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*Akshay Patel
12th Grade*

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

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IN THIS ISSUE

GOVERNOR

Executive Order 1405

ATTORNEY GENERAL

Opinions 1407

EMERGENCY RULES

TEXAS DEPARTMENT OF AGRICULTURE

QUARANTINES AND NOXIOUS AND INVASIVE PLANTS

4 TAC §19.601, §19.602 1409

TEXAS REAL ESTATE COMMISSION

PROFESSIONAL AGREEMENTS AND STANDARD CONTRACTS

22 TAC §§537.20, 537.28, 537.30 - 537.32, 537.37 1410

PROPOSED RULES

TEXAS HEALTH AND HUMAN SERVICES COMMISSION

MEDICAID HEALTH SERVICES

1 TAC §§354.1415 - 354.1417 1411

REIMBURSEMENT RATES

1 TAC §355.8640 1417

TEXAS DEPARTMENT OF BANKING

PERPETUAL CARE CEMETERIES

7 TAC §§26.1, 26.2, 26.4, 26.5 1418

MONEY SERVICES BUSINESSES

7 TAC §§33.31, 33.33, 33.35 1420

TEXAS DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

APPLICATIONS

7 TAC §75.1 1422

MISCELLANEOUS

7 TAC §79.122 1423

TEXAS RESIDENTIAL MORTGAGE LOAN ORIGINATOR REGULATIONS

7 TAC §80.9 1423

OFFICE OF CONSUMER CREDIT COMMISSIONER

CONSUMER LOANS

7 TAC §83.831 1424

RULES OF OPERATION FOR PAWNSHOPS

7 TAC §85.402 1426

TEXAS HISTORICAL COMMISSION

ADMINISTRATION OF FEDERAL PROGRAMS

13 TAC §15.6 1427

13 TAC §15.6 1428

TEXAS EDUCATION AGENCY

ADAPTATIONS FOR SPECIAL POPULATIONS

19 TAC §89.4 1430

TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR TECHNOLOGY APPLICATIONS

19 TAC §§126.1, 126.5 - 126.7 1432

19 TAC §§126.11, 126.13 - 126.16 1434

19 TAC §§126.21, 126.31 - 126.50 1438

19 TAC §§126.61 - 126.64 1467

TEXAS REAL ESTATE COMMISSION

PRACTICE AND PROCEDURE

22 TAC §533.1, §533.3 1467

GENERAL PROVISIONS

22 TAC §535.217 1468

WITHDRAWN RULES

TEXAS BOARD OF CHIROPRACTIC EXAMINERS

RULES OF PRACTICE

22 TAC §75.17 1471

TEXAS STATE BOARD OF PHARMACY

ADMINISTRATIVE PRACTICE AND PROCEDURES

22 TAC §281.2 1471

22 TAC §281.30 1471

LICENSING REQUIREMENTS FOR PHARMACISTS

22 TAC §§283.4, 283.7, 283.8 1471

PHARMACIES

22 TAC §291.1 1471

22 TAC §291.32 1472

PHARMACY TECHNICIANS AND PHARMACY TECHNICIAN TRAINEES

22 TAC §297.3 1472

ADOPTED RULES

STATE SECURITIES BOARD

INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES

7 TAC §§116.2, 116.9, 116.11, 116.12 1473

TEXAS DEPARTMENT OF RURAL AFFAIRS

TEXAS COMMUNITY DEVELOPMENT PROGRAM

10 TAC §255.1, §255.9.....	1473	22 TAC §465.18.....	1561
TEXAS STATE LIBRARY AND ARCHIVES COMMISSION		TEXAS REAL ESTATE COMMISSION	
GENERAL POLICIES AND PROCEDURES		GENERAL PROVISIONS	
13 TAC §2.311.....	1491	22 TAC §535.154.....	1561
13 TAC §2.411.....	1491	22 TAC §535.154.....	1562
TEXSHARE LIBRARY CONSORTIUM		22 TAC §535.400, §535.403.....	1563
13 TAC §8.3.....	1492	RULES RELATING TO THE RESIDENTIAL SERVICE COMPANY ACT	
TEXAS EDUCATION AGENCY		22 TAC §539.61.....	1564
SCHOOL DISTRICTS		22 TAC §539.121.....	1564
19 TAC §61.1038.....	1492	22 TAC §539.150.....	1565
19 TAC §61.1039.....	1498	COMPTROLLER OF PUBLIC ACCOUNTS	
TEXAS BOARD OF CHIROPRACTIC EXAMINERS		TAX ADMINISTRATION	
APPLICATIONS AND APPLICANTS		34 TAC §3.37.....	1565
22 TAC §71.3.....	1508	RULE REVIEW	
LICENSES AND RENEWALS		Proposed Rule Reviews	
22 TAC §73.3.....	1509	Office of the Governor, Economic Development and Tourism Division.....	1567
RULES OF PRACTICE		Department of Information Resources.....	1567
22 TAC §75.11.....	1510	State Securities Board.....	1569
PROFESSIONAL CONDUCT		Adopted Rule Reviews	
22 TAC §80.13.....	1511	Credit Union Department.....	1569
TEXAS BOARD OF PROFESSIONAL ENGINEERS		Texas Education Agency.....	1569
LICENSING		Texas State Board of Pharmacy.....	1570
22 TAC §133.27.....	1511	TABLES AND GRAPHICS	
TEXAS STATE BOARD OF PHARMACY		1571
PHARMACIES		IN ADDITION	
22 TAC §§291.3, 291.11, 291.16, 291.17.....	1512	Texas Department of Agriculture	
22 TAC §291.33.....	1517	Request for Applications: Urban Schools Agricultural Competitive Grant Program.....	1581
22 TAC §291.74, §291.76.....	1528	Department of Assistive and Rehabilitative Services	
22 TAC §291.151.....	1547	Notice of Request for Comments on DARS Annual Application for Federal Funds for Early Childhood Intervention Services.....	1583
PHARMACISTS		Office of the Attorney General	
22 TAC §295.8.....	1556	Notice of Settlement of a Texas Water Code Enforcement Action.....	1584
CODE OF CONDUCT		Cancer Prevention and Research Institute of Texas	
22 TAC §311.1.....	1559	Request for Applications R-11-RCI-1 Recruitment of Clinical Investigators.....	1584
TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS		Request for Applications R-12-CFSA-1 Core Facilities Support Award.....	1584
APPLICATIONS AND EXAMINATIONS		Request for Applications R-12-HIHR-1 High Impact High Risk Research Award.....	1585
22 TAC §463.10.....	1560		
RULES OF PRACTICE			
22 TAC §465.2.....	1561		

Request for Applications R-12-IIRA-1 Individual Investigator Research Award.....	1585	Public Notice.....	1605
Comptroller of Public Accounts		Texas Department of Insurance	
Certification of the Average Taxable Price of Gas and Oil - January 2011.....	1585	Company Licensing.....	1605
Notice of Request for Applications.....	1585	Texas Department of Licensing and Regulation	
Notice of Request for Proposals.....	1586	Vacancies on Property Tax Consultants Advisory Council.....	1605
Concho Valley Workforce Development Board		Vacancies on Towing, Storage and Booting Advisory Board.....	1606
Public Notice - Request for Qualifications.....	1586	Texas Lottery Commission	
Office of Consumer Credit Commissioner		Instant Game Number 1316 "Loteria® Texas".....	1606
Notice of Rate Ceilings.....	1587	Instant Game Number 1324 "Texas Lottery® Black Series II - Limited Edition".....	1610
Texas Commission on Environmental Quality		Public Utility Commission of Texas	
Agreed Orders.....	1587	Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority.....	1614
Correction of Error.....	1590	Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority.....	1615
Correction of Error.....	1591	Notice of Application for Waiver of Denial of Numbering Resources.....	1615
Enforcement Orders.....	1591	Notice of Filing to Withdraw TLS Customer Service Management and Protected Access Line Pursuant to P.U.C. Substantive Rule §26.208(h).....	1615
Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions.....	1597	Notice of Intent to Implement a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171.....	1615
Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions.....	1600	South East Texas Regional Planning Commission	
Notice of Opportunity to Comment on Shut Down/Default Orders of Administrative Enforcement Actions.....	1600	Request for Proposals.....	1616
Notice of Opportunity to Request a Public Meeting for a New Municipal Solid Waste Facility Registration Application No. 43032.....	1601	Texas Department of Transportation	
Notice of Water Quality Applications.....	1602	Public Notice - Aviation.....	1616
Texas Facilities Commission		The University of Texas System	
Request for Proposals #303-1-20271.....	1603	Addendum 1.....	1616
Request for Proposals #303-1-20275.....	1603	Texas Veterans Commission	
Texas Health and Human Services Commission		Request for Applications Concerning the Texas Veterans Commission Fund for Veterans' Assistance Grant Program.....	1617
Public Notice.....	1604		
Public Notice.....	1604		

Open Meetings

Statewide agencies and regional agencies that extend into four or more counties post meeting notices with the Secretary of State.

Meeting agendas are available on the *Texas Register's* Internet site:
<http://www.sos.state.tx.us/open/index.shtml>

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 512-463-5561. Or request a copy by email: register@sos.state.tx.us

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

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

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

<http://www.oag.state.tx.us/open/index.shtml>

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

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

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

THE GOVERNOR

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

Executive Order

RP 74

Relating to Rescinding Certain Previous Executive Orders

WHEREAS, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas, I have previously issued Executive Orders Nos. RP 19, RP 24, RP 61, RP 63, RP 65, and RP 66; and

WHEREAS, each of these executive orders, by virtue of its own terms, remains in effect and in full force until modified, amended, rescinded, or superseded by me or by a succeeding Governor; and

WHEREAS, I have now determined that these executive orders are no longer essential to the organization or operation of the executive branch of government; 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 do hereby rescind Executive Orders Nos. RP 19, RP 24, RP 61, RP 63, RP 65, and RP 66.

Given under my hand this the 10th day of February, 2011.

Rick Perry, Governor

TRD-201100746

◆ ◆ ◆

THE ATTORNEY GENERAL

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

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

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

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

Opinions

Opinion No. GA-0843

The Honorable Allan B. Ritter

Chair, House Committee on Natural Resources

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Authority of the Sandy Land Underground Water Conservation District to transfer certain assets to an individual or other entity (RQ-0904-GA)

S U M M A R Y

The board of directors of the Sandy Land Underground Water Conservation District has broad statutory authority to transfer certain assets to any individual or entity. Whether it may do so under article III, section 52(a) of the Texas Constitution depends upon whether such transfer comports with the public purpose analysis promulgated by the Texas Supreme Court in *Texas Municipal League Intergovernmental Risk Pool v. Texas Workers' Compensation Commission*, 74 S.W.3d 377 (Tex. 2002), and its progeny.

Opinion No. GA-0844

The Honorable Robert F. Deuell, M.D.

Chair, Senate Nominations Committee

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Constitutionality of subsection 32.0248(h), Human Resources Code, which prohibits the Health and Human Services Commission from contracting under the Women's Health Program with entities that perform or promote elective abortions or with affiliates of such entities (RQ-0902-GA)

S U M M A R Y

Human Resources Code section 32.0248(h), which applies to women's health care demonstration project services, provides that the Health and Human Services Commission may not contract with entities that are affiliates of entities that perform or promote elective abortions. This provision is not preempted by federal law.

Opinion No. GA-0845

Mr. Thomas M. Suehs

Executive Commissioner

Texas Health and Human Services Commission

4900 North Lamar

Austin, Texas 78751

Re: Whether the Health and Human Services Commission may adopt a definition of the term "affiliate" for purposes of section 32.0248 of the Human Resources Code (RQ-0903-GA)

S U M M A R Y

The Health and Human Services Commission does have authority to adopt by rule a definition of "affiliate" that is consistent with subsection 32.0248(h), Texas Human Resources Code, and that does not impose additional burdens, conditions, or restrictions.

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

TRD-201100752

Jay Dyer

Deputy Attorney General

Office of the Attorney General

Filed: February 23, 2011



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 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 19. QUARANTINES AND NOXIOUS AND INVASIVE PLANTS SUBCHAPTER W. RED PALM MITE QUARANTINE

4 TAC §19.601, §19.602

The Texas Department of Agriculture (the department) adopts on an emergency basis amendments to §19.601 and §19.602 in order to expand the quarantined area and to update the list of quarantined articles for the Red Palm Mite Quarantine. This quarantine listed four counties in the State of Florida as the quarantined area and over 48 species of plants, primarily palm species, as quarantined articles. However, the recent information received from the Florida Department of Agriculture and Consumer Services, Division of Plant Industry (DPI) indicated that eight Florida counties are infested with the red palm mite and the mite host list has expanded to over 62 plant species. The amended sections are adopted on an emergency basis to add Collier, Lee, Martin and St. Lucie counties to the list of quarantined areas and to add Coyure, ruffie or spine palm; Alexander or king palm; Gomuti or sugar palm; giant windowpane palm; Kentia or sentry palm; Pindo or jelly palm; Miraguama palm; Talipot palm; Florida royal palm; silver pimento palm; Florida thatch palm; Manila palm; *Washingtonia* species; and *Heliconia* species to the list of the red palm mite host plants. Amendments also correct misspelled scientific names and arrange plant species in logical order.

The department believes it is necessary to take this immediate action to prevent man-made introduction of the red palm mite into Texas, and adoption of the proposed emergency amendments is both necessary and appropriate. The palm nursery industry, landscapers, homeowners and others who use palms are in peril because without the emergency amendments, chances of introduction of this mite into Texas increase significantly. The mite is not known to occur in Texas and it poses a serious threat to the state's palm nurseries and to residential properties, shopping malls, businesses, and other areas where palms are used for landscaping. Heavy infestation of this mite can cause significant loss of the foliage. Updating the red palm mite quarantined areas and the mite host lists would ensure that shipments impacted by the proposed amendments would also receive DPI's mite-free certification, thereby reducing threat of this pest introduction into Texas.

Amended §19.601 adds Collier, Lee, Martin and St. Lucie counties of Florida to the quarantined area. Amended §19.602 adds

over 14 species of plants, mostly palm species, to the list of quarantined articles. The department intends to propose adoption of this emergency rule on a permanent basis in a separate submission.

The amended sections are adopted on an emergency basis under the Texas Agriculture Code, §71.001 and §71.002, which authorize the department to establish quarantines against in-state and out-of-state diseases and pests; §71.004, which authorizes the department to establish emergency quarantines; §71.007 which authorizes the department to adopt rules as necessary to protect agricultural and horticultural interests, including rules to provide for specific treatment of quarantined articles; and the Texas Government Code §2001.034, which provides for the adoption of administrative rules on an emergency basis, without notice and comment.

§19.601. *Quarantined areas.*

The quarantined areas are:

- (1) Broward, Collier, Dade, Lee, Martin, Monroe, [and] Palm Beach, and St. Lucie counties in the State of Florida; and
- (2) any other area infested with the red palm mite.

§19.602. *Quarantined Articles.*

- (a) The quarantined pest is a quarantined article.
- (b) The following articles are quarantined:

Figure: 4 TAC §19.602(b)

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 February 14, 2011.

TRD-201100609

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Effective date: February 14, 2011

Expiration date: June 13, 2011

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

TITLE 22. EXAMINING BOARDS

PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 537. PROFESSIONAL AGREEMENTS AND STANDARD CONTRACTS

22 TAC §§537.20, 537.28, 537.30 - 537.32, 537.37

The Texas Real Estate Commission (TREC) adopts on an emergency basis amendments to §537.20, concerning Standard Contract Form TREC No. 9-7, Unimproved Property Contract; §537.28, concerning Standard Contract Form TREC No. 20-8, One to Four Family Residential Contract (Resale); §537.30, concerning Standard Contract Form TREC No. 23-9, New Home Contract (Incomplete Construction); §537.31, concerning Standard Contract Form TREC No. 24-9, New Home Contract (Completed Construction); §537.32, concerning Standard Contract Form TREC No. 25-6, Farm and Ranch Contract; and §537.37, concerning Standard Contract Form TREC No. 30-7, Residential Condominium Contract (Resale).

The amendments are adopted on an emergency basis to eliminate from the contracts subparagraph 15B which requires a party to the contract to file suit for specific performance within 45 days of the closing date of the contract. This subparagraph may conflict with §16.070 of the Civil Practice and Remedies Code which precludes parties to a contract from agreeing to shorten the time period in which to file suit to less than two years. An urgent public necessity requires emergency action to prevent confusion and possible litigation regarding a potential conflict between a contract provision and an existing statutory provision.

The amendments are adopted on an emergency basis 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 adoption is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the emergency adoption.

§537.20. Standard Contract Form TREC No. 9-9[7].

The Texas Real Estate Commission adopts by reference standard contract form TREC No. 9-9[7] approved by the Texas Real Estate Commission in 2011 [2008] for use in the sale of unimproved property where intended use is for one to four family residences. 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.

§537.28. Standard Contract Form TREC No. 20-10[8].

The Texas Real Estate Commission adopts by reference standard contract form TREC No. 20-10[8] approved by the Texas Real Estate Commission in 2011 [2008] for use in the resale of residential real estate. 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.

§537.30. Standard Contract Form TREC No. 23-11[9].

The Texas Real Estate Commission adopts by reference standard contract form TREC No. 23-11[9] approved by the Texas Real Estate Commission in 2011 [2009] 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. 24-11[9].

The Texas Real Estate Commission adopts by reference standard contract form TREC No. 24-11[9] approved by the Texas Real Estate Commission in 2011 [2009] 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.

§537.32. Standard Contract Form TREC No. 25-8[6].

The Texas Real Estate Commission adopts by reference standard contract form TREC No. 25-8[6] approved by the Texas Real Estate Commission in 2011 [2008] for use in the sale of a farm or ranch. 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.

§537.37. Standard Contract Form TREC No. 30-9[7].

The Texas Real Estate Commission adopts by reference standard contract form TREC No. 30-9[7] approved by the Texas Real Estate Commission in 2011 [2008] for use in the resale of a residential condominium unit. 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 February 17, 2011.

TRD-201100654
Loretta R. DeHay
General Counsel
Texas Real Estate Commission
Effective date: March 1, 2011
Expiration date: June 28, 2011
For further information, please call: (512) 465-3926



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 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER A. PURCHASED HEALTH SERVICES

DIVISION 32. TEXAS MEDICAID WELLNESS PROGRAM

1 TAC §§354.1415 - 354.1417

The Texas Health and Human Services Commission (HHSC) proposes to amend Title 1, Part 15, Chapter 354, Subchapter A, Division 32, §354.1415, Vendor Requirements and Conditions for Participation; §354.1416, Eligibility Criteria; and §354.1417, Definitions for Texas Medicaid Wellness Program Services.

Background and Justification

Section 32.057 of the Human Resources Code requires HHSC to make disease management programs available to Medicaid clients with diseases or chronic conditions. Section 32.057 further states that a disease management program should meet the following minimum requirements:

- (1) use disease management approaches that are based on evidence-supported models, standards of care in the medical community and clinical outcomes;
- (2) ensure that a recipient's primary care physician and other appropriate specialty positions, registered nurses, advanced practice nurses or physician assistants become directly involved with the disease management program through which the recipient receives services; and
- (3) include a written guarantee of state savings on expenditures for the group of Medicaid recipients covered by the program.

To meet this direction, HHSC began a traditional disease management program in November 2004. This program was designed to serve Medicaid fee-for-service clients diagnosed with one or more of the following chronic diseases: asthma, coronary artery disease, congestive heart failure, chronic obstructive pulmonary disease, and diabetes.

Recently, the entire disease management community has shifted its emphasis from disease management to health management by moving away from the traditional approach of enrolling patients based on a specific set of diagnoses or conditions toward

programs that provide holistic interventions for those patients at the highest risk of utilization of medical services. In August 2009, HHSC published a Request for Proposals (RFP) for the Texas Medicaid Health Management (TMHM) program, now known as the Texas Medicaid Wellness Program, based on this updated philosophy.

In accordance with the RFP's requirements, the Texas Medicaid Wellness Program will focus on three main components: client self-management, provider practice/delivery system design, and technological support. Under client self-management, a client becomes an informed and active participant in the management of his or her physical and mental health conditions and co-morbidities. Under the provider practice/delivery system design approach, medical home providers take an active role in helping their patients make informed healthcare decisions. Finally, the foundation for the success of the program includes technology, such as the use of predictive modeling, to identify potential program patients and providers.

The purpose of the rule amendments is to align HHSC's administrative rules with its revised approach to health management, while at the same time ensuring that the Texas Medicaid Wellness Program complies with the requirements set forth in §32.057 of the Human Resources Code.

Section-by-Section Summary

HHSC proposes to change the title of Division 32 from "Disease Management" to "Texas Medicaid Wellness Program" to more accurately reflect the scope of the program. Additionally, throughout the rules the term "disease management" is replaced with "wellness services" and the term "Disease Management Program" is replaced with "Texas Medicaid Wellness Program." Other changes throughout the rules include renumbering paragraphs as a result of adding or deleting requirements, deleting and replacing obsolete language, and updating language for clarity.

Amended §354.1415(a)(1) updates the requirements for participation in the program from populations with specific diseases to populations who are identified through HHSC-approved predictive modeling approaches as high cost and high risk.

Amended §354.1415(a)(2) is revised to reflect the requirements of Human Resources Code §32.057.

New §354.1415(a)(5) adds language referencing providers serving as medical homes. The remaining paragraphs are renumbered.

Amended renumbered §354.1415(a)(6) deletes language referencing targeted disease populations and adds language regarding patient self-care management strategies.

Amended renumbered §354.1415(a)(7) updates the educational materials requirements to ensure that all materials are provided in a culturally sensitive manner.

Amended renumbered §354.1415(a)(8) updates the requirements regarding process and outcome measures.

Deleted §354.1415(a)(9) removes obsolete language.

Amended §354.1415(a)(10) updates language to correctly identify the nurse consultation/triage line.

Deleted §354.1415(a)(13) - (20) remove obsolete language.

Amended §354.1415(b)(1) updates language to make the client identification requirement more specific and deletes obsolete language.

Amended §354.1415(b)(2) removes obsolete language and clarifies intervention requirements.

Amended §354.1415(b)(3) changes terminology from "hard to serve" to "difficult to serve."

Deleted §354.1415(b)(8) removes obsolete language.

Section 354.1415(b)(9) - (18) are renumbered.

Amended renumbered §354.1415(b)(10)(C) updates language to reflect that educational materials are provided in English, Spanish, and the language of any other major population group.

Amended renumbered §354.1415(b)(11) clarifies education requirements.

Amended renumbered §354.1415(b)(13) clarifies language requirements.

Amended renumbered §354.1415(b)(14) omits the redundant use of the word "service."

Amended renumbered §354.1415(b)(15) clarifies the requirements regarding documentation and distribution of health care information.

Amended renumbered §354.1415(b)(16) clarifies hospital discharge requirements.

Amended renumbered §354.1415(b)(17) removes obsolete language.

New §354.1415(b)(18) adds language requiring coordination with behavioral health providers.

Amended §354.1415(b)(21) clarifies provider education requirements.

Amended §354.1415(b)(22) clarifies requirements regarding provider participation in the care plan.

Amended §354.1415(b)(23) requires the vendor to implement a system to accept provider referrals into the program.

Deleted §354.1416(a)(2) removes obsolete language. The remaining paragraphs are renumbered.

Amended renumbered §354.1416(a)(2) clarifies that clients who may not be of sufficient age or cognitive ability may have a caregiver to act on their behalf for program interventions.

Amended renumbered §354.1416(a)(3) specifies that clients are eligible to participate in the program if identified by HHSC or the Texas Medicaid Wellness Program vendor as high cost and/or high risk due to a chronic illness or condition.

Renumbered §354.1416(a)(4) - (9) are deleted because they are related to the disease-specific requirements that are no longer criteria for inclusion in the program.

Deleted §354.1416(b)(1)(A) removes language excluding Aged and Blind client populations from program since this is no longer an exclusion. The remaining subparagraphs are renumbered.

Amended renumbered §354.1416(b)(1)(G) clarifies the timeframes regarding skilled nursing facility stays.

Amended §354.1416(b)(2) adds as an exclusion, Undocumented Aliens.

Deleted §354.1416(b)(3) removes any medical exclusions for program participation.

Amended §354.1416(c)(1) allows a client to opt out of the program at any time.

Amended §354.1416(c)(2) revises the provisions regarding loss of program eligibility.

Amended §354.1417(1) revises the definition of care management to address nurse consultation.

Deleted §354.1417(3) removes obsolete language. The remaining paragraphs are renumbered.

Amended renumbered §354.1417(4) updates language to include Primary Care Case Management (PCCM) clients in the program and deletes obsolete language.

Deleted §354.1417(5) removes the disease hierarchy because a specific diagnosis is not required for participation in the program.

Deleted §354.1417(7) removes the five chronic health conditions that are no longer necessary for program inclusion. The remaining paragraphs are renumbered.

Amended renumbered §354.1417(7) changes the definition of health severity level to health severity level assessment and deletes obsolete language.

Amended renumbered §354.1417(9) updates the medical home definition by deleting obsolete language.

Amended renumbered §354.1417(11) adds the criteria for age-appropriate screening exams to the definition of preventative care.

Amended renumbered §354.1417(14) clarifies that the level of interaction with the vendor is based on the recipient's specific needs at a given time rather than the severity of their condition.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the amended rules are in effect, there will be no fiscal impact to state government. The proposed amended rules will not result in any fiscal implications for local health and human services agencies. Local governments will not incur additional costs.

Small and Micro-business Impact Analysis

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

Public Benefit

Billy Millwee, Associate Commissioner for Medicaid and CHIP, has determined that for each year of the first five years the sections are in effect, the public will benefit from the adoption of the rules. The anticipated public benefit of enforcing the proposed amended rules will be better management of high-cost and high-risk members of the Medicaid population.

Regulatory Analysis

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

Takings Impact Assessment

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

Public Comment

Written comments on the proposal may be submitted to Anna Sicher, Texas Medicaid Wellness Program Specialist, P.O. Box 85200 Mail Code H-312; Austin, Texas 78708; by fax to (512) 491-1338 or by e-mail to anna.sicher@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

Public Hearing

A public hearing is scheduled for March 11, 2011 from 10:00 a.m. to 11:00 a.m. (central time) in the Health and Human Services Braker Center, Lone Star Conference Room, located at 11209 Metric Boulevard, Building H, Austin, Texas. Persons requiring further information, special assistance, or accommodations should contact Leigh Van Kirk at (512) 491-2813.

Statutory Authority

The amendments are proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.057 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the Texas Medicaid Wellness Program and the federal medical assistance (Medicaid) program in Texas.

§354.1415. *Vendor Requirements and Conditions for Participation.*

(a) In addition to the general requirements for contractors listed in Chapter 391, Purchase of Goods and Services by the Health and Human Services Agencies and Chapter 392, Procurements by the Health and Human Services Commission, care [disease] management companies must meet all of the following program requirements to be considered for a contract with the state. Entities who wish to contract with the Health and Human Services Commission (HHSC) to provide wellness program [disease management] services must meet the following conditions:

(1) Use HHSC-approved predictive modeling approaches to identify high-cost and high-risk [Have an appropriate method for using HHSC healthcare data to identify targeted disease] populations;

(2) Use approaches that are based on nationally recognized evidence-supported models, [Have nationally recognized evidence-based healthcare practice guidelines with accepted] standards of care in the medical community and clinical outcomes [for each targeted disease];

(3) Have collaborative healthcare practice models in place to include HHSC's contracted physicians, support service providers, and existing community resources;

(4) Ensure that a recipient's primary care provider, [physician (PCP)] and other appropriate specialty physicians, or registered nurses, advance practice nurses, or physician assistants become directly involved in the Texas Medicaid Wellness Program [disease management program through which the recipient receives services];

(5) Ensure that providers serving as medical homes take an active role in helping clients or their caregivers make informed healthcare decisions;

(6) [(5)] Use [Have] patient self-care management strategies, so that clients become informed and active participants in the management of their physical and mental health conditions and co-morbidities [education materials and methods appropriate to each targeted disease population that demonstrate cultural competency];

(7) [(6)] Provide client and [Have service] provider educational [education] materials that are culturally sensitive and [and methods] appropriate to the [each] targeted [disease] population;

(8) [(7)] Have process and outcome measurements, evaluations, and management systems that incorporate [using] nationally recognized evidence-based clinical [scientific information and standardized best] practice guidelines;

(9) [(8)] Have routine reporting processes that are proven to properly support wellness [disease management] goals;

[(9)] Have demonstrable, measurable, and successful experience in disease management for the targeted disease populations;

(10) Provide access to 24 hour-a-day, seven days-per-week nurse consultation/triage line [call center];

(11) Provide coordination of client care during a transition period for clients that move from enrollment in one disease management or wellness program to another; and

(12) Have the ability to guarantee program savings.[-];

[(13)] Ensure compliance with all laws, regulations, and administrative rules that govern the performance of the disease management services and deliverables including all state and federal tax laws, employment laws, regulatory requirements, and licensing provisions;

[(14)] Ensure each of its personnel who provides services or deliverables through the disease management program is properly licensed, certified, and/or has proper permits to perform the required disease management activities;

[(15)] Ensure data entered, maintained, or generated to meet disease management program requirements are retained and accessible according to Federal requirement 42 CFR §431.17 and in accordance with the HHSC Medicaid Records Retention and Disposition Schedule;

[(16)] Maintain an accounting system that provides an audit trail containing sufficient financial documentation to allow for the reconciliation of billings, expenses, and financial information with all general ledger accounts applicable to the contract;

~~{(17) Maintain and retain financial records and supporting documents relating to the disease management program for a period of five years, after the date of the final payment under the contract, or until the resolution of all litigation, claims, and financial management review or audit pertaining to the contract, whichever is longer;}~~

~~{(18) Provide authorized state and federal governments full access to all information needed to conduct reviews and audits required by law or by the contract in accordance with applicable auditing standards;}~~

~~{(19) Ensure contractor's systems and processes, to include files or data transferred from the contractor's internal system, comply with the requirements of the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191) ("HIPAA"); and}~~

~~{(20) Ensure contractor and its subcontractors will comply with any policy, rule, or reasonable requirement of HHSC that relates to the safeguarding or disclosure of information relating to Medicaid applicants and recipients, contractor's operations, or the disease management services.}~~

(b) The contracted Texas Medicaid Wellness Program [disease management] vendor must provide at a minimum, the following services to eligible clients and participating providers:

(1) Identify eligible clients utilizing predictive modeling and impactability scores and stratify them into severity levels for care management services [them based on health severity level and risk for non-adherence to recommended care];

(2) Provide appropriate interventions that include, at a minimum, development[, implementation,] and evaluation of an individual plan of care that:

(A) Addresses the client's comprehensive [~~multiple~~] health, behavioral, and social needs to ensure continuity of care, quality of care, and improvement of health status [effectiveness];

(B) Assures and facilitates appropriate collaboration between the client's family and/or caregivers, health care providers, and community case managers; and

(C) Links health care providers with allied health and social services agencies to facilitate access to necessary services. This includes, but is not limited to, medically necessary services such as pharmacy, mental health, equipment and supplies, rehabilitative therapies, and transportation or interpreter services.

(3) Intensive outreach to [~~find~~] difficult- [~~hard-~~]to-serve clients, including home visits if the client does not have telephone service available, or has cognitive or physical difficulties that interfere with phone usage. The vendor must use effective, appropriate, and culturally sensitive methods to accomplish this service;

(4) Enroll and engage eligible clients in the Texas Medicaid Wellness Program [~~disease management program~~] and track active acceptance, refusal to participate, complaints, levels of care and disenrollment information;

(5) Facilitate the establishment of [~~Establish~~] a medical home or primary care provider for clients;

(6) Identify gaps between recommended prevention and treatment and actual care provided to clients. Assure that client's medical care follows nationally recognized evidence-based practice guidelines [~~for practice~~]. Give providers feedback on differences between recommended [~~prevention and~~] treatment and actual care received by clients, including [~~and~~] client adherence to their plan of care;

(7) Assess client's adherence to prescribed medical care and instructions;

~~{(8) Prepare initial health assessments and conduct periodic health status follow-ups based on the risk and health severity level of the client. In-person visits are required for hard to reach clients;}~~

~~{(9) [(9)] Assist client in accessing appropriate primary and preventive medical care;~~

~~{(9) [(10)] Development and demonstration of educational and care management techniques by phone, written materials, and face-to-face personal interaction;~~

~~{(10) [(11)] Development and circulation of client educational materials that [~~which~~] must be:~~

(A) Written at the 5th grade reading level;

(B) Available for clients who are blind, sight impaired, or have reading impairments; and

(C) Provided in English, Spanish and the [a] language of any other major population group identified by HHSC [~~that may be understood by each individual client~~].

~~{(11) [(12)] Educate eligible clients and/or their caregivers regarding the client's particular health care condition so that they will [~~and needs to~~];~~

(A) Become [~~Increase the client's understanding of his or her disease and become~~] more effective in the management and self-care [~~management~~] of their health problems/conditions;

(B) Utilize [~~Understand the~~] appropriate [~~use of~~] resources needed to care for his or her problem(s);

(C) Identify [~~negative~~] changes in his or her health condition and seek appropriate attention before reaching crisis levels; and

(D) Become more compliant with medical recommendations.

~~{(12) [(13)] Provide a 24 hour-a-day, seven day-a-week, toll-free nurse consultation and triage service that responds in a culturally sensitive manner to eligible clients and/or caregivers' questions;~~

~~{(13) [(14)] Have English and Spanish-speaking nurses, with other languages available through a translation or interpretation service. The vendor also must have nurses who speak the languages of major population groups identified by HHSC [~~Translation and interpreter services should be available on-line and not require an additional phone call by the client~~];~~

~~{(14) [(15)] Provide [~~service~~] referrals for specialty, social and ancillary services through the use of a nurse consultation telephone line;~~

~~{(15) [(16)] Maintain documentation of wellness [~~disease management~~] services in the [a] member file or care plan and distribute or provide to the primary care provider via an electronic provider portal or [~~appropriate providers~~] on a periodic basis if providers do not have electronic capabilities;~~

~~{(16) [(17)] Develop and/or support a mechanism [~~collaboration with client and local hospitals~~] to receive timely notification of hospital admissions or emergency department visits of Texas Medicaid Wellness Program [~~disease management~~] clients, and coordinate with hospitals to provide discharge planning services;~~

~~{(17) [(18)] Provide care coordination support, [~~discharge planning for early discharge and to prevent readmissions,~~] revisions to client's plan of care as appropriate, and on-site visits when needed;~~

(18) Provide coordination with behavioral health providers where the client has a behavioral health condition;

(19) Develop a process to respond to client and provider complaints with HHSC oversight;

(20) Provide intensive recruitment of providers (including specialists when warranted by the client's medical condition) to participate in the Texas Medicaid Wellness Program [disease management program] and serve as primary care providers, or as a medical home for eligible clients as needed;

(21) Develop and offer provider education regarding specific evidence-based practice guidelines and improved practice management methods [selected for use];

(22) Ensure medical providers actively participate in [that there are no barriers to medical provider input into] the development of the eligible client's plan of care;

(23) Implement a system for providers to request specific wellness [disease management] interventions via referrals to the program;

(24) Provide assistance in assuring necessary specialty [specialists] care; and

(25) Provide reports on client's health status changes to their participating primary care provider.

§354.1416. Eligibility Criteria.

(a) The Texas Medicaid Wellness Program serves [disease management program includes] members of the Medicaid disabled and Temporary Assistance for Needy Families (TANF) populations who:

(1) Receive medical services through fee-for-service [Fee-For-Service (FFS)] or the Primary Care Case Management (PCCM) program; [coverage.]

{(2) Meet the following criteria and have a diagnosis of one or more of the following:}

{(A) Severe Asthma, TANF, ages 2 and above;}

{(B) Congestive Heart Failure (CHF), Disabled, Non-Medicare, ages 18 and above;}

{(C) Chronic Obstructive Pulmonary Disease (COPD), Disabled, Non-Medicare, ages 18 and above;}

{(D) Diabetes, Disabled, Non-Medicare, ages 18 and above;}

{(E) Coronary Artery Disease (CAD), Disabled, Non-Medicare, ages 18 and above; or}

{(F) Asthma, Disabled, Non-Medicare, Ages 2 and above.}

(2) [(3)] Are able, or have a caregiver who is able, [of sufficient age and cognitive ability] to respond actively to health information and care coordination activities; and[-]

(3) Are identified by HHSC and the Texas Medicaid Wellness Program vendor as being high-cost and/or high-risk due to chronic illness or condition.

{(4) Do not already have a catastrophic condition that takes precedence over the disease management targeted diseases.}

{(5) Clients enrolled in Disease Management (DM) must meet all of the specific diagnostic and clinical coding criteria for each targeted disease to be included in the DM program.}

{(6) Eligible clients must have at least three consecutive months of Medicaid coverage to be included in the DM program.}

{(7) A client is not included in the DM program until the third month after the month in which the client's claims first qualify him/her for one of the targeted diseases.}

{(8) Disease management clients in the disabled population are categorized by the following disease hierarchy (from highest to lowest):}

{(A) Congestive Heart Failure (CHF);}

{(B) Chronic Obstructive Pulmonary Disease (COPD);}

{(C) Diabetes;}

{(D) Coronary Artery Disease (CAD);}

{(E) Asthma (persons with qualifying asthma claims in Month 1 will remain in the asthma category in subsequent months until qualifying claims in a higher disease category occur).}

{(9) A person qualifying for more than one condition is continuously categorized in the highest disease category for which the person qualifies. A person moves up the hierarchy as qualifying claims occur, but does not move downward.}

(b) Texas Medicaid Wellness Program [Disease Management program] client population exclusions:

(1) Medicaid clients that are programmatically excluded from the Texas Medicaid Wellness Program [DM]:

{(A) Aged and Blind client populations as defined in §358.100 of this title (relating to Definitions);}

{(B) [(B)] Dual Eligible client populations that are eligible for Medicare and Medicaid services;

{(C) [(C)] Clients with Third Party Insurance;

{(D) [(D)] Clients in a [another] Medicaid waiver program other than PCCM;

{(E) [(E)] Clients in a managed care program other than PCCM;

{(F) [(F)] Clients in a Medicare pilot;

{(G) [(G)] Clients in a hospice program; or

{(H) [(H)] Clients in institutional or community-based long term care [Long Term Care] service programs (except previously enrolled Texas Medicaid Wellness Program [DM] clients in a skilled nursing facility less than [Skilled Nursing Facility for] 60 consecutive days in a 12 month period); and [or less].}

(2) Undocumented aliens.[-]

{(3) Clients with health claims indicating they have one or more of the following conditions:}

{(A) AIDS;}

{(B) Various forms of cancer;}

{(C) End-stage renal disease; and}

{(D) Various transplants.}

(c) Texas Medicaid Wellness Program [Disease Management program] client disenrollment:

(1) Clients enrolled in the Texas Medicaid Wellness Program [DM program] can opt-out of the program at any time. [within 30-days of enrollment by contacting the DM vendor. If the DM client

does not opt out within the 30 days, they are locked into the program for a period of six months.]

(2) Clients may be disenrolled from the Texas Medicaid Wellness Program [DM program] for the following reasons:

(A) Loss of Medicaid eligibility: clients that regain Medicaid eligibility are automatically re-enrolled into the Texas Medicaid Wellness Program [DM program] during their first month of renewed eligibility; or

(B) The client is unresponsive to, fails to participate in, or cannot be reached for interventions by the Texas Medicaid Wellness Program vendor. HHSC's contract with the Texas Medicaid Health Wellness Program vendor will specify the number of attempts that the vendor must make to reach a client before disenrollment.

[(B) Lack of access to covered services, and lack of access to providers experienced in dealing with enrollee's health care needs; or]

[(C) A request from the DM vendor that the State has reviewed and approved.]

§354.1417. Definitions for Wellness [Disease Management] Services.

The following terms are specific to the Texas Medicaid Wellness [Disease Management (DM)] Program, [and] when used in this division [chapter and], have the following meanings, unless the context clearly indicates otherwise.

(1) Care management--An approach or process for persons with complex needs and/or chronic illness that is focused on preventing acute or urgent care utilization through the use of accepted clinical and non-clinical interventions. These interventions include services such as care coordination;[-] telephone access to nurses skilled in monitoring and providing consultation on how to address disease symptoms and complications, including answering medication questions; providing[-] teaching] patient education; [in] self-management care skills;[-] and providing physician-coordinated treatment plans.

(2) Case management--A process whereby covered persons with specific health care needs are identified and a care plan is developed [formulated] and implemented that [which] efficiently utilizes health care resources to achieve the optimum outcome in the most cost-effective manner.

[(3) Catastrophic condition--A health condition, such as AIDS, cancer, or end-stage renal disease requiring intensive and ongoing treatment. Clients diagnosed with these types of conditions are excluded from participation in the Texas DM Program.]

(3) [(4)] Claim--A request for payment for authorized benefits submitted on the applicable approved form that meets the established itemization requirements.

[(5) Disease hierarchy--The classification of diseases (from highest to lowest) within the DM program that establishes severity and anticipated complexity of intervention and management.]

(4) [(6)] Texas Medicaid Wellness [Disease Management] Program--[The Texas Medicaid DM Program] is a holistic approach to health care delivery designed to identify and provide services to Medicaid fee-for-service and Primary Care Case Management [Fee-for-Service (FFS)] clients with, or who are at risk for, incurring high-cost medical services due to [developing a targeted] chronic illness or complex conditions. [disease. Clients receive specific interventions from medical professionals for their disease based on nationally recognized evidence-based practice guidelines, support to follow their physician's plan of care, and education to practice health behaviors.]

[(7) Disease management targeted diseases--The DM Program provides services to Medicaid eligible clients with, or at risk for one or more of the following five chronic health conditions: Diabetes, Asthma, Congestive Heart Failure (CHF), Chronic Obstructive Pulmonary Disease (COPD), and Coronary Artery Disease (CAD).]

(5) [(8)] Eligible client--An individual who has been designated by the State as eligible for medical care and services under the Medicaid program [State Plan] and meets the requirements for the Texas Medicaid Wellness Program; [targeted diseases included in the DM Program.]

(6) [(9)] Fee-for-Service Reimbursement--The traditional health care payment system under which physicians and other providers receive a payment for each unit of service they provide or an insurance product in which clients are allowed total freedom to choose their health care providers.

(7) [(10)] Health severity level assessment--An assessment by the Texas Medicaid Wellness Program [disease management] vendor that determines the appropriate interventions [intervention level (low, medium, high) based on the progression of the disease and the DM enrollee's health status interventions].

(8) [(11)] Medical assistance program--The program implemented by the State of Texas under the provisions of Title XIX of the Social Security Act, as amended.

(9) [(12)] Medical home--A community-based system of health care delivery that provides individual patients a known resource (primary care provider or clinic) for all primary and preventive care services. It also provides continuity of care for [primary] acute care needs 24 hours a day, including [and is networked to any necessary] consultative, specialty, and health-related services.

(10) [(13)] Physician--A doctor of medicine or doctor of osteopathy (MD or DO) legally authorized to practice medicine or osteopathy at the time and place the service is provided.

(11) [(14)] Preventive care--Comprehensive care emphasizing [priorities for] prevention, early detection, and early treatment of conditions, generally including routine physical examination, immunization, [and] well-person care, and age-appropriate screening exams.

(12) [(15)] Primary Care Case Management (PCCM)--A managed care model allowed under federal regulations in which HHSC contracts with providers to form a managed care provider network.

(13) [(16)] Primary care provider (PCP)--A physician or provider who has agreed to provide a medical home to Medicaid clients and who is responsible for providing [initial and primary] care to patients, maintaining the continuity of patient care and initiating referral for care.

(14) [(17)] Stratify--A method used by the Texas Medicaid Wellness Program [disease management] vendor to organize interventions based on the client's specific needs at a given time [low, medium, and high categories].

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 February 18, 2011.

TRD-201100671

Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: April 3, 2011
For further information, please call: (512) 424-6900



CHAPTER 355. REIMBURSEMENT RATES
SUBCHAPTER J. PURCHASED HEALTH SERVICES
DIVISION 34. DISEASE MANAGEMENT PROGRAM

1 TAC §355.8640

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

The Texas Health and Human Services Commission (HHSC) proposes to repeal Title 1, Part 15, Chapter 355, Subchapter J, Division 34, Disease Management Program. The repeal of Division 34 includes the repeal of §355.8640, Reimbursement for the Disease Management Program.

Background and Justification

Division 34, §355.8640 describes the payment structure for the Medicaid disease management program, as well as the percentage of the disease management vendor's fees that are placed at risk if the vendor does not meet targeted savings and performance measures. The payment structure and at-risk fee components are specific to the former disease management program, which HHSC is replacing with the successor Texas Medicaid Health Management program, also known as the Texas Medicaid Wellness Program. HHSC and the selected program vendor will negotiate a new payment structure, including new at-risk components and performance measures. HHSC proposes the rule repeal to avoid the potential confusion regarding the application of the rule to the successor program.

Section-by-Section Summary

HHSC proposes to repeal §355.8640(a) - (d) related to disease management program reimbursement.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the repeal is in effect, there will be no fiscal impact to state government. The proposed repeal will not result in any fiscal implications for local health and human services agencies. Local governments will not incur additional costs.

Small and Micro-business Impact Analysis

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

Public Benefit

Billy Millwee, Associate Commissioner for Medicaid and CHIP, has determined that the public will benefit from the repeal of the rule. The anticipated public benefit as a result of this repeal will be less confusion in understanding the payment process for the Texas Medicaid Wellness Program, the successor program for the disease management program.

