is responsible for all costs associated with providing the information required for designation of a new or expanded utility strip, requires the utility to delineate the utility-access denial line on the ground by installing permanent markers, and retains the existing requirements of §21.37(b)(8) pertaining to the location of fences at the right of way line and the continuation of access denial regarding property adjoining the right of way line.

Section 21.37(c)(4) describes the requirements for a utility's installation plan. The amendment to §21.37(c)(4) deletes the word "utilities" and replaces it with the words "utility facilities." This change clarifies that the paragraph relates to the actual lines, pipelines, conduits, cables, and their appurtenances rather than the entity that owns the utility facilities.

New §21.42 establishes an appeal process under which a utility can contest the department's application of the accommodation requirements in 43 TAC, Chapter 21, Subchapter C. It incorporates provisions from the limited appeal process in existing 43 TAC §21.34 into a comprehensive appeal procedure that allows the utility to challenge any denial of a utility's request for the installation of a new utility facility or the adjustment or relocation of an existing utility facility. The appeal process gives the utility an opportunity to appeal a district decision first to a division director, and if not satisfied at that level, the appeal can be presented to the department's executive director. The appeal process is consistent with the requirements of Utilities Code, §181.005.

New §21.42(a) authorizes a utility to file a petition of appeal to contest: (1) a supplemental accommodation requirement prescribed under 43 TAC §21.33; (2) a denial of the utility's request for an exception under 43 TAC §21.35; or (3) a denial of the utility's request for either the installation of a new utility facility or the adjustment or relocation of an existing utility facility.

New §21.42(b) requires that the petition of appeal be filed with either the director of the Right of Way Division, if the utility facility that is the subject of the appeal occupies or is proposing to occupy the right of way under a utility joint use agreement, or with the director of the Maintenance Division, if the utility facility that is the subject of the appeal occupies or is proposing to occupy the right of way under a use and occupancy agreement other than a utility joint use agreement.

New §21.42(c) requires that the petition must: (1) be in writing; (2) completely and succinctly state the grounds for appeal and its factual basis; and (3) include sufficient factual documentation, such as drawings, surveys, or photographs, to establish the merits of the appeal.

New §21.42(d) provides that the utility has the burden of proving its appeal.

New §21.42(e) requires the division director to issue, within 45 days after the date of receipt of the petition, a written decision approving or disapproving the appeal, and to immediately send the decision to the utility. If a written decision is not issued within the 45-day period, the appeal is considered to be disapproved and the decision of disapproval is considered to be issued on the 46th day. This provision allows the utility to continue with the appeal in a timely manner in the event that the director is unable or unwilling to act within the designated period.

New §21.42(f) provides the utility an opportunity to appeal a director's decision under §21.42(e). It must submit a written petition of appeal to the department's executive director within 30 days after issuance of the division director's decision. The executive director will issue, within 30 days after the date of receipt of the petition, a final written decision approving or disapproving the appeal.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five years the amendments and new sections as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments and new sections.

John Campbell, Director, Right of Way Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments and new sections.

PUBLIC BENEFIT AND COST

Mr. Campbell has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing or administering the amendments and new sections will be improved administration of the utility accommodation program. There are no anticipated economic costs for persons required to comply with the sections as proposed. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §§21.31, 21.33, 21.34, 21.36, and 21.37, and new §21.24 and §21.42 may be submitted to John Campbell, Director, Right of Way Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on October 12, 2009.

SUBCHAPTER B. UTILITY ADJUSTMENT, RELOCATION, OR REMOVAL

43 TAC §21.24

STATUTORY AUTHORITY

The new section is proposed 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 more specifically, Transportation Code, §203.095, which directs the commission to adopt rules to implement Transportation Code, Chapter 203, Subchapter E, concerning relocation of utility facilities required by improvements to the state highway system, and Utilities

Code, §181.005, which directs the commission to adopt rules to provide an appeals process relating to the department's utility accommodation regulations.

CROSS REFERENCE TO STATUTE

Transportation Code, §§203.002, 203.003, 203.031, and -203.092; and Utilities Code, §181.005.

§21.24. State Participation in Gas Pipeline Relocations.

(a) This section applies only to the adjustment, modification, relocation, or removal of a gas pipeline that is owned or operated by a gas corporation authorized to act under Utilities Code, §181.005, and that is located longitudinally on a state highway right of way.

(b) The adjustment, modification, relocation, or removal of a gas pipeline owned or operated by a gas corporation made necessary by an improvement to a state highway will be at the sole cost and expense of the gas corporation, except that the department will reimburse the gas corporation for that cost and expense if:

(1) the owner or operator of the pipeline has a private property interest in the land occupied by the pipeline that is adjusted, modified, relocated, or removed; or

(2) the pipeline is owned or operated by a gas utility, as defined in the Utilities Code, §181.021 or a common carrier subject to Natural Resources Code, Chapter 111, and meets the requirements of Transportation Code, §203.092.

(c) If an owner or operator of a gas pipeline requests reimbursement from the department for the costs of adjustment, modification, relocation, or removal of its pipeline under subsection (b)(2) of this section, the pipeline owner or operator must provide:

(1) a written certification that it is a gas utility or common carrier that qualifies for reimbursement under subsection (b)(2) of this section; and

(2) documentation issued by the Railroad Commission of Texas that substantiates that it is a gas utility, as defined in the Utilities Code, §181.021 or a common carrier subject to Natural Resources Code, Chapter 111.

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 28, 2009.

TRD-200903806
Bob Jackson
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: October 11, 2009
For further information, please call: (512) 463-8683

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SUBCHAPTER C. UTILITY ACCOMMODATION

43 TAC §§21.31, 21.33, 21.34, 21.36, 21.37, 21.42

STATUTORY AUTHORITY

The amendments and new section are proposed 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 more specifically, Transportation Code, §203.095, which directs the commission to adopt rules to implement Transportation Code, Chapter 203, Subchapter E, concerning relocation of utility facilities required by improvements to the state highway system, and Utilities Code, §181.005, which directs the commission to adopt rules to provide an appeals process relating to the department's utility accommodation regulations.

CROSS REFERENCE TO STATUTE

Transportation Code, §§203.002, 203.003, 203.031, and 203.092; and Utilities Code, §181.005.

§21.31. Definitions.

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

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

(4) As-Built plans--Drawings showing the actual locations of installed or relocated utility facilities [~~utilities~~].

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

(8) Certified as-installed construction plans--The construction plans for the installation of a utility facility, accompanied by an affidavit certifying that the facility was installed in accordance with the plans.

(9) - (10) (No change.)

(11) Conduit--A pipe or other opening, buried or above ground, for conveying fluids or gases, or serving as an envelope containing pipelines, cables, or other utility facilities [~~utilities~~].

(12) - (15) (No change.)

(16) Director--The chief administrative officer in charge of either the Maintenance Division or the Right of Way Division, or a successor division of either the Maintenance Division or the Right of Way Division.

(17) [~~(16)~~] Distribution line--That part of a utility system connecting a transmission line to a service line.

(18) [~~(17)~~] District--One of the 25 geographical districts into which the department is divided.

(19) [~~(18)~~] District engineer--The chief administrative officer in charge of a district, or his or her designee.

(20) [~~(19)~~] Duct--A pipe or other opening, buried or above ground, containing multiple conduits.

(21) [~~(20)~~] Engineer--A person licensed to practice engineering in the state of Texas.

(22) Engineering study--An appropriate level of analysis as determined by the department, which may include a traffic impact analysis, that determines the expected impact that permitting access will have on mobility, safety, and the efficient operation of the state highway system.

(23) [~~(21)~~] Executive director--The chief administrative officer of the department, or that officer's designee not below the level of assistant executive director.

(24) [~~(22)~~] Freeway--A divided highway with frontage roads or full control of access.

(25) [~~(23)~~] Frontage road--A street or road auxiliary to, and located alongside, a controlled access highway or freeway that separates local traffic from high-speed through traffic and provides service to abutting property.

(26) [~~(24)~~] Gathering line--A line that delivers a raw utility product from various sites to a central distribution or feed line for the purposes of refining, collecting, or storing the product[~~, and is private in function and does not directly or indirectly serve the public~~].

(27) [~~(25)~~] Hazardous material--Any gas, material, substance, or waste that, because of its quantity, concentration, or physical or chemical characteristics, is deemed by any federal, state, or local authority to pose a present or potential hazard to human health or safety or to the environment. The term includes hazardous substances, hazardous wastes, marine pollutants, elevated temperature materials, materials designated as hazardous in the Hazardous Materials Table (49 CFR §172.101), and materials that meet the defining criteria for hazard classes and divisions in 49 CFR Part 173 (49 CFR §171.8).

(28) [~~(26)~~] High-pressure gas or liquid petroleum lines--Gas or liquid petroleum pipelines that are operated, or may reasonably be expected to operate in the future, at a pressure of over 60 pounds per square inch.

(29) [~~(27)~~] Horizontal clearance--The areas of highway roadsides designed, constructed, and maintained to increase safety, improve traffic operation, and enhance the appearance of highways.

(30) [~~(28)~~] Idled facility--A utility conduit or line which temporarily does not carry a product, or does not perform a function and whose owner has not provided a date for its return to operation.

(31) [~~(29)~~] Inclement weather--Weather conditions that are hazardous to the safety of the traveling public, highway or utility workers, or the preservation of the highway.

(32) [~~(30)~~] Joint use agreement--A use and occupancy agreement that describes the obligations, responsibilities, rights, and privileges vested in the department and retained by the utility, and used for situations in which the utility has a compensable interest in the land occupied by its facilities and the land is to be jointly occupied and used for highway and utility purposes.

(33) [~~(31)~~] Low-pressure gas or liquid petroleum lines--Gas or liquid petroleum pipelines that are operated at a pressure not exceeding 60 pounds per square inch.

(34) [~~(32)~~] Mainlanes--The traveled way of a freeway or controlled access highway that carries through traffic.

(35) [~~(33)~~] Maintenance Division--The administrative office of the department responsible for the maintenance and operation of the state highway system.

(36) [~~(34)~~] Noncontrolled access highway--A highway on which owners or occupants of abutting lands or other persons have direct access to or from the mainlanes by department permit.

(37) [~~(35)~~] Outer separation--The area between the mainlanes of a highway for through traffic and a frontage road.

(38) [~~(36)~~] Pavement structure--The combination of the surface, base course, and subbase.

(39) [~~(37)~~] Private utility--A person, firm, corporation, or other entity engaged in a business other than a business described in paragraph (40) of this section, including an individual who owns a service line. [~~Any utility facility, its accessories, and appurtenances, including gathering lines devoted exclusively to private use.~~]

(40) [~~(38)~~] Public utility--A person, firm, corporation, river authority, municipality, or other political subdivision that is engaged in the business of producing, transporting or distributing a utility product which directly or indirectly serves the public and that is authorized by state law to operate, construct, and maintain its facilities over, under, across, on, or along highways [~~for public consumption~~].

(41) [~~(39)~~] Ramp terminus--The entrance or exit portion of a controlled access highway ramp adjacent to the through traveled lanes.

(42) [~~(40)~~] Right of Way Division (ROW)--The administrative office of the department responsible for the acquisition and management of the state right of way.

(43) [~~(41)~~] Riprap--An appurtenance placed on the exposed surfaces of soils to prevent erosion, including a cast-in-place layer of concrete or stones placed together.

(44) [~~(42)~~] Service line--A utility facility that conveys electricity, gas, water, or telecommunication services from a main or conduit located in the right of way to a meter or other measuring device that services a customer or to the outside wall of a structure, whichever is applicable and nearer the right of way.

(45) [~~(43)~~] TMUTCD--The most recent edition of Texas Manual on Uniform Traffic Control Devices for Streets and Highways.

(46) Traffic impact analysis--A traffic engineering study that determines the potential current and future traffic impacts of a proposed traffic generator and that is signed, sealed, and dated by an engineer licensed to practice in the state of Texas.

(47) [~~(44)~~] Transmission line--That part of a utility system connecting a main energy or material source with a distribution system.

(48) [~~(45)~~] Use and occupancy agreement--The written document, whether in the form of an agreement, acknowledgment, notice, or request, by which the department approves the use and occupancy of highway right of way by utility facilities.

(49) [~~(46)~~] Utility--Any entity owning a public or private utility.

(50) [~~(47)~~] Utility appurtenances--Any attachments or integral parts of a utility facility, including fire hydrants, valves, communication controller boxes and pedestals, electric boxes, and gas regulators.

(51) [~~(48)~~] Utility facilities--All utility lines, pipelines, conduits, cables, and their appurtenances within the highway right of way except those for highway-oriented needs, including underground, surface, or overhead facilities either singularly or in combination, which may be transmission, distribution, service, or gathering lines.

(52) [~~(49)~~] Utility strip--The area of land established within a control of access highway, located longitudinally within the area between the outer traveled way and the right of way line, for the nonexclusive [~~border width, where an assignment may be designated for a utility delineating the area of~~] use, occupancy, and access by one or more authorized public utilities.

(53) [~~(50)~~] Utility structure--A pole, bridge, tower, or other aboveground structure on which a conduit, line, pipeline, or other utility facility is attached.

§21.33. Applicability.

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

(d) The district engineer [~~or designee~~] may prescribe special district supplemental accommodation requirements on a specific installation or adjustment based on the specific soil, terrain, climate, vegetation, traffic characteristics, type of utility line, or other factors unique to the area. If the district supplemental accommodation requirements are more strict than the minimum requirements of this subchapter, the

supplemental accommodation requirements must be detailed in writing.

§21.34. Scope.

This subchapter governs matters concerning accommodation, location, and methods for the installation, adjustment, relocation, and maintenance of utilities on state highway rights of way, but does [~~do~~] not alter current authority for their installation nor determination of financial responsibilities for placement or adjustment. To the extent that a federal or state [~~Any~~] law, code, regulation, rule, or order [~~that~~] prescribes a higher degree of protection for highway facilities or the traveling public than the protection provided by this subchapter, the federal or state provision controls. [~~shall supersede this subchapter. District supplemental accommodation requirements shall be detailed where more than the minimums of this subchapter are required. If a utility contests such supplemental requirements, they may appeal to the district engineer. The district engineer's decision may be appealed to the Maintenance Division or Right of Way Division, as appropriate.~~]

§21.36. Rights of Utilities.

(a) Under state law, public [~~certain~~] utilities have a right to operate, construct, and maintain their facilities [~~lines~~] over, under, across, on, or along highways, subject to highway purposes. This includes utilities authorized by law to transport or distribute natural gas, water, electric power, telephone, cable television, or salt water and those that are authorized to construct and operate common carrier petroleum and petroleum product lines.

(b) A private utility [~~Private lines~~] may place a utility facility over, under, or across a highway, subject to highway purposes [~~cross~~], but it is [~~are~~] not permitted to place a utility facility longitudinally on a highway right [~~rights~~] of way. [~~This includes privately-owned lines from gas or oil wells, lines owned by oil companies within refinery and oil storage complexes or by firms engaged in businesses other than those described in subsection (a) of this section, private purpose lines of an entity described in subsection (a) of this section, and service lines owned by individuals.~~]

(c) If a utility requests the installation of a new utility facility or the adjustment or relocation of an existing utility facility longitudinally within a highway right of way and the utility's legal authority to install, adjust, or relocate its facility longitudinally within the highway right of way is not readily evident, the department may require that the utility provide:

(1) a written certification that it is an entity authorized by state law to operate, construct, and maintain its lines over, under, across, on, or along state highways; and

(2) documentation issued by the applicable state regulatory commission or agency that substantiates that the utility and its facilities are subject to public regulation.

§21.37. Design.

(a) General. The design of any utility installation, adjustment, or relocation is the responsibility of the utility. Utility design will be accomplished in a manner and to a standard acceptable to the department. The location and manner in which a utility installation, adjustment, or relocation work will be performed within the right of way must be reviewed and approved by the department. The department will review the measures to be taken to preserve the safety and free flow of traffic, structural integrity of the highway or highway structure, ease of highway maintenance, appearance of the highway, and the integrity of the utility facility. Utility installations shall conform with:

(1) - (7) (No change.)

(8) 30 TAC §§290.38 - 290.47, relating to Rules and Regulations for Public Water Systems; [~~and~~]

(9) applicable state and federal environmental regulations, including storm water pollution prevention, endangered species, and wetlands; and[~~.~~]

(10) applicable Railroad Commission of Texas safety regulations.

(b) Location.

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

(4) The horizontal and vertical location of overhead utility lines shall conform with §21.41 [~~§21.41(c)~~] of this subchapter (relating to Overhead Electric and Communication Lines), consistent with the clearances applicable to all roadside obstacles. No aboveground fixed objects will be allowed in the horizontal clearance.

(5) The utility is responsible for determining whether other utility lines exist at, or if plans have been submitted to the department regarding, the proposed installation area. The utility must make every effort to insure that the proposed installation is compatible with existing and approved future utility facilities [~~utilities~~].

(6) A utility facility [~~Utilities~~] on controlled access highways or freeways shall be located to permit maintenance of the facility [~~utility~~] by access from frontage roads, nearby or adjacent roads and streets, or trails along or near the right of way line without access from the mainlanes or ramps. A utility facility may [~~Utilities shall~~] not be located longitudinally in the center median or outer separation of controlled access highways or freeways.

(7) (No change.)

(8) The procedures and requirements of this paragraph apply if [~~When~~] a longitudinal installation is proposed within existing access denial lines of a controlled access highway or freeway without frontage roads. [~~and meets the conditions of §21.35 of this subchapter, the department may establish a utility strip, specific to the requesting utility, designating the area of use, occupancy, and access. All existing and proposed fences shall be located at the freeway right of way line. Denial of access regarding property adjoining the right of way line will not be altered.~~]

(A) The public utility seeking the installation shall submit to the district engineer a written request that includes for each facility proposed for installation the following detailed information:

(i) the information required by §21.35 of this subchapter (relating to Exceptions);

(ii) survey data as directed by the department to identify and designate the location of a utility strip, the utility strip's relationship to existing highway facilities and the right of way line, and the specific area of use, occupancy, and access for installation and maintenance of the utility facility;

(iii) a plan for the utility's access to, from, and within the utility strip with clearly described procedures that preserve the safety and free flow of traffic on the controlled access highway or freeway during installation, maintenance, and emergency service or repair of the utility facility; and

(iv) any additional information, including an engineering study requested by the department, that is reasonably necessary for a determination of the impact of the proposed utility facility on the safety, design, construction, operation, maintenance, and stability of the controlled access highway.

(B) If the requested utility facility installation meets the conditions of §21.35 of this subchapter and the other applicable require-

ments of this subchapter, the department shall establish a utility strip along the outer edge of the right of way by:

(i) locating a utility-access denial line between the proposed utility facility installation and the mainlanes and connecting ramps; and

(ii) designating the specific area of use, occupancy, and access for installation and maintenance of the requested utility facility.

(C) The department may adjust the utility-access denial line of an established utility strip to accommodate additional authorized utility facilities within the utility strip.

(D) The utility requesting installation of the utility facility is responsible for all costs associated with providing the information required for designation of a new or expanded utility strip. The utility shall delineate the utility-access denial line on the ground by setting readily identifiable, durable, and weatherproof permanent markers to represent or reference the corners, angle points, and points of curvature or tangency of the utility-access denial line.

(E) All existing and proposed fences shall be located at the freeway right of way line.

(F) Denial of access regarding property adjoining the right of way line will not be altered.

(c) Plans. Utilities shall be responsible and accountable for protecting the public investment in the highway, inclusive of all its components, and to maintain traffic capacity and safety for each highway user.

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

(4) Plans shall include the design, proposed location, vertical elevations, and horizontal alignments of the utility facility based on the department's survey data [~~datum~~], the relationship to existing highway facilities and the right of way line, and location of existing utility facilities [~~utilities~~] that may be affected by the proposed utility facility.

(5) As-built plans or certified as-installed construction plans shall include the installed location, vertical elevations, and horizontal alignments of the utility facility based upon the department's survey data [~~datum~~], the relationship to existing highway facilities and the right of way line, and access procedures for maintenance of the utility facility. As-installed construction plans certified by a utility or its representative shall be submitted to the department for each relocation or new installation. In the alternative, if approved by the director of the Maintenance Division or Right of Way Division, a district may require a utility to deliver either as-installed construction plans that are certified by an independent party or final as-built plans that are signed and sealed by an engineer or registered professional land surveyor. In determining whether to authorize a requirement for independently certified or signed and sealed plans, the director shall consider:

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

(6) (No change.)

(d) - (f) (No change.)

§21.42. Appeal Process.

(a) A utility may file a petition of appeal to contest:

(1) a supplemental accommodation requirement prescribed under §21.33 of this subchapter (relating to Applicability);

(2) the denial of the utility's request for an exception under §21.35 of this subchapter (relating to Exceptions); or

(3) the denial of the utility's request under this subchapter for either the installation of a new utility facility or the adjustment or relocation of an existing utility facility.

(b) The petition must be filed with:

(1) the director of the Right of Way Division, if the utility facility that is the subject of the appeal occupies or is proposed to occupy the right of way under a utility joint use agreement; or

(2) the director of the Maintenance Division, if the utility facility that is the subject of the appeal occupies or is proposed to occupy the right of way under a use and occupancy agreement other than a utility joint use agreement.

(c) The petition must:

(1) be in writing;

(2) completely and succinctly state the grounds for appeal and its factual basis; and

(3) include sufficient factual documentation, such as drawings, surveys, or photographs, to establish the merits of the appeal.

(d) The utility has the burden of proving its appeal.

(e) The director of the division to which a petition that satisfies the requirements of this section is submitted will issue, within 45 days after the date of receipt of the petition, a written decision approving or disapproving the appeal and, on issuance, immediately send the decision to the utility. If a written decision is not issued within the 45-day period, the appeal is considered to be disapproved and the decision of disapproval is considered to be issued on the 46th day after the date of receipt of the petition.

(f) To appeal a decision issued under subsection (e) of this section, the utility must submit a written petition of appeal to the executive director within 30 days after the date that the division director's decision is issued. The petition must satisfy the requirements of subsection (c) of this section. The executive director will issue, within 30 days after the date of receipt of the petition, a final written decision approving or disapproving the appeal.

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 28, 2009.

TRD-200903807
Bob Jackson
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: October 11, 2009
For further information, please call: (512) 463-8683

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CHAPTER 24. TRANS-TEXAS CORRIDOR SUBCHAPTER B. DEVELOPMENT OF FACILITIES

43 TAC §24.13

The Texas Department of Transportation (department) proposes amendments to §24.13, concerning corridor planning and development. The amendments to §24.13 are proposed in conjunction with §§1.82, 1.84, and 1.85, and concerning department advisory committees.

EXPLANATION OF PROPOSED AMENDMENTS

Under §24.13(c), the Texas Transportation Commission (commission) creates corridor segment committees for proposed segments of the Trans-Texas Corridor or certain transportation facilities that may become segments of the Trans-Texas Corridor to provide input, advice, and recommendations to the commission and the department regarding the designation of a route for the segment for which the committee was created and the construction of the proposed segment of the Trans-Texas Corridor or a facility that may become all or part of the segment.

Amendments to §24.13, Corridor Planning and Development, add subsection (c)(7) to provide a sunset date of December 31, 2011 for commission corridor segment committees. The sunset date is established in accordance with Government Code, §2110.008, which authorizes a state agency by rule to establish a date on which advisory committees will automatically be abolished unless continued. Under Government Code, §2110.008, if a sunset date is not provided by rule an advisory committee is automatically abolished on the fourth anniversary of the date of its creation.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five years the amendments as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments.

Mark Tomlinson, Director, Texas Turnpike Authority Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT AND COST

Mr. Tomlinson has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be to provide efficiency of government by automatically abolishing a corridor segment committee unless the commission determines that its continued existence is desirable. There are no anticipated economic costs for persons required to comply with the sections as proposed. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §24.13 may be submitted to Mark Tomlinson, Director, Texas Turnpike Authority Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on October 12, 2009.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §227.002, which provides the commission with the authority to adopt rules as necessary or convenient to implement and administer Transportation Code, Chapter 227, and Government Code, §2110.008, which authorizes a state agency by rule to establish a sunset date for an advisory committee.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 227 and Government Code, Chapter 2110.

§24.13. Corridor Planning and Development.

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

(c) Corridor segment committees.

(1) - (6) (No change.)

(7) Duration. A corridor segment committee may be abolished at any time by the commission, but in no event may a committee continue beyond completion of the segment for which the committee is created. Except as otherwise specified in this paragraph, a committee created under this section is abolished December 31, 2011, unless the commission amends its rules to provide for a different 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 28, 2009.

TRD-200903808
Bob Jackson
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: October 11, 2009
For further information, please call: (512) 463-8683

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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 22. EXAMINING BOARDS

PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

CHAPTER 153. RULES RELATING TO PROVISIONS OF THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT

22 TAC §153.9

The Texas Appraiser Licensing and Certification Board withdraws the proposed amendments to §153.9 which appeared in the May 29, 2009, issue of the *Texas Register* (34 TexReg 3339).

Filed with the Office of the Secretary of State on August 28, 2009.

TRD-200903839
Devon V. Bijansky
Counsel
Texas Appraiser Licensing and Certification Board
Effective date: August 28, 2009
For further information, please call: (512) 465-3900

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PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 535. GENERAL PROVISIONS SUBCHAPTER E. EDUCATION, EXPERIENCE, EDUCATIONAL PROGRAMS, TIME PERIODS AND TYPE OF LICENSE

22 TAC §535.66

The Texas Real Estate Commission withdraws the proposed amendments to §535.66 which appeared in the June 26, 2009, issue of the *Texas Register* (34 TexReg 4271).

Filed with the Office of the Secretary of State on August 31, 2009.

TRD-200903865
Loretta R. DeHay
Interim Administrator and General Counsel
Texas Real Estate Commission
Effective date: August 31, 2009
For further information, please call: (512) 465-3926

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 52. ADMINISTRATION

SUBCHAPTER A. GENERAL PROVISIONS

1 TAC §52.1

The Office of the Attorney General adopts new Chapter 52, Subchapter A, §52.1, concerning Sick Leave Pool, without changes to the proposed text as published in the April 24, 2009, issue of the *Texas Register* (34 TexReg 2579) and will not be republished.

The purpose of the new rule is to prescribe procedures relating to the administration of the agency sick leave pool.

No comments were received regarding proposed rule during the comment period.

This rule is adopted in accordance with Texas Government Code §661.002(c), which requires state agencies to adopt rules and prescribe procedures relating to the administration of the agency sick leave pool.

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 28, 2009.

TRD-200903819
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Effective date: September 17, 2009
Proposal publication date: April 24, 2009
For further information, please call: (512) 936-9901

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PART 10. DEPARTMENT OF INFORMATION RESOURCES

CHAPTER 202. INFORMATION SECURITY STANDARDS

The Texas Department of Information Resources (department) adopts amendments to 1 TAC Chapter 202, §§202.1, 202.20 - 202.26, 202.70 - 202.76, concerning Information Security Standards, without changes to the proposed text as published in the June 5, 2009, issue of the *Texas Register* (34 TexReg 3459).

The amendments clarify and standardize policy requirements for state agencies and institutions of higher education to help protect the State's critical information resources and the security of citizens' information. The changes address three technical areas of security controls: firewalls, encryption, and incident response. They also reflect findings and recommendations of the State Auditor's Office (SAO) as well as improved technical standards.

Subchapter A. Definitions

1 TAC §202.1

The changes to §202.1(4), (5), (7), (10), (14), (15), and (20) are necessary to effectuate appropriate security controls. Section 202.1(9) clarifies and improves encryption technical standards. Section 202.1(22) clarifies and improves the technical standards and best practices for reporting security incidents. Section 202.1(7) - (29) are updated for numbering purposes. Section 202.1(1) - (3), (8), (11), (12), (16) - (19), (21), (23) - (29) contain terminology and technical corrections.

Subchapter B. Security Standards for State Agencies

1 TAC §§202.20 - 202.26

The amendments to §202.20 align risk management terminology to reflect clarifications to the list of applicable terms and technologies in §202.1.

The changes to §202.21 clarify wording regarding information ownership and associated responsibilities as well as the requirement for the information resource owner to coordinate with the head of the agency when classifying business functional information, the responsibility and authority for data owners to specify controls that extend to services as well as to other information resources, and Information Security Officer functions. The changes to this section also align Information Owner terminology to reflect clarifications to the list of applicable terms and technologies in §202.1, delete redundant language, add and clarify the responsibility and authority for information owners to approve, justify, documents, and coordinate agency exceptions to security controls, require information owners to classify business functional information, require custodians of information to include technical safeguards for the information resources and clarify the responsibilities of information resources custodians to include third party entities. The amendments to §202.21 also align the requirement for the state agency Information Security Officer to approve security controls for major information resources projects as specified in §§2054.304 - 2054.307, Government Code, and clarify the responsibility and authority for Information Security Officers to approve, justify, document, and communicate agency exceptions to information security requirements or controls as part of the security risk assessment process.

Section 202.22 aligns risk management terminology with that in the amended definitions of §202.1.

Section 202.23 clarifies the scope of physical security management and documentation responsibilities as well as the requirement to conduct at least annual physical security reviews as part of the risk assessment process.

Section 202.24 updates and consolidates the elements of Business Impact Analysis for Business Continuity Planning using current best practices, aligns risk assessment terminology and mission critical information terminology to reflect clarifications in the definitions in §202.1, and eliminates redundant language.

Section 202.25 clarifies language as well as the process to approve, justify, and document exceptions to information security safeguards. This section also clarifies the scope of the requirement to identify, document, and protect confidential information files or records consistently with the requirements of §202.20(1) and to protect information resources assigned to third parties. Section 202.25 also aligns risk management terminology with the definitions in §202.1, updates the reference for digital signature guidelines, updates the technical and procedural standards for encryption, clarifies procedural safeguards for protecting data within test environments, updates applicable "Account Management" policy requirements to include user identity and monitoring user access, and recommends creating, distributing, and implementing an "Application Security" policy based on applicable risk management decisions and business functions. Changes in this section also update "Change Management" to include "Configuration Management," update "Email" with "Electronic Communication" policy requirements to include electronic messages in addition to email, recommend creating, distributing, and implementing a "Firewall" management policy based on applicable risk management decisions and business functions and provide topic areas the firewall policy should address. Section 202.25 updates and clarifies "Incident Management," "Password/Authentication," "Platform Hardening," "Vendor Access," and "Wireless Access" policies. It also updates the "Perimeter Security Controls" safeguard to include the requirement to provide related external security services for state agencies pursuant to Chapters 2054 and 2059, Government Code. Section 202.20 adds "Intrusion Protection System" to the list of components that may be included as perimeter security controls, updates the perimeter security component descriptions and definitions, and clarifies the requirement for system Logon Banners to specify that the "no expectation of privacy" statement is applicable to system users.

Section 202.26 updates security incident reporting and response requirements, defines what incidents must be reported to the department, describes the incident reporting responsibilities of vendors and other third parties with respect to the agencies they support, clarifies monthly summary reporting requirements and requires the department to provide additional reporting instructions.

Subchapter C. Security Standards for Institutions of Higher Education

1 TAC §§202.70 - 202.76

The changes to §202.70 align risk management terminology to reflect clarifications to the list of applicable terms and technologies in §202.1.

The changes to §202.71 clarify wording regarding information ownership and associated responsibilities as well as the requirement for the information resource owner to coordinate with the head of the institution of higher education when classifying business functional information, the responsibility and authority for data owners to specify controls that extend to services as well as to other information resources, and Information Security Officer functions. The changes to this section also align Information Owner terminology to reflect clarifications to the list of applicable terms and technologies in §202.1, delete redundant language, add and clarify the responsibility and authority for information owners to approve, justify, document, and coordinate agency exceptions to security controls, require information owners to classify business functional information, require custodians of information to include technical safeguards for the information resources and clarify the responsibilities of information resources custodians to include third party entities. The amendments to §202.71 also align the requirement for the institution of higher education Information Security Officer to approve security controls for major information resources projects as specified in §§2054.304 - 2054.307, Government Code, and clarify the responsibility and authority for Information Security Officers to approve, justify, document, and communicate institution of higher education exceptions to information security requirements or controls as part of the security risk assessment process.

Section 202.72 aligns risk management terminology with that in the amended definitions of §202.1.

Section 202.73 clarifies the scope of physical security management and documentation responsibilities as well as the requirement to conduct at least annual physical security reviews as part of the risk assessment process.

Section 202.74 updates and consolidates the elements of Business Impact Analysis for Business Continuity Planning using current best practices, aligns risk assessment terminology and mission critical information terminology to reflect clarifications in the definitions in §202.1, and eliminates redundant language.

Section 202.75 clarifies language as well as the process to approve, justify, and document exceptions to information security safeguards. This section also clarifies the scope of the requirement to identify, document, and protect confidential information files or records consistently with the requirements of §202.70(1) and to protect information resources assigned to third parties. Section 202.75 also aligns risk management terminology with the definitions in §202.1, updates the reference for digital signature guidelines, updates the technical and procedural standards for encryption, clarifies procedural safeguards for protecting data within test environments, updates applicable "Account Management" policy requirements to include user identity and monitoring user access, and recommends creating, distributing, and implementing an "Application Security" policy based on applicable risk management decisions and business functions. Changes in this section also update "Change Management" to include "Configuration Management," update "Email" with "Electronic Communication" policy requirements to include electronic messages in addition to email, recommend creating, distributing, and implementing a "Firewall" management policy based on applicable risk management decisions and business functions and provide topic areas the firewall policy should address. Section 202.75 updates and clarifies "Incident Management" policy, "Password/Authentication" policy, "Platform Hardening," "Vendor Access," and "Wireless Access" policies. Section 202.70 adds "Intrusion Protection System" to the list of components that may be included as perimeter security controls, updates the perimeter security component descriptions and definitions, and clarifies the requirement for system Logon

Banners to specify that the "no expectation of privacy" statement is applicable to system users.