Regulatory Analysis

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

Takings Impact Assessment

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

Public Comment

Written comments on the proposal may be submitted to Anna Sicher, Medicaid Wellness Program Specialist, P.O. Box 85200 Mail Code H-312; Austin, Texas 78708; by fax to (512) 491-1973 or by e-mail to anna.sicher@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

Statutory Authority

The repeal is proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.057 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

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

§355.8640. *Reimbursement for the Disease Management Program.*

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 February 18, 2011.

TRD-201100672

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: April 3, 2011

For further information, please call: (512) 424-6900



TITLE 7. BANKING AND SECURITIES

PART 2. TEXAS DEPARTMENT OF BANKING

CHAPTER 26. PERPETUAL CARE CEMETERIES

7 TAC §§26.1, 26.2, 26.4, 26.5

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes to amend §26.1, concerning perpetual care cemetery fees; §26.2, concerning maintenance of perpetual care cemetery records; and §26.4, concerning time requirements for ordering and setting a burial marker or monument in a perpetual care cemetery; and to add new §26.5, concerning time requirements for issuance of a conveyance document for a cemetery plot.

The amendments are proposed to update the rules, the need for which was discovered as a result of the recent review of these rules conducted in accordance with Government Code, §2001.039. New §26.5 is proposed to set a deadline that is consistent with the deadline set out in the department's Legal Opinion 98-48.

Pre-proposal consultation with stakeholders.

The department provided a draft of the proposed revisions to §§26.1, 26.2, and 26.4, and the proposed new §26.5 to those persons currently holding a certificate to operate a perpetual care cemetery. The department invited those parties to submit written comments. No comments were submitted.

Description of proposed amendments and the new rule.

The proposed amendments to §26.1 accomplish two things. The proposal would delete §26.1(a)(3). This change removes the ability of an insolvent permit holder to request a one-year reduction in its annual fee. In the last five years, the department has not received a request under the current rule and is of the opinion that each perpetual care cemetery should pay its cost of regulation.

The second change adds language to §26.1(a)(4) which would tie the fee for examinations of new perpetual care cemetery certificate holders and the fee for extra examinations of perpetual care cemeteries to the fee charged for specialty examinations of other entities under §3.36(h) of this title. Examination rates are set by using the average salary for an average tenured employee. The Department resources necessary for these examinations is similar.

Additionally, the proposed amendment would allow these perpetual care cemetery examination fees to automatically change to mirror any change to the specialty examination fee for other entities under §3.36(h). Currently, the new and extra examination fee for perpetual care cemeteries, like the specialty examination fee for other entities under §3.36(h), is \$600 per day plus actual travel expenses. Therefore, this amendment does not change the current examination fees for perpetual care cemeteries.

The proposed amendments to §26.2 simplify recordkeeping requirements for permit holders by allowing the maintenance of records in an electronic database as long as the records can be retrieved without impeding the examination process. The proposed amendments would eliminate the need to retain certain records and reduce the retention time for others. A certificate holder's general file would no longer be required to contain a copy of its certificate of authority, its most recent annual state-

ment, previously examined amendments to the perpetual care fund trust agreement, all correspondence with the department for the previous three years, all examination reports for the previous three years, and cemetery price lists used before the prior examination. A certificate holder who had a limited scope examination or who was rated a 3 or lower would be required to retain the signed acknowledgement by its board of directors to the examination report. All certificate holders would be required to maintain a record of department approvals upon which the certificate holder relies, and a list of all its maps and plats.

The proposed amendment to §26.4 adds a requirement in subsection (f) to maintain a list of all markers sold for the examination period. This information is needed to test and verify that timelines for marker ordering and setting are consistently met. Additionally a typographical error in §26.4(c)(2) has been corrected.

Proposed new §26.5 sets a deadline for issuing a conveyance document for a cemetery plot. The deadline is 20 days after the month in which the purchase contract is paid in full. The deadline is consistent with that established by department Legal Opinion 98-48. Placing the deadline in a rule will clarify that a violation of the deadline will subject the violator to enforcement action.

Deputy Commissioner Stephanie Newberg, Texas Department of Banking, has determined that for the first five-year period the proposed rules are in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering the rules.

Ms. Newberg has also determined that, for each year of the first five years the rules as proposed are in effect, the public benefit is as follows: ensuring that examination fees for examinations with similar resource demands are the same; reducing the recordkeeping requirements for perpetual care cemetery certificate holders; making compliance with marker ordering and setting rules more easily monitored and enforced by the department; and clarifying the deadline for issuance of a conveyance document for a cemetery plot.

For each year of the first five years that the rules will be in effect, there may be minimal economic costs to persons required to comply with §26.4 as proposed. That section's requirement that certificate holders keep a list of marker sales may result in a minimal cost to those certificate holders who sell markers. Any costs incurred as a result of marker sales recordkeeping will be offset by cost savings resulting from the reductions in general recordkeeping requirements in proposed amendments to §26.2. There is no economic cost as a result of the proposed change to §26.1 because the specialty examination fees under §3.36(h) to which these cemetery examination fees would be tied are the same amount, i.e., \$600 per day plus actual travel expenses.

There will be no adverse economic effect on small businesses or micro-businesses. There will be no difference in the cost of compliance for small businesses as compared to large businesses.

To be considered, comments on the proposed amended and new sections must be submitted no later than 5:00 p.m. on April 4, 2011. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to legal@dob.texas.gov.

The amendments and the new rule are proposed under Health and Safety Code §712.008(a), which provides that the commission may adopt rules to enforce and administer Chapter 712, including rules establishing fees to defray the costs of enforcing

and administering Chapter 712. The proposed amendment to §26.4 is also proposed under Health and Safety Code §712.008(b)(1), which states that the commission shall adopt rules establishing reasonable standards for timely placement of burial markers or monuments in a perpetual care cemetery. New rule §26.5 is also proposed under Health and Safety Code §711.012(a), which authorizes the Finance Commission to adopt rules to enforce and administer Health and Safety Code §711.038 relating to perpetual care cemeteries. Section 711.038 concerns the sale of plots and the issuance of certificates of ownership.

Health and Safety Code §§711.038, 711.054, 711.055, 711.056, 712.042, 712.044, 712.0441, and 712.0442 are affected by the proposed amended and new sections.

§26.1. *What fees must I pay to operate a perpetual care cemetery?*

(a) Definitions. The following words and terms, when used in this section, will have the following meanings, unless the text clearly indicates otherwise.

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

~~{(3) Financially insolvent—}~~

~~{(A) the inability to pay debts as they mature or pay obligations as they become due and payable; or}~~

~~{(B) having debts in excess of assets.}~~

(3) ~~{(4)}~~ You, Your, I--the owner or operator of a perpetual care cemetery.

(4) ~~{(5)}~~ Fund balance--the total amount of perpetual care monies that are required to be deposited in your perpetual care fund under the Act, excluding capital gains, capital losses, undistributed interest income and any voluntary contributions.

(5) ~~{(6)}~~ Fiscal year--the 12-month period from September 1st to August 31st.

(b) If I want to operate a perpetual care cemetery, what fees must I pay to the department?

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

(4) If you are a new certificate holder and have not yet filed your first annual statement of funds report required by Section 712.041 of the Act, you must pay an examination fee at the same rate established for bank examiners by §3.36(h)(2) of this title ~~[of \$600 per day]~~ for each examiner and all associated travel expenses. Your subsequent annual assessments will be calculated in accordance with paragraph (3) of this subsection.

(c) (No change.)

(d) Must I pay for additional examinations and if so how much and when?

(1) If more than one examination is required in the same fiscal year as a result of your failure to comply with the Act, this chapter, or a request by the department, for each additional examination you must pay a fee for each assigned examiner at the same rate established for bank examiners by §3.36(h)(2) of this title ~~[a rate of \$600 per day]~~ and reimburse the department for all associated travel expenses.

(2) (No change.)

(e) Are any fees refundable? ~~[What if I cannot afford to pay a fee or I need a fee refunded?]~~

~~{(1) If you are experiencing financial difficulties, you may be able to obtain a one-year reduction in the amount of your annual~~

~~fee. To request a one-year reduction in your annual fee, you must file a written application as described in paragraph (2) of this subsection and the commissioner must find that your application satisfies the requirements described in paragraph (3) of this subsection. The commissioner has discretion to decide whether to reduce your annual fee and to decide the amount of any reduction.}~~

~~{(2) To request a one-year reduction in your annual fee, you must:}~~

~~{(A) not later than the date the current annual fee is due, file with the department a written application accompanied by a written business recovery plan and other supporting documentation sufficient to demonstrate that you satisfy each factor described in paragraph (3) of this subsection; and}~~

~~{(B) file any additional documentation the department requests not later than the seventh day after the date you receive the request.}~~

~~{(3) The commissioner will not grant a one-year reduction of your annual fee unless the commissioner finds, based on your application and supporting documentation, that:}~~

~~{(A) you are financially insolvent or payment of the full annual fee will cause you to become financially insolvent, and your current or impending financial insolvency is temporary; and}~~

~~{(B) you reasonably expect to have the ability to pay your annual fee in full by at least the third year after the year in which your request is made, based on a written business recovery plan that is reasonable and attainable.}~~

~~{(4) Your filing fee, annual assessment, or additional examination fee cannot be reduced or waived.}~~

~~{(5) You may be subject to an enforcement action if you fail to pay a fee in the manner required by this section.}~~

~~{(6) Fees paid under this section are nonrefundable.}~~

(f) (No change.)

§26.2. *What Records am I Required to Maintain?*

(a) What unique defined terms are used in this section?

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

(4) "Maintain" means to store and retain records either in hard copy form or on microfiche or in an electronic database from which the record can be retrieved and printed in hard copy in a manner that does not impede the efficient completion of the examination ~~[information and documents specified by this section in such a way that the information can be expeditiously retrieved for examination by the commissioner, whether by hard copy or produced electronically and printed for review].~~

(b) What records must I maintain?

(1) You must maintain the following records in a general file that is readily accessible to the department:

~~{(A) the current certificate of authority to operate a perpetual care cemetery, unless prominently displayed in the cemetery office;}~~

~~{(B) the latest filed annual statement required under Health & Safety Code, §712.041;}~~

~~{(C)}~~ (A) ~~{(C)}~~ your most current consolidated financial statement or, in the alternative, your most current financial records and/or tax return, provided that the records must substantiate your use or expenditure of fund income;

(B) ~~[(D)]~~ a sample form of each purchase agreement you currently use;

(C) ~~[(E)]~~ a sample form of each document of conveyance of interment rights you currently use;

(D) ~~[(F)]~~ the current trust agreement governing the fund, if amended since the last examination;

(E) ~~[(G)]~~ if the certificate holder received a uniform risk rating of 3, 4, or 5 at the last examination or if the last examination was a limited scope examination, the examination report acknowledgments, signed by the certificate holder's board of directors, for the last examination report (See Texas Department of Banking Supervisory Memorandum 1014 (2006) for an explanation of the perpetual care cemetery rating system.) [all examination reports and official correspondence sent to you by the banking department during the preceding three years];

(F) ~~[(H)]~~ all trustee/depository statements covering the perpetual care fund, provided at least quarterly, and all written correspondence from the trustee that you received since the last examination;

(G) ~~[(I)]~~ minutes of each meeting of the cemetery corporation's board of directors held since the last banking department examination or, if the cemetery corporation is a wholly-owned subsidiary and does not hold board meetings, minutes of each meeting of the parent corporation's board of directors held since the last examination;

(H) ~~[(J)]~~ all recordkeeping exceptions and other department or commissioner approvals or directions upon which the certificate holder relies in connection with its current operations [all correspondence you sent to or received from the banking department during the preceding three years];

(I) ~~[(K)]~~ all maps, plats, and property dedications, and a list of these that reflects ~~[you have filed reflecting]~~ the dates of filing in the county records under Health & Safety Code, §711.034;

(J) ~~[(L)]~~ your current sales maps showing the sold and unsold spaces in all gardens, mausoleums, crematories, and columbaria in the cemetery;

(K) ~~[(M)]~~ records and photographs relating to lawn crypt construction and completion, to demonstrate you complied with Health & Safety Code, §711.061 and §711.062 ~~[§711.061];~~

(L) ~~[(N)]~~ each cemetery price list that you used at any time since the last examination [in the preceding three years]; and

(M) ~~[(O)]~~ your quarterly reconciliation of capital gains and losses in the fund since the last examination, if your trust agreement includes capital gains and losses in the definition of trust income.

(2) - (5) (No change.)

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

§26.4. *When Must I Order and Set a Burial Marker or Monument in my Perpetual Care Cemetery?*

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

(c) When must I set the burial marker, once it has been delivered to my cemetery location? You must set the marker on or before the 15th day after the date as of which all of the following events have occurred:

(1) (No change.)

(2) the purchaser ~~[purchase]~~ pays you:

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

(3) (No change.)

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

(f) Must I keep a written log related to the burial marker or monument purchase and installation process to prove that I have complied with this section? No. However, you must keep a list of each marker purchased since the last examination, and the purchaser's marker or monument contract file must include all documentation necessary to verify and substantiate the dates specified in subsections (b), (c), (d), and (e) of this section, as applicable, and your compliance with this section.

(g) - (i) (No change.)

§26.5. *When must I issue a conveyance document for a cemetery plot?*

A perpetual care cemetery must issue a conveyance document for a cemetery plot, as defined by Health and Safety Code §711.001(25), no later than 20 days after the end of the month in which the contract is paid in full.

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 February 18, 2011.

TRD-201100690

A. Kaylene Ray

General Counsel

Texas Department of Banking

Proposed date of adoption: April 15, 2011

For further information, please call: (512) 475-1300

CHAPTER 33. MONEY SERVICES BUSINESSES

7 TAC §§33.31, 33.33, 33.35

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes to amend §33.31, concerning records that must be kept related to currency exchange transactions; §33.33, concerning what receipts must be issued related to currency exchange transactions; and §33.35, concerning records that must be kept related to money transmission transactions. The amended rules are proposed to correct references to Financial Crimes Enforcement Network (FinCEN) regulations.

These amendments arise from the recodification of federal FinCEN regulations under the Bank Secrecy Act (BSA). In an effort to increase efficiency, FinCEN's rules have been reorganized and renumbered into a new tenth chapter of Title 31 of the Code of Federal Regulations (CFR). Effective March 1, 2011, FinCEN's regulations transfer from 31 CFR Part 103 to 31 CFR Chapter X. The transfer and reorganization of the BSA regulations from Part 103 to Chapter X of Title 31 of the CFR does not alter any existing regulatory obligation or impose any new obligation. As a result of this transfer all references in 7 TAC Chapter 33 to 31 CFR Part 103 are now incorrect. The proposed amendments would update these references to conform to the new codification.

Stephanie Newberg, Deputy Banking Commissioner, Texas Department of Banking, has determined that for the first five-year period the proposed rules are in effect, there will be no fiscal

implications for state government or for local government as a result of enforcing or administering the rule.

Ms. Newberg also has determined that, for each year of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing the rules is an updated and accurate rule.

For each year of the first five years that the rules will be in effect, there will be no economic costs to persons required to comply with the rules as proposed.

There will be no adverse economic effect on small businesses or micro-businesses. There will be no difference in the cost of compliance for small businesses as compared to large businesses.

To be considered, comments on the proposed amended sections must be submitted no later than 5:00 p.m. on April 4, 2011. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to legal@dob.texas.gov.

Amendments to §§33.31, 33.33 and 33.35 are proposed under Finance Code, §151.102, which authorizes the Commission to adopt rules to administer and enforce Finance Code Chapter 151.

Finance Code, §151.602, is affected by the proposed amended sections.

§33.31. What Records Must I Keep Related to Currency Exchange Transactions?

(a) (No change.)

(b) What are the general recordkeeping requirements?

(1) As a general matter, you must maintain:

(A) records of all filings made, and that contain all information required, under applicable federal laws and regulations, including the BSA and 31 CFR Chapter X [Part 103];

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

(2) (No change.)

(c) What specific records must I keep related to currency exchange?

(1) With respect to currency exchange transactions in an amount in excess of \$1,000, you must keep a record for each transaction that contains:

(A) the customer and transaction information required under 31 CFR §1022.410(b)(3) [~~§103.37(b)(3)~~], provided that, if your customer does not have a taxpayer identification number (e.g., social security, employee identification number) or passport number and is an alien, you may use the number of an alien identification card or other official document evidencing your customer's foreign nationality or residence, such as foreign driver's license or foreign voter registration card; and

(B) - (H) (No change.)

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

(d) (No change.)

§33.33. What Receipts Must I Issue Related to Currency Exchange Transactions?

(a) (No change.)

(b) Must I issue a receipt in connection with the currency exchange transactions I conduct?

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

(3) With respect to a currency exchange transaction you conduct with another financial institution as that term is defined in 31 CFR §1010.100(n) [~~§103.11(n)~~] or with a financial institution located outside the United States, you must obtain a contemporaneous receipt for each transaction regardless of where the transaction is conducted. If the other financial institution is a money services business as that term is defined in 31 CFR §1010.100(uu) [~~§103.11(uu)~~], or a money services business or financial institution located outside the United States, the receipt must contain:

(A) - (E) (No change.)

§33.35. What Records Must I Keep Related to Money Transmission Transactions?

(a) (No change.)

(b) What are the general recordkeeping requirements?

(1) As a general matter, you must maintain:

(A) records of all filings made, and that contain all information required, under applicable federal laws and regulations, including the Bank Secrecy Act and 31 CFR Chapter X [Part 103] (collectively BSA);

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

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

(c) What specific records must I keep related to the sale of payment instruments?

(1) (No change.)

(2) You must keep a record for each transaction that contains the customer and transaction information required under 31 CFR §1010.415(a)(2) and (b) [~~§103.29(a)(2) and (b)~~].

(d) What specific records must I keep related to the issuance and sale of stored value products?

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

(3) The BSA and 31 CFR Chapter X [Part 103] impose certain requirements upon money services businesses that issue, sell and redeem stored value products. As of the effective date of this section, however, the United States Department of Treasury has not adopted specific recordkeeping requirements for stored value transactions. You must comply with applicable BSA and other federal recordkeeping requirements when and as such requirements are adopted by the Department of Treasury.

(e) What specific records must I keep related to transmission of funds transactions?

(1) (No change.)

(2) The requirements of this subsection do not apply to a transmission of funds transaction governed by the Electronic Fund Transfer Act of 1978 (title XX, Pub. L. 950630, 92 Stat. 3728, 15 USC 1693, *et. seq.*), as well as any other funds transfers that are made through an automated clearing house, an automated teller machine, or a point-of-sale system within the meaning of 31 CFR §1010.100(j) [~~103.11(j)~~].

(3) If a transmission of funds otherwise subject to this subsection is funded by a credit card, you must obtain and record only the information required under the applicable provisions of 31 CFR §1010.410(e) [~~§103.33(f)~~].

(4) (No change.)

(5) With respect to a transmission transaction in an amount of \$3,000 or more, you must keep a record for each transaction that contains:

(A) for an in-person transaction in which your customer is the sender and orders the transaction on the customer's own behalf or on behalf of another person:

(i) the customer and transaction information required under 31 CFR §1010.410(e)(1)(i) and (e)(2)(i) [~~§103.33(f)(1)(i) and (f)(2)(i)~~], except that you must review or record, as applicable:

(I) - (V) (No change.)

(ii) - (vii) (No change.)

(B) for a not-in person transaction, for example, a transaction ordered by phone, fax, mail or online, in which your customer is the sender and orders the transaction on the customer's own behalf or on behalf of another person:

(i) the customer and transaction information required under 31 CFR §1010.410(e)(1)(i) and (e)(2)(ii) [~~§103.33(f)(1)(i) and (f)(2)(ii)~~], except that you must review or record, as applicable:

(I) - (III) (No change.)

(ii) - (viii) (No change.)

(C) for an in-person transaction in which your customer receives payment of the transmitted funds as the designated recipient or on behalf of the designated recipient:

(i) the customer and transaction information required under 31 CFR §1010.410(e)(1)(iii) and (e)(3)(i) [~~§103.33(f)(1)(iii) and (f)(3)(i)~~], except that you must review or record, as applicable:

(I) - (IV) (No change.)

(ii) - (vii) (No change.)

(D) for a transaction where the transmission proceeds are delivered to the designated recipient other than in person:

(i) the customer and transaction records required under 31 CFR §1010.410(e)(1)(iii) and (e)(3)(ii) [~~§103.33(f)(1)(iii) and (f)(3)(ii)~~];

(ii) - (iv) (No change.)

(6) (No change.)

(f) - (g) (No change.)

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

Filed with the Office of the Secretary of State on February 18, 2011.

TRD-201100691

A. Kaylene Ray

General Counsel

Texas Department of Banking

Proposed date of adoption: April 15, 2011

For further information, please call: (512) 475-1300



PART 4. TEXAS DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 75. APPLICATIONS

SUBCHAPTER A. CHARTER APPLICATIONS

7 TAC §75.1

The Finance Commission of Texas (the Commission), on behalf of the Texas Department of Savings and Mortgage Lending (the Department), proposes to amend 7 TAC §75.1, concerning Application for Permission to Organize a State Savings Bank. The amended rule is proposed to update Department contact information.

The amendment to §75.1 arises from a change in the internet domain name of the Department. In June, 2010, the Department of Information Resources (DIR) unveiled a new official state website, www.Texas.gov. In conjunction with this initiative, all state agencies have changed or will change their respective domain names from the current state.tx.us address to Texas.gov. Accordingly, all of the Department's e-mail and web page addresses have changed from sml.state.tx.us to sml.texas.gov. As a result, the reference in §75.1 to the Department's website address is now incorrect, and eventually will be disconnected. Although DIR and the Department have implemented the Department's domain name change, all old domain addresses will remain functional for an extended transition period. The proposed amendment would update the reference to the Department's website address.

Douglas B. Foster, Commissioner, Texas Department of Savings and Mortgage Lending, has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering the rule.

Commissioner Foster has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of the proposed amendment will be that the Department's rule will be more accurate. There will be no effect on individuals required to comply with the amendment as proposed. There will be no adverse economic effect on small or micro businesses.

Comments on the proposed amendment may be submitted in writing to Caroline C. Jones, General Counsel, Texas Department of Savings and Mortgage Lending, 2601 North Lamar, Suite 201, Austin, TX 78705 or by e-mail to sm-linfo@sml.state.tx.us within 30 days of this publication in the *Texas Register*.

The amendment is proposed under Texas Finance Code §11.302, which authorizes the Finance Commission to adopt rules to enforce Title 3 of the Texas Finance Code.

The statutory provisions affected by the proposed amendment are contained in Texas Finance Code, Chapter 92.

§75.1. *Application for Permission to Organize a State Savings Bank.*

(a) (No change.)

(b) The commissioner shall furnish approved forms of application and other information to aid in the filing of the application. The form is available from the department at 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705 and from the State Savings Bank Information section of the Department's website at www.sml.texas.gov [www.sml.state.tx.us].

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

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

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Douglas B. Foster
Commissioner
Texas Department of Savings and Mortgage Lending
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For further information, please call: (512) 475-1350



CHAPTER 79. MISCELLANEOUS SUBCHAPTER H. CONSUMER COMPLAINT PROCEDURES

7 TAC §79.122

The Finance Commission of Texas (the Commission), on behalf of the Texas Department of Savings and Mortgage Lending (the Department), proposes to amend 7 TAC §79.122, concerning Consumer Complaint Procedures. The amended rule is proposed to update Department contact information.

The amendment to §79.122 arises from a change in the internet domain name of the Department. In June, 2010, the Department of Information Resources (DIR) unveiled a new official state website, www.Texas.gov. In conjunction with this initiative, all state agencies have changed or will change their respective domain names from the current state.tx.us address to Texas.gov. Accordingly, all of the Department's e-mail and web page addresses have changed from sml.state.tx.us to sml.texas.gov. As a result, the reference in §79.122 to the Department's e-mail address is now incorrect, and eventually will be disconnected. Although DIR and the Department have implemented the Department's domain name change, all old domain addresses will remain functional for an extended transition period. The proposed amendment would update the reference to the Department's e-mail address.

Douglas B. Foster, Commissioner, Texas Department of Savings and Mortgage Lending, has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering the rule.

Commissioner Foster has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of the proposed amendment will be that the Department's rule will be more accurate. There will be no effect on individuals required to comply with the amendment as proposed. There will be no adverse economic effect on small or micro businesses.

Comments on the proposed amendment may be submitted in writing to Caroline C. Jones, General Counsel, Texas Department of Savings and Mortgage Lending, 2601 North Lamar, Suite 201, Austin, TX 78705 or by e-mail to sm-linfo@sml.state.tx.us within 30 days of this publication in the *Texas Register*.

The amendment is proposed under Texas Finance Code §11.302, which authorizes the Finance Commission to adopt rules to enforce Title 3 of the Texas Finance Code.

The statutory provisions affected by the proposed amendment are contained in Texas Finance Code, Chapter 13.

§79.122. *Consumer Complaint Procedures.*

(a) (No change.)

(b) Notice of how to file complaints

(1) In order to let its consumers know how to file complaints, state savings banks must use the following notice: The (name of state savings bank) is chartered under the laws of the State of Texas and by state law is subject to regulatory oversight by the Texas Department of Savings and Mortgage Lending. Any consumer wishing to file a complaint against the (name of state savings bank) should contact the Texas Department of Savings and Mortgage Lending through one of the means indicated below: In Person or by U.S. Mail: 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705-4294, Telephone No.: (877) 276-5550, Fax No.: (512) 475-1505, E-mail: sm-linfo@sml.texas.gov [sm-linfo@sml.state.tx.us].

(2) - (4) (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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Douglas B. Foster
Commissioner
Texas Department of Savings and Mortgage Lending
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For further information, please call: (512) 475-1350



CHAPTER 80. TEXAS RESIDENTIAL MORTGAGE LOAN ORIGINATOR REGULATIONS SUBCHAPTER B. PROFESSIONAL CONDUCT 7 TAC §80.9

The Finance Commission of Texas (the Commission), on behalf of the Texas Department of Savings and Mortgage Lending (the Department), proposes to amend 7 TAC §80.9, concerning Required Disclosures. The amended rule is proposed to update Department contact information and to amend the Residential Mortgage Loan Originator Disclosure form to be applicable to license types who, prior to the SAFE Act, were not required to be licensed and in anticipation of the April 1, 2011 change in compensation rules by the Federal Reserve.

Amendments to §80.9 arise from a change in the internet domain name of the Department. In June, 2010, the Department of Information Resources (DIR) unveiled a new official state website, www.Texas.gov. In conjunction with this initiative, all state agencies have changed or will change their respective domain names from the current state.tx.us address to Texas.gov. Accordingly, all of the Department's e-mail and web page addresses have changed from sml.state.tx.us to sml.texas.gov.

As a result, the reference in §80.9 to the Department's website address and e-mail address is now incorrect, and eventually will be disconnected. Although DIR and the Department have implemented the Department's domain name change, all old domain addresses will remain functional for an extended transition period. The proposed amendment would update the reference to the Department's website address and e-mail address.

The amendment amends the Residential Mortgage Loan Originator Disclosure form to be applicable to license types who, prior to the SAFE Act, were not required to be licensed and in anticipation of the April 1, 2011 change in compensation rules by the Federal Reserve.

Douglas B Foster, Commissioner, Texas Department of Savings and Mortgage Lending, has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering the rule.

Commissioner Foster has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of the proposed amendment will be that the Department's rule will be more accurate. There will be no effect on individuals required to comply with the amendments as proposed. There will be no adverse economic effect on small or micro businesses.

Comments on the proposed amendment may be submitted in writing to Caroline C. Jones, General Counsel, Texas Department of Savings and Mortgage Lending, 2601 North Lamar, Suite 201, Austin, TX 78705 or by e-mail to sm-linfo@sml.state.tx.us within 30 days of this publication in the *Texas Register*.

The amended rule is proposed under Finance Code §11.306, which authorizes the Finance Commission to adopt mortgage broker rules as provided by Chapter 156 of the Act, and under Finance Code §156.102, which authorizes the Finance Commission, upon consultation with the commissioner to adopt rules necessary for the intent of or to ensure compliance with the Act.

Finance Code, §156.004 is affected by the proposed amendment.

§80.9. *Required Disclosures.*

(a) (No change.)

(b) In order to let its consumers know how to file complaints and to inform them of the Mortgage Broker Recovery Fund, Residential Mortgage Loan Originators must include the following notice in the disclosure required by subsection (a) of this section:

Figure: 7 TAC §80.9(b)

~~Figure: 7 TAC §80.9(b)~~

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

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

Filed with the Office of the Secretary of State on February 18, 2011.

TRD-201100704

Douglas B. Foster
Commissioner

Texas Department of Savings and Mortgage Lending
Earliest possible date of adoption: April 3, 2011
For further information, please call: (512) 475-1350



PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 83. CONSUMER LOANS

SUBCHAPTER J. DUTIES AND AUTHORITY OF AUTHORIZED LENDERS

7 TAC §83.831

The Finance Commission of Texas (commission) proposes amendments to 7 TAC §83.831, concerning Approval of Electronic Recordkeeping Systems.

In general, the purpose of the amendments to §83.831 is to clarify the software review process conducted by the Office of Consumer Credit Commissioner (OCCC), one of the commission agencies. These revisions are in response to a finding in an audit of OCCC examination procedures. The suggested changes will provide conformance to the agency's current practices and are mostly technical in nature.

The OCCC circulated a draft of these revisions to interested stakeholders. In response to the agency's circulation of the draft, the agency received early or pre-comments prior to the original presentation of the rule to the commission. The OCCC believes that the informal comments received and the participation of stakeholders in the rulemaking process has greatly benefited the resulting proposal. This proposal incorporates some of the industry's input that serves to refine the amendments in certain areas.

The use of the term "reviewed" as opposed to an "approved" non-proprietary software system is proposed. The terminology change to "reviewed" is contained throughout the amendments in order to more appropriately reflect the OCCC's regulatory role concerning software systems. While the OCCC reviews non-proprietary software systems for compliance with the law and directs licensees to perform necessary corrections, licensees maintain responsibility to periodically check their software systems for accuracy and to seek updates to those systems. In other words, the OCCC's review of a non-proprietary system at one point in time does not provide any sort of waiver of the licensee's responsibility. Thus, the agency will continue to conduct the same review of non-proprietary software systems as it has done in the past; however, the proposed "review" language more accurately describes the responsibilities of both parties with regard to those systems.

The last two sentences of §83.831(a) are proposed for deletion, as much of this language is being relocated to new subsection (b). Subsection (b) specifically relates to the software review for licensees under Texas Finance Code, Chapter 342, Subchapters E and F. Section 83.831(b) requires these licensees to use a reviewed software system, maintain a manual recordkeeping system in compliance with §83.828, or use a proprietary software system not sold or distributed to other licensees aside from affiliates. The latter two options for a manual system or proprietary software system have been relocated from subsection (a).

New subsection (b) of §83.831 continues by stating that a list of reviewed non-proprietary software systems will be maintained on the OCCC's website, which places this agency policy into regulation. The final sentence of §83.831(b) has been carried over from subsection (a) and continues the requirement that licensees provide documentation to explain how required information is maintained within the system.

Section 83.831(c) has been added and states that Chapter 342, Subchapter G licensees (secondary mortgage lenders) are not required to submit electronic recordkeeping systems for review. These systems are reviewed during the course of the examination process.

Technical corrections have been made to proposed subsection (d) (current subsection (b)) to maintain consistent language and provide clarification. In addition, new paragraph (3) outlines the responsibility for filing non-proprietary software systems. Proposed §83.831(d)(3) states that while a non-proprietary software vendor may make the filing on behalf of a licensee, the licensee is still responsible to ensure review of the system prior to use. Additionally, in proposed subsections (d), (e), and (f), descriptive taglines have been added for clarity and formatting purposes, along with the relettering of these subsections.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for state or local government as a result of administering the rule.

Commissioner Pettijohn also has determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of the changes will be that the commission's rules will conform to current practice, will be more easily understood by licensees required to comply with the rules, and will be more easily enforced. There is no anticipated cost to persons who are required to comply with the amendments as proposed. There is no anticipated adverse economic effect on small or micro businesses. There will be no effect on individuals required to comply with the amendments as proposed.

Comments on the proposed amendments may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to laurie.hobbs@occc.state.tx.us. To be considered, a written comment must be received on or before the 31st day after the date the proposal is published in the *Texas Register*. At the conclusion of the 31st day after the proposal is published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

The amendments are proposed under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 grants the commission the authority to adopt rules to enforce the consumer loan chapter.

The statutory provisions affected by the amendments are contained in Texas Finance Code, Chapter 342.

§83.831. *Review [Approval] of Electronic Recordkeeping Systems and Optical Imaging Systems.*

(a) Generally. Records and accounting systems maintained in whole or in part by electronic systems must contain the equivalent information as required in §83.828 and §83.829 of this title (relating to Files and Records Required (Subchapter E and F Lenders) and Files and Records Required (Subchapter G Lenders)). ~~An approved soft-~~

~~ware system must be used unless a manual system that complies with §83.828 and §83.829 of this title is used or a licensee is using a proprietary electronic software system that is not sold or distributed to other licensees. A licensee must provide documentation of the system to the commissioner that explains how the required information is maintained within the system.]~~

(b) Software review for Chapter 342, Subchapter E or F licensees. A licensee making, transacting, or negotiating consumer loans subject to Texas Finance Code, Chapter 342, Subchapter E or F must use a reviewed software system unless the licensee utilizes either a manual recordkeeping system that complies with §83.828 of this title or a proprietary software system that is not sold or distributed to other licensees, unless the other licensees are affiliates of the licensee operating the proprietary system. A list of reviewed non-proprietary software systems that may be used by licensees will be maintained on the Office of Consumer Credit Commissioner's website. A licensee or software vendor must provide documentation of the non-proprietary software system to the commissioner that explains how the required information is maintained within the system.

(c) Software review for Chapter 342, Subchapter G licensees. A licensee making, transacting, or negotiating secondary mortgage loans subject to Texas Finance Code, Chapter 342, Subchapter G will not have to submit its electronic recordkeeping system for review.

(d) ~~(b)~~ Non-proprietary software system [Approval] documentation.

(1) Required information. A licensee or software vendor seeking a review ~~[approval]~~ of a non-proprietary software system must make available a complete and detailed written description of the system proposed to be utilized, including:

- (A) a statement specifying whether the system will be used in its entirety;
- (B) operating manuals;
- (C) instructions;
- (D) a copy of the software to be used; and
- (E) a full description of backup systems in place that will ensure business continuity and the protection of the data.

(2) Amendments. Any amendment or change to a non-proprietary software system is required to meet the minimum reporting requirements as established by this section.

(3) Responsibility for filing non-proprietary software system. A non-proprietary software vendor may make a filing on behalf of a licensee; however, it is the licensee's responsibility to ensure that the non-proprietary software system was reviewed prior to utilizing the system.

(e) ~~(c)~~ Compliance. If an examination of the system demonstrates that the required records are not being maintained appropriately, the commissioner may disapprove the use of the system. A licensee will have 90 days to bring the electronic system into compliance.

(f) ~~(d)~~ Optical imaging systems. Records may be retained and stored using optical image storage media, provided the following requirements are satisfied:

- (1) The optical image storage must be nonerasable "write once, read many" ("WORM") that does not allow changes to the stored document or record;
- (2) The stored document or record is made or preserved as part of and in the regular course of business;

(3) The custodian of the record is able to identify the stored document or record, the mode of its preparation, and the mode of storing it on the optical image storage system;

(4) The optical image storage system contains a reliable indexing system that provides ready access to a desired document or record, appropriate quality control of the storage process to ensure the quality of imaged documents or records, and date-ordered arrangement of stored documents or records to assure a consistent and logical flow of paperwork to preclude unnecessary search time;

(5) The original documents must be maintained for one year after the date of the loan. If a licensee assigns loans to another authorized lender and no longer services the loans, the licensee who sold the loans to another lender is no longer required to maintain the original documents for the transferred loans; however, the licensee must either maintain photocopies of the original form documents for one year or enter into an agreement with the authorized lender acquiring the loans to provide access to the original form documents for a period of one year. The optical imaged records must be maintained for the entire required retention period; and

(6) A licensee must maintain at the licensee's office a method of viewing documents or records stored pursuant to this section. A licensee must provide a hard copy of any document or record requested by the OCCC.

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 February 18, 2011.

TRD-201100700

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Earliest possible date of adoption: April 3, 2011

For further information, please call: (512) 936-7621



CHAPTER 85. RULES OF OPERATION FOR PAWNSHOPS

SUBCHAPTER D. OPERATION OF PAWNSHOPS

7 TAC §85.402

The Finance Commission of Texas (commission) proposes amendments to 7 TAC §85.402, concerning Recordkeeping.

In general, the purpose of the amendments to §85.402 is to clarify the software review process conducted by the Office of Consumer Credit Commissioner (OCCC), one of the commission agencies. These revisions are in response to a finding in an audit of OCCC examination procedures. The suggested changes will provide conformance to the agency's current practices and are mostly technical in nature.

The OCCC circulated a draft of these revisions to interested stakeholders. In response to the agency's circulation of the draft, the agency received early or pre-comments prior to the original presentation of the rule to the commission. The OCCC believes that the informal comments received and the participation of stakeholders in the rulemaking process has greatly benefited

the resulting proposal. This proposal incorporates some of the industry's input that serves to refine the amendments in certain areas.

The use of the term "reviewed" as opposed to an "approved" non-proprietary software system is proposed. The terminology change to "reviewed" is contained throughout the amendments in order to more appropriately reflect the OCCC's regulatory role concerning software systems. While the OCCC reviews non-proprietary software systems for compliance with the law and directs licensees to perform necessary corrections, licensees maintain responsibility to periodically check their software systems for accuracy and to seek updates to those systems. In other words, the OCCC's review of a non-proprietary system at one point in time does not provide any sort of waiver of the licensee's responsibility. Thus, the agency will continue to conduct the same review of non-proprietary software systems as it has done in the past; however, the proposed "review" language more accurately describes the responsibilities of both parties with regard to those systems.

Much of the language in proposed §85.402(d) has been continued from the current rule, but for better clarity and compliance with *Texas Register* guidelines, the entire subsection is being proposed for deletion and replaced with new language. Section 85.402(d) requires licensees to use a reviewed software system, maintain a manual recordkeeping system in compliance with subsection (f), or use a proprietary software system not sold or distributed to other licensees aside from affiliates. The latter two options for a manual system or proprietary software system have been maintained from current subsection (d). Additionally, the concept that all systems in place on the effective date of the rule do not have to resubmit the system to the agency has also been continued from the current rule.

Proposed subsection (d) of §85.402 contains a statement regarding a list of reviewed non-proprietary software systems being maintained on the OCCC's website, which places this agency policy into regulation. The final sentence of proposed §85.402(d) requires that licensees provide documentation to explain how required information is maintained within the system.

Technical corrections have been made to subsection (e) to maintain consistent terminology and provide clarification. In addition, paragraph (4) of subsection (e), relating to removal of a system from the agency's list, has been proposed for deletion and replacement with new language. In addition to the continued use of parallel phrasing to provide consistency, the changes to §85.402(e)(4) allow a pawnbroker or vendor time to make corrections prior to removal from the list, if the additional time will not harm pledgors.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for state or local government as a result of administering the rule.

Commissioner Pettijohn also has determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of the changes will be that the commission's rules will conform to current practice, will be more easily understood by licensees required to comply with the rules, and will be more easily enforced. There is no anticipated cost to persons who are required to comply with the amendments as proposed. There is no anticipated adverse economic effect on small or micro businesses. There will be no effect on individuals required to comply with the amendments as proposed.

Comments on the proposed amendments may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to laurie.hobbs@occc.state.tx.us. To be considered, a written comment must be received on or before the 31st day after the date the proposal is published in the *Texas Register*. At the conclusion of the 31st day after the proposal is published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

The amendments are proposed under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §371.006 authorizes the commission to adopt rules for enforcement of the Texas Pawnshop Act (Chapter 371).

The statutory provisions affected by the amendments are contained in Texas Finance Code, Chapter 371.

§85.402. *Recordkeeping.*

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

(d) Recordkeeping systems. A licensee must use a reviewed software system unless the licensee utilizes either a manual system that complies with subsection (f) of this section or a proprietary software system that is not sold or distributed to other licensees, unless the other licensees are affiliates of the licensee operating the proprietary system. All reviewed software systems in place on the effective date of this rule are not required to submit for re-review. A list of reviewed non-proprietary software systems that may be used by licensees will be maintained on the Office of Consumer Credit Commissioner's website. A licensee or the software vendor must provide documentation of the non-proprietary software system to the commissioner that explains how the required information provided by subsection (e) of this section is maintained within the system.

~~(d) Recordkeeping systems. An approved software system must be used unless a manual system that complies with subsection (f) of this section is used. All systems in place on the effective date of this rule are not required to submit to reapproval.~~

(e) System [Approval] documentation.

(1) Required information. A licensee or vendor seeking review ~~[approval]~~ of a system must make available a complete and detailed written description of the system proposed to be utilized, including:

(A) - (E) (No change.)

(2) (No change.)

(3) Who must file. A non-proprietary software [private] vendor may make a filing on behalf of a pawnbroker. It is the pawnbroker's responsibility, however, to ensure the system was reviewed [approval is received] before utilizing the system.

(4) Removal of reviewed status for non-proprietary software systems. The commissioner may remove a software vendor's name from the list of Reviewed Non-Proprietary Software Systems upon finding the system does not provide information as anticipated at the time of the review or does not comply with this section. Prior to the removal of the reviewed status for a non-proprietary software system, a pawnbroker or software vendor will be granted a reasonable time to make corrective modifications if it can be shown that the granting of time will not be detrimental to pledgors. Upon withdrawal of the system from the reviewed list, the use of the system must cease.

~~[(4) Withdrawal of approval by commissioner. The commissioner may withdraw approval upon finding the system does not provide information as anticipated at the time of the approval or does not comply with this section. Upon withdrawal of approval, the use of the system must cease unless the commissioner grants time to make modifications. Reasonable time to make modifications will be granted if it can be shown that the granting of time will not be detrimental to pledgors.]~~

(f) - (g) (No change.)

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

Filed with the Office of the Secretary of State on February 18, 2011.

TRD-201100701

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Earliest possible date of adoption: April 3, 2011

For further information, please call: (512) 936-7621



TITLE 13. CULTURAL RESOURCES

PART 2. TEXAS HISTORICAL COMMISSION

CHAPTER 15. ADMINISTRATION OF FEDERAL PROGRAMS

13 TAC §15.6

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

The Texas Historical Commission proposes the repeal of §15.6, concerning Rules and Procedures for Certified Local Governments. New §15.6, concerning Rules and Procedures for Certified Local Governments, which will replace the repealed section, is contemporaneously proposed in this issue of the *Texas Register*.

The purpose of the repeal is to implement changes made to allow adoption of a significantly revised rule on the same subject.

Mark Wolfe, Executive Director, has determined that for the first five-year period the repeal of the rule is in effect there will be no fiscal implications for state or local government.

Mr. Wolfe has also determined that for each year of the first five years the repeal of the rule is in effect the public benefit anticipated as a result of the repeal and replacement of the existing rule will be an increase in the number and impact of potentially important preservation projects that are eligible for grants under the Texas Certified Local Government program. Additionally, Mr. Wolfe has determined that there will be no effect on small or micro businesses or individuals.

Comments on the proposal may be submitted to Mark Wolfe, Executive Director, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711. Comments will be accepted for 60 days

after publication in the *Texas Register*. Under federal requirements, the public comment period is required to be 60 days, and, accordingly, an additional 30 days will be allowed for comments following the 30-day comment period.

The repeal of this section is proposed under §442.005(q), of the Texas Government Code, which provides the Texas Historical Commission with the authority to promulgate rules and conditions to reasonably effect the purposes of this chapter.

This repeal implements §442.005(e) and §442.0155 of the Texas Government Code. No other statutes, articles, or codes are affected by this repeal.

§15.6. Rules and Procedures for Certified Local Governments.

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 February 15, 2011.

TRD-201100613

Mark Wolfe

Executive Director

Texas Historical Commission

Proposed date of adoption: May 3, 2011

For further information, please call: (512) 463-2192



13 TAC §15.6

The Texas Historical Commission proposes new §15.6, concerning Rules and Procedures for Certified Local Governments. The repeal of current §15.6, concerning Rules and Procedures for Certified Local Governments, is contemporaneously proposed in this issue of the *Texas Register*.

The Texas Historical Commission's Certified Local Government (CLG) Program is part of the agency's responsibilities in administering the National Historic Preservation Act of 1966. Administration of the program is required to comply with the Act and with the Historic Preservation Fund Grants Manual, which stipulates the minimum requirements for administration and operation of the program. States may amplify minimum CLG requirements so long as any additional requirements are consistent with the Act and applicable federal regulations, including 36 CFR Part 61.

The purposes of the CLG program are: 1) to ensure the broadest possible participation of local governments in the national historic preservation program while maintaining standards consistent with the National Historic Preservation Act and the Secretary of the Interior's "Standards and Guidelines for Archeology and Historic Preservation;" 2) to enrich, develop, and help maintain local historic preservation programs in cooperation and coordination with the SHPO; and 3) to provide financial and technical assistance to further these purposes.

Section 15.6 is proposed to allow for better organized and streamlined procedures that should promote a broader range of interest and participation in the CLG program in Texas. The proposed rule removes a significant amount of information already codified in the federal regulations. In addition, the proposed §15.6 eliminates requirements that may be more restrictive than those of federal regulations. The proposed §15.6 includes language that provides the framework but is less

specific to day to day operations of the program which can be more effectively conveyed through guidance materials such as applications and handbooks. Utilizing guidance materials rather than administrative code will allow better flexibility and efficiency for the program and CLGs to adapt to current needs including scheduling and application procedures.