Section 202.76 updates security incident reporting and response requirements, defines what incidents must be reported to the department, describes the incident reporting responsibilities of vendors and other third parties with respect to the institutions of higher education they support, clarifies monthly summary reporting requirements and requires the department to provide additional reporting instructions.

SUBCHAPTER A. DEFINITIONS

1 TAC §202.1

The amendments are adopted under §2054.052(a), Government Code, which authorizes the department to adopt rules as necessary to implement its responsibilities under Chapter 2054, Government Code.

Sections 2054.051, 2054.052 and 2054.121, Government Code, are affected by the adoption.

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

Filed with the Office of the Secretary of State on August 28, 2009.

TRD-200903831
Renee Mauzy
General Counsel
Department of Information Resources
Effective date: September 17, 2009
Proposal publication date: June 5, 2009
For further information, please call: (512) 475-4750

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SUBCHAPTER B. SECURITY STANDARDS FOR STATE AGENCIES

1 TAC §§202.20 - 202.26

The amendments are adopted under §2054.052(a), Government Code, which authorizes the department to adopt rules as necessary to implement its responsibilities under Chapter 2054, Government Code.

Section 2054.051 and §2054.052, Government Code, are affected by the adoption.

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

Filed with the Office of the Secretary of State on August 28, 2009.

TRD-200903832
Renee Mauzy
General Counsel
Department of Information Resources
Effective date: September 17, 2009
Proposal publication date: June 5, 2009
For further information, please call: (512) 475-4750

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SUBCHAPTER C. SECURITY STANDARDS FOR INSTITUTIONS OF HIGHER EDUCATION

1 TAC §§202.70 - 202.76

The amendments are adopted under §2054.052(a), Government Code, which authorizes the department to adopt rules as necessary to implement its responsibilities under Chapter 2054, Government Code.

Sections 2054.051, 2054.052 and 2054.121, Government Code, are affected by the adoption.

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

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TRD-200903833
Renee Mauzy
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Department of Information Resources
Effective date: September 17, 2009
Proposal publication date: June 5, 2009
For further information, please call: (512) 475-4750

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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES

SUBCHAPTER F. REIMBURSEMENT METHODOLOGY FOR PROGRAMS SERVING PERSONS WITH MENTAL ILLNESS AND MENTAL RETARDATION

1 TAC §355.723

The Texas Health and Human Services Commission (HHSC) adopts amendments to §355.723, relating to Reimbursement Methodology for Home and Community-Based Services (HCS) under Title 1, Part 15, Chapter 355, Subchapter F, without changes to the proposed text as published in the July 24, 2009, issue of the *Texas Register* (34 TexReg 4801) and will not be republished.

Background and Justification

This rule establishes the reimbursement methodology for the Home and Community-Based Services (HCS) waiver program. HHSC, under its authority and responsibility to administer and implement rates, is updating this rule to: (i) describe how administrative and operations expenses are allocated to the various HCS service types, (ii) describe how the foster/companion care coordinator component of the foster/companion care rate is determined, (iii) delete language indicating that payment rates are determined annually and that state-operated HCS providers are reimbursed at cost, and (iv) clarify the current reimbursement methodology.

The Department of Aging and Disability Services (DADS) provides individualized services and supports to persons with mental retardation who are living with their families, in their own homes, or in other community settings, such as small group

homes, through the HCS Medicaid waiver program. In order to receive matching federal funds, this waiver requires approval from the federal Centers for Medicare and Medicaid Services (CMS).

Under the current HCS reimbursement methodology, a monthly "Administration and Operations" fee is used to reimburse providers for certain administration and operations expenses related to various HCS services. The fee is currently a flat $938.62 per consumer per month or approximately $11,263 per annum. In 2008, a waiver renewal application was submitted to CMS for the HCS waiver program which was set to expire August 31, 2008. As a condition of the waiver approval, CMS instructed HHSC to develop and implement a new payment methodology that would incorporate administration and operations costs into the rate for covered services and to discontinue reimbursing for those expenses as a separate monthly payment.

In response to provider concerns regarding CMS's directive, HHSC submitted a letter to CMS in October 2008 requesting that CMS reconsider its decision to redistribute the monthly fee. CMS responded in January 2009 reaffirming its direction and requiring HHSC to submit a corrective action plan on how it intended to redistribute the monthly fee in order to maintain federal funding for the HCS waiver program.

To come into compliance with the CMS directive, HHSC formed a workgroup and gathered feedback on possible options to redistribute the monthly administration and operations fee to the individual services in the HCS waiver. HHSC considered the feedback from the workgroup and other interested parties. This rule reflects the results of that feedback by adopting weighting factors for distributing these costs. While this weighting methodology represents a reduction in the total administration and operations reimbursement for foster/companion care providers, it equalizes the percentage of the total rate paid to foster/companion care and residential care providers for their administration and operations costs.

Currently, many HCS providers pay the full foster/companion care direct services rate to individuals providing foster/companion care in order to recruit and retain foster/companion care providers. These HCS providers cover the cost of foster/companion care coordination with the funds from the monthly administration and operations fee, even though the foster/companion care direct services rate includes a foster/companion care coordinator component. To enable providers to continue funding the costs for foster/companion care coordination using administration and operations funds, this rule determines a stand-alone foster/companion care coordinator component of the foster/companion care rate. This component is funded out of the administration and operations costs prior to the allocation of the administration and operations costs to the various HCS services. As a result, providers will be able to continue funding the costs for foster/companion care coordination using administration and operations funds. Language indicating how often payment rates are determined is being deleted because the frequency of rate determination is addressed in §355.101 of this title (relating to Introduction). Language indicating that state-operated HCS providers are reimbursed at cost is being deleted because there are currently no state-operated HCS providers and, if there were, they would be reimbursed in the same manner as all other HCS providers. Language concerning the reimbursement methodology is being modified to clarify the rate determination process.

Comments

The 30-day comment period ended August 23, 2009. During this period, HHSC received comments regarding the proposed amendments to §355.723 from five HCS providers, one advocacy group, relatives of consumers, the Private Providers Association of Texas and other interested parties. Overall, three commenters expressed support for the rule as proposed, one commenter was neutral and thirty-four commenters expressed opposition to the rule. Commenters expressing opposition to the rule were divided between those who objected to the rule because it directed too many funds to residential support services and not enough funds to foster/companion care services and those who objected to the rule because it directed too many funds to foster/companion care services and not enough funds to residential support services. A summary of the comments relating to the proposed rule and HHSC's responses follows:

General comment: The proposed rule is being applied to reimbursement rates (in particular the indirect component of the rates) that have long been inadequate.

Response: This comment is not germane to the proposed rule. The purpose of the proposed rules is to describe how administrative and operations expenses are allocated to the various HCS service types, not to address issues pertaining to the adequacy of the HCS reimbursement rates. HHSC did not change the proposed rule in response to this comment.

General comment: The preamble to the rule states that "HHSC considered the feedback from the workgroup and other interested parties including HCS providers specializing in the provision of foster/companion care services" (page 4801). This statement conflicts with the HCS requirement under 40 TAC, Chapter 9, Subchapter D, Rule §9.174, that a contracted provider "provide or obtain as needed and without delay all HCS Program services."

Response: 40 TAC, Chapter 9, Subchapter D, Rule §9.174 is separate from this proposal and is enforced by the Department of Aging and Disability Services. HHSC did not change the proposed rule in response to this comment.

General comment: One commenter indicated that HHSC did not provide a small business analysis. This commenter stated that turning a blind eye to the small business impact ignores the duty the State has to its citizens and will devastate the provider network.

Response: The rule proposal published in the July 24, 2009, issue of the *Texas Register* (34 TexReg 4801) contained an extensive Small Business and Micro-Business Impact Analysis. This analysis appeared on pages 4802 through 4804 of the *Texas Register*. HHSC did not change the proposed rule in response to this comment.

Comments concerning §355.723(d)(2): Multiple commenters expressed opposition to the creation of a foster/companion care coordinator component of the foster/companion care rate to be funded out of the administration and operations costs prior to the allocation of the administration and operations costs to the various HCS services. These commenters indicated that administration and operations expenses associated with the provision of residential support services are significantly greater than those associated with foster/companion care services and that funds should not be diverted from the residential support services administration and operations allocation to fund a foster/companion care coordinator.

Response: HHSC agrees that the administration and operations expenses associated with the provision of residential support services are significantly greater than those associated with foster/companion care services. The payment rates resulting from the rule as proposed direct significantly more administration and operations funds to residential support services than to foster/companion care services, even after accounting for the funding of the foster/companion care coordinator component. HHSC did not change the proposed rule in response to these comments.

Comments concerning §355.723(d)(2): Two commenters expressed support for the creation of a foster/companion care coordinator component of the foster/companion care rate.

Response: HHSC did not change the proposed rule in response to these comments.

Comment concerning §355.723(d)(5): One commenter expressed opposition to the weights proposed in §355.723(d)(5) by stating that the methodology employed to develop the proposed weights was inequitable because it did not capture all administration and operations costs for foster care.

Response: HHSC does not agree that the methodology employed to develop the proposed weights failed to capture all administration and operations costs for foster care. HHSC does agree that a number of foster care providers appear to have been covering the cost of foster/companion care coordination with administration and operations fee monies, even though the current modeled foster/companion care rate contains a separate foster/companion care coordinator component. However, subsection (d), paragraph (2) addresses this issue by determining a stand-alone foster/companion care coordinator component of the foster/companion care rate that will be funded out of administration and operations costs prior to their allocation to the various HCS services. As a result, providers will be able to continue funding their costs for foster/companion care coordination using administration and operations funds. HHSC did not change the proposed rule in response to this comment.

Comment concerning §355.723(d)(5): One commenter expressed opposition to the weights proposed in §355.723(d)(5), stating that the proposed weights will result in DADS paying HCS providers significantly more money to cover administration and operations expenses for group home services than for foster/companion care services, which will give group home services substantial advantages regarding new development and borrowing power, encourage the provider base to migrate to the group home model, and deny consumers freedom of choice and that the proposed weights will result in HCS providers receiving less money to cover administration and operations expenses for foster/companion care than they currently receive.

Response: HHSC agrees that the proposed weights will shift administration and operations funding from foster/companion care services to residential support services. HHSC believes that this change will more closely align payment for administrative and operations expenses with administrative effort so that services that require more effort or time to administer and operate will be equitably compensated. It is HHSC's position that rates need to be as closely aligned with costs as possible to ensure equity, avoid false incentives and ensure accountability for taxpayer funds. These rules do not change the direct care components of the rates and only change the administration and operations component of the rate. HHSC did not change the proposed rule in response to these comments.

Comment concerning §355.723(d)(5): Two commenters expressed opposition to the weights proposed in §355.723(d)(5) and proposed that the weights be set equal for residential support services and foster/companion care.

Response: HHSC does not agree that the proposed weights should be revised. The proposed weights are based on analyses of data that represents substantially equal percentages of units of service provided under residential support services and foster/companion care. The results of the analyses are supported by analyses of cost report data. The commenters did not provide any data or other information to support their contention that HHSC's analyses were flawed or that its database was biased. As noted elsewhere in this preamble, HHSC solicited and received input from providers and other stakeholders and, as a result, proposed a methodology that recognizes the administrative and operating costs of residential care providers and foster/companion care providers in equal percentages of the total rate paid to the respective providers. HHSC believes that this allocation of administrative and operating costs is fair and reasonable. HHSC did not change the proposed rule in response to these comments.

Comment concerning §355.723(d)(5): One commenter expressed opposition to the weights proposed in §355.723(d)(5) based on the belief that differential service costs are already addressed in the service rates and room and board collection and that administrative and operations costs do not vary from residential support to foster/companion care to any degree of consequence.

Response: Analyses of both data collected specifically for the purpose of developing the weights as well as analyses of HCS cost report data indicate that there are significant differences in the administrative effort required to provide residential support versus foster/companion care versus supported home living. HHSC did not change the proposed rule in response to these comments.

Comment concerning §355.723(d)(5): One commenter indicated that the proposed rule exceeds the federal mandate to eliminate the monthly administrative fee and incorporate those fees into the rate for covered services. This commenter stated that HHSC can equally redistribute the fee and support that decision to CMS by pointing out historical methodologies, pointing out a 12-year history of equal distribution among service areas and specifying that it provides incentives for more cost efficient services.

Response: CMS requires that rates be related to costs. Equal distribution of the administration and operations fee would lead to rates that vary significantly from the costs to provide the services. HHSC did not change the proposed rule in response to this comment.

Other comments were received relating to the need for additional funding for the HCS program and suggestions about how to evaluate the impact of the rule after implementation. Since these comments do not relate directly to the rule, no changes were made.

The amendment is 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 au-

thority to propose and adopt rules governing the determination of Medicaid reimbursements.

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 31, 2009.

TRD-200903840
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Effective date: September 20, 2009
Proposal publication date: July 24, 2009
For further information, please call: (512) 424-6900

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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 26. FOOD AND NUTRITION DIVISION

SUBCHAPTER B. NUTRITION WORKING GROUPS

4 TAC §26.20, §26.21

The Texas Department of Agriculture (the department) adopts new Chapter 26, Subchapter B, §26.20, concerning the Early Childhood Health and Nutrition Interagency Council, and §26.21, concerning the Interagency Farm-To-School Coordination Task Force, without changes to the proposal published in the July 10, 2009, issue of the *Texas Register* (34 TexReg 4603).

Section 26.20 is adopted pursuant to conform to Senate Bill 395 (SB 395), 81st Legislative Session, 2009, which authorized the department to research, assess and develop an early childhood nutrition and physical activity plan for implementation in the state. Section 26.21 is adopted pursuant to Senate Bill 1027 (SB 1027), 81st Legislative Session, 2009, which authorized the department to develop and implement a plan to facilitate the availability of locally grown food products in public schools.

No comments were received on the proposal.

Section 26.20 is adopted under the Texas Health and Safety Code, Chapter 115, as enacted by SB 395; specifically, §115.003, which authorizes the department to establish the Early Childhood Health and Nutrition Interagency Council; and §115.012, which provides the department with the authority to adopt rules to implement Chapter 115. Section 26.21 is adopted under the Texas Agriculture Code (the Code), §12.0026, as enacted by SB 1027, which requires the department to establish the Interagency Farm-To-School Coordination Task Force; the Code, §12.016, which provides the department with the authority to adopt rules to carry out its duties under the Code; and the Texas Government Code, §2001.006, which provides the department with the authority to adopt rules in preparation for the implementation of legislation that has become law, but has not taken effect.

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 26, 2009.

TRD-200903766
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: September 15, 2009
Proposal publication date: July 10, 2009
For further information, please call: (512) 463-4075

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SUBCHAPTER C. NUTRITION OUTREACH AND EDUCATION

The Texas Department of Agriculture (the department) adopts proposed Chapter 26, Subchapter C, Division 1, §26.30, concerning the Nutrition Outreach Program; Division 2, §§26.40 - 26.48, concerning the Best Practices in Nutrition Education Grant Program; and Division 3, §§26.50 - 26.57, concerning the Nutrition Education Grant Program. All new sections are adopted without changes to the proposal published in the July 17, 2009, issue of the *Texas Register* (34 TexReg 4708).

The adopted new sections implement Senate Bill 282 (SB 282), 81st Regular Session, 2009. Chapter 26, Subchapter C, Division 1, §26.30 provides authorization for the department to administer the Nutrition Outreach Program. Adopted §26.30 contains a Statement of Authorization for the program. The Nutrition Outreach Program will serve the purpose of promoting better health and nutrition programs and preventing obesity among children in this state.

Chapter 26, Subchapter C, Division 2, §§26.40 - 26.48 provide authorization for the department to implement and administer the Best Practices in Nutrition Education Grant Program. Adopted §26.40 contains a Statement of Authorization for the program; §26.41 contains definitions related to implementation of the program; §26.42 contains a Statement of Purpose for the program; §26.43 contains eligibility requirements for grant recipients; §26.44 contains the application procedure; §26.45 contains the selection criteria for recipients; §26.46 defines permitted use of grant funds; §26.47 explains the grant agreement to be used in the program; and §26.48 explains reporting procedures to be used in the program. The Best Practices in Nutrition Education Grant Program will award grant funds to school districts and/or campuses for implementing best practices in nutrition education.

Chapter 26, Subchapter C, Division 3, §§26.50 - 26.57 provide authorization for the department to implement and administer the Nutrition Education Grant Program. Adopted §26.50 contains a Statement of Authorization for the program; §26.51 contains definitions related to implementation of the program; §26.52 contains a Statement of Purpose for the program; §26.53 contains eligibility requirements for grant recipients; §26.54 contains the application procedure; §26.55 contains the selection criteria for recipients; §26.56 explains the grant agreement to be used in the program; and §26.57 explains reporting procedures to be used in the program. The Nutrition Education Grant Program will provide grants to specified care providers and community or faith-based

organizations to operate nutrition education programs for children.

No comments were received on the proposal.

DIVISION 1. NUTRITION OUTREACH PROGRAM

4 TAC §26.30

New §26.30 is adopted under the authority of the Texas Agriculture Code (the Code), §12.0027, as enacted by SB 282, which provides the department with the authority to develop a nutrition outreach program and adopt rules as necessary to administer the program.

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 26, 2009.

TRD-200903767
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: September 15, 2009
Proposal publication date: July 17, 2009
For further information, please call: (512) 463-4075

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DIVISION 2. BEST PRACTICES IN NUTRITION EDUCATION GRANT PROGRAM

4 TAC §§26.40 - 26.48

New §§26.40 - 26.48 are adopted under the authority of the Texas Education Code, §38.026, as enacted by SB 282, which provides that the department shall develop a program for awarding grants to public school campuses for best practices in nutrition education, and provides that the department may adopt rules as necessary to administer such a grant program.

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 26, 2009.

TRD-200903768
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: September 15, 2009
Proposal publication date: July 17, 2009
For further information, please call: (512) 463-4075

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DIVISION 3. NUTRITION EDUCATION GRANT PROGRAM

4 TAC §§26.50 - 26.57

New §§26.50 - 26.57 are adopted under the authority of the Texas Human Resources Code, §33.028, as enacted by SB 282, which provides that the department shall develop a program for awarding nutrition education grants, and provides that the department may adopt rules as necessary to administer such a program.

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-200903769
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: September 15, 2009
Proposal publication date: July 17, 2009
For further information, please call: (512) 463-4075

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TITLE 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 115. EXTENSION OF DUTIES OF AUXILIARY PERSONNEL--DENTAL HYGIENE

22 TAC §115.6

The Texas State Board of Dental Examiners (Board) adopts new §115.6, concerning records, without changes to the proposed text as published in the July 10, 2009 issue of the *Texas Register* (34 TexReg 4615) and will not be republished.

The new section is adopted to establish a reference to the recordkeeping standard of care relating to dental hygiene practice.

No comments were received.

The section is adopted under Texas Government Code §2001.021 et seq., Texas Civil Statutes; the Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

The proposed amendment affects Title 3, Subtitle D of the Occupations Code and Title 22, Texas Administrative Code, Part 5.

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 31, 2009.

TRD-200903845
Sherri Sanders Meek
Executive Director
State Board of Dental Examiners
Effective date: September 20, 2009
Proposal publication date: July 10, 2009
For further information, please call: (512) 475-0972

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PART 6. TEXAS BOARD OF PROFESSIONAL ENGINEERS

CHAPTER 133. LICENSING

The Texas Board of Professional Engineers (Board) adopts amendments to §133.63, concerning the Texas Engineering Professional Conduct and Ethics Examination and §133.81, concerning Receipt and Processing of Applications by the Board, without changes to the proposed text as published in the July 10, 2009, issue of the *Texas Register* (34 TexReg 4616) and will not be republished.

The adopted amendment to §133.63 changes the passing score on the Texas Engineering Professional Conduct and Ethics Examination from a 70 to a 90.

The adopted amendment to §133.81 relates to requirements for applicants for licensure as a professional engineer. The change clarifies that the Executive Director can evaluate and determine whether a substantially modified application should be handled as a "new" application with regard to which version of the Board rules shall be used to review the application. The applicant has the ability to appeal this determination to the Licensing Committee of the Board.

No public comments were received for any of the rules.

SUBCHAPTER G. EXAMINATIONS

22 TAC §133.63

The amendment is adopted pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

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

Filed with the Office of the Secretary of State on August 28, 2009.

TRD-200903810
Dale Beebe Farrow, P.E.
Executive Director
Texas Board of Professional Engineers
Effective date: September 20, 2009
Proposal publication date: July 10, 2009
For further information, please call: (512) 440-7723

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SUBCHAPTER H. REVIEW PROCESS OF APPLICATIONS AND LICENSE ISSUANCE

22 TAC §133.81

The amendment is adopted pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

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

Filed with the Office of the Secretary of State on August 28, 2009.

TRD-200903811
Dale Beebe Farrow, P.E.
Executive Director
Texas Board of Professional Engineers
Effective date: September 20, 2009
Proposal publication date: July 10, 2009
For further information, please call: (512) 440-7723

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CHAPTER 137. COMPLIANCE AND PROFESSIONALISM

The Texas Board of Professional Engineers (Board) adopts amendments to §137.9, concerning Renewal for Expired License, §137.17, concerning Continuing Education Program and §137.31, concerning Seal Specifications, without changes to the proposed text as published in the July 10, 2009, issue of the *Texas Register* (34 TexReg 4617) and will not be republished.

The adopted amendment to §137.9 contains two main sections. The first states that the Board will not refund annual or late renewal fees unless an incorrect fee was assessed by the Board. The second is related to a requirement from the Office of the Attorney General (OAG), as described in Texas Family Code, Chapter 232, that the Board shall not renew a professional engineer license if notified by the OAG that the licensee is delinquent in their child support payments.

The adopted amendment to §137.17 relates to requirements for licensed engineers who wish to change the status of the license from inactive to active. It clarifies that the licensee shall provide documentation of the required continuing education hours when applying for reactivation.

The adopted amendment to §137.31 permits the use of commonly accepted variations of given names on engineering seals.

No public comments were received for any of the rules.

SUBCHAPTER A. INDIVIDUAL AND ENGINEER COMPLIANCE

22 TAC §137.9

The amendment is adopted pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

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

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TRD-200903812
Dale Beebe Farrow, P.E.
Executive Director
Texas Board of Professional Engineers
Effective date: September 20, 2009
Proposal publication date: July 10, 2009
For further information, please call: (512) 440-7723

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22 TAC §137.17

The amendment is adopted pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

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

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TRD-200903813
Dale Beebe Farrow, P.E.
Executive Director
Texas Board of Professional Engineers
Effective date: September 20, 2009
Proposal publication date: July 10, 2009
For further information, please call: (512) 440-7723

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SUBCHAPTER B. SEALING REQUIREMENTS

22 TAC §137.31

The amendment is adopted pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

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

Filed with the Office of the Secretary of State on August 31, 2009.

TRD-200903841
Dale Beebe Farrow, P.E.
Executive Director
Texas Board of Professional Engineers
Effective date: September 20, 2009
Proposal publication date: July 10, 2009
For further information, please call: (512) 440-7723

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CHAPTER 139. ENFORCEMENT

The Texas Board of Professional Engineers (Board) adopts new §139.51, concerning License Suspension Based on Delinquent Child Support and new §139.63, concerning Extensions of Time, without changes to the proposed text as published in the July 10, 2009, issue of the *Texas Register* (34 TexReg 4619) and will not be republished.

The adopted new §139.51 implements a requirement from the Office of the Attorney General (OAG), as described in Texas Family Code, Chapter 232, that the Board shall suspend a professional engineer license if notified by the OAG that the licensee is delinquent in their child support payments.

The adopted new §139.63 delegates to the Executive Director the authority to enter into agreements to modify time limits as provided under the Administrative Procedure Act, Texas Government Code §2001.147. This new rule allows the Board to better coordinate the presentation of proposed decisions in contested cases at the regularly scheduled quarterly meetings of the Board.

No public comments were received for any of the rules.

SUBCHAPTER D. SPECIAL DISCIPLINARY PROVISIONS FOR LICENSE HOLDERS

22 TAC §139.51

The new rule is adopted pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

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

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TRD-200903814
Dale Beebe Farrow, P.E.
Executive Director
Texas Board of Professional Engineers
Effective date: September 20, 2009
Proposal publication date: July 10, 2009
For further information, please call: (512) 440-7723

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SUBCHAPTER E. HEARINGS

22 TAC §139.63

The new rule is adopted pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

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

Filed with the Office of the Secretary of State on August 28, 2009.

TRD-200903815
Dale Beebe Farrow, P.E.
Executive Director
Texas Board of Professional Engineers
Effective date: September 20, 2009
Proposal publication date: July 10, 2009
For further information, please call: (512) 440-7723

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PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 291. PHARMACIES

SUBCHAPTER D. INSTITUTIONAL PHARMACY (CLASS C)

22 TAC §§291.72 - 291.76

The Texas State Board of Pharmacy adopts amendments to §291.72, concerning Definitions, §291.73, concerning Personnel, §291.74, concerning Operational Standards, §291.75, concerning Records, and §291.76, concerning (Class C) Pharmacies Located in a Freestanding Ambulatory Surgical Center. Section 291.74 is adopted with changes to the proposed text as published in the June 12, 2009, issue of the *Texas Register* (34 TexReg 3893). Sections 291.72, 291.73, 291.75 and 291.76 are adopted without changes and will not be republished.

The amendments incorporate recommendations made by the Task Force on Class C Pharmacy Rules as follows: clarify the definition of an inpatient and change all references from inpatient to patient; allow for a quarterly inspection of automated medication supply systems provided certain monitoring and security features are present; delete the need for in-process checking of prepacking and labeling of unit and multi-dose packages by pharmacy technicians, but keep the final check by pharmacists; change the word typewriter to data processing system and printer; add electronic receiving of medication orders; define labeling requirements for discharge prescriptions; allow pharmacy technicians to re-stock automated medication supply cabinets provided a pharmacist conducts checking, provided machine readable product identifier information is used in the final verification; delete tripelennamine (PBZ) from drugs considered as controlled substances; replace reference to supportive personnel with pharmacy technician and pharmacy technician trainee; delete requirements that dangerous drugs be supplied to discharged emergency room patients on a telephone call by physician. The amendments also incorporate staff recommendations to update/correct references to other rules and update the rules to be consistent with other sections of the rules.

The following comments were received regarding adoption of the amendments.

The Texas Society of Health-System Pharmacists (TSHP) commented that "in-process" checking by a pharmacist may have been inadvertently left in several sections of the rules and recommended that it be deleted from these sections. The Board disagrees with this comment. The "in-process" checking was left in the rules in sections regarding compounding because "in-process" checking is a requirement elsewhere in the rules. TSHP also suggested that §291.74(j)(2)(D) be changed to allow IV admixtures in medication supply systems and to reference verified and labeled prescription drugs. The Board disagrees with deleting the reference to IV admixtures because the products would have a limited beyond-use-day but does agree with this comment and included verified and labeled.

Envision commented that the requirement to have a pharmacist visit the pharmacy every 7 days should not be included or changed to allow for electronic supervision. The Board disagrees with the comment and believes a pharmacist should visit the pharmacy to ensure patient safety at least every 7 days.

The amendments are adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

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

§291.74. Operational Standards.

(a) Licensing requirements.

(1) A Class C pharmacy shall register annually or biennially with the board on a pharmacy license application provided by the board, following the procedures specified in §291.1 of this title (relating to Pharmacy License Application).

(2) If the institutional pharmacy is owned or operated by a hospital management or consulting firm, the following conditions apply.

(A) The pharmacy license application shall list the hospital management or consulting firm as the owner or operator.

(B) The hospital management or consulting firm shall obtain DEA and DPS controlled substance registrations that are issued in their name, unless the following occurs:

(i) the hospital management or consulting firm and the facility cosign a contractual pharmacy service agreement which assigns overall responsibility for controlled substances to the facility; and

(ii) such hospital pharmacy management or consulting firm maintains dual responsibility for the controlled substances.

(3) A Class C pharmacy which changes ownership shall notify the board within 10 days of the change of ownership and apply for a new and separate license as specified in §291.3 of this title (relating to Required Notifications).

(4) A Class C pharmacy which changes location and/or name shall notify the board within 10 days of the change and file for an amended license as specified in §291.3 of this title.

(5) A Class C pharmacy owned by a partnership or corporation which changes managing officers shall notify the board in writing of the names of the new managing officers within 10 days of the change following the procedures in §291.3 of this title.

(6) A Class C pharmacy shall notify the board in writing within 10 days of closing, following the procedures in §291.5 of this title (relating to Closing a Pharmacy).

(7) A fee as specified in §291.6 of this title (relating to Pharmacy License Fees) will be charged for the issuance and renewal of a license and the issuance of an amended license.

(8) A separate license is required for each principal place of business and only one pharmacy license may be issued to a specific location.

(9) A Class C pharmacy, licensed under the Act, §560.051(a)(3), which also operates another type of pharmacy which would otherwise be required to be licensed under the Act, §560.051(a)(1) (Community Pharmacy (Class A)) or the Act, §560.051(a)(2) (Nuclear Pharmacy (Class B)), is not required to secure a license for the such other type of pharmacy; provided, however, such licensee is required to comply with the provisions of §291.31 of this title (relating to Definitions), §291.32 of this title (relating to Personnel), §291.33 of this title (relating to Operational Standards), §291.34 of this title (relating to Records), and §291.35 of this title (relating to Official Prescription Records), contained in Community Pharmacy (Class A), or §291.51 of this title (relating to Purpose), §291.52 of this title (relating to Definitions), §291.53 of this title (relating to Personnel), §291.54 of this title (relating to Operational

Standards), and §291.55 of this title (relating to Records), contained in Nuclear Pharmacy (Class B), to the extent such sections are applicable to the operation of the pharmacy.

(10) A Class C (Institutional) pharmacy engaged in the compounding of non-sterile preparations shall comply with the provisions of §291.131 of this title (relating to Pharmacies Compounding Non-sterile Preparations);

(11) A Class C (Institutional) pharmacy engaged in the compounding of sterile preparations shall comply with the provisions of §291.133 of this title (relating to Pharmacies Compounding Sterile Preparations).

(12) A Class C (Institutional) pharmacy engaged in the provision of remote pharmacy services, including storage and dispensing of prescription drugs, shall comply with the provisions of §291.121 of this title (relating to Remote Pharmacy Services).

(13) A Class C (Institutional) pharmacy engaged in centralized prescription dispensing and/or prescription drug or medication order processing shall comply with the provisions of §291.123 of this title (relating to Central Prescription Drug or Medication Order Processing) and/or §291.125 of this title (relating to Centralized Prescription Dispensing).

(b) Environment.

(1) General requirements.

(A) The institutional pharmacy shall have adequate space necessary for the storage, compounding, labeling, dispensing, and sterile preparation of drugs prepared in the pharmacy, and additional space, depending on the size and scope of pharmaceutical services.

(B) The institutional pharmacy shall be arranged in an orderly fashion and shall be kept clean. All required equipment shall be clean and in good operating condition.

(C) A sink with hot and cold running water exclusive of restroom facilities shall be available to all pharmacy personnel and shall be maintained in a sanitary condition at all times.

(D) The institutional pharmacy shall be properly lighted and ventilated.

(E) The temperature of the institutional pharmacy shall be maintained within a range compatible with the proper storage of drugs. The temperature of the refrigerator and/or freezer shall be maintained within a range compatible with the proper storage of drugs.

(F) If the institutional pharmacy has flammable materials, the pharmacy shall have a designated area for the storage of flammable materials. Such area shall meet the requirements set by local and state fire laws.

(G) The institutional pharmacy shall store antiseptics, other drugs for external use, and disinfectants separately from internal and injectable medications.

(2) Security requirements.

(A) The institutional pharmacy shall be enclosed and capable of being locked by key, combination or other mechanical or electronic means, so as to prohibit access by unauthorized individuals. Only individuals authorized by the pharmacist-in-charge shall enter the pharmacy.

(B) Each pharmacist on duty shall be responsible for the security of the institutional pharmacy, including provisions for adequate safeguards against theft or diversion of dangerous drugs, controlled substances, and records for such drugs.

(C) The institutional pharmacy shall have locked storage for Schedule II controlled substances and other drugs requiring additional security.

(c) Equipment and supplies. Institutional pharmacies distributing medication orders shall have the following equipment:

(1) data processing system including a printer or comparable equipment; and

(2) refrigerator and/or freezer and a system or device (e.g., thermometer) to monitor the temperature to ensure that proper storage requirements are met.

(d) Library. A reference library shall be maintained that includes the following in hard-copy or electronic format and that pharmacy personnel shall be capable of accessing at all times:

(1) current copies of the following:

(A) Texas Pharmacy Act and rules;

(B) Texas Dangerous Drug Act and rules;

(C) Texas Controlled Substances Act and regulations; and

(D) Federal Controlled Substances Act and regulations (or official publication describing the requirements of the Federal Controlled Substances Act and regulations);

(2) at least one current or updated reference from each of the following categories:

(A) drug interactions. A reference text on drug interactions, such as Drug Interaction Facts. A separate reference is not required if other references maintained by the pharmacy contain drug interaction information including information needed to determine severity or significance of the interaction and appropriate recommendations or actions to be taken;

(B) a general information reference text, such as:

(i) Facts and Comparisons with current supplements;

(ii) United States Pharmacopeia Dispensing Information Volume I (Drug Information for the Healthcare Provider);

(iii) AHFS Drug Information with current supplements;

(iv) Remington's Pharmaceutical Sciences; or

(v) Clinical Pharmacology;

(3) a current or updated reference on injectable drug products, such as Handbook of Injectable Drugs;

(4) basic antidote information and the telephone number of the nearest regional poison control center;

(5) metric-apothecary weight and measure conversion charts.

(e) Absence of a pharmacist.

(1) Medication orders.

(A) In facilities with a full-time pharmacist, if a practitioner orders a drug for administration to a bona fide patient of the facility when the pharmacy is closed, the following is applicable.

(i) Prescription drugs and devices only in sufficient quantities for immediate therapeutic needs may be removed from the institutional pharmacy.

(ii) Only a designated licensed nurse or practitioner may remove such drugs and devices.

(iii) A record shall be made at the time of withdrawal by the authorized person removing the drugs and devices. The record shall contain the following information:

(I) name of patient;

(II) name of device or drug, strength, and dosage form;

(III) dose prescribed;

(IV) quantity taken;

(V) time and date; and

(VI) signature (first initial and last name or full signature) or electronic signature of person making withdrawal.

(iv) The original or direct copy of the medication order may substitute for such record, providing the medication order meets all the requirements of clause (iii) of this subparagraph.

(v) The pharmacist shall verify the withdrawal of drugs from the pharmacy and perform a drug regimen review as specified in subsection (g)(1)(B) of this section as soon as practical, but in no event more than 72 hours from the time of such withdrawal.

(B) In facilities with a part-time or consultant pharmacist, if a practitioner orders a drug for administration to a bona fide patient of the facility when the pharmacist is not on duty, or when the pharmacy is closed, the following is applicable.

(i) Prescription drugs and devices only in sufficient quantities for therapeutic needs may be removed from the institutional pharmacy.

(ii) Only a designated licensed nurse or practitioner may remove such drugs and devices.

(iii) A record shall be made at the time of withdrawal by the authorized person removing the drugs and devices; the record shall meet the same requirements as specified in subparagraph (A)(iii) and (iv) of this paragraph.

(iv) The pharmacist shall verify the withdrawal of drugs from the pharmacy and perform a drug regimen review as specified in subsection (g)(1)(B) of this section after a reasonable interval, but in no event may such interval exceed seven days.

(2) Floor stock. In facilities using a floor stock method of drug distribution, the following is applicable.

(A) Prescription drugs and devices may be removed from the pharmacy only in the original manufacturer's container or prepackaged container.

(B) Only a designated licensed nurse or practitioner may remove such drugs and devices.

(C) A record shall be made at the time of withdrawal by the authorized person removing the drug or device; the record shall contain the following information:

(i) name of the drug, strength, and dosage form;

(ii) quantity removed;

(iii) location of floor stock;

(iv) date and time; and

(v) signature (first initial and last name or full signature) or electronic signature of person making the withdrawal.

(D) The pharmacist shall verify the withdrawal of drugs from the pharmacy after a reasonable interval, but in no event may such interval exceed seven days.

(f) Drugs.

(1) Procurement, preparation and storage.

(A) The pharmacist-in-charge shall have the responsibility for the procurement and storage of drugs, but may receive input from other appropriate staff of the facility, relative to such responsibility.

(B) The pharmacist-in-charge shall have the responsibility for determining specifications of all drugs procured by the facility.

(C) Institutional pharmacies may not sell, purchase, trade or possess prescription drug samples, unless the pharmacy meets all of the following conditions:

(i) the pharmacy is owned by a charitable organization described in the Internal Revenue Code of 1986, or by a city, state or county government;

(ii) the pharmacy is a part of a health care entity which provides health care primarily to indigent or low income patients at no or reduced cost;

(iii) the samples are for dispensing or provision at no charge to patients of such health care entity; and

(iv) the samples are possessed in compliance with the federal Prescription Drug Marketing Act of 1986.

(D) All drugs shall be stored at the proper temperatures, as defined in the USP/NF and in §291.15 of this title (relating to Storage of Drugs).

(E) Any drug bearing an expiration date may not be distributed beyond the expiration date of the drug.

(F) Outdated and other unusable drugs shall be removed from stock and shall be quarantined together until such drugs are disposed of properly.

(2) Formulary.

(A) A formulary shall be developed by the facility committee performing the pharmacy and therapeutics function for the facility. For the purpose of this section, a formulary is a compilation of pharmaceuticals that reflects the current clinical judgment of a facility's medical staff.

(B) The pharmacist-in-charge or pharmacist designated by the pharmacist-in-charge shall be a full voting member of the committee performing the pharmacy and therapeutics function for the facility, when such committee is performing the pharmacy and therapeutics function.

(C) A practitioner may grant approval for pharmacists at the facility to interchange, in accordance with the facility's formulary, for the prescribed drugs on the practitioner's medication orders provided:

(i) the pharmacy and therapeutics committee has developed a formulary;

(ii) the formulary has been approved by the medical staff committee of the facility;

(iii) there is a reasonable method for the practitioner to override any interchange; and

(iv) the practitioner authorizes pharmacists in the facility to interchange on his/her medication orders in accordance with the facility's formulary through his/her written agreement to abide by the policies and procedures of the medical staff and facility.

(3) Prepackaging of drugs.

(A) Distribution within a facility.

(i) Drugs may be prepackaged in quantities suitable for internal distribution by a pharmacist or by pharmacy technicians or pharmacy technician trainees under the direction and direct supervision of a pharmacist.

(ii) The label of a prepackaged unit shall indicate:

(I) brand name and strength of the drug; or if no brand name, then the generic name, strength, and name of the manufacturer or distributor;

(II) facility's unique lot number;

(III) expiration date based on currently available literature; and

(IV) quantity of the drug, if the quantity is greater than one.

(iii) Records of prepackaging shall be maintained to show:

(I) name of the drug, strength, and dosage form;

(II) facility's unique lot number;

(III) manufacturer or distributor;

(IV) manufacturer's lot number;

(V) expiration date;

(VI) quantity per prepackaged unit;

(VII) number of prepackaged units;

(VIII) date packaged;

(IX) name, initials, or electronic signature of the prepacker; and

(X) name, initials, or electronic signature of the responsible pharmacist.

(iv) Stock packages, prepackaged units, and control records shall be quarantined together until checked/released by the pharmacist.

(B) Distribution to other Class C (Institutional) pharmacies under common ownership.

(i) Drugs may be prepackaged in quantities suitable for distribution to other Class C (Institutional) pharmacies under common ownership by a pharmacist or by pharmacy technicians or pharmacy technician trainees under the direction and direct supervision of a pharmacist.

(ii) The label of a prepackaged unit shall indicate:

(I) brand name and strength of the drug; or if no brand name, then the generic name, strength, and name of the manufacturer or distributor;

(II) facility's unique lot number;

(III) expiration date based on currently available literature;

(IV) quantity of the drug, if the quantity is greater than one; and

(V) name of the facility responsible for pre-packaging the drug.

(iii) Records of pre-packaging shall be maintained to show:

(I) name of the drug, strength, and dosage form;

(II) facility's unique lot number;

(III) manufacturer or distributor;

(IV) manufacturer's lot number;

(V) expiration date;

(VI) quantity per prepackaged unit;

(VII) number of prepackaged units;

(VIII) date packaged;

(IX) name, initials, or electronic signature of the prepacker;

(X) name, initials, or electronic signature of the responsible pharmacist; and

(XI) name of the facility receiving the pre-packaged drug.

(iv) Stock packages, prepackaged units, and control records shall be quarantined together until checked/released by the pharmacist.

(v) The pharmacy shall have written procedure for the recall of any drug prepackaged for another Class C Pharmacy under common ownership. The recall procedures shall require:

(I) notification to the pharmacy to which the prepackaged drug was distributed;

(II) quarantine of the product if there is a suspicion of harm to a patient;

(III) a mandatory recall if there is confirmed or probable harm to a patient; and

(IV) notification to the board if a mandatory recall is instituted.

(4) Sterile preparations prepared in a location other than the pharmacy. A distinctive supplementary label shall be affixed to the container of any admixture. The label shall bear at a minimum:

(A) patient's name and location, if not immediately administered;

(B) name and amount of drug(s) added;

(C) name of the basic solution;

(D) name or identifying code of person who prepared admixture; and

(E) expiration date of solution.

(5) Distribution.

(A) Medication orders.

(i) Drugs may be given to patients in facilities only on the order of a practitioner. No change in the order for drugs may be made without the approval of a practitioner except as authorized by the practitioner in compliance with paragraph (2)(C) of this subsection.

(ii) Drugs may be distributed only from the original or a direct copy of the practitioner's medication order.

(iii) Pharmacy technicians and pharmacy technician trainees may not receive verbal medication orders.

(iv) Institutional pharmacies shall be exempt from the labeling provisions and patient notification requirements of §562.006 and §562.009 of the Act, as respects drugs distributed pursuant to medication orders.

(B) Procedures.

(i) Written policies and procedures for a drug distribution system (best suited for the particular institutional pharmacy) shall be developed and implemented by the pharmacist-in-charge, with the advice of the committee performing the pharmacy and therapeutics function for the facility.

(ii) The written policies and procedures for the drug distribution system shall include, but not be limited to, procedures regarding the following:

(I) pharmaceutical care services;

(II) handling, storage and disposal of cytotoxic drugs and waste;

(III) disposal of unusable drugs and supplies;

(IV) security;

(V) equipment;

(VI) sanitation;

(VII) reference materials;

(VIII) drug selection and procurement;

(IX) drug storage;

(X) controlled substances;

(XI) investigational drugs, including the obtaining of protocols from the principal investigator;

(XII) prepackaging and manufacturing;

(XIII) stop orders;

(XIV) reporting of medication errors, adverse drug reactions/events, and drug product defects;

(XV) physician orders;

(XVI) floor stocks;

(XVII) drugs brought into the facility;

(XVIII) furlough medications;

(XIX) self-administration;

(XX) emergency drug supply;

(XXI) formulary;

(XXII) monthly inspections of nursing stations and other areas where drugs are stored, distributed, administered or dispensed;

(XXIII) control of drug samples;

(XXIV) outdated and other unusable drugs;

(XXV) routine distribution of patient medication;

(XXVI) preparation and distribution of sterile preparations;

(XXVII) handling of medication orders when a pharmacist is not on duty;

(XXVIII) use of automated compounding or counting devices;

(XXIX) use of data processing and direct imaging systems;

(XXX) drug administration to include infusion devices and drug delivery systems;

(XXXI) drug labeling;

(XXXII) recordkeeping;

(XXXIII) quality assurance/quality control;

(XXXIV) duties and education and training of professional and nonprofessional staff; and

(XXXV) emergency preparedness plan, to include continuity of patient therapy and public safety.

(6) Discharge Prescriptions. Discharge prescriptions must be dispensed and labeled in accordance with §291.33 of this title (relating to Operational Standards) except that certain medications packaged in unit-of-use containers, such as metered-dose inhalers, insulin pens, topical creams or ointments, or ophthalmic or otic preparation that are administered to the patient during the time the patient was a patient in the hospital, may be provided to the patient upon discharge provided the pharmacy receives a discharge order and the product bears a label containing the following information:

(A) name of the patient;

(B) name and strength of the medication;

(C) name of the prescribing or attending practitioner;

(D) directions for use;

(E) duration of therapy (if applicable); and

(F) name and telephone number of the pharmacy.

(g) Pharmaceutical care services.

(1) The pharmacist-in-charge shall assure that at least the following pharmaceutical care services are provided to patients of the facility.

(A) Drug utilization review. A systematic ongoing process of drug utilization review shall be developed in conjunction with the medical staff to increase the probability of desired patient outcomes and decrease the probability of undesired outcomes from drug therapy.

(B) Drug regimen review.

(i) For the purpose of promoting therapeutic appropriateness, a pharmacist shall evaluate medication orders and patient medication records for:

(I) known allergies;

(II) rational therapy--contraindications;

(III) reasonable dose and route of administration;

(IV) reasonable directions for use;

(V) duplication of therapy;

(VI) drug-drug interactions;

(VII) drug-food interactions;

(VIII) drug-disease interactions;

(IX) adverse drug reactions;

(X) proper utilization, including overutilization or underutilization; and

(XI) clinical laboratory or clinical monitoring methods to monitor and evaluate drug effectiveness, side effects, toxicity, or adverse effects, and appropriateness to continued use of the drug in its current regimen.

(ii) The drug regimen review shall be conducted on a prospective basis when a pharmacist is on duty, except for an emergency order, and on a retrospective basis as specified in subsection (e)(1) of this section when a pharmacist is not on duty.

(iii) Any questions regarding the order must be resolved with the prescriber and a written notation of these discussions made and maintained.

(iv) The drug regimen review may be conducted by remotely accessing the pharmacy's electronic data base from outside the pharmacy by an individual Texas licensed pharmacist employee of the pharmacy, provided the pharmacy establishes controls to protect the privacy of the patient and the security of confidential records.

(C) Education. The pharmacist-in-charge in cooperation with appropriate multi-disciplinary staff of the facility shall develop policies that assure that:

(i) the patient and/or patient's caregiver receives information regarding drugs and their safe and appropriate use; and

(ii) health care providers are provided with patient specific drug information.

(D) Patient monitoring. The pharmacist-in-charge in cooperation with appropriate multi-disciplinary staff of the facility shall develop policies to ensure that the patient's response to drug therapy is monitored and conveyed to the appropriate health care provider.

(2) Other pharmaceutical care services which may be provided by pharmacists in the facility include, but are not limited to, the following:

(A) managing drug therapy as delegated by a practitioner as allowed under the provisions of the Medical Practice Act;

(B) administering immunizations and vaccinations under written protocol of a physician;

(C) managing patient compliance programs;

(D) providing preventative health care services; and

(E) providing case management of patients who are being treated with high-risk or high-cost drugs, or who are considered "high risk" due to their age, medical condition, family history, or related concern.

(h) Emergency rooms.

(1) During the times a pharmacist is on duty in the facility any prescription drugs supplied to an outpatient, including emergency department patients, may only be dispensed by a pharmacist.

(2) When a pharmacist is not on duty in the facility, the following is applicable for supplying prescription drugs to be taken home by the patient for self-administration from the emergency room. If the patient has been admitted to the emergency room and assessed by a practitioner at the hospital, the following procedures shall be observed in supplying prescription drugs from the emergency room.

(A) Dangerous drugs and/or controlled substances may only be supplied in accordance with the system of control and accountability for dangerous drugs and/or controlled substances administered or supplied from the emergency room; such system shall be developed and supervised by the pharmacist-in-charge or staff pharmacist designated by the pharmacist-in-charge.

(B) Only dangerous drugs and/or controlled substances listed on the emergency room drug list may be supplied; such list shall be developed by the pharmacist-in-charge and the facility's emergency department committee (or like group or person responsible for policy in that department) and shall consist of dangerous drugs and/or controlled substances of the nature and type to meet the immediate needs of emergency room patients.

(C) Dangerous drugs and/or controlled substances may only be supplied in prepackaged quantities not to exceed a 72-hour supply in suitable containers and appropriately prelabeled (including necessary auxiliary labels) by the institutional pharmacy.

(D) At the time of delivery of the dangerous drugs and/or controlled substances, the practitioner or licensed nurse under the supervision of a practitioner shall appropriately complete the label with at least the following information:

(i) name, address, and phone number of the facility;

(ii) date supplied;

(iii) name of practitioner;

(iv) name of patient;

(v) directions for use;

(vi) brand name and strength of the dangerous drug or controlled substance; or if no brand name, then the generic name, strength, and the name of the manufacturer or distributor of the dangerous drug or controlled substance;

(vii) quantity supplied; and

(viii) unique identification number.

(E) The practitioner, or a licensed nurse under the supervision of the practitioner, shall give the appropriately labeled, prepackaged drug to the patient and explain the correct use of the drug.

(F) A perpetual record of dangerous drugs and/or controlled substances supplied from the emergency room shall be maintained in the emergency room. Such record shall include the following:

(i) date supplied;

(ii) practitioner's name;

(iii) patient's name;

(iv) brand name and strength of the dangerous drug or controlled substance; or if no brand name, then the generic name, strength, and the name of the manufacturer or distributor of the dangerous drug or controlled substance;

(v) quantity supplied; and

(vi) unique identification number.

(G) The pharmacist-in-charge, or staff pharmacist designated by the pharmacist-in-charge, shall verify the correctness of this record at least once every seven days.

(i) Radiology departments.

(1) During the times a pharmacist is on duty, any prescription drugs dispensed to an outpatient, including radiology department patients, may only be dispensed by a pharmacist.

(2) When a pharmacist is not on duty, the following procedures shall be observed in supplying prescription drugs from the radiology department.

(A) Prescription drugs may only be supplied to patients who have been scheduled for an x-ray examination at the facility.

(B) Prescription drugs may only be supplied in accordance with the system of control and accountability for prescription drugs administered or supplied from the radiology department and supervised by the pharmacist-in-charge or staff pharmacist designated by the pharmacist-in-charge.

(C) Only prescription drugs listed on the radiology drug list may be supplied; such list shall be developed by the pharmacist-in-charge and the facility's radiology committee (or like group or persons responsible for policy in that department) and shall consist of drugs for the preparation of a patient for a radiological procedure.

(D) Prescription drugs may only be supplied in prepackaged quantities in suitable containers and prelabeled by the institutional pharmacy with the following information:

(i) name and address of the facility;

(ii) directions for use;

(iii) name and strength of the prescription drug--if generic name, the name of the manufacturer or distributor of the prescription drug;

(iv) quantity;

(v) facility's lot number and expiration date; and

(vi) appropriate ancillary label(s).

(E) At the time of delivery of the prescription drug, the practitioner or practitioner's agent shall complete the label with the following information:

(i) date supplied;

(ii) name of physician;

(iii) name of patient; and

(iv) unique identification number.

(F) The practitioner or practitioner's agent shall give the appropriately labeled, prepackaged prescription drug to the patient.

(G) A perpetual record of prescription drugs supplied from the radiology department shall be maintained in the radiology department. Such records shall include the following:

(i) date supplied;

(ii) practitioner's name;

(iii) patient's name;

(iv) brand name and strength of the prescription drug; or if no brand name, then the generic name, strength, dosage form, and the name of the manufacturer or distributor of the prescription drug;

(v) quantity supplied; and

(vi) unique identification number.

(H) The pharmacist-in-charge, or a pharmacist designated by the pharmacist-in-charge, shall verify the correctness of this record at least once every seven days.

(j) Automated devices and systems.

(1) Automated compounding or counting devices. If a pharmacy uses automated compounding or counting devices:

(A) the pharmacy shall have a method to calibrate and verify the accuracy of the automated compounding or counting device and document the calibration and verification on a routine basis;

(B) the devices may be loaded with unlabeled drugs only by a pharmacist or by pharmacy technicians or pharmacy technician trainees under the direction and direct supervision of a pharmacist;

(C) the label of an automated compounding or counting device container shall indicate the brand name and strength of the drug; or if no brand name, then the generic name, strength, and name of the manufacturer or distributor;

(D) records of loading unlabeled drugs into an automated compounding or counting device shall be maintained to show:

(i) name of the drug, strength, and dosage form;

(ii) manufacturer or distributor;

(iii) manufacturer's lot number;

(iv) expiration date;

(v) date of loading;

(vi) name, initials, or electronic signature of the person loading the automated compounding or counting device; and

(vii) signature or electronic signature of the responsible pharmacist; and

(E) the automated compounding or counting device shall not be used until a pharmacist verifies that the system is properly loaded and affixes his or her signature to the record specified in subparagraph (D) of this paragraph.

(2) Automated medication supply systems.

(A) Authority to use automated medication supply systems. A pharmacy may use an automated medication supply system to fill medication orders provided that:

(i) the pharmacist-in-charge is responsible for the supervision of the operation of the system;

(ii) the automated medication supply system has been tested by the pharmacy and found to dispense accurately. The pharmacy shall make the results of such testing available to the Board upon request; and

(iii) the pharmacy will make the automated medication supply system available for inspection by the board for the purpose of validating the accuracy of the system.

(B) Quality assurance program. A pharmacy which uses an automated medication supply system to fill medication orders shall operate according to a written program for quality assurance of the automated medication supply system which:

(i) requires continuous monitoring of the automated medication supply system; and

(ii) establishes mechanisms and procedures to test the accuracy of the automated medication supply system at least every six months and whenever any upgrade or change is made to the system and documents each such activity.

(C) Policies and procedures of operation.

(i) When an automated medication supply system is used to store or distribute medications for administration pursuant to medication orders, it shall be operated according to written policies and procedures of operation. The policies and procedures of operation shall establish requirements for operation of the automated medication supply system and shall describe policies and procedures that:

(I) include a description of the policies and procedures of operation;

(II) provide for a pharmacist's review and approval of each original or new medication order prior to withdrawal from the automated medication supply system:

(-a-) before the order is filled when a pharmacist is on duty except for an emergency order;

(-b-) retrospectively within 72 hours in a facility with a full-time pharmacist when a pharmacist is not on duty at the time the order is made; or

(-c-) retrospectively within 7 days in a facility with a part-time or consultant pharmacist when a pharmacist is not on duty at the time the order is made;

(III) provide for access to the automated medication supply system for stocking and retrieval of medications which is limited to licensed healthcare professionals, pharmacy technicians, or pharmacy technician trainees acting under the supervision of a pharmacist;

(IV) provide that a pharmacist is responsible for the accuracy of the restocking of the system. The actual restocking may be performed by a pharmacy technician or pharmacy technician trainee;

(V) provide for an accountability record to be maintained which documents all transactions relative to stocking and removing medications from the automated medication supply system;

(VI) require a prospective or retrospective drug regimen review is conducted as specified in subsection (g) of this section; and

(VII) establish and make provisions for documentation of a preventative maintenance program for the automated medication supply system.

(ii) A pharmacy which uses an automated medication supply system to fill medication orders shall, at least annually, review its written policies and procedures, revise them if necessary, and document the review.

(D) Automated medication supply systems used for storage and recordkeeping of medications located outside of the pharmacy department (e.g., Pyxis). A pharmacy technician or pharmacy technician trainee may re-stock an automated medication supply system located outside of the pharmacy department with prescription drugs other than compounded IV admixtures provided:

(i) prior to distribution of the prescription drugs a pharmacist verifies that the prescription drugs pulled to stock the automated supply system match the list of prescription drugs generated by the automated medication supply system;

(ii) the prescription drugs to re-stock the system are labeled and verified with a machine readable product identifier, such as a barcode;

(iii) any previous manipulation of the product such as repackaging or extemporaneous compounding has been checked by a pharmacist; and

(iv) quality assurance audits are conducted according to established policies and procedures to ensure accuracy of the process.

(E) Recovery Plan. A pharmacy which uses an automated medication supply system to store or distribute medications for administration pursuant to medication orders shall maintain a written plan for recovery from a disaster or any other situation which interrupts the ability of the automated medication supply system to provide services necessary for the operation of the pharmacy. The written plan for recovery shall include:

(i) planning and preparation for maintaining pharmacy services when an automated medication supply system is experiencing downtime;

(ii) procedures for response when an automated medication supply system is experiencing downtime;

(iii) procedures for the maintenance and testing of the written plan for recovery; and

(iv) procedures for notification of the Board and other appropriate agencies whenever an automated medication supply system experiences downtime for more than two days of operation or a period of time which significantly limits the pharmacy's ability to provide pharmacy services.

(3) Verification of medication orders prepared by the pharmacy department through the use of an automated medication supply system. A pharmacist must check drugs prepared pursuant to medication orders to ensure that the drug is prepared for distribution accurately as prescribed. This paragraph does not apply to automated medication supply systems used for storage and recordkeeping of medications located outside of the pharmacy department.

(A) This check shall be considered accomplished if:

(i) a check of the final product is conducted by a pharmacist after the automated system has completed preparation of the medication order and prior to delivery to the patient; or

(ii) the following checks are conducted by a pharmacist:

(I) if the automated medication supply system contains unlabeled stock drugs, a pharmacist verifies that those drugs have been accurately stocked; and

(II) a pharmacist checks the accuracy of the data entry of each original or new medication order entered into the automated medication supply system before the order is filled.

(B) If the final check is accomplished as specified in subparagraph (A)(ii) of this paragraph, the following additional requirements must be met.

(i) The medication order preparation process must be fully automated from the time the pharmacist releases the medication order to the automated system until a completed medication order, ready for delivery to the patient, is produced.

(ii) The pharmacy has conducted initial testing and has a continuous quality assurance program which documents that the

automated medication supply system dispenses accurately as specified in paragraph (2)(A) and (B) of this subsection.

(iii) The automated medication supply system documents and maintains:

(I) the name(s), initials, or identification code(s) of each pharmacist responsible for the checks outlined in subparagraph (A)(ii) of this paragraph; and

(II) the name(s), initials, or identification code(s) and specific activity(ies) of each pharmacist or pharmacy technician or pharmacy technician trainee who performs any other portion of the medication order preparation process.

(iv) The pharmacy establishes mechanisms and procedures to test the accuracy of the automated medication supply system at least every month rather than every six months as specified in paragraph (2)(B) of this subsection.

(4) Automated checking device.

(A) For the purpose of this subsection, an automated checking device is a fully automated device which confirms, after a drug is prepared for distribution but prior to delivery to the patient, that the correct drug and strength has been labeled with the correct label for the correct patient.

(B) The final check of a drug prepared pursuant to a medication order shall be considered accomplished using an automated checking device provided:

(i) a check of the final product is conducted by a pharmacist prior to delivery to the patient or the following checks are performed by a pharmacist:

(I) the prepackaged drug used to fill the order is checked by a pharmacist who verifies that the drug is labeled and packaged accurately; and

(II) a pharmacist checks the accuracy of each original or new medication order.

(ii) the medication order is prepared, labeled, and made ready for delivery to the patient in compliance with Class C (Institutional) Pharmacy rules; and

(iii) prior to delivery to the patient:

(I) the automated checking device confirms that the correct drug and strength has been labeled with the correct label for the correct patient; and

(II) a pharmacist performs all other duties required to ensure that the medication order has been prepared safely and accurately as prescribed.

(C) If the final check is accomplished as specified in subparagraph (B) of this paragraph, the following additional requirements must be met.

(i) The pharmacy has conducted initial testing of the automated checking device and has a continuous quality assurance program which documents that the automated checking device accurately confirms that the correct drug and strength has been labeled with the correct label for the correct patient.

(ii) The pharmacy documents and maintains:

(I) the name(s), initials, or identification code(s) of each pharmacist responsible for the checks outlined in subparagraph (B)(i) of this paragraph; and

(II) the name(s), initials, or identification code(s) and specific activity(ies) of each pharmacist, pharmacy technician, or pharmacy technician trainee who performs any other portion of the medication order preparation process.

(iii) The pharmacy establishes mechanisms and procedures to test the accuracy of the automated checking device at least monthly.

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 31, 2009.

TRD-200903843
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Effective date: September 20, 2009
Proposal publication date: June 12, 2009
For further information, please call: (512) 305-8028

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PART 16. TEXAS BOARD OF PHYSICAL THERAPY EXAMINERS

CHAPTER 329. LICENSING PROCEDURE

22 TAC §329.2

The Texas Board of Physical Therapy Examiners adopts amendments to §329.2, concerning License by Examination, with changes to the proposed text as published in the June 19, 2009, issue of the *Texas Register* (34 TexReg 4077). The amendment will result in more efficient licensure of applicants by endorsement, with less expense and delay for those who must take the exam again for endorsement purposes. The change substitutes the term "continuing competence" for "continuing education," reflecting a change made to Chapter 453 of the Occupations Code during the 2009 legislative session.

The amendment will exempt those already licensed in another state from the additional education requirement if they have to take the national examination again.

No comments were received on these amendments.

The amendment is 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.

§329.2. License by Examination.

(a) Requirements. An applicant applying for licensure by examination must:

(1) meet the requirements as stated in §329.1 of this title (relating to General Licensure Requirements and Procedures); and

(2) pass the National Physical Therapy Exam (NPTE) for physical therapists or physical therapist assistants with the score set by the board. Score reports must be sent directly to the board by the authorized score reporting service.

(b) Notification of exam score. The board will notify applicants in writing of the exam score.

(1) If an applicant passes the exam, the board will include a permanent license with the score notification.

(2) If an applicant fails the exam, a re-examination application and fee is required for a subsequent examination.

(c) An applicant may take the examination for PT or PTA licensure only after the application process is complete and all requirements are met.

(d) Applying for licensure in more than one state. An applicant who applies for licensure by exam in another state, but does not receive a license from any other state, may apply for licensure by exam in Texas. The applicant must meet all other requirements for licensure in Texas, and must have the score report sent directly to the board from the authorized score reporting service.

(e) If an examinee has failed the physical therapy examination and wishes to take the physical therapist assistant examination, the examinee may apply under the Act, §453.203.

(f) Re-examination.

(1) First re-examination. An applicant who fails the exam the first time is eligible to take the examination a second time after submitting a re-exam application and fee.

(2) Second or subsequent re-examination. An applicant who fails the exam twice or more must complete additional education before taking the exam again. The amount of additional education is set forth in the attached chart. To be eligible to register for the exam again, the applicant must submit a letter that identifies the area(s) of weakness and describes the plan that addresses the weakness(s). The letter must be accompanied by proof that the additional education has been successfully completed. Additional education may be one or more of the following:

(A) A commercial review course.

(B) An individual tutorial. The completed tutorial must be signed by the tutor and notarized, and include the tutor's curriculum vitae. If the applicant is applying for a PT license, the tutor must be a licensed PT. If the applicant is applying for a PTA license, the tutor must be a licensed PT, or a licensed PTA who is associated with a Texas PTA program.

(C) Board-approved continuing competence (CCU) activities.

Figure: 22 TAC §329.2(f)(2)(C)

(3) A person who is currently licensed in good standing in another state and who must retake the national exam to meet Texas score requirements is not required to complete additional education.

(g) Failure of PT exam. An applicant who fails the physical therapy examination may apply for licensure as a PTA and take the physical therapist assistant examination if he meets all other requirements for licensure.

(h) License upgrading. An applicant who was licensed under the grandfather clause may take the NPTE to upgrade his or her score. The applicant must submit a written request and the examination registration materials and the appropriate fee.

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

Filed with the Office of the Secretary of State on August 28, 2009.

TRD-200903791

John P. Maline
Executive Director
Texas Board of Physical Therapy Examiners
Effective date: September 17, 2009
Proposal publication date: June 19, 2009
For further information, please call: (512) 305-6900

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22 TAC §329.3

The Texas Board of Physical Therapy Examiners adopts amendments to §329.3, concerning Temporary Licensure for Examination Candidates, without changes to the proposed text as published in the June 19, 2009, issue of the *Texas Register* (34 TexReg 4078). The amendment will result in less ambiguity for applicants by examination regarding when the temporary licensed may be issued.

The amendment will clarify that a temporary license will not be issued until the applicant has registered for the national examination as well as met the other requirements stated in the section.

No comments were received on these amendments.

The amendment is 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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John P. Maline
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Proposal publication date: June 19, 2009
For further information, please call: (512) 305-6900

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PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 535. GENERAL PROVISIONS
SUBCHAPTER E. REQUIREMENTS FOR LICENSURE

22 TAC §535.51

The Texas Real Estate Commission (TREC) adopts amendments to §535.51, General Requirements, without changes to the proposed text as published in the June 26, 2009, issue of the *Texas Register* (34 TexReg 4270), and will not be republished.

The amendments correct and clarify the requirements for obtaining an education evaluation and submitting an application for licensure. The amendments also include stylistic changes to improve readability and restore to subsection (e) (relettered as subsection (f)) text that was inadvertently omitted at the time of the last amendments to this section.

The amendments also change the fee schedule on the late renewal application forms adopted by reference to reflect an increase in late renewal fees from $45 to $51 for the annual late renewal of a real estate salesperson or broker license for a person whose license has been expired 90 days or less; and late renewal fee from $60 to $68 for the annual late renewal of a real estate salesperson or broker license for a person whose license has been expired more than 90 days but less than one year. The fee increases are concurrently being adopted in amendments to §535.101. The 81st Legislature in the 2010-2011 General Appropriations Act and riders thereto approved budget appropriations for the commission contingent on those appropriations being paid through fee collections.

The amendments also change the fee schedule on the salesperson original application, late renewal application forms, and the broker step down application form adopted by reference to reflect an increase in the fee paid by such applicants to the Real Estate Center from $17.50 to $20. The fee was increased during the 81st Legislative Session, Regular Session, by Senate Bill 862 which amended Texas Occupations Code §1101.152.

The reasoned justification for the amendments as adopted is increased clarity for applicants regarding the requirements for licensure.

No comments were received regarding the amendments as proposed.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to ensure compliance with the provisions of the Act.

The statute affected by this adoption is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the amendments.

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

Filed with the Office of the Secretary of State on August 24, 2009.

TRD-200903732
Loretta R. DeHay
Interim Administrator and General Counsel
Texas Real Estate Commission
Effective date: November 1, 2009
Proposal publication date: June 26, 2009
For further information, please call: (512) 465-3900

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SUBCHAPTER F. EDUCATION, EXPERIENCE, EDUCATIONAL PROGRAMS, TIME PERIODS AND TYPE OF LICENSE

22 TAC §535.64

The Texas Real Estate Commission (TREC) adopts amendments to §535.64, Accreditation of Schools and Approval of Courses and Instructors, with changes from the proposed text as published in the June 26, 2009, issue of the *Texas Register* (34 TexReg 4271).

The proposed amendments would have addressed two distinct issues related to accreditation of schools and approval of courses and instructors: (1) the calculation and publication of exam passage rates and change to a two-year accreditation to facilitate the passage rate requirements; and (2) new requirements for instructors of the required legal update and ethics course. The exam passage rate provisions are not being adopted because it was determined that further consideration of this issue is necessary. The amendments adopt a revised application for instructor approval pursuant to changes to requirements to teach the required legal update and ethics courses, adopted elsewhere in this issue in §535.71, and also make minor stylistic changes to another provision to improve readability.