The proposed rule simplifies the detailed requirements for achieving and maintaining CLG status found in the previous version of the rule to agency guidance materials and procedures to allow more flexibility for the state and CLGs to effectively achieve program goals.

The proposed rule eliminates the specific procedures for the state and CLG to process nominations to the National Register of Historic Places for properties within a CLG as these procedures are already codified in federal regulations.

The proposed rule specifically eliminates the requirement for local matching of CLG grant funds on a 50-50 basis as a match is not required by federal regulations. The new rule will allow the agency to establish, lower, or waive match requirements to encourage more effective and competitive applications from CLGs. Other detailed requirements for the grants such as application deadlines, schedules, and meeting requirements have been removed by the proposed rule and will be outlined in the application and grant materials. Obsolete terminology, steps, and meetings have been eliminated from the rule.

The proposed §15.6 requires that the agency evaluate each CLG no less than once every four years in conformance with federal regulations rather than every three years as in the previous version of the rule. The new rule will allow greater efficiency given an increase in the number of CLGs since the adoption of the previous rule.

Mark Wolfe, Executive Director, has determined that for the first five-year period the new rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Wolfe has also determined that for each year of the first five years the new rule is in effect the public benefit anticipated will be an increase in the number and impact of potentially important preservation projects that are eligible for grants under the Texas CLG program. Additionally, Mr. Wolfe has determined that there will be no effect on small or micro businesses or individuals.

Comments on the proposal may be submitted to Mark Wolfe, Executive Director, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711. Comments will be accepted for 60 days after publication in the *Texas Register*. Under federal requirements, the public comment period is required to be 60 days, and, accordingly, an additional 30 days will be allowed for comments following the 30-day comment period.

The new section is proposed under §442.005(q) of the Texas Government Code, which provides the Texas Historical Commission with the authority to promulgate rules and conditions to reasonably affect the purposes of this chapter.

The proposed new section implements §442.005(e) and §442.0155 of the Texas Government Code. No other statutes, articles, or codes are affected by this new section.

§15.6. Rules and Procedures for Certified Local Governments.

(a) Purpose. The Certified Local Government program (hereinafter referred to as the Program) is part of the Historic Preservation Fund (HPF) grants-in-aid program authorized by the National Historic

Preservation Act of 1966 (16 U.S.C. 470 et seq.) (also referred to as the Act), to provide a statutory framework for national historic preservation partnerships among federal, state, tribal, and local governments in the identification, evaluation, designation, and protection of historic and prehistoric properties. The Texas State Historic Preservation Office (Texas SHPO), within the Texas Historical Commission (THC), coordinates the state's preservation responsibilities as set out in the Act. Local participation in this Program is provided to local governments that are certified by the Secretary of the United States Department of the Interior and administered by the National Park Service (NPS) through the Program.

(1) Section 101(c)(1) of the Act directs the Texas State Historic Preservation Officer (SHPO) and the Secretary of the Department of the Interior through the NPS to participate in the partnership and Title 36, Code of the Federal Regulations, Part 61.6 lists requirements that the SHPO and local governments are to meet.

(2) These requirements are also found in the Historic Preservation Fund (HPF) grants manual, as published and amended by the NPS.

(b) City participation. City governments may participate in the Program through compliance with the Texas Local Government Code, Chapter 211, which empowers municipal governments to adopt zoning regulation for the purpose of promoting the public health, safety, morals, or general welfare and protecting and preserving places and areas of historical, cultural, or architectural importance and significance. Section 214.00111 of the Texas Local Government Code also provides additional authority specifically to participating local governments for the purpose of preserving substandard buildings that are historic properties.

(c) County participation. Counties may participate in the Program through compliance with the Texas Local Government Code, Chapter 318, which empowers the Commissioners Court of each county to appoint a County Historical Commission, for the purpose of initiating and conducting programs suggested by the Court and the THC for the preservation of the county's historic cultural resources that are consistent with the statewide preservation plan.

(d) Indian Tribe participation. Indian tribes that effectively meet the definition of a local government in Section 301(3) of the Act may participate in the Program in accordance with Section 101(d)(1)(A) of the Act to establish a program and promulgate regulations to assist Indian tribes in preserving their historic properties.

(e) Eligibility for certification of Local Governments. Any city, county, township, municipality, Indian tribe, or any other general-purpose political subdivision of Texas may apply to become a Certified Local Government (CLG) by submitting a Request for Certification to the Texas SHPO. To be considered eligible, the local government must meet the minimum Program requirements pursuant to Title 36, Code of the Federal Regulations, Part 61, and outlined in the HPF grants manual. The Texas SHPO may expand or prescribe additional state requirements and responsibilities. The following are the minimum federal requirements local governments must satisfy for certification:

(1) Enforces appropriate State or local legislation for the designation and protection of historic properties;

(2) Has established an adequate and qualified historic preservation review commission by State or local legislation;

(3) Maintains a system for the survey and inventory of historic properties;

(4) Provides for adequate public participation in the local historic preservation program, including the process of recommending properties for nomination to the National Register; and

(5) Satisfactorily performs the responsibilities delegated to it under the Act.

(f) Certification process of Certified Local Governments. All eligible local governments must submit a completed Request for Certification and Certification Agreement, signed by the chief elected official of the applying local government, along with all necessary requested materials, to the THC. A Request for Certification may be submitted at any time throughout the year. Texas SHPO shall have a reasonable opportunity to review and respond to the request. If the local government meets the minimum requirements for participation in the Program, the Texas SHPO shall forward the Request for Certification and Certification Agreement to the NPS with a recommendation for certification. The NPS shall make the final certification decision. The local government shall become a CLG upon receipt of written notice from the NPS, completing the certification process.

(g) Annual requirements for Certified Local Governments for participation in Program. All annual requirements for participation and Program procedures are found in the Texas SHPO's Certified Local Government Preservation Handbook (Handbook), which shall be provided to each CLG upon its certification into the Program.

(1) The Texas SHPO shall provide a 60-day period for all CLGs to comment on any proposed significant changes or amendments to the Handbook, keep a record of its consultation process, and follow the procedures outlined in the HPF grant manual.

(2) Written notification from the Texas SHPO to the CLGs is sufficient for minor changes, technical corrections and amendments to the Handbook.

(h) Monitoring and evaluating CLG performance. The Texas SHPO shall monitor the performance of each CLG on an on-going basis to assure that CLGs fulfill their responsibilities in accordance with the requirements found in the Handbook and the terms of the Certification Agreement. In addition the performance of the CLG shall be reviewed by the Texas SHPO on the basis of recognized standards for historic preservation activities. These standards shall include but not be limited to the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation; National Register criteria for evaluation in reviewing the local government's role in the National Register Program; state survey grant requirements in assessing the local government's execution of the survey requirement of the CLG regulations; and the Secretary of the Interior's Standards for the Treatment of Historic Properties in considering the local government's role in overseeing work to locally designated landmarks and districts. Evaluation of the performance of the CLG shall include the ability to maintain an adequate and qualified commission as called for in subsection (e)(2) of this section with all commission members having a demonstrated interest, competence, or knowledge in historic preservation.

(1) The Texas SHPO shall conduct a full evaluation of each CLG no less than once every four years. Written procedures and standards for evaluating CLG performance in program operation and administration shall be included in the Certification Agreement and in the Handbook.

(2) The Texas SHPO shall promptly notify the CLG in writing of the results of the evaluation and must maintain written records for all evaluations.

(3) If the performance of a CLG is unsatisfactory, the Texas SHPO shall suggest ways the CLG can improve its performance and stipulate a time frame in which the improvements are to be made.

(i) Decertification. If the Texas SHPO determines that a CLG has not complied with the terms of the Certification Agreement, and/or has not improved sufficiently within a reasonable stipulated time frame as recommended during the monitoring process, the Texas SHPO must notify the CLG in writing of its intent to recommend decertification to the NPS. During the decertification process:

(1) The Texas SHPO may begin procedures for the suspension and termination of financial assistance to that local governmental entity in accordance with the HPF grants manual.

(2) Recertification shall not be permitted until all previously identified inadequacies have been addressed to the satisfaction of the Texas SHPO, and a demonstrated effort has been made by the local government to strengthen local preservation efforts above and beyond previous attempts.

(j) Funds for Certified Local Governments. The Act provides that at least 10 percent of the Texas SHPO's annual HPF allocation be made available in the form of sub grants to CLGs to provide financial assistance for local activities associated with the identification, evaluation, designation, and protection of historic and prehistoric properties. Although each CLG is eligible to receive funds from this allocation, there is no requirement that funds be awarded to all local governments that are eligible. All procedures, terms and conditions for application to receive a sub grant as part of the Program shall be found in the Handbook.

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 February 15, 2011.

TRD-201100614

Mark Wolfe

Executive Director

Texas Historical Commission

Proposed date of adoption: May 3, 2011

For further information, please call: (512) 463-2192



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 89. ADAPTATIONS FOR SPECIAL POPULATIONS

SUBCHAPTER A. GIFTED/TALENTED EDUCATION

19 TAC §89.4

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

The State Board of Education (SBOE) proposes the repeal of §89.4, concerning gifted and talented education. The section addresses fiscal responsibility for gifted and talented education funds. The proposed repeal would remove the rule relating to the indirect cost allotment for gifted and talented education from 19 TAC Chapter 89 since the maximum allowable indirect cost ref-

erenced in 19 TAC Chapter 105, Foundation School Program, Subchapter B, Use of State Funds, §105.11, Maximum Allowable Indirect Cost, includes in rule the indirect cost for gifted and talented education.

Through 19 TAC §105.11, the SBOE establishes the maximum percentage of Foundation School Program (FSP) special allotments under the Texas Education Code (TEC), Chapter 42, Subchapter C, that school districts may expend for indirect costs for specific programs. Previously, no more than 15% of FSP special allotments could be expended on indirect costs related to the following programs: compensatory education, gifted and talented education, bilingual education and special language programs, and special education.

House Bill (HB) 3646, 81st Texas Legislature, 2009, amended the TEC, §42.152(c), to provide that up to 45%, rather than 15%, may be expended from FSP special allotments for indirect costs. HB 3646 also added the TEC, §42.1541, directing the SBOE to by rule increase the indirect cost allotments established for special education, compensatory education, bilingual education, and career and technical education programs. Accordingly, the SBOE took action to amend 19 TAC §105.11 at the November 2009 meeting to increase the percent allowances for indirect costs for FSP special allotments. The adopted amendment, which took effect December 31, 2009, included an increase of the indirect cost for gifted and talented education.

The proposed repeal of 19 TAC §89.4 would remove the provision relating to fiscal responsibility from 19 TAC Chapter 89, Subchapter A, to avoid potential conflict with the governing rule, 19 TAC §105.11, if future revisions to statute would change the allowable percentage for indirect costs for special program allotments.

At the January 2011 meeting, the SBOE approved the proposed repeal of 19 TAC Chapter 89, Adaptations for Special Populations, Subchapter A, Gifted/Talented Education, §89.4, Fiscal Responsibility, for first reading and filing authorization.

The proposed repeal would have no procedural and reporting implications. The proposed repeal would have no locally maintained paperwork requirements.

Anita Givens, associate commissioner for standards and programs, has determined that for the first five-year period the proposed repeal is in effect there will be no additional costs for state or local government as a result of enforcing or administering the repeal.

Ms. Givens has determined that for each year of the first five years the proposed repeal is in effect the public benefit anticipated as a result of enforcing the proposed repeal would be the removal of an outdated provision related to the use of state funds for special program allotments that is already adopted elsewhere in SBOE rule. There is no anticipated economic cost to persons who are required to comply with the proposed repeal.

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

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

under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register*.

The repeal is proposed under the Texas Education Code (TEC), §42.156(b), which authorizes the SBOE to by rule establish how each district must account for the expenditure of state funds allocated for the gifted and talented education program.

The repeal implements the Texas Education Code, §42.156(b).

§89.4. *Fiscal Responsibility.*

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 February 18, 2011.

TRD-201100695

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Earliest possible date of adoption: April 3, 2011

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



CHAPTER 126. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR TECHNOLOGY APPLICATIONS

The State Board of Education (SBOE) proposes amendments to §§126.1, 126.11, and 126.21 and new §§126.5-126.7, 126.13-126.16, 126.31-126.50, and 126.61-126.64, concerning Texas essential knowledge and skills (TEKS) for technology applications. The sections establish the TEKS for technology applications courses in elementary, middle school, and high school. The proposed rule actions would establish revised technology applications TEKS for implementation beginning with the 2012-2013 school year.

Applications for appointment to technology applications TEKS review committees were accepted by the Texas Education Agency (TEA) in September and October 2009. Applications were provided to SBOE members at the November 2009 meeting, nominations were made in November and December 2009, and individuals were notified of their appointment to serve on a committee in March 2010. Also at the November 2009 meeting, SBOE members were asked to begin appointing experts to review the technology applications TEKS.

At the March 2010 meeting, staff presented the Committee on Instruction with draft guidelines for the technology applications expert reviewers. The committee had no additional guidance for staff regarding the expert reviewers. In April 2010, three expert reviewers appointed by the SBOE reviewed the current technology applications TEKS. Committees were convened in early May 2010 to begin review of the technology applications TEKS. The review committees met again in July 2010 to complete initial drafts of the recommended revisions to the technology applications TEKS. Initial drafts of the recommendations for revisions to the technology applications TEKS were posted on the TEA website for informal feedback.

Initial drafts were also reviewed by the three expert reviewers. During the September 2010 Committee of the Full Board meet-

ing, expert reviewers and representatives from the TEKS review committees provided invited testimony.

The technology applications TEKS review committees met again in October 2010 to review feedback and complete recommendations for revisions to the technology applications TEKS. The recommendations from the review committees were provided to the Committee of the Full Board at the November 2010 meeting. At that time, the committee requested that the expert reviewers review the recommendations a final time and submit their written feedback to the board in advance of the January 2011 SBOE meeting.

At the January 2011 meeting, the SBOE approved for first reading and filing authorization the proposed revisions to 19 TAC Chapter 126, Subchapters A-C, and proposed new 19 TAC Chapter 126, Subchapter D.

The proposed rule actions would have no new procedural and reporting implications. The proposed rule actions would have no new locally maintained paperwork requirements.

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

There are fiscal implications for the TEA in the first two years to reimburse committee members for travel to review and revise the technology applications TEKS. There are also implications for the TEA to create professional development to help teachers and administrators understand the revisions to the TEKS. For fiscal year (FY) 2011, the estimated cost to the TEA for reviewing and revising the TEKS is \$38,000. The estimated cost for professional development is \$1 million for FY 2012 and \$125,000 for FYs 2013-2015.

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

Ms. Givens has determined that for each year of the first five years the proposed rule actions are in effect the public benefit anticipated as a result of enforcing the rule actions would be better alignment of the TEKS and coordination of the standards with the adoption of instructional materials. There is no anticipated economic cost to persons who are required to comply with the proposed rule actions.

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

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to rules@tea.state.tx.us or faxed to (512) 463-0028. The State Board of Education will hold a public hearing in conjunction with the regularly scheduled April 2011 State Board of Education meeting. Information about the public hearing will be available at <http://www.tea.state.tx.us/index4.aspx?id=3785> by March 23, 2011.

SUBCHAPTER A. ELEMENTARY

19 TAC §§126.1, 126.5 - 126.7

The amendment and new sections are proposed under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; and §28.002, which authorizes the SBOE to by rule identify the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating textbooks and addressed on the assessment instruments.

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

§126.1. Implementation of Texas Essential Knowledge and Skills for Technology Applications, Elementary.

The provisions of §126.2 and §126.3 of this subchapter shall be superseded by §126.6 and §126.7 of this subchapter beginning with the 2012-2013 school year [effective September 1, 1998].

§126.5. Implementation of Texas Essential Knowledge and Skills for Technology Applications, Elementary, Beginning with School Year 2012-2013.

The provisions of §126.6 and §126.7 of this subchapter shall be implemented by school districts beginning with the 2012-2013 school year.

§126.6. Technology Applications, Kindergarten-Grade 2, Beginning with School Year 2012-2013.

(a) Introduction.

(1) The technology applications curriculum has six strands based on the National Educational Technology Standards for Students (NETS•S) and performance indicators developed by the International Society for Technology in Education (ISTE): creativity and innovation; communication and collaboration; research and information fluency; critical thinking, problem solving, and decision making; digital citizenship; and technology operations and concepts.

(2) Through the study of the six strands in technology applications, students use creative thinking and innovative processes to construct knowledge and develop products. Students communicate and collaborate both locally and globally to reinforce and promote learning. Research and information fluency includes the acquisition and evaluation of digital content. Students develop critical-thinking, problem-solving, and decision-making skills by collecting, analyzing, and reporting digital information. Students practice digital citizenship by behaving responsibly while using technology tools and resources. Through the study of technology operations and concepts, students learn technology related terms, concepts, and data input strategies.

(3) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(b) Knowledge and skills.

(1) Creativity and innovation. The student uses creative thinking and innovative processes to construct knowledge and develop digital products. The student is expected to:

- (A) apply prior knowledge to develop new ideas, products, and processes;
- (B) create original products using a variety of resources;
- (C) explore virtual environments, simulations, and models to enhance learning;
- (D) create and execute steps to accomplish a task; and

(E) evaluate and modify steps to accomplish a task.

(2) Communication and collaboration. The student collaborates and communicates both locally and globally using digital tools and resources to reinforce and promote learning. The student is expected to:

(A) use communication tools that allow for anytime, anywhere access to interact, collaborate, or publish with peers locally and globally;

(B) participate in digital environments to develop cultural understanding by interacting with learners of multiple cultures;

(C) format digital information, including font attributes, color, white space, graphics, and animation, for a defined audience and communication medium; and

(D) select, store, and deliver products using a variety of media, formats, devices, and virtual environments.

(3) Research and information fluency. The student acquires and evaluates digital content. The student is expected to:

(A) use search strategies to access information to guide inquiry;

(B) use research skills to build a knowledge base regarding a topic, task, or assignment; and

(C) evaluate the usefulness of acquired digital content.

(4) Critical thinking, problem solving, and decision making. The student applies critical-thinking skills to solve problems, guide research, and evaluate projects using digital tools and resources. The student is expected to:

(A) identify what is known and unknown and what needs to be known regarding a problem and explain the steps to solve the problem;

(B) evaluate the appropriateness of a digital tool to achieve the desired product;

(C) evaluate products prior to final submission; and

(D) collect, analyze, and represent data using tools such as word processing, spreadsheets, graphic organizers, charts, multimedia, simulations, and models.

(5) Digital citizenship. The student practices safe, responsible, legal, and ethical behavior while using digital tools and resources. The student is expected to:

(A) adhere to acceptable use policies reflecting appropriate behavior in a digital environment;

(B) comply with acceptable digital safety rules, fair use guidelines, and copyright laws; and

(C) practice the responsible use of digital information regarding intellectual property, including software, text, images, audio, and video.

(6) Technology operations and concepts. The student demonstrates knowledge and appropriate use of technology systems, concepts, and operations. The student is expected to:

(A) use appropriate terminology regarding basic hardware, software applications, programs, networking, virtual environments, and emerging technologies;

(B) use appropriate digital tools and resources for storage, access, file management, and collaboration;

(C) perform basic software application functions, including opening an application and creating, modifying, printing, and saving files;

(D) use a variety of input, output, and storage devices;

(E) use proper keyboarding techniques such as ergonomically correct hand and body positions appropriate for Kindergarten-Grade 2 learning;

(F) demonstrate keyboarding techniques for operating the alphabetic, numeric, punctuation, and symbol keys appropriate for Kindergarten-Grade 2 learning; and

(G) use the help feature online and in applications.

§126.7. Technology Applications, Grades 3-5, Beginning with School Year 2012-2013.

(a) Introduction.

(1) The technology applications curriculum has six strands based on the National Educational Technology Standards for Students (NETS•S) and performance indicators developed by the International Society for Technology in Education (ISTE): creativity and innovation; communication and collaboration; research and information fluency; critical thinking, problem solving, and decision making; digital citizenship; and technology operations and concepts.

(2) Through the study of the six strands in technology applications, students use creative thinking and innovative processes to construct knowledge and develop products. Students communicate and collaborate both locally and globally to reinforce and promote learning. Research and information fluency includes the acquisition and evaluation of digital content. Students develop critical-thinking, problem-solving, and decision-making skills by collecting, analyzing, and reporting digital information. Students practice digital citizenship by behaving responsibly while using technology tools and resources. Through the study of technology operations and concepts, students learn technology related terms, concepts, and data input strategies.

(3) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(b) Knowledge and skills.

(1) Creativity and innovation. The student uses creative thinking and innovative processes to construct knowledge and develop digital products. The student is expected to:

(A) create original products using a variety of resources;

(B) analyze trends and forecast possibilities, developing steps for the creation of an innovative process or product; and

(C) use virtual environments to explore systems and issues.

(2) Communication and collaboration. The student collaborates and communicates both locally and globally using digital tools and resources to reinforce and promote learning. The student is expected to:

(A) draft, edit, and publish products in different media individually and collaboratively;

(B) use font attributes, color, white space, and graphics to ensure that products are appropriate for multiple communication media, including monitor display, web, and print;

(C) collaborate effectively through personal learning communities and social environments;

(D) select and use appropriate collaboration tools;

(E) evaluate the product for relevance to the assignment or task; and

(F) perform basic software application functions, including opening applications and creating, modifying, printing, and saving files.

(3) Research and information fluency. The student acquires and evaluates digital content. The student is expected to:

(A) use various search strategies such as keyword(s); the Boolean identifiers *and*, *or*, and *not*; and other strategies appropriate to specific search engines;

(B) collect and organize information from a variety of formats, including text, audio, video, and graphics;

(C) validate and evaluate the relevance and appropriateness of information; and

(D) acquire information appropriate to specific tasks.

(4) Critical thinking, problem solving, and decision making. The student researches and evaluates projects using digital tools and resources. The student is expected to:

(A) identify information regarding a problem and explain the steps toward the solution;

(B) collect, analyze, and represent data to solve problems using tools such as word processing, databases, spreadsheets, graphic organizers, charts, multimedia, simulations, and models;

(C) evaluate student-created products through self and peer review for relevance to the assignment or task; and

(D) evaluate technology tools applicable for solving problems.

(5) Digital citizenship. The student practices safe, responsible, legal, and ethical behavior while using digital tools and resources. The student is expected to:

(A) adhere to acceptable use policies reflecting positive social behavior in the digital environment;

(B) respect the intellectual property of others;

(C) abide by copyright law and the Fair Use Guidelines for Educational Multimedia;

(D) protect and honor the individual privacy of oneself and others;

(E) follow the rules of digital etiquette;

(F) practice safe, legal, and responsible use of information and technology; and

(G) comply with fair use guidelines and digital safety rules.

(6) Technology operations and concepts. The student demonstrates knowledge and appropriate use of technology systems, concepts, and operations. The student is expected to:

(A) demonstrate an understanding of technology concepts, including terminology for the use of operating systems, network systems, virtual systems, and learning systems appropriate for Grades 3-5 learning;

(B) manipulate files using appropriate naming conventions; file management, including folder structures and tagging; and file conversions;

(C) navigate systems and applications accessing peripherals both locally and remotely;

(D) troubleshoot minor technical problems with hardware and software using available resources such as online help and knowledge bases; and

(E) use proper touch keyboarding techniques and ergonomic strategies such as correct hand and body positions and smooth and rhythmic keystrokes.

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

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SUBCHAPTER B. MIDDLE SCHOOL

19 TAC §§126.11, 126.13 - 126.16

The amendment and new sections are proposed under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; and §28.002, which authorizes the SBOE to by rule identify the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating textbooks and addressed on the assessment instruments.

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

§126.11. Implementation of Texas Essential Knowledge and Skills for Technology Applications, Middle School.

The provisions of §126.12 of this subchapter shall be superseded by §§126.14-126.16 of this subchapter beginning with the 2012-2013 school year [~~supersede §75.51 of this title (relating to Computer Literacy) beginning September 1, 1998~~].

§126.13. Implementation of Texas Essential Knowledge and Skills for Technology Applications, Middle School, Beginning with School Year 2012-2013.

The provisions of §§126.14-126.16 of this subchapter shall be implemented by school districts beginning with the 2012-2013 school year.

§126.14. Technology Applications, Grade 6, Beginning with School Year 2012-2013.

(a) General requirements. Districts have the flexibility of offering technology applications in a variety of settings. Districts are encouraged to offer technology applications in all content areas. This content may also be offered in a specific class while being integrated in all content areas.

(b) Introduction.

(1) The technology applications curriculum has six strands based on the National Educational Technology Standards for Students

(NETS•S) and performance indicators developed by the International Society for Technology in Education (ISTE): creativity and innovation; communication and collaboration; research and information fluency; critical thinking, problem solving, and decision making; digital citizenship; and technology operations and concepts.

(2) Through the study of technology applications, students make informed decisions by understanding current and emerging technologies, including technology systems, appropriate digital tools, and personal learning networks. As competent researchers and responsible digital citizens, students use creative and computational thinking to solve problems while developing career and college readiness skills.

(3) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) Creativity and innovation. The student uses creative thinking and innovative processes to construct knowledge, generate new ideas, and create products. The student is expected to:

(A) identify, create, and use files in various formats such as text, raster and vector graphics, video, and audio files;

(B) create original works as a means of personal or group expression;

(C) explore complex systems or issues using models, simulations, and new technologies to make predictions, modify input, and review results; and

(D) discuss trends and possible outcomes.

(2) Communication and collaboration. The student collaborates and communicates both locally and globally to reinforce and promote learning. The student is expected to:

(A) participate in personal learning networks to collaborate with peers, experts, or others using digital tools such as blogs, wikis, audio/video communication, or other emerging technologies;

(B) communicate effectively with multiple audiences using a variety of media and formats; and

(C) read and discuss examples of technical writing.

(3) Research and information fluency. The student acquires, analyzes, and manages content from digital resources. The student is expected to:

(A) create a research plan to guide inquiry;

(B) discuss and use various search strategies, including keyword(s) and Boolean operators;

(C) select and evaluate various types of digital resources for accuracy and validity; and

(D) process data and communicate results.

(4) Critical thinking, problem solving, and decision making. The student makes informed decisions by applying critical-thinking and problem-solving skills. The student is expected to:

(A) identify and define relevant problems and significant questions for investigation;

(B) plan and manage activities to develop a solution or complete a project;

(C) collect and analyze data to identify solutions and make informed decisions;

(D) use multiple processes and diverse perspectives to explore alternative solutions;

(E) make informed decisions and support reasoning;
and

(F) transfer current knowledge to the learning of newly encountered technologies.

(5) Digital citizenship. The student practices safe, responsible, legal, and ethical behavior while using technology tools and resources. The student is expected to:

(A) understand copyright principles, including current laws, fair use guidelines, creative commons, open source, and public domain;

(B) practice ethical acquisition of information and standard methods for citing sources;

(C) practice safe and appropriate online behavior, personal security guidelines, digital identity, digital etiquette, and acceptable use of technology; and

(D) understand the negative impact of inappropriate technology use, including online bullying and harassment, hacking, intentional virus setting, invasion of privacy, and piracy such as software, music, video, and other media.

(6) Technology operations and concepts. The student demonstrates a thorough understanding of technology concepts, systems, and operations. The student is expected to:

(A) define and use current technology terminology appropriately;

(B) select technology tools based on licensing, application, and support;

(C) identify, understand, and use operating systems;

(D) understand and use software applications, including selecting and using software for a defined task;

(E) identify, understand, and use hardware systems;

(F) understand troubleshooting techniques such as restarting systems, checking power issues, resolving software compatibility, verifying network connectivity, connecting to remote resources, and modifying display properties;

(G) demonstrate effective file management strategies such as file naming conventions, location, backup, hierarchy, folder structure, file conversion, tags, labels, and emerging digital organizational strategies;

(H) discuss how changes in technology throughout history have impacted various areas of study;

(I) discuss the relevance of technology as it applies to college and career readiness, life-long learning, and daily living;

(J) use a variety of local and remote input sources;

(K) use keyboarding techniques and ergonomic strategies while building speed and accuracy;

(L) create and edit files with productivity tools, including:

(i) a word processing document using digital typography standards such as page layout, font formatting, paragraph formatting, and list attributes;

(ii) a spreadsheet workbook using basic computational and graphic components such as basic formulas and functions, data types, and chart generation;

(iii) a database by manipulating components such as entering and searching for relevant data; and

(iv) a digital publication using relevant publication standards;

(M) plan and create non-linear media projects using graphic design principles; and

(N) integrate two or more technology tools to create a new digital product.

§126.15. Technology Applications, Grade 7, Beginning with School Year 2012-2013.

(a) General requirements. Districts have the flexibility of offering technology applications in a variety of settings. Districts are encouraged to offer technology applications in all content areas. This content may also be offered in a specific class while being integrated in all content areas.

(b) Introduction.

(1) The technology applications curriculum has six strands based on the National Educational Technology Standards for Students (NETS•S) and performance indicators developed by the International Society for Technology in Education (ISTE): creativity and innovation; communication and collaboration; research and information fluency; critical thinking, problem solving, and decision making; digital citizenship; and technology operations and concepts.

(2) Through the study of technology applications, students make informed decisions by understanding current and emerging technologies, including technology systems, appropriate digital tools, and personal learning networks. As competent researchers and responsible digital citizens, students use creative and computational thinking to solve problems while developing career and college readiness skills.

(3) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) Creativity and innovation. The student uses creative thinking and innovative processes to construct knowledge, generate new ideas, and create products. The student is expected to:

(A) identify, create, and use files in various formats such as text, raster and vector graphics, video, and audio files;

(B) create and present original works as a means of personal or group expression;

(C) explore complex systems or issues using models, simulations, and new technologies to make predictions, modify input, and review results; and

(D) discuss trends and make predictions.

(2) Communication and collaboration. The student collaborates and communicates both locally and globally to reinforce and promote learning. The student is expected to:

(A) create personal learning networks to collaborate and publish with peers, experts, or others using digital tools such as blogs, wikis, audio/video communication, or other emerging technologies;

(B) communicate effectively with multiple audiences using a variety of media and formats; and

(C) create products using technical writing strategies.

(3) Research and information fluency. The student acquires, analyzes, and manages content from digital resources. The student is expected to:

(A) create a research plan to guide inquiry;

(B) use and evaluate various search strategies, including keyword(s) and Boolean operators;

(C) select and evaluate various types of digital resources for accuracy and validity; and

(D) process data and communicate results.

(4) Critical thinking, problem solving, and decision making. The student makes informed decisions by applying critical-thinking and problem-solving skills. The student is expected to:

(A) identify and define relevant problems and significant questions for investigation;

(B) plan and manage activities to develop a solution or complete a project;

(C) collect and analyze data to identify solutions and make informed decisions;

(D) use multiple processes and diverse perspectives to explore alternative solutions;

(E) make informed decisions and support reasoning; and

(F) transfer current knowledge to the learning of newly encountered technologies.

(5) Digital citizenship. The student practices safe, responsible, legal, and ethical behavior while using technology tools and resources. The student is expected to:

(A) understand and practice copyright principles, including current laws, fair use guidelines, creative commons, open source, and public domain;

(B) practice ethical acquisition of information and standard methods for citing sources;

(C) practice and explain safe and appropriate online behavior, personal security guidelines, digital identity, digital etiquette, and acceptable use of technology; and

(D) understand the negative impact of inappropriate technology use, including online bullying and harassment, hacking, intentional virus setting, invasion of privacy, and piracy such as software, music, video, and other media.

(6) Technology operations and concepts. The student demonstrates a thorough understanding of technology concepts, systems, and operations. The student is expected to:

(A) define and use current technology terminology appropriately;

(B) select and apply technology tools based on licensing, application, and support;

(C) identify, understand, and use operating systems;

(D) understand and use software applications, including selecting and using software for a defined task;

(E) identify, understand, and use hardware systems;

(F) understand troubleshooting techniques such as restarting systems, checking power issues, resolving software compatibility, verifying network connectivity, connecting to remote resources, and modifying display properties;

(G) implement effective file management strategies such as file naming conventions, location, backup, hierarchy, folder structure, file conversion, tags, labels, and emerging digital organizational strategies;

(H) explain how changes in technology throughout history have impacted various areas of study;

(I) explain the relevance of technology as it applies to college and career readiness, life-long learning, and daily living;

(J) use a variety of local and remote input sources;

(K) use keyboarding techniques and ergonomic strategies while building speed and accuracy;

(L) create and edit files with productivity tools, including:

(i) a word processing document using digital typography standards such as page layout, font formatting, paragraph formatting, and list attributes;

(ii) a spreadsheet workbook using advanced computational and graphic components such as complex formulas, basic functions, data types, and chart generation;

(iii) a database by manipulating components such as defining fields, entering data, and designing layouts appropriate for reporting; and

(iv) a digital publication using relevant publication standards;

(M) plan and create non-linear media projects using graphic design principles; and

(N) integrate two or more technology tools to create a new digital product.

§126.16. Technology Applications, Grade 8, Beginning with School Year 2012-2013.

(a) General requirements. Districts have the flexibility of offering technology applications in a variety of settings. Districts are encouraged to offer technology applications in all content areas. This content may also be offered in a specific class while being integrated in all content areas.

(b) Introduction.

(1) The technology applications curriculum has six strands based on the National Educational Technology Standards for Students (NETS•S) and performance indicators developed by the International Society for Technology in Education (ISTE): creativity and innovation; communication and collaboration; research and information fluency; critical thinking, problem solving, and decision making; digital citizenship; and technology operations and concepts.

(2) Through the study of technology applications, students make informed decisions by understanding current and emerging technologies, including technology systems, appropriate digital tools, and personal learning networks. As competent researchers and responsible digital citizens, students use creative and computational thinking to solve problems while developing career and college readiness skills.

(3) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) Creativity and innovation. The student uses creative thinking and innovative processes to construct knowledge, generate new ideas, and create products. The student is expected to:

(A) identify, create, and use files in various formats, including text, raster and vector graphics, video, and audio files;

(B) create, present, and publish original works as a means of personal or group expression;

(C) explore complex systems or issues using models, simulations, and new technologies to develop hypotheses, modify input, and analyze results; and

(D) analyze trends and forecast possibilities.

(2) Communication and collaboration. The student collaborates and communicates both locally and globally to reinforce and promote learning. The student is expected to:

(A) create and manage personal learning networks to collaborate and publish with peers, experts, or others using digital tools such as blogs, wikis, audio/video communication, or other emerging technologies;

(B) communicate effectively with multiple audiences using a variety of media and formats; and

(C) create and publish products using technical writing strategies.

(3) Research and information fluency. The student acquires, analyzes, and manages content from digital resources. The student is expected to:

(A) create a research plan to guide inquiry;

(B) plan, use, and evaluate various search strategies, including keyword(s) and Boolean operators;

(C) select and evaluate various types of digital resources for accuracy and validity; and

(D) process data and communicate results.

(4) Critical thinking, problem solving, and decision making. The student makes informed decisions by applying critical-thinking and problem-solving skills. The student is expected to:

(A) identify and define relevant problems and significant questions for investigation;

(B) plan and manage activities to develop a solution or complete a project;

(C) collect and analyze data to identify solutions and make informed decisions;

(D) use multiple processes and diverse perspectives to explore alternative solutions;

(E) make informed decisions and support reasoning;
and

(F) transfer current knowledge to the learning of newly encountered technologies.

(5) Digital citizenship. The student practices safe, responsible, legal, and ethical behavior while using technology tools and resources. The student is expected to:

(A) understand, explain, and practice copyright principles, including current laws, fair use guidelines, creative commons, open source, and public domain;

(B) practice and explain ethical acquisition of information and standard methods for citing sources;

(C) practice and explain safe and appropriate online behavior, personal security guidelines, digital identity, digital etiquette, and acceptable use of technology; and

(D) understand and explain the negative impact of inappropriate technology use, including online bullying and harassment, hacking, intentional virus setting, invasion of privacy, and piracy such as software, music, video, and other media.

(6) Technology operations and concepts. The student demonstrates a thorough understanding of technology concepts, systems, and operations. The student is expected to:

(A) define and use current technology terminology appropriately;

(B) evaluate and select technology tools based on licensing, application, and support;

(C) identify, understand, and use operating systems;

(D) understand and use software applications, including selecting and using software for a defined task;

(E) identify, understand, and use hardware systems;

(F) apply troubleshooting techniques, including restarting systems, checking power issues, resolving software compatibility, verifying network connectivity, connecting to remote resources, and modifying display properties;

(G) implement effective file management strategies such as file naming conventions, location, backup, hierarchy, folder structure, file conversion, tags, labels, and emerging digital organizational strategies;

(H) evaluate how changes in technology throughout history have impacted various areas of study;

(I) evaluate the relevance of technology as it applies to college and career readiness, life-long learning, and daily living;

(J) use a variety of local and remote input sources;

(K) use keyboarding techniques and ergonomic strategies while building speed and accuracy;

(L) create and edit files with productivity tools, including:

(i) a word processing document using digital typography standards such as page layout, font formatting, paragraph formatting, mail merge, and list attributes;

(ii) a spreadsheet workbook using advanced computational and graphic components such as complex formulas, advanced functions, data types, and chart generation;

(iii) a database by manipulating components, including defining fields, entering data, and designing layouts appropriate for reporting; and

(iv) a digital publication using relevant publication standards and graphic design principles;

(M) plan and create non-linear media projects using graphic design principles; and

(N) integrate two or more technology tools to create a new digital product.

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 February 18, 2011.

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Director, Policy Coordination

Texas Education Agency

Earliest possible date of adoption: April 3, 2011

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SUBCHAPTER C. HIGH SCHOOL

19 TAC §§126.21, 126.31 - 126.50

The amendment and new sections are proposed under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to by rule identify the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating textbooks and addressed on the assessment instruments; and §28.025, which authorizes the SBOE to by rule determine curriculum requirements for the minimum, recommended, and advanced high school programs that are consistent with the required curriculum under §28.002.

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

§126.21. Implementation of Texas Essential Knowledge and Skills for Technology Applications, High School.

The provisions of §§126.22-126.29 of this subchapter shall be superseded by §§126.32-126.50 of this subchapter beginning with the 2012-2013 school year [supersede §75.123 of this title (relating to Computer Science) beginning September 1, 1998].

§126.31. Implementation of Texas Essential Knowledge and Skills for Technology Applications, High School, Beginning with School Year 2012-2013.

The provisions of §§126.32-126.50 of this subchapter shall be implemented by school districts beginning with the 2012-2013 school year.

§126.32. Fundamentals of Computer Science (One Credit), Beginning with School Year 2012-2013.

(a) General requirements. Students shall be awarded one credit for successful completion of this course. The prerequisite for this course is proficiency in the knowledge and skills relating to Technology Applications, Grades 6-8. This course is recommended for students in Grades 9-12.

(b) Introduction.

(1) The technology applications curriculum has six strands based on the National Educational Technology Standards for Students (NETS•S) and performance indicators developed by the International Society for Technology in Education (ISTE): creativity and innovation; communication and collaboration; research and information fluency; critical thinking, problem solving, and decision making; digital citizenship; and technology operations and concepts.

(2) Fundamentals of Computer Science is intended as a first course for those students just beginning the study of computer science. Students will learn about the computing tools that are used every day. Students will foster their creativity and innovation through opportunities to design, implement, and present solutions to real-world problems. Students will collaborate and use computer science concepts to access, analyze, and evaluate information needed to solve problems. Students will learn the problem-solving and reasoning skills that are the foundation of computer science. By using computer science knowledge and skills that support the work of individuals and groups in solving problems, students will select the technology appropriate for the task, synthesize knowledge, create solutions, and evaluate the results. Students will learn digital citizenship by researching current laws and regulations and by practicing integrity and respect. Students will gain an understanding of the principles of computer science through the study of technology operations and concepts.

(3) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) Creativity and innovation. The student develops products and generates new understanding by extending existing knowledge. The student is expected to:

(A) investigate and explore various career opportunities within the computer science field and report findings through various media;

(B) create and publish interactive stories, games, and animations;

(C) create and publish interactive animations;

(D) create algorithms for the solution of various problems;

(E) create web pages using a mark-up language;

(F) use the Internet to create and publish solutions; and

(G) design creative and effective user interfaces.

(2) Communication and collaboration. The student communicates and collaborates with peers to contribute to his or her own learning and the learning of others. The student is expected to:

(A) seek and respond to advice from peers and professionals in evaluating problem solutions;

(B) debug and solve problems using reference materials and effective strategies; and

(C) publish information in a variety of ways such as print, monitor display, web pages, and video.

(3) Research and information fluency. The student locates, analyzes, processes, and organizes data. The student is expected to:

(A) construct appropriate electronic search strategies; and

(B) use a variety of resources, including other subject areas, together with various productivity tools to gather authentic data as a basis for individual and group programming projects.

(4) Critical thinking, problem solving, and decision making. The student uses appropriate strategies to analyze problems and design algorithms. The student is expected to:

(A) demonstrate the ability to insert applets into web pages;

- (B) find, download, and insert scripting code into web pages to enhance interactivity;
 - (C) understand binary representation of data in computer systems, perform conversions between decimal and binary number systems, and count in binary number systems;
 - (D) read and define a problem's description, purpose, and goals;
 - (E) demonstrate coding proficiency in a contemporary programming language by developing solutions that create stories, games, and animations;
 - (F) choose, identify, and use the appropriate data type to properly represent data in a problem solution;
 - (G) demonstrate an understanding of and use variables within a programmed story, game, or animation;
 - (H) demonstrate proficiency in the use of arithmetic operators to create mathematical expressions, including addition, subtraction, multiplication, real division, integer division, and modulus division;
 - (I) demonstrate an understanding of and use sequence within a programmed story, game, or animation;
 - (J) demonstrate an understanding of and use conditional statements within a programmed story, game, or animation;
 - (K) demonstrate an understanding of and use iteration within a programmed story, game, or animation;
 - (L) create an interactive story, game, or animation;
 - (M) use random numbers within a programmed story, game, or animation; and
 - (N) test program solutions by investigating valid and invalid data.
- (5) Digital citizenship. The student explores and understands safety, legal, cultural, and societal issues relating to the use of technology and information. The student is expected to:
- (A) discuss copyright laws/issues and model ethical acquisition of digital information by citing sources using established methods;
 - (B) demonstrate proper digital etiquette and knowledge of acceptable use policies when using networks, especially resources on the Internet and on intranets;
 - (C) investigate measures such as passwords or virus detection/prevention to protect computer systems and databases from unauthorized use and tampering;
 - (D) understand the safety risks associated with the use of social networking sites;
 - (E) discuss the impact of computing and computing related advancements on society; and
 - (F) determine the reliability of information available through electronic media.
- (6) Technology operations and concepts. The student understands technology concepts, systems, and operations as they apply to computer science. The student is expected to:
- (A) demonstrate knowledge of the basic computer components, including a central processing unit (CPU), storage, and input/output devices;

- (B) use operating system tools, including appropriate file management;
- (C) demonstrate knowledge and appropriate use of different operating systems;
- (D) demonstrate knowledge and understanding of basic network connectivity;
- (E) describe, compare, and contrast the differences between an application and an operating system; and
- (F) compare, contrast, and appropriately use various input, processing, output, and primary/secondary storage devices.

§126.33. Computer Science I (One-Half to One Credit), Beginning with School Year 2012-2013.

(a) General requirements. Students shall be awarded one-half to one credit for successful completion of this course. The required prerequisite for this course is Algebra I. This course is recommended for students in Grades 9-12.

(b) Introduction.

(1) The technology applications curriculum has six strands based on the National Educational Technology Standards for Students (NETS•S) and performance indicators developed by the International Society for Technology in Education (ISTE): creativity and innovation; communication and collaboration; research and information fluency; critical thinking, problem solving, and decision making; digital citizenship; and technology operations and concepts.

(2) Computer Science I will foster students' creativity and innovation by presenting opportunities to design, implement, and present meaningful programs through a variety of media. Students will collaborate with one another, their instructor, and various electronic communities to solve the problems presented throughout the course. Through data analysis, students will identify task requirements, plan search strategies, and use computer science concepts to access, analyze, and evaluate information needed to solve problems. By using computer science knowledge and skills that support the work of individuals and groups in solving problems, students will select the technology appropriate for the task, synthesize knowledge, create solutions, and evaluate the results. Students will learn digital citizenship by researching current laws and regulations and by practicing integrity and respect. Students will gain an understanding of the principles of computer science through the study of technology operations, systems, and concepts.

(3) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) Creativity and innovation. The student develops products and generates new understandings by extending existing knowledge. The student is expected to:

- (A) participate with electronic communities as a learner, initiator, contributor, and teacher/mentor;
- (B) extend the learning environment beyond the school walls with digital products created to increase teaching and learning in the other subject areas; and
- (C) participate in relevant, meaningful activities in the larger community and society to create electronic projects.

(2) Communication and collaboration. The student communicates and collaborates with peers to contribute to his or her own learning and the learning of others. The student is expected to:

(A) create and properly display meaningful output;

(B) create interactive console display interfaces, with appropriate user prompts, to acquire data from a user;

(C) use Graphical User Interfaces (GUIs) to create interactive interfaces to acquire data from a user and display program results;

(D) write programs with proper programming style to enhance the readability and functionality of the code by using meaningful descriptive identifiers, internal comments, white space, spacing, indentation, and a standardized program style;

(E) improve numeric display by optimizing data visualization;

(F) display simple vector graphics using lines, circles, and rectangles;

(G) display simple bitmap images; and

(H) seek and respond to advice from peers and professionals in evaluating quality and accuracy.

(3) Research and information fluency. The student locates, analyzes, processes, and organizes data. The student is expected to:

(A) use a variety of resources, including foundation and enrichment curricula, to gather authentic data as a basis for individual and group programming projects; and

(B) use various productivity tools to gather authentic data as a basis for individual and group programming projects.

(4) Critical thinking, problem solving, and decision making. The student uses appropriate strategies to analyze problems and design algorithms. The student is expected to:

(A) use program design problem-solving strategies to create program solutions;

(B) define and specify the purpose and goals of solving a problem;

(C) identify the subtasks needed to solve a problem;

(D) identify the data types and objects needed to solve a problem;

(E) identify reusable components from existing code;

(F) design a solution to a problem;

(G) code a solution from a program design;

(H) identify and debug errors;

(I) test program solutions with appropriate valid and invalid test data for correctness;

(J) debug and solve problems using error messages, reference materials, language documentation, and effective strategies;

(K) explore common algorithms, including finding greatest common divisor, finding the biggest number out of three, finding primes, making change, and finding the average;

(L) analyze and modify existing code to improve the underlying algorithm;

(M) create program solutions that exhibit robust behavior by understanding, avoiding, and preventing runtime errors, including division by zero and type mismatch;

(N) select the most appropriate algorithm for a defined problem;

(O) demonstrate proficiency in the use of the arithmetic operators to create mathematical expressions, including addition, subtraction, multiplication, real division, integer division, and modulus division;

(P) create program solutions to problems using available mathematics libraries, including absolute value, round, power, square, and square root;

(Q) develop program solutions that use assignment;

(R) develop sequential algorithms to solve non-branching and non-iterative problems;

(S) develop algorithms to decision-making problems using branching control statements;

(T) develop iterative algorithms and code programs to solve practical problems;

(U) demonstrate proficiency in the use of the relational operators;

(V) demonstrate proficiency in the use of the logical operators; and

(W) generate and use random numbers.

(5) Digital citizenship. The student explores and understands safety, legal, cultural, and societal issues relating to the use of technology and information. The student is expected to:

(A) discuss intellectual property, privacy, sharing of information, copyright laws, and software licensing agreements;

(B) model ethical acquisition and use of digital information;

(C) demonstrate proper digital etiquette, responsible use of software, and knowledge of acceptable use policies;

(D) investigate measures, including passwords and virus detection/prevention, to protect computer systems and databases from unauthorized use and tampering; and

(E) investigate how technology has changed and the social and ethical ramifications of computer usage.

(6) Technology operations, systems, and concepts. The student understands technology concepts, systems, and operations as they apply to computer science. The student is expected to:

(A) compare and contrast types of operating systems, software applications, and programming languages;

(B) demonstrate knowledge of major hardware components, including primary and secondary memory, a central processing unit (CPU), and peripherals;

(C) differentiate among current programming languages, discuss the use of those languages in other fields of study, and demonstrate knowledge of specific programming terminology and concepts;

(D) differentiate between a high-level compiled language and an interpreted language;

(E) understand concepts of object-oriented design;

(F) use local and global scope access variable declarations;

(G) encapsulate data and associated subroutines into an abstract data type;

(H) create subroutines that do not return values with and without the use of arguments and parameters;

(I) create subroutines that return typed values with and without the use of arguments and parameters;

(J) understand and identify the data-binding process between arguments and parameters;

(K) compare objects using reference values and a comparison routine;

(L) understand the binary representation of numeric and nonnumeric data in computer systems;

(M) understand the finite limits of numeric data;

(N) perform numerical conversions between the decimal and binary number systems and count in the binary number system;

(O) choose, identify, and use the appropriate data types for integer, real, and Boolean data when writing program solutions;

(P) demonstrate an understanding of the concept of a variable;

(Q) demonstrate an understanding of and use reference variables for objects;

(R) demonstrate an understanding of how to represent and manipulate text data, including concatenation and other string functions;

(S) demonstrate an understanding of the concept of scope;

(T) identify and use the structured data type of one-dimensional arrays to traverse, search, and modify data;

(U) choose, identify, and use the appropriate data type and structure to properly represent the data in a program problem solution; and

(V) compare and contrast strongly typed and un-typed programming languages.

§126.34. Computer Science II (One Credit), Beginning with School Year 2012-2013.

(a) General requirements. Students shall be awarded one credit for successful completion of this course. The required prerequisites for this course are Algebra I and either Computer Science I or Fundamentals of Computer Science. This course is recommended for students in Grades 11 and 12.

(b) Introduction.

(1) The technology applications curriculum has six strands based on the National Educational Technology Standards for Students (NETS•S) and performance indicators developed by the International Society for Technology in Education (ISTE): creativity and innovation; communication and collaboration; research and information fluency; critical thinking, problem solving, and decision making; digital citizenship; and technology operations and concepts.

(2) Computer Science II will foster students' creativity and innovation by presenting opportunities to design, implement, and present meaningful programs through a variety of media. Students will collaborate with one another, their instructor, and various electronic communities to solve the problems presented throughout the course. Through data analysis, students will identify task requirements, plan search strategies, and use computer science concepts to access, analyze, and evaluate information needed to solve problems. By

using computer science knowledge and skills that support the work of individuals and groups in solving problems, students will select the technology appropriate for the task, synthesize knowledge, create solutions, and evaluate the results. Students will learn digital citizenship by researching current laws and regulations and by practicing integrity and respect. Students will gain an understanding of computer science through the study of technology operations, systems, and concepts.

(3) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) Creativity and innovation. The student develops products and generates new understandings by extending existing knowledge. The student is expected to:

(A) use program design problem-solving strategies to create program solutions;

(B) demonstrate the ability to read and modify large programs, including the design description and process development;

(C) follow the systematic problem-solving process of identifying the specifications of purpose and goals, the data types and objects needed, and the subtasks to be performed;

(D) compare and contrast design methodologies and implementation techniques such as top-down, bottom-up, and black box;

(E) analyze, modify, and evaluate existing code by performing a case study on a large program, including inheritance and black box programming;

(F) identify the data types and objects needed to solve a problem;

(G) choose, identify, and use the appropriate abstract data type, advanced data structure, and supporting algorithms to properly represent the data in a program problem solution;

(H) use object-oriented programming development methodology, data abstraction, encapsulation with information hiding, and procedural abstraction in program development and testing; and

(I) create, edit, and manipulate bitmap images that are used to enhance user interfaces and program functionality.

(2) Communication and collaboration. The student communicates and collaborates with peers to contribute to his or her own learning and the learning of others. The student is expected to:

(A) use the principles of software engineering to work in software design teams, break a problem statement into specific solution requirements, create a program development plan, code part of a solution from a program development plan while a partner codes the remaining part, team test the solution for correctness, and develop presentations to report the solution findings;

(B) create interactive console display interfaces with appropriate user prompts;

(C) create interactive human interfaces to acquire data from a user and display program results using an advanced Graphical User Interface (GUI);

(D) write programs and communicate with proper programming style to enhance the readability and functionality of the code by using meaningful descriptive identifiers, internal comments, white space, indentation, and a standardized program style;

(E) improve data display by optimizing data visualization;

(F) display simple vector graphics to interpret and display program results; and

(G) display simple bitmap images.

(3) Research and information fluency. The student locates, analyzes, processes, and organizes data. The student is expected to:

(A) use local area networks (LANs) and wide area networks (WANs), including the Internet and intranets, in research, file management, and collaboration;

(B) understand programming file structure and file access for required resources;

(C) acquire and process information from text files, including files of known and unknown sizes;

(D) manipulate data structures using string processing;

(E) manipulate data values by casting between data types;

(F) identify and use the structured data type of one-dimensional arrays to traverse, search, modify, insert, and delete data;

(G) identify and use the structured data type of two-dimensional arrays to traverse, search, modify, insert, and delete data; and

(H) identify and use a list object data structure to traverse, search, insert, and delete data.

(4) Critical thinking, problem solving, and decision making. The student uses appropriate strategies to analyze problems and design algorithms. The student is expected to:

(A) develop sequential algorithms using branching control statements, including nested structures, to create solutions to decision-making problems;

(B) develop choice algorithms using selection control statements based on ordinal values;

(C) demonstrate proficiency in the use of short-circuit evaluation;

(D) demonstrate proficiency in the use of Boolean algebra, including De Morgan's Law;

(E) develop iterative algorithms using nested loops;

(F) identify, trace, and appropriately use recursion in programming solutions, including algebraic computations;

(G) design, construct, evaluate, and compare search algorithms, including linear searching and binary searching;

(H) identify, describe, design, create, evaluate, and compare standard sorting algorithms, including selection sort, bubble sort, insertion sort, and merge sort;

(I) measure time/space efficiency of various sorting algorithms;

(J) compare and contrast search and sort algorithms, including linear, quadratic, and recursive strategies, for time/space efficiency;

(K) analyze algorithms using "big-O" notation for best, average, and worst-case data patterns;

(L) develop algorithms to solve various problems, including factoring, summing a series, finding the roots of a quadratic equation, and generating Fibonacci numbers;

(M) test program solutions by investigating boundary conditions; testing classes, methods, and libraries in isolation; and performing stepwise refinement;

(N) identify and debug compile, syntax, runtime, and logic errors;

(O) compare and contrast algorithm efficiency by using informal runtime comparisons, exact calculation of statement execution counts, and theoretical efficiency values using "big-O" notation, including worst-case, best-case, and average-case time/space analysis;

(P) demonstrate the ability to count, convert, and perform mathematical operations in the binary and hexadecimal number systems;

(Q) demonstrate knowledge of the maximum integer boundary, minimum integer boundary, imprecision of real number representations, and round-off errors;

(R) create program solutions to problems using the mathematics library class;

(S) use random algorithms to create simulations that model the real world;

(T) identify, understand, and create class specifications and relationships among classes, including composition and inheritance relationships;

(U) understand and explain object relationships among defined classes, abstract classes, and interfaces;

(V) create object-oriented definitions using class declarations, variable declarations, constant declarations, method declarations, parameter declarations, and interface declarations;

(W) create robust classes that encapsulate data and the methods that operate on that data and incorporate overloading to enrich the object's behavior;

(X) design and implement a set of interactive classes;

(Y) design, create, and evaluate multiclass programs that use abstract classes and interfaces;

(Z) understand and implement a student-created class hierarchy;

(AA) extend, modify, and improve existing code using inheritance;

(BB) create adaptive behaviors, including overloading, using polymorphism;

(CC) understand and use reference variables for object and string data types;

(DD) understand and implement access scope modifiers;

(EE) understand and demonstrate how to compare objects;

(FF) duplicate objects using the appropriate deep and/or shallow copy;

(GG) define and implement abstract classes and interfaces in program problem solutions;

(HH) apply functional decomposition to a program solution;

(II) create simple and robust objects from class definitions through instantiation;

(JJ) apply class membership of variables, constants, and methods;

(KK) examine and mutate the properties of an object using accessors and modifiers;

(LL) understand and implement a composite class; and

(MM) design and implement an interface.

(5) Digital citizenship. The student explores and understands safety, legal, cultural, and societal issues relating to the use of technology and information. The student is expected to:

(A) model ethical acquisition and use of digital information;

(B) demonstrate proper digital etiquette, responsible use of software, and knowledge of acceptable use policies; and

(C) investigate digital rights management.

(6) Technology operations and concepts. The student understands technology concepts, systems, and operations as they apply to computer science. The student is expected to:

(A) compare and contrast types of operating systems, software applications, hardware platforms, and programming languages;

(B) demonstrate knowledge of major hardware components, including primary and secondary memory, a central processing unit (CPU), and peripherals;

(C) demonstrate knowledge of major networking components, including hosts, servers, switches, and routers;

(D) demonstrate knowledge of computer communication systems, including single-user, peer-to-peer, workgroup, client-server, and networked;

(E) demonstrate knowledge of computer addressing systems, including Internet Protocol (IP) address and Media Access Control (MAC) address; and

(F) differentiate among the categories of programming languages, including machine, assembly, high-level compiled, high-level interpreted, and scripted.

§126.35. Computer Science III (One Credit), Beginning with School Year 2012-2013.

(a) General requirements. Students shall be awarded one credit for successful completion of this course. The required prerequisite for this course is Computer Science II, Advanced Placement (AP) Computer Science, or International Baccalaureate (IB) Computer Science. This course is recommended for students in Grades 11 and 12.

(b) Introduction.

(1) The technology applications curriculum has six strands based on the National Educational Technology Standards for Students (NETS•S) and performance indicators developed by the International Society for Technology in Education (ISTE): creativity and innovation; communication and collaboration; research and information fluency; critical thinking, problem solving, and decision making; digital citizenship; and technology operations and concepts.

(2) Computer Science III will foster students' creativity and innovation by presenting opportunities to design, implement, and present meaningful programs through a variety of media. Students will collaborate with one another, their instructor, and various electronic communities to solve the problems presented throughout the course. Through data analysis, students will identify task requirements, plan search strategies, and use computer science concepts to access, analyze, and evaluate information needed to solve problems. By using computer science knowledge and skills that support the work of individuals and groups in solving problems, students will select the technology appropriate for the task, synthesize knowledge, create solutions, and evaluate the results. Students will learn digital citizenship by researching current laws and regulations and by practicing integrity and respect. Students will gain an understanding of advanced computer science data structures through the study of technology operations, systems, and concepts.

(3) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) Creativity and innovation. The student develops products and generates new understandings by extending existing knowledge. The student is expected to:

(A) apply data abstraction and encapsulation to manage complexity;

(B) implement a student-created class hierarchy;

(C) read and write class specifications using visual organizers, including Unified Modeling Language;

(D) use black box programming methodology;

(E) design, create, and use interfaces to apply protocols;

(F) identify, describe, design, create, evaluate, and compare standard sorting algorithms that perform sorting operations on data structures, including quick sort and heap sort;

(G) select, identify, and use the appropriate abstract data type, advanced data structure, and supporting algorithms to properly represent the data in a program problem solution; and

(H) manage complexity by using a systems approach.

(2) Communication and collaboration. The student communicates and collaborates with peers to contribute to his or her own learning and the learning of others. The student is expected to:

(A) use local area networks (LANs) and wide area networks (WANs), including the Internet and intranets, in research, file management, and collaboration;

(B) create interactive human interfaces to acquire data from a user and display program results using an advanced Graphical User Interface (GUI);

(C) write programs and communicate with proper programming style to enhance the readability and functionality of the code by using meaningful descriptive identifiers, internal comments, white space, indentation, and a standardized program style; and

(D) work in software design teams.

(3) Research and information fluency. The student locates, analyzes, processes, and organizes data. The student is expected to:

(A) identify and use the structured data type of arrays of objects to traverse, search, modify, insert, and delete data;

(B) identify and use two-dimensional ragged arrays to traverse, search, modify, insert, and delete data;

(C) identify and use a list object data structure, including vector, to traverse, search, insert, and delete object data;

(D) understand and trace a linked-list data structure;

(E) create program solutions using a linked-list data structure, including unordered single, ordered single, double, and circular linked;

(F) understand composite data structures, including a linked list of a linked list;

(G) understand and create program solutions using stacks, queues, trees, heaps, priority queues, graph theory, and enumerated data types;

(H) understand and create program solutions using sets, including HashSet and TreeSet;

(I) understand and create program solutions using maps, including HashMap and TreeMap; and

(J) write and modify text file data.

(4) Critical thinking, problem solving, and decision making. The student uses appropriate strategies to analyze problems and design algorithms. The student is expected to:

(A) develop choice algorithms using selection control statements, including break, label, and continue;

(B) demonstrate proficiency in the use of the bitwise operators;

(C) develop iterative algorithms using do-while loops;

(D) demonstrate proficiency in the use of the ternary operator;

(E) create program solutions that use iterators;

(F) identify, trace, and appropriately use recursion;

(G) understand and create program solutions using hashing;

(H) perform pattern recognition using regular expressions;

(I) explore common algorithms, including matrix addition and multiplication, fractals, Towers of Hanoi, and magic square;

(J) create program solutions that exhibit robust behavior by understanding and avoiding runtime errors and handling anticipated errors;

(K) understand object-oriented design concepts of inner classes, outer classes, and anonymous classes;

(L) use object reference scope identifiers, including null, this, and super;

(M) provide object functionality to primitive data types;

(N) write program assumptions in the form of assertions;

(O) write a Boolean expression to test a program assertion; and

(P) construct assertions to make explicit program invariants.

(5) Digital citizenship. The student explores and understands safety, legal, cultural, and societal issues relating to the use of technology and information. The student is expected to:

(A) model ethical acquisition and use of digital information; and

(B) demonstrate proper digital etiquette, responsible use of software, and knowledge of acceptable use policies.

(6) Technology operations and concepts. The student understands technology concepts, systems, and operations as they apply to computer science. The student is expected to:

(A) compare and contrast high-level programming languages;

(B) create a small workgroup network;

(C) create and apply a basic network addressing scheme; and

(D) create discovery programs in a low-level language, high-level language, and scripting language.

§126.36. Digital Forensics (One-Half to One Credit), Beginning with School Year 2012-2013.

(a) General requirements. Students shall be awarded one-half to one credit for successful completion of this course. The prerequisite for this course is proficiency in the knowledge and skills relating to Technology Applications, Grades 6-8. This course is recommended for students in Grades 9-12.

(b) Introduction.

(1) The technology applications curriculum has six strands based on the National Educational Technology Standards for Students (NETS•S) and performance indicators developed by the International Society for Technology in Education (ISTE): creativity and innovation; communication and collaboration; research and information fluency; critical thinking, problem solving, and decision making; digital citizenship; and technology operations and concepts.

(2) Digital Forensics will foster students' creativity and innovation by presenting opportunities to investigate simulations and case studies of crimes, reconstructing computer security incidents, troubleshooting operational problems, and recovering from accidental system damage. Students will collaborate to develop forensic techniques to assist with computer security incident response. Students will learn methods to identify, collect, examine, and analyze data while preserving the integrity of the information and maintaining a strict chain of custody for data. Students will solve problems as they study the application of science to the law. Students will learn digital citizenship by researching current laws and regulations and by practicing integrity and respect. Students will gain an understanding of computing and networking systems that transmit or store electronic data.

(3) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) Creativity and innovation. The student develops products and generates new understanding by extending existing knowledge. The student is expected to:

(A) explain the need for digital forensics, staffing requirements, and team interactions;

(B) develop policies to define staff roles and responsibilities;

(C) develop guidelines, procedures, and recommendations for digital forensics tool use; and

(D) investigate simulations and case studies of crimes to reconstruct computer security incidents.

(2) Communication and collaboration. The student communicates and collaborates with peers to contribute to his or her own learning and the learning of others. The student is expected to:

(A) describe the characteristics and behaviors of a given system;

(B) justify and describe the impact of selecting a given system;

(C) apply effective teamwork practices;

(D) collaborate with multiple participants;

(E) document use, functionality, and implementation;

(F) seek and respond to advice from peers and professionals; and

(G) describe considerations required for incident response.

(3) Research and information fluency. The student locates, analyzes, processes, and organizes data. The student is expected to:

(A) identify possible sources of data;

(B) acquire data;

(C) analyze and report data collected;

(D) collect files by copying files from media while maintaining data file integrity;

(E) examine data files by locating files, extracting data, and using a digital forensics toolkit;

(F) examine and analyze operating system data;

(G) collect volatile and non-volatile operating system data;

(H) collect, examine, and analyze application data;

(I) use traffic data sources, including firewalls and routers, packet sniffers and protocol analyzers, intrusion detection systems, remote access, security event management software, and network forensic analysis tools;

(J) describe how a file scan can be accessed and modified;

(K) collect, examine, and analyze data from multiple sources; and

(L) provide examples of how multiple data sources can be used during digital forensics, including investigating worm infections, viruses, and email threats.

(4) Critical thinking, problem solving, and decision making. The student uses appropriate strategies to analyze problems and design algorithms. The student is expected to:

(A) resolve information conflicts and validate information through data acquisition, research, and comparison; and

(B) examine and analyze network traffic data, including identifying events of interest, examining data sources, and identifying attacks.

(5) Digital citizenship. The student explores and understands safety, legal, cultural, and societal issues relating to the use of technology and information. The student is expected to:

(A) identify and use digital information appropriately;

(B) identify and use appropriate methods for citing sources;

(C) identify and discuss intellectual property laws, issues, and use;

(D) identify intellectual property stakeholders and their needs and perspectives;

(E) identify and describe the kinds of crimes investigated by digital forensics specialists;

(F) identify legal, illegal, ethical, and unethical aspects of information gathering;

(G) compare and contrast legal, illegal, ethical, and unethical information gathering methods and identify possible gray areas;

(H) identify and describe ways in which developing laws and guidelines affect digital forensics practices;

(I) identify and describe legal considerations and technical issues related to collecting network traffic data;

(J) identify and describe ways in which technological changes affect applicable laws; and

(K) identify and describe businesses and government agencies that use digital forensics.

(6) Technology operations and concepts. The student understands technology concepts, systems, and operations as they apply to computer science. The student is expected to:

(A) demonstrate knowledge of and appropriately use operating systems, software applications, and communication and networking components;

(B) compare, contrast, and appropriately use various input, processing, output, and primary and secondary storage devices;

(C) make decisions regarding the selection, acquisition, and use of software, including its quality, appropriateness, effectiveness, and efficiency;

(D) demonstrate knowledge of data formats;

(E) demonstrate knowledge of networks, including the Internet, intranets, and extranets;

(F) compare and contrast non-volatile and volatile data;

(G) describe file basics, including file storage, file systems, and other types of storage media;

(H) describe file modification, including access and creation times;

(I) describe operating systems, including terminology and functions;

(J) describe technical procedures related to collecting operating system data;

(K) describe the significance to digital forensics of the Transmission Control Protocol/Internet Protocol (TCP/IP) model, including application, transport, IP, and hardware layers;

(L) describe the function and use of application components, including configurations settings, authentications, logs, application data, supporting files, and application architecture; and

(M) describe the functions and use of application types, including email, web usage, interactive communications, file sharing, document usage, security applications, and data concealment tools.

§126.37. Discrete Mathematics (One-Half to One Credit), Beginning with School Year 2012-2013.

(a) General requirements. Students shall be awarded one-half to one credit for successful completion of this course. The required prerequisite for this course is Algebra II. This course is recommended for students in Grades 11 and 12.

(b) Introduction.

(1) The technology applications curriculum has six strands based on the National Educational Technology Standards for Students (NETS•S) and performance indicators developed by the International Society for Technology in Education (ISTE): creativity and innovation; communication and collaboration; research and information fluency; critical thinking, problem solving, and decision making; digital citizenship; and technology operations and concepts.

(2) Discrete Mathematics provides the tools used in most areas of computer science. Exposure to the mathematical concepts and discrete structures presented in this course is essential in order to provide an adequate foundation for further study. Discrete Mathematics is generally listed as a core requirement for Computer Science majors. Course topics are divided into six areas: functions, relations, and sets; basic logic; proof techniques; counting basics; graphs and trees; and discrete probability. Mathematical topics are interwoven with computer science applications to enhance the students' understanding of the introduced mathematics. Students will develop the ability to see computational problems from a mathematical perspective. Introduced to a formal system (propositional and predicate logic) upon which mathematical reasoning is based, students will acquire the necessary knowledge to read and construct mathematical arguments (proofs), understand mathematical statements (theorems), and use mathematical problem-solving tools and strategies. Students will be introduced to discrete data structures such as sets, relations and discrete functions, and graphs and trees. Students will also be introduced to discrete probability and expectations.

(3) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) Creativity and innovation. The student develops products and generates new understanding by extending existing knowledge. The student is expected to:

(A) model algorithms and real-world situations using formal tools of symbolic logic;

(B) model computer science problems by using graphs and trees; and

(C) calculate the probabilities of events and expectations of random variables for such problems as games of chance.

(2) Communication and collaboration. The student communicates and collaborates with peers to contribute to his or her own learning and the learning of others. The student is expected to:

(A) convert spoken language statements to appropriate statements in propositional logic;

(B) explain basic terminology of functions, relations, and sets;

(C) state the definition of the Master theorem;

(D) use the context of a particular application to interpret the meaning derived when computing the permutations and combinations of a set;

(E) interpret associated operations and terminology in context; and

(F) define and provide examples of logical equivalence, normal forms, validity, and modus ponens/modus tollens.

(3) Research and information fluency. The student locates, analyzes, processes, and organizes data. The student is expected to:

(A) construct truth tables for negation, conjunction, disjunction, implication, biconditional, and bit operators; and

(B) use truth tables to demonstrate propositional relations.

(4) Critical thinking, problem solving, and decision making. The student uses appropriate strategies to analyze problems and design algorithms. The student is expected to:

(A) analyze practical examples using appropriate models of sets, functions, and relations;

(B) compare and contrast tautology, contradiction, and contingency as related to propositional equivalences;

(C) compare and contrast examples and use of counterexamples, contrapositions, and contradictions;

(D) describe the appropriate use and limitations of predicate logic;

(E) apply formal methods of symbolic propositional and predicate logic;

(F) use formal logic proofs and logical reasoning to solve problems;

(G) outline the basic structure of proofs, including direct, indirect, contradiction, induction, existence, and constructive proofs;

(H) compare and contrast the types of problems best satisfied by direct, indirect, contradiction, induction, existence, and constructive proofs;

(I) relate mathematical induction to recursion and recursively defined structures;

(J) compare and contrast weak, strong, and structural induction, including when each is most appropriately used and examples of each;

(K) compare and contrast dependent and independent events;

(L) use recurrence equations to analyze algorithms and other practical problems;

(M) use counting techniques to analyze algorithms and other practical problems;

(N) apply probability tools to solve problems; and

(O) define, compare, and contrast simple graphs, multigraphs, and directed and undirected graphs using definitions, properties, and examples, including special cases.

(5) Digital citizenship. The student explores and understands safety, legal, cultural, and societal issues relating to the use of technology and information. The student is expected to:

(A) model ethical acquisition and use of digital information;

(B) demonstrate proper digital etiquette, responsible use of software, and knowledge of acceptable use policies; and

(C) investigate how the concepts of discrete mathematics are related to relevant problems and significant questions.

(6) Technology operations and concepts. The student understands technology concepts, systems, and operations as they apply to computer science. The student is expected to:

(A) perform operations associated with sets, functions, and relations;

(B) apply basic counting principles, including cardinality and the pigeonhole principle;

(C) apply appropriate precedence when using logical operators;

(D) use appropriate strategies, including De Morgan's Laws, to identify propositional equivalences;

(E) identify and appropriately use predicates, existential and universal quantifiers, and valid arguments;

(F) identify possible applications of proofs, including evaluating algorithmic complexity;

(G) state and appropriately use the product and sum rules;

(H) compute permutations and combinations of a set;

(I) solve a variety of basic recurrence equations;

(J) apply the binomial theorem to independent events;

(K) apply Bayes' theorem to dependent events;

(L) demonstrate transversal methods for trees and graphs; and

(M) relate graphs and trees to data structures, algorithms, and counting.

§126.38. Game Programming and Design (One-Half to One Credit), Beginning with School Year 2012-2013.

(a) General requirements. Students shall be awarded one-half to one credit for successful completion of this course. The required prerequisite for this course is Algebra I. This course is recommended for students in Grades 9-12.

(b) Introduction.

(1) The technology applications curriculum has six strands based on the National Educational Technology Standards for Students (NETS•S) and performance indicators developed by the International Society for Technology in Education (ISTE): creativity and innovation; communication and collaboration; research and information fluency; critical thinking, problem solving, and decision making; digital citizenship; and technology operations and concepts.

(2) Game Programming and Design will foster student creativity and innovation by presenting students with opportunities to de-

sign, implement, and present meaningful programs through a variety of media. Students will collaborate with one another, their instructor, and various electronic communities to solve gaming problems. Through data analysis, students will include the identification of task requirements, plan search strategies, and use programming concepts to access, analyze, and evaluate information needed to design games. By acquiring programming knowledge and skills that support the work of individuals and groups in solving problems, students will select the technology appropriate for the task, synthesize knowledge, create solutions, and evaluate the results. Students will learn digital citizenship by researching current laws and regulations and by practicing integrity and respect. Students will create a computer game that is presented to an evaluation panel.

(3) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) Creativity and innovation. The student develops products and generates new understanding by extending existing knowledge. The student is expected to:

(A) understand the basic game design elements, including conceptual ideas, storyline, visualization, storyboard, game effects, sound elements, game play, game controls, and player tutorial;

(B) create a design concept document;

(C) create a storyboard;

(D) demonstrate an understanding of the fundamentals of game art, including the look and feel, graphics coordinate system, basics of color, and color palettes;

(E) use bitmap graphics images, including designing, creating, reading, and manipulating images;

(F) create backgrounds, including solid, image, and tiled backgrounds;

(G) write programs creating images using geometric shapes;

(H) create games using sprites by evaluating the role of sprites, creating sprites, and managing sprites;

(I) create programs using sprite sheets;

(J) demonstrate an understanding of image rendering, including transparency, refresh rate, hardware acceleration, and animation;

(K) find, create, and edit game audio sound effects and music; and

(L) implement game sound mechanics, including playing, pausing, and looping.

(2) Communication and collaboration. The student communicates and collaborates with peers to contribute to his or her own learning and the learning of others. The student is expected to:

(A) design and implement procedures to set timelines for, track the progress of, and evaluate a game product;

(B) seek and respond to input from peers and professionals in evaluating a game project;

(C) demonstrate knowledge and appropriate use of operating systems, program development tools, and networking resources;

(D) use network resources to acquire, organize, maintain, and evaluate information;

(E) collaborate to research the business of games, including the roles of developer, marketing, publisher, and retail sales; and

(F) demonstrate an understanding of and evaluate online technology, including online interaction and massive multiplayer games.

(3) Research and information fluency. The student locates, analyzes, processes, and organizes data. The student is expected to:

(A) play board games to research and collect game play data;

(B) evaluate, analyze, and document game styles and playability; and

(C) research the dramatic elements in games, including kinds of fun, player types, and nonlinear storytelling.

(4) Critical thinking, problem solving, and decision making. The student uses appropriate strategies to analyze problems and design algorithms. The student is expected to:

(A) demonstrate an understanding of the game design process, including generating ideas, brainstorming, and paper prototyping;

(B) write programs using variables of different data types;

(C) evaluate game rules and instructions;

(D) demonstrate an understanding of the user experience by comparing rules and game-play patterns;

(E) write game rules and instructions;

(F) develop game software;

(G) write computer game code, resolve game defects, and revise existing game code; and

(H) test a finished game product by implementing sound testing techniques.

(5) Digital citizenship. The student explores and understands safety, legal, cultural, and societal issues relating to the use of technology and information. The student is expected to:

(A) explore intellectual property, privacy, sharing of information, copyright laws, and software licensing agreements;

(B) model ethical acquisition and use of digital information;

(C) demonstrate proper digital etiquette when using networks, responsible use of software, and knowledge of acceptable use policies;

(D) model respect of intellectual property, including manipulating graphics, morphing graphics, editing graphics, and editing sound;

(E) discuss and evaluate the social issues surrounding gaming; and

(F) evaluate the cultural aspects of game design fundamentals, including rationale for games and types of games.

(6) Technology operations and concepts. The student understands technology concepts, systems, and operations as they apply to game programming. The student is expected to:

(A) identify basic game components, including the game engine, game play subsystems, data structures, models, and interfaces;

(B) generate random numbers in a program;

(C) create a program implementing conditional statements;

(D) develop an appropriate data model;

(E) demonstrate an understanding of and apply object-oriented game programming;

(F) demonstrate an understanding of game programming essentials, including event-driven programming, communicating with messages, and device management;

(G) demonstrate an understanding of the role of game events, the animation loop, and game timing;

(H) demonstrate an understanding of the role of game engines;

(I) demonstrate an understanding of video display flicker and double buffering;

(J) apply basic game screen design and layout, including visual controls, user interfaces, menus, and options;

(K) use game control design to understand, access, and control input devices, including keyboard, mouse, and joystick;

(L) demonstrate an understanding of and apply game animation, including the principles of animation and frame-based animation;

(M) demonstrate an understanding of decision making and types of decisions;

(N) demonstrate an understanding of game events, including listeners, triggers, and timed events;

(O) demonstrate an understanding of and implement collision detection, including bounding boxes and sprite collisions;

(P) implement a tile-based game, including loading tile maps, drawing tile maps, rendering a tile map, and layering sprites;

(Q) demonstrate an understanding of artificial intelligence and develop and implement artificial intelligence;

(R) demonstrate an understanding of game balance and tuning; and

(S) demonstrate an understanding of player progression, including leveling, linear progression, and maintaining high score data.

§126.39. Mobile Application Development (One-Half to One Credit), Beginning with School Year 2012-2013.

(a) General requirements. Students shall be awarded one-half to one credit for successful completion of this course. The required prerequisites for this course are proficiency in the knowledge and skills relating to Technology Applications, Grades 6-8, and Algebra I. This course is recommended for students in Grades 9-12.

(b) Introduction.

(1) The technology applications curriculum has six strands based on the National Educational Technology Standards for Students (NETS•S) and performance indicators developed by the International Society for Technology in Education (ISTE): creativity and innovation; communication and collaboration; research and information flu-

ency; critical thinking, problem solving, and decision making; digital citizenship; and technology operations and concepts.

(2) Mobile Application Development will foster students' creativity and innovation by presenting opportunities to design, implement, and deliver meaningful projects using mobile computing devices. Students will collaborate with one another, their instructor, and various electronic communities to solve problems presented throughout the course. Through data analysis, students will identify task requirements, plan search strategies, and use software development concepts to access, analyze, and evaluate information needed to program mobile devices. By using software design knowledge and skills that support the work of individuals and groups in solving problems, students will select the technology appropriate for the task, synthesize knowledge, create solutions, and evaluate the results. Students will learn digital citizenship by researching current laws and regulations and by practicing integrity and respect. Students will gain an understanding of the principles of mobile application development through the study of development platforms, programming languages, and software design standards.

(3) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) Creativity and innovation. The student develops products and generates new understanding by extending existing knowledge. The student is expected to:

(A) create effective user interfaces appropriate for a specified mobile device that is best suited for an identified purpose;

(B) create effective user interfaces for browser-based, native, and hybrid mobile applications;

(C) create mobile application components appropriate for identified needs;

(D) create browser-based applications for mobile devices;

(E) create native applications that can reside on specified mobile devices; and

(F) create mobile applications that combine native and hybrid components.

(2) Communication and collaboration. The student communicates and collaborates with peers to contribute to his or her own learning and the learning of others. The student is expected to:

(A) demonstrate an understanding of and discuss how teams function;

(B) use teamwork to solve problems;

(C) describe the development workflow of mobile applications;

(D) use time-management techniques to develop and maintain work schedules, meet deadlines, and establish mobile application project criteria;

(E) describe a problem solution; and

(F) document and share problem solutions through various media.

(3) Research and information fluency. The student locates, analyzes, processes, and organizes data. The student is expected to:

(A) analyze, identify, and describe mobile application project stakeholders and their perspectives;

(B) collect and analyze available data to identify mobile application project requirements;

(C) analyze, identify, and describe input, output, and processing requirements; and

(D) analyze, identify, and define hardware and software specifications.

(4) Critical thinking, problem solving, and decision making. The student uses appropriate strategies to analyze problems and design algorithms. The student is expected to:

(A) compare and contrast design decisions based on the hardware considerations of a mobile device;

(B) compare and contrast available mobile technologies, including platforms and their operating systems;

(C) compare and contrast available development approaches, including application to specific technologies and platforms;

(D) determine the most appropriate solution for the development of a given mobile application, including browser-based, native, and hybrid approaches;

(E) compare and contrast available programming languages and how their use might be applied to specific technologies and platforms;

(F) identify and justify the selection of an appropriate programming language, including available resources and required interfaces;

(G) select an appropriate program development environment;

(H) identify and use available libraries;

(I) evaluate and justify the selection of appropriate options and components;

(J) compare and contrast available networks and their implications for mobile application development; and

(K) compare and contrast design strategies related to mobile network and device security.

(5) Digital citizenship. The student explores and understands safety, legal, cultural, and societal issues relating to the use of technology and information. The student is expected to:

(A) discuss copyright laws and issues;

(B) model ethical acquisition and use of digital information;

(C) cite sources using established methods;

(D) demonstrate proper digital etiquette and knowledge of acceptable use policies;

(E) investigate mobile device security measures such as passwords, virus detection, and virus prevention;

(F) describe potential risks and benefits associated with the use of a mobile application;

(G) identify current and emerging technologies related to mobile applications; and

(H) evaluate technologies and assess their applicability to current mobile applications.

(6) Technology operations and concepts. The student understands technology concepts, systems, and operations as they apply to computer science. The student is expected to:

(A) demonstrate an understanding of the difference between desktop and mobile applications;

(B) demonstrate an understanding of hardware and software structures and requirements in the design of mobile applications;

(C) recognize multiple platforms and demonstrate an understanding of their associated requirements;

(D) recognize various program development environments;

(E) demonstrate an understanding of event-based programming and its appropriate use;

(F) describe how memory management affects mobile application design;

(G) demonstrate an understanding of how low bandwidth and the mobility of a device affect the design of mobile applications;

(H) identify applications that are best suited for mobile devices;

(I) demonstrate an understanding of the use of libraries when designing mobile applications;

(J) use a simulation tool to emulate a mobile device's functionality; and

(K) use actual mobile devices to test mobile applications.

§126.40. Robotics Programming and Design (One-Half to One Credit), Beginning with School Year 2012-2013.

(a) General requirements. Students shall be awarded one-half to one credit for successful completion of this course. The prerequisite for this course is proficiency in the knowledge and skills relating to Technology Applications, Grades 6-8. This course is recommended for students in Grades 9-12.

(b) Introduction.

(1) The technology applications curriculum has six strands based on the National Educational Technology Standards for Students (NETS•S) and performance indicators developed by the International Society for Technology in Education (ISTE): creativity and innovation; communication and collaboration; research and information fluency; critical thinking, problem solving, and decision making; digital citizenship; and technology operations and concepts.

(2) Robotics Programming and Design will foster students' creativity and innovation by presenting opportunities to design, implement, and present meaningful robotic programs through a variety of media. Students will collaborate with one another, their instructor, and various electronic communities to solve problems in designing and programming robots. Through data analysis, students will identify task requirements, plan search strategies, and use robotic concepts to access, analyze, and evaluate information needed to solve problems. By using robotic knowledge and skills that support the work of individuals and groups in solving problems, students will select the technology appropriate for the task, synthesize knowledge, create solutions, and evaluate the results. Students will learn digital citizenship by researching current laws and regulations and by practicing integrity and respect. Students will gain an understanding of the principles of robotics through the study of physics, robotics, automation, and engineering design concepts.

(3) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) Creativity and innovation. The student develops products and generates new understanding by extending existing knowledge. The student is expected to:

(A) produce a prototype;

(B) present a prototype using a variety of media;

(C) use the design process to construct a robot;

(D) refine the design of a robot;

(E) build robots of simple, moderate, and advanced complexity;

(F) improve a robot design to meet a specified need;

(G) demonstrate an understanding of and create artificial intelligence in a robot; and

(H) create behavior-based control algorithms.

(2) Communication and collaboration. The student communicates and collaborates with peers to contribute to his or her own learning and the learning of others. The student is expected to:

(A) demonstrate an understanding of and implement design teams;

(B) use design teams to solve problems;

(C) serve as a team leader and a team member;

(D) describe a problem and identify design specifications;

(E) design a solution to a problem and share a solution through various media;

(F) document prototypes, adjustments, and corrections in the design process;

(G) document a final design and solution; and

(H) present a final design, testing results, and solution.

(3) Research and information fluency. The student locates, analyzes, processes, and organizes data. The student is expected to:

(A) test and evaluate a robot design;

(B) implement position tracking to complete assigned robot tasks;

(C) develop solution systems and implement systems analysis;

(D) modify a robot to respond to a change in specifications; and

(E) implement a system to identify and track all components of a robot.

(4) Critical thinking, problem solving, and decision making. The student uses appropriate strategies to analyze problems and design algorithms. The student is expected to:

(A) develop algorithms to control a robot, including applying instructions, collecting sensor data, and performing simple tasks;

(B) create maneuvering algorithms to physically move the location of a robot;

(C) create algorithms that provide interaction with a robot;

(D) demonstrate an understanding of and use output commands, variables, and sequence programming structure;

(E) demonstrate an understanding of and use jumps, loops, and selection programming structures;

(F) demonstrate an understanding of and use subroutines, accessors, and modifiers; and

(G) apply decision-making strategies when developing solutions.

(5) Digital citizenship. The student explores and understands safety, legal, cultural, and societal issues relating to the use of technology and information. The student is expected to:

(A) discuss intellectual property, privacy, sharing of information, copyright laws, and software licensing agreements;

(B) demonstrate proper digital etiquette, responsible use of software, and knowledge of acceptable use policies; and

(C) explore the effects robots have on changing our culture and society.

(6) Technology operations and concepts. The student understands technology concepts, systems, and operations as they apply to computer science. The student is expected to:

(A) use tools and laboratory equipment safely to construct and repair robots;

(B) identify and describe the steps needed to produce a prototype;

(C) use software applications to simulate robotic behavior, present design concepts, and test solution strategies;

(D) demonstrate the use of computers to manipulate a robot;

(E) demonstrate knowledge of process control design factors;

(F) demonstrate knowledge of different types of sensors used in robotics;

(G) demonstrate knowledge and use of effectors;

(H) implement multiple sensors in a robot;

(I) interpret sensor feedback and calculate threshold values;

(J) demonstrate knowledge of motors, gears, and gear trains used in a robot;

(K) implement infrared range sensing;

(L) apply measurement and geometry to calculate robot navigation;

(M) implement movement control using shaft encoding;

(N) demonstrate robot navigation;

(O) implement path planning using geometry and multiple sensor feedback;

(P) program a robot to perform simple tasks, including following lines, moving objects, and avoiding obstacles;

(Q) demonstrate and implement a robotic task solution using robotic arm construction;

(R) demonstrate knowledge of feedback control loops to provide information;

(S) demonstrate knowledge of torque and power factors used in the operation of a robot servo; and

(T) troubleshoot and maintain robotic systems and sub-systems.

§126.41. Digital Design and Media Production (One Credit), Beginning with School Year 2012-2013.

(a) General requirements. Students shall be awarded one credit for successful completion of this course. The prerequisite for this course is proficiency in the knowledge and skills relating to Technology Applications, Grades 6-8. This course is recommended for students in Grades 9-12.

(b) Introduction.

(1) The technology applications curriculum has six strands based on the National Educational Technology Standards for Students (NETS•S) and performance indicators developed by the International Society for Technology in Education (ISTE): creativity and innovation; communication and collaboration; research and information fluency; critical thinking, problem solving, and decision making; digital citizenship; and technology operations and concepts.

(2) Digital Design and Media Production will allow students to demonstrate creative thinking, develop innovative strategies, and use communication tools in order to work effectively with others as well as independently. Students will gather information electronically, which will allow for problem solving and making informed decisions regarding media projects. Students will learn digital citizenship by researching current laws and regulations and by practicing integrity and respect. Students will demonstrate a thorough understanding of digital design principles that is transferable to other disciplines.

(3) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) Creativity and innovation. The student employs a creative design process to create original projects as they relate to purposes and audiences. The student is expected to:

(A) create designs for defined projects such as graphics, logos, and page layouts;

(B) apply design elements and typography standards; and

(C) use visual composition principles.

(2) Communication and collaboration. The student understands professional digital media communications strategies. The student is expected to:

(A) adapt the language and design of a project for audience, purpose, situation, and intent;

(B) organize oral, written, and graphic information into formal and informal publications;

(C) interpret and communicate information to multiple audiences; and

(D) collaborate to create original projects, including seeking and responding to advice from others such as peers or experts in the creation and evaluation process.

(3) Research and information fluency. The student uses a variety of strategies to plan, obtain, evaluate, and use valid information. The student is expected to:

(A) obtain print and digital information such as graphics, audio, and video from a variety of resources while citing the sources;

(B) evaluate information for accuracy and validity; and

(C) present accurate information using techniques appropriate for the intended audience.

(4) Critical thinking, problem solving, and decision making. The student implements problem-solving methods using critical-thinking skills to plan, implement, manage, and evaluate projects; solve problems; and make informed decisions using appropriate digital tools and resources. The student is expected to:

(A) employ critical-thinking and interpersonal skills to solve problems and make decisions through planning and gathering, interpreting, and evaluating data;

(B) identify and organize the tasks for completion of a project using the most appropriate digital tools;

(C) distinguish design requirements as they relate to the purposes and audiences of a project and apply appropriate design elements;

(D) seek and respond to input from others, including peers, teachers, and outside collaborators;

(E) evaluate a process and project both independently and collaboratively and make suggested revisions; and

(F) transfer critical-thinking, problem-solving, and decision-making processes when using new technologies.

(5) Digital citizenship. The student complies with standard practices and behaviors and upholds legal and ethical responsibilities. The student is expected to:

(A) examine copyright and fair use guidelines with regard to print and digital media;

(B) model ethical and legal acquisition and use of digital resources such as licensing and established methods of citing sources;

(C) demonstrate proper digital etiquette, personal security guidelines, use of network resources, and application of the district's acceptable use policy for technology; and

(D) identify and demonstrate positive personal qualities such as flexibility, open-mindedness, initiative, listening attentively to speakers, willingness to learn new knowledge and skills, and pride in quality work.