One comment was received regarding the amendments as proposed. The commenter suggested that the proposed two-year approval will cost schools more in rent than the current five-year approval because concern over non-renewal after two years will be a deterrent from entering into longer-term leases for school facilities. The commenter expressed concerns about how pass/fail results will be counted toward or against providers when a provider regulated by TREC partners with an exempt college or university, and further concern about the delegation of enforcement functions to agency staff and a perceived lack of due process if an educator's approval were not renewed. The Commission agreed with some of these concerns and determined that further evaluation was appropriate.

In not adopting unrelated parts of the proposed amendments, the revisions to the rules as adopted do not change the nature or scope so much that they could be deemed different rules. The rules as adopted do not affect individuals other than those contemplated by the rules as proposed. The rules as adopted do not impose more onerous requirements than the proposed version and do not materially alter the issues raised in the proposed rules. Changes in the adopted rules respond to public comments.

The reasoned justification for the amendments is increased quality in the required legal update and ethics courses through the establishment of increased standards for instructors.

No comments were received regarding the portions of the proposed amendments that are being adopted.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to ensure compliance with the provisions of the Act.

The statute affected by this adoption is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the amendments.

§535.64. Accreditation of Schools and Approval of Courses and Instructors.

(a) Application. A person desiring to offer educational programs or courses of study under approval of the commission pursuant to Texas Occupations Code, Chapter 1101 (the Act), §1101.301, shall file an application on forms adopted by the commission accompanied by the fee prescribed pursuant to §1101.152(a)(10) of the Act. The commission may request additional information from an applicant which the commission deems to be relevant and material to the consideration of an application.

(b) Standards for approval of application for accreditation. To be accredited as a school, the applicant must satisfy the commission as to the applicant's ability to administer courses with competency, honesty, trustworthiness and integrity. If the applicant proposes to employ another person, such as an independent contractor, to conduct or administer the courses, the other person must meet this standard as if the other person were the applicant. The applicant also must demonstrate that the applicant has sufficient financial resources to conduct its proposed operations on a continuing basis without risk of loss to students attending the school and that the proposed facilities will be adequate and safe for conducting classes. If the applicant is currently accredited, the applicant will be deemed to meet financial requirements imposed by this subsection once the applicant has provided the statutory bond or other security acceptable to the commission under §1101.301 of the Act and there are no unsatisfied final money judgments against the applicant; otherwise, the application will be subject to the financial review provisions of this section.

(c) Financial review. The commission shall review the financial condition of each proposed school to determine whether the school has sufficient financial resources to conduct its proposed operations on a continuing basis. In making this determination, the commission shall be conservative in the financial assumptions it makes concerning the school's proposed operations and its future cash flows. The applicant shall provide the following information:

(1) business financial statements prepared in accordance with generally accepted accounting principles, which shall include a current statement of financial condition and a current statement of net worth;

(2) on an initial application, a proposed budget for the first year of operation; and

(3) on an initial application, a market survey indicating the anticipated enrollment for the first year of operation.

(d) Approval of application for accreditation. If it determines that the applicant meets the standards for accreditation and has furnished the bond or other acceptable security required by the Act, §1101.302, the commission shall approve the application and provide a written notice of the accreditation to the applicant. Unless surrendered or revoked for cause, the accreditation will be valid for a period of five years.

(e) Subsequent application for accreditation. No more than six months prior to the expiration of its current accreditation, a school may apply for accreditation for another five year period.

(1) To renew its accreditation, at least 55 percent of the school's graduates must have passed a commission licensing exam the first time the exam is taken by the graduates.

(2) The school a graduate is affiliated with for purposes of this subsection is the school where the graduate took his or her last core course, unless the course was taken more than two years before the date the graduate submitted an education evaluation to the commission. If the graduate's last core course was taken more than two years before that date, the commission will not count the course or the graduate in calculating the school's exam pass rate.

(3) For purposes of calculating the exam passage rate of a commission-accredited school, each type of licensing examination that a graduate takes for the first time will have a school affiliation, unless the last core course taken for the purpose of meeting the education requirements for the type of license was taken at a school that is not accredited by the commission or the course was taken more than two years before the date the graduate submitted an education evaluation to the commission.

(f) Disapproval of application. If it determines that an applicant does not meet the standards for accreditation, the commission shall disapprove the application in writing. An applicant may request a hearing before the commission on the disapproval by filing a written request for hearing within 10 days following the applicant's receipt of the notice of disapproval. Following the hearing, the commission shall issue an order which, in the opinion of the commission, is appropriate in the matter concerned. Venue for any hearing conducted under this section shall be in Travis County. The disapproval and hearing are subject to the Administrative Procedure Act, Texas Government Code, Chapter 2001, and to Chapter 533 of this title (relating to Practice and Procedure).

(g) Forms. The Texas Real Estate Commission adopts by reference the following forms approved by the commission. These documents are published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.state.tx.us.

(1) Form ED 1-0, Education Provider Application;

(2) Form ED 2-0, Principal Information Form;

(3) Form ED 3-1, Course Application;

(4) Form ED 4-2, Instructor Application - Core, Legal Update and Ethics;

(5) Form ED 5-2, Real Estate Provider Bond;

(6) Form ED 6-0; Evaluation Form; and

(7) Form ED 7-1, Instructor Manual Guidelines.

(h) Obtaining approval to offer course. An applicant shall submit Form ED 3-1 the first time approval is sought to offer a course. Once a course has been approved, no further approval is required for another accredited school to offer the same course. Prior to advertising or offering the course, however, the subsequent provider shall complete Form ED 3-1, file the form with the commission and receive written or oral acknowledgment from the commission that all necessary documentation has been filed. A school shall submit an instructor's manual for each proposed course. The commission may require a copy of the course materials and instructor's manual to be submitted for each previously approved course the school intends to offer. Subsequent providers shall offer the course as originally approved or as revised with the approval of the commission and shall use all materials required in the original or revised course. Each manual must comply with Form ED 7-1, Instructor Manual Guidelines. Schools may offer a course using an alternative delivery method such as computers if the course satisfies the requirements for such a course contained in §535.62(d)(6) of this title (relating to Acceptable Courses of Study).

(i) Standards for instructor approval. The application for commission approval of an instructor must be filed on forms adopted by the commission. To be approved as an instructor, a person must satisfy the commission as to the person's competency in the subject matter to be taught and ability to teach effectively. Each instructor must also possess the following qualifications:

(1) a college degree in the subject area or five years professional experience in the subject area and three years experience in teaching or training; or

(2) the equivalent of paragraph (1) of this subsection as determined by the commission after due consideration of the applicant's professional experience, research, authorship or other significant endeavors in the subject area.

(j) Approval of instructor. If the commission determines that the applicant meets the standards for instructor approval, the commis-

sion shall approve the application and provide a written notice of the approval to the applicant. Unless surrendered or revoked for cause, the approval will be valid for a period of five years.

(k) Subsequent application for instructor approval. No more than six months prior to the expiration of the current approval, an instructor may apply for approval for another five year period. If an instructor was approved prior to the effective date of this section, the approval of the instructor expires January 1, 2001, and the instructor may apply for approval at any time.

(l) Disapproval of application. The commission may disapprove an application for approval of an instructor for failure to meet the standard imposed by subsection (i) of this section, failure to satisfy the commission as to the applicant's honesty, trustworthiness or integrity, or for any reason which would be a ground to suspend or revoke a real estate license. If an application is disapproved, the commission shall provide written notice to the applicant detailing the basis of the decision. An applicant may request a hearing before the commission by filing a written request for hearing within 10 days following the applicant's receipt of the notice of disapproval. Venue for any hearing conducted under this section is in Travis County. Appeals from application disapprovals will be conducted in the manner required by the Act, §1101.364. Hearings are subject to the Administrative Procedure Act, Texas Government Code, Chapter 2001, and to Chapter 533 of this title.

(m) Additional information related to application. The commission may request an applicant to provide additional information related to the application, and the commission may terminate the application without further notice if the applicant fails to provide the information within 60 days after the mailing of a request by the commission.

(n) Delegation of authority. The commission may authorize its director of licensing and education, or that person's designate, to determine whether applications for schools, courses, and instructors should be approved.

(o) Examination preparation courses.

(1) No school may be accredited or operate under commission approval for the sole purpose of offering courses of instruction designed to prepare its students for the state examination for any license issued by the commission. A school may offer an examination preparation course on a non-credit basis, provided the requirements of subsection (h) of this section have been met.

(2) Once an examination preparation course has been approved by the commission, the school may offer the course until the course approval expires. The approval for a course expires December 31 of the odd-numbered year following approval of the course. A school may apply for approval to offer a subsequent course no earlier than September 1 of the year in which the course approval expires. If the course was approved by the commission prior to the effective date of this subsection, the approval of the course expires December 31, 2001, and the school may apply for approval of another course beginning September 1, 2001. The commission is not required to approve a course sooner than 30 days after the filing of an application for course approval.

(3) Schools shall update examination preparation course materials in the manner required by §535.65 of this title (relating to Change in Ownership or Operation of School; Presentation of Courses, Advertising, and Records).

(4) In the presentation of examination preparation courses, schools must ensure that the students are advised of the confidentiality of the contents of examinations administered for the commission and of the punishments for a violation of §535.61 of this title (relating to Examinations).

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 24, 2009.

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Loretta R. DeHay
Interim Administrator and General Counsel
Texas Real Estate Commission
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For further information, please call: (512) 465-3900

SUBCHAPTER G. MANDATORY CONTINUING EDUCATION

22 TAC §535.71

The Texas Real Estate Commission (TREC) adopts amendments to §535.71, concerning Mandatory Continuing Education: Approval of Providers, Courses and Instructors, without changes to the proposed text as published in the June 26, 2009, issue of the *Texas Register* (34 TexReg 4272), and will not be republished.

The amendments to §535.71 add the TREC web site address to subsection (d) concerning availability of forms and adopts by reference MCE Form 16-1 which has been revised for use as an instructor application for MCE elective courses only. The amendments to §535.71 also change the requirements for approval of instructors of Mandatory Continuing Education required legal and ethics courses.

Currently instructors of such courses meet minimum requirements by certifying attendance at an instructor training course. The amendments require persons to have a college degree in the subject area of real estate or five years professional experience in the subject areas of Principles of Real Estate, Law of Agency, and Law of Contracts; and three years experience in teaching or training; or the equivalent of those requirements as determined by the commission.

The reasoned justification for the amendments is to have better qualified instructors of required MCE legal and ethics courses who are able to effectively teach important information to licensees about current issues related to real estate brokerage.

No comments were received regarding the amendments as proposed.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapter 1101; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of Chapter 1101 and ensure compliance with Chapter 1101.

The statute affected by this adoption is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the amendments.

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

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Loretta R. DeHay
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For further information, please call: (512) 465-3900

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SUBCHAPTER J. FEES

22 TAC §535.101

The Texas Real Estate Commission (TREC) adopts amendments to §535.101, Fees, with changes to the proposed text as published in the June 26, 2009, issue of the *Texas Register* (34 TexReg 4275).

The proposed amendments to the accreditation and renewal fee rules for education programs were not adopted by the Commission because rules regarding the calculation and publication of exam passage rates and change to a two-year accreditation to facilitate the passage rate statutory requirements to which the fee rules were related were not adopted.

In not adopting unrelated parts of the proposed amendments, the revisions to the rules as adopted do not change the nature or scope so much that they could be deemed different rules. The rules as adopted do not affect individuals other than those contemplated by the rules as proposed. The rules as adopted do not impose more onerous requirements than the proposed version and do not materially alter the issues raised in the proposed rules. Changes in the adopted rule are in response to public comments received regarding §535.66.

The adopted amendments increase the salesperson and broker annual renewal fees from $30 to $34; late renewal fee from $45 to $51 for the annual late renewal of a real estate salesperson or broker license for a person whose license has been expired 90 days or less; and late renewal fee from $60 to $68 for the annual late renewal of a real estate salesperson or broker license for a person whose license has been expired more than 90 days but less than one year. The 81st Legislature in the 2010-2011 General Appropriations Act and riders thereto approved budget appropriations for the commission contingent on those appropriations being paid through fee collections. The amendments permit TREC to raise the necessary revenue to offset the additional costs incurred by the commission to implement new programs required by laws passed by the 81st Legislature (2009).

The reasoned justification for these amendments is to generate sufficient revenue to fund appropriations by the 81st Legislature.

No comments were received regarding the amendments as proposed.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to ensure compliance with the provisions of the Act.

The statute affected by this adoption is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the amendments.

§535.101. Fees.

(a) Fees for the issuance of a license due to a change of address, additional place of business or change of sponsoring broker are due when requests for such licenses are received. A change of address or name submitted with an application to renew a license, however, does not require payment of a fee in addition to the fee for renewing the license. If the commission receives a request for issuance of a license certificate which requires payment of a fee, and appropriate fee was not filed with the request, the commission shall return the request and notify the person filing the request that the person must pay the fee before the certificate will be issued. The commission may require written proof of a licensee's right to use a different name prior to issuing a license certificate reflecting a change of name. As used in this section, the term "license" includes a certificate of registration.

(b) The commission shall charge and collect the following fees:

(1) a fee not to exceed $75 for the filing of an original application for a real estate broker license;

(2) a fee of $34 for annual renewal of a real estate broker license;

(3) a fee of $75 for the filing of an original application for a real estate salesperson license;

(4) a fee of $34 for annual renewal of a real estate salesperson license;

(5) a fee of $61 for taking a license examination;

(6) a fee of $20 for filing a request for a license for each additional office or place of business;

(7) a fee of $20 for filing a request for a license for a change of place of business change of name, return to active status or change of sponsoring broker;

(8) a fee of $20 for filing a request to replace a license lost or destroyed;

(9) a fee of $400 for filing an application for accreditation of an education program under Texas Occupations Code (the Act), §1101.301;

(10) a fee of $200 a year for operation of a real estate education program under the Act, §1101.301;

(11) a fee of $30 for transcript evaluation;

(12) a fee of $20 for preparing a license history;

(13) a fee of $25 for the filing of an application for a moral character determination;

(14) a fee of $25 for the filing of an instructor application;

(15) a fee of $51 for the annual late renewal of a real estate salesperson or broker license for a person whose license has been expired 90 days or less;

(16) a fee of $68 for the annual late renewal of a real estate salesperson or broker license for a person whose license has been expired more than 90 days but less than one year;

(17) the fee charged by the Federal Bureau of Investigation for a national criminal history check in connection with a license renewal; and

(18) a late reporting fee of $250 to reactivate a license under §535.92(f) of this chapter.

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 24, 2009.

TRD-200903735
Loretta R. DeHay
Interim Administrator and General Counsel
Texas Real Estate Commission
Effective date: November 1, 2009
Proposal publication date: June 26, 2009
For further information, please call: (512) 465-3900

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SUBCHAPTER R. REAL ESTATE INSPECTORS

22 TAC §535.212

The Texas Real Estate Commission (TREC) adopts amendments to §535.212, Education and Experience Requirements for an Inspector License, without changes to the proposed text as published in the June 26, 2009, issue of the *Texas Register* (34 TexReg 4277), and will not be republished.

The amendments update a reference to the recently revised standard inspection report form, which was not changed when the REI 7A-0 form was replaced by the REI 7A-1, effective February 1, 2009, and adds a reference to form REI 7-2, concurrently being adopted through an amendment to 22 TAC §535.223.

The reasoned justification for the amendments is to ensure that education providers are offering training, and persons pursuing licensure as inspectors are properly trained, in the use of the current inspection report forms.

No comments were received regarding the amendments as proposed.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to ensure compliance with the provisions of the Act.

The statutes affected by this adoption are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the amendments.

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

Filed with the Office of the Secretary of State on August 24, 2009.

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Loretta R. DeHay
Interim Administrator and General Counsel
Texas Real Estate Commission
Effective date: September 13, 2009
Proposal publication date: June 26, 2009
For further information, please call: (512) 465-3900

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22 TAC §535.223

The Texas Real Estate Commission (TREC) adopts amendments to §535.223, Standard Inspection Report Form, without changes to the proposed text as published in the June 26, 2009, issue of the *Texas Register* (34 TexReg 4277), but with changes to the form, REI 7-2, adopted by reference. A typographical error which did not modify "D=Deficient" in the header on pages 4 - 6 was corrected to read "D=Deficient."

The amendments adopt by reference a revised standard inspection report form. TREC has a statutory duty to adopt standard inspection report forms and to adopt rules requiring licensed inspectors to use the report forms under Senate Bill Number 1100, 75th Legislature (1997). To create a grace period during which inspectors may use either the new form, REI 7-2 or the old form, REI 7A-1, the rule will require inspectors to use either the 7-2 form or the 7A-1 form for inspections of one-to-four family residential properties. The amended form corrects the rule reference on the first page of the form, modifies the header on pages 3 - 6 to indicate that "D=Deficient," and makes minor stylistic revisions to the form.

The amendments have been recommended by the Texas Real Estate Inspector Committee, an advisory committee of six professional inspectors and three public members appointed by TREC, resulting from revisions to the inspector standards of practice that became effective on February 1, 2009.

The reasoned justification for the amendments is increased clarity for consumers regarding the inspection process.

No comments were received regarding the amendments as proposed.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to ensure compliance with the provisions of the Act.

The statutes affected by this adoption are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the amendments.

§535.223. Standard Inspection Report Form.

The Texas Real Estate Commission adopts by reference Property Inspection Report Form REI 7A-1, approved by the Commission in 2008, and Property Inspection Report Form REI 7-2, approved by the Commission in 2009, for use in reporting inspection results. These documents are published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

(1) Except as provided by this section, inspections performed for a prospective buyer or prospective seller of one-to-four family residential property shall be reported on Form REI 7A-1 or Form REI 7-2 adopted by the Commission ("the standard form").

(2) Inspectors may reproduce the standard form by computer or from printed copies obtained from the Commission. Except as specifically permitted by this section, the inspector shall reproduce the text of the standard form verbatim and the spacing, length of blanks, borders, and placement of text on the page must appear to be identical to that in the printed version of the standard form.

(3) An inspector may make the following changes to the standard form:

(A) the inspector may delete the line for name, license number, and signature of the sponsoring inspector if the inspection was performed solely by a professional inspector;

(B) the inspector may change the typeface, provided that fonts are no smaller than those used in the printed version of the standard form;

(C) the inspector may use legal sized (8-1/2" by 14") paper;

(D) the inspector may add a cover page to the report form;

(E) the inspector may add footers to each page of the report except the first page and may add headers to each page of the report;

(F) the inspector may place the property identification and page number at either the top or bottom of the page;

(G) the inspector may add subheadings under items, provided that the numbering of the standard items remains consistent with the standard form;

(H) the inspector may list other items in the appropriate section of the form and additional captions, letters, and check boxes for those items;

(I) the inspector may delete inapplicable subsections of Section VI., Optional Systems, and re-letter any remaining subsections;

(J) the inspector may delete Subsection L., Other, of Section I., Structural Systems;

(K) the inspector may allocate such space in the "Additional Information Provided by the Inspector" section and in each of the spaces provided for comments for each inspected item as the inspector deems necessary or may attach additional pages of comments to the report; and

(L) if necessary to report the inspection of a part, component, or system not contained in the standard form, or space provided on the form is inadequate for a complete reporting of the inspection, the inspector may attach additional pages to the form. When providing comments or additional pages to report on items listed on a form, the inspector shall arrange the comments or additional pages to follow the sequence of the items listed in the form adopted by the Commission.

(4) The inspector shall renumber the pages of the form to correspond with any changes made necessary due to adjusting the space for comments or adding additional items and shall number all pages of the report, including any addenda.

(5) The inspector shall indicate, by checking the appropriate boxes on the form, whether each item was inspected, not inspected, not present, and/or deficient and shall explain the findings in the appropriate space on the form.

(6) This section does not apply to the following:

(A) re-inspections of a property performed for the same client; or

(B) inspections performed for or required by a lender or governmental agency;

(C) inspections for which federal or state law requires use of a different report; or

(D) quality control construction inspections of new homes performed for builders, including phased construction inspections, inspections performed solely to determine compliance with building codes, warranty or underwriting requirements, or inspections required by a municipality and the builder or other entity requires use of a different report, and the first page of the report contains a notice either in bold or underlined reading substantially similar to the following: "This report was prepared for a builder or other entity in accordance with the builder's requirements. The report is not intended as a substitute for an inspection of the property by an inspector of the buyer's choice. Standard inspections performed by a Texas Real Estate Commission licensee and reported on Texas Real Estate Commission promulgated report forms may contain additional information a buyer should consider in making a decision to purchase." If a report form required for use by the builder or builder's employee does not contain the notice, the inspector may attach the notice to the first page of the report at the time the report is prepared by the inspector.

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 24, 2009.

TRD-200903737
Loretta R. DeHay
Interim Administrator and General Counsel
Texas Real Estate Commission
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For further information, please call: (512) 465-3900

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 21. TEXAS LOW-LEVEL RADIOACTIVE WASTE DISPOSAL COMPACT COMMISSION

CHAPTER 675. PRELIMINARY RULES

31 TAC §675.1

The Texas Low Level Radioactive Waste Disposal Compact Commission (Commission) adopts new §675.1 estimating the volume of low level radioactive waste, including decommissioning waste, to be disposed of by Texas in the Compact facility in the years 1995 through 2045. The rule is being adopted with changes to the proposed text as published in the June 26, 2009, issue of the *Texas Register* (34 TexReg 4278) and will be republished.

The chapter name as published with the proposed rule is being changed intentionally to better describe the function of the rules. It is anticipated that at some future date, the Commission will restructure the adopted rules; therefore the chapter name reflects that this structure is preliminary.

Justification for Rule Adoption

The new rule is intended to satisfy the requirements of Health and Safety Code §403.006. Under provisions of Section 3.04(11) of the actual Compact as it appears in §403.006 of the Health and Safety Code there is a requirement that the Compact Commission "...establish by rule the total volume of low-level radioactive waste that the host state will dispose of in the compact facility in the years 1995 through 2045, including decommissioning waste"

by a time period no later than 180 days after all members of the Commission have been appointed.

How the rule will function

The proposed new section provides an estimate of the total quantity of waste generated in Texas that is estimated to be disposed of in the Texas site during the period 1995 through 2045. The Compact Commission's estimate is a total waste disposed of 5,000,000 cubic feet. This estimate does not predict circumstances which may change regarding generation and disposal of waste and therefore is an estimate which may be revised by subsequent rulemaking.

Summary of comments

Prior to proposing the rule the Compact Commission conducted a stakeholders meeting on April 14, 2009. Based upon comments made during that meeting, language of the proposed rule was developed and then published.

After its publication, one entity, Associates for Responsible Disposal in Texas (ARDT) filed written comments to the proposed rule. All of the comments to the proposed rule were directed at subsection (b). After reviewing the comments, and the Compact provisions incorporated in Texas Health and Safety Code §403.006(3.04)(11) the Commission determined that §675.1(b) could be eliminated from the proposed rule and the rule revised to reflect that there are no subsections.

What follows is a summary of public comments and corresponding responses regarding the proposed 31 TAC §675.1:

ARDT Comment No. 1:

In its first comment, ARDT notes a typographical error in the rule as published in the *Texas Register.* The error is in the "Background and Summary" section where the word "form" should be "from."

Response:

While appreciating the observation, the comment is not to any language in the proposed rule so no change is required.

ARDT Comment No. 2:

In its second comment, ARDT notes that in the "Section by Section" discussion there is a reference to Section 403.06 of the Texas Health and Safety Code which should have been Section 403.006.

Response:

As with its first observation, the reference is not one of substance to the proposed rule. No revision to the proposed rule is required as a result of the comment.

ARDT Comment No. 3:

In its third comment, ARDT notes that the subsection (b) of proposed rule §675.1 expressly refers to the "State of Vermont" and there is a suggestion that the phrase, "nonhost party states" be used instead because the Compact allows for other states to be made eligible for party status.

Response:

The Commission agrees with the comment and after reading it as well as those that follow, the Commission has eliminated proposed subsection (b) of the rule as being unnecessary.

ARDT Comment No. 4:

In its fourth comment, ARDT notes that subsection (b) of proposed rule §675.1 states that "the Commission shall coordinate the volumes, timing and frequency of shipments from Vermont..." and then suggests, in keeping with its third comment, that the phrase "generators in nonhost party states" be used in the rule.

Response:

As noted, subsection (b) of the proposed rule has been eliminated as being unnecessary.

ARDT Comment No. 5:

In its fifth comment, ARDT suggests that the total quantity of one million cubic feet attributed to waste volumes from Vermont in subsection (b), now volumes from generators in "nonhost party states," be eliminated. The proposal is to express the limitation merely as 20% of the volume projected by the Commission for Texas.

Response:

The intent of using a number in the proposed rule was to give some certainty to the State of Vermont, as the only current nonhost party state, about the quantity of waste that it might reasonably expect to be able to ship to a site in Texas. The Commission recognizes that, by operation of the statute and the provisions of the Compact, in establishing the Volume Estimate for Texas at 5 million cubic feet Vermont has that assurance as long as there are no additional party states. As a result, the Commission voted to eliminate subsection (b) of the proposed rule.

ARDT Comment No. 6(A):

In its sixth comment, ARDT quotes the last sentence of Section 3.04(11) of the Compact as follows: "The Commission shall coordinate the volume, timing and frequency of shipments from generators in nonhost party states in order to assure that over the life of this agreement shipments from nonhost party states did not exceed 20% of the volume projected by the Commission under this paragraph." In its comments, ARDT emphasized the words "over the life of this agreement" and notes that emphasis. ARDT then states in its interpretation of the provision that the language establishes a cap on the total amount of waste that the nonhost party states may dispose of in the site so long as the compact is in effect not just over the years 1995 through 2045. The assertion in the Comment is that the cap is broader than the proposed rule because the rule limits the cap to the years 1995 through 2045. While no change in language is suggested by ARDT in this paragraph, the observations do bear on the suggested change in its next comment.

Response:

The only change proposed by the Commission is elimination of subsection (b) of the required proposed rule. A full reading of Section 3.04(11) requires that the Compact Commission establish by rule "the total volume of low level radioactive waste that the host state will dispose of in the compact facility in the years 1995 through 2045, including decommissioning waste." The language in the Compact, and in the statute, is very specific in terms of the period of time for which the estimate of quantity is to be made. The next sentence of that same provision limits the 20% restriction to volume estimated by the host to be disposed of by the host state during that 50-year period but does that through a provision in the Compact and in the Texas Health and Safety Code. No rulemaking is required.

The interpretation of the Commission is that the requirement for establishment of an estimate of waste volume to be disposed of

by the host state at the site during the periods 1995 through 2045 is independent of the length of time of the agreement. Because the requirement in the Compact and in the statute specifically refers to the period 1995 through 2045 and only requires a rule for estimating volumes the host state will dispose of at the site during the specified period, the Commission determined to eliminate subsection (b) of the proposed rule in the adopted rule.

ARDT Comment No. 6(B):

In its paragraph 6, the ARDT also notes that the "language in subsection (b) is technically correct as long as the rule is not amended to lower estimated volumes for disposal by Texas in the site" and then notes that the Compact establishes a cap is broader than set forth in subsection (b) should the paragraph not be amended.

Response:

The Commission notes that it is true that if the estimate of waste disposed of by Texas is reduced to less than 5 million cubic feet, the disposal volumes for nonhost party states is also reduced because of the language mandating a 20% limitation in the statute and in the Compact and no rulemaking was required to make the requirement effective. Therefore, the Commission determined to eliminate subsection (b) of the proposed rule.

ARDT Comment No. 7:

In its seventh comment, ARDT suggests that based upon its analysis and suggestions in its paragraphs 3 through 6 commenting on subsection (b) of the proposed rule appearing at §675.1, subsection (b) be reworded to state as follows: "The Commission shall coordinate the volumes, timing and frequency of shipments from generators in the nonhost party states in order to assure that during the period from 1995 through 2045 and over the life of the Compact shipments do not exceed 20% of the volume projected by the Commission for Texas under subsection (a) of this Rule."

Response:

For the reasons stated above, the Commission is eliminating subsection (b) of §675.1 of the Waste Disposal Volume Estimate rule.

STATUTORY AUTHORITY

The rule is required by and adopted pursuant to Section 3.04(11) of the Texas Low-Level Radioactive Waste Compact as compiled at §403.006, Texas Health and Safety Code.

§675.1. 1995 - 2045 Waste Disposal Volume Estimate.

The Commission estimates that Texas will dispose of Five Million (5,000,000) Cubic Feet of Low Level Radioactive Waste at a Compact disposal site to be established in Texas during the period from 1995 - 2045.

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 31, 2009.

TRD-200903846

Robert C. Wilson
Commissioner
Texas Low-Level Radioactive Waste Disposal Compact Commission
Effective date: September 20, 2009
Proposal publication date: June 26, 2009
For further information, please call: (512) 225-5595

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 800. GENERAL ADMINISTRATION

The Texas Workforce Commission (Commission) adopts the following new sections, *without* changes, to Chapter 800, relating to General Administration, as published in the July 3, 2009, issue of the *Texas Register* (34 TexReg 4498):

Subchapter B. Allocations, §§800.74 - 800.77

The Commission adopts amendments, *without* changes, to the following sections of Chapter 800, relating to General Administration, as published in the July 3, 2009, issue of the *Texas Register* (34 TexReg 4498):

Subchapter A. General Provisions, §800.2

Subchapter B. Allocations, §§800.54, 800.58, and 800.71

The Commission adopts the repeal, *without* changes, of the following sections of Chapter 800, relating to General Administration, as published in the July 3, 2009, issue of the *Texas Register* (34 TexReg 4498):

Subchapter B. Allocations, §800.74 and §800.75

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND RESPONSES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the adopted amendments to Chapter 800 is to provide the Commission with additional flexibility in its review of underlying factors or causes for the underexpenditure of Commission-allocated funds by a Local Workforce Development Board (Board).

Additionally, the Food, Conservation, and Energy Act of 2008, enacted June 18, 2008, changed the name of the Food Stamp Program to the Supplemental Nutrition Assistance Program (SNAP). The Texas Health and Human Services Commission (HHSC), which administers the federal program, has informed the Agency that effective April 1, 2009, it will change the name of the state food stamp program to SNAP. To align with the federal and state name changes, the Commission also is changing the name of Food Stamp Employment and Training (FSE&T) to Supplemental Nutrition Assistance Program Employment and Training (SNAP E&T). Therefore, FSE&T references in this chapter will be changed to be consistent with federal and state revisions.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND RESPONSES

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER A. GENERAL PROVISIONS

The Commission adopts the following amendments to Subchapter A:

§800.2. Definitions

Section 800.2(2), the definition of allocation is clarified to ensure consistency with:

--Texas Labor Code §302.062, which specifies that Commission block grant allocations are made to local workforce development areas (workforce areas); and

--§800.51 of this chapter, which notes that Commission block grant allocations are made to workforce areas.

Section 800.2(10), the definition of FSE&T, is removed and replaced by new §800.16, which reflects the name change from FSE&T to SNAP E&T.

Certain paragraphs in this section have been renumbered to reflect additions or deletions.

SUBCHAPTER B. ALLOCATIONS

The Commission adopts the following amendments to Subchapter B:

§800.54. Food Stamp Employment and Training

Section 800.54 changes:

--the section title "Food Stamp Employment and Training" to "Supplemental Nutrition Assistance Program Employment and Training";

--the term "FSE&T" to "SNAP E&T"; and

--the term "food stamps" to "SNAP benefits."

§800.58. Child Care

Section 800.58 changes:

--the term "Food Stamp Employment and Training" to "SNAP E&T";

--the term "aged" to "ages"; and

--the term "food stamp" to "SNAP."

§800.71. General Deobligation and Reallocation Provisions

Section 800.71 changes "Food Stamp" to "Supplemental Nutrition Assistance Program."

§800.74. Deobligation of Funds

Section 800.74 is repealed and consolidated in new §800.74.

§800.74. Midyear Deobligation of Funds

The Commission provides WIA program year funds to Boards for expenditure over a two-year period. New §800.74(a) provides that the Commission may deobligate funds during the program year--or the first year of availability of WIA funds--if a workforce area is not meeting the expenditure thresholds in new §800.74(b) and (c). This information is unchanged from repealed §800.74(b)(1).

New §800.74(a)(1) specifies "midyear" as the end of months five, six, seven, or eight. The rule broadens the Commission's ability to review all relevant information that may be causing an underexpenditure of funds, except as set forth in new §800.74(c), beyond the narrow scope of repealed §800.74(b)(1) and (2). New §800.74(a)(1) affords the Commission greater flexibility to consider individual and unique circumstances in the workforce area.

New §800.74(a)(2) limits the amount that may be deobligated by the Commission to no more than the difference between a Board's actual expenditures and the amount corresponding to the relative proportion of the program year. As the midyear period is specified as the end of months five, six, seven, or eight, this new section removes reference to a three-consecutive-month period as in repealed §800.74(c).

New §800.74(a)(3) retains the exemption from deobligation for an underexpended workforce area that received a supplemental allocation or reallocation of funds from the Commission within the prior 60 days. This information remains unchanged from repealed §800.74(d)(1). However, new §800.74(a)(3) removes the exemption from deobligation for an underexpended workforce area that is achieving a sufficient per participant cost and meeting contracted performance measures, information previously located in repealed §800.74(d)(2).

New §800.74(b)(1) - (8) provides the criteria by which the Commission may deobligate the funds listed at midyear, provisions that are unchanged from repealed §800.74(a)(1).

New §800.74(c) provides the criteria by which the Commission may deobligate Workforce Investment Act (WIA) formula funds at midyear, provisions that are unchanged from repealed §800.74(a)(2)(A).

New §800.74(d)(1) - (4), previously located in repealed §800.74(f)(1) - (4), states that upon request from the Commission, a workforce area subject to deobligation of funds must submit a written justification to the Commission and provide a copy to the Board Chair, detailing the actions the workforce area will take, including:

--expanding services proportionate to available resources;

--projecting service levels and related performance;

--reporting additional obligations; or

--other factors the workforce area wants the Commission to consider.

New §800.74(e), previously located in repealed §800.74(g), states that if this section is found not to comply with federal requirements, or if related federal waivers expire, the Commission is subject to any federal requirements in effect.

§800.75. Reallocation of Funds

Section 800.75 is repealed and set forth as new §800.77.

§800.75. Second-Year WIA Deobligation of Funds

New §800.75 sets forth the Commission's criteria for the deobligation of WIA formula funds during the second year of availability.

New §800.75(a) clarifies that in each month of the second year of WIA funds availability, the Commission may deobligate any unexpended WIA formula funds that exceed 20% of the allocation for each category of WIA formula funds for the program year, information previously located in repealed §800.74(a)(2)(B).

New §800.75(b) limits the Commission's ability to deobligate funds from a workforce area to an amount not to exceed the difference between a workforce area's actual expenditures and

the unexpended funds that exceed 20% of the allocation for each category of WIA formula funds for the program year.

New §800.75(c) states that the Commission shall not deobligate funds from a workforce area that failed to meet the expenditure thresholds set forth in §800.75(a) if within 60 days prior to the potential deobligation period, a workforce area executes a contract amendment for a supplemental allocation or reallocation of funds in the same program funding category. This mirrors the provision in new §800.74(a)(3) relating to midyear deobligation of funds.

§800.76. Voluntary Deobligation of Funds

New §800.76 allows Boards to request a voluntary deobligation of funds by submitting a written request to the Commission with a copy to the Board Chair.

§800.77. Reallocation of Funds

New §800.77 pertains to a workforce area's eligibility for reallocated funds, and the factors the Commission may consider when reviewing workforce areas' requests for reallocated funds.

New §800.77(a)(1) - (9) lists the funds that the Commission may reallocate to workforce areas. This information remains unchanged from repealed §800.75(a).

New §800.77(b)(1)(A), (C), (D), and (F) - (H) sets forth the criteria for workforce areas' eligibility for child care funds (excluding unmatched federal funds that are contingent upon a workforce area securing local funds) and the funds listed in §800.77(a)(2) - (9). This information remains unchanged from repealed §800.75(b)(1)(A) - (G).

New §800.77(b)(1)(B) specifies an additional criterion. The Commission also may consider a workforce area's reported obligations when considering the workforce area's requests for available funds.

New §800.77(b)(1)(E) specifies an additional criterion. The Commission also may consider reallocating funds to workforce areas that have an established plan for working with at least one of the Governor's industry clusters, as detailed in the local Board plan.

New §800.77(c)(1), (3), (5), and (6), previously located in repealed §800.75(a)(1) - (4), provides the criteria that the Commission may consider when modifying a reallocation amount.

New §800.77(c)(2) is an additional criterion. The Commission also may consider the amount available for reallocation versus the total dollar amount of the requests, thus providing the Commission flexibility when considering Boards' reallocation requests.

New §800.77(c)(4) also provides an additional criterion. The Commission may consider the extent to which a workforce area's project supports activities related to the Governor's industry clusters.

New §800.77(d), previously located in repealed §800.75(c), is reworded to mirror new §800.74(e).

No comments were received.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §800.2

The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

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-200903745
Reagan Miller
Deputy Division Director, Workforce Policy and Service Delivery Branch
Texas Workforce Commission
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For further information, please call: (512) 475-0829

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SUBCHAPTER B. ALLOCATIONS

40 TAC §§800.54, 800.58, 800.71, 800.74 - 800.77

The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

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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Effective date: September 14, 2009
Proposal publication date: July 3, 2009
For further information, please call: (512) 475-0829

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40 TAC §800.74, §800.75

The repeals are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted repeals affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

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 25, 2009.

TRD-200903747

Reagan Miller
Deputy Division Director, Workforce Policy and Service Delivery Branch
Texas Workforce Commission
Effective date: September 14, 2009
Proposal publication date: July 3, 2009
For further information, please call: (512) 475-0829

REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Comptroller of Public Accounts

Title 34, Part 1

The Comptroller of Public Accounts proposes to review Texas Administrative Code, Title 34, Part 1, Chapter 7, Prepaid Higher Education Tuition Program; Chapter 9, Property Tax Administration; Chapter 13, Unclaimed Property Reporting and Compliance; Chapter 15, Electronic Transfer of Certain Payments to State Agencies; and Chapter 16, Electronic Transfer of Payments to the Texas State Treasury Department. This review is being conducted in accordance with Government Code, §2001.039. The review will include, at the minimum, whether the reasons for readopting continue to exist.

The comptroller will accept comments regarding the review. The comment period will last for 30 days following the publication of this notice in the *Texas Register.*

Comments pertaining to this review may be directed accordingly:

Chapter 7. Prepaid Higher Education Tuition Program

Linda Fernandez, Program Director

Educational Opportunities and Investment Division

P.O. Box 13528, Austin, Texas 78711-3528

Chapter 9. Property Tax Administration

Deborah Cartwright, Director

Property Tax Assistance Division

P.O. Box 13528, Austin, Texas 78711-3528.

Chapter 13. Unclaimed Property Reporting and Compliance

Linda White

Unclaimed Property

P.O. Box 13528, Austin, Texas 75711-3528

Chapter 15. Electronic Transfer of Certain Payments to State Agencies

Tom Smelker, Director

Treasury Operations

208 East Tenth Street, Austin, Texas 78701

Chapter 16. Electronic Transfer of Payments to the Texas State Treasury Department

Tom Smelker, Director

Treasury Operations

208 East Tenth Street, Austin, Texas 78701

TRD-200903896
Martin Cherry
General Counsel
Comptroller of Public Accounts
Filed: September 2, 2009

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Office of Consumer Credit Commissioner

Title 7, Part 5

The Finance Commission of Texas (commission) files this notice of intention to review and consider for readoption, revision, or repeal, Texas Administrative Code, Title 7, Part 5, Chapter 85, concerning Rules of Operation for Pawnshops. Chapter 85 contains Subchapter A, concerning General Provisions; Subchapter B, concerning Pawnshop License; Subchapter C, concerning Pawnshop Employee License; Subchapter D, concerning Operation of Pawnshops; Subchapter E, concerning Inspections and Examination; Subchapter F, concerning License Revocation, Suspension, and Surrender; and Subchapter G, concerning Enforcement; Penalties.

This rule review will be conducted pursuant to Texas Government Code, §2001.039. The commission will accept comments for 31 days following publication of this notice in the *Texas Register* as to whether the reasons for adopting these rules continue to exist.

The Office of Consumer Credit Commissioner, which administers these rules, believes that the reasons for adopting the rules contained in this chapter continue to exist. Any questions or written comments pertaining to this notice of intention to review should be directed to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207, or by e-mail to laurie.hobbs@occc.state.tx.us. Any proposed changes to the rules as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 31-day public comment period prior to final adoption or repeal by the commission.

TRD-200903905
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: September 2, 2009

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The Finance Commission of Texas (commission) files this notice of intention to review and consider for readoption, revision, or repeal, Texas Administrative Code, Title 7, Part 5, Chapter 88, concerning Consumer Debt Management Services. Chapter 88 contains Subchapter A, concerning Registration Procedures; Subchapter B, concerning Annual Requirements; and Subchapter C, concerning Operational Requirements.

This rule review will be conducted pursuant to Texas Government Code, §2001.039. The commission will accept comments for 31 days following publication of this notice in the *Texas Register* as to whether the reasons for adopting these rules continue to exist.

The Office of Consumer Credit Commissioner, which administers these rules, believes that the reasons for adopting the rules contained in this chapter continue to exist. Any questions or written comments pertaining to this notice of intention to review should be directed to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207, or by e-mail to laurie.hobbs@occc.state.tx.us. Any proposed changes to the rules as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 31-day public comment period prior to final adoption or repeal by the commission.

TRD-200903908

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: September 2, 2009

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State Board for Educator Certification

Title 19, Part 7

The notice of proposed review of Title 19, Texas Administrative Code (TAC), Chapter 245, Certification of Educators from Other Countries, was published in the September 4, 2009, issue of the *Texas Register* (34 TexReg 6127). This corrected notice of proposed review has been updated and supersedes the original notice in order to specify the correct end date of the public comment period for the rule review of 19 TAC Chapter 245. The date of the end of the public comment period was changed from October 9, 2009, to February 5, 2010. The start date of the public comment period has also been updated to September 11, 2009. Following is the complete notice that reflects the correct dates.

The State Board for Educator Certification (SBEC) proposes the review of Title 19, Texas Administrative Code (TAC), Chapter 245, Certification of Educators from Other Countries, pursuant to the Texas Government Code, §2001.039.

As required by the Texas Government Code, §2001.039, the SBEC will accept comments as to whether the reasons for adopting 19 TAC Chapter 245 continue to exist. The comment period begins September 11, 2009, and ends following receipt of public comments on the rule review of 19 TAC Chapter 245 at the regularly scheduled SBEC meeting to be held on February 5, 2010.

Comments or questions regarding this rule review may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 475-1497. Comments may also be submitted electronically to sbecrules@tea.state.tx.us or faxed to (512) 463-0028. Comments should be identified as "SBEC Rule Review."

TRD-200903915

Karen Loonam

Deputy Associate Commissioner, Educator Certification and Standards, Texas Education Agency

State Board for Educator Certification

Filed: September 2, 2009

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Public Utility Commission of Texas

Title 16, Part 2

The Public Utility Commission of Texas (commission) publishes this notice of intention to review Chapter 25, Substantive Rules Applicable to Electric Service Providers (Subchapters K - O) pursuant to Texas Government Code §2001.039, *Agency Review of Existing Rules.* The text of the rule sections will not be published. The text of the rules may be found in the Texas Administrative Code, Title 16, Economic Regulation, Part 2, or through the commission's website at www.puc.state.tx.us. Project Number 37229 is assigned to this proceeding.

Texas Government Code §2001.039 requires that each state agency review and readopt, readopt with amendments, or repeal the rules adopted by that agency pursuant to the Texas Government Code, Chapter 2001, Subchapter B, Rulemaking. As required by §2001.039, this review is to assess whether the reason for adopting or readopting the rules continues to exist. The commission requests specific comments from interested persons on whether the reasons for adopting each rule section in Chapter 25 continue to exist. If it is determined during this review that any section of Chapter 25 needs to be repealed or amended, the repeal or amendment will be initiated under a separate proceeding. This notice of intention to review Chapter 25 has no effect on the sections as they currently exist.

Jess Totten, Director of Competitive Markets, has determined that for each year of the first five-year period the sections are in effect there will be no new fiscal implications for state or local government as a result of enforcing or administering these sections that are not already in effect as a result of the previous adoption of these sections.

Mr. Totten has determined that for each year of the first five years these sections are in effect the public benefit anticipated as a result of enforcing these sections will be: protection of the public interest inherent in the rates and services of public utilities; monitoring of the established regulatory system to assure rates, operations, and services that are just and reasonable to the consumers and utilities; assurance of high-quality service to customers; protection of the public interest inherent in the service quality of electric service providers; and maintaining a healthy marketplace for competition among electric service providers. There will be no new effect on small businesses or micro-businesses as a result of enforcing these sections that is not already in effect as a result of the previous adoption of these sections. There are no new anticipated economic costs to persons who are required to comply with these sections as noticed for review that are not already in effect as a result of the previous adoption of these sections.

Mr. Totten has also determined that for each year of the first five years the sections are in effect there should be no effect on a local economy as a result of this review, and therefore no local employment impact statement is required under Administrative Procedure Act §2001.022.

Comments on the review of Chapter 25 - Subchapters K - O (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 31 days after publication. Reply comments may be submitted within 45 days after publication. When filing comments interested persons are requested to comment on the sections in the same

order they are found in the chapter and to clearly designate which section is being commented upon. All comments should refer to Project Number 37229.

The rules subject to this review are proposed for publication under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007, Supplement 2008) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and Texas Government Code §2001.039 which requires each state agency to review its rules every four years.

Cross Reference to Statutes: Texas Government Code §2001.039; Texas Utilities Code Annotated, Title II, Public Utility Regulatory Act; and Title IV, Chapters 161, 163, 181, 182, 183, 184, and 185.

SUBCHAPTER K. RELATIONSHIPS WITH AFFILIATES.

§25.271. Foreign Utility Company Ownership by Exempt Holding Companies.

§25.272. Code of Conduct for Electric Utilities and Their Affiliates.

§25.273. Contracts Between Electric Utilities and Their Competitive Affiliates.

§25.275. Code of Conduct for Municipally Owned Utilities and Electric Cooperatives Engaged in Competitive Activities.

SUBCHAPTER L. NUCLEAR DECOMMISSIONING.

§25.301. Nuclear Decommissioning Trusts.

§25.303. Nuclear Decommissioning Following the Transfer of Texas Jurisdictional Nuclear Generating Plant Assets.

§25.304. Nuclear Decommissioning Funding and Requirements for Power Generation Companies.

SUBCHAPTER M. COMPETITIVE METERING.

§25.311. Competitive Metering Services.

SUBCHAPTER O. UNBUNDLING AND MARKET POWER.

DIVISION 1: Unbundling.

§25.341. Definitions.

§25.342. Electric Business Separation.

§25.343. Competitive Energy Services.

§25.344. Cost Separation Proceedings.

§25.345. Recovery of Stranded Costs Through Competition Transition Charge (CTC).

§25.346. Separation of Electric Utility Metering and Billing Service Costs and Activities.

DIVISION 2: Independent Organizations.

§25.361. Electric Reliability Council of Texas (ERCOT).

§25.362. Electric Reliability Council of Texas (ERCOT) Governance.

§25.363. ERCOT Fees and Other Rates.

§25.365. Independent Market Monitor.

DIVISION 3: Capacity Auction.

§25.381. Capacity Auctions.

DIVISION 4: Other Market Power Issues.

§25.401. Share of Installed Generation Capacity.

DIVISION 5: Competition in Non-ERCOT Areas.

§25.421. Transition to Competition for a Certain Area Outside the Electric Reliability Council of Texas Region.

§25.422. Transition to Competition for Certain Areas within the Southwest Power Pool.

TRD-200903783
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 26, 2009

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The Public Utility Commission of Texas (commission) publishes this notice of intention to review Chapter 25, Substantive Rules Applicable to Electric Service Providers (Subchapters P - S) pursuant to Texas Government Code §2001.039, *Agency Review of Existing Rules.* The text of the rule sections will not be published. The text of the rules may be found in the Texas Administrative Code, Title 16, Economic Regulation, Part 2, or through the commission's website at www.puc.state.tx.us. Project Number 37230 is assigned to this proceeding.

Texas Government Code §2001.039 requires that each state agency review and readopt, readopt with amendments, or repeal the rules adopted by that agency pursuant to the Texas Government Code, Chapter 2001, Subchapter B, Rulemaking. As required by §2001.039, this review is to assess whether the reason for adopting or readopting the rules continues to exist. The commission requests specific comments from interested persons on whether the reasons for adopting each rule section in Chapter 25 continue to exist. If it is determined during this review that any section of Chapter 25 needs to be repealed or amended, the repeal or amendment will be initiated under a separate proceeding. This notice of intention to review Chapter 25 has no effect on the sections as they currently exist.

Jess Totten, Director of Competitive Markets, has determined that for each year of the first five-year period the sections are in effect there will be no new fiscal implications for state or local government as a result of enforcing or administering these sections that are not already in effect as a result of the previous adoption of these sections.

Mr. Totten has determined that for each year of the first five years these sections are in effect the public benefit anticipated as a result of enforcing these sections will be: protection of the public interest inherent in the rates and services of public utilities; monitoring of the established regulatory system to assure rates, operations, and services that are just and reasonable to the consumers and utilities; assurance of high-quality service to customers; protection of the public interest inherent in the service quality of electric service providers; and maintaining a healthy marketplace for competition among electric service providers. There will be no new effect on small businesses or micro-businesses as a result of enforcing these sections that is not already in effect as a result of the previous adoption of these sections. There are no new anticipated economic costs to persons who are required to comply with these sections as noticed for review that are not already in effect as a result of the previous adoption of these sections.

Mr. Totten has also determined that for each year of the first five years the sections are in effect there should be no effect on a local economy as a result of this review, and therefore no local employment impact statement is required under Administrative Procedure Act §2001.022.

Comments on the review of Chapter 25 - Subchapters P - S (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 60 days after publication. Reply comments may

be submitted within 75 days after publication. When filing comments interested persons are requested to comment on the sections in the same order they are found in the chapter and to clearly designate which section is being commented upon. All comments should refer to Project Number 37230.

The rules subject to this review are proposed for publication under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007, Supplement 2008) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and Texas Government Code §2001.039 which requires each state agency to review its rules every four years.

Cross Reference to Statutes: Texas Government Code §2001.039; Texas Utilities Code Annotated, Title II, Public Utility Regulatory Act; and Title IV, Chapters 161, 163, 181, 182, 183, 184, and 185.

SUBCHAPTER P. PILOT PROJECTS.

§25.431. Retail Competition Pilot Projects.

SUBCHAPTER Q. SYSTEM BENEFIT FUND.

§25.451. Administration of the System Benefit Account.

§25.453. Targeted Energy Efficiency Programs.

§25.454. Rate Reduction Program.

§25.455. One-Time Bill Payment Assistance Program.

§25.457. Implementation of the System Benefit Fee by the Municipally Owned Utilities and Electric Cooperatives.

SUBCHAPTER R. CUSTOMER PROTECTION RULES FOR RETAIL ELECTRIC SERVICE.

§25.471. General Provisions of Customer Protection Rules.

§25.472. Privacy of Customer Information.

§25.473. Non-English Language Requirements.

§25.474. Selection of Retail Electric Provider.

§25.475. General Retail Electric Provider Requirements and Information Disclosures to Residential and Small Commercial Customers.

§25.476. Renewable and Green Energy Verification.

§25.477. Refusal of Electric Service.

§25.478. Credit Requirements and Deposits.

§25.479. Issuance and Format of Bills.

§25.480. Bill Payment and Adjustments.

§25.481. Unauthorized Charges.

§25.483. Disconnection of Service.

§25.484. Electric No-Call List.

§25.485. Customer Access and Complaint Handling.

§25.487. Obligations Related to Move-In Transactions.

§25.488. Procedures for a Premise with No Service Agreement.

§25.489. Treatment of Premises with No Retail Electric Provider of Record.

§25.490. Moratorium on Disconnection on Move-Out.

§25.491. Record Retention and Reporting Requirements.

§25.492. Non-Compliance with Rules or Orders; Enforcement by the Commission.

§25.493. Acquisition and Transfer of Customers from one Retail Electric Provider to Another.

§25.495. Unauthorized Change of Retail Electric Provider.

§25.497. Critical Care Customers.

§25.498. Retail Electric Service Using a Customer Prepayment Device or System.

SUBCHAPTER S. WHOLESALE MARKETS.

§25.501. Wholesale Market Design for the Electric Reliability Council of Texas.

§25.502. Pricing Safeguards in Markets Operated by the Electric Reliability Council of Texas.

§25.503. Oversight of Wholesale Market Participants.

§25.504. Wholesale Market Power in the Electric Reliability Council of Texas Power Region.

§25.505. Resource Adequacy in the Electric Reliability Council of Texas Power Region.

§25.507. Electric Reliability Council of Texas (ERCOT) Emergency Interruptible Load Service (EILS).

TRD-200903784
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 26, 2009

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Adopted Rule Reviews

Texas Department of Licensing and Regulation

Title 16, Part 4

The Texas Department of Licensing and Regulation (Department) filed a notice of intent to review and consider for re-adoption, revision, or repeal 16 Texas Administrative Code (TAC) Chapter 61, Combative Sports. The Notice of Intent to Review was published in the July 10, 2009, issue of the *Texas Register* (34 TexReg 4645).

Texas Government Code, §2001.039 requires state agencies to review their rules every four years to determine if the reasons for initially adopting the rules continue to exist. The rules implementing the Combative Sports program under Texas Occupations Code, Chapter 2052, were scheduled for this four-year review.

The Department reviewed these rules and determined that the rules are still essential in implementing the provisions of Texas Occupations Code, Chapter 2052, Combative Sports. The rules provide details that are not found in the program statute but are necessary for implementation and operation of this program. For example, the rules detail the registration/licensing requirements and the fees that are specific to this program. In addition, Texas Occupations Code, §2052.052 specifically requires that rules be adopted for this program.

As noted above, the Notice of Intent to Review was published in the July 10, 2009, issue of the *Texas Register* and distributed to persons internal and external to the agency. The public comment period closed on August 10, 2009. The Department did not receive any public comments on the Notice of Intent to Review.

The Texas Commission of Licensing and Regulation (Commission), the Department's governing body, readopted the rules at 16 TAC Chapter 61, Combative Sports, in their current form. The Department may propose amendments in the future that may further clarify or supple-

ment the existing rules. Any future proposed changes to the rules will be published in the Proposed Rules section of the *Texas Register* and will be open for public comment prior to final adoption by the Commission in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

The rules are re-adopted by the Commission in accordance with Texas Government Code, §2001.039. This concludes the review of 16 TAC Chapter 61, Combative Sports.

TRD-200903887
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: September 1, 2009

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The Texas Department of Licensing and Regulation (Department) filed a notice of intent to review and consider for re-adoption, revision, or repeal 16 Texas Administrative Code (TAC) Chapter 64, Temporary Common Worker Employers. The Notice of Intent to Review was published in the July 10, 2009, issue of the *Texas Register* (34 TexReg 4645).

Texas Government Code, §2001.039 requires state agencies to review their rules every four years to determine if the reasons for initially adopting the rules continue to exist. The rules implementing the Temporary Common Worker Employers program under Texas Labor Code, Chapter 92, were scheduled for this four-year review.

The Department reviewed these rules and determined that the rules are still essential in implementing the provisions of Texas Labor Code, Chapter 92, Temporary Common Worker Employers. The rules provide details that are not found in the program statute but are necessary for implementation and operation of this program. For example, the rules detail the registration/licensing requirements and the fees that are specific to this program.

As noted above, the Notice of Intent to Review was published in the July 10, 2009, issue of the *Texas Register* and distributed to persons internal and external to the agency. The public comment period closed on August 10, 2009. The Department did not receive any public comments on the Notice of Intent to Review.

The Texas Commission of Licensing and Regulation (Commission), the Department's governing body, readopted the rules at 16 TAC Chapter 64, Temporary Common Worker Employers, in their current form. The Department may propose amendments in the future that may further clarify or supplement the existing rules. Any future proposed changes to the rules will be published in the Proposed Rules section of the *Texas Register* and will be open for public comment prior to final adoption by the Commission in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

The rules are re-adopted by the Commission in accordance with Texas Government Code, §2001.039. This concludes the review of 16 TAC Chapter 64, Temporary Common Worker Employers.

TRD-200903888
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: September 1, 2009

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The Texas Department of Licensing and Regulation (Department) filed a notice of intent to review and consider for re-adoption, revision, or repeal 16 Texas Administrative Code (TAC) Chapter 67, Auctioneers. The Notice of Intent to Review was published in the July 10, 2009, issue of the *Texas Register* (34 TexReg 4646).

Texas Government Code, §2001.039 requires state agencies to review their rules every four years to determine if the reasons for initially adopting the rules continue to exist. The rules implementing the Auctioneer program under Texas Occupation Code, Chapter 1802, were scheduled for this four-year review.

The Department reviewed these rules and determined that the rules are still essential in implementing the provisions of Texas Occupations Code, Chapter 1802, Auctioneers. The rules provide details that are not found in the program statute but are necessary for implementation and operation of this program. For example, the rules detail the registration/licensing requirements and the fees that are specific to this program.

As noted above, the Notice of Intent to Review was published in the July 10, 2009, issue of the *Texas Register* and distributed to persons internal and external to the agency. The public comment period closed on August 10, 2009. The Department received three public comments in response to the Notice of Intent to Review. The comments address continuing education, escrow account requirements, definitions, the proposed repeal of certain licensing and examination requirements, advisory board meetings, auctioneer and associate auctioneer requirements, estate auctions, and termination of auctions if there are inadequate bids. These suggested revisions will be taken under consideration as part of any possible rule changes in the future.

The Texas Commission of Licensing and Regulation (Commission), the Department's governing body, readopted the rules at 16 TAC Chapter 67, Auctioneers, in their current form. The Department may propose amendments in the future that may further clarify or supplement the existing rules. Any future proposed changes to the rules will be published in the Proposed Rules section of the *Texas Register* and will be open for public comment prior to final adoption by the Commission in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

The rules are re-adopted by the Commission in accordance with Texas Government Code, §2001.039. This concludes the review of 16 TAC Chapter 67, Auctioneers.

TRD-200903889
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: September 1, 2009

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The Texas Department of Licensing and Regulation (Department) filed a notice of intent to review and consider for re-adoption, revision, or repeal 16 Texas Administrative Code (TAC) Chapter 68, Elimination of Architectural Barriers. The Notice of Intent to Review was published in the July 10, 2009, issue of the *Texas Register* (34 TexReg 4646).

Texas Government Code, §2001.039 requires state agencies to review their rules every four years to determine if the reasons for initially adopting the rules continue to exist. The rules implementing the Elimination of Architectural Barriers program under Texas Government Code, Chapter 469, were scheduled for this four-year review.

The Department reviewed these rules and determined that the rules are still essential in implementing the statutory provisions of Texas Government Code, Chapter 469, Elimination of Architectural Barriers. The

rules provide details that are not found in the program statute but are necessary for implementation and operation of this program. For example, the rules detail the registration/licensing requirements and the fees that are specific to this program. In addition, Texas Government Code, §469.052 specifically requires that rules be adopted for this program.

As noted above, the Notice of Intent to Review was published in the July 10, 2009, issue of the *Texas Register* and distributed to persons internal and external to the agency. The public comment period closed on August 10, 2009. The Department received one public comment in response to the Notice of Intent to Review. The comment addresses continuing education requirements, and it will be taken under consideration as part of any possible rule changes in the future.

The Texas Commission of Licensing and Regulation (Commission), the Department's governing body, readopted the rules at 16 TAC Chapter 68, Elimination of Architectural Barriers, in their current form. The Department may propose amendments in the future that may further clarify or supplement the existing rules. Any future proposed changes to the rules will be published in the Proposed Rules section of the *Texas Register* and will be open for public comment prior to final adoption by the Commission in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

The rules are re-adopted by the Commission in accordance with Texas Government Code, §2001.039. This concludes the review of 16 TAC Chapter 68, Elimination of Architectural Barriers.

TRD-200903890
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: September 1, 2009

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The Texas Department of Licensing and Regulation (Department) filed a notice of intent to review and consider for re-adoption, revision, or repeal 16 Texas Administrative Code (TAC) Chapter 74, Elevators, Escalators, and Related Equipment ("Elevators" or "Elevator program"). The Notice of Intent to Review was published in the July 10, 2009, issue of the *Texas Register* (34 TexReg 4647).

Texas Government Code, §2001.039 requires state agencies to review their rules every four years to determine if the reasons for initially adopting the rules continue to exist. The rules implementing the Elevator program under Texas Health and Safety Code, Chapter 754 were scheduled for this four-year review.

The Department reviewed these rules and determined that the rules are still essential in implementing the provisions of Texas Health and Safety Code, Chapter 754, Elevators. The rules provide details that are not found in the program statute but are necessary for implementation and operation of this program. For example, the rules detail the registration/licensing requirements and the fees that are specific to this program. In addition, Texas Health and Safety Code, §754.015 specifically requires that rules be adopted for this program.

As noted above, the Notice of Intent to Review was published in the July 10, 2009, issue of the *Texas Register* and distributed to persons internal and external to the agency. The public comment period closed on August 10, 2009. The Department received one response to the Notice of Intent to Review. The public comment addresses statutory requirements involving fire safety standards and is not within the scope of the rules review as published.

The Texas Commission of Licensing and Regulation (Commission), the Department's governing body, readopted the rules at 16 TAC Chapter 74, Elevators, Escalators, and Related Equipment, in their current form. The Department may propose amendments in the future that may further clarify or supplement the existing rules. Any future proposed changes to the rules will be published in the Proposed Rules section of the *Texas Register* and will be open for public comment prior to final adoption by the Commission in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

The rules are re-adopted by the Commission in accordance with Texas Government Code, §2001.039. This concludes the review of 16 TAC Chapter 74, Elevators, Escalators, and Related Equipment.

TRD-200903891
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: September 1, 2009

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The Texas Department of Licensing and Regulation (Department) filed a notice of intent to review and consider for re-adoption, revision, or repeal 16 Texas Administrative Code (TAC) Chapter 75, Air Conditioning and Refrigeration. The Notice of Intent to Review was published in the July 10, 2009, issue of the *Texas Register* (34 TexReg 4647).

Texas Government Code, §2001.039 requires state agencies to review their rules every four years to determine if the reasons for initially adopting the rules continue to exist. The rules implementing the Air Conditioning and Refrigeration program under Texas Occupations Code, Chapter 1302, were scheduled for this four-year review.

The Department reviewed these rules and determined that the rules are still essential in implementing the statutory provisions of Texas Occupations Code, Chapter 1302, Air Conditioning and Refrigeration. The rules provide details that are not found in the program statute but are necessary for implementation and operation of this program. For example, the rules detail the registration/licensing requirements and the fees that are specific to this program. In addition, Texas Occupations Code, §1302.502 specifically requires that rules be adopted for this program.

As noted above, the Notice of Intent to Review was published in the July 10, 2009, issue of the *Texas Register* and distributed to persons internal and external to the agency. The public comment period closed on August 10, 2009. The Department received four public comments in response to the Notice of Intent to Review. Two of the comments address statutory requirements involving technicians and are not within the scope of the rules review as published. The other two comments address program fees, licensing requirements, renewals, continuing education, exemptions, and responsibilities of licensees and of companies. These comments will be taken under consideration as part of any possible rule changes in the future.

The Texas Commission of Licensing and Regulation (Commission), the Department's governing body, readopted the rules at 16 TAC Chapter 75, Air Conditioning and Refrigeration, in their current form. The Department may propose amendments in the future that may further clarify or supplement the existing rules. Any future proposed changes to the rules will be published in the Proposed Rules section of the *Texas Register* and will be open for public comment prior to final adoption by the Commission in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

The rules are re-adopted by the Commission in accordance with Texas Government Code, §2001.039. This concludes the review of 16 TAC Chapter 75, Air Conditioning and Refrigeration.

TRD-200903892
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: September 1, 2009

♦ ♦ ♦

The Texas Department of Licensing and Regulation (Department) filed a notice of intent to review and consider for re-adoption, revision, or repeal 16 Texas Administrative Code (TAC) Chapter 78, Talent Agencies. The Notice of Intent to Review was published in the July 10, 2009, issue of the *Texas Register* (34 TexReg 4648).

Texas Government Code, §2001.039 requires state agencies to review their rules every four years to determine if the reasons for initially adopting the rules continue to exist. The rules implementing the Talent Agencies program under Texas Occupations Code, Chapter 2105, were scheduled for this four-year review.

The Department reviewed these rules and determined that the rules are still essential in implementing the provisions of Texas Occupations Code, Chapter 2105, Talent Agencies. The rules provide details that are not found in the program statute but are necessary for implementation and operation of this program. For example, the rules detail the registration/licensing requirements and the fees that are specific to this program. In addition, Texas Occupations Code, §2105.002 specifically requires that rules be adopted for this program.

As noted above, the Notice of Intent to Review was published in the July 10, 2009, issue of the *Texas Register* and distributed to persons internal and external to the agency. The public comment period closed on August 10, 2009. The Department received five public comments in response to the Notice of Intent to Review. One comment supports re-adoption of the existing rules. Three comments suggest that the rules be revised to include: more extensive background checks on license applicants; more enforcement of current rules; and additional prohibitions on talent agencies accepting referral fees, charging for certain auditions, owning acting or modeling schools, and taking incentives from vendors. One comment opposed the repeal of the statute, the Texas Talent Agency Act, which is not within the scope of the rules review as published. The suggested revisions will be taken under consideration as part of any possible rule changes in the future.

The Texas Commission of Licensing and Regulation (Commission), the Department's governing body, readopted the rules at 16 TAC Chapter 78, Talent Agencies, in their current form. The Department may propose amendments in the future that may further clarify or supplement the existing rules. Any future proposed changes to the rules will be published in the Proposed Rules section of the *Texas Register* and will be open for public comment prior to final adoption by the Commission in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

The rules are re-adopted by the Commission in accordance with Texas Government Code, §2001.039. This concludes the review of 16 TAC Chapter 78, Talent Agencies.