(6) Technology operations and concepts. The student uses technology concepts, systems, and operations as appropriate for a project. The student is expected to:

(A) define the purpose of a product and identify the specified audience;

(B) demonstrate appropriate project management to:

(i) create a plan for a media project such as a storyboard, stage development, and identification of equipment and resources; and

(ii) evaluate design, content delivery, purpose, and audience throughout a project's timeline and make suggested revisions until completion of the project;

(C) use hardware, software, and information appropriate to a project and its audience to:

(i) acquire readily available digital information, including text, audio, video, and graphics, citing the sources;

(ii) create digital content through the use of various devices such as video camera, digital camera, scanner, microphone, interactive whiteboard, video capture, and musical instrument;

(iii) collaborate via online tools such as blogs, discussion boards, email, and online learning communities;

(iv) make decisions regarding the selection and use of software, taking into consideration operating system platform, quality, appropriateness, effectiveness, and efficiency;

(v) delineate and make necessary adjustments regarding compatibility issues, including digital file formats and cross-platform connectivity; and

(vi) demonstrate the ability to import and export elements from one program to another;

(D) use digital typography standards such as:

(i) one space after punctuation, the use of em- and en-dashes, and smart quotation marks;

(ii) categories of type, font, size, style, and alignment appropriate for the task;

(iii) type techniques such as drop cap, decorative letters, or embedded text frames as graphic elements;

(iv) leading and kerning, automatic text flow into linked columns, widows and orphans, and text wrap; and

(v) type measurement for inches and picas;

(E) apply design and layout principles and techniques to:

(i) incorporate the principles of design, including balance, contrast, dominant element, white space, consistency, repetition, alignment, and proximity;

(ii) apply the elements of design, including text, graphics, and white space;

(iii) apply color principles appropriate to the product in order to communicate the mood for the specific audience;

(iv) identify the parts of pages, including inside margin, outside margin, and gutter;

(v) create a master template, including page specifications and other repetitive elements; and

(vi) use style sheets, including a variety of type specifications such as typeface, style, size, alignment, indents, and tabs;

(F) demonstrate appropriate use of digital photography and editing to:

(i) use digital photography equipment to capture still-shot images that incorporate various photo composition tech-

niques, including lighting, perspective, candid versus posed, rule of thirds, and filling the frame;

(ii) transfer digital images from equipment to the computer; and

(iii) demonstrate image enhancement techniques such as feathering, layering, color enhancement, and image selection using appropriate digital manipulation software;

(G) demonstrate appropriate use of videography equipment and techniques to:

(i) use digital photography equipment to capture video that incorporates video principles such as lighting, zooming, panning, and stabilization;

(ii) transfer video from equipment to the computer;

(iii) demonstrate videographic enhancement and editing techniques such as transitions, zooming, content editing, and synchronizing audio and video using appropriate digital manipulation software; and

(iv) export video in digital formats to be used in various delivery systems such as podcasting, downloadable media, embedding, and streaming; and

(H) deploy digital media into print, web, and video products to:

(i) produce digital files in various formats such as portable document format (PDF), portable network graphics (PNG), and HyperText Markup Language (HTML);

(ii) publish integrated digital content such as video, audio, text, graphics, and motion graphics following appropriate digital etiquette standards;

(iii) publish and share projects using online methods such as social media and collaborative sites;

(iv) incorporate various digital media into a printed document such as a newsletter, poster, or report;

(v) use printing options such as tiling, color separations, and collation; and

(vi) collect and organize student-created products to build an individual portfolio.

§126.42. *Digital Art and Animation (One Credit), Beginning with School Year 2012-2013.*

(a) General requirements. Students shall be awarded one credit for successful completion of this course. The prerequisite for this course is proficiency in the knowledge and skills relating to Technology Applications, Grades 6-8. The recommended prerequisite is Art, Level I. This course is recommended for students in Grades 9-12. This course satisfies the high school fine arts graduation requirement.

(b) Introduction.

(1) The technology applications curriculum has six strands based on the National Educational Technology Standards for Students (NETS•S) and performance indicators developed by the International Society for Technology in Education (ISTE): creativity and innovation; communication and collaboration; research and information fluency; critical thinking, problem solving, and decision making; digital citizenship; and technology operations and concepts.

(2) Through the study of the six strands in technology applications, students will develop college readiness skills applied to technology, including terminology, concepts, and strategies. Students

will communicate information in different formats and to diverse audiences using a variety of technologies. Students will learn the efficient acquisition of information using search strategies and using technology to access, analyze, and evaluate the acquired information. Students will learn to make informed decisions about technologies and their applications. By using technology as a tool that supports the work of individuals and groups in solving problems, students will select the technology appropriate for the task, synthesize knowledge, create solutions, and evaluate the results.

(3) Digital Art and Animation consists of computer images and animations created with digital imaging software. Digital Art and Animation has applications in many careers, including graphic design, advertising, web design, animation, corporate communications, illustration, character development, script writing, storyboarding, directing, producing, inking, project management, editing, and the magazine, television, film, and game industries. Students in this course will produce various real-world projects and animations.

(4) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) Creativity and innovation. The student demonstrates creative thinking, constructs knowledge, and develops innovative products and processes using technology. The student is expected to:

(A) evaluate, edit, and create scripts for animations;

(B) identify and apply color theories, including harmony rules, tints, shades, gradients, color mixing, new color creation, and the visual impacts of specific color combinations using a digital format;

(C) compare, contrast, and integrate the basic sound editing principles, including mixing and manipulating wave forms, audio tracks, and effects;

(D) compare and contrast the rules of composition such as the rule of thirds or the golden section/rectangle with respect to harmony and balance;

(E) evaluate the fundamental concepts of a digital art and design such as composition, perspective, angles, lighting, repetition, proximity, white space, balance, and contrast;

(F) analyze digital art designs to interpret the point of interest, the prominence of the subject, and visual parallels between the structures of natural and human-made environments;

(G) distinguish among typefaces while recognizing and resolving conflicts that occur through the use of typography as a design element;

(H) use perspective, including backgrounds, light, shades and shadows, hue and saturation, and scale, to capture a focal point and create depth;

(I) use the basic principles of design such as proportion, balance, variety, emphasis, harmony, symmetry, and unity in type, color, size, line thickness, shape, and space;

(J) edit files using appropriate digital editing tools and established design principles such as consistency, repetition, alignment, proximity, white space, image file size, color use, and font size, type, and style; and

(K) identify pictorial qualities in a design such as shape and form, space and depth, or pattern and texture to create visual unity and desired effects in designs.

(2) Communication and collaboration. The student uses digital media and environments to communicate and work collaboratively, including at a distance, to support individual learning and contribute to the learning experience of others. The student is expected to:

(A) use vocabulary as it relates to digital art, audio, and animation;

(B) demonstrate the use of technology to participate in self-directed and collaborative activities within the global community;

(C) participate in electronic communities;

(D) create technology specifications for tasks and rubrics for the evaluation of products;

(E) design and implement procedures to track trends, set timelines, and evaluate products;

(F) collaborate with peers in delineating technological tasks;

(G) publish and save information in a variety of ways, including print or digital formats;

(H) analyze and evaluate projects for design, content delivery, purpose, and audience; and

(I) critique original digital artwork, portfolios, and products with peers.

(3) Research and information fluency. The student applies digital tools to gather, evaluate, and use information. The student is expected to:

(A) distinguish between and correctly apply process color (RGB and CMYK), spot color, and black or white;

(B) research the history of digital art and animation;

(C) research career choices in digital art and animation;

(D) use the Internet to retrieve information in an electronic format;

(E) demonstrate the appropriate use of digital imaging, video integration, and sound retrieved from an electronic format;

(F) import sounds from a variety of sources; and

(G) create planning designs such as rough sketches, storyboards, and brainstorming materials.

(4) Critical thinking, problem solving, and decision making. The student uses critical-thinking skills to plan and conduct research, manage projects, solve problems, and make informed decisions using appropriate digital tools and resources. The student is expected to:

(A) distinguish between and use the components of animation software programs such as cast, score, stage, and the animation manipulation interface;

(B) distinguish between and use different animation techniques such as path and cell animation, onion skinning, and tweening;

(C) create three-dimensional effects by layering images such as foreground, middle distance, and background images;

(D) apply a variety of color schemes such as monochromatic, analogous, complementary, primary/secondary triads, cool/warm colors, and split complements to digital designs;

(E) use the basic concepts of color and design theory such as working in a bitmapped and vector mode to create backgrounds, characters, and other cast members as needed for the animation;

(F) use the appropriate scripting language or program code to create an animation;

(G) use a variety of lighting techniques such as shadows and shading to create effects; and

(H) define the design attributes and requirements of products created for a variety of purposes such as posters, billboards, logos, corporate identity, advertisements, book jackets, brochures, and magazines.

(5) Digital citizenship. The student understands human, cultural, and societal issues related to technology and practices legal and ethical behavior. The student is expected to:

(A) discuss copyright laws/issues and use of digital information such as attributing ideas and citing sources using established methods;

(B) define plagiarism and model respect of intellectual property;

(C) demonstrate proper digital etiquette and knowledge of acceptable use policies when using technology; and

(D) evaluate the validity and reliability of sources.

(6) Technology operations and concepts. The student demonstrates a sound understanding of technology concepts, systems, and operations. The student is expected to:

(A) demonstrate knowledge and appropriate use of operating systems, software applications, and communication and networking components;

(B) make decisions regarding the selection and use of software and Internet resources;

(C) make necessary adjustments regarding compatibility issues with digital file formats, importing and exporting data, and cross-platform compatibility; and

(D) read, use, and develop technical documentation.

§126.43. 3-D Modeling and Animation (One Credit), Beginning with School Year 2012-2013.

(a) General requirements. Students shall be awarded one credit for successful completion of this course. The prerequisite for this course is proficiency in the knowledge and skills relating to Technology Applications, Grades 6-8. The recommended prerequisite is Art, Level I. This course is recommended for students in Grades 9-12. This course satisfies the high school fine arts graduation requirement.

(b) Introduction.

(1) The technology applications curriculum has six strands based on the National Educational Technology Standards for Students (NETS•S) and performance indicators developed by the International Society for Technology in Education (ISTE): creativity and innovation; communication and collaboration; research and information fluency; critical thinking, problem solving, and decision making; digital citizenship; and technology operations and concepts.

(2) Through the study of the six strands in technology applications, students will develop college readiness skills applied to technology, including terminology, concepts, and strategies. Students will learn to make informed decisions about technologies and their applications. Students will learn the efficient acquisition of information using search strategies and the use of technology to access,

analyze, and evaluate acquired information. By using technology as a tool that supports the work of individuals and groups in solving problems, students will select the technology appropriate for the task, synthesize knowledge, create solutions, and evaluate results. Students will communicate information in different formats and to diverse audiences using a variety of technologies. Students will analyze and evaluate the results.

(3) 3-D Modeling and Animation consists of computer images created in a virtual three-dimensional (3-D) environment. 3-D Modeling and Animation has applications in many careers, including criminal justice, crime scene, and legal applications; construction and architecture; engineering and design; and the movie and game industries. Students in this course will produce various 3-D models of real-world objects.

(4) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) Creativity and innovation. The student demonstrates creative thinking, constructs knowledge, and develops innovative products and processes using technology. The student is expected to:

(A) evaluate, edit, and create scripts for animations;

(B) identify and apply color theories, including harmony rules, tints, shades, gradients, color mixing, new color creation, and the visual impacts of specific color combinations using a digital format;

(C) apply texture, transparency, skinning, and contour along a 3-D object surface;

(D) compare, contrast, and integrate the basic sound editing principles, including mixing and manipulating wave forms, audio tracks, and effects;

(E) compare and contrast the rules of composition such as the rule of thirds or the golden section/rectangle with respect to harmony and balance;

(F) evaluate the fundamental concepts of 3-D modeling and design such as composition, perspective, angles, lighting, repetition, proximity, white space, balance, and contrast;

(G) analyze 3-D model objects to interpret the point of interest, the prominence of the subject, and visual parallels between the structures of natural and human-made environments;

(H) distinguish among typefaces while recognizing and resolving conflicts that occur through the use of typography as a design element;

(I) use perspective, including spot and directional light, backgrounds, ambience, shades and shadows, and hue and saturation;

(J) use the basic principles of design such as proportion, balance, variety, emphasis, harmony, symmetry, and unity in type, color, size, line thickness, shape, and space;

(K) edit files using appropriate digital editing tools and established design principles such as consistency, repetition, alignment, proximity, white space, image file size, color use, font size, type, and style; and

(L) identify pictorial qualities in a design such as shape and form, space and depth, or pattern and texture to create visual unity and desired effects in designs.

(2) Communication and collaboration. The student uses digital media and environments to communicate and work collaboratively, including at a distance, to support individual learning and contribute to the learning experience of others. The student is expected to:

(A) use vocabulary as it relates to digital art, audio, and animation;

(B) demonstrate the use of technology to participate in self-directed and collaborative activities within the global community;

(C) participate in electronic communities;

(D) create technology specifications for tasks and rubrics for the evaluation of products;

(E) design and implement procedures to track trends, set timelines, and evaluate products;

(F) collaborate with peers in delineating technological tasks;

(G) publish and save information in a variety of ways, including print or digital formats;

(H) analyze and evaluate projects for design, content delivery, purpose, and audience; and

(I) critique original 3-D digital artwork, portfolios, and products with peers.

(3) Research and information fluency. The student applies digital tools to gather, evaluate, and use information. The student is expected to:

(A) distinguish among and correctly apply process color (RGB and CYMK), spot color, and black or white;

(B) research the history of 3-D modeling and 3-D animation;

(C) research career choices in 3-D modeling and 3-D animation;

(D) use the Internet to retrieve information in an electronic format;

(E) demonstrate the appropriate use of 3-D objects, digital imaging, video integration, and sound retrieved from an electronic format;

(F) import sounds from a variety of sources; and

(G) create planning designs such as rough sketches, storyboards, and brainstorming materials.

(4) Critical thinking, problem solving, and decision making. The student uses critical-thinking skills to plan and conduct research, manage projects, solve problems, and make informed decisions using appropriate digital tools and resources. The student is expected to:

(A) distinguish between and use the components of 3-D animation software programs such as cast, score, environment, the X-Y-Z coordinate system, and the animation manipulation interface;

(B) distinguish between and use the different 3-D modeling techniques such as box modeling, transformation, and polygon primitives using extrusion and rotation;

(C) distinguish between and use the different 3-D animation techniques such as path and rendering using dynamics and physics;

(D) apply a variety of color schemes such as monochromatic, analogous, complementary, primary/secondary triads, cool/warm colors, and split complements to digital designs;

(E) use the basic concepts of color and design theory such as working with 3-D models and environments, characters, objects, and other cast members as needed for the animation;

(F) use the appropriate rendering techniques to create an animation;

(G) use a variety of lighting techniques such as shadow, shading, point, spot, directional, and ambient to create effects; and

(H) define the design attributes and requirements of a 3-D animation project.

(5) Digital citizenship. The student understands human, cultural, and societal issues related to technology and practices legal and ethical behavior. The student is expected to:

(A) discuss copyright laws/issues and use of digital information such as attributing ideas and citing sources using established methods;

(B) define plagiarism and model respect of intellectual property;

(C) demonstrate proper digital etiquette and knowledge of acceptable use policies when using technology; and

(D) evaluate the validity and reliability of sources.

(6) Technology operations and concepts. The student demonstrates a sound understanding of technology concepts, systems, and operations. The student is expected to:

(A) demonstrate knowledge and appropriate use of operating systems, software applications, and communication and networking components;

(B) make decisions regarding the selection and use of software and Internet resources;

(C) make necessary adjustments regarding compatibility issues with digital file formats, importing and exporting data, and cross-platform compatibility; and

(D) read, use, and develop technical documentation.

§126.44. Digital Communications in the 21st Century (One Credit), Beginning with School Year 2012-2013.

(a) General requirements. Students shall be awarded one credit for successful completion of this course. The prerequisite for this course is proficiency in the knowledge and skills relating to Technology Applications, Grades 6-8. This course is recommended for students in Grades 9-12. This course satisfies the high school speech graduation requirement.

(b) Introduction.

(1) The technology applications curriculum has six strands based on the National Educational Technology Standards for Students (NETS•S) and performance indicators developed by the International Society for Technology in Education (ISTE): creativity and innovation; communication and collaboration; research and information fluency; critical thinking, problem solving, and decision making; digital citizenship; and technology operations and concepts.

(2) Through the study of the six strands in technology applications, students will support and manage the work of individuals and groups to create products to inform and promote their proposed solutions using appropriate communication skills and methods of deliv-

ery. Students will learn to make informed decisions using digital tools and appropriate applications. By using online research and information resources such as journals, newspapers, or authoritative databases, students will synthesize knowledge; create solutions; and evaluate the results for authentic, real-world local, state, national, and global issues.

(3) Digital Communications in the 21st Century will prepare students for the societal demands of increased civic literacy, independent working environments, global awareness, and the mastery of a base set of analysis and communication skills. Students will be expected to design and present an effective product based on well-researched issues in order to thoughtfully propose suggested solutions to authoritative stakeholders. The outcome of the process and product approach is to provide students an authentic platform to demonstrate effective application of multimedia tools within the contexts of global communication and collaborative communities and appropriately share their voices to affect change that concerns their future.

(4) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) Creativity and innovation. The student demonstrates the ability to analyze, evaluate, and adapt during the creative problem-solving process and demonstrates creative thinking in developing solutions to real-world issues using digital tools. The student is expected to:

(A) generate innovative, sustainable solutions for real-world issues such as global warming, immigration, or the global economy using emerging digital tools;

(B) gather and evaluate accurate information for feasibility and practicality as a basis for making communication decisions; and

(C) analyze the ethical and social responsibilities as a project team when communicating with peers, stakeholders, and experts.

(2) Creativity and innovation. The student uses innovative thinking to develop new ideas and processes for solving real-world issues and conveying those ideas to a global audience through a persuasive digital product. The student is expected to:

(A) examine real-world issues relating to current topics such as health care, government, business, or aerospace;

(B) develop innovative solutions to address issues;

(C) create unique methods and products conveying solutions to audiences beyond the classroom such as school officials, non-profit organizations, higher education officials, government, or other stakeholders;

(D) demonstrate the effective use and importance of verbal and nonverbal communication skills when presenting ideas and solutions to diverse audiences; and

(E) use appropriate techniques to manage communication apprehension, build self-confidence, and gain command of information.

(3) Communication and collaboration. The student develops a process to effectively communicate with peers, experts, and other audiences about current issues and solutions to global problems. The student is expected to:

(A) demonstrate innovative uses of a wide range of emerging technologies, including online learning, mobile devices, digital content, and Web 2.0 tools such as podcasting, wikis, and blogs;

(B) participate within appropriate electronic communities as a learner, initiator, and contributor;

(C) extend the learning environment beyond the school walls using appropriate digital tools;

(D) collaborate with a variety of field experts;

(E) prepare for, organize, and participate in an informative or persuasive group discussion with an audience; and

(F) participate appropriately in conversations by making clear requests, giving accurate directions, and asking purposeful questions.

(4) Communication and collaboration. The student uses digital tools to facilitate collaboration and communication in the design, development, and evaluation of products offering solutions to real-world issues. The student is expected to:

(A) design and organize resources to create an effective collaborative working environment that enables a group to investigate a local, state, national, or global issue;

(B) analyze and evaluate effective communication;

(C) demonstrate leadership by managing project activities such as timelines, research, product development, marketing material, and effective communication skills;

(D) demonstrate effective management of diverse peer-group dynamics such as solving problems, managing conflicts, and building consensus; and

(E) evaluate original products for accuracy, validity, and compliance with copyright laws.

(5) Research and information fluency. The student uses a variety of strategies to acquire and evaluate information relating to real-world issues. The student is expected to:

(A) locate authoritative information from primary and secondary sources such as field experts, online full-text databases, or current news databases;

(B) make decisions regarding the selection, acquisition, and use of information gathered, taking into consideration its quality, appropriateness, effectiveness, and level of interest to society; and

(C) demonstrate fluency in the use of a variety of electronic sources such as cloud computing, emerging collaboration technologies, data mining strategies, and mobile or other technologies.

(6) Research and information fluency. The student uses a variety of digital tools to synthesize information related to real-world issues in student-created materials. The student is expected to:

(A) construct real-world informational materials that inform, persuade, or recommend reform of selected issues;

(B) identify and employ a method to evaluate the design, functionality, and accuracy of the student-created materials; and

(C) use effective strategies to organize and outline presentations to support and clarify points.

(7) Critical thinking, problem solving, and decision making. The student uses critical-thinking skills to conduct research, manage products, solve problems, and make informed decisions for real-

world local, state, national, and global issues. The student is expected to:

(A) identify and define authentic problems and significant questions for investigation;

(B) design and implement procedures to track trends, set timelines, and review and evaluate progress for project completion;

(C) read and use technical documentation, including appropriate help options, to complete tasks; and

(D) analyze the audience, occasion, and purpose when designing presentations.

(8) Critical thinking, problem solving, and decision making. The student creates a product presenting solutions for real-world local, state, national, and global issues. The student is expected to:

(A) create technology specifications for tasks and rubrics to evaluate products and product quality against established criteria;

(B) resolve information conflicts and validate information by comparing data;

(C) represent diverse perspectives in problem solutions; and

(D) prepare and use visual or auditory aids such as scripts, notes, or digital applications to enhance presentations.

(9) Digital citizenship. The student examines ethical and legal behavior to demonstrate leadership as a digital citizen. The student is expected to:

(A) model safe and ethical use of digital information;

(B) model respect of intellectual property when manipulating, morphing, or editing graphics, video, text, and sound;

(C) use technology applications in a positive manner that supports productivity, collaboration, and continuing education; and

(D) use professional etiquette and protocol in situations such as making introductions, offering and receiving criticism, and communicating with digital tools.

(10) Digital citizenship. The student demonstrates ethical and legal behavior in the creation of student products. The student is expected to:

(A) use collaborative tools and strategies; and

(B) use digital tools to correctly document sources such as in bibliographies or works cited.

(11) Technology operations and concepts. The student makes decisions regarding the selection, acquisition, and use of digital tools in a multimedia classroom/lab, taking into consideration the quality, appropriateness, effectiveness, and efficiency of the tools. The student is expected to:

(A) determine the most appropriate file type based on universally recognized file formats such as portable document format (PDF), text format (TXT), rich text format (RTF), and Joint Photographic Experts Group format (JPEG);

(B) use compression schemes for photo, animation, video, and graphics; and

(C) distinguish among appropriate color, sound, and design principles such as consistency, repetition, alignment, proximity, and ratio of text to white space.

(12) Technology operations and concepts. The student demonstrates knowledge through various cloud and network technologies such as web-based interactive presentations, document sharing, and online scholarly databases. The student is expected to:

(A) use necessary vocabulary related to digital tools;

(B) retrieve and discriminate between authoritative and non-authoritative data sources; and

(C) adopt, adapt, and transfer prior knowledge to multiple situations when retrieving, manipulating, and creating original digital projects.

§126.45. Digital Video and Audio Design (One Credit), Beginning with School Year 2012-2013.

(a) General requirements. Students shall be awarded one credit for successful completion of this course. This course is recommended for students in Grades 11 and 12.

(b) Introduction.

(1) The technology applications curriculum has six strands based on the National Educational Technology Standards for Students (NETS•S) and performance indicators developed by the International Society for Technology in Education (ISTE): creativity and innovation; communication and collaboration; research and information fluency; critical thinking, problem solving, and decision making; digital citizenship; and technology operations and concepts.

(2) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) Creativity and innovation. The student applies academic knowledge and skills in audio and video projects. The student is expected to:

(A) apply English language arts knowledge and skills by demonstrating the use of appropriate technical concepts;

(B) apply English language arts knowledge and skills by demonstrating the use of vocabulary and correct grammar and punctuation to write and edit documents; and

(C) incorporate knowledge of mathematics by determining a feasible resolution and aspect ratio to keep a file.

(2) Creativity and innovation. The student understands and examines problem-solving methods. The student is expected to employ critical-thinking and interpersonal skills independently and in teams to solve problems.

(3) Creativity and innovation. The student applies information technology applications. The student is expected to:

(A) use personal information management, email, Internet, writing and publishing, presentation, and spreadsheet or database applications for audio or video production projects;

(B) demonstrate an understanding of the impact of participation in videoconferencing and other social network environments; and

(C) demonstrate an understanding of the responsibility of digital publications in social network environments.

(4) Creativity and innovation. The student understands design systems. The student is expected to analyze and summarize the history and evolution of audio and video production fields.

(5) Communication and collaboration. The student understands professional communication strategies. The student is expected to:

(A) adapt language such as structure and style for audience, purpose, situation, and intent;

(B) organize oral and written information;

(C) interpret and communicate information, data, and observations;

(D) present formal and informal presentations;

(E) apply active listening skills;

(F) listen to and speak with diverse individuals;

(G) exhibit public relations skills;

(H) employ leadership skills;

(I) employ collaborative and conflict-management skills;

(J) conduct and participate in meetings; and

(K) employ mentoring skills.

(6) Research and information fluency. The student understands the pre-production process. The student is expected to:

(A) identify critical elements in the pre-production stage, including design procedures, timeline development, technology specifications, scripting techniques, and budgeting procedures;

(B) analyze script and storyboard development processes for a successful production;

(C) identify and participate in the team roles required for completion of a production;

(D) identify equipment, crew, and cast requirements for a scripted production; and

(E) understand the casting or audition process.

(7) Critical thinking, problem solving, and decision making. The student develops employability characteristics. The student is expected to:

(A) identify and participate in training, education, or certification required for employment;

(B) identify and demonstrate positive work behaviors and personal qualities needed to be employable;

(C) demonstrate skills related to seeking and applying for employment;

(D) create a video portfolio to document work experiences, licenses, certifications, and work samples;

(E) demonstrate skills in evaluating and comparing employment opportunities; and

(F) examine employment opportunities in entrepreneurship.

(8) Digital citizenship. The student applies ethical decision making and complies with laws regarding the use of technology in audio and video production. The student is expected to:

(A) exhibit ethical conduct related to interacting with others and provide proper credit for ideas;

(B) discuss and apply copyright laws in relation to fair use and acquisition;

(C) discuss what defines intellectual property and how to show appropriate respect;

(D) analyze the ethical impact of the audio and video production industry on society;

(E) implement personal and workplace safety rules and regulations;

(F) follow emergency procedures; and

(G) examine and summarize safety-related problems that may result from working with electrical circuits.

(9) Technology operations and concepts. The student develops a basic understanding of the history, current practice, future trends, and procedural protocols in the use of audio and video production. The student is expected to:

(A) explain the origin and evolution of audio, video, and film;

(B) describe how changing technology impacts the digital society;

(C) define terminology associated with the industry;

(D) apply knowledge of audio and video script production;

(E) discuss the impact of audio and video selection on human emotion;

(F) demonstrate the use of audio and video for a three-screen environment, including cell phones, television monitors, and computer screens;

(G) demonstrate various videography techniques, including picture composition, video composition, audio composition, editing, and delivery;

(H) understand the differences in linear and nonlinear systems;

(I) demonstrate knowledge of control peripherals for capturing or ingesting media;

(J) demonstrate the skills needed to create special lighting, animation, and voice-over effects with appropriate resources; and

(K) format digital information for effective communication for a defined audience with the use of appropriate camera perspectives, color techniques, and content selection.

(10) Technology operations and concepts. The student understands the post-production process. The student is expected to:

(A) select the appropriate evaluation and delivery formats such as a product evaluation rubric, job performance critique, and client and audience feedback survey; and

(B) deliver the product in a variety of media forms such as social networks, collaborative workspaces, and cloud environments.

§126.46. Web Communications (One-Half Credit), Beginning with School Year 2012-2013.

(a) General requirements. Students shall be awarded one-half credit for successful completion of this course. This course is recommended for students in Grade 9. This course satisfies the high school speech graduation requirement.

(b) Introduction.

(1) The technology applications curriculum has six strands based on the National Educational Technology Standards for Students

(NETS•S) and performance indicators developed by the International Society for Technology in Education (ISTE): creativity and innovation; communication and collaboration; research and information fluency; critical thinking, problem solving, and decision making; digital citizenship; and technology operations and concepts. This is an exploratory course in web communications.

(2) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) Creativity and innovation. The student demonstrates creative thinking, constructs knowledge, and develops innovative products and processes using technology. The student is expected to:

(A) demonstrate proficiency in the use of local and on-line collaboration;

(B) create websites using web editors or web authoring programs;

(C) evaluate the accessibility and usability of original websites; and

(D) conceptualize possible technologies based on current technical trends.

(2) Communication and collaboration. The student uses digital technology to work collaboratively toward his or her own learning and the learning of others. The student is expected to:

(A) analyze and implement the proper and acceptable use of digital/virtual communications technologies such as instant messaging (IM), chat, email, and social networking;

(B) define and implement the acquisition, sharing, and use of files taking into consideration primary ownership and copyright;

(C) apply decisions regarding the selection, acquisition, and sharing of uniform resource locators (URLs) used in research, taking into consideration their quality, appropriateness, and effectiveness; and

(D) solve problems using critical-thinking strategies.

(3) Research and information fluency. The student applies digital tools to gather, evaluate, and use information. The student is expected to:

(A) verify the accuracy, validity, and currency of acquired information;

(B) conduct effective searches using Boolean operators;

(C) acquire and use appropriate vocabulary terms;

(D) cite sources appropriately using established methods;

(E) model ethical and legal acquisition of digital information following guidelines in the student code of conduct, including plagiarism and copyright laws;

(F) identify and discuss emerging technologies and their impact;

(G) understand Internet history and structure and how they impact current use; and

(H) demonstrate appropriate use of grammar, spelling, and vocabulary when creating original work.

(4) Critical thinking, problem solving, and decision making. The student uses critical-thinking skills to plan and conduct research, manage projects, solve problems, and make informed decisions using appropriate digital tools and resources. The student is expected to:

(A) demonstrate the transfer and adaptation of knowledge through the creation of original work;

(B) evaluate and implement security measures such as firewalls and Hypertext Transfer Protocol Secure (HTTPS) to protect original work;

(C) analyze and follow timelines needed to create, edit, and present original work;

(D) verify current licensing issues for software being used for the creation of original work;

(E) identify and evaluate the design and functionality of web pages using rubrics;

(F) optimize web information for fast download such as dial-up and high speed Internet and mobile devices; and

(G) evaluate original work through self-, peer, and professional review of websites.

(5) Digital citizenship. The student understands human, cultural, and societal issues related to technology and practices legal and ethical behavior. The student is expected to:

(A) engage in online activities that follow appropriate behavioral, communication, and privacy guidelines, including ethics, personal security, and verbiage determined by the intended audience;

(B) understand the negative impact of inappropriate technology use, including online bullying and harassment;

(C) implement online security guidelines, including identity protection, limited personal information sharing, and password protection of a secure website; and

(D) advocate and practice safe, legal, and responsible use of information and technology.

(6) Technology operations and concepts. The student demonstrates a sound understanding of technology concepts, systems, and operations. The student is expected to:

(A) demonstrate knowledge of hardware such as scanners, cameras, printers, video cameras, and external hard drives;

(B) identify the parts of a computer and explain their functions;

(C) summarize the need, functionality, and use of servers;

(D) identify the advantages and disadvantages of running a personal web server versus using a web server provider;

(E) differentiate and appropriately use various input, processing, output, and primary/secondary storage devices;

(F) create and implement universally accessible documents;

(G) analyze bandwidth issues as they relate to audience, servers, connectivity, and cost;

(H) establish a folder/directory hierarchy for storage of a web page and its related or linked files;

(I) follow file and folder naming conventions, including spacing, special characters, and capitalization; and

(J) identify basic design principles when creating a website.

§126.47. Web Design (One Credit), Beginning with School Year 2012-2013.

(a) General requirements. Students shall be awarded one credit for successful completion of this course. This course is recommended for students in Grades 9-12.

(b) Introduction.

(1) The technology applications curriculum has six strands based on the National Educational Technology Standards for Students (NETS•S) and performance indicators developed by the International Society for Technology in Education (ISTE): creativity and innovation; communication and collaboration; research and information fluency; critical thinking, problem solving, and decision making; digital citizenship; and technology operations and concepts. This is an introductory course in web design.

(2) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) Creativity and innovation. The student demonstrates creative thinking, constructs knowledge, and develops innovative products and processes using technology. The student is expected to:

(A) demonstrate proficiency in local and online collaboration;

(B) create a website using web editors and web authoring programs;

(C) evaluate the accessibility and usability of an original website as it relates to a target audience;

(D) conceptualize new possible technologies based on current technical trends;

(E) analyze the use of virtualization such as virtual classrooms, distance learning, virtual storage, and a virtual operating system;

(F) demonstrate knowledge and appropriate use of operating systems, software applications, and communication and networking components; and

(G) make decisions regarding the selection, acquisition, and use of software, taking into consideration its quality, appropriateness, effectiveness, and efficiency.

(2) Communication and collaboration. The student uses digital media and environments to communicate and work collaboratively, including at a distance, to support individual learning and contribute to the learning experience of others. The student is expected to:

(A) analyze and implement the proper and acceptable use of digital/virtual communications technologies such as instant messaging (IM), chat, email, and social networking;

(B) define and implement the acquisition, sharing, and use of files, taking into consideration their primary ownership and copyright;

(C) apply decisions regarding the selection, acquisition, and sharing of uniform resource locators (URLs) used in research, taking into consideration their quality, appropriateness, and effectiveness;

and (D) solve problems using critical-thinking strategies;

(E) compare, evaluate, and implement the use of wired versus wireless access.

(3) Research and information fluency. The student applies digital tools to gather, evaluate, and use information. The student is expected to:

(A) verify the accuracy, validity, and currency of acquired information;

(B) conduct effective searches with Boolean operators;

(C) acquire and use appropriate vocabulary terms;

(D) cite sources appropriately using established methods;

(E) model ethical and legal acquisition of digital information following guidelines in the student code of conduct, including plagiarism and copyright laws;

(F) identify and discuss emerging technologies and their impact;

(G) understand Internet history and structure and how they impact current use;

(H) demonstrate appropriate use of grammar, spelling, and vocabulary when creating original work;

(I) acquire, evaluate, and use various web standards such as World Wide Web Consortium (W3C), Ecma International, and Internet Corporation for Assigned Names and Numbers (ICANN) to make informed decisions and implement standards in original work;

(J) understand, analyze, and use interactive websites;

(K) understand, evaluate, and determine the appropriate use of dynamic and static websites;

(L) understand, evaluate, and determine the appropriate use of open/closed source file formats and software;

(M) explain and demonstrate how search engines work such as advanced options, preferences, advertising, and search categories;

(N) evaluate, create, and apply principles of project management, including web storyboards, site maps, job duties, time constraints, group dynamics, communication interaction, and project completion, evaluation, and feedback;

(O) understand the use and application of a virtual private network (VPN);

(P) distinguish among protocols, including Hypertext Transfer Protocol (HTTP) and File Transfer Protocol (FTP);

(Q) summarize the technical needs of a World Wide Web server, including random access memory (RAM), hard disk capacity, central processing unit (CPU) speed, busses, methods of connectivity, and appropriate software;

(R) demonstrate proficiency in the use of a variety of electronic input devices such as keyboard, scanner, voice/sound recorder, mouse, touch screen, or digital video by incorporating such components while publishing web pages;

(S) demonstrate proper digital etiquette and knowledge of acceptable use policies when using networks, especially resources on the Internet and intranets;

(T) demonstrate proficiency in and appropriate use and navigation of local area networks (LANs), wide area networks (WANs), the Internet, and intranets for research and resource sharing;

(U) construct appropriate search strategies in the acquisition of information from the Internet, including keyword searches and searches with Boolean operators; and

(V) acquire information in electronic formats, including text, audio, video, and graphics, citing the source.

(4) Critical thinking, problem solving, and decision making. The student uses critical-thinking skills to plan and conduct research, manage projects, solve problems, and make informed decisions using appropriate digital tools and resources. The student is expected to:

(A) demonstrate the transfer and adaptation of knowledge through the creation of original work;

(B) evaluate and implement security measures to protect original work such as firewalls and Hypertext Transfer Protocol Secure (HTTPS);

(C) analyze and follow timelines needed to create, edit, and present original work;

(D) verify current licensing issues for software being used for the creation of original work;

(E) identify and evaluate the design and functionality of web pages using rubrics;

(F) optimize web information for fast download such as dial-up and high speed Internet and mobile devices;

(G) evaluate original work through self-, peer, and professional review of websites;

(H) evaluate the types, functions, and target audiences of websites;

(I) read, use, and develop technical documents;

(J) analyze, examine, assess, and decide on servers as they relate to the management of a website;

(K) analyze, examine, assess, and decide on a web host;

(L) analyze, examine, assess, and decide on domain name acquisition and retention;

(M) evaluate the functionality of a website such as color scheme, grammar, technological constraints, age appropriateness, cross-platform usability, and user relevant criteria as it relates to an intended audience;

(N) identify software file formats and their characteristics and appropriate use;

(O) identify and apply search engine optimization (SEO) to ensure optimal website visibility;

(P) investigate and choose electronic security methods for a web server to protect from unauthorized access and negative intentions; and

(Q) draw conclusions from data gathered from electronic and telecommunication resources.

(5) Digital citizenship. The student understands human, cultural, and societal issues related to technology and practices legal and ethical behavior. The student is expected to:

(A) engage in online activities that follow appropriate behavioral, communication, and privacy guidelines, including ethics, personal security, verbiage determined by the intended audience, and ethical use of files and file sharing;

(B) understand the negative impact of inappropriate technology use, including online bullying and harassment;

(C) implement online security guidelines, including identity protection, limited personal information sharing, and password protection of a secure website;

(D) engage in safe, legal, and responsible use of information and technology;

(E) understand and respond to local, state, national, and global issues to ensure appropriate cross-browser and cross-platform usability;

(F) interpret, use, and develop a safe online shared computing environment;

(G) identify legal, ethical, appropriate, and safe website marketing practices;

(H) identify legal, ethical, appropriate, and safe multi-media usage, including video, audio, graphics, animation, and emerging trends;

(I) analyze the impact of the World Wide Web on society through research, interviews, and personal observation; and

(J) participate in relevant and meaningful activities in the larger community and society to create electronic projects.

(6) Technology operations and concepts. The student demonstrates a sound understanding of technology concepts, systems, and operations. The student is expected to:

(A) demonstrate knowledge of hardware, including scanners, cameras, printers, video cameras, and external hard drives;

(B) identify the parts of a computer and explain its functions;

(C) summarize the need for and functionality and use of servers;

(D) identify the advantages and disadvantages of running a personal web server versus using a web server provider;

(E) differentiate and appropriately use various input, processing, output, and primary/secondary storage devices;

(F) create and implement universally accessible documents;

(G) analyze bandwidth issues as related to audience, server, connectivity, and cost;

(H) establish a folder/directory hierarchy for storage of a web page and its related or linked files;

(I) create file and folder naming conventions to follow established guidelines, including spacing, special characters, and capitalization;

(J) identify basic design principles when creating a website, including white space, color theory, background color, shape, line, proximity, unity, balance (ratio of text to white space), alignment, typography, font size, type, style, image file size, repetition, contrast, consistency, and aesthetics;

(K) demonstrate knowledge of the six core domains (gov, net, com, mil, org, edu) and be familiar with new domain implementation;

(L) implement escape codes, HyperText Markup Language (HTML), cascading style sheets (CSS), and javascript through hard coding, web editors, and web authoring programs;

(M) identify and use FTP client software;

(N) implement java applet insertion;

(O) identify and differentiate various network topologies, including physical and logical;

(P) create, evaluate, and use web-based animation;

(Q) create, evaluate, and use video, including editing, compression, exporting, appropriateness, and delivery;

(R) demonstrate the ability to conduct secure communications from a web server to a client; and

(S) use hypertext linking appropriately when creating web pages.

§126.48. *Web Game Development (One Credit), Beginning with School Year 2012-2013.*

(a) General requirements. Students shall be awarded one credit for successful completion of this course. The recommended prerequisite for this course is Web Design. This course is recommended for students in Grades 11 and 12. This course satisfies the high school fine arts graduation requirement.

(b) Introduction.

(1) The technology applications curriculum has six strands based on the National Educational Technology Standards for Students (NETS•S) and performance indicators developed by the International Society for Technology in Education (ISTE): creativity and innovation; communication and collaboration; research and information fluency; critical thinking, problem solving, and decision making; digital citizenship; and technology operations and concepts.

(2) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) Creativity and innovation. The student demonstrates creative thinking, constructs knowledge, and develops innovative products and processes using technology. The student is expected to:

(A) research, evaluate, and demonstrate appropriate design of a web-based gaming site;

(B) illustrate ideas for web artwork from direct observations, experiences, and imagination;

(C) create original designs for web applications; and

(D) demonstrate the effective use of art media to create original web designs.

(2) Communication and collaboration. The student uses digital media and environments to communicate and work collaboratively, including at a distance, to support individual learning and contribute to the learning experience of others. The student is expected to:

(A) understand and evaluate the use and appropriateness of webinars;

(B) examine, discuss, and summarize interactive online learning environments;

(C) distinguish between distance learning, virtual learning, and online learning;

(D) define and evaluate Voice over Internet Protocol (VoIP);

(E) identify and apply end-user, peer, self-, and professional evaluations; and

(F) work collaboratively to create functioning programs and gaming products.

(3) Research and information fluency. The student applies digital tools to gather, evaluate, and use information. The student is expected to:

(A) research, evaluate, and create web forms for database processing;

(B) identify the various programming languages and differentiate among the available web programming languages;

(C) research, evaluate, and summarize content management systems (CMS);

(D) differentiate between Common Gateway Interface (CGI) and computer-generated imagery (CGI);

(E) discuss, analyze, and summarize streaming media/content and game broadcasting;

(F) define and evaluate instant messaging (IM) within a game environment;

(G) analyze and discuss the history of gaming;

(H) discuss, analyze, compare, and contrast game types such as action, action-adventure, adventure, construction and management simulation, life simulation, massively multiplayer online role-playing (MMORPG), music, party, puzzle, role-playing, sports, strategy, trivia, and vehicle simulation;

(I) discuss, analyze, compare, and contrast gaming hardware, including console, personal computer, mobile, and web;

(J) compare and contrast web standards versus browser-specific languages;

(K) research, evaluate, and summarize e-commerce;

(L) investigate career opportunities in programming, gaming, art, design, business, and marketing;

(M) research the characteristics of existing gaming websites to determine local, state, national, and global trends;

(N) compare and contrast historical and contemporary styles of art as applied to website development;

(O) compare and contrast the use of the art elements of color, texture, form, line, space, and value and the art principles of emphasis, pattern, rhythm, balance, proportion, and unity in personal web game artwork and the web game artwork of others, using vocabulary accurately;

(P) describe general characteristics in artwork from a variety of cultures that influence web game design;

(Q) research and evaluate emerging technologies; and

(R) research and evaluate augmented reality (the supplementing of reality with computer-generated imagery) such as heads-up display and virtual digital projectors.

(4) Critical thinking, problem solving, and decision making. The student uses critical-thinking skills to plan and conduct re-

search, manage projects, solve problems, and make informed decisions using appropriate digital tools and resources. The student is expected to:

(A) select an appropriate web programming language based on given criteria;

(B) develop requirements for a database and determine the appropriate means to insert, delete, and modify records;

(C) develop Structured Query Language (SQL) statements to retrieve, insert, modify, and delete records in a database;

(D) design and create a flow diagram to plan a database, program, and game;

(E) define and identify proper use of gaming graphics, including skins, textures, environment appearance, environment mapping, raster graphics, and vector graphics;

(F) plan an animation that includes the movement of characters, camera movements, camera angles, user point of view, mechanics of motion, backgrounds, settings, ambient objects, and environments;

(G) compare and contrast two-dimensional (2-D) and three-dimensional (3-D) animation;

(H) develop and create a gaming storyboard and script that shows the overall development of a storyline;

(I) identify and implement graphic and game design elements, including color, environment, time to completion, difficulty, story complexity, character development, device control, backstory, delivery, and online player(s);

(J) design and create decision trees for a game's artificial intelligence engine;

(K) compare and contrast available audio formats for optimal delivery;

(L) identify the similarities and differences among platforms, including the application of coding on a personal computer, mobile device, and gaming console;

(M) research and identify existing online game development tools;

(N) evaluate and determine network requirements for the delivery of online games to end users; and

(O) create visual solutions by elaborating on direct observation, experiences, and imagination as they apply to original web design.

(5) Digital citizenship. The student understands human, cultural, and societal issues related to technology and practices legal and ethical behavior. The student is expected to:

(A) explain game ratings and why games fit into certain ratings;

(B) assess games and game ratings in terms of their impact on societal interactions;

(C) model the ethical and legal acquisition of digital information following copyright laws, fair-use guidelines, and the student code of conduct;

(D) define and practice the ethical and legal acquisition, sharing, and use of files taking into consideration their primary ownership and copyright;

(E) examine original web game artwork to comply with appropriate behavioral, communication, and privacy guidelines, including ethics, online bullying and harassment, personal security, appropriate audience language, ethical use of files/file sharing, technical documentation, and online communities;

(F) interpret, evaluate, and justify artistic decisions in the creation of original art for web game design; and

(G) analyze original web game artwork and digital portfolios created by peers and others to form precise conclusions about formal qualities, historical and cultural contexts, intents, and meanings.