TRD-200903893
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: September 1, 2009

♦ ♦ ♦

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 §70.100(d)

Code Name and Edition	Effective Date of Adoption
2003 Edition of the International Building Code	7/1/2004
2003 Edition of the International Residential Building Code	7/1/2004
2003 Edition of the International Plumbing Code	7/1/2004
2003 Edition of the International Mechanical Code	7/1/2004
2003 Edition of the International Fuel Gas Code	7/1/2004
2003 Edition of the International Energy Conservation Code	7/1/2004
2003 Edition of the International Existing Building Code	7/1/2004
2002 Edition of the National Electrical Code	7/1/2004
2000 Edition of the International Building Code	2/20/2002
2000 Edition of the International Residential Code with 2001 Supplement	2/20/2002
2000 Edition of the International Plumbing Code	2/20/2002
2000 Edition of the International Mechanical Code	2/20/2002
2000 Edition of the International Fuel Gas Code	2/20/2002
2000 Edition of the International Energy Conservation Code with 2001 Supplement	2/20/2002
1997 Edition of the Uniform Building Code	2/8/2000
1997 Edition of the Standard Building Code	2/8/2000
1997 Edition of the International Fuel Gas Code	2/8/2000
1997 Edition of the International Plumbing Code	2/8/2000
1998 Edition of the International Mechanical Code	2/8/2000
1998 Edition of the International One and Two Family Dwelling Code	2/8/2000
1998 Edition of the International Energy Conservation Code	2/8/2000
1999 Edition of the National Electrical Code	2/8/2000
1994 Edition of the Uniform Building Code	12/7/1996
1994 Edition of the Standard Building Code	12/7/1996
1996 Edition of the National Electrical Code	12/7/1996
1994 Edition of the Uniform Mechanical Code as published by the International Conference of Building Officials	12/7/1996
1994 Edition of the Standard Mechanical Code	12/7/1996
1995 Edition of the International Plumbing Code	12/7/1996
1994 Edition of the Standard Plumbing Code	12/7/1996
1994 Edition of the Standard Gas Code	12/7/1996
1995 Edition of the CABO One and Two Family Dwelling Code	12/7/1996
1993 Edition of the CABO Model Energy Code	12/6/1994
ASHRAE/IES 90.1-89	12/6/1994
1991 Edition of the Uniform Building Code	5/19/1992
1991 Edition of the Standard Building Code	5/19/1992
1991 Edition of the Uniform Mechanical Code	5/19/1992
1991 Edition of the Standard Mechanical Code	5/19/1992
1991 Edition of the Uniform Plumbing Code	5/19/1992
1991 Edition of the Standard Plumbing Code	5/19/1992
1991 Edition of the Standard Gas Code	5/19/1992
1989 Edition of the CABO One and Two Family Dwelling Code	5/19/1992
1990 Edition of the National Electrical Code	5/13/1991

Code Name and Edition	Effective Date of Adoption
1988 Edition of the Uniform Building Code	12/27/1988
1988 Edition of the Standard Building Code	12/27/1988
1988 Edition of the Uniform Mechanical Code	12/27/1988
1988 Edition of the Standard Mechanical Code	12/27/1988
1988 Edition of the Uniform Plumbing Code	12/27/1988
1988 Edition of the Standard Plumbing Code	12/27/1988
1988 Edition of the Standard Gas Code	12/27/1988
1986 Edition of the CABO One and Two Family Dwelling Code	12/27/1988
1987 Edition of the National Electrical Code	2/1/1988
1985 Edition of the Uniform Building Code with 1986 amendments	2/27/1987
1985 Edition of the Standard Building Code with 1986 amendments	2/27/1987
1985 Edition of the Uniform Mechanical Code with 1986 amendments	2/27/1987
1985 Edition of the Standard Mechanical Code with 1986 amendments	2/27/1987
1985 Edition of the Uniform Plumbing Code with 1986 amendments	2/27/1987
1985 Edition of the Standard Plumbing Code with 1986 amendments	2/27/1987
1985 Edition of the Standard Gas Code with 1986 amendments	2/27/1987
1985 Edition of the Uniform Building Code	7/15/1986
1985 Edition of the Standard Building Code	7/15/1986
1985 Edition of the Uniform Mechanical Code	7/15/1986
1985 Edition of the Standard Mechanical Code	7/15/1986
1985 Edition of the Uniform Plumbing Code	7/15/1986
1985 Edition of the Standard Plumbing Code	7/15/1986
1985 Edition of the Standard Gas Code	7/15/1986
1983 Edition of the CABO One and Two Family Dwelling Code	7/15/1986
1984 Edition of the National Electrical Code	1/1/1986
1982 Edition of the Uniform Building Code	1/1/1986
1982 Edition of the Standard Building Code	1/1/1986
1982 Edition of the Uniform Mechanical Code	1/1/1986
1982 Edition of the Standard Mechanical Code	1/1/1986
1982 Edition of the Uniform Plumbing Code	1/1/1986
1982 Edition of the Standard Plumbing Code	1/1/1986
1982 Edition of the Standard Gas Code	1/1/1986

Figure: 22 TAC §329.2(f)(2)(C)

Additional Education Requirements for

Licensure Applicants Who Fail the National Examination

Requirements based on: 1) number of failures AND 2) exam score (passing = 600)	Tutorial Hour Requirements	CCU Requirements
A. Applicants who fail the exam 2 or 3 times		
PT.....599 - 586 PTA.....599 - 584	25 hours tutorial	1.5 CCUs
PT.....585 - 566 PTA.....583 - 560	40 hours tutorial	2.0 CCUs
PT.....565 & below PTA.....560 & below	80 hours tutorial	4.0 CCUs
B. Applicants who fail the exam 4 times		
PT.....599 - 586 PTA.....599 - 584	50 hours tutorial	3.0 CCUs
PT.....585 - 566 PTA.....583 - 560	80 hours tutorial	4.0 CCUs
PT.....565 & below PTA.....560 & below	160 hours tutorial	8.0 CCUs
C. Applicants who fail the exam 5, 6, or 7 times		
PT.....599 - 586 PTA.....599 - 584		6.0 CCUs
PT.....585 - 566 PTA.....583 - 560		9.0 CCUs
PT.....565 & below PTA.....560 & below		15.0 CCUs
D. Applicants who fail the exam 8 or more times must repeat an accredited PT or PTA program.		

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.

Cancer Prevention and Research Institute of Texas

Request for Applications (R-10-H1) High-Impact/High-Risk Research Award

The Cancer Prevention and Research Institute of Texas (CPRIT) seeks grant applications from qualified organizations located in the State of Texas for relatively short-term high-impact/high-risk projects that are innovative, developmental, or exploratory in nature targeting new avenues of cancer research that, if successful, would contribute major new insights into the etiology, diagnosis, treatment, or prevention of cancers. Successful applicants would be eligible for a grant award of up to $200,000 over 24 months. A request for applications is available online at www.cprit.state.tx.us. Applications will be accepted beginning at 7:00 a.m. Central Time on Tuesday, September 15, 2009, and must be submitted via the CPRIT Application Receipt System (www.CPRITGrants.org). Only applications submitted at this portal will be considered eligible for evaluation. Applications are due on or before 3:00 p.m. Central Time on Thursday, October 8, 2009. There is a cap on the number of High-Impact/High-Risk Research Award applications that may be submitted per institution. Applicants are advised to consult with their institution's Office of Research and Sponsored Programs (or equivalent). CPRIT will not accept late applications or applications that are not submitted via the portal.

TRD-200903916
William Gimson
Executive Director
Cancer Prevention and Research Institute of Texas
Filed: September 2, 2009

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Request for Applications (R-10-I1) Individual Investigator Research Award

The Cancer Prevention and Research Institute of Texas (CPRIT) seeks grant applications from qualified organizations located in the State of Texas for innovative research proposals that will significantly advance knowledge of the causes, prevention, and/or treatment of cancer. Successful applicants are eligible for a grant award of up to $1 million annually for 4 years. A request for applications is available online at www.cprit.state.tx.us. Applications will be accepted beginning at 7:00 a.m. Central Time on Tuesday, September 15, 2009, and must be submitted via the CPRIT Application Receipt System (www.CPRITGrants.org). Only applications submitted at this portal will be considered eligible for evaluation. Applications are due on or before 3:00 p.m. Central Time on Thursday, October 8, 2009. CPRIT will not accept late applications or applications that are not submitted via the portal.

TRD-200903917
William Gimson
Executive Director
Cancer Prevention and Research Institute of Texas
Filed: September 2, 2009

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Request for Applications (R-10-RE1) Recruitment of Established Investigators

The Cancer Prevention and Research Institute of Texas (CPRIT) solicits grant applications from qualified organizations for the recruitment of outstanding senior research faculty with established cancer research programs to academic institutions in Texas. Supported individuals will have the demonstrated ability to make outstanding contributions to the field of cancer research, promote inquiry into new areas, foster collaboration, and stimulate growth in the field. Organizations must apply for a specific candidate who will likely hold an appointment at the rank of professor (or equivalent) at an accredited academic institution, research institution, industry, government agency, or private foundation not primarily based in Texas. The candidate must not reside in Texas at the time the application is submitted. A request for applications is available online at www.cprit.state.tx.us. Applications will be accepted beginning at 7:00 a.m. Central Time on Tuesday, September 15, 2009, and must be submitted via the CPRIT Application Receipt System (www.CPRITGrants.org). Only applications submitted at this portal will be considered eligible for evaluation. This is an ongoing grant opportunity with no deadline for applications.

TRD-200903919
William Gimson
Executive Director
Cancer Prevention and Research Institute of Texas
Filed: September 2, 2009

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Request for Applications (R-10-RF1) Recruitment of First-Time, Tenure-Track Faculty Members

The Cancer Prevention and Research Institute of Texas (CPRIT) solicits grant applications from qualified organizations for the recruitment of exceptional faculty (first-time, tenure track) to universities and/or cancer research institutions located in the State of Texas. Supported individuals will have the demonstrated ability to make outstanding contributions to the field of cancer research, promote inquiry into new areas, foster collaboration, and stimulate growth in the field. Organizations must apply for a specific candidate who, at the time of the application, must not hold an appointment at the rank of assistant professor or above (or equivalent) at an accredited academic institution, research institution, industry, government agency, or private foundation. The candidate may or may not reside in the State of Texas at the time of the application. A request for applications is available online at www.cprit.state.tx.us. Applications will be accepted beginning at 7:00 a.m. Central Time on Tuesday, September 15, 2009, and must be submitted via the CPRIT Application Receipt System (www.CPRITGrants.org). Only applications submitted at this portal will be considered eligible for evaluation. This is an ongoing grant opportunity with no deadline for applications.

TRD-200903918

William Gimson
Executive Director
Cancer Prevention and Research Institute of Texas
Filed: September 2, 2009

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Request for Applications (R-10-RR1) Recruitment of Rising Stars

The Cancer Prevention and Research Institute of Texas (CPRIT) solicits grant applications from qualified organizations for the recruitment of outstanding investigators who are at a relatively early stage in their career to universities and/or cancer research institutions located in the State of Texas. Supported individuals will have the demonstrated ability to make outstanding contributions to the field of cancer research, promote inquiry into new areas, foster collaboration, and stimulate growth in the field. Organizations must apply for a specific candidate who must hold an appointment at the rank of assistant professor or above (or equivalent) at an accredited academic institution, research institution, industry, government agency, or private foundation not primarily based in Texas. A request for applications is available online at www.cprit.state.tx.us. Applications will be accepted beginning at 7:00 a.m. Central Time on Tuesday, September 15, 2009, and must be submitted via the CPRIT Application Receipt System (www.CPRITGrants.org). Only applications submitted at this portal will be considered eligible for evaluation. This is an ongoing grant opportunity with no deadline for applications.

TRD-200903920
William Gimson
Executive Director
Cancer Prevention and Research Institute of Texas
Filed: September 2, 2009

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Comptroller of Public Accounts

Amendment to Notice of Contract Awards

Pursuant to Chapter 403, Chapter 2254, Subchapter A, Texas Government Code, and Chapter 111 Texas Tax Code, the Comptroller of Public Accounts (Comptroller) announces this notice of contract awards.

The Comptroller's Request for Qualifications (RFQ #192h) related to these contract awards was published in the May 8, 2009, issue of the *Texas Register* (34 TexReg 2823).

The contractors will provide Professional Contract Auditing Services as authorized by Subchapter A, Chapter 111, §111.0045 of the Texas Tax Code as described in the Comptroller's RFQ.

The Comptroller announces that ten (10) contracts were awarded as of August 27, 2009 as follows:

A contract is awarded to Nedzra J. Ward, 11403 Kay Lane, Pearland, Texas 77584-7270. Examinations will be assigned in $60,000 packages but no contract examiner shall have examination packages totaling more than $180,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2009 through August 31, 2010, with two (2) one (1) year options to renew.

A contract is awarded to Sam W. Armstrong, P.C., 931 Kentbury Court, Katy, Texas 77450. Examinations will be assigned in $60,000 packages but no contract examiner shall have examination packages totaling more than $180,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2009 through August 31, 2010, with two (2) one (1) year options to renew.

A contract is awarded to Melanie C. Bowman and Wayne F. Bowman, 2225 Potomac Drive, Unit C, Houston, Texas 77057. Examinations will be assigned in $60,000 packages but no contract examiner shall have examination packages totaling more than $180,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2009 through August 31, 2010, with two (2) one (1) year options to renew.

A contract is awarded to James Park, 10491 Park Lane, Kountze, Texas 77625. Examinations will be assigned in $60,000 packages but no contract examiner shall have examination packages totaling more than $180,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2009 through August 31, 2010, with two (2) one (1) year options to renew.

A contract is awarded to Texas Tax Consulting Group, L.C., 6116 Ayers Street, Suite 2C, Corpus Christi, Texas 78415. Examinations will be assigned in $60,000 packages but no contract examiner shall have examination packages totaling more than $180,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2009 through August 31, 2010, with two (2) one (1) year options to renew.

A contract is awarded to Gordon Wheeler, 8410 Neff Street, Houston, Texas 77036. Examinations will be assigned in $60,000 packages but no contract examiner shall have examination packages totaling more than $180,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2009 through August 31, 2010, with two (2) one (1) year options to renew.

A contract is awarded to Cindy Alvarez, 3820 Ashbury Lane, Bedford, Texas 76021. Examinations will be assigned in $60,000 packages but no contract examiner shall have examination packages totaling more than $180,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2009 through August 31, 2010, with two (2) one (1) year options to renew.

A contract is awarded to Jean Chan, 6119 Jereme Trail, Dallas, Texas 75252. Examinations will be assigned in $60,000 packages but no contract examiner shall have examination packages totaling more than $180,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2009 through August 31, 2010, with two (2) one (1) year options to renew.

A contract is awarded to Cindy H. Coats, CPA, 212 W. Legend Oaks Drive, Georgetown, Texas 78628-5003. Examinations will be assigned in $60,000 packages but no contract examiner shall have examination packages totaling more than $180,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2009 through August 31, 2010, with two (2) one (1) year options to renew.

A contract is awarded to Curry, Frazier & Associates, LLC, 6333 E. Mockingbird Lane, Ste. 147-915, Dallas Texas 75214-2692. Examinations will be assigned in $60,000 packages but no contract examiner shall have examination packages totaling more than $180,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2009 through August 31, 2010, with two (2) one (1) year options to renew.

The ten (10) contracts above are the final awards that the Comptroller will make under this RFQ.

TRD-200903834
Pamela G. Smith
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: August 28, 2009

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Notice of Contract Amendment

Pursuant to Chapter 403, Texas Government Code, and Chapter 2254, Subchapter A, Texas Government Code; and Chapters 72-75, Property Code, the Comptroller of Public Accounts (Comptroller) announces the following notice of contract amendment and renewal of a contract for professional unclaimed property audit services.

The Notice of Request for Proposals (RFP #190c) was published in the August 29, 2008, issue of the *Texas Register* (33 TexReg 7340). The Notice of Award was published in the January 16, 2009, issue of *Texas Register* (34 TexReg 351).

The contract amended and renewed is with Verus Financial LLC, 500 Chase Parkway, Waterbury, CT 06708. The total amount of the contract is based on a percentage of the cash value of the net unclaimed property received by Comptroller as a result of an audit. The term of the contract was October 22 2008 through August 31, 2009. The renewal extends the contract through August 31, 2010.

TRD-200903899
William Clay Harris
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: September 2, 2009

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Notice of Contract Amendment and Renewal

Pursuant to Chapter 403, Texas Government Code, and Chapter 2254, Subchapter A, Texas Government Code; and Chapters 72-75, Property Code, the Comptroller of Public Accounts (Comptroller) announces this notice of amendment and renewal of two (2) contracts awarded for providing professional unclaimed property audit services for one (1) additional one-year term, each.

The Notice of Request for Proposals (RFP #179b) was published in the July 6, 2007, issue of the *Texas Register* (32 TexReg 4250). The Notice of Award was published in the March 21, 2008, issue of the *Texas Register* (33 TexReg 2569).

The contracts amended and renewed are:

Audit Services U.S., LLC., 212 West 35th Street, Suite 600, New York, New York 10001. The term of the contract was October 5, 2007 through August 31, 2009. The renewal extends the contract through August 31, 2010.

ACS State and Local Solutions, Inc. aka ACS Unclaimed Property Clearinghouse, 260 Franklin Street, 11th Floor, Boston, MA 02110. The term of the contract was December 14, 2007 through August 31, 2009. The renewal extends the contract through August 31, 2010.

The total amount of each contract is based on a percentage of the cash value of net unclaimed property received by Comptroller as a result of an audit.

TRD-200903898
William Clay Harris
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: September 2, 2009

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, 303.008, 303.009, 304.003, and 346.101, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 09/07/09 - 09/13/09 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 09/07/09 - 09/13/09 is 18% for Commercial over $250,000.

The monthly ceiling as prescribed by §303.005 and §303.009[3] for the period of 09/01/09 - 09/30/09 is 18% for Consumer/Agricultural/Commercial/credit through $250,000.

The monthly ceiling as prescribed by §303.005 and §303.009 for the period of 09/01/09 - 09/30/09 is 18% for Commercial over $250,000.

The standard quarterly rate as prescribed by §303.008 and §303.009 for the period of 10/01/09 - 12/31/09 is 18% for Consumer/Agricultural/Commercial/credit through $250,000.

The standard quarterly rate as prescribed by §303.008 and §303.009 for the period of 10/01/09 - 12/31/09 is 18% for Commercial over $250,000.

The retail credit card quarterly rate as prescribed by §303.009[1] for the period of 10/01/09 - 12/31/09 is 18% for Consumer/Agricultural/Commercial/credit through $250,000.

The lender credit card quarterly rate as prescribed by §346.101 Texas Finance Code[1] for the period of 10/01/09 - 12/31/09 is 18% for Consumer/Agricultural/Commercial/credit through $250,000.

The standard annual rate as prescribed by §303.008 and §303.009[4] for the period of 10/01/08 - 12/31/09 is 18% for Consumer/Agricultural/Commercial/credit through $250,000.

The standard annual rate as prescribed by §303.008 and §303.009 for the period of 10/01/09 - 12/31/09 is 18% for Commercial over $250,000.

The retail credit card annual rate as prescribed by §303.009[1] for the period of 10/01/09 - 12/31/09 is 18% for Consumer/Agricultural/Commercial/credit through $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 09/01/09 - 09/30/09 is 5.00% for Consumer/Agricultural/Commercial/credit through $250,000.

The judgment ceiling as prescribed §304.003 for the period of 09/01/09 - 09/30/09 is 5.00% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

[3]For variable rate commercial transactions only.

[4]Only for open-end credit as defined in §301.002(14), Texas Finance Code.

TRD-200903876
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: September 1, 2009

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Texas Education Agency

Request for Applications Concerning Texas Science, Technology, Engineering, and Mathematics Academies - Startup Grant, Cycle 5

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-09-123 from school districts and open-enrollment charter schools. A school district or open-enrollment charter school is eligible to apply for the Texas Science, Technology, Engineering, and Mathematics (T-STEM) Academies - Startup Grant, Cycle 5, if it meets all T-STEM Academy eligibility requirements, as follows.

1. The school district or open-enrollment charter school must target and enroll a majority (at least 50 percent) of students who are at risk of dropping out of school (at risk, economically disadvantaged, English language learners, and/or first generation college-goers). Special consideration and priority will be given to school districts and open-enrollment charter schools that serve a population of greater than 40 percent economically disadvantaged students, calculated as an average over each of the preceding three school years (2006-2007, 2007-2008, and 2008-2009).

2. The school district or open-enrollment charter school must demonstrate a commitment to design a program that meets all T-STEM requirements. A T-STEM Academy must (a) be an autonomous school that is either a stand-alone campus with a unique county/district/campus number or a small learning community within a larger school (i.e., the T-STEM Academy is physically separated from the larger school and the T-STEM students are a separate cohort with their own teacher(s), leader, schedule, and curriculum); (b) serve Grades 6-12 or Grades 9-12 with an active relationship with the feeder middle school(s). If the applicant selects a Grades 9-12 model, the T-STEM Academy must serve Grade 9 during the first year of operation. If the applicant selects a Grades 6-12 model, the T-STEM Academy must serve a middle grade (6, 7, or 8) and Grade 9 during the first year of operation; (c) be small, serving approximately 100 students per grade; (d) be open enrollment, hosting lotteries for admission; and (e) follow all requirements and indicators outlined in the RFA and in the T-STEM Academy Design Blueprint provided in Appendix 1 of the RFA.

Eligible applicants shall demonstrate how they will meet all requirements defined in the RFA for opening a T-STEM Academy no later than the beginning of the 2010-2011 school year.

Description. The purpose of the T-STEM Academies - Startup Grant, Cycle 5, is to increase student achievement by engaging students in and exposing students to innovative science and mathematics instruction. T-STEM Academies serve as demonstration sites to inform mathematics and science teaching and learning statewide. To that end, every T-STEM Academy will provide a rigorous, well-rounded education; establish a personalized culture with the expectation that all students will achieve postsecondary success; and provide teacher and leadership development.

The program goals of the T-STEM Academies - Startup Grant, Cycle 5, are to (1) align high school, postsecondary education, and economic development activities across the areas of science, technology, engineering, and mathematics and the broader high school curriculum; (2) establish T-STEM Academies in high-need areas across the state that will prepare Texas high school graduates from diverse backgrounds to pursue careers in fields related to science, technology, engineering, and mathematics; and (3) establish a statewide best-practices network for science, technology, engineering, and mathematics education to promote broad dissemination and adoption of promising practices from the initiative and improve mathematics and science performance for students across Texas.

Dates of Project. The T-STEM Academies - Startup Grant, Cycle 5, will be implemented during the 2010-2011 and 2011-2012 school years. Applicants should plan for a starting date of no earlier than March 1, 2010, and an ending date of no later than May 31, 2012.

Project Amount. Funding will be provided for approximately three to six projects. Due to the limit on enrollment of 100 students per grade level, applicants proposing to serve Grades 6-12 are eligible for a maximum amount of $840,000, and applicants proposing to serve Grades 9-12 are eligible for a maximum amount of $480,000. This project is funded 100 percent from state funds.

Selection Criteria. Applications will be selected based on the ability of each applicant to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA.

TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. RFAs are no longer available in print. The announcement letter and complete RFA will be posted on the TEA website at http://burleson.tea.state.tx.us/GrantOpportunities/forms for viewing and downloading. In the "Select Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

Further Information. For clarifying information about the RFA, contact Donnell Bilsky, Division of Discretionary Grants, Texas Education Agency, (512) 463-9269. In order to assure that no prospective applicant may obtain a competitive advantage because of acquisition of information unknown to other prospective applicants, any and all questions must be submitted in writing to the TEA contact persons identified in Part 2: Program Guidelines of the RFA. All questions and the written answers thereto will be posted on the TEA website in the format of Frequently Asked Questions (FAQs) at http://burleson.tea.state.tx.us/GrantOpportunities/forms. In the "Select Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

Deadline for Receipt of Applications. Applications must be received in the TEA Document Control Center by 5:00 p.m. (Central Time), Thursday, November 5, 2009, to be eligible to be considered for funding.

TRD-200903897
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: September 2, 2009

♦ ♦ ♦

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 **October 12, 2009**. 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) 239-2545 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 October 12, 2009**. 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: Alcoa World Alumina, LLC; DOCKET NUMBER: 2009-1012-AIR-E; IDENTIFIER: RN100242577; LOCATION: Point Comfort, Calhoun County; TYPE OF FACILITY: alumina refining and processing plant; RULE VIOLATED: 30 Texas Administrative Code (TAC) §116.115(c), Permit Number 8166, Special Condition (SC) Numbers 1 and 3, and Texas Health and Safety Code (THSC), §382.085(b), by failing to demonstrate compliance with volatile organic compound emission limits of 0.07 pounds per million British Thermal Units and 29.40 pounds per hour; PENALTY: $6,250; ENFORCEMENT COORDINATOR: John Muennink, (361) 825-3100; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(2) COMPANY: Approach Operating, LLC; DOCKET NUMBER: 2009-1032-AIR-E; IDENTIFIER: RN104256102; LOCATION: Crockett County; TYPE OF FACILITY: natural gas compressor plant; RULE VIOLATED: 30 TAC §122.143(4), General Operating Permit (GOP) Number 02797, SC Number (b)(8), and THSC, §382.085(b), by failing to keep records of quarterly opacity observations of all stationary vents; 30 TAC §122.144(3), GOP Number 02797, SC Number (b)(1), and THSC, §382.085(b), by failing to maintain records on-site; 30 TAC §106.352(1) and §106.512(2)(C)(iii), GOP Number 02797, SC Number (b)(7)(D), and THSC, §382.085(b), by failing to conduct initial emissions testing within 60 days of engine construction and biannually afterwards; and 30 TAC §122.145(2), GOP Number O2797, SC Number (b)(7)(D), and THSC, §382.085(b), by failing to report three violations discovered during the June 10, 2009 investigation as deviations in previous Title V reports; PENALTY: $32,108; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3500; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(3) COMPANY: BASF FINA Petrochemicals Limited Partnership; DOCKET NUMBER: 2009-0750-AIR-E; IDENTIFIER: RN100216977; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: petrochemical manufacturing; RULE VIOLATED: 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4), Federal Operating Permit (FOP) Number O-01877, Air Permit Number 36644/Prevention of Significant Deterioration TX-903M1/N-007, SC Number 1, and THSC, §382.085(b), by failing to maintain allowable emissions limits; PENALTY: $8,200; ENFORCEMENT COORDINATOR: Audra Benoit, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(4) COMPANY: Biomedical Waste Solutions, LLC; DOCKET NUMBER: 2009-0856-MSW-E; IDENTIFIER: RN105650634; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: medical waste processor; RULE VIOLATED: 30 TAC §330.73(e) and (f), by failing to obtain authorization prior to operating a medical waste facility; PENALTY: $3,000; ENFORCEMENT COORDINATOR: Ross Fife, (512) 239-2541; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(5) COMPANY: City of Cameron; DOCKET NUMBER: 2009-0755-PWS-E; IDENTIFIER: RN101392215; LOCATION: Cameron, Milam County; TYPE OF FACILITY: public water supply (PWS); RULE VIOLATED: 30 TAC §290.46(f) and (3)(B)(vi), by failing to keep on file and make available for commission review water system records; 30 TAC §290.42(1), by failing to maintain a thorough plant operations manual for operator review and reference; 30 TAC §290.46(s)(1), by failing to calibrate flow measuring devices; 30 TAC §290.42(m) and §290.43(e), by failing to enclose the surface water treatment plant and water storage facilities with an intruder-resistant fence; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices at the facility to ensure the good working condition and general appearance of its facilities and equipment; 30 TAC §290.43(c)(3), by failing to provide an overflow cover that fits tightly with no gap over 1/16-inch for the facility's elevated storage tank; 30 TAC §290.110(c)(1)(A), by failing to continuously monitor and record the disinfectant residual of the water entering the distribution system; and 30 TAC §290.44(h)(1)(A), by failing to install backflow prevention assemblies or an air gap at all residences or establishments; PENALTY: $3,264; ENFORCEMENT COORDINATOR: Yulyia Dunaway, (210) 490-3096; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(6) COMPANY: City of Centerville; DOCKET NUMBER: 2009-0997-MWD-E; IDENTIFIER: RN101610624; LOCATION: Centerville, Leon County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010147001, Effluent Limitations and Monitoring Requirements Numbers 1 and 6, and the Code, §26.121(a), by failing to comply with permit effluent limits for ammonia nitrogen (NH_3N) and dissolved oxygen; PENALTY: $6,150; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(7) COMPANY: CNL Income Splashtown, LLC and PARC Splashtown, LLC; DOCKET NUMBER: 2009-0665-MWD-E; IDENTIFIER: RN102095627; LOCATION: Spring, Harris County; TYPE OF FACILITY: domestic wastewater treatment system; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0011886001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with the permit effluent limits for NH_3N and total suspended solids; and 30 TAC §305.125(17) and TPDES Permit Number WQ0011886001, Sludge Provisions, by failing to submit the annual sludge report; PENALTY: $1,850; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(8) COMPANY: Deadwood Water Supply Corporation; DOCKET NUMBER: 2009-0774-PWS-E; IDENTIFIER: RN101442523; LOCATION: Beckville, Panola County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.46(u), by failing to plug well number four with cement according to the requirements set forth in 16 TAC Chapter 76, or to repair the well so that it is no longer in a deteriorated condition; 30 TAC §290.45(b)(1)(D)(i) and THSC, §341.0315(c), by failing to provide a minimum total well capacity of 0.6 gallons per minute (gpm) per connection in pressure plane one and two; and 30 TAC §290.45(b)(1)(D)(iv) and THSC, §341.0315(c), by failing to provide a minimum elevated storage capacity of 100 gallons per connection in pressure plane one; PENALTY: $735; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(9) COMPANY: Enbridge Pipelines (Texas Gathering), L.P.; DOCKET NUMBER: 2009-0920-AIR-E; IDENTIFIER: RN105170930; LOCATION: Hemphill County; TYPE OF FACILITY: natural gas compressor station; RULE VIOLATED: 30 TAC §116.615(4) and §116.617(b)(1)(F), New Source Review Standard Permit Registration Number 84745, and THSC, §382.085(b), by failing to report start and completion of construction not later than 15 days after the events; 30 TAC §116.617(b)(1)(F) and §116.615(5)(A) and THSC, §382.085(b), by failing to notify the TCEQ prior to beginning operation of pollution control equipment; and 30 TAC §122.143(4) and §122.146(1), FOP Number O-02973, Oil and Gas General Operating Permit Number 514, Site-wide requirements (b)(2), and THSC, §382.085(b), by failing to certify a calendar day, September 26, 2007, within the reporting period of the annual permit compliance certification (PCC) report; PENALTY: $5,295; ENFORCEMENT COORDINATOR: Terry Murphy, (512) 239-5025; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(10) COMPANY: Equistar Chemcials, LP; DOCKET NUMBER: 2008-1474-AIR-E; IDENTIFIER: RN100542281; LOCATION: Channelview, Harris County; TYPE OF FACILITY: chemical plant producing benzene and toluene; RULE VIOLATED: 30 TAC §115.782(c)(2)(A)(i) and THSC, §382.085(b), by failing to take extraordinary repair efforts within 14 days if a leak of greater than 10,000 parts per million by volume (ppmv) is found; 30 TAC §122.143(4) and §122.145(2)(A), FOP Number O-02174, General Terms and Conditions, and THSC, §382.085(b), by failing to report all instances of deviations on deviation report; and 30 TAC §116.115(c) and §122.143(4) and THSC, §382.085(b), by failing to maintain a regenerative vent R-4360A emissions within permit limits; PENALTY: $29,252; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(11) COMPANY: Gulf Chemical & Metallurgical Corporation; DOCKET NUMBER: 2009-0543-AIR-E; IDENTIFIER: RN100210129; LOCATION: Freeport, Brazoria County; TYPE OF FACILITY: metal recovery plant; RULE VIOLATED: 30 TAC §116.115(c), Air Permit Number 9803, SC Number 1, and THSC, §382.085(b), by failing to comply with the permitted emission rate limits for nitrogen oxides (NO_x); and 30 TAC §116.115(c), Air Permit Number 9803, SC Number 11.B, and THSC, §382.085(b), by failing to comply with the permitted ambient air limitations for nickel and vanadium in the particular matter emissions from the property; PENALTY: $43,575; Supplemental Environmental Project (SEP) offset amount of $17,430 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Clean School Buses; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(12) COMPANY: Harris County Municipal Utility District Number 82; DOCKET NUMBER: 2009-0784-MWD-E; IDENTIFIER: RN102183696; LOCATION: Harris County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §305.125(4), TPDES Permit Number WQ0011799001, Permit Conditions Number 2.d., and the Code, §26.121(a), by failing to properly operate and maintain the facility; PENALTY: $12,060; ENFORCEMENT COORDINATOR: Heather Brister, (254) 751-0335; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(13) COMPANY: Michael Ury dba K & M Landscape; DOCKET NUMBER: 2009-0924-LII-E; IDENTIFIER: RN103566923; LOCATION: Niederwald and Cedar Park; Hays and Williamson Counties; TYPE OF FACILITY: landscape business; RULE VIOLATED: 30 TAC §344.24(a) and §344.35(d)(2), by failing, as a licensed irrigator, to comply with local requirements, ordinances, and regulations designed to protect the PWS; PENALTY: $2,500; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5700, (512) 339-2929.