(6) Technology operations and concepts. The student demonstrates a sound understanding of technology concepts, systems, and operations. The student is expected to:

(A) create a website that includes:

(i) an interactive database with elements such as SQL statements, Extensible Markup Language (XML), and Open Database Connectivity (ODBC);

(ii) javascript; and

(iii) server-side processing, including Common Gateway Interface (CGI); bitmap and vector graphics; database creation, modification, and deletion; creation and maintenance of user accounts; user authentication; and documentation;

(B) create a fully functional online game that includes:

(i) multiple game levels with increasing difficulty;

(ii) high-score ranking;

(iii) physics, including center of mass, collision detection, lighting, shading, perspective, anatomy, motion blur, lens flare, and reflections;

(iv) art principles, including color theory, texture, balance, lighting, shading, skinning, and drawing;

(v) graphics resolution, including pixel depth and compression;

(vi) database creation, modification, and deletion;

(vii) creation and maintenance of user accounts;

(viii) user authentication;

(ix) artificial intelligence;

(x) game-level saving;

(xi) mathematical functions;

(xii) varying camera angles;

(xiii) VoIP for online web games; and

(xiv) documentation; and

(C) create a digital portfolio.

§126.49. Independent Study in Technology Applications (One-Half to One Credit), Beginning with School Year 2012-2013.

(a) General requirements. Students shall be awarded one-half to one credit for successful completion of this course. The prerequisite for this course is completion of a high school technology applications course as identified in this subchapter and permission of the instructor/mentor for Independent Study in Technology Applications. This course may be taken at Grades 9-12.

(b) Introduction.

(1) The technology applications curriculum has six strands based on the National Educational Technology Standards for Students (NETS•S) and performance indicators developed by the International Society for Technology in Education (ISTE): creativity and innovation; communication and collaboration; research and information fluency; critical thinking, problem solving, and decision making; digital citizenship; and technology operations and concepts.

(2) Through the study of technology applications foundations, including technology-related terms, concepts, and data input strategies, students will communicate information in different formats and to diverse audiences using a variety of technologies. Students will learn to make informed decisions; develop and produce original work that exemplifies the standards identified by the selected profession or discipline; and publish the product in electronic media and print. Students will practice the efficient acquisition of information by identifying task requirements, using search strategies, and using technology to access, analyze, and evaluate the acquired information. By using technology as a tool that supports the work of individuals and groups in solving problems, students will select the technology appropriate for the task, synthesize knowledge, create solutions, and evaluate the results.

(3) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) Creativity and innovation. The student demonstrates creative thinking, constructs knowledge, and develops innovative products and processes using technology. The student is expected to:

(A) apply existing knowledge to promote creativity in designing new technology products or services;

(B) design and implement procedures to track trends, set timelines, and review and evaluate progress for continual improvement in process and product;

(C) produce electronic documentation to illustrate the progress of a project;

(D) seek and respond to input from peers and professionals in delineating technological tasks and problem solving;

(E) make necessary revisions and/or proceed to the next stage of study;

(F) use technology terminology appropriate to the independent study course;

(G) develop and apply advanced creativity and innovation employed in technology applications skills;

(H) identify and solve problems, individually and with input from peers and professionals, using research methods and advanced creativity and innovation skills used in a selected profession or discipline;

(I) develop products that meet standards identified by the selected profession or discipline; and

(J) produce original work to solve an identified problem and publish a product in electronic media and print.

(2) Communication and collaboration. The student uses digital media and environments to communicate and work collaboratively, including at a distance, to support individual learning and contribute to the learning experience of others. The student is expected to:

- (A) format developed projects according to defined output specifications, including target audience and viewing environment;
 - (B) present findings to a panel for comment and professional response;
 - (C) determine and implement the best method of presenting or publishing findings;
 - (D) synthesize and publish information in a variety of print or digital formats;
 - (E) use evolving network and Internet resources and appropriate technology skills to create, exchange, and publish information;
 - (F) develop cultural understanding and global awareness by interacting with learners of other cultures through evolving digital formats and communication methods;
 - (G) collaborate with others to identify a problem to be solved, hypotheses, and strategies to accomplish a task;
 - (H) participate with electronic communities as a learner, initiator, contributor, and facilitator/mentor; and
 - (I) participate in relevant, meaningful activities in the larger community and society to create electronic projects.
- (3) Research and information fluency. The student applies digital tools to gather, evaluate, and use information. The student is expected to:
- (A) use evolving network and Internet resources for research and resource sharing of technology applications;
 - (B) apply appropriate search strategies in the acquisition of information from the Internet, including keyword and Boolean search strategies;
 - (C) pose hypotheses and questions related to a selected problem;
 - (D) acquire information using appropriate research strategies with source citations through electronic formats, including interactive components, text, audio, video, graphics, and simulations; and
 - (E) identify, create, and use available file formats, including text, image, video, and audio files.
- (4) Critical thinking, problem solving, and decision making. The student uses critical-thinking skills to plan and conduct research, manage projects, solve problems, and make informed decisions using appropriate digital tools and resources. The student is expected to:
- (A) evaluate the design, functionality, and accuracy of the accessed information;
 - (B) conduct systematic research;
 - (C) demonstrate creative-thinking and problem-solving skills;
 - (D) integrate appropriate productivity tools, including network, mobile access, and multimedia tools, in the creation of solutions to problems;
 - (E) use enriched curricular content in the creation of products;
 - (F) synthesize and generate new information from data gathered from electronic resources;

- (G) read and use technical documentation; and
- (H) write simple technical documentation relative to the audience.

(5) Digital citizenship. The student understands human, cultural, and societal issues related to technology and practices legal and ethical behavior. The student is expected to:

- (A) discuss intellectual property, privacy, sharing of information, copyright laws, and software licensing agreements;
- (B) model ethical acquisition and use of digital information;
- (C) model respect of intellectual property when editing graphics, video, text, and sound files;
- (D) demonstrate proper etiquette, responsible use of software, and knowledge of acceptable use policies when using network resources;
- (E) demonstrate best practices in understanding and applying information security;
- (F) develop and maintain a technical documentation library in a variety of formats; and
- (G) investigate how technology has changed and the social and ethical ramifications of computer usage.

(6) Technology operations and concepts. The student demonstrates a sound understanding of technology concepts, systems, and operations. The student is expected to:

- (A) demonstrate knowledge and appropriate use of input devices, operating systems, software applications, and communication and networking components;
- (B) select, acquire, and use appropriate digital tools;
- (C) delineate and make necessary adjustments regarding compatibility issues, including digital file formats and cross-platform connectivity; and
- (D) use appropriate technology terminology and naming conventions.

§126.50. Independent Study in Evolving/Emerging Technologies (One-Half to One Credit), Beginning with School Year 2012-2013.

(a) General requirements. Students shall be awarded one-half to one credit for successful completion of this course. The prerequisite for this course is completion of a high school technology applications course as identified in this subchapter and permission of the instructor/mentor for Independent Study in Evolving/Emerging Technologies. This course may be taken at Grades 9-12.

(b) Introduction.

(1) The technology applications curriculum has six strands based on the National Educational Technology Standards for Students (NETS•S) and performance indicators developed by the International Society for Technology in Education (ISTE): creativity and innovation; communication and collaboration; research and information fluency; critical thinking, problem solving and decision making; digital citizenship; and technology operations and concepts.

(2) Through the study of evolving/emerging technologies, including technology-related terms, concepts, and data input strategies, students will communicate information in different formats and to diverse audiences using a variety of technologies. Students will learn to make informed decisions, develop and produce original work that exemplifies the standards identified by the selected profession or disci-

pline, and publish the product in electronic media and print. Students will demonstrate efficient acquisition of information by identifying task requirements, using search strategies, and using technology to access, analyze, and evaluate the acquired information. By using technology as a tool that supports the work of individuals and groups in solving problems, students will select the technology appropriate for the task, synthesize knowledge, create solutions, and evaluate the results.

(3) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) Creativity and innovation. The student demonstrates creative thinking, constructs knowledge, and develops innovative products and processes using technology. The student is expected to:

(A) apply existing knowledge to promote creativity in designing new technology products or services;

(B) design and implement procedures to track trends, set timelines, and review and evaluate progress for continual improvement in process and product;

(C) produce electronic documentation to illustrate the progress of a project;

(D) seek and respond to input from peers and professionals in delineating technological tasks and problem solving;

(E) make necessary revisions and/or proceed to the next stage of study;

(F) use technology terminology appropriate to the independent study course;

(G) develop and apply advanced creativity and innovation employed in technology applications skills;

(H) identify and solve problems, individually and with input from peers and professionals, using research methods and advanced creativity and innovation skills used in a selected profession or discipline;

(I) develop products that meet standards identified by a selected profession or discipline; and

(J) produce original work to solve an identified problem and publish a product in electronic media and print.

(2) Communication and collaboration. The student uses digital media and environments to communicate and work collaboratively, including at a distance, to support individual learning and contribute to the learning experience of others. The student is expected to:

(A) format developed projects according to defined output specifications, including target audience and viewing environment;

(B) present findings to a panel for comment and professional response;

(C) determine and implement the best method of presenting or publishing findings;

(D) synthesize and publish information in a variety of print or digital formats;

(E) use evolving network resources and appropriate technology skills to create, exchange, and publish information;

(F) develop cultural understanding and global awareness by interacting with learners of other cultures through evolving digital formats and communication methods;

(G) collaborate with others to identify a problem to be solved, hypotheses, and strategies to accomplish a task;

(H) participate with electronic communities as a learner, initiator, contributor, and facilitator/mentor; and

(I) participate in relevant, meaningful activities in the larger community and society to create electronic projects.

(3) Research and information fluency. The student applies digital tools to gather, evaluate, and use information. The student uses a variety of strategies to acquire information from electronic resources, with appropriate supervision. The student is expected to:

(A) use evolving network and Internet resources for research and resource sharing of technology applications;

(B) apply appropriate search strategies in the acquisition of information from the Internet, including keyword and Boolean search strategies;

(C) pose hypotheses and questions related to a selected problem;

(D) acquire information using appropriate research strategies with source citations through electronic formats, including interactive components, text, audio, video, graphics, and simulations; and

(E) identify, create, and use available file formats, including text, image, video, and audio files.

(4) Critical thinking, problem solving, and decision making. The student uses critical-thinking skills to plan and conduct research, manage projects, solve problems, and make informed decisions using appropriate digital tools and resources. The student is expected to:

(A) evaluate the design, functionality, and accuracy of the accessed information;

(B) conduct systematic research;

(C) demonstrate creative-thinking and problem-solving skills;

(D) integrate appropriate productivity tools, including network, mobile access, and multimedia tools, in the creation of solutions to problems;

(E) use enriched curricular content in the creation of products;

(F) synthesize and generate new information from data gathered from electronic resources;

(G) read and use technical documentation; and

(H) write simple technical documentation relative to the audience.

(5) Digital citizenship. The student understands human, cultural, and societal issues related to technology and practices legal and ethical behavior. The student is expected to:

(A) discuss intellectual property, privacy, sharing of information, copyright laws, and software licensing agreements;

(B) model ethical acquisition and use of digital information;

(C) model respect of intellectual property when editing graphics, video, text, and sound files;

(D) demonstrate proper etiquette, responsible use of software, and knowledge of acceptable use policies when using network resources;

(E) demonstrate best practices in understanding and applying information security;

(F) develop and maintain a technical documentation library in a variety of formats; and

(G) investigate how technology has changed and the social and ethical ramifications of computer usage.

(6) Technology operations and concepts. The student demonstrates a sound understanding of technology concepts, systems, and operations. The student is expected to:

(A) demonstrate knowledge and appropriate use of input devices, operating systems, software applications, and communication and networking components;

(B) select, acquire, and use appropriate digital tools;

(C) delineate and make necessary adjustments regarding compatibility issues, including digital file formats and cross-platform connectivity; and

(D) use appropriate technology terminology and naming conventions.

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 February 18, 2011.

TRD-201100698

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Earliest possible date of adoption: April 3, 2011

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



SUBCHAPTER D. OTHER TECHNOLOGY APPLICATIONS COURSES

19 TAC §§126.61 - 126.64

The new sections are proposed under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to by rule identify the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating textbooks and addressed on the assessment instruments; and §28.025, which authorizes the SBOE to by rule determine curriculum requirements for the minimum, recommended, and advanced high school programs that are consistent with the required curriculum under §28.002.

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

§126.61. Implementation of Texas Essential Knowledge and Skills for Technology Applications, Other Technology Applications Courses, Beginning with School Year 2012-2013.

The provisions of §§126.62-126.64 of this subchapter shall be implemented by school districts beginning with the 2012-2013 school year.

§126.62. Advanced Placement (AP) Computer Science (One to One and One-Half Credits), Beginning with School Year 2012-2013.

(a) General requirements. Students shall be awarded one to one and one-half credits for successful completion of this course. Recommended prerequisites: Computer Science I, Algebra II.

(b) Content requirements. Content requirements for Advanced Placement (AP) Computer Science are prescribed in the College Board Publication Advanced Placement Course Description: Computer Science A, published by The College Board.

§126.63. International Baccalaureate (IB) Computer Science, Standard Level (One to One and One-Half Credits), Beginning with School Year 2012-2013.

(a) General requirements. Students shall be awarded one to one and one-half credits for successful completion of this course. Recommended prerequisites: Computer Science I, Algebra II.

(b) Content requirements. Content requirements for International Baccalaureate (IB) Computer Science, Standard Level are prescribed by the International Baccalaureate Organization. Curriculum guides may be obtained from International Baccalaureate of North America.

§126.64. International Baccalaureate (IB) Computer Science, Higher Level (One to One and One-Half Credits), Beginning with School Year 2012-2013.

(a) General requirements. Students shall be awarded one to one and one-half credits for successful completion of this course. Recommended prerequisites: Computer Science I, Algebra II.

(b) Content requirements. Content requirements for International Baccalaureate (IB) Computer Science, Higher Level are prescribed by the International Baccalaureate Organization. Curriculum guides may be obtained from International Baccalaureate of North America.

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 February 18, 2011.

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Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

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



TITLE 22. EXAMINING BOARDS

PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 533. PRACTICE AND PROCEDURE

22 TAC §533.1, §533.3

The Texas Real Estate Commission (TREC) proposes amendments to §533.1 regarding Definitions and §533.3 regarding Filing and Notice. The proposed amendment to §533.1 amends the

definition of "last known mailing address" to "mailing address" to be consistent with other TREC rules. The proposed amendment to §533.3 clarifies that the Notice of Alleged Violation required by Occupations Code §1101.703 will be mailed to the respondent's mailing address.

Loretta R. DeHay, General Counsel, has determined that for the first five-year period the proposed rules as amended are effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the rules. There is no anticipated economic effect on small businesses, micro-businesses, persons, or local or state employment as a result of implementing the amendment.

Ms. DeHay also has determined that for each year of the first five years the amended sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be clarification of the practice and procedure before the commission and the State Office of Administrative Hearings and consistency with other TREC rules.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed 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 proposal are Texas Occupations Code, Chapters 1101, 1102, and 1303, and Texas Property Code, Chapter 221. No other statute, code or article is affected by the proposed amendments.

§533.1. Definitions.

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

(1) - (12) (No change.)

(13) ~~[Last Known]~~ Mailing Address--The [permanent] mailing address as provided to the commission by a Licensee and maintained as required by §535.96 and §535.217 of this title (relating to Mailing Address and Other Contact Information) or as provided to the commission by an [✽] Applicant or as shown in the commission's records for a Respondent who is not a license holder. The mailing address for a Respondent that holds an active salesperson license shall be the mailing address of the salesperson's sponsoring broker as shown in the commission's records.

(14) - (22) (No change.)

§533.3. Filing and Notice.

(a) The commission shall provide notice to all parties in accordance with the APA §2001.052, Chapters 1101 and 1102, Texas Occupations Code, and the following:

(1) If, after investigation of a possible violation and the facts surrounding that possible violation, the commission determines that a violation has occurred, the commission may issue a written Notice of Alleged Violation.

(2) The Notice of Alleged Violation shall be sent to the Respondent's ~~[last known]~~ mailing address by certified or registered mail.

(3) The Notice of Alleged Violation shall include:

(A) a brief summary of the alleged violation(s);

(B) a statement of the amount of the penalty and/or sanction recommended; and

(C) a statement of the right of the Respondent to a hearing.

(4) The commission shall base the recommendation on the factors set forth in this chapter.

(b) - (d) (No change.)

(e) If a real estate salesperson is a Respondent [~~respondent~~], the commission also will notify the salesperson's sponsoring broker of the hearing. Such notice need not be provided by certified or registered mail. If an apprentice inspector or real estate inspector is a respondent, the commission also will notify the sponsoring professional inspector of the hearing.

(f) Any document served upon a party is prima facie evidence of receipt if it is directed to the party's ~~[last known]~~ mailing address. This presumption is rebuttable. Failure to claim properly addressed certified or registered mail will not support a finding of nondelivery.

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 February 17, 2011.

TRD-201100651

Loretta R. DeHay

General Counsel

Texas Real Estate Commission

Earliest possible date of adoption: April 3, 2011

For further information, please call: (512) 465-3926

CHAPTER 535. GENERAL PROVISIONS SUBCHAPTER R. REAL ESTATE INSPECTORS

22 TAC §535.217

The Texas Real Estate Commission (TREC) proposes amendments to §535.217 regarding Contact Information. The proposed amendment to §535.217 amends the title of the rule to add "Mailing Address and Other" and deletes the term "permanent" from the rule to make it consistent with other TREC rules.

Loretta R. DeHay, General Counsel, has determined that for the first five-year period the proposed rules as amended are effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the rules.

There is no anticipated economic effect on small businesses, micro-businesses, persons, or local or state employment as a result of implementing the amendment.

Ms. DeHay also has determined that for each year of the first five years the amended sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be clarification of the practice and procedure before the commission and the State Office of Administrative Hearings and consistency with other TREC rules.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed 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 proposal are Texas Occupations Code, Chapters 1101, 1102, and 1303, and Texas Property Code, Chapter 221. No other statute, code or article is affected by the proposed amendments.

§535.217. *Mailing Address and Other Contact Information.*

Each licensee shall furnish a [permanent] mailing address, phone number, and email address to the commission and shall report all subsequent changes within 10 days after a change of any of the listed contact infor-

mation. If a licensee fails to update the [a permanent] mailing address, the last known mailing address for the licensee will be deemed to be the licensee's [permanent] mailing address.

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 February 17, 2011.

TRD-201100652

Loretta R. DeHay

General Counsel

Texas Real Estate Commission

Earliest possible date of adoption: April 3, 2011

For further information, please call: (512) 465-3926



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 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

CHAPTER 75. RULES OF PRACTICE

22 TAC §75.17

The Texas Board of Chiropractic Examiners withdraws the proposed amendment to §75.17 which appeared in the November 19, 2010, issue of the *Texas Register* (35 TexReg 10138).

Filed with the Office of the Secretary of State on February 18, 2011.

TRD-201100673

Glenn Parker

Executive Director

Texas Board of Chiropractic Examiners

Effective date: February 18, 2011

For further information, please call: (512) 305-6716



PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 281. ADMINISTRATIVE PRACTICE AND PROCEDURES

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §281.2

The Texas State Board of Pharmacy withdraws the proposed amendments to §281.2 which appeared in the December 24, 2010, issue of the *Texas Register* (35 TexReg 11474).

Filed with the Office of the Secretary of State on February 18, 2011.

TRD-201100680

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

Effective date: February 18, 2011

For further information, please call: (512) 305-8028



SUBCHAPTER B. GENERAL PROCEDURES IN A CONTESTED CASE

22 TAC §281.30

The Texas State Board of Pharmacy withdraws the proposed amendments to §281.30 which appeared in the December 24, 2010, issue of the *Texas Register* (35 TexReg 11475).

Filed with the Office of the Secretary of State on February 18, 2011.

TRD-201100681

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

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For further information, please call: (512) 305-8028



CHAPTER 283. LICENSING REQUIREMENTS FOR PHARMACISTS

22 TAC §§283.4, 283.7, 283.8

The Texas State Board of Pharmacy withdraws the proposed amendments to §§283.4, 283.7, and 283.8 which appeared in the December 24, 2010, issue of the *Texas Register* (35 TexReg 11476).

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TRD-201100682

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

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For further information, please call: (512) 305-8028



CHAPTER 291. PHARMACIES SUBCHAPTER A. ALL CLASSES OF PHARMACIES

22 TAC §291.1

The Texas State Board of Pharmacy withdraws the proposed amendments to §291.1 which appeared in the December 24, 2010, issue of the *Texas Register* (35 TexReg 11480).

Filed with the Office of the Secretary of State on February 18, 2011.

TRD-201100683

Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
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For further information, please call: (512) 305-8028



SUBCHAPTER B. COMMUNITY PHARMACY (CLASS A)

22 TAC §291.32

The Texas State Board of Pharmacy withdraws the proposed amendments to §291.32 which appeared in the December 24, 2010, issue of the *Texas Register* (35 TexReg 11486).

Filed with the Office of the Secretary of State on February 18, 2011.

TRD-201100685

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

Effective date: February 18, 2011

For further information, please call: (512) 305-8028

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CHAPTER 297. PHARMACY TECHNICIANS AND PHARMACY TECHNICIAN TRAINEES

22 TAC §297.3

The Texas State Board of Pharmacy withdraws the proposed amendments to §297.3 which appeared in the December 24, 2010, issue of the *Texas Register* (35 TexReg 11490).

Filed with the Office of the Secretary of State on February 18, 2011.

TRD-201100684

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

Effective date: February 18, 2011

For further information, please call: (512) 305-8028



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 7. BANKING AND SECURITIES

PART 7. STATE SECURITIES BOARD

CHAPTER 116. INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTA- TIVES

7 TAC §§116.2, 116.9, 116.11, 116.12

The Texas State Securities Board adopts amendments to §116.2, concerning application requirements; §116.9, concerning post-registration reporting requirements; §116.11, concerning disclosure requirement/brochure rule; and §116.12, concerning advisory contract requirements. The rules were adopted without changes to the proposed text as published in the December 24, 2010, issue of the *Texas Register* (35 TexReg 11457).

The changes update the Form ADV filing requirements following recent amendments to the form by the SEC, identify the portions of the application that are filed electronically through the Investment Adviser Registration Depository (IARD) and the portions that are to be filed in paper form with the Commissioner, add a requirement that a currently registered investment adviser file the new narrative Part 2 of Form ADV annually within 90 days after the end of the investment adviser's fiscal year, and update references to portions of Form ADV to reflect the relocation or renaming of those provisions in the newly revised form.

Prospective clients and existing clients of investment advisers will receive enhanced disclosures, which the registered investment adviser can file electronically using a uniform form.

A comment was received from the Financial Services Institute urging adoption of the proposed amendments. The Board agrees and has adopted the proposals without change.

The amendments are adopted under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The adopted amendments affect Texas Civil Statutes, Articles 581-12, 581-13, 581-15, 581-18, and 581-19.

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 February 17, 2011.

TRD-201100664

Denise Voigt Crawford
Securities Commissioner
State Securities Board

Effective date: March 9, 2011

Proposal publication date: December 24, 2010

For further information, please call: (512) 305-8303



TITLE 10. COMMUNITY DEVELOPMENT

PART 6. TEXAS DEPARTMENT OF RURAL AFFAIRS

CHAPTER 255. TEXAS COMMUNITY DEVELOPMENT PROGRAM

SUBCHAPTER A. ALLOCATION OF PROGRAM FUNDS

10 TAC §255.1, §255.9

The Texas Department of Rural Affairs (TDRA) adopts amendments to §255.1 and §255.9, concerning the General Provisions and Colonia Fund, with changes to the proposal published in the December 17, 2010, issue of the *Texas Register* (35 TexReg 11143). The amendments are adopted to conform the Texas Administrative Code to the approved 2011 Texas CDBG Action Plan and Riders 6 and 7 of the General Appropriations Act of the 81st Legislature.

The amendments are to §255.1 and §255.9. In accordance with §2001.039 of the Texas Government Code, the agency has reviewed the Texas Administrative Code, Title 10, Part 6, Chapter 255. The agency has determined that at this time revisions need to be made to §255.1 and §255.9. In addition, the agency published for public comment proposed amendments covering §255.5.

No comments were received.

The amendments to §255.1 and §255.9 are adopted under the Texas Government Code §487.052, which provides the Texas Department of Rural Affairs with the authority to adopt rules and administrative procedures to carry out the provisions of Chapter 487 of the Texas Government Code.

§255.1. *General Provisions.*

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

(1) Applicant--A unit of general local government which is preparing to submit or has submitted an application for Texas Community Development funds to the Department or to the Texas Department of Agriculture (TDA).

(2) Application--A written request for Texas Community Development Block Grant Program (TxCDBG) funds in the format required by the Department or by the TDA for Texas Capital Fund (TCF) applications.

(3) Community Development Block Grant nonentitlement area funds--The funds awarded to the State of Texas pursuant to the Housing and Community Development Act of 1974, Title I, as amended (42 United States Code §§5301 et seq.), and the regulations promulgated thereunder in 24 Code of Federal Regulations Part 570.

(4) Community--A unit of general local government.

(5) Contract--A written agreement, including all amendments thereto, executed by the Department, or by the TDA, and contractor which is funded with community development block grant nonentitlement area funds.

(6) Contractor--A unit of general local government with which the Department or the TDA has executed a contract.

(7) Department--Texas Department of Rural Affairs.

(8) Local government--A unit of general local government.

(9) Low-and moderate-income person--A member of a family which earns less than 80% of the area median family income, as defined under the United States Department of Housing and Urban Development §8 Assisted Housing Program.

(10) Nonentitlement area--An area which is not a metropolitan city or part of an urban county as defined in 42 United States Code, §5302.

(11) Poverty--The current official poverty line established by the Director of the Federal Office of Management and Budget.

(12) Primary beneficiary--A low or moderate income person.

(13) Regional review committee--A regional community development review committee, one of which is established in each of the 24 state planning regions established by the governor pursuant to Texas Local Government Code, §391.003.

(14) Slum or blighted area--An area which has been designated a state enterprise zone, or an area within a municipality or county that is detrimental to the public health, safety, morals, and welfare of the municipality or county because the area:

(A) has a predominance of buildings or other improvements that are dilapidated, deteriorated, or obsolete due to age or other reasons;

(B) is prone to high population densities and overcrowding due to inadequate provision for open space;

(C) is composed of open land that, because of its location within municipal or county limits, is necessary for sound community growth through replatting, planning, and development for predominantly residential uses; or

(D) has conditions that exist due to any of the causes enumerated in subparagraphs (A) - (C) of this paragraph or any combination of those causes that:

(i) endanger life or property by fire or other causes;

(ii) are conducive to:

(I) the ill health of the residents;

(II) disease transmission;

(III) abnormally high rates of infant mortality;

(IV) abnormally high rates of juvenile delinquency and crime; or

(V) disorderly development because of inadequate or improper platting for adequate residential development of lots, streets, and public utilities.

(15) Slum or blight, spot basis--A building which has been declared as a slum or blight and has multiple and unattended building code violations, and qualifies as slum or blighted on a spot basis under local law.

(16) Unemployed person--A person between the ages of 16 and 64, inclusive, who is not presently working but is seeking employment.

(17) Unit of general local government--An entity defined as a unit of general local government in 42 United States Code §5302(a)(1), as amended.

(b) Overview--Community Development Block Grant nonentitlement area funds are distributed by the TxCDBG to eligible units of general local government in the following program areas:

(1) community development fund;

(2) Texas Capital fund. The Texas Capital Fund (TCF) is administered by the TDA under an interagency agreement with the Department. Applications for the TCF shall be submitted to the TDA.

(3) planning/capacity building fund;

(4) disaster relief fund;

(5) urgent need fund;

(6) colonia fund;

(7) small towns environment program fund;

(8) renewable energy demonstration pilot program.

(c) Types of applications.

(1) Single jurisdiction applications. An applicant may submit one application per TxCDBG fund, as outlined in subsection (b) of this section, on its own behalf, or as a participant in a multi-jurisdictional application, per funding cycle (except as specified for the TCF, community development fund, housing fund, colonia fund, and small towns environment program fund).

(A) A city may submit a single jurisdiction application that includes beneficiaries located within the extraterritorial jurisdiction of the city. However, the applicant must document that each activity benefiting persons located in its extraterritorial jurisdiction is meeting its community and housing development needs, including the needs of low and moderate income persons. A city cannot submit a single jurisdiction application that includes beneficiaries located inside the corporate city limits and outside of the city's extraterritorial jurisdiction. In this instance, the city and county in which the beneficiaries outside of

the city's extraterritorial jurisdiction are located must submit the project as a multi-jurisdiction application.

(B) A county may submit an application on behalf of an incorporated city when the proposed application activities provide improvements to a public facility or service that is not owned or operated by the incorporated city and the persons benefiting from the application activities are located within the city's corporate city limits or the city's extraterritorial jurisdiction. If a county submits an application on behalf of an incorporated city, then the county and that city cannot submit another single jurisdiction application or be a participating jurisdiction in a multi-jurisdiction application submitted under the same TxCDBG fund category.

(C) An application from an eligible city or county for a project that would primarily benefit another city or county that was not meeting the TxCDBG application threshold requirements would be considered ineligible.

(2) Multi jurisdiction applications. Subject to each participating community satisfying the application requirements of the Tx-CDBG fund under which the application is submitted and this paragraph, an application will be accepted from two or more units of general local government if the application clearly demonstrates that the proposed activities will mutually benefit the residents of the communities applying for funds. A multi-jurisdiction application solely for administrative convenience will not be accepted. Any community participating in a multi-jurisdiction application may not submit a single jurisdiction application under the project fund for which the multi-jurisdiction application was submitted. One of the participating communities must be primarily accountable to the Department and the TDA, in instances where the TCF is accessed, for financial compliance and program performance; however, all entities participating in the multi-jurisdiction application will be accountable for application threshold compliance. Only one unit of general local government may be the official applicant and this applicant must enter into a legally binding cooperation agreement with each participant that incorporates TxCDBG requirements. A proposed project which is located in more than one jurisdiction or in which beneficiaries from more than one jurisdiction will be counted must be submitted as a multi-jurisdiction application (except as specified for the TCF and single jurisdiction applications described in paragraph 1(A) - (C) of this subsection).

(d) Eligible location. Only projects or activities which are located in the nonentitlement areas of the state are eligible for funding under the TxCDBG. An exception to this requirement is Hidalgo County, an entitlement county, which is eligible for the colonia fund. Another exception to this requirement is that entitlement areas located in disaster recovery initiative eligible counties are eligible locations for disaster recovery initiative funds.

(e) Ineligible activities. Any type of activity not described or referred to in the Federal Housing and Community Development Act of 1974, §5305(a) (42 United States Code §§5301 et seq.) is ineligible for funding under the TxCDBG.

(1) Specific ineligible activities include, but are not limited to: construction of buildings and facilities used for the general conduct of government (e.g., city halls and courthouses); new housing construction, except as described as eligible under the current Tx-CDBG application guides; the financing of political activities; purchases of construction equipment (except in limited circumstances under the small towns environment program); income payments, such as housing allowances; most operation and maintenance expenses (including smoke testing televising/video taping line work, or any other investigative method to determine the overall scope and location of the project work activities); pre-contract costs, except for costs incurred

prior to submittal of an application and paid with local government or other funds for administrative consultant and engineering/architectural services and pre-agreement costs described in a TxCDBG contract; prisons/detention centers; government supported facilities; and racetracks.

(2) The following activities and/or uses are specifically ineligible under the TCF: monies may not be used for speculation, investment or excess improvements over the minimum improvements needed for the business. TCF funds may not be utilized for refinancing or to repay the applicant, a local related economic development entity, the benefiting business or its owners and related parties for expenditures. Educational institutions, including but not limited to colleges and/or universities, and governmental entities may not qualify as the benefiting business. Ineligible infrastructure activities/improvements include, but are not limited to: landfills, incinerators, recycling facilities, machinery and equipment. Real estate improvements designed and/or built for a single, special or limited use or purpose are an ineligible use of funds. Real estate improvements do not include machinery and equipment used in the production and/or services marketed by the business.

(f) Citizen Participation.

(1) Public hearing requirements. For each public hearing scheduled and conducted by an applicant or contractor, the following public hearing requirements shall be followed.

(A) Notice of each hearing must be published in a newspaper having general circulation in the city or county at least 72 hours prior to each scheduled hearing. The published notice must include the date, time, and location of each hearing and the topics to be considered at each hearing. The published notice must be printed in both English and Spanish, if appropriate. Articles published in such newspapers which satisfy the content and timing requirements of this subparagraph will be accepted by the Department and, in the case of TCF hearings, by the TDA, in lieu of publication of notices. Notices should also be prominently posted in public buildings and distributed to local Public Housing Authorities and other interested community groups.

(B) Each public hearing shall be held at a time and location convenient to potential or actual beneficiaries, with accommodation for persons with disabilities. Persons with disabilities must be able to attend the hearings and an applicant must make arrangements for individuals who require auxiliary aids or services if contacted at least two days prior to each hearing.

(C) When a significant number of non-English speaking residents can reasonably be expected to participate in a public hearing, an applicant or contractor shall provide an interpreter to accommodate the needs of the non-English speaking residents.

(2) Application requirements. Prior to submitting a formal application, an applicant for TxCDBG funding shall satisfy the following requirements.

(A) At least one public hearing shall be held prior to the preparation of its application and a public notice shall be published in a newspaper having general circulation in the city or county notifying the public of the availability of the application for public review prior to submitting its completed application to the Department and, in the case of TCF applications, to the TDA. The requirements described in this subparagraph are not applicable to applications submitted under the housing infrastructure fund.

(B) For an application submitted for housing infrastructure fund assistance, an applicant must hold two public hearings. At least one public hearing shall be held prior to the preparation of the ap-

plication and a second public hearing shall be held prior to submission of the application.

(C) An applicant shall retain documentation of the hearing notices, a list of attendees at each hearing, minutes of the hearings, and any other records concerning the proposed use of funds for a period of three years or until the project, if funded, is closed out. Such records must be made available to the public in accordance with Texas Government Code, Chapter 552.

(D) The public hearing must include a discussion with citizens on the development of housing and community development needs, the amount of funding available, all eligible activities under the TxCDBG, the plans of the applicant to minimize displacement of persons and to assist persons actually displaced as a result of activities assisted with TxCDBG funds, and the use of past TxCDBG contract funds, if applicable. Citizens, with particular emphasis on persons of low and moderate income who are residents of slum and blight areas, shall be encouraged to submit their views and proposals regarding community development and housing needs. Local organizations that provide services or housing for low to moderate income persons, including but not limited to, the local or area Public Housing Authority, the local or area Health and Human Services office, and the local or area Mental Health and Mental Retardation office, must receive written notification concerning the date, time, location, and topics to be covered at the first public hearing. Citizens shall be made aware of the location where they may submit their views and proposals should they be unable to attend the public hearing. For submission of a housing infrastructure fund application, these requirements must be followed for the first public hearing.

(E) The notice announcing the availability of the application for public review must be published five days prior to the submission of the application and the published notice must include the fund category for which the application is submitted, the amount of funds requested, a description of the application activities, the location or locations of the application activities, and the location and hours when the application is available for review.

(F) Any public hearing held prior to submission of the application must be held after 5:00 p.m. on a weekday or at a convenient time on a Saturday or Sunday.

(3) Contractor requirements.

(A) A contractor must hold a public hearing concerning any substantial change, as determined by the Department and, in the case of TCF program changes, by the TDA, proposed to be made in the use of TxCDBG funds from one eligible activity to another.

(B) Upon completion of its contract, the contractor shall hold a public hearing to review its program performance, including the actual use of the funds provided under the contract.

(C) A contractor shall retain documentation of the hearing notices, a list of attendees at each hearing, minutes of the hearings, and any other records concerning the actual use of funds for a period of three years after the contract is closed out. Such records must be made available to the public in accordance with Texas Government Code, Chapter 552.

(D) The public hearings must be held after 5:00 p.m. on a weekday or at a convenient time on a Saturday or Sunday.

(4) Complaint procedures. Applicants and contractors must maintain written citizen complaint procedures that provide a timely written response to complaints and grievances. Citizens must be made aware of the location and hours at which they may obtain a copy of the written procedures.

(5) Technical assistance. An applicant shall provide technical assistance to groups representative of persons of low- and moderate-income that request such assistance in developing proposals for the use of TxCDBG funds. The level and type of assistance shall be determined by the applicant based upon the specific needs of its residents.

(g) Appeals. An applicant for funding under the TxCDBG, except for the Texas Capital Fund, may appeal the disposition of its application in accordance with this subsection.

(1) The appeal may only be based on one or more of the following grounds.

(A) Misplacement of an application. All or a portion of an application is lost, misfiled, or otherwise misplaced by Department staff resulting in unequal consideration of the applicant's proposal.

(B) Mathematical error. In rating the application, the score on any selection criteria is incorrectly computed by the Department due to human or computer error.

(C) Other procedural error. The application is not processed by the Department in accordance with the application and selection procedures set forth in this subchapter. Procedural errors alleged to have been committed by a regional review committee may only be appealed in accordance with the provisions of §255.8 of this title (relating to Regional Review Committees).

(2) The appeal must be submitted in writing to the Tx-CDBG of the Department no later than 30 days after the date the announcement of contract awards is published on the Department's website. The Department staff will evaluate the appeal and may either concur with the appeal and make an appropriate adjustment to the applicant's scores, or disagree with the appeal and prepare an appeal file for consideration by the Executive Director. The Executive Director then considers the appeal within 30 days and makes a decision.

(3) In the event the appeal is sustained and the corrected scores would have resulted in project funding, the application is approved and funded. If the appeal concerning an application is rejected, the office notifies the applicant of its decision, including the basis for rejection.

(4) Appeal of Executive Director's Decision to the Board.

(A) If the appealing party is not satisfied with the Executive Director's response to the appeal, it may appeal in writing directly to the Board within seven days after the date of the Executive Director's response. In order to be placed on the next agenda of the Board, the appeal must be received by the Department at least fourteen days prior to the next scheduled Board meeting. Appeals received after the fourteenth calendar day prior to the Board meeting will be scheduled for the next Board meeting. The Executive Director shall prepare an appeal file for the Board's review based on the information provided. If the appealing party receives additional information after the Executive Director has denied the appeal, but prior to the posting of the appeal, for Board consideration, the new information must be provided to the Executive Director for further consideration or the Board will not consider any information submitted by the applicant after the written appeal. New information will cause the deadlines in this subparagraph to begin again. The Board will review the appeal de novo and may consider any information properly considered by the Department in making its prior decision(s).

(B) Public comment. The Board hears public comment on the appeal under its usual procedures. Persons making public comment are not parties to the appeal and no rights accrue to them under this section or any other appeal process. Nothing in this section provides

a right to appeal any decision made on an application if the appealing party does not have direct grounds to appeal.

(C) Possible actions regarding applications. In instances in which the appeal is sustained by the Board, the application shall be approved by the Board contingent on the availability of funds. If the appeal is denied, the Department shall notify the applicant of the decision.

(h) Threshold requirements. An applicant must satisfy each of the following requirements in order to be eligible to apply for or to receive funding under the TxCDBG:

(1) Demonstrate the ability to manage and administer the proposed project, including meeting all proposed benefits outlined in its application. The applicant can meet this threshold by:

(A) Providing the roles and responsibilities of local staff designated to administer or work on the proposed project and a plan for project implementation;

(B) Indicating the intention to use a third-party administrator, if applicable; or

(C) If local staff along with a third-party administrator, will jointly administer the proposed project, by providing the roles and responsibilities of the designated local staff.

(2) Demonstrate the financial management capacity to operate and maintain any improvement made in conjunction with the proposed project. The applicant can meet this threshold by:

(A) Providing the name of the financial person on the applicant's staff, or evidence that the applicant intends to contract services for financial oversight; and

(B) Providing a statement certifying that financial records for the proposed project will be kept at an officially designated city/county site, accessible by the public, and will be adequately managed on a timely basis using generally accepted accounting principles.

(3) Levy a local property tax or local sales tax option.

(4) Demonstrate satisfactory performance on previously awarded TxCDBG contracts. The applicant can meet this threshold by:

(A) Showing past responses, if applicable, to audit and monitoring issues (over the most recent 48 months before the application due date) within prescribed times as indicated in the Department's resolution letter(s);

(B) The presence of documentation related to past contracts (over the most recent 48 months before the application due date), through close-out monitoring and reporting, that the activity or service was made available to all intended beneficiaries, that low and moderate income persons were provided access to the service, or there has been adequate resolution of issues regarding beneficiaries served;

(C) The non-presence of any outstanding delinquent response to a written request from the Department regarding a request for repayment of funds to TxCDBG; or

(D) By not having at least one outstanding delinquent response to a written request from the Department regarding compliance issues such as a request for closeout documents or any other required information.

(5) Resolve all outstanding compliance and audit findings related to previously awarded TxCDBG contracts and any other Department contracts. The applicant can meet this threshold if the applicant is actively participating in the resolution of any outstanding audit

and/or monitoring issues by responding with substantial progress on outstanding issues within the time specified in the resolution process.

(6) Submit any past due audit to the Department.

(A) A community with one year's delinquent audit may be eligible to submit an application for funding by the established application deadline, but may not receive a contract award if the audit continues to be delinquent on the date the Department approves funding recommendations. Applications for the colonia self-help center fund and the disaster relief/urgent need fund are exempt from this threshold.

(B) A community with two years of delinquent audits may not apply for additional funding and may not receive a funding recommendation. This applies to all funding categories under the Texas Community Development Block Grant Program. The colonia self-help centers fund may be exempt from this threshold, since funds for the self-help centers fund is included in the program's state budget appropriation. Failure to meet the threshold will be reported to the Texas Department of Housing and Community Affairs for review and recommendation. The disaster relief fund may be exempt from this threshold, but failure to meet this threshold will be forwarded to the Board for review and consideration.

(7) TxCDBG funds cannot be expended in any county that is designated as eligible for the Texas Water Development Board Economically Distressed Areas Program unless the county has adopted and is enforcing the Model Subdivision Rules established pursuant to §16.343 of the Texas Water Code. An incorporated city that is located in a Texas Water Development Board Economically Distressed Areas Program eligible county that has not adopted, or is not enforcing, the Model Subdivision Rules, may submit an application for TxCDBG funds. However, in lieu of county adoption of the Model Subdivision Rules, the incorporated city must adopt the Model Subdivision Rules prior to the expenditure of any TxCDBG funds by the incorporated city.

(8) Based on a pattern of unsatisfactory performance on previous TxCDBG contracts, unsatisfactory management and administration of previous TxCDBG contracts, or the presence of evidence that an applicant lacks financial management capacity based on a review of official financial records and audits related to previous TxCDBG contracts, the Department, or TDA in the case of Texas Capital Fund applications, may determine that an applicant is ineligible to apply for TxCDBG funding even though at the application deadline date it meets the threshold and past performance requirements. The Department, or TDA in the case of Texas Capital Fund applications, will consider an applicant's performance during the most recent 48 months before an application due date to make the eligibility determination. An applicant would still remain eligible for funding under the disaster relief fund.

(i) Unmet benefits. Actions that may be taken against a contractor by the Department where the Department finds that the contractor did not provide the level of benefits specified in its contract include, but are not limited to:

(1) holding the contractor ineligible to apply for TxCDBG funds for a period of two program years or until any issue of restitution is resolved, whichever is longer;

(2) requiring the contractor to reimburse the Department for the difference between the amount of funds provided for the level of benefits specified in the contract and the amount of funds actually expended in providing such level of benefits; and

(3) rescoring the contractor's application, and if the level of benefits actually provided by the contractor would have changed the funding recommendation, terminating the local government's contract.

(j) False information. If an applicant provides false information in any application which has the effect of increasing the applicant's competitive advantage, the number of beneficiaries, or the percentage of low to moderate income beneficiaries, the TxCDBG staff shall make a recommendation for action to the Executive Director of the Department. Actions that the Executive Director may take include, but are not limited to:

(1) Disqualification of the application and holding the locality ineligible to apply for TxCDBG funding for a period of at least one year not to exceed two program years;

(2) holding the applicant or contractor ineligible to apply for TxCDBG funds for a period of two program years or until any issue of restitution is resolved, whichever is longer; and

(3) terminating the local government's contract if the correct information would have changed the scores and resulted in a change in the rankings for purposes of funding. If the applicant provides false information in a TCF application, TDA staff shall make a recommendation for action to the appropriate TDA official. Actions that the TDA official may take, in consultation with TxCDBG, include, but are not limited to:

(A) Disqualification of the application and holding the locality ineligible to apply for TCF funding for a period of at least one year not to exceed two program years;

(B) holding the applicant or contractor ineligible to apply for TCF funds for a period of two program years or until any issue of restitution is resolved, whichever is longer; and

(C) terminating the local government's contract if the correct information would have changed the scores and resulted in a change in the rankings for purposes of funding.

(k) Substitution of standardized data. Any applicant that chooses to substitute locally generated data for standardized information available to all applicants must use the survey instrument provided by the Department and must follow the procedures prescribed in the instructions to the survey instrument. This option does not apply to applications submitted to the TCF.

(1) Only door-to-door surveys are allowed, unless an alternate method is approved in writing by the Department.

(2) Surveys, including signed tabulation sheets, signed surveys location sheets, all responses, and all non-responses must be submitted to the Department by the application deadline, for verification and spot-checking.

(3) A survey instrument that lacks information prescribed in the instructions to the survey instrument or which includes conflicting information may be considered as a non-response for that family.

(4) The applicant must demonstrate a 100% effort in contacting households to be surveyed and obtain at least an 80% response rate for surveys.

(5) A survey that was completed on or after January 1, 2004 for a previous TxCDBG application may be accepted by the Department for a new application to the extent specified in the most recent application guide for the proposed project.

(l) Unobligated and recaptured funds. Deobligated funds, unobligated funds and program income generated by TCF projects shall be retained for expenditure in accordance with the Consolidated Plan. Program income derived from TCF projects will be used by the Department for eligible TxCDBG activities in accordance with the Consolidated Plan. Any deobligated funds, unobligated funds, program income, and unused funds from the current year's allocation or from

previous years' allocations derived from any TxCDBG Fund, including program income recovered from TCF local revolving loan funds, and any reallocated funds which HUD has recaptured from Small Cities may be redistributed among the established current program year fund categories, for otherwise eligible projects. The selection of eligible projects to receive such funds is approved by the Department Executive Director, or when applicable, approved by the Board or by the TDA on a priority needs basis with eligible disaster relief and urgent need projects as the highest priority; followed by, any awards necessary to resolve appeals under fund categories requiring publication of contract awards in the Texas Register, TCF projects, special needs projects, projects in colonias, housing activities, and other projects as determined by the Department Executive Director. Other purposes or initiatives may be established as a priority use of such funds within existing fund categories by the Board. Should the TxCDBG be required to make payments to HUD to cover any loan payments not made by any recipient of a TxCDBG Section 108 loan guarantee, it would first use any available deobligated funds.

(m) Waivers. The Department may waive any provision of this subchapter upon its own motion, or upon an applicant's or contractor's written request for such a waiver if the Department finds that compelling circumstances exist outside the control of the applicant or contractor which justifies the approval of such a waiver. The Department shall not waive any provision hereof concerning the TCF program unless written request to do so is received from the Executive Director of the TDA. The provisions of the foregoing sentence shall not apply to contracts other than those awarded and/or administered by the TDA for the Department. Issues related to audit requirements will be handled by the appropriate agency.

(n) Performance threshold requirements. In addition to the requirements of subsection (h) of this section, an applicant must satisfy the following performance requirements in order to be eligible to apply for program funds. A contract is considered executed for the purposes of this subsection on the date stated in section 2 of such contract.

(1) Obligate at least 50% of the total TxCDBG funds awarded under an open TxCDBG contract within 12 months from the start date of the contract or prior to the application deadlines and have received all applicable environmental approvals from TxCDBG covering this obligation. This threshold is applicable to TxCDBG contracts with an original 24-month contract period. To meet this threshold, 50% of the TxCDBG funds must be obligated through executed contracts for administrative services, engineering services, acquisition, construction, materials purchase, etc. The TxCDBG contract activities do not have to be 50% completed, nor do 50% of the TxCDBG contract funds have to be expended to meet this threshold. This threshold is applicable to previously awarded TxCDBG contracts under the community development fund, community development supplemental fund, the colonia construction fund, the colonia planning fund, the non-border colonia fund the planning and capacity building fund, and the disaster relief/urgent need fund. This threshold is not applicable to previously awarded TxCDBG contracts under the TCF, the housing infrastructure fund, the housing rehabilitation fund, the colonia self-help centers fund, the colonia economically distressed area program fund, the Young v. Martinez fund, the disaster recovery initiative program, microenterprise loan fund, small business loan fund, Section 108 loan guarantee pilot program, and the small towns environment program fund. This paragraph does not apply to a city or county that meets the eligibility criteria for current assistance from the TxCDBG disaster relief fund.

(2) Submit to the Department the certificate of expenditures (COE) report showing the expended TxCDBG funds and a final drawdown for any remaining TxCDBG funds as required by the most

recent edition of the TxCDBG Project Implementation Manual. Any reserved funds on the COE must be approved in writing by TxCDBG staff. To meet this threshold "expended" means that the construction and services covered by the TxCDBG funds are complete and a draw-down for the TxCDBG funds has been submitted prior to the application deadlines. This threshold will apply to an open TxCDBG contract with an original 24-month contract period and to TxCDBG contractors that have reached the end of the 24-month period prior to the application deadlines. This threshold is applicable to previously awarded TxCDBG contracts under the community development fund, community development supplemental fund, the colonia construction fund, the colonia planning fund, the non-border colonia fund, the planning and capacity building fund, and the disaster relief/urgent need fund. This threshold is not applicable to previously awarded TxCDBG contracts under the TCF, the housing infrastructure fund, the housing rehabilitation fund, the colonia self-help centers fund, the colonia economically distressed area program fund, the Young v. Martinez fund, the disaster recovery initiative program, microenterprise loan fund, small business loan fund, Section 108 loan guarantee pilot program, and the small towns environment program fund (original 24-month contract extended to 36-months). This paragraph does not apply to a city or county that meets the eligibility criteria for current assistance from the TxCDBG disaster relief fund.

(3) TCF applicants may not have an existing contract with an award date in excess of 48 months prior to the application deadline date, regardless of extensions granted. If an existing contract requires an extension beyond the initial term, TDA must be in receipt of the request for extension no less than 30 days prior to contract expiration date. If an existing contract expires prior to or on the new application deadline date, without an approved extension, TDA must be in receipt of complete closeout documentation for the existing contract, no less than 30 days prior to the new application deadline date (complete closeout documentation is defined in the most recent version of the TCF Implementation Manual).

(4) Submit to the Department the certificate of expenditures (COE) report showing the expended TxCDBG funds and a final drawdown for any remaining TxCDBG funds as required by the most recent edition of the TxCDBG Project Implementation Manual. Any reserved funds on the COE must be approved in writing by TxCDBG staff. To meet this threshold "expended" means that the construction and services covered by the TxCDBG funds are complete and a draw-down for the TxCDBG funds has been submitted prior to the application deadlines. This threshold will apply to an open TxCDBG contract with an original 36-month contract period or a small towns environment program 24-month contract, extended to 36 months, and to TxCDBG contractors that have reached the end of the 36-month period prior to the application deadlines. This threshold is applicable to previously awarded TxCDBG contracts under the housing infrastructure fund (when the applicant is applying for the housing infrastructure fund competition) and the small towns environment program fund original 36-month contract or original 24-month contract, extended to 36 months. This threshold is not applicable to previously awarded TxCDBG contracts under the TCF, the housing rehabilitation fund, the colonia self-help centers fund, the colonia economically distressed area program fund, the Young v. Martinez fund, the disaster recovery initiative program the microenterprise loan fund, the small business loan fund, and the section 108 loan guarantee pilot program. This paragraph does not apply to a city or county that meets the eligibility criteria for current assistance from the TxCDBG disaster relief fund.

(o) Minority hiring/participation. It is the policy of the Department to encourage minority employment and participation among all applicants under the TxCDBG. All applicants to the TxCDBG are

required to submit information documenting the level of minority participation as part of the application for funding.

(p) Revolving loan funds. A Revolving Loan Fund established through program income recovered from a TxCDBG contract must meet the requirements for Revolving Loan Funds described in the Tx-CDBG Final Statement, Consolidated Plan or Action Plan for the program year in which the original contract was awarded. Revolving Loan Funds are also subject to appropriate state and federal requirements, TxCDBG contract provisions, and the appropriate Revolving Loan Fund guidelines issued by the Department. The requirement in this section applies to all local Revolving Loan Funds (RLF) established from program income from Texas Capital Fund projects, housing projects and the Small Business Loan Fund. Funds retained in the local RLF must be committed within three years of the original Tx-CDBG contract programmatic close date. Every award from the RLF must be used to fund the same type of activity, for the same business, from which such income is derived. A local Revolving Loan Fund may retain a cash balance not greater than 33 percent of its total cash and outstanding loan balance. If the local government does not comply with the local RLF requirements, all program income retained in the local RLF and any future program income received from the proceeds of the RLF must be returned to the State.

(q) Withdrawal of award.

(1) Should the applicant fail to substantiate or maintain the claims and statements made in the application upon which the award is based, including failure to maintain compliance with application thresholds in subsection (h)(1) - (4) of this section, within a period ending 90 days after the date of the TxCDBG's award letter to the applicant, the award will be immediately withdrawn by the TxCDBG (excluding the colonia self-help center awards).

(2) Should the applicant fail to execute the Department's award contract (excluding Texas Capital Fund and colonia self-help center contracts) within 60 days from the date of the letter transmitting the award contract to the applicant, the award will be withdrawn by the Department.

(r) Funds recaptured from withdrawn awards. For an award that is withdrawn from an application, the Department follows different procedures for the use of those recaptured funds depending on the fund category where the award is withdrawn.

(1) Funds recaptured under the community development fund from the withdrawal of an award made from the first year of the biennial funding are offered to the next highest ranked applicant from that region that was not recommended to receive an award from the first year regional allocation. Funds recaptured under the community development fund from the withdrawal of an award made from the second year of the biennial funding are offered to the next highest ranked applicant from that region that was not recommended to receive full funding (the applicant recommended to receive marginal funding) from the second year regional allocation. Any funds remaining from the second year regional allocation after full funding is accepted by the second year marginal applicant are offered to the next highest ranked applicant from the region as long as the amount of funds still available exceeds the minimum community development fund grant amount. Any funds remaining from the second year regional allocation that are not accepted by an applicant from the region or that are not offered to an applicant from the region may be used for other TxCDBG fund categories and, if unallocated to another fund, are then subject to the procedures described in subsection (1) of this section.

(2) Funds recaptured under the planning and capacity building fund from the withdrawal of an award made from the first year of the biennial funding are offered to the next highest ranked applicant

from that statewide competition that was not recommended to receive an award from the first year allocation. Funds recaptured under the planning and capacity building fund from the withdrawal of an award made from the second year of the biennial funding are offered to the next highest ranked applicant from that statewide competition that was not recommended to receive full funding (the applicant recommended to receive marginal funding) from the second year allocation. Any funds remaining from the second year allocation after full funding is accepted by the second year marginal applicant are offered to the next highest ranked applicant from the statewide competition. Any funds remaining from the second year allocation that are not accepted by an applicant from the statewide competition or that are not offered to an applicant from the statewide competition may be used for other TxCDBG fund categories and, if unallocated to another fund, are then subject to the procedures described in subsection (l) of this section.

(3) Funds recaptured under the colonia construction component from the withdrawal of an award remain available to potential colonia program fund applicants during that program year to meet the 10 percent colonia set-aside requirement and, if unallocated within the colonia fund, may be used for other TxCDBG fund categories. Remaining unallocated funds are then subject to the procedures in subsection (l) of this section.

(4) Funds recaptured under the colonia planning component from the withdrawal of an award remain available to potential colonia program fund applicants during that program year to meet the 10 percent colonia set-aside requirement and, if unallocated within the colonia fund, may be used for other TxCDBG fund categories. Remaining unallocated funds are then subject to the procedures in subsection (l) of this section.

(5) Funds recaptured under the program year allocation for the colonia economically distressed areas program fund from the withdrawal of an award remain available to potential colonia economically distressed areas program fund applicants during that program year. If there are an insufficient number of TWDB EDAP projects ready for Colonia Economically Distressed Areas Program (CEDAP) funding, the CEDAP funds may be transferred as appropriate. If unallocated within the colonia fund, may be used for other TxCDBG fund categories. Remaining unallocated funds are then subject to the procedures in subsection (l) of this section.

(6) Funds recaptured under the program year allocation for the disaster relief/urgent need fund from the withdrawal of an award are subject to the procedures described in subsection (l) of this section.

(7) Funds recaptured under the small towns environment program fund (STEP) from the withdrawal of an award will be made available in the next round of STEP competition following the withdraw date in the same program year. If the withdrawn award had been made in the last of the two competitions in a program year, the funds would go to the next highest scoring applicant in the same STEP competition. If there are no unfunded STEP applicants, then the recaptured funds would be available for other TxCDBG fund categories. Any unallocated STEP funds are subject to the procedures described in subsection (l) of this section.

(8) Funds recaptured under the Texas Capital Fund from the withdrawal of an award are subject to the procedures described in subsection (l) of this section.

(9) For both the community development fund, if there are no remaining unfunded eligible applications in the region from the same biennial application period to receive the withdrawn funding, then the withdrawn funds are considered as deobligated funds, subject to the procedures described in subsection (l) of this section.

(s) Readiness to proceed requirements: In order to determine that the project is ready to proceed, the applicant must provide in its application information that:

(1) Identifies the source of matching funds and provides evidence that the applicant has applied for any non-local matching funds, and for local matching funds, evidence that local matching funds would be available.

(2) Provides written evidence of a ratified, legally binding agreement, contingent upon award, between the applicant and the utility that will operate the project for the continual operation of the utility system as proposed in the application. For utility projects that require the applicant or service provider to obtain a certificate of convenience and necessity for the target area proposed in the application, provides written evidence that the Texas Commission on Environmental Quality has received the applicant or service provider's application.

(3) Where applicable, provide a written commitment from service providers, such as the local water or sewer utility, stating that they will provide the intended services to the project area if the project is constructed.

(t) Performance measures. Each applicant for TxCDBG funds and each city or county receiving a contract award shall provide applicable information requested in application guides, the grant contract, or the most recent edition of the TxCDBG project implementation manual that is required by the Department to report on Community Development Block Grant program performance measures promulgated by the Board, the Texas Legislature, and the U.S. Department of Housing and Urban Development.

(u) Street paving activities. Area benefit can be used to qualify street paving activities. However, for street paving activities with multiple and non-contiguous target areas, each target area must separately meet the principally benefit low and moderate income national program objective. At least 51% of the residents located in each non-contiguous target area must be low and moderate income persons. A target area that does not meet this requirement cannot be included in an application for TxCDBG funds. The only exception to this requirement is street paving eligible under the disaster relief fund.

(v) For any award made on or after September 1, 2005, any political subdivision that receives community development block grant program money targeted toward street improvement projects in eligible colonia areas must allocate not less than five percent but not more than 15 percent of the total amount of street improvement money to providing financial assistance to colonias within the political subdivision to enable the installation of adequate street lighting in those colonias if street lighting is absent or needed.

(w) The TxCDBG is under no obligation to approve any changes in a performance statement of a TxCDBG contract that would result in a program year score lower than originally used to make the award if the lower score would have initially caused that project to be denied funding. This does not apply to colonia self-help centers or the Texas Capital Fund.

(x) Any applicant's cash match included in the TxCDBG contract budget may not be obtained from any person or entity that provides contracted professional or construction-related services (other than utility providers) to the applicant to accomplish the purpose described in the TxCDBG contract, in accordance with 24 CFR Part 570.

(y) If an audit becomes due after the award date, the Department may withhold the issuance of a contract until it receives a satisfactory audit. If a satisfactory audit is not received by the Department within four months of the audit due date, the Department may withdraw the award and re-allocate the funds in accordance with subsection (r)

of this section (excludes the colonia self-help center awards and Texas Capital Fund awards).

(z) If the Regional Review Committee for a particular region fails to approve, to the satisfaction of the Department, an objective scoring methodology for the 2009 Community Development Fund competition, the Department will award 2008 Program Year funds in that region for the Community Development Fund and Community Development Supplemental Fund based the state's existing scores under section IV (C)(1)(a-e) of the approved 2007 Texas CDBG Action Plan.

§255.9. *Colonia Fund.*

(a) General provisions. This fund covers the payment of assessments, access fees, and capital recovery fees for low and moderate income persons for eligible water and sewer improvements projects, all other program eligible activities, eligible planning activities projects, and the establishment of colonia self-help centers to serve severely distressed unincorporated areas of counties which meet the definition of a colonia under this fund. A colonia is defined as: any identifiable unincorporated community that is within 150 miles of the border between the United States and Mexico, except that the term does not include any standard metropolitan statistical area that has a population exceeding 1,000,000; and that is determined to be a colonia on the basis of objective criteria, including lack of potable water supply, lack of adequate sewage systems, and lack of decent, safe, and sanitary housing; and was in existence as a colonia prior to the Cranston-Gonzalez National Affordable Housing Act (November 28, 1990). For an eligible county to submit an application on behalf of eligible colonia areas, the colonia areas must be within 150 miles of the Texas-Mexico border region, except that any county that is part of a standard metropolitan statistical area with a population exceeding one million is not eligible under this fund.

(1) An applicant may not submit an application under this fund and also under any other TxCDBG fund category at the same time if the proposed activity under each application is the same or substantially similar.

(2) In addition to the threshold requirements of §255.1(h) and (n) of this title (relating to General Provisions), in order to be eligible to apply for colonia funds, an applicant must document that at least 51% of the persons who would directly benefit from the implementation of each activity proposed in the application are of low to moderate income.

(3) Eligibility for the Office's colonia economically distressed areas program EDAP fund (colonia EDAP fund) is limited to counties, and nonentitlement cities (that meet other eligibility requirements including the geographic requirements of the Colonia Fund), located in those counties, that are eligible under the TxCDBG Colonia Fund and Texas Water Development Board's EDAP. Eligible colonia EDAP fund projects shall be located in unincorporated colonias and in eligible nonentitlement cities that annexed the eligible colonia where improvements are to be made within five years after the effective date of the annexation, or are in the process of annexing the colonia where improvements are to be made. A colonia EDAP fund application cannot be submitted until the construction of the Texas Water Development Board's Economically Distressed Areas Program financed water or sewer system begins.

(4) In accordance with Subchapter Z, Chapter 43, §43.907 of the Texas Local Government Code, eligible colonia areas meeting specified criteria that are annexed by municipalities on or after September 1, 1999, remain eligible for five years after the effective date of the annexation to receive any form of assistance for which the colonia would be eligible if the annexation had not occurred. A nonentitlement city located in a county that is eligible under the TxCDBG

Colonia Fund and Texas Water Development Board's Economically Distressed Areas Program that has annexed a colonia area is an eligible applicant for the Department's colonia EDAP fund. However, an application for TxCDBG colonia construction fund or colonia planning fund assistance for a colonia area annexed by a municipality on or after September 1, 1999, may only be submitted by the county where the annexed colonia area is located.

(b) Eligible activities. The only eligible activities under the colonia fund are:

(1) the payment of assessments (including any charge made as a condition of obtaining access) levied against properties owned and occupied by persons of low and moderate income to recover the capital cost for a public water and/or sewer improvement;

(2) payment of the cost of planning community development (including water and sewage facilities) and housing activities; costs for the provision of information and technical assistance to residents of the area in which the activities are located and to appropriate nonprofit organizations and public agencies acting on behalf of the residents; and costs for preliminary surveys and analyses of market needs, preliminary site engineering and architectural services, site options, applications, mortgage commitments, legal services, and obtaining construction loans;

(3) other activities eligible under the Housing and Community Development Act of 1974, §105, as amended, designed to meet the needs of residents of colonias;

(4) the establishment of colonia self-help centers and activities conducted by colonia self-help centers in accordance with the provisions of Chapter 2306, Subchapter Z, of the Texas Government Code.

(5) For the Department's colonia EDAP fund, eligible activities are limited to those that provide assistance to low and moderate income colonia residents that cannot afford the costs associated with connections and service to water or sewer systems funded through the Texas Water Development Board's Economically Distressed Areas Program. In accordance with Rider 7 of the General Appropriations Act, 81st Legislature, the eligible activities are residential service lines, hookups, and plumbing improvements associated with being connected to a water supply or sewer service system, any part of which is financed under the Texas Water Development Board's Economically Distressed Areas Program.

(c) Types of applications.

(1) Colonia Planning and Construction Fund.

(A) Colonia Construction Component. The allocation is available on a biennial basis for funding from program years 2011 and 2012 through a 2011 annual competition. Applications received by the 2011 program year application deadline are eligible to receive grant awards from the 2011 and 2012 program year allocations. Funding priority shall be given to TxCDBG applications from localities that have been funded through the Texas Water Development Board Economically Distressed Areas Program (TWDB EDAP) where the TxCDBG project will provide assistance to colonia residents that cannot afford the cost of residential service lines, hookups, and plumbing improvements associated with being connected to the TWDB EDAP-funded water or sewer system. A colonia construction application must include an assessment of the effect of the Model Subdivision Rules established pursuant to §16.343 of the Water Code and enforcement actions throughout the county and provide the colonia identification number for the colonias that would receive the project benefit. An eligible county applicant may submit one (1) application for the following eligible construction activities:

(i) Assessments for Public Improvements--The payment of assessments (including any charge made as a condition of obtaining access) levied against properties owned and occupied by persons of low- and moderate-income to recover the capital cost for a public improvement.

(ii) Other Improvements--Other activities eligible under 42 U.S.C. §5305 designed to meet the needs of colonia residents.

(B) Colonia Planning Component. A portion of the funds will be allocated to two separate biennial competitions for applications that include planning activities targeted to selected colonia areas (Colonia Area Planning activities), and for applications that include countywide comprehensive planning activities (Colonia Comprehensive Planning activities). Applications received by the 2011 program year application deadline are eligible to receive a grant award from the 2011 and 2012 program year allocations. A Colonia Planning activities application must receive a minimum score for the Project Design selection factor of at least 70 percent of the maximum number of points allowable under this factor to be considered for funding.

(i) Colonia Area Planning Activities. In order to qualify for the Colonia Area Planning activities, the county applicant must have a Colonia Comprehensive Plan in place that prioritizes problems and colonias for future action. The targeted colonia must be included in the Colonia Comprehensive Plan. An eligible county may submit an application for eligible planning activities that are targeted to one or more colonia areas. Eligible activities include:

(I) Payment of the cost of planning community development (including water and sewage facilities) and housing activities;

(II) costs for the provision of information and technical assistance to residents of the area in which the activities are located and to appropriate nonprofit organizations and public agencies acting on behalf of the residents; and

(III) costs for preliminary surveys and analyses of market needs, preliminary site engineering and architectural services, site options, applications, mortgage commitments, legal services, and obtaining construction loans.

(IV) for any colonia in close proximity to a city, a plan that if implemented could lead to annexation of the colonia by the city.

(ii) Colonia Comprehensive Planning Activities. To be eligible for these funds, a county must be located within 150 miles of the Texas-Mexico border. The applicant's countywide comprehensive plan will provide a general assessment of the colonias in the county, but will include enough detail for accurate profiles of the county's colonia areas. The prepared comprehensive plan must include the following information and general planning elements:

(I) Verification of the number of dwellings, number of lots, number of occupied lots, and the number of persons residing in each county colonia;

(II) Mapping of the locations of each county colonia;

(III) Demographic and economic information on colonia residents;

(IV) The physical environment in each colonia including land use and conditions, soil types, and flood prone areas;

(V) An inventory of the existing infrastructure (water, sewer, streets, drainage) in each colonia and the infrastructure needs in each colonia including projected infrastructure costs;

(VI) The condition of the existing housing stock in each colonia and projected housing costs;

(VII) A ranking system for colonias that will enable counties to prioritize colonia improvements rationally and systematically plan and implement short-range and long-range strategies to address colonia needs;

(VIII) Goals and Objectives;

(IX) Five-year capital improvement program;

(X) An assessment of the effect of the Model Subdivision Rules established pursuant to §16.343 of the Water Code and enforcement actions throughout the county; and

(XI) For any colonia in close proximity to a city, a plan that if implemented could lead to annexation of the colonia by the city.

(2) Colonia Economically Distressed Areas Program (CEDAP) Legislative Set-aside. The allocation is distributed on an as-needed basis. Eligible applicants may submit an application that will provide assistance to colonia residents that cannot afford the cost of residential service lines, hookups, and plumbing improvements associated with being connected to a TWDB EDAP-funded water and sewer system improvement project. An application cannot be submitted until the construction of the TWDB EDAP-funded water or sewer system begins. In accordance with Rider 7 of the General Appropriations Act, 81st Legislature, eligible program costs are residential service lines, hookups, and plumbing improvements associated with being connected to a water supply or sewer service system, any part of which is financed under the Texas Water Development Board's Economically Distressed Areas Program. If there are an insufficient number of TWDB EDAP projects ready for Colonia Economically Distressed Areas Program (CEDAP) funding, the CEDAP funds may be transferred as appropriate. An applicant may not have an existing CEDAP contract open in excess of 48 months and still be eligible for a new CEDAP award.

(3) Colonia Self-Help Centers Legislative Set-aside. The colonia self-help centers fund is allocated on an annual basis to counties included in Chapter 2306, Subchapter Z, §2306.582, Texas Government Code, and/or counties designated as economically distressed areas under Chapter 17, Texas Water Code. TDHCA has established self-help centers in Cameron County, El Paso County, Hidalgo County, Starr County, and Webb County. If deemed necessary and appropriate, TDHCA may establish self-help centers in other counties (self-help centers have been established in Maverick County and Val Verde County) as long as the site is located in a county that is designated as an economically distressed area under the Texas Water Development Board Economically Distressed Areas Program, the county is eligible to receive EDAP funds, and the colonias served by the center are located within 150 miles of the Texas-Mexico border.

(d) Selection procedures.

(1) On or before the application deadline, each eligible county may submit one application for the colonia construction component, colonia area planning activities, and colonia comprehensive planning activities. Eligible applicants for the colonia EDAP fund may submit one application after construction begins on the water or sewer system financed by the Texas Water Development Board's Economically Distressed Areas Program.

(2) Upon receipt of an application, the Office staff performs an initial review to determine whether the application is complete and whether all proposed activities are eligible for funding. The results of this initial review are provided to the applicant. If not subject to disqualification, the applicant may correct any deficiencies identified within ten calendar days of the date of the staff's notification.

(3) Each regional review committee may, at its option, review and comment on a colonia fund proposal from a jurisdiction within its state planning region. These comments will become part of the application file, provided such comments are received by the Office prior to scoring of the applications.

(4) The Office then scores the colonia construction component, colonia area planning activities, and colonia comprehensive planning activities applications to determine rankings. Scores on the selection factors are derived from standardized data from the Census Bureau, other federal or state sources, and from information provided by the applicant. For colonia EDAP fund applications, the Office evaluates information in each application and other factors before the completion of a final technical review of each application.

(5) Following a final technical review, the Department staff presents the funding recommendations for the 2011 and 2012 colonia fund and colonia EDAP fund to the executive director of the Department who approves grant applications and associated funding awards of eligible counties and municipalities.

(6) Upon announcement of the 2011 and 2012 contract awards, the Department staff works with recipients to execute the contract agreements. While the award must be based on the information provided in the application, the Department may negotiate any element of the contract with the recipient as long as the contract amount is not increased and the level of benefits described in the application is not decreased. The level of benefits may be negotiated only when the project is partially funded.

(e) Selection criteria (colonia fund). The following is an outline of the selection criteria used by the Department for scoring colonia fund applications (colonia construction component, colonia area planning activities, and colonia comprehensive planning activities).

(1) Colonia construction component (430 total points maximum).

(A) Community distress (total--35 points). All community distress factor scores are based on the unincorporated population of the applicant. An applicant that has 125% or more of the average of all applicants in the competition of the rate on any community distress factor, except per capita income, receives the maximum number of points available for that factor. An applicant with less than 125% of the average of all applicants in the competition on a factor will receive a proportionate share of the maximum points available for that factor. An applicant that has 75% or less of the average of all applicants in the competition on the per capita income factor will receive the maximum number of points available for that factor. An applicant with greater than 75% of the average of all applicants in the competition on the per capita income factor will receive a proportionate share of the maximum points available for that factor.

(i) Percentage of persons living in poverty--15 points

(ii) Per capita income--10 points

(iii) Percentage of housing units without complete plumbing--5 points

(iv) Unemployment rate--5 points

(B) Benefit to low and moderate income persons (total--30 points). A formula is used to determine the percentage of TxCDBG funds benefiting low to moderate income persons. The percentage of low to moderate income persons benefiting from each construction, acquisition, and engineering activity is multiplied by the TxCDBG funds requested for each corresponding construction, acquisition, and engineering activity. Those calculations determine the amount of TxCDBG benefiting low to moderate income person for each of those activities. Then, the funds benefiting low to moderate income persons for each of those activities are added together and divided by the TxCDBG funds requested minus the TxCDBG funds requested for administration to determine the percentage of TxCDBG funds benefiting low to moderate income persons. Points are then awarded in accordance with the following scale:

(i) 100% to 90% of funds benefiting low to moderate income persons--30 points

(ii) 89.99% to 80% of funds benefiting low to moderate income persons--25 points

(iii) 79.99% to 70% of funds benefiting low to moderate income persons--20 points

(iv) 69.99% to 60% of funds benefiting low to moderate income persons--15 points

(v) Below 60% of funds benefiting low to moderate income persons--5 points

(C) Project priorities (total--195 points). When necessary, a weighted average is used to assign scores to applications which include activities in the different project priority scoring levels. Using as a base figure the TxCDBG funds requested minus the TxCDBG funds requested for engineering and administration, a percentage of the total TxCDBG construction dollars for each activity is calculated. The percentage of the total TxCDBG construction dollars for each activity is then multiplied by the appropriate project priorities point level. The sum of the calculations determines the composite project priorities score. The different project priority scoring levels are:

(i) activities (service lines, service connections, and/or plumbing improvements) providing access to water and/or sewer systems funded through the Texas Water Development Board Economically Distressed Area program--195 points

(ii) first time public water service activities (including yard service lines)--145 points

(iii) first time public sewer service activities (including yard service lines)--145 points

(iv) installation of approved residential on-site wastewater disposal systems for providing first time service--145 points

(v) installation of approved residential on-site wastewater disposal systems for failing systems that cause health issues--140 points

(vi) housing activities--140 points

(vii) first time water and/or sewer service through a privately-owned for profit utility--135 points

(viii) expansion or improvement of existing water and/or sewer service--120 points

(ix) street paving and drainage activities--95 points

(x) all other eligible activities--20 points

(D) Matching funds (total--20 points). An applicant's matching share may consist of one or more of the following contributions: cash; in-kind services or equipment use; materials or supplies; or land. An applicant's match is considered only if the contributions are used in the same target areas for activities directly related to the activities proposed in its application; if the applicant demonstrates that its matching share has been specifically designated for use in the activities proposed in its application; and if the applicant has used an acceptable and reasonable method of valuation. The population category under which county applications are scored is dependent upon the project type and the beneficiary population served. If the project is for activities in the unincorporated area of the county with a target area of beneficiaries, the population category is based on the unincorporated residents for the entire county. For county applications addressing water and sewer improvements in unincorporated areas, the population category is based on the actual number of beneficiaries to be served by the project activities. The population category under which multi-jurisdiction applications are scored is based on the combined populations of the applicants according to the 2000 Census. Applications that include a housing rehabilitation and/or affordable new permanent housing activity for low- and moderate-income persons as a part of a multi-activity application do not have to provide any matching funds for the housing activity. This exception is for housing activities only. The TxCDBG does not consider sewer or water service lines and connections as housing activities. The TxCDBG also does not consider on-site wastewater disposal systems as housing activities. Demolition/clearance and code enforcement, when done in the same target area in conjunction with a housing rehabilitation activity, is counted as part of the housing activity. When demolition/clearance and code enforcement are proposed activities, but are not part of a housing rehabilitation activity, then the demolition/clearance and code enforcement are not considered as housing activities. Any additional activities, other than related housing activities, are scored based on the percentage of match provided for the additional activities.

(i) Applicants with populations equal to or less than 1,500 according to the 2000 census:

(I) match equal to or greater than 5.0% of grant request--20 points;

(II) match at least 2.0% but less than 5.0% of grant request--10 points;

(III) match less than 2.0% of grant request--0 points.

(ii) Applicants with populations equal to or less than 3,000 but over 1,500 according to the 2000 census:

(I) match equal to or greater than 10% of grant request--20 points;

(II) match at least 2.5% but less than 10% of grant request--10 points;

(III) match less than 2.5% of grant request--0 points.

(iii) Applicants with populations equal to or less than 5,000 but over 3,000 according to the 2000 census:

(I) match equal to or greater than 15% of grant request--20 points;

(II) match at least 3.5% but less than 15% of grant request--10 points;

(III) match less than 3.5% of grant request--0 points.

(iv) Applicants with populations over 5,000 according to the 2000 census:

(I) match equal to or greater than 20% of grant request--20 points;

(II) match at least 5.0% but less than 20% of grant request--10 points;

(III) match less than 5.0% of grant request--0 points.

(E) Project design (total--140 points). Each application is scored based on how the proposed project resolves the identified need and the severity of need within the applying jurisdiction. A more detailed description on the assignment of points under the project design scoring is included in the application guide for this fund and in subparagraph (F) of this paragraph. Each application is scored by a committee composed of TxCDBG staff using the following information submitted in the application:

(i) the severity of need within the colonia area(s) and how the proposed project resolves the identified need (additional consideration is given to water activities addressing impacts from drought conditions);

(ii) the TxCDBG cost per low to moderate income beneficiary;

(iii) the applicant's past efforts, especially the applicant's most recent efforts, to address water, sewer, and housing needs in colonia areas through applications submitted under the TxCDBG community development fund or through community development block grant entitlement funds;

(iv) the projected water and/or sewer rates after completion of the project based on 3,000 gallons, 5,000 gallons, and 10,000 gallons of usage;

(v) the ability of the applicant to utilize the grant funds in a timely manner;

(vi) the availability of grant funds to the applicant for project financing from other sources;

(vii) whether the applicant, or the service provider, has waived the payment of water or sewer service assessments, capital recovery fees, and other access fees for the proposed low and moderate income project beneficiaries;

(viii) whether the applicant's proposed use of Tx-CDBG funds is to provide water or sewer connections/yardlines and/or plumbing improvements that provide access to water/sewer systems financed through the Texas Water Development Board Economically Distressed Areas Program;

(ix) whether the applicant has already met its basic water and wastewater needs if the application is for activities other than water or wastewater;

(x) whether the project has provided for future funding necessary to sustain the project;

(xi) whether the applicant has provided any local matching funds for administrative, engineering, or construction activities;

(xii) the applicant's past performance on previously awarded TxCDBG contracts; and

(xiii) proximity of project site to entitlement cities or metropolitan statistical areas.

(F) Project design scoring guidelines. Project design scores are assigned by Office staff using guidelines that first consider the severity of the need for each application activity and how the project resolves the need described in the application. The severity of need and resolution of the need determine the maximum project design score that can be assigned to an application. After the maximum project design score has been established, points are then deducted from this maximum score through the evaluation of the other project design evaluation factors until the maximum score and the point deductions from that maximum score determine the final assigned project design score. When necessary, a weighted average is used to set the maximum project design score to applications that include activities in the different severity of the need/project resolution maximum scoring levels. Using as a base figure the TxCDBG funds requested minus the TxCDBG funds requested for engineering and administration, a percentage of the total TxCDBG construction dollars for each activity is calculated. The percentage of the total TxCDBG construction dollars for each activity is then multiplied by the appropriate maximum project design point level. The sum of the calculations determines the maximum project design score that the applicant can be assigned before points are deducted based on the evaluation of the other project design factors.

(i) Maximum project design score that can be assigned based on the severity of the need and resolution of the problem.

(I) Activities providing first-time public sewer service to the area--maximum score 140 points.

(II) Activities providing first-time public water service to the area--maximum score 140 points.

(III) Installation of approved residential on-site wastewater disposal systems providing first-time sewer service--maximum score 140 points.

(IV) Installation of approved residential on-site wastewater disposal systems for failing systems that cause health issues--maximum score 130 points.

(V) Housing rehabilitation and eligible new housing construction--maximum score 130 points.

(VI) Water activities addressing and resolving water supply shortage from drought conditions--maximum score 130 points.

(VII) Water or sewer activities expanding or improving existing water or sewer system--maximum score 125 points.

(VIII) Street paving activities providing first time surface pavement to the area--maximum score 100 points.

(IX) Installation of designed drainage structures providing first time designed drainage system to the area--maximum score 100 points.

(X) Reconstruction of streets with existing surface pavement--maximum score 90 points.

(XI) Installation of improvements or drainage structures to a designed drainage system--maximum score 90 points.

(XII) All other eligible activities--maximum score 80 points.

(ii) TxCDBG cost per low to moderate income beneficiary. The total amount of TxCDBG funds requested by the applicant is divided by the total number of low to moderate income persons benefiting from the application activities to determine the TxCDBG cost per beneficiary.

(I) Cost per low to moderate income beneficiary is equal to or less than \$2,000. Deduct zero points from the set maximum project design score.

(II) Cost per low to moderate income beneficiary is greater than \$2,000 but equal to or less than \$4,000. Deduct 1 point from the set maximum project design score.

(III) Cost per low to moderate income beneficiary is greater than \$4,000 but equal to or less than \$6,000. Deduct 2 points from the set maximum project design score.

(IV) Cost per low to moderate income beneficiary is greater than \$6,000 but equal to or less than \$8,000. Deduct 3 points from the set maximum project design score.

(V) Cost per low to moderate income beneficiary is greater than \$8,000 but equal to or less than \$10,000. Deduct 4 points from the set maximum project design score.

(VI) Cost per low to moderate income beneficiary is greater than \$10,000 but equal to or less than \$11,000. Deduct 5 points from the set maximum project design score.

(VII) Cost per low to moderate income beneficiary is greater than \$11,000 but equal to or less than \$13,000. Deduct 10 points from the set maximum project design score.

(VIII) Cost per low to moderate income beneficiary is greater than \$13,000 but equal to or less than \$15,000. Deduct 15 points from the set maximum project design score.

(IX) Cost per low to moderate income beneficiary is greater than \$15,000 but equal to or less than \$17,000. Deduct 20 points from the set maximum project design score.

(X) Cost per low to moderate income beneficiary is greater than \$17,000 but equal to or less than \$19,000. Deduct 30 points from the set maximum project design score.

(XI) Cost per low to moderate income beneficiary is greater than \$19,000. Deduct 40 points from the set maximum project design score.

(iii) The applicant's past efforts, especially the applicant's most recent efforts, to address water, sewer, and housing needs in colonia areas through applications submitted under the TxCDBG community development fund or through community development block grant entitlement funds.

(I) The nonentitlement county submitted an application under the TxCDBG community development fund 2009/2010 biennial competition that was not addressing water, sewer, and housing needs in colonia areas. Deduct 3 points from the set maximum project design score.

(II) The nonentitlement county submitted an application under the TxCDBG community development fund 2007/2008 biennial competition that was not addressing water, sewer, and housing needs in colonia areas. Deduct 3 points from the set maximum project design score.

(III) The entitlement county did not use 2009 CDBG entitlement funds to address water, sewer, and housing needs in colonia areas. Deduct 3 points from the set maximum project design score.

(IV) The entitlement county did not use 2008 CDBG entitlement funds to address water, sewer, and housing needs in colonia areas. Deduct 3 points from the set maximum project design score.

(iv) The projected water and/or sewer rates after completion of the project based on 3,000 gallons, 5,000 gallons, and 10,000 gallons of usage.

(I) The projected water and/or sewer rates may be too high for the application beneficiaries. Deduct 1 point from the set maximum project design score.

(II) The projected water and/or sewer rates are too low to discourage water conservation by the application beneficiaries. Deduct 1 point from the set maximum project design score.

(v) The ability of the applicant to utilize the grant funds in a timely manner.

(I) The application includes the acquisition of real property, easements or rights-of-way. Deduct 1 point from the set maximum project design score.

(II) The application includes matching funds that have not been secured by the applicant. Deduct 1 point from the set maximum project design score.

(III) The proposed application target area is not located in an area where a service provider already has the certificate of convenience and necessity (CCN) needed to provide service to the application beneficiaries. Deduct 1 point from the set maximum project design score.

(vi) The availability of grant funds to the applicant for project financing from other sources. Grant funds for any activity included in the application are available from another source. Deduct 1 point from the set maximum project design score.

(vii) The applicant, or the service provider, has not waived the payment of water or sewer service assessments, capital recovery fees, and other access fees for the proposed low and moderate income project beneficiaries.

(I) Assessments and fees budgeted in the application are equal to or less than \$100 per low and moderate income household. Deduct 2 points from the set maximum project design score.

(II) Assessments and fees budgeted in the application are greater than \$100 but equal to or less than \$200 per low and moderate income household. Deduct 4 points from the set maximum project design score.

(III) Assessments and fees budgeted in the application are greater than \$200 but equal to or less than \$300 per low and moderate income household. Deduct 6 points from the set maximum project design score.

(IV) Assessments and fees budgeted in the application are greater than \$300 but equal to or less than \$500 per low and moderate income household. Deduct 8 points from the set maximum project design score.

(V) Assessments and fees budgeted in the application are greater than \$500 per low and moderate income household. Deduct 10 points from the set maximum project design score.

(viii) Applicant's proposed use of TxCDBG funds does not provide water or sewer connections/yardlines and/or plumbing improvements that provide access to water/sewer systems financed through the Texas Water Development Board Economically Distressed Areas Program. Deduct 2 points from the set maximum project design score.

(ix) The application is for activities other than water or wastewater and the applicant has not already met its basic water

and wastewater needs. Deduct 3 points from the set maximum project design score.

(x) The applicant has not documented that future funding necessary to sustain the project is available. Deduct 3 points from the set maximum project design score.

(G) Past performance. An applicant receives from zero to ten points based on the applicant's past performance on previously awarded TxCDBG contracts. The applicant's score will primarily be based on an assessment of the applicant's performance on the applicant's two most recent TxCDBG contracts that have reached the end of the original contract period stipulated in the contract. TxCDBG staff may also assess the applicant's performance on existing TxCDBG contracts that have not reached the end of the original contract period. An applicant that has never received a TxCDBG grant award will automatically receive these points. TxCDBG staff will assess the applicant's performance on TxCDBG contracts up to the application deadline date. The applicant's performance on TxCDBG contracts after the application deadline date will not be evaluated in this assessment. The evaluation of an applicant's past performance may include, but is not necessarily limited to the following:

(i) The applicant's completion of the previous contract activities within the original contract period.

(ii) The applicant's submission of the required close-out documents within the period prescribed for such submission.

(iii) The applicant's timely response to monitoring findings on previous TxCDBG contracts especially any instances when the monitoring findings included disallowed costs.

(iv) The applicant's timely response to audit findings on previous TxCDBG contracts.

(v) The applicant's submission of all contract reporting requirements such as quarterly progress reports, certificates of expenditures, and project completion reports.

(H) Colonia Construction Component Marginal Applicant. The marginal applicant is the applicant whose score is high enough for partial funding of the applicant's original grant request. If the marginal amount available to this applicant is equal to or more than the Colonia Construction Component grant minimum of \$75,000, the marginal applicant may scale down the scope of the original project design, and accept the marginal amount, if the reduced project is still feasible. In the event that the marginal amount remaining in the Colonia Construction Component allocation is less than \$75,000, then the remaining funds will be used to either fund a Colonia Planning Fund application or will be reallocated to other established TxCDBG fund categories.

(2) Colonia area planning component (340 Total Points Maximum). The following is an outline of the selection criteria used by the Office for scoring applications for eligible planning activities under this fund. Three hundred forty points are available.

(A) Community distress (total--up to 35 points). All community distress factor scores are based on the unincorporated population of the applicant. An applicant that has 125% or more of the average of all applicants in the competition of the rate on any community distress factor, except per capita income, receives the maximum number of points available for that factor. An applicant with less than 125% of the average of all applicants in the competition on a factor will receive a proportionate share of the maximum points available for that factor. An applicant that has 75% or less of the average of all applicants in the competition on the per capita income factor will receive the maximum number of points available for that factor. An applicant

with greater than 75% of the average of all applicants in the competition on the per capita income factor will receive a proportionate share of the maximum points available for that factor.

(i) Percentage of persons living in poverty--15 points

(ii) Per capita income--10 points

(iii) Percentage of housing units without complete plumbing--5 points

(iv) Unemployment Rate--5 points

(B) Benefit to low and moderate income persons (total--30 points). Points are awarded based on the low and moderate income percentage for all of the colonia areas where project activities are located according to the following scale:

(i) 100% to 90% of funds benefiting low to moderate income persons--30 points

(ii) 89.99% to 80% of funds benefiting low to moderate income persons--25 points

(iii) 79.99% to 70% of funds benefiting low to moderate income persons--20 points

(iv) 69.99% to 60% of funds benefiting low to moderate income persons--15 points

(v) Below 60% of funds benefiting low to moderate income persons--5 points

(C) Project design (total--255 points). Each application is scored based on how the proposed planning effort resolves the identified need and the severity of need within the applying jurisdiction. A colonia planning fund application must receive a minimum score for the project design selection factor of at least 70 percent of the maximum number of points available under this factor to be considered for funding. A more detailed description on the assignment of points under the project design scoring is included in the application guide for this fund. Each application is scored by TxCDBG staff using the following information submitted in the application:

(i) Evidence of severity of need as described in originally received application (total--up to 10 points)

(ii) Applicant provides documentation that proposed colonia(s) is/are ranked high that is, within the top five colonias in its "comprehensive plan" as submitted to the TxCDBG (up to 30 points)

(iii) all target area colonia(s) not platted (up to 20 points)

(iv) all target area colonia(s) with no water (up to 20 points)

(v) all target area colonia(s) with no wastewater (up to 20 points)

(vi) all or some target area colonia(s) are partially platted or platted but not recorded (up to 10 points)

(vii) target area colonia(s) partial water (up to 10 points)

(viii) target area colonia(s) partial sewer (up to 10 points)

(ix) Population (total--10 points). The change in county population from 1990 and current HUD estimate is between:

(I) greater than 5% but less than or equal to 10% (2 points)

(II) greater than 10% but less than or equal to 15% (4 points)

(III) greater than 15% but less than or equal to 20% (6 points)

(IV) greater than 20% but less than or equal to 25% (8 points)

(V) greater than 25% (10 points)

(x) Needs are clearly identified in original application by priority through a community needs assessment (total--up to 5 points).

(xi) Evidence provided in the original application of citizen input or known citizen involvement in addressing need (total--up to 15 points).

(xii) Evidence provided in the original application that the public hearings to solicit input on needs were performed as described in the application guide (total--up to 28 points).

(xiii) Proposed planning efforts as described in the application are clear, concise and reasonable (total--up to 20 points).