(14) COMPANY: Kempner Water Supply Corporation; DOCKET NUMBER: 2009-1005-PWS-E; IDENTIFIER: RN101197549; LOCATION: Kempner, Lampasas County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.46(f)(2) and (3)(D)(ii), by failing to make the facility's operating records accessible for review during an inspection; 30 TAC §290.44(d)(1), by failing to install air release devices in the distribution system; 30 TAC §290.43(e), by failing to provide a properly constructed intruder-resistant fence around all storage tanks and pressure maintenance facilities; 30 TAC §290.46(r), by failing to provide a minimum pressure of 35 pounds per square inch throughout the distribution system; 30 TAC §290.43(d)(3), by failing to equip all air compressor injection lines with filters or other devices to prevent compressor lubricants or other contaminants from entering the pressure tank; 30 TAC §290.42(e)(3)(G), by failing to obtain approval under the exemption guidelines of 30 TAC §290.39(1) to use a primary disinfectant other than chlorine; and 30 TAC §290.45(b)(1)(D)(iii) and THSC, §341.0315(c), by failing to provide two or more pumps that have a total capacity of two gpm per connection at each pressure plane; PENALTY: $1,762; SEP offset amount of $1,410 applied to Lower Colorado River Authority's Household Hazardous Waste and Reusable Materials Collection; ENFORCEMENT COORDINATOR: Stephen Thompson, (512) 239-2558; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(15) COMPANY: Kinder Morgan Tejas Pipeline, LLC; DOCKET NUMBER: 2009-0613-AIR-E; IDENTIFIER: RN100224682; LOCATION: Starr County; TYPE OF FACILITY: natural gas transmission plant; RULE VIOLATED: 30 TAC §122.121 and §122.241(b) and THSC, §382.054 and §382.085(b), by failing to submit an application for renewal of an authorization to operate under a general operating permit; PENALTY: $3,750; ENFORCEMENT COORDINATOR: James Nolan, (512) 239-6634; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(16) COMPANY: Leander Independent School District; DOCKET NUMBER: 2009-0658-EAQ-E; IDENTIFIER: RN105688303; LOCATION: Cedar Park, Williamson County; TYPE OF FACILITY: roadway construction project site; RULE VIOLATED: 30 TAC §213.23(a)(1), by failing to obtain approval of a contributing zone plan; PENALTY: $1,500; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5700, (512) 339-2929.

(17) COMPANY: North Runnels Water Supply Corporation; DOCKET NUMBER: 2009-1031-PWS-E; IDENTIFIER: RN101222081;

LOCATION: Winters, Runnels County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.45(b)(1)(D)(v) and THSC, §341.0315(c), by failing to provide emergency power that will deliver water at a rate of 0.35 gpm per connection in the event of the loss of normal power supply; PENALTY: $267; ENFORCEMENT COORDINATOR: Stephen Thompson, (512) 239-2558; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(18) COMPANY: Michael Paddack; DOCKET NUMBER: 2009-0740-LII-E; IDENTIFIER: RN105711485; LOCATION: Georgetown, Williamson County; TYPE OF FACILITY: landscape irrigation company; RULE VIOLATED: 30 TAC §344.70(b), by failing to include in all advertisements the irrigator's license number; 30 TAC §344.61 and §344.63, by failing to conduct a walk through demonstration, to provide a maintenance checklist, a permanent sticker and irrigation plan to the irrigation system owner; and 30 TAC §344.24(a), by failing to comply with local requirements, ordinances, and regulations designed to protect the PWS; PENALTY: $399; ENFORCEMENT COORDINATOR: John Shelton, (512) 239-2563; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5700, (512) 339-2929.

(19) COMPANY: Republic Plastics, Limited; DOCKET NUMBER: 2009-1107-AIR-E; IDENTIFIER: RN100851211; LOCATION: McQueeney, Guadalupe County; TYPE OF FACILITY: polystyrene foam products manufacturing plant; RULE VIOLATED: 30 TAC §122.143(4) and §122.146(2) and (5)(C), FOP Number O-02680, General Terms and Conditions, and THSC, §382.085(b), by failing to submit the Title V PCC; PENALTY: $3,100; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 490-3096; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(20) COMPANY: SL Horizon, LLC dba Town & Country Airport; DOCKET NUMBER: 2009-0635-PST-E; IDENTIFIER: RN102277076; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: local airport for small private aircraft; RULE VIOLATED: 30 TAC §334.7(d)(3), by failing to provide an amended underground storage tank (UST) registration; 30 TAC §334.8(c)(4)(C) 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 §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; 30 TAC §334.50(b)(2)(A) 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 at least once per year for performance and operational reliability; 30 TAC §334.50(d)(1)(B)(ii) and the Code, §26.3475(c)(1), by failing to conduct reconciliation of detailed inventory control records; 30 TAC §334.49(c)(2)(C) and the Code, §26.3475(d), by failing to inspect the impressed current cathodic protection system at least once every 60 days; and 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; PENALTY: $20,502; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5800; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(21) COMPANY: Stallion Oilfield Services Limited; DOCKET NUMBER: 2009-0705-SLG-E; IDENTIFIER: RN105233225; LOCATION: Alvord, Wise County; TYPE OF FACILITY: sludge transporter service; RULE VIOLATED: 30 TAC §312.142(c), by failing to maintain a copy of the registration at the designated place of business and in each vehicle; 30 TAC §312.142, by failing to amend the sludge transporter registration; 30 TAC §312.144(a), by failing to display the TCEQ registration number and facility telephone number on each of the trucks; 30 TAC §312.82(c)(2), by failing to meet the alkali addition/pH requirements for domestic septage disposed at a beneficial use site; 30 TAC §312.145, by failing to maintain trip tickets with the required information; and 30 TAC §205.6, by failing to pay the general stormwater permit fee and associated late fees; PENALTY: $7,360; SEP offset amount of $2,944 applied to RC&D - Unauthorized Trash Dump Clean-Up; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(22) COMPANY: Servando De La Garza dba UTW Tire Collection Services; DOCKET NUMBER: 2009-0616-MSW-E; IDENTIFIER: RN103074969; LOCATION: Laredo, Webb County; TYPE OF FACILITY: land reclamation project using tires; RULE VIOLATED: 30 TAC §328.66(a), by failing to obtain a registration amendment prior to expanding outside the authorized boundaries of a land reclamation project using tires; 30 TAC §328.63(c), by failing to obtain authorization prior to processing scrap tires; and 30 TAC §328.66(j), by failing to obtain authorization for a scrap tire storage facility; PENALTY: $14,000; ENFORCEMENT COORDINATOR: Clinton Sims, (512) 239-6933; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(23) COMPANY: Webb County; DOCKET NUMBER: 2009-0818-PWS-E; IDENTIFIER: RN102698719; LOCATION: Laredo, Webb County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.113(f)(4) and THSC, §341.0315(c), by failing to comply with the maximum contaminant level for total trihalomethanes; PENALTY: $965; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(24) COMPANY: Randy Wilson; DOCKET NUMBER: 2009-1345-WOC-E; IDENTIFIER: RN105749188; LOCATION: Houston, Harris County; TYPE OF FACILITY: licensing; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $210; ENFORCEMENT COORDINATOR: Kirk Schoppe, (512) 239-0489; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-200903869
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: September 1, 2009

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Enforcement Orders

An agreed order was entered regarding MPR Investments, LLC dba Oak Ridge Square Mobile Home Park, Docket No. 2004-1188-MWD-E on August 26, 2009 assessing $14,650 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Xavier Guerra, Staff Attorney at (210) 403-4016, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Derek Broussard dba Broussard Auto Parts & Repair, Docket No. 2007-0102-MLM-E on August 26, 2009 assessing $3,150 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Peipey Tang, Staff Attorney at (512) 239-0654, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lewis Blessing, L.P. dba Blessing Mobile Home Park, Docket No. 2007-0878-PWS-E on August 26, 2009 assessing $1,656 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mike Fishburn, Staff Attorney at (512) 239-0635, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Barmont, L.P. dba Montesello Homes, Docket No. 2007-0919-WQ-E on August 26, 2009 assessing $2,000 in administrative penalties with $400 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Monarch Utilities I L.P., Docket No. 2008-0112-MWD-E on August 26, 2009 assessing $10,110 in administrative penalties with $2,022 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3048, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Chalico Concrete Materials, Inc., Docket No. 2008-0202-AIR-E on August 26, 2009 assessing $5,350 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Gary Shiu, Staff Attorney at (713) 767-3500, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Leopoldo E. Galindo dba Leo's Tire Service aka Crane Texaco, Docket No. 2008-0258-PST-E on August 26, 2009 assessing $2,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Peipey Tang, Staff Attorney at (512) 239-0654, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Citgo Refining and Chemicals Company, L.P., Docket No. 2008-0273-IHW-E on August 26, 2009 assessing $23,460 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting James Sallans, Staff Attorney at (512) 239-2053, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Shore-Tech, Inc. dba L & M Water Development Co., Docket No. 2008-0329-PWS-E on August 26, 2009 assessing $352 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Stephen Thompson, Enforcement Coordinator at (512) 239-2558, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Diamond Shamrock Refining Company, L.P., Docket No. 2008-0384-AIR-E on August 26, 2009 assessing $93,236 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Anna Treadwell, Staff Attorney at (512) 239-0974, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Northwest Petroleum LP dba Sam Bass Shell, Docket No. 2008-0617-MLM-E on August 26, 2009 assessing $9,600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Stephanie Frazee, Staff Attorney at (512) 239-0693, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Maverick County, Docket No. 2008-0637-MSW-E on August 26, 2009 assessing $3,810 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Boutwell, Staff Attorney at (512)239-5846, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hwy. 29 Grocery, Inc. dba Jiffy Mart 3, Docket No. 2008-0639-PST-E on August 26, 2009 assessing $8,367 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Peipey Tang, Staff Attorney at (512) 239-0654, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hwy 2243 Grocery, Inc. dba Jiffy Mart 2, Docket No. 2008-0656-MLM-E on August 26, 2009 assessing $14,059 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Phillip Goodwin, Staff Attorney at (512) 239-0675, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Imkan Enterprises, Inc. dba Rose Hill Country Store, Docket No. 2008-0660-PST-E on August 26, 2009 assessing $29,386 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Gary Shiu, Staff Attorney at (713) 767-3500, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Darrell Hall dba 2620 Estates, Docket No. 2008-0834-PWS-E on August 26, 2009 assessing $6,885 in administrative penalties with $1,377 deferred.

Information concerning any aspect of this order may be obtained by contacting Stephen Thompson, Enforcement Coordinator at (512) 239-2558, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Phil Skloss, Docket No. 2008-0899-PST-E on August 26, 2009 assessing $3,675 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Peipey Tang, Staff Attorney at (512) 239-0654 Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding De Los Santos dba De Los Santos Ready Mix, Docket No. 2008-0951-MSW-E on August 26, 2009 assessing $1,050 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kari Gilbreth, Staff Attorney at (512) 239-1320, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Derdeyn/Ford Inc. dba Tejas Village, Docket No. 2008-0974-PWS-E on August 26, 2009 assessing $585 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tommy Henson, Staff Attorney at (512) 239-0946, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Michael Soza dba Water Valley Water Co-op, Docket No. 2008-0993-PWS-E on August 26, 2009 assessing $1,630 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Boutwell, Staff Attorney at (512) 239-5846, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding John C. Moore dba Moores Water System, Docket No. 2008-1040-PWS-E on August 26, 2009 assessing $1,674 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Boutwell, Staff Attorney at (512) 239-5846, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Royal Oak Water System, Inc., Docket No. 2008-1126-PWS-E on August 26, 2009 assessing $3,893 in administrative penalties with $778 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrea Linson-Mgbeoduru, Enforcement Coordinator at (512) 239-1482, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bryan D. Carlson, Docket No. 2008-1138-LII-E on August 26, 2009 assessing $250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Phillip Goodwin, Staff Attorney at (512) 239-0675, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CITGO Refining and Chemicals Company L.P., Docket No. 2008-1193-AIR-E on August 26, 2009 assessing $10,482 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Anna Treadwell, Staff Attorney at (512) 239-0974, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Paul McGregor, Docket No. 2008-1206-LII-E on August 26, 2009 assessing $500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Phillip Goodwin, Staff Attorney at (512) 239-0675, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Joyce Carter dba PJ's One Stop, Docket No. 2008-1278-PST-E on August 26, 2009 assessing $13,092 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Phillip Goodwin, Staff Attorney at (512) 239-0675, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Larry Cathey dba Waco Wood Recycling and Materials, Docket No. 2008-1368-MLM-E on August 26, 2009 assessing $3,210 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tracy Chandler, Staff Attorney at (512) 239-0629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sam Cicalo, Docket No. 2008-1450-AIR-E on August 26, 2009 assessing $1,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurencia Fasoyiro, Staff Attorney at (713) 422-8914, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Norman Barnett dba Villa Utilities, Docket No. 2008-1620-PWS-E on August 26, 2009 assessing $614 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sharesa Alexander, Staff Attorney at (512) 239-3503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Charles E. Schram III, Docket No. 2008-1657-WOC-E on August 26, 2009 assessing $1,992 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Phillip Goodwin, Staff Attorney at (512) 239-0675, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Edelia I. Trevino, Docket No. 2008-1687-PST-E on August 26, 2009 assessing $2,550 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Peipey Tang, Staff Attorney at (512) 239-0654, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding The Dow Chemical Company, Docket No. 2008-1723-AIR-E on August 26, 2009 assessing $63,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Nadia Hameed, Enforcement Coordinator at (713) 767-3629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Groveton, Docket No. 2008-1769-MWD-E on August 26, 2009 assessing $31,531 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Pam Campbell, Enforcement Coordinator at (512) 239-4493, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hector Guzman dba Shiloh Oak Mobile Home Park, Docket No. 2008-1800-PWS-E on August 26, 2009 assessing $7,872 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Amanda Henry, Enforcement Coordinator at (713) 767-3672, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Leo Bird dba Walnut Ridge Estates Water System, Docket No. 2008-1824-PWS-E on August 26, 2009 assessing $354 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jennifer Cook, Staff Attorney at (512) 239-1873, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Fouad Matar dba Bingle Chevron, Docket No. 2008-1909-PST-E on August 26, 2009 assessing $3,218 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Phillip Goodwin, Staff Attorney at (512) 239-0675, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Shell Oil Company and Shell Chemical LP, Docket No. 2008-1925-AIR-E on August 26, 2009 assessing $30,423 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator at (512) 239-1044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Judy Rinker and Phyllis Bigby, Docket No. 2008-1958-PWS-E on August 26, 2009 assessing $2,052 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Amanda Henry, Enforcement Coordinator at (713) 767-3672, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Huntsman Petrochemical Corporation, Docket No. 2009-0041-AIR-E on August 26, 2009 assessing $28,615 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Roshondra Lowe, Enforcement Coordinator at (713) 767-3553, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Gatesville, Docket No. 2009-0043-MWD-E on August 26, 2009 assessing $1,975 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jennifer Cook, Staff Attorney at (512) 239-1873, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Gregory Power Partners, L.P., Docket No. 2009-0060-AIR-E on August 26, 2009 assessing $30,500 in administrative penalties with $6,100 deferred.

Information concerning any aspect of this order may be obtained by contacting Kirk Schoppe, Enforcement Coordinator at (512) 239-0489, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Encinal, Docket No. 2009-0075-IHW-E on August 26, 2009 assessing $1,270 in administrative penalties with $254 deferred.

Information concerning any aspect of this order may be obtained by contacting John Shelton, Enforcement Coordinator at (512)-239-0563, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Amistad Lake Developments, Inc., Docket No. 2009-0078-PWS-E on August 26, 2009 assessing $1,801 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mike Fishburn, Staff Attorney at (512) 239-0635, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Longhorn Mobile Home Community, LTD, Docket No. 2009-0079-PWS-E on August 26, 2009 assessing $4,212 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lauren Smitherman, Enforcement Coordinator at (512) 239-5223, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding The Premcor Refining Group Inc., Docket No. 2009-0151-AIR-E on August 26, 2009 assessing $19,600 in administrative penalties with $3,920 deferred.

Information concerning any aspect of this order may be obtained by contacting Raymond Marlow, Enforcement Coordinator at (409) 899-8785, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Camp Olympia, Inc., Docket No. 2009-0155-MWD-E on August 26, 2009 assessing $5,640 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steve Villatoro, Enforcement Coordinator at (512) 239-4930, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding LANXESS Corporation, Docket No. 2009-0172-AIR-E on August 26, 2009 assessing $4,524 in administrative penalties with $904 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (361) 825-3420, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mobil Chemical Company Inc., Docket No. 2009-0193-AIR-E on August 26, 2009 assessing $3,675 in administrative penalties with $735 deferred.

Information concerning any aspect of this order may be obtained by contacting Kirk Schoppe, Enforcement Coordinator at (512) 239-0489, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TENET HOSPITALS LIMITED dba Providence Memorial Hospital, Docket No. 2009-0196-PST-E on August 26, 2009 assessing $4,230 in administrative penalties with $846 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Air Liquide Large Industries U.S. LP, Docket No. 2009-0222-AIR-E on August 26, 2009 assessing $82,455 in administrative penalties with $16,491 deferred.

Information concerning any aspect of this order may be obtained by contacting Nadia Hameed, Enforcement Coordinator at (713) 767-3629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Chevron Phillips Chemical Company LP, Docket No. 2009-0267-AIR-E on August 26, 2009 assessing $9,700 in administrative penalties with $1,940 deferred.

Information concerning any aspect of this order may be obtained by contacting Roshondra Lowe, Enforcement Coordinator at (713) 767-3553, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Air Products LLC, Docket No. 2009-0278-IWD-E on August 26, 2009 assessing $2,540 in administrative penalties with $508 deferred.

Information concerning any aspect of this order may be obtained by contacting Jennifer Graves, Enforcement Coordinator at (956) 430-6023, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ExxonMobil Oil Corporation, Docket No. 2009-0314-AIR-E on August 26, 2009 assessing $9,925 in administrative penalties with $1,985 deferred.

Information concerning any aspect of this order may be obtained by contacting Terry Murphy, Enforcement Coordinator at (512) 239-5025, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Owens Corning Roofing and Asphalt, LLC, Docket No. 2009-0315-AIR-E on August 26, 2009 assessing $2,500 in administrative penalties with $500 deferred.

Information concerning any aspect of this order may be obtained by contacting Clinton Sims, Enforcement Coordinator at (512) 239-6933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BASF FINA Petrochemicals Limited Partnership, Docket No. 2009-0316-AIR-E on August 26, 2009 assessing $53,900 in administrative penalties with $10,780 deferred.

Information concerning any aspect of this order may be obtained by contacting James Nolan, Enforcement Coordinator at (512) 239-6634, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CIRCLE K STORES INC. dba Circle K Store 2701418, Docket No. 2009-0336-PST-E on August 26, 2009 assessing $3,246 in administrative penalties with $649 deferred.

Information concerning any aspect of this order may be obtained by contacting Steven Lopez, Enforcement Coordinator at (512) 239-1896, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Lott, Docket No. 2009-0347-MWD-E on August 26, 2009 assessing $6,140 in administrative penalties with $1,228 deferred.

Information concerning any aspect of this order may be obtained by contacting Carlie Konkol, Enforcement Coordinator at (361) 825-3422, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Aqua Utilities, Inc. dba Aqua Texas, Inc., Docket No. 2009-0354-MWD-E on August 26, 2009 assessing $3,520 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tom Jecha, Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Indian Petro Corp., Docket No. 2009-0368-MWD-E on August 26, 2009 assessing $4,640 in administrative penalties with $928 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3034, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bell's Conversions, Inc., Docket No. 2009-0373-AIR-E on August 26, 2009 assessing $4,280 in administrative penalties with $856 deferred.

Information concerning any aspect of this order may be obtained by contacting Suzanne Walrath, Enforcement Coordinator at (512) 239-2134, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SHINTECH INCORPORATED, Docket No. 2009-0402-AIR-E on August 26, 2009 assessing $3,500 in administrative penalties with $700 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding El Dorado Utility District, Docket No. 2009-0403-MWD-E on August 26, 2009 assessing $6,500 in administrative penalties with $1,300 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Paint Rock Independent School District, Docket No. 2009-0411-PST-E on August 26, 2009 assessing $4,900 in administrative penalties with $980 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Savoy, Docket No. 2009-0418-MWD-E on August 26, 2009 assessing $7,500 in administrative penalties with $1,500 deferred.

Information concerning any aspect of this order may be obtained by contacting Steve Villatoro, Enforcement Coordinator at (512) 239-4930, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Chevron Phillips Chemical Company LP, Docket No. 2009-0428-AIR-E on August 26, 2009 assessing $9,750 in administrative penalties with $1,950 deferred.

Information concerning any aspect of this order may be obtained by contacting Nadia Hameed, Enforcement Coordinator at (713) 767-3629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding 100 Century Oaks, Ltd., Docket No. 2009-0430-EAQ-E on August 26, 2009 assessing $2,250 in administrative penalties with $450 deferred.

Information concerning any aspect of this order may be obtained by contacting Lanae Foard, Enforcement Coordinator at (512) 239-2554, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Denny Transport, L.L.C., Docket No. 2009-0454-PST-E on August 26, 2009 assessing $3,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tom Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding 1404 Blaketree, L.P., Docket No. 2009-0457-PWS-E on August 26, 2009 assessing $4,578 in administrative penalties with $915 deferred.

Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (210) 403-4077 Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding B & B Ready Mix, Inc., Docket No. 2009-0461-AIR-E on August 26, 2009 assessing $970 in administrative penalties with $194 deferred.

Information concerning any aspect of this order may be obtained by contacting Suzanne Walrath, Enforcement Coordinator at (512) 239-2134, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bright Star-Salem Special Utility District, Docket No. 2009-0470-MWD-E on August 26, 2009 assessing $2,700 in administrative penalties with $540 deferred.

Information concerning any aspect of this order may be obtained by contacting Lanae Foard, Enforcement Coordinator at (512) 239-2554, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Stallion Oilfield Services Ltd., Docket No. 2009-0496-WR-E on August 26, 2009 assessing $575 in administrative penalties with $115 deferred.

Information concerning any aspect of this order may be obtained by contacting Evette Alvarado, Enforcement Coordinator at (512) 239-2573, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Queen City, Docket No. 2009-0515-PWS-E on August 26, 2009 assessing $745 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (210)-403-4077, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Town of Buckholts, Docket No. 2009-0534-MWD-E on August 26, 2009 assessing $3,840 in administrative penalties with $768 deferred.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator at (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bell County Water Control and Improvement District No. 2, Docket No. 2009-0554-MWD-E on August 26, 2009 assessing $2,750 in administrative penalties with $550 deferred.

Information concerning any aspect of this order may be obtained by contacting Tom Jecha, Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Enbridge Pipelines (NE Texas) L.P., Docket No. 2009-0571-AIR-E on August 26, 2009 assessing $3,000 in administrative penalties with $600 deferred.

Information concerning any aspect of this order may be obtained by contacting Martina Kusniadi, Enforcement Coordinator at (713) 767-3682, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Julian J. Pena, Docket No. 2009-0598-WOC-E on August 26, 2009 assessing $225 in administrative penalties with $45 deferred.

Information concerning any aspect of this order may be obtained by contacting Richard Croston, Enforcement Coordinator at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Firestone Polymers, LLC, Docket No. 2009-0623-AIR-E on August 26, 2009 assessing $5,475 in administrative penalties with $1,095 deferred.

Information concerning any aspect of this order may be obtained by contacting Nadia Hameed, Enforcement Coordinator at (713) 767-3629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Tomas Perez dba Tomas Body Shop, Docket No. 2009-0674-AIR-E on August 26, 2009 assessing $1,100 in administrative penalties with $220 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding David M. Richter, Docket No. 2009-0632-WOC-E on August 26, 2009 assessing $210 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Brystar Contracting, Inc., Docket No. 2009-00682-WR-E on August 26, 2009 assessing $350 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding H & H Iron and Metal, Inc., Docket No. 2009-0683-WQ-E on August 26, 2009 assessing $700 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Mueller Supply Company, Inc., Docket No. 2009-0684-WQ-E on August 26, 2009 assessing $700 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Andres Maldonado, Docket No. 2009-0688-WOC-E on August 26, 2009 assessing $210 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Cody M. Brite, Docket No. 2009-0701-WOC-E on August 26, 2009 assessing $210 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding David A. Hernandez, Docket No. 2009-0702-WOC-E on August 26, 2009 assessing $210 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An order was entered regarding James Jones, Docket No. 2009-0709-MLM-E on August 28, 2009 assessing $2,257 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mike Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200903910
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: September 2, 2009

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Notice of Correction to Default Order

In the December 12, 2008, issue of the *Texas Register* (33 TexReg 10211), the Texas Commission on Environmental Quality (TCEQ or commission) submitted as published a notice of Default Order Number, specifically Item Number 5. The reference to Oakridge Custom Homes, Inc. was submitted in error by the commission as TCEQ ID NUMBER: RN10595679 and instead should have been submitted as TCEQ ID Number: RN105295679.

For questions concerning this error, please contact Jacquelyn Boutwell at (512) 239-5486.

TRD-200903866
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: September 1, 2009

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Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **October 12, 2009**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on October 12, 2009**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: Dowd & Sons Automobile Salvage Company, Inc. aka Dowd & Sons, Inc.; DOCKET NUMBER: 2007-1881-MLM-E; TCEQ ID NUMBER: RN101531887; LOCATION: 419 7th Street, Corsicana, Navarro County; TYPE OF FACILITY: automobile salvage and wrecking yard; RULES VIOLATED: 30 TAC §§30.5(a), 30.301(b), 334.55(a)(3), and 334.401(a), and Texas Water Code (TWC), §37.003, by failing to hold an on-site supervisor license and contractor registration prior to removal of an underground storage tank (UST) from the ground; 30 TAC §334.6(b)(2) and §334.55(a)(1), by failing to provide a written notification to the TCEQ at least 30 days prior to performing a major construction activity, namely removing a UST; and 30 TAC §334.55(a)(6) and (e)(1), by failing to determine whether or not a release has occurred by performing a site assessment; PENALTY: $4,673; STAFF ATTORNEY: Jennifer Cook, Litigation Division, MC 175, (512) 239-1873; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Houston Refining LP; DOCKET NUMBER: 2008-0790-AIR-E; TCEQ ID NUMBER: RN100218130; LOCATION: 12000 Lawndale Street, Houston, Harris County; TYPE OF FACILITY: petroleum refinery; RULES VIOLATED: 30 TAC §101.20(2), 40 Code of Federal Regulations (CFR) §61.343(a)(1), and Texas Health and Safety Code (THSC), §382.085(b), by failing to install, operate, and maintain a fixed roof and closed vent system to route organic vapor from the solids collection hoppers used in the material recovery and recycling operations operated by a contractor at the refinery; and 30 TAC §101.20(2), 40 CFR §61.356(a), (d), (f)(2)(i)(G) and (g) and THSC, §382.085(b), by failing to keep records of the material recovery and recycling operations in accordance with 40 CFR Part 61 Subpart FF; PENALTY: $37,950; STAFF ATTORNEY: Laurencia Fasoyiro, Litigation Division, MC R-12, (713) 422-8914; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(3) COMPANY: John Popma dba Marketing Interface Company; DOCKET NUMBER: 2004-0083-IHW-E; TCEQ ID NUMBER: RN103146049; LOCATION: East Mountain Road and Municipal Drive, East Mountain, Upshur County; TYPE OF FACILITY: refurbishes and resells electroplating equipment; RULES VIOLATED: 30 TAC §§335.62, 335.503(a)(4), 335.513, and 335.431(c), by failing to complete waste classification, hazardous waste determination, and land disposal restrictions on each solid waste generated; 30 TAC §335.6(c), by failing to update the facility's Notice of Registration and thereby notify the executive director of the generation of hazardous waste; 30 TAC §335.2(b) and §335.10(a), by failing to properly manifest, transport, and dispose of industrial hazardous waste at a permitted facility; 30 TAC §335.9(a)(1), by failing to maintain records of all hazardous waste and industrial solid waste activities regarding the quantities generated, stored, processed, and disposed of on-site or shipped off-site for storage, processing, or disposal; 30 TAC §§335.69(a)(4)(A), 335.474, and 335.479, and 40 CFR §265.16(d)(4) and §265.51(a), by failing to maintain records that document personnel training activities, a contingency plan and a pollution prevention plan; PENALTY: $29,250; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(4) COMPANY: Mervin Snyder; DOCKET NUMBER: 2008-1628-WOC-E; TCEQ ID NUMBER: RN10546966; LOCATION: 1604 Private Road 8692, Winnsboro, Wood County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §30.381(b) and §30.5(a), TWC, §37.003, and THSC, §341.034(b), by failing to maintain a valid, effective public water system operator license issued by the commission prior to performing process control duties for the production and distribution of drinking water; PENALTY: $1,992; STAFF ATTORNEY: Rudy Calderon, Litigation Division, MC 175, (512) 239-0205; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(5) COMPANY: Tommy Rutledge; DOCKET NUMBER: 2007-0859-MLM-E; TCEQ ID NUMBER: RN105171078; LOCATION: 3951 Highway 164 East, Groesbeck, Limestone County; TYPE OF FACILITY: storage facility; RULES VIOLATED: 30 TAC §327.5(a) and TWC, §26.121(a)(1), by failing to prevent and immediately abate and contain a spill or discharge of municipal solid waste into or adjacent to any water in the state; 30 TAC §111.201 and THSC, §328.085(b), by failing to comply with the prohibition on outdoor burning; and 30 TAC §330.15(c), by failing to dispose of municipal solid waste at an authorized facility; PENALTY: $12,500; STAFF ATTORNEY: Tracy Chandler, Litigation Division, MC 175, (512) 239-0629; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

TRD-200903868
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: September 1, 2009

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **October 12, 2009**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on October 12, 2009**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing**.

(1) COMPANY: Foster Consolidated Investments, LLC dba Chaparral, III; DOCKET NUMBER: 2009-0406-PWS-E; TCEQ ID NUMBER: RN101219384; LOCATION: intersection of Mesheppard Road and County Road 100, four miles east of Georgetown, Williamson County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.43(c)(6), by failing to maintain all storage tanks and associated appurtenances in a watertight condition; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the facility and its equipment; PENALTY: $168; STAFF ATTORNEY: Mike Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: Austin Regional Office, 2800 South Interstate Highway 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(2) COMPANY: Humble Partners Limited Partnership; DOCKET NUMBER: 2008-1050-MWD-E; TCEQ ID NUMBER: RN103114716; LOCATION: 1,000 feet east of the intersection of Atascocita Road and Old Humble Road, Harris County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(11)(B) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0011161001 Monitoring and Reporting Requirements Number 3; 30 TAC §305.125(17) and TPDES Permit Number WQ0011161001 Sludge Provisions, by failing to submit the annual sludge report for the monitoring period ending July 31, 2007 by September 1, 2007; 30 TAC §305.125(1) and (5) and TPDES Permit Number WQ0011161001 Operational Requirements Number 1, by failing to properly maintain and operate the facility; 30 TAC §305.125(1) and (9)(A) and TPDES Permit Number WQ0011161001 Monitoring and Reporting Requirements Number 7.c.; and 30 TAC §317.7(e), by failing to provide a chain and lock at the double gate; PENALTY: $5,311; STAFF ATTORNEY: Becky Combs, Litigation Division, MC 175, (512) 239-6939; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(3) COMPANY: Mordonio Flores dba Flores Landscaping; DOCKET NUMBER: 2009-0395-LII-E; TCEQ ID NUMBER: RN105639348; LOCATION: 7507 Compass Drive, Austin, Travis County; TYPE OF FACILITY: landscaping business which provides landscape irrigation installation services; RULES VIOLATED: TWC, §37.003, Texas Occupations Code, §1903.251, and 30 TAC §30.5(b) and §344.30, by failing to refrain from advertising or representing himself to the public as a person who can perform services for which a license or registration is required when not possessing a current license or registration; PENALTY: $525; STAFF ATTORNEY: Barham Richard, Litigation Division, MC 175, (512) 239-0107; REGIONAL OFFICE: Austin Regional Office, 2800 South Interstate Highway 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(4) COMPANY: Nelson King; DOCKET NUMBER: 2009-0218-AIR-E; TCEQ ID NUMBER: RN105568091; LOCATION: 386 Coyote Trail, Rhome, Wise County; TYPE OF FACILITY: property; RULES VIOLATED: 30 TAC §111.201 and Texas Health and Safety Code, §382.085(b), by failing to comply with the general prohibition of outdoor burning by failing to prevent the burning of furniture, plastic, paint cans, tires, domestic waste, brush, and miscellaneous construction debris at the site; PENALTY: $1,712; STAFF ATTORNEY: Mike Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: Total Land Development Corporation; DOCKET NUMBER: 2008-1151-WQ-E; TCEQ ID NUMBER: RN105346241; LOCATION: Old 440 Road and Claridge Avenue, Killeen, Bell County; TYPE OF FACILITY: subdivision; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26, by failing to obtain authorization to discharge storm water associated with construction activities; PENALTY: $2,100; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

TRD-200903867
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: September 1, 2009

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Notice of Public Hearing on Proposed Repeals to 30 TAC Chapter 115 and Revisions to the State Implementation Plan

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony regarding proposed repeals to 30 Texas Administrative Code (TAC) Chapter 115, Control of Air Pollution from Volatile Organic Compounds and corresponding revisions to the state implementation plan.

The proposed rulemaking would repeal the state Portable Fuel Container regulations in order to address recently adopted federal standards for Portable Fuel Containers. Specifically, the United States Environmental Protection Agency adopted a federal Portable Fuel Container rule (72 *Federal Register* 8432, February 26, 2007) that set a national standard for gasoline, diesel, and kerosene Portable Fuel Containers. All Portable Fuel Containers manufactured on or after January 1, 2009, are required to comply with the federal standards. The federal standards promulgated are more stringent than the current state Portable Fuel Container regulations. (Rule Project Number 2008-032-115-EN)

The proposed rulemaking would also revise the state implementation plan (SIP) concerning repeal of the Texas Portable Fuel Container rule. This proposed Texas Portable Fuel Container Rule Repeal SIP Revision (Texas Portable Fuel Container Rule Repeal SIP) removes Texas Portable Fuel Container regulations from the control strategy for Texas' Air Quality Implementation Plan for the Control of Ozone Air Pollution. This proposed SIP revision incorporates proposed rulemaking repealing state Portable Fuel Container rules and demonstrates that federal Portable Fuel Container standards promulgated in 2007 provide replacement emission reductions. Because those emission reductions are estimated to be equal to or greater than those derived from the state regulations, the repeal of the Texas Portable Fuel Container rule will not negatively impact the State of Texas Air Quality Implementation Plan for the Control of Ozone Air Pollution. (Rule Project Number 2009-024-SIP-NR)

A public hearing on this proposal will be held in Austin on October 6, 2009, at 2:00 p.m., in Building E, Room 201, at the commission's central office located at 12100 Park 35 Circle. The hearing will be structured for the receipt of oral or written comments. Registration begins 30 minutes prior to the hearing. Individuals may present oral statements when called upon in order of registration. A time limit may be established to assure enough time is allowed for every interested person to speak. There will be no open discussion during the hearing; however, commission staff members will be available for discussion 30 minutes prior to the hearing and will answer questions before and after the hearing.

Persons planning to attend the hearing, who have special communication or other accommodation needs, should contact Charlotte Horn, Office of Legal Services at (512) 239-0779. Requests should be made as far in advance as possible.

Comments may be submitted to Michael Parrish, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at *http://www5.tceq.state.tx.us/rules/ecomments.* File size restrictions may apply to comments submitted through the eComments system. All comments should reference the rule or SIP project the comment pertains to: Rule Project Number 2008-032-115-EN for the proposed Portable Fuel Container Rule Repeal and Project Number 2009-024-SIP-NR for the Portable Fuel Container SIP Revision. The comment period closes October 12, 2009. To view the rules, please visit *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html.* Copies of the proposed SIP revision can be obtained from the commission's Web site at *http://www.tceq.state.tx.us/implementation/air/mobilesource/vetech/fuelprograms.html.* For further information or questions concerning these proposals, please contact Lisa Shuvalov, Air Quality Planning Section, at (512) 239-4484.

TRD-200903797
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: August 28, 2009

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Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 116 and to the State Implementation Plan

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony concerning proposed revisions to 30 TAC Chapter 116, Control of Air Pollution by Permits for New Construction or Modification, and to the state implementation plan (SIP). These revisions are proposed under the requirements of Texas Health and Safety Code, §382.017; Texas Government Code, Subchapter B, Chapter 2001; and 40 Code of Federal Regulations,

§51.102, of the United States Environmental Protection Agency (EPA) regulations concerning SIPs.

The proposed rulemaking would modify Chapter 116 to define the public notice requirements for the relocation or change of location of a portable facility. The proposed additions to Chapter 116 would revise Subchapter A, Definitions, to add new §116.20, Portable Facilities Definitions, and would also revise Subchapter B, New Source Review Permits, to add new §116.178, Relocations and Changes of Location of Portable Facilities.

The proposed new rules in Chapter 116 would incorporate existing guidance regarding the proper procedures for movement of portable facilities. The Air Permits Division originally issued this guidance in 2000, and most recently updated it in September 2008, on the division's Web site.

The commission will hold a public hearing on this proposal in Austin on October 13, 2009, at 10:00 a.m. at the Texas Commission on Environmental Quality Complex located at 12100 Park 35 Circle in Building E, Room 201S. The hearing will be structured for the receipt of oral or written comments by interested persons. Registration will begin 30 minutes prior to the hearing. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, commission staff members will be available to informally discuss the proposal 30 minutes before the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Charlotte Horn, Office of Legal Services, at (512) 239-0779.

Comments may be submitted to Jessica Rawlings, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at *http://www5.tceq.state.tx.us/rules/ecomments.* File size restrictions may apply to comments submitted through the eComments system. All comments should reference Rule Project Number 2008-031-116-PR. The comment period closes October 14, 2009. Copies of the proposed rules can be obtained from the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html.* For further information, please contact Lisa Martin, Air Permits Division, (512) 239-1966.

TRD-200903795
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: August 28, 2009

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Notice of Water Quality Applications

The following notices were issued on August 10, 2009 through August 24, 2009.

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

Montgomery County Municipal Utility District No. 83 has applied for a minor amendment to the Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014482001 to authorize an increase in the Interim II phase of the existing permit from a daily average flow not to exceed 350,000 gallons per day to 400,000 gallons per day. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 600,000 gallons per day in the Final phase. The facility is located approximately 4,800 feet west-northwest of the intersection of Northpark Drive and U.S. Highway 59 and approximately 600 feet north of Morton Road in Montgomery County, Texas 77365.

Schreiber Foods, Inc., which operates Schreiber Foods, Inc., a specialty dairy foods manufacturing facility, has applied for a major amendment to TCEQ Permit No. WQ0003074000 to authorize a reduction in the discharge of treated wastewater from the facility to the effluent treatment/storage lagoons from 200,000 gallons per day to 110,000 gallons per day, and a reduction of irrigation area from 158 acres to 50 acres. The current permit authorizes the discharge of treated wastewater at an average flow not exceeding 200,000 gallons per day to the effluent treatment/storage lagoons. This permit will not authorize a discharge of pollutants into water in the State. The facility and land application site are located adjacent to Smith Springs Road, approximately 2,000 feet northeast of the intersection of Smith Springs Road and U.S. Highway 281, approximately 2.2 miles north of the City of Stephenville, Erath County, Texas.

City of Hale Center has applied for a major amendment to TCEQ Permit No. WQ0010030001, to authorize renovation of the treatment system from the current Imhoff tank to a facultative lagoon and reduce the area of land application from the current 152 acres to 80 acres. The current permit authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 245,000 gallons per day via surface irrigation of 152 acres of non-public access agricultural land. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located approximately 2,640 feet south of the City of Hale Center and 3,600 feet east of Interstate Highway 27 in Hale County, Texas 79041.

City of Edna has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. WQ0010164001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,800,000 gallons per day. The facility is located at 700 Parkmoor Boulevard, approximately 1.0 mile southeast of the intersection of State Highway Loop 521 and State Highway 111, adjacent to south bank of Post Oak Branch, southeast of the City of Edna in Jackson County, Texas.

Brazoria County Fresh Water Supply District No. 1 has applied for a renewal of TPDES Permit No. WQ0011130001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 140,000 gallons per day. The facility is located on the east side of State Highway 36, approximately 1,100 feet southeast of the intersection of Farm-to-Market Road 1462 and State Highway 36, northeast of the City of Damon in Brazoria County, Texas.

City of Joaquin has applied for a renewal of TPDES Permit No. WQ0012718001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 137,000 gallons per day. The facility is located approximately 2,700 feet northeast of the intersection of Jackson Street and U.S. Highway 84 in the City of Joaquin in Shelby County, Texas.

CW SCOA West, L.P. has applied for a major amendment to TPDES Permit No. WQ0014740001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 320,000 gallons per day to a daily average flow not to exceed 750,000 gallons per day. The facility will be located approximately 1,700 feet north of West Road and 3,100 feet west of Barker-Cypress Road IN Northwest Harris County, Texas.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.TCEQ.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200903909
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: September 2, 2009

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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 26, 2009, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Tommy Rutledge and B&M Freight; SOAH Docket No. 582-08-3929; TCEQ Docket No. 2007-0859-MLM-E.

The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Tommy Rutledge and B&M Freight 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-200903911
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: September 2, 2009

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Proposal for Decision

The State Office of Administrative Hearings (SOAH) issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality (TCEQ or commission) on August 31, 2009, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Kandy King; SOAH Docket No. 582-09-2246; TCEQ Docket No. 2008-0901-PST-E.

The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Kandy King 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-200903913
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: September 2, 2009

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Texas Ethics Commission

List of Late Filers

Listed below are the names of filers from the Texas Ethics Commission who did not file reports, or failed to pay penalty fines for late reports in reference to the listed filing deadline. If you have any questions, you may contact Robbie Douglas at (512) 463-5800 or (800) 325-8506.

Deadline: Semiannual Report due July 15, 2009 for Candidates and Officeholders

Alex J. Cresswell, 3638 Ocee St., Houston, Texas 77063-5448

James P. Dillon, P.O. Box 878, Liberty Hill, Texas 78642

John V. Garza, 12106 Faber Dr., San Antonio, Texas 78245-3416

Terry E. Hockman Jr., P.O. Box 60153, Midland, Texas 79711-0153

Jeffrey S. Joyner, 2600 E. Renner Rd. #145, Richardson, Texas 75082

Daniel J. Kindred, 1670 FM 2676, Hondo, Texas 78861

Abel C. Limas, 1274 Sandy Hill Dr., Brownsville, Texas 78520

Juan J. Maldonado, 105 E. Expy. 83, Ste. F, Pharr, Texas 78577

Mary M. Markantonis, 12335 Kingsride #336, Houston, Texas 77024

Carlos A. Obando, P.O. Box 980663, Houston, Texas 77098-0663

Bonnie Rangel, 500 E. San Antonio #601, El Paso, Texas 79901

Daniel G. Rios, 4112 Hobbs Dr., Edinburg, Texas 78539

John Roland Ross, 401 Molly St. Apt. 201, Caldwell, Texas77836

Fausto Sosa, 101 W. Hillside Rd., Ste. 11C, Laredo, Texas 78041

James M. 'Mat' Young, 300 Summit Loop, Wimberley, Texas 78676

Deadline: Semiannual Report due July 15, 2009 for Committees

Dwayne E. Adams, Bexar County Democratic Party (CEC), 3010 N. St. Mary's St., Ste. 1101, San Antonio, Texas 78212

Joshua M. Bailey, Friends of Senate District 26, P.O. Box 760577, San Antonio, Texas 78245

Richard C. Bodin, Jr., Port Arthur Firefighters PAC, 197 Osborne, Bridge City, Texas 77611

Russell L. Burnett, Automobile Insurance Agents of Texas PAC, P.O. Box 428, Lake Jackson, Texas 77566

Noel Candelaria, Ysleta Educators PAC, 10935 Ben Crenshaw, Ste. 210, El Paso, Texas 79935

Chelsea R. Chapman, Houston Area Conservatives, 705 Main St. #303, Houston, Texas 77002

Carlos A. Elizondo, Brownsville, Firefighters for Responsible Government, 2994 Vanessa Dr., Brownsville, Texas 78526

Debra A. Garza, Families for Texas John V. Garza, 12106 Faber Dr., San Antonio, Texas 78245

Helen Heavey, Lake Country Republican Club, 175 Private Road 5938, Emory, Texas 75440

Kent D. Henry, Stonewall Democrats of Collin County, 3800 Double Oak Ln., Irving, Texas 75061-3938

Ginger K. Martin, Heart of Texas Apartment Assn. PAC, 4201 W. Lake Shore Dr., Ste. H, Waco, Texas 76710

Steve M. Miller, Democratic Governor's Trust PAC, 516 Dawson Rd. #107, Austin, Texas 78704

Otilio Rene Perez, Jr., Signs of Texas Liberty PAC, 1611 Reever St., Arlington, Texas 76010

Sherri Riedel, PEIMS PAC, 2055 Bolton Rd., Marion, Texas 78124

Trace A. Smith, Wise County Active Democrats, 1562 County Road 2625, Decatur, Texas 76234

Samuel D. Wesley, P.O.W.E.R. PAC, 3602 S. MacGregor Way, Houston, Texas 77021

Samuel D. Wesley, KEY PAC, 3602 S. MacGregor Way, Houston, Texas 77021

Deadline: Lobby Activities Report due January 10, 2008

Mike French, 816 Congress Ave., Ste. 940, Austin, Texas 78701

Deadline: Lobby Activities Report due June 10, 2009

J. Lawrence Collins, 112-A Laurel Lane, Austin, Texas 78705

Vanus J. Priestley, 111 Congress Ave., Ste. 1400, Austin, Texas 78701

Michelle Romero, 401 W. 15th St., Austin, Texas 78701

Deadline: Lobby Activities Report due July 10, 2009

Neftali Partida, 3502 Crescent Dr., Pearland, Texas 77584

Mark Seale, P.O. Box 301805, Austin, Texas 78703

Deadline: Personal Financial Statement due April 30, 2009

Virginia Hermosa Boissonneault, 9104 Colberg Dr., Austin, Texas 78749

Vondal Neal Burnett, 7307 W. US Hwy 70, Plainview, Texas 79072

Lori Clark, 9800 Fredericksburg Rd., San Antonio, Texas 78288-4501

Arthur Jay Eisenberg, University of North Texas Health Center, 3500 Camp Bowie Blvd., Fort Worth, Texas 76107

Jack B. Gorden, Jr., 2211 Old Union Rd., Lufkin, Texas 75904

Lawrence D. Mann, 3504 Brees, Plano, Texas 75075

Joe E. Martin, Jr., 13671 Suzanne Pl., College Station, Texas 77845

Kosse Kyle Maykus, 608 Chapel Court, Southlake, Texas 76092

Lee William McNutt III, 3716 McFarlin, Dallas, Texas 75205

Devora Mitchell, 2121 Oaklawn, Kermit, Texas 79745

Vickie J. Mitchell, 113 Fairway View Lane, Montgomery, Texas 77356

Cliff Mountain, 2909 Meandering River Court, Austin, Texas 78746

Scott James Petty, 1200 State Hwy 173 North, Hondo, Texas 78861

John W. Riddle, 12615 Brandi Lane, Willis, Texas 77378

Lawrence M. Sampleton, Jr., 2900 Bunny Run, Austin, Texas 78746

Whitney Thompson Smith, 21006 Hwy 7 West, Marquez, Texas 77865

Gene Stallings, 6508 County Road 43200, Powderly, Texas 75473

Linda Diane Steinbrueck, 1401 Darden Hill Rd., Driftwood, Texas 78619

Deadline: Personal Financial Statement due June 29, 2009

Christopher Barbic, 930 Cortlandt, Houston, Texas 77008

Jonathan D. Bow, P.O. Box 13777, Austin, Texas 78711-3777

Haroon R. Shaikh, 3239 Bridgeberry Lane, Houston, Texas 77082

Gena N. Slaughter, 3109 Knox St. #313, Dallas, Texas 75205

Alexandra Smoots-Hogan, P.O. Box 3947, Houston, Texas 77253

William M. Wachel, P.O. Box 600088, Dallas, Texas 75360-0088

TRD-200903883
David Reisman
Executive Director
Texas Ethics Commission
Filed: September 1, 2009

♦ ♦ ♦

Texas Department of Insurance

Company Licensing

Application for admission to the State of Texas by CAPSON INSURANCE COMPANY, a domestic fire and casualty company. The home office is in Austin, Texas.

Application for admission to the State of Texas by AXIS SPECIALTY INSURANCE COMPANY, a foreign fire and casualty company. The home office is in Hartford, Connecticut.

Application for admission to the State of Texas by COMPWEST INSURANCE COMPANY, a foreign fire and casualty company. The home office is in San Francisco, California.

Any objections must be filed with the Texas Department of Insurance, within 20 calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200903914
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: September 2, 2009

♦ ♦ ♦

Public Utility Commission of Texas

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on August 25, 2009, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Marcus Cable Associates, L.L.C. d/b/a Charter Communications for an Amendment to its State-Issued Certificate of Franchise Authority, Project Number 37390 before the Public Utility Commission of Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at (800) 735-2989. All inquiries should reference Project Number 37390.

TRD-200903870
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 1, 2009

♦ ♦ ♦

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on August 26, 2009, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Northland Cable Ventures LLC for an Amendment to its State-Issued Certificate of Franchise Authority, Project Number 37399 before the Public Utility Commission of Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at (800) 735-2989. All inquiries should reference Project Number 37399.

TRD-200903871
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 1, 2009

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Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On August 25, 2009, AccuTel of Texas, L.P. filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60072. Applicant intends to reflect a change in ownership/control and a name change.

The Application: Application of AccuTel of Texas, L.P. for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 37391.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than September 16, 2009. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 37391.

TRD-200903872
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 1, 2009

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Notice of Filing to Grandfather Services Pursuant to P.U.C. Substantive Rule §26.208

Notice is given to the public of Embarq's applications filed with the Public Utility Commission of Texas (commission) on June 27, 2009, to grandfather services pursuant to P.U.C. Substantive Rule §26.208.

Docket Title and Number: Central Telephone Company and United Telephone Company of Texas, Inc. dba Embarq - Notice of Intent to Grandfather Anonymous Call Rejection, Intercom Service and Hot Line/Warm Line Services for Residence and Business Customers; Docket Numbers 37288 and 37289.

The Application: On June 27, 2009, Central Telephone Company and United Telephone Company of Texas dba Embarq (Embarq) filed applications to grandfather Anonymous Call Rejection, Intercom Service and Hot Line/Warm Line Services. The grandfathering arrangement will be limited to existing customers of record unless the customer moves to a new location or chooses to disconnect the service. The proceedings were docketed and suspended on July 29, 2009, to allow adequate time for review and intervention.

Persons wishing to comment on the applications or intervene should contact the Public Utility Commission of Texas, by October 15, 2009, 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 1-800-735-2989. All correspondence should refer to Docket Numbers 37288 and 37289.

TRD-200903884
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 1, 2009

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Public Notice of CCN Holders Filing Requirements in Order to Calculate the Weighted Statewide Average Composite Usage Sensitive Intrastate Switched Access Rates

The Public Utility Commission of Texas (commission) is required to recalculate the weighted statewide average composite usage sensitive intrastate switched access rates pursuant to P.U.C. Substantive Rule §26.223. In order to calculate the statewide average, Certificate of Convenience and Necessity (CCN) holders are required to submit updated intrastate switched access data. Therefore, all CCN holders must provide the following intrastate data to the commission as a compliance filing pursuant to Substantive Rule §26.223(g) by September 15, 2009:

(1) The current tariffed rate for originating and terminating common carrier line (CCL);

(2) The current tariffed rate for originating and terminating local switching (LS);

(3) The current tariffed rate for originating and terminating transport (TR);

(4) The current tariffed rate for originating and terminating tandem switching (TS);

(5) The current average per minute rate for originating and terminating tandem switch transport (TST);

(6) The current originating and terminating tariffed rate(s) for any other usage sensitive intrastate switched access rate element(s);

(7) The total actual originating and terminating minutes of use (MOU) for the most recent 12-month period (August 1 through July 31) for each rate element in (1) - (6) listed above that is billed on an MOU basis; and,

(8) The total revenues for the most recent 12-month period (August 1 through July 31) received from any switched access monthly rate element used to transport or switch the access traffic listed in (1) - (6) above that may be specifically attributable to the element identified (e.g., local switching, transport).

CCN holders' compliance filings should be filed in Project No. 37178 no later than 3:00 p.m., Tuesday, September 15, 2009.

Questions concerning this notice should be referred to John Costello, Senior Rate Analyst, Rate Regulation Division at (512) 936-7377, or Stephen Mendoza, Rate Analyst, Rate Regulation Division at (512) 936-7394. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200903886
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 1, 2009

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San Antonio-Bexar County Metropolitan Planning Organization

Request for Proposal - Legal Services

The San Antonio-Bexar County Metropolitan Planning Organization (MPO) is seeking qualifications/proposals for Legal Services.

A copy of the Request for Qualifications/Proposals (RFQ/P) may be requested by downloading the RFQ/P from the MPO's website at www.sametroplan.org or calling Jeanne Geiger, Deputy Director, at (210) 227-8651. Anyone wishing to submit a proposal must do so by 12:00 p.m. (CT), Friday, October 9, 2009 at the MPO office to:

Isidro "Sid" Martinez Director

San Antonio-Bexar County Metropolitan Planning Organization

825 South Saint Mary's

San Antonio, Texas 78205

The MPO's Executive Committee will review the qualifications/proposals, and the contract award will be made by the MPO's Transportation Policy Board.

Funding is contingent upon the availability of Federal transportation planning funds.

TRD-200903798
Jeanne Geiger
Deputy Director
San Antonio-Bexar County Metropolitan Planning Organization
Filed: August 28, 2009

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South East Texas Regional Planning Commission

Request for Proposals

The South East Texas Regional Planning Commission seeks a qualified consultant to provide technical assistance to the South East Texas region to improve interoperable emergency communication capabilities and support the implementation of the Statewide Communication Interoperability Plan. The consultant must be familiar with the South East Texas region, possess a working knowledge of the current radio system, and be familiar with the phased migration plan to be implemented in the next five years. The scope of work under this contract includes the following broad categories for which the consultant will be required to lend expertise and guidance:

Communications:

Determine interoperable equipment and standards;

Provide planning assistance;

Develop and maintain regional protocols;

Assist in regional training and exercises;

Understand the regional's communications assets inventory.

Equipment Support:

Assist with interoperable communications initiatives;

Assist local jurisdictions with selection and procurement, as needed;

Serve as a liaison with vendors as needed.

Interested parties should send qualifications, references and hourly compensation rate no later than September 15, 2009 to Sue Landry, slandry@setrpc.org or Robert Grimm, rgrimm@setrpc.org or mail to Sue Landry, SETRPC, 2210 Eastex Freeway, Beaumont, Texas 77703.

TRD-200903788
Jim Borel
Director of Finance
South East Texas Regional Planning Commission
Filed: August 27, 2009

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Texas Department of Transportation

Public Hearing - State Highway 121

Public Hearing for the Proposed Removal and Transfer to the North Texas Tollway Authority of a Portion of State Highway 121 (SH 121) in Collin County.

Pursuant to Transportation Code, §228.151 and 43 TAC §27.13, the Texas Department of Transportation (department) will conduct a public hearing on Wednesday, September 30, 2009 at 4:00 p.m., at the Maribelle Davis Library, 7501 Independence Pkwy, Suite B, Plano, Texas 75025, to receive comments from interested persons concerning the proposed removal from the state highway system and transfer to the North Texas Tollway Authority (NTTA) of a portion of State Highway 121 from the ramp pair on the east side of the Hillcrest Road overpass to the ramp pair on the west side of the Watters Road overpass in Collin County, to be utilized by the NTTA under Transportation Code, Chapter 366 for the design, financing, construction, operation, and maintenance of a turnpike project.

Transportation Code, §228.151 authorizes the department to lease, sell, or transfer in another manner a toll project or system that is part of the state highway system, including a nontolled state highway or a segment of a nontolled state highway converted to a toll project, to a governmental entity that has the authority to operate a tolled highway. A lease, sale, or transfer is subject to a prior public hearing in each county in which the project is located, and is subject to the Texas Transportation Commission (commission) and the Governor approving the transfer of the toll project or system as being in the best interests of the state and the entity receiving the project or system. Transportation Code, §228.153 requires the authority to reimburse the department for any expenditures of the department for the financing, design, development, construction, operation, or maintenance of the highway that have not been reimbursed with the proceeds of bonds issued for the highway, unless the commission finds that the transfer will result in substantial

net benefits to the state, the department, and the public that equal or exceed that cost.

Criteria and guidelines for the approval of the transfer have been adopted by rule by the commission in 43 TAC §27.13, and specify that the commission may, after considering public comments received, approve the transfer of a toll project to the NTTA, if:

(1) the NTTA agrees, through a written commitment, to:

(A) assume all liability and responsibility for the safe and effective maintenance and operation of the highway on its transfer;

(B) assume all liability and responsibility for existing and future environmental permits, issues, and commitments, including obtaining all environmental permits and approvals, and for compliance with all federal and state environmental laws, regulations, and policies applicable to the highway and related improvements;

(C) provide for public involvement and conduct a study of the social and environmental impact of all proposed improvements to the toll project; and

(D) if applicable, comply with the design and construction standards of 43 TAC §27.15 when developing projects on the transferred highway; and

(2) the commission finds that the transfer:

(A) is in the best interests of the state;

(B) is in the best interests of the entity receiving the project; and

(C) will not adversely affect:

(i) the financial viability of the project; or

(ii) regional mobility.

The commission may not approve the transfer unless the governor approves the transfer as being in the best interests of the state and the entity receiving the project.

A metes and bounds description and maps and drawings showing the proposed portion of SH 121 to be transferred and other information concerning the proposed transfer are on file and available for public inspection and copying by contacting Robert Hall, Texas Department of Transportation, 4777 E. Hwy 80, Mesquite, TX 75150-6643, telephone (214) 320-6157.

All interested citizens are invited to attend this public hearing, which will be conducted in accordance with the procedures specified in 43 TAC §1.5. Speakers will be recognized in the order registered. Any interested person may appear and offer comments or testimony, either orally or in writing; however, questioning of those making presentations will be reserved exclusively to the presiding authority as may be necessary to ensure a complete record. While any person with pertinent comments or testimony will be granted an opportunity to present them during the course of the hearing, the presiding authority reserves the right to restrict testimony in terms of time and repetitive comment. Groups, organizations, or associations are encouraged to present their commonly held views, and same or similar comments, through a representative member where possible. Presentations must remain pertinent to the issue being discussed. A person may not assign a portion of his or her time to another speaker. A person who disrupts a public hearing must leave the hearing room if ordered to do so by the presiding officer.

Persons with disabilities who plan to attend the hearing and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are requested to contact the Dallas District Public Information Office, Texas Department of Transportation, 4777 E. Hwy 80, Mesquite, TX 75150-6643, telephone (214) 320-6100 at least two work days prior to the hearing so that appropriate arrangements can be made.

Written comments may be submitted following the public hearing to Mark Tomlinson, P.E., Director, Texas Turnpike Authority Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for submitting written comments is 5:00 p.m. on Tuesday, October 13, 2009.

TRD-200903885
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: September 1, 2009

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Public Notice - Public Hearing, Presidio County Regional Mobility Authority, Marfa Texas

The Texas Department of Transportation (department) will conduct a public hearing to receive comments on the proposed formation of the Presidio County Regional Mobility Authority (Presidio County RMA) by Presidio County (the County).

On March 2, 2009 the County filed a revised petition requesting authorization from the Texas Transportation Commission to form the Presidio County RMA. As proposed, the Presidio County RMA would encompass the boundary of the County, and would be governed by a board of directors of up to five members. Four of the board members would be appointed by the County Commissioner's Court. In addition to the board members appointed by the County, the presiding officer of the board will be appointed by the Governor. The Presidio County RMA's proposed initial project concerns the existing international bridge at the City of Presidio. The RMA would acquire the bridge from the department, and toll it. Toll revenue would be used for costs associated with the bridge itself, and excess toll revenue would be used for additional projects proposed in the application.

Pursuant to Title 43, Texas Administrative Code, §26.12, the department will hold a public hearing on the date, time, and location indicated below to receive public comments and assess the level of public support concerning the proposed Presidio County RMA:

Tuesday, September 29, 2009 at 6:00 p.m.

Presidio County Courthouse, District Courtroom

300 North Highland Avenue

Marfa, Texas 79843

All interested citizens are invited to attend the public hearing and to provide input. Those desiring to make official comments may register starting at 5:30 p.m. Oral and written comments may be presented at the public hearing, or written comments may be submitted by mail. To be included in the official record of the public hearing, written comments must be received by 5:00 p.m. on October 9, 2009. Written comments should be mailed to: Doug Woodall, P.E., Director of Turnpike Planning and Development, Texas Turnpike Authority Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483.

Persons with disabilities who plan to attend the public hearing and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print, or Braille, are requested to contact the Presidio County Clerk's Office at (432) 729-4054 at least two business days prior to the hearing so that appropriate arrangements can be made.

A copy of Presidio County's petition to the Texas Transportation Commission is available for inspection at the Office of the County Clerk, Presidio County Courthouse, 300 North Highland Avenue, Marfa, Texas 79843.

TRD-200903912
Bob Jackson
General Counsel
Texas Department of Transportation
Filed: September 2, 2009

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The Texas A&M University System

Amendment to Existing Consulting Contract

In accordance with the provisions of Texas Government Code, Chapter 2254, and in the best interest of The Texas A&M University System (TAMUS), TAMUS is renewing a major consulting contract with Federal Consulting Concepts per RFP SYS 04-0010 dated November 14, 2003, Addendum 1, Addendum 2 Federal Costing Concepts' proposal as submitted and Federal Costing Concepts' best and final offer.

The consultant will provide the reviewing of calculations and negotiating the facilities and administrative cost rates for all of the TAMUS members.

The Name and Address of Consultant is as follows: Federal Costing Concepts, LLC PMB 208, 4960 William Flynn Hwy, Ste 6, Allison Park, Pennsylvania 15101.

The A&M System will pay an amount of $36,000.00. The contract will begin on September 13, 2009 and shall terminate September 12, 2010.

Any questions regarding this posting should be directed to: Don Barwick, HUB and Procurement Manager, Office of HUB and Procurement Programs, The Texas A&M University System, 200 Technology Way, Ste 1273, College Station, Texas 77845, Voice: (979) 458-6410, Email: dbarwick@tamu.edu.

TRD-200903838
Donna Harrell
Buyer
The Texas A&M University System
Filed: August 28, 2009

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Renewal of an Existing Consulting Contract

In accordance with the provisions of Texas Government Code, Chapter 2254, The Texas A&M University System has renewed an existing consulting contract for research consulting services. The consultant will continue to assist with coordination of the development of the Good Manufacturing Practices (GMP) facility and related programs.

The Name and Address of Consultant is as follows: Laurus Partners, LLC, 7001 Preston Road, 5th Floor, Dallas, Texas 75205.

The contract renewal will begin on August 1, 2009 and shall terminate in six months unless renewed for additional months up to January 31, 2011.

If any, the consultant will submit documents, films, recordings, or reports compiled by the consultant under the contract to TAMUS, no later than one year after completion of services.

Any questions regarding this posting should be directed to: Don Barwick, HUB and Procurement Manager, Office of HUB and Procurement Programs, The Texas A&M University System, 200 Technology Way, Ste. 1273, College Station, Texas 77845, Voice: (979) 458-6410, Email: dbarwick@tamu.edu.

TRD-200903787
Don Barwick
HUB and Procurement Manager
The Texas A&M University System
Filed: August 27, 2009

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University of North Texas System

Invitation for Consultants to Provide Offers of Consulting Services to Assist in the Formation and Development of the University of North Texas at Dallas College of Law

Pursuant to the provisions of Texas Government Code, Chapter 2254, the University of North Texas System (UNT System) extends this invitation (Invitation) to qualified and experienced consultants interested in providing the consulting services described in this Request for Proposal to the University of North Texas System.

Scope of Work:

The selected consulting firm will be responsible for assisting UNT System in the formation and development of the University of North Texas at Dallas College of Law. The consulting services include facilitating the development of facilities, faculty, accreditation and student recruiting. The scope of work is more fully described in the Request for Proposal (RFP769-10-DAR-082809) located under the Bid Listing Page found at http://pps.unt/edu.

Specifications:

Any consultant submitting an offer in response to this Invitation must provide a response to the Request for Proposals posted on the University of North Texas website under the Bid Listings Page found at http://pps.unt.edu.

Selection Process:

The consulting services do not relate to services previously provided to UNT System.

Selection of the Successful Offer will be made using the competitive process described in the Request for Proposal.

Criteria for Selection:

The successful offer will be the offer that is the most advantageous to UNT System in UNT System's sole discretion. Offers will be evaluated by University of North Texas System personnel. The evaluation of offers and the selection of the Successful Offer will be based on the information provided to UNT by the consultant in response to the Specifications section of the Request for Proposal. Consideration may also be given to any additional information and comments if such information or comments increase the benefits to UNT System. The successful consultant will be required to enter into a contract acceptable to UNT System.

Consultant's Acceptance of Process:

Submission of an offer by a consultant indicates: (1) the consultant's acceptance of the Selection Process, the Criteria for Selection, and all other requirements and specifications set forth in the RFP; and (2) the consultant's recognition that some subjective judgments must be made by UNT System during this process.

The Chancellor of the University of North Texas System has found that the consulting services are necessary because the UNT System does not have the specialized experience or the staff resources available to assist

in the formation and development of the University of North Texas at Dallas College of Law. The UNT System believes that such expert consulting services will be cost effective in facilitating the development of facilities, faculty, accreditation, and student recruiting.

Submittal Deadline:

To respond to the Request for Proposal, consultants must submit the information requested in the Specification section of the RFP found at http://pps.unt.edu and any other relevant information in a clear and concise written format to: Debbie Reynolds, Director of Purchasing, University of North Texas, 2310 North Interstate 35-E, Denton, Texas 76205. Offers must be submitted in accordance with the posted RFP.

Questions:

Questions concerning this Invitation should be submitted to: Solicitation Questions located on the Bid Listings page found at http://pps.unt.edu. UNT may in its sole discretion respond in writing to questions concerning this Invitation. Only UNT's responses made by formal written addenda to this Invitation shall be binding. Oral or other written interpretations or clarifications shall be without legal effect.

TRD-200903817
Carrie Stoeckert
Assistant Director of PPS
University of North Texas System
Filed: August 28, 2009

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Workforce Solutions Brazos Valley Board

Request for Applications for Workforce Skills Enhancement Training

Workforce Solutions Brazos Valley is requesting applications for Workforce Skills Enhancement Training Projects. This initiative is designed to assist employers develop and implement incumbent worker training programs customized to their needs and to avoid layoffs in the seven counties comprising the WSBVB Area (Brazos, Grimes, Washington, Burleson, Robertson, Madison, and Leon).

The RFA contains the necessary background, requirements, instructions, and information necessary to prepare an application for the requested training. RFA #08-249 can be downloaded from: www.bvjobs.org under Workforce Board - Procurements or by contacting:

Workforce Solutions Brazos Valley Board

Attn: Workforce Skills Enhancement Training Projects RFA

P.O. Box 4128, Bryan, Texas 77805

Physical Address:

3991 E. 29th Street

Bryan, Texas

Phone: (979) 595-2800

Contact Person: Joseph Bienski

Phone: (979) 595-2800

Email: Jbienski@bvcog.org

Workforce Solutions Brazos Valley is an equal opportunity employer and provides equal opportunity employment programs. Auxiliary aids are available upon request to disabled individuals.

Texas Relay (800) 735-2989

TDD (800) 735-2988 voice

TRD-200903790
Tom Wilkinson
Executive Director
Workforce Solutions Brazos Valley Board
Filed: August 27, 2009

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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 33 (2008) is cited
as follows: 33 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 "33 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 33 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 (512) 463-5561.

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 (800-356-6548), and West Publishing Company (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***. 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).