(xiv) The description of planning activity in the original application:

(I) Originally submitted TABLE 1 requests eligible activities (3 points);

(II) Originally submitted TABLE 1 proposes an inventory, analysis and plan or an eligible activity not previously funded through the Colonia Fund (3 points);

(III) Originally submitted TABLE 1 addresses identified needs (3 points);

(IV) Originally submitted TABLE 1 activities match Table 2 planning elements (3 points);

(V) Originally submitted TABLE 1 describes or indicates an implementable strategy, for example, a capital improvements plan or other method (3 points).

(xv) All proposed activities will be conducted on a colonia-wide basis (10 points).

(xvi) The extent to which any previous planning efforts for colonia areas have been accomplished. Applicant was a previous recipient of Colonia Planning Funds and through implementation of previously funded activities a colonia has been eliminated from colonia status (water, wastewater and housing needs have been provided for). Evidence such as a resolution of the commissioner's court that county has eliminated a colonia from the original colonia list in the comprehensive study or the OAG list thus indicating that the county is organized to implement the plan or would ensure that the plan is implemented. Points will be awarded if applicant is a previous recipient of a Colonia Comprehensive Planning Fund award and certifies completion of all of a colonia's needs since the colonia's problems were last studied (25 points).

(xvii) TxCDBG cost per low to moderate income beneficiary (total--15 points):

(I) the TxCDBG cost per low to moderate income beneficiary is at least 50 percent below the median cost per beneficiary of all eligible applicants (15 points); or

(II) the TxCDBG cost per low to moderate income beneficiary is at or below the median cost per beneficiary of all eligible applicants (10 points); or

(III) the TxCDBG cost per low to moderate income beneficiary is below 150 percent of the median cost per beneficiary of all eligible applicants (7 points); or

(IV) the TxCDBG cost per low to moderate income beneficiary is 150 percent or greater than the median cost per beneficiary of all eligible applicants (5 points).

(xviii) the availability of grant funds to the applicant for project financing from other sources. The area would be eligible for funding under the Texas Water Development Board's Economically Distressed Areas Program (EDAP) or other programs as described in the original application (total--6 points).

(xix) the applicant's past performance on prior Tx-CDBG contracts. An applicant can receive from zero to twelve points based on the applicant's past performance on previously awarded Tx-CDBG contracts. The applicant's score will be primarily based on our assessment of the applicant's performance on the applicant's two most recent Tx-CDBG contracts that have reached the end of the original contract period stipulated in the contract. The Tx-CDBG may also assess the applicant's performance on existing Tx-CDBG contracts that have not reached the end of the original contract period. Applicants that have never received a Tx-CDBG grant award will automatically receive these points. The Tx-CDBG will assess the applicant's performance on Tx-CDBG contracts up to the application deadline date. The applicant's performance after the application deadline date will not be evaluated in this assessment. The evaluation of an applicant's past performance may include, but is not necessarily limited to the following:

(I) The applicant's completion of the previous two most recent contracts contract activities within the original contract period (up to 3 points).

(II) The applicant's submission of the required close-out documents for aforementioned contracts within the period prescribed for such submission (up to 3 points).

(III) The applicant's timely response to monitoring findings on previous Tx-CDBG contracts especially any instances when the monitoring findings included disallowed costs (up to 3 points).

(IV) The applicant's timely response to audit findings on previous Tx-CDBG contracts (up to 3 points).

(D) Matching funds (total--20 points). The population category under which county applications are scored is based on the actual number of beneficiaries to be served by the colonia planning activities.

(i) Applicants with populations equal to or less than 1,500 according to the 2000 census:

(I) match equal to or greater than 5.0% of grant request--20 points;

(II) match at least 2.0% but less than 5.0% of grant request--10 points;

(III) match less than 2.0% of grant request--0 points.

(ii) Applicants with populations equal to or less than 3,000 but over 1,500 according to the 2000 census:

(I) match equal to or greater than 10% of grant request--20 points;

(II) match at least 2.5% but less than 10% of grant request--10 points;

(III) match less than 2.5% of grant request--0 points.

(iii) Applicants with populations equal to or less than 5,000 but over 3,000 according to the 2000 census:

(I) match equal to or greater than 15% of grant request--20 points;

(II) match at least 3.5% but less than 15% of grant request--10 points;

(III) match less than 3.5% of grant request--0 points.

(iv) Applicants with populations over 5,000 according to the 2000 census:

(I) match equal to or greater than 20% of grant request--20 points;

(II) match at least 5.0% but less than 20% of grant request--10 points;

(III) match less than 5.0% of grant request--0 points.

(E) The marginal applicant is the applicant whose score is high enough for partial funding of the applicant's original grant request. The marginal applicant may scale down the scope of the original project design, and accept the marginal amount, if the reduced project is still feasible. Any unobligated funds remaining in the Colonia Area Planning allocation will be reallocated to either fund additional Colonia Comprehensive Planning applications, Colonia Construction Component applications, or will be reallocated to other established Tx-CDBG fund categories.

(3) Colonia construction component (200 Total Points Maximum). The following is an outline of the selection criteria used by the Office for scoring applications for eligible planning activities under this fund. Two hundred points are available.

(A) Community distress (total--25 points). All community distress factor scores are based on the unincorporated population of the applicant. An applicant that has 125% or more of the average of all applicants in the competition of the rate on any community distress factor, except per capita income, receives the maximum number of points available for that factor. An applicant with less than 125% of the average of all applicants in the competition on a factor will receive a proportionate share of the maximum points available for that factor. An applicant that has 75% or less of the average of all applicants in the competition on the per capita income factor will receive the maximum number of points available for that factor. An applicant with greater than 75% of the average of all applicants in the competition on the per capita income factor will receive a proportionate share of the maximum points available for that factor.

(i) Percentage of persons living in poverty--10 points

(ii) Per capita income--5 points

(iii) Percentage of housing units without complete plumbing--5 points

(iv) Unemployment Rate--5 points

(B) Project design (total--175 points). A colonia planning fund application must receive a minimum score for the project design selection factor of at least 70 percent of the maximum number

of points available under this factor to be considered for funding. A more detailed description on the assignment of points under the project design scoring is included in the application guide for this fund. Each application is scored by the Office staff using the following information submitted in the application:

(i) the severity of need for the comprehensive colonia planning effort and how effectively the proposed comprehensive planning effort will result in a useful assessment of colonia populations, locations, infrastructure conditions, housing conditions, and the development of short-term and long-term strategies to resolve the identified needs;

(I) Evidence of severity of need as described in originally received application (total--100 points).

(II) Population (total--10 points). The change in county population from 1990 to current HUD estimate is between:

(-a-) greater than 2% but less than or equal to 4% (2 points).

(-b-) greater than 4% but less than or equal to 6% (4 points).

(-c-) greater than 6% but less than or equal to 8% (6 points).

(-d-) greater than 8% but less than or equal to 10% (8 points).

(-e-) greater than 10% (10 points).

(III) Needs are clearly identified in original application by priority through a community needs assessment (total--2 points);

(IV) Evidence provided in the original application of citizen input or known citizen involvement in addressing need (total--2 points);

(V) Evidence provided in the original application that the public hearings to solicit input on needs were performed as described in the application guide (total--18 points);

(VI) Proposed planning efforts as described in the application are clear, concise and reasonable (total--2 points).

(VII) Proposed planning efforts as described in the application match the needs in the target area (total--2 points).

(VIII) Evidence in the application that the county is organized to implement the plan or would ensure that the plan is implemented (total--2 points).

(IX) The description of planning activity in the original application:

(-a-) Describes eligible activities (total--1 point).

(-b-) Describes understanding of plan process (total--1 point).

(-c-) Addresses identified needs (total--1 point).

(-d-) Appears to result in solution to problems (total--1 point).

(-e-) Indicates a strategy that can be implemented (total--1 point).

(X) Considering the applicant's probable capability, the Colonia Questionnaire in the original application indicates an attempt to control problems and the original submission was complete (total--3 points).

(ii) the extent to which any previous planning efforts for colonia areas have been implemented (total--5 points). Applicant

was a previous recipient of Colonia Planning Funds and some implementation of previously funded activities or special or extenuating circumstances prohibiting implementation exist. Points will be awarded if applicant is not a previous recipient of a Colonia Planning Fund award. Points will not be awarded if applicant did not implement previously funded activities and no special or extenuating circumstances prohibiting implementation existed;

(iii) whether the applicant provides any local matching funds for project activities. (total--12 points).

(I) At least 20% of TxCDBG requested amount match--12 points.

(II) At least 15% of TxCDBG requested amount but less than 20% match--9 points.

(III) At least 10% of TxCDBG requested amount but less than 15% match--6 points.

(IV) At least 5% of TxCDBG requested amount but less than 10% match--3 points.

(V) Under 5% of TxCDBG requested amount match--0 points.

(iv) the applicant's past performance on previously awarded TxCDBG contracts. An applicant can receive from zero to twelve points based on the applicant's past performance on previously awarded TxCDBG contracts. The applicant's score will be primarily based on our assessment of the applicant's performance on the applicant's two most recent TxCDBG contracts that have reached the end of the original contract period stipulated in the contract. The TxCDBG may also assess the applicant's performance on existing TxCDBG contracts that have not reached the end of the original contract period. Applicants that have never received a TxCDBG grant award will automatically receive these points. The TxCDBG will assess the applicant's performance on TxCDBG contracts up to the application deadline date. The applicant's performance after the application deadline date will not be evaluated in this assessment. The evaluation of an applicant's past performance will include, but is not necessarily limited to the following:

(I) The applicant's completion of the previous contract, two most recent TxCDBG contracts contract activities within the original contract period (up to 3 points).

(II) The applicant's submission of the required close-out documents for aforementioned contracts within the period prescribed for such submission (up to 3 points).

(III) The applicant's timely response to monitoring findings on previous TxCDBG contracts especially any instances when the monitoring findings included disallowed costs (up to 3 points).

(IV) The applicant's timely response to audit findings on previous TxCDBG contracts (up to 3 points).

(f) Program guidelines (colonia self-help centers legislative set-aside). The colonia self-help centers legislative set-aside is administered by the Texas Department of Housing and Community Affairs (TDHCA) under an interagency agreement with the Office. The following is an outline of the administrative requirements and eligible activities under this fund.

(1) The geographic area served by each colonia self-help center shall be determined by the Office or by the TDHCA. Five colonias located in each established colonia self-help center service area shall be designated to receive concentrated attention from the center. Each colonia self-help center shall set a goal to improve the living con-

ditions of the residents located in the colonias designated for concentrated attention within a two-year period set under the contract terms. The Office and the TDHCA have the authority to make changes to the colonias designated for this concentrated attention.

(2) The Office's grant contract for each colonia self-help center is awarded and executed with the county where the colonia self-help center is located. Each county executes a subcontract agreement with a non-profit community action agency or a public housing authority.

(3) A colonia advisory committee is established and not fewer than five persons who are residents of colonias are selected from the candidates submitted by local nonprofit organizations and the commissioners court of a county where a self-help center is located. One committee member shall be appointed to represent each of the counties in which a colonia self-help center is located. Each committee member must be a resident of a colonia located in the county the member represents but may not be a board member, contractor, or employee of or have any ownership interest in an entity that is awarded a contract through the TxCDBG. The advisory committee shall advise the Office and the TDHCA regarding:

(A) the needs of colonia residents;

(B) appropriate and effective programs that are proposed or are operated through the centers; and

(C) activities that may be undertaken through the centers to better serve the needs of colonia residents.

(4) The purpose of each colonia self-help center is to assist low income and very low income individuals and families living in colonias located in the center's designated service area to finance, refinance, construct, improve or maintain a safe, suitable home in the designated service area or in another suitable area. Each self-help center may serve low income and very low income individuals and families by:

(A) providing assistance in obtaining loans or grants to build a home;

(B) teaching construction skills necessary to repair or build a home;

(C) providing model home plans;

(D) operating a program to rent or provide tools for home construction and improvement for the benefit of property owners in colonias who are building or repairing a residence or installing necessary residential infrastructure;

(E) helping to obtain, construct, assess, or improve the service and utility infrastructure designed to service residences in a colonia, including potable water, wastewater disposal, drainage, streets and utilities;

(F) surveying or platting residential property that an individual purchased without the benefit of a legal survey, plat, or record;

(G) providing credit and debt counseling related to home purchase and finance;

(H) applying for grants and loans to provide housing and other needed community improvements;

(I) monthly programs to educate individuals and families on their rights and responsibilities as property owners;

(J) providing other eligible services that the self-help center, with the Office's approval, determines are necessary to assist

colonia residents in improving their physical living conditions, including help in obtaining suitable alternative housing outside of a colonia's area;

(K) providing assistance in obtaining loans or grants to enable an individual or family to acquire fee simple title to property that originally was purchased under a contract for a deed, contract for sale, or other executory contract; and

(L) providing access to computers, the internet, and computer training.

(5) A self-help center may not provide grants, financing, or mortgage loan services to purchase, build, rehabilitate, or finance construction or improvements to a home in a colonia if water service and suitable wastewater disposal are not available.

(g) Selection criteria (colonia EDAP fund). The following is an outline of the application information evaluated by a committee composed of the Office's staff.

(1) The proposed use of the colonia EDAP funds including the eligibility of the proposed activities and the effective use of the funds to provide water or sewer connections/yard lines to water/sewer systems funded through the Texas Water Development Board Economically Distressed Area Program.

(2) The ability of the applicant to utilize the grant funds in a timely manner.

(3) The availability of grant funds to the applicant for project financing from other sources.

(4) The applicant's past performance on previously awarded TxCDBG contracts.

(5) Cost per beneficiary.

(6) Proximity of project site to entitlement cities or metropolitan statistical areas.

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 February 18, 2011.

TRD-201100706

Charles S. (Charlie) Stone

Executive Director

Texas Department of Rural Affairs

Effective date: March 10, 2011

Proposal publication date: December 17, 2010

For further information, please call: (512) 936-6734

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TITLE 13. CULTURAL RESOURCES

PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

CHAPTER 2. GENERAL POLICIES AND PROCEDURES

SUBCHAPTER C. GRANT POLICIES

DIVISION 3. LIBRARY SERVICES AND TECHNOLOGY ACT, LIBRARY COOPERATION GRANTS

13 TAC §2.311

The Texas State Library and Archives Commission adopts an amendment to §2.311, concerning the eligible applicants for Library Cooperation grants, with changes to the proposed text as published in the October 29, 2010, issue of the *Texas Register* (35 TexReg 9597). The section will be republished. The adopted amendment corrects a typographical error in subsection (a).

The membership of the Texas Library Systems is changing with the application and accreditation of certain non-public libraries, and the rules need clarification that any member of the Texas Library System is an eligible applicant for these competitive grants.

No comments were received regarding the proposed amendment.

The amendment is adopted under the authority of Government Code §441.006 that permits the commission to accept, receive, and administer federal funds, §441.109 that permits the commission to adopt a state plan consistent with federal goals, and directs the state library to administer the plan according to local, state, and federal requirements, §441.135(6) that authorizes the commission to offer competitive grants to public libraries and to certain non-public libraries described by §441.1271(a), and §441.1271 that authorizes extending membership in the Texas Library System to certain non-public libraries.

The amendment affects Government Code §§441.006, 441.109, 441.135(6), 441.1271(a) and 441.1271.

§2.311. *Eligible Applicants.*

(a) Through their governing authority, major resource library systems, regional library systems, and libraries that are members of the TexShare Library Consortium or Texas Library System are eligible to apply for funds. These funds are awarded to major resource or regional library systems, TexShare member libraries or Texas Library System members but may be used with all types of libraries as specified in the grant guidelines and application. Applicants must be members of the TexShare Library Consortium or the Texas Library System at the time of application and for the period of grant funding. Non-profit organizations may be awarded funds for projects that involve a number of TexShare or Texas Library System member libraries, as well as other types of libraries or organizations. Public school libraries that are not members of the Texas Library System may participate as partners in grants led by eligible entities.

(b) Successful applicants are eligible to apply for grant funds for the two years following the initial grant year. The second and third application will be evaluated with the same criteria as new applications. No applicant will be eligible for a fourth year of funding for the same project.

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 February 17, 2011.

TRD-201100665

Edward Seidenberg
Deputy Director
Texas State Library and Archives Commission
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Proposal publication date: October 29, 2010
For further information, please call: (512) 463-5459



DIVISION 4. LIBRARY SERVICES AND TECHNOLOGY ACT, SPECIAL PROJECTS GRANTS

13 TAC §2.411

The Texas State Library and Archives Commission adopts an amendment to §2.411, concerning the eligible applicants for Special Projects grants, with changes to the proposed text as published in the October 29, 2010, issue of the *Texas Register* (35 TexReg 9597). The section will be republished. The adopted amendment corrects a typographical error in subsection (a).

The membership of the Texas Library Systems is changing with the application and accreditation of certain non-public libraries, and the rule needs clarification that any member of the Texas Library System is an eligible applicant for these competitive grants.

No comments were received regarding the proposed amendment.

The amendment is adopted under the authority of Government Code §441.006 that permits the commission to accept, receive, and administer federal funds, §441.109 that permits the commission to adopt a state plan consistent with federal goals, and directs the state library to administer the plan according to local, state, and federal requirements, §441.135(6) that authorizes the commission to offer competitive grants to public libraries and to certain non-public libraries described by §441.1271(a), and §441.1271 that authorizes extending membership in the Texas Library System to certain non-public libraries.

The amendment affects Government Code §§441.006, 441.109, 441.135(6), 441.1271(a) and 441.1271.

§2.411. *Eligible Applicants.*

(a) Through their governing authority, major resource library systems, regional library systems, and libraries that are members of the TexShare Library Consortium or Texas Library System are eligible to apply for funds. These funds are awarded to major resource or regional library systems, TexShare member libraries or Texas Library System members but may be used with all types of libraries as specified in the grant guidelines and application. Applicants must be members of the TexShare Library Consortium or the Texas Library System at the time of application and for the period of grant funding. Non-profit organizations may be awarded funds for projects that involve a number of TexShare or Texas Library System member libraries, as well as other types of libraries or organizations. Public school libraries that are not members of the Texas Library System may participate as partners in grants led by eligible entities.

(b) Successful applicants are eligible to apply for grant funds for the two years following the initial grant year. The second and third application will be evaluated with the same criteria as new applications. No applicant will be eligible for a fourth year of funding for the same project.

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-201100666

Edward Seidenberg

Deputy Director

Texas State Library and Archives Commission

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For further information, please call: (512) 463-5459



CHAPTER 8. TEXSHARE LIBRARY CONSORTIUM

13 TAC §8.3

The Texas State Library and Archives Commission adopts an amendment to §8.3, concerning Consortium Membership and Affiliated Membership, without changes to the proposed text as published in the October 29, 2010, issue of the *Texas Register* (35 TexReg 9598). The section will not be republished.

The revisions allow the commission to collect fees from affiliate members of the consortium to cover the costs associated with their participation in TexShare services. They also allow the commission to collect fees from public school libraries for their participation in group purchasing programs of the consortium.

No comments were received regarding the proposed amendment.

The amendment is adopted under Government Code §441.225(b), which authorizes the commission to adopt rules to govern the operation of the consortium and Government Code §441.224, which authorizes the director and librarian to assess fees for consortium services.

The amendment affects Government Code, §441.224.

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

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TRD-201100667

Edward Seidenberg

Deputy Director

Texas State Library and Archives Commission

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For further information, please call: (512) 463-5459



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS

SUBCHAPTER CC. COMMISSIONER'S RULES CONCERNING SCHOOL FACILITIES

19 TAC §61.1038

The Texas Education Agency (TEA) adopts new §61.1038, concerning credit enhancement for school district bonds. The section is adopted with changes to the proposed text as published in the October 29, 2010, issue of the *Texas Register* (35 TexReg 9613). The adopted new section allows the commissioner to implement and administer the provisions of the Texas Education Code (TEC), Chapter 45, Subchapter I, as added by Section 75 of House Bill 3646, 81st Texas Legislature, 2009, which establishes an intercept program to provide credit enhancement for school district bonds.

In March 2009, the Texas Permanent School Fund (PSF) Bond Guarantee Program (BGP) was closed temporarily because a drop in the market had lowered the PSF's value to the point that outstanding guarantees exceeded capacity under federal regulations.

Partly in response to the closure of the BGP, the 81st Texas Legislature, 2009, included in House Bill 3646 provisions establishing an intercept program to provide credit enhancement for school district bonds. Section 75 of House Bill 3646 added these provisions to the TEC as Chapter 45, Subchapter I. TEC, §45.263, directs the commissioner of education to adopt rules necessary for the administration of the new subchapter.

The adopted new rule implements the provisions of the TEC, Chapter 45, Subchapter I. Specifically, the adopted new rule sets out the statutory provisions for the intercept credit enhancement program, provides definitions, sets out the data sources used for prioritization of applications, explains application and approval requirements, provides a description of how applications would be processed, and sets out eligibility requirements, limitations on access to the credit enhancement, financial exigency provisions, and credit enhancement restrictions. The rule explains what effect defeasance would have on bonds approved for credit enhancement, the responsibilities of school districts that are unable to make payments on enhanced bonds, how payments would be made under the program, and how the Foundation School Program would be reimbursed for payments. The rule also describes penalties for repeated failure of a district to make payments on enhanced bonds.

In a technical correction, the definition for "existing annual debt service" in subsection (b)(6) as proposed was deleted at adoption, as the term is not used elsewhere in the rule. Subsequent subsections and subsection references were renumbered accordingly.

The following changes were made at adoption in response to public comments received for proposed new 19 TAC §61.1039, Open-Enrollment Charter School Bond Enhancement Program. Because statute requires that that program's structure and procedures be "substantially similar" to those of the program to be implemented through 19 TAC §61.1038, the comments that were received for proposed new 19 TAC §61.1039 and that were applicable to 19 TAC §61.1038 were treated as comments received for 19 TAC §61.1038.

The definition for "total debt service" in subsection (b)(14) as proposed, adopted as subsection (b)(13), was modified to reference the final maturity schedule.

Subsection (d)(2)(B) was modified to provide for a notice of denial of approval that includes the reasons for the denial.

Subsection (f)(1)(C) was modified to use the same language used for the corresponding provision of 19 TAC §61.1039.

Subsection (f)(2)(A) was deleted, and subsequent subsections and a subsection reference were relettered accordingly.

In subsection (f)(2)(D) as proposed, adopted as subsection (f)(2)(C), the term "present value savings" was changed to "net present value savings."

A school district that wishes to receive the credit enhancement for its bonds must submit an application for the enhancement that includes the following: the name of the school district and the principal amount of the bonds to be issued; the name and address of the district's paying agent for those bonds; and the maturity schedule, estimated interest rate, and date of the bonds. A single application will be used to apply for the PSF BGP guarantee and for the program's credit enhancement. An applicant school district will also be required to submit any additional information related to the bonds that the commissioner specifically requested to make an approval determination. A school district that applies for credit enhancement of refunding bonds must provide evidence that issuing the refunding bonds will result in a net present value savings and that the refunding bonds did not have a maturity date later than the final maturity date of the bonds being refunded.

The adopted rule action has no locally maintained paperwork requirements.

The TEA determined that there is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The public comment period on the proposal began October 29, 2010, and ended November 29, 2010. Because statute requires that the structure and procedures of the open-enrollment charter school bond enhancement program, adopted in this issue of the *Texas Register* as new 19 TAC §61.1039, be "substantially similar" to those of the program to be implemented through 19 TAC §61.1038, the comments that were received for proposed new 19 TAC §61.1039 and that are applicable to 19 TAC §61.1038 have been treated as comments received for 19 TAC §61.1038. Following is a summary of the applicable public comments received and corresponding agency responses.

Comment: A bond counsel commented that the debt service definitions in subsection (b) that reference the Municipal Advisory Council (MAC) of Texas should be modified to provide that the principal and interest amounts used be those amounts certified by the applicant instead of the amounts reported by the MAC of Texas or its successor. The commenter stated that the change was necessary because private placements would not necessarily be reported to the MAC.

Agency Response: The agency disagrees with the comment and has maintained the definition for "total debt service" as proposed. Its provisions are similar to those included in the rules for the Bond Guarantee Program, which provide that the debt service amounts used will be those reported to the MAC of Texas. Because the rule provisions do specify that the principal and interest amounts to be used are those reported to the MAC, if an applicant district chooses to use a private placement, the district must ensure that debt service payment information is reported to the MAC of Texas. In a technical correction, the definition for

"existing annual debt service" in subsection (b)(6) as proposed has been deleted, as the term is not used in the rule.

Comment: A bond counsel commented that the debt service definitions in subsection (b) that reference variable rate bonds should be modified to specify that debt service amounts for variable rate bonds without official statements would be determined on a historical average or by some other means. The commenter stated that some provision had to be made for variable rate bonds without official statements.

Agency Response: The agency provides the following clarification about final official statements. Whether bonds have a final official statement does not depend on the type of interest rate (variable or fixed) but instead depends on whether the bonds are privately placed.

The agency agrees that some provision should be made for privately placed bonds that do not have a final official statement and has modified the definition for "total debt service" in subsection (b)(14) as proposed, adopted as subsection (b)(13), accordingly. In a technical correction, the definition for "existing annual debt service" in subsection (b)(6) as proposed has been deleted, as the term is not used in the rule.

Comment: A bond counsel commented that the debt service definitions in subsection (b) that reference variable rate bonds should be modified to specify that debt service amounts for variable rate bonds without official statements would be determined on the actual basis of the amounts paid during the preceding fiscal year.

Agency Response: The agency agrees that some provision should be made for privately placed bonds that do not have a final official statement but has made a different modification from the one suggested. The agency has made provision for bonds that do not have a final official statement by adding the phrase "or final maturity schedule" to the definition for "total debt service" in subsection (b)(14) as proposed, adopted as subsection (b)(13). In a technical correction, the definition for "existing annual debt service" in subsection (b)(6) as proposed has been deleted, as the term is not used in the rule.

Comment: The Texas Charter Schools Association (TCSA) commented that the rule should explicitly state that the list of items for review provided in subsection (d)(2) is an exhaustive list of the criteria the commissioner will consider.

Agency Response: The agency disagrees with the comment and has maintained language as published as proposed. The purpose of the review is to protect the financial integrity of the Foundation School Program (FSP), and to add the requested statement could weaken the agency's ability to do that. Also, the Open-Enrollment Charter School Bond Enhancement Program (CSBEP) rule and the Bond Guarantee Program rule, which each contain a similar list of items for review by the commissioner before application approval, do not include such a statement.

Comment: The TCSA commented that the list of items for review provided in subsection (d)(2) should be modified to include the applicant's Financial Integrity Rating System of Texas (FIRST) rating and its financial solvency review. The commenter stated that perhaps these precise criteria could replace the more general criteria specified in subsections (d)(2)(A)(iii) and (iv). The commenter added that the criteria in subsections (d)(2)(A)(iii) and (iv) were too broadly worded.

Agency Response: The agency disagrees with the comment and has maintained the referenced provisions as proposed. The specific criteria the commenter suggests adding are already included within the broader criteria provided in subsections (d)(2)(A)(iii) and (iv). The broad criteria provided in these subsections will allow the agency to more thoroughly evaluate applicants and to guard against approving applicants that may later default, protecting the financial integrity of the FSP.

Comment: The TCSA commented that the rule should include a provision requiring the commissioner to provide written notice if approval for the credit enhancement is denied and that the notice should state the reasons for denial.

Agency Response: The agency agrees with the comment and has modified subsection (d)(2)(B) accordingly.

Comment: A bond counsel commented that subsection (f)(1)(C) should be modified to explicitly provide for applicants that do not have credit ratings.

Agency Response: The agency disagrees with the comment. However, the agency has modified subsection (f)(1)(C) to clarify the subsection's provisions by using language similar to that used in the corresponding provision of the CSBEP rule. With this amended language, if a school district does not have a credit rating, then the criterion specified in subsection (f)(1)(C) will simply not apply.

Comment: A bond counsel commented that subsection (f)(1)(D) should be modified to provide that only debt service payments that are enhanced would be included in the calculation specified in the subparagraph. The commenter also asked that the reference to proposed annual debt service be modified to remove the word "annual" and to remove the reference to the definition provided in subsection (b).

Agency Response: The agency disagrees with the comment and has maintained language as published as proposed. If a specific bonded debt is approved for credit enhancement, then all debt service payments for that debt, as described in the amortization schedule, would be considered enhanced. "Proposed annual debt service," as defined in subsection (b)(11) as proposed, adopted as subsection (b)(10), includes yearly principal and interest for all years described in the amortization schedule.

Comment: A bond counsel commented that subsection (f)(2)(A) as proposed should be deleted, stating that it is redundant.

Agency Response: The agency agrees that the subsection is redundant, as its provisions are already included in subsection (d)(2), which specifies the criteria to be met for approval, regardless of whether the bond issue is a combination, new money, or refunding issue. The agency has deleted subsection (f)(2)(A) as proposed.

Comment: A bond counsel commented that the order of the subsections referenced in subsection (g)(2) should be changed to numerical order.

Agency Response: The agency disagrees with the comment and has maintained language as published as proposed. The agency provides the following clarification regarding the order of the subsection references listed in subsection (g)(2). The subsection references appear in the order that the corresponding terms are listed, and the word "respectively" appears after the list of subsection references for that reason.

Comment: Two bond counsels commented that, in subsection (f)(2)(D) as proposed, the requirement that refunding bonds not

have a maturity date later than that of the bonds being refunded should be deleted. However, one of the bond counsels also provided a suggested revised version of the subsection that still included the requirement.

Agency Response: The agency disagrees with the comments and has maintained language as published as proposed. The rules for the CSBEP and the Bond Guarantee Program include this same requirement.

Comment: A bond counsel commented that, in subsection (f)(2)(D) as proposed, the term "present value savings" should be changed to "net present value savings."

Agency Response: The agency agrees with the comment and has made this change in subsection (f)(2)(D) as proposed, adopted as subsection (f)(2)(C).

Comment: A bond counsel commented that subsection (f)(2)(F) as proposed should be deleted as it references requirements that are not specifically related to refunding issues.

Agency Response: The agency disagrees with the comment and has maintained language as published as proposed. While the requirements referenced do not specifically mention refunding issues, they do apply to refunding issues. Subsection (f)(2)(F) as proposed, adopted as subsection (f)(2)(E), is meant to make clear that applicants must meet the same requirements for refunding issues as for new money issues.

The new section is adopted under the Texas Education Code (TEC), Chapter 45, Subchapter I, §45.263, which authorizes the commissioner to adopt rules necessary for the administration of the bond credit enhancement program. TEC, §45.263, also authorizes the commissioner, in adopting rules, to establish an annual deadline by which a school district must pay the debt service on bonds for which credit enhancement is provided under TEC, Chapter 45, Subchapter I. TEC, §45.261(b), authorizes the commissioner, in accordance with commissioner rules, to authorize reimbursement of the Foundation School Program in a manner other than that provided by TEC, §45.261.

The new section implements the Texas Education Code, Chapter 45, Subchapter I.

§61.1038. *School District Bond Enhancement Program.*

(a) Statutory provision. The commissioner of education must administer the intercept credit enhancement program for school district bonds according to the provisions of the Texas Education Code (TEC), Chapter 45, Subchapter I.

(b) Definitions. The following definitions apply to the intercept credit enhancement program for school district bonds.

(1) Application deadline--The last business day of the month in which an application for a credit enhancement is filed. Applications must be received by the Texas Education Agency (TEA) division responsible for state funding by 5:00 p.m. on the last business day of the month to be considered in that month's application processing.

(2) Average daily attendance (ADA)--Total refined average daily attendance as defined by the TEC, §42.005.

(3) Bond order--The order adopted by the governing body of a school district that authorizes the issuance of bonds.

(4) Combination issue--An issuance of bonds for which an application is filed for a credit enhancement that includes both a new money portion and a refunding portion, as permitted by the Texas Government Code, Chapter 1207. The eligibility of combination issues for

the credit enhancement is limited by the eligibility of the new money and refunding portions as defined in this subsection.

(5) Enrollment growth--Growth in student enrollment, as defined by §129.1025 of this title (relating to Adoption by Reference: Student Attendance Accounting Handbook), that has occurred over the previous five school years.

(6) Financial exigency--A determination by a school district board of trustees that the financial condition of the district requires a reduction in personnel, as authorized by the TEC, §21.211.

(7) Foundation School Program (FSP)--The program established under the TEC, Chapters 41, 42, and 46, or any successor program of state-appropriated funding for school districts in this state.

(8) New money issue--An issuance of bonds for the purposes of constructing, renovating, acquiring, and equipping school buildings; the purchase of property; or the purchase of school buses. Eligibility for the credit enhancement for new money issues is limited to the issuance of bonds authorized under the TEC, §45.003. A new money issue does not include the issuance of bonds to purchase a facility from a public facility corporation created by the school district or to purchase any property that is currently under a lease-purchase contract under the Local Government Code, Chapter 271, Subchapter A. A new money issue does not include an issuance of bonds to refinance any type of maintenance tax-supported debt. Maintenance tax-supported debt includes, but is not limited to:

(A) time warrants or loans entered under the TEC, Chapter 45, Subchapter E; or

(B) any other type of loan or warrant that is not supported by bond taxes as defined by the TEC, §45.003.

(9) Notes issued to provide interim financing--An issuance of notes, including commercial paper notes, designed to provide short-term financing for the purposes of constructing, renovating, acquiring, and equipping school buildings; the purchase of property; or the purchase of school buses. For notes to be eligible for the credit enhancement under this section, the notes must be:

(A) issued to pay costs for which bonds have been authorized at an election occurring before the issuance of the notes;

(B) approved by the Office of the Attorney General or issued in accordance with proceedings that have been approved the Office of the Attorney General; and

(C) refunded by bonds issued to provide long-term financing no more than three years from the date of issuance of such notes, provided that the date of issuance of notes will be determined by reference to the date on which the notes were issued for capital expenditures and the intervening date or dates of issuance of any notes issued to refinance outstanding notes will be disregarded.

(10) Proposed annual debt service--Payments of principal and interest on the outstanding bonded debt for which the enhancement is sought scheduled to occur between September 1 and August 31 during the fiscal year in which the credit enhancement is sought and each fiscal year for which the credit enhancement is or would be in effect as described in the amortization schedule for the bonded debt for which the enhancement is sought.

(11) Refunding issue--An issuance of bonds for the purpose of refunding bonds, including notes issued to provide interim financing, that are supported by bond taxes as defined by the TEC, §45.003. Eligibility for the credit enhancement for refunding issues is limited to refunding issues that refund bonds, including notes issued

to provide interim financing, that were authorized by a bond election under the TEC, §45.003.

(12) School District Bond Enhancement Program (SD-BEP)--The intercept program to provide credit enhancement for school district bonds that is described by this section and established under the TEC, Chapter 45, Subchapter I.

(13) Total debt service--Total outstanding principal and interest on bonded debt.

(A) The total debt service will be determined by the current report of the bonded indebtedness of the district as reported by the MAC of Texas or its successor as of the date of the application deadline, if the district has outstanding bonded indebtedness.

(B) The total debt service does not include:

(i) the amount of debt service to be paid on the bonds for which the credit enhancement is sought; or

(ii) the amount of debt service attributable to any debt that is no longer outstanding at the application deadline, provided that the TEA has sufficient evidence of the discharge or defeasance of such debt.

(C) The debt service amounts used in this calculation for variable rate bonds will be those that are published in the final official statement or final maturity schedule.

(c) Data sources.

(1) The following data sources will be used for purposes of prioritization:

(A) projected ADA for the current school year as adopted by the legislature for appropriations purposes;

(B) final property values certified by the comptroller of public accounts, as described in the Texas Government Code, Chapter 403, Subchapter M, for the tax year preceding the year in which the bonds will be issued. If final property values are unavailable, the most recent projection of property values by the comptroller, as described in the Texas Government Code, Chapter 403, Subchapter M, will be used;

(C) debt service information reported by the MAC of Texas or its successor as of the date of the application deadline; and

(D) enrollment information reported to the Public Education Information Management System (PEIMS) for the five-year time period ending in the year before the application date.

(2) The commissioner may consider adjustments to data values determined to be erroneous or not reflective of current conditions before the deadline for receipt of applications for that application cycle.

(d) Application for the credit enhancement.

(1) Application process. Districts must apply to the commissioner of education for the guarantee or the credit enhancement of eligible bonds. The district must submit, in a form specified by the commissioner, the information required under the TEC, §45.055(b), and this section and any additional information the commissioner may require. The application and all additional information required by the commissioner must be received before the application will be processed. The application will first be considered for guarantee of eligible bonds under §33.65 of this title (relating to Bond Guarantee Program). If Permanent School Fund (PSF) capacity has been exhausted, the application will then be considered for credit enhancement of eligible bonds. The application must be accompanied by a fee in the amount specified as the application fee amount in §33.65 of this title.

(A) The fee is due at the time the application for the guarantee or the credit enhancement is submitted. An application will not be processed until the fee has been received in accordance with the process prescribed by the commissioner for remitting the fee on the application form.

(B) The fee will not be refunded to a district that:

- (i) is not approved for the guarantee or the credit enhancement; or
- (ii) does not sell its bonds before the expiration of its approval for the guarantee or the credit enhancement.

(C) The fee may be transferred to a subsequent application for the guarantee or the credit enhancement by the district if the district withdraws its application and submits the subsequent application before the expiration of its approval for the guarantee or the credit enhancement.

(2) Approval.

(A) Under the TEC, §45.056, the commissioner will investigate the applicant school district's accreditation status and financial status. A district must be accredited and financially sound to be eligible for approval by the commissioner. The commissioner's review will include the following:

- (i) the purpose of the bond issue;
- (ii) the district's accreditation status as defined by §97.1055 of this title (relating to Accreditation Status) in accordance with the following:

(I) if the district's accreditation status is Accredited, the district will be eligible for consideration for the credit enhancement;

(II) if the district's accreditation status is Accredited-Warning or Accredited-Probation, the commissioner will investigate the underlying reason for the accreditation rating to determine whether the accreditation rating is related to the district's financial soundness. If the accreditation rating is related to the district's financial soundness, the district will not be eligible for consideration for the credit enhancement; or

(III) if the district's accreditation status is Not Accredited-Revoked, the district will not be eligible for consideration for the credit enhancement;

(iii) the district's compliance with statutes and rules of the TEA; and

(iv) the district's financial status and stability, regardless of the district's accreditation rating, including approval of the bonds by the Office of the Attorney General under the provisions of the TEC, §45.0031 and §45.005.

(B) The commissioner will grant or deny approval for the credit enhancement based on the review described in subparagraph (A) of this paragraph and will provide an applicant district whose application has received or been denied approval for the credit enhancement written notice of approval or denial. Notice of denial will include the reasons for denial.

(e) Application processing. To facilitate prioritization of applications for the guarantee authorized under §33.65 of this title, or for the credit enhancement authorized under this section, if the PSF capacity has been exhausted, all applications received during a calendar month will be held until the fifteenth business day of the subsequent month. On the fifteenth business day of each month, the commissioner of education will announce the results of the prioritization described

in paragraph (5) of this subsection. If the PSF capacity has been exhausted, the commissioner will process the application for approval for the credit enhancement up to the available capacity of money appropriated for the FSP for credit enhancement under this section as of the application deadline, subject to the requirements of this subsection.

(1) The school district may not submit an application for a guarantee or credit enhancement before the successful passage of an authorizing proposition.

(2) The actual credit enhancement of the bonds is subject to the approval process prescribed in subsection (d) of this section.

(3) During those periods in which the PSF capacity has been exhausted, the commissioner in each month of each fiscal year will estimate the amount of funds available to make payments under the SDBEP from the FSP through the end of the fiscal year for purposes of providing approval for the credit enhancement of school district bonds under this section. The commissioner will confirm that a sufficient amount of these funds exists to enhance the credit of the bonds before the issuance of the approval for the credit enhancement in accordance with subsection (d)(2) of this section. The amount of funds available to make payments under the SDBEP from the FSP is limited as described in paragraph (4) of this subsection and does not include:

- (A) Available School Fund (ASF) funds;
- (B) any FSP funds designated for the facilities programs provided for under the TEC, Chapter 46;
- (C) any funds designated for the charter school credit enhancement program provided for under the TEC, Chapter 45, Subchapter J; or
- (D) any federal funds, including federal funds provided by the American Recovery and Reinvestment Act of 2009.

(4) Before approving school district bonds for credit enhancement under the SDBEP, the commissioner must:

- (A) make the determination described in paragraph (3) of this subsection;
- (B) determine that credit enhancement of the bonds will not cause the projected debt service coming due during the remainder of the fiscal year for bonds provided credit enhancement under this section to exceed the lesser of:

- (i) one-half of the amount of funds due to public schools from the FSP for the final month of the current fiscal year; or
- (ii) one-half of the amount of funds anticipated to be on hand in the FSP to make payments for the final month of the current fiscal year; and

(C) determine that the maximum annual debt service on the bonds provided credit enhancement under this section, during any state fiscal year, will not exceed the lesser of:

- (i) one-half of the amount of funds due to public schools from the FSP for the final month of the current fiscal year; or
- (ii) one-half of the amount of funds anticipated to be on hand in the FSP to make payments for the final month of the current fiscal year.

(5) Credit enhancements will be awarded each month beginning with the districts with the lowest property wealth per ADA until the amount of funds available to make payments under the SDBEP from the FSP reaches its net capacity to enhance bonds, as described in paragraph (4) of this subsection. Credit enhancements will be awarded to applicants based on the amount available to fully enhance the bond

issue for which the credit enhancement is sought. Applications for bond issues that cannot be fully enhanced will not receive an award. The amount of bond issue for which the guarantee or credit enhancement was requested may not be modified after the monthly application deadline for the purposes of securing the guarantee or credit enhancement during the award process.

(6) An application received after the application deadline will be considered a valid application for the subsequent month, unless withdrawn by the submitting district before the end of the subsequent month.

(7) Each district that submits a valid application will be notified of the application status within 15 business days of the application deadline. If a district is awarded approval for the credit enhancement as described in subsection (d)(2) of this section, the bonds must be approved by the Office of the Attorney General within 180 days of the date of the letter granting the approval for the credit enhancement. The approval for the credit enhancement will expire at the end of the 180-day period. The commissioner may extend the 180-day period, based on extraordinary circumstances, on receiving a written request from the district before the expiration of the 180-day period.

(8) If a district does not receive a credit enhancement or for any reason does not receive approval of the bonds from the Office of the Attorney General within the specified time period, the district may reapply in a subsequent month. Applications that were denied a credit enhancement will not be retained for consideration in subsequent months.

(9) If the bonds are not approved by the Office of the Attorney General within 180 days of the date of the letter granting the approval for the credit enhancement, the commissioner will consider the application withdrawn, and the district must reapply for a credit enhancement.

(10) Districts may not represent the bonds as approved for credit enhancement for the purposes of pricing or marketing the bonds before the date of the letter granting approval for the credit enhancement.

(f) Eligibility.

(1) For bonds to be eligible for the credit enhancement under the SDBEP:

(A) bonds must be issued in the manner provided by the TEC, §45.054;

(B) payments of all of the principal of the bonds must be scheduled during the first six months of the state fiscal year;

(C) the applicant school district's lowest credit rating from any credit rating agency may not be the same as or higher than that of the SDBEP;

(D) the bonded debt for which the credit enhancement is sought must be structured so that no single annual debt service payment exceeds two times the quotient produced by dividing the total proposed annual debt service, as defined in subsection (b)(10) of this section, for the term of the bonds by the number of years in the amortization schedule; and

(E) the applicant school district must agree in its application that the total annual debt service on bonds approved for the credit enhancement will be paid on or before August 15 of each state fiscal year.

(2) Refunding issues must comply with the following requirements to be eligible for the credit enhancement for the refunding bonds, except that subparagraph (C) of this paragraph does not apply

to a refunding issue that provides long-term financing for notes issued to provide interim financing.

(A) Only refunding issues as defined in subsection (b)(11) of this section are eligible for the credit enhancement.

(B) The bonds to be refunded must have been:

(i) previously guaranteed by the PSF under the guarantee program authorized under §33.65 of this title or provided credit enhancement under this section;

(ii) issued on or after November 1, 2008, and before December 16, 2009; or

(iii) issued as notes to provide interim financing as defined in subsection (b)(9) of this section.

(C) The district must demonstrate that issuing the refunding bond(s) will result in a net present value savings to the district and that the refunding bond or bonds will not have a maturity date later than the final maturity date of the bonds being refunded. Net present value savings is determined by computing the net present value of the difference between each scheduled payment on the original bonds and each scheduled payment on the refunding bonds. Net present value savings must be computed at the true interest cost of the refunding bonds.

(D) If a district files an application for a combination issue, the application will be treated as a single issue for the purposes of eligibility for the guarantee or the credit enhancement. A credit enhancement for the combination issue will be awarded only if both the new money portion and the refunding portion meet all of the applicable eligibility requirements described in this subsection. The district making the application must present data to the commissioner that demonstrate compliance for both the new money portion of the issue and the refunding portion of the issue.

(E) The refunding transaction must comply with the provisions of subsection (e)(7) and (9) of this section.

(g) Limitations on access to the credit enhancement.

(1) The commissioner will limit approval for the credit enhancement to a district with less than the amount of annual debt service per student in ADA or less than the amount of total debt service per student in ADA that is specified as the limitation in §33.65 of this title at the time of the application for a guarantee or a credit enhancement. The limitation will not apply to school districts that have enrollment growth, as defined in subsection (b)(5) of this section, of at least 25%, based on PEIMS data on enrollment available at the time of application. The annual debt service amount is the amount defined by §33.65(b)(1) of this title. The total debt service amount is the amount defined by subsection (b)(13) of this section.

(2) The eligibility of bonds to receive the credit enhancement is limited to those new money, refunding, and combination issues as defined in subsection (b)(8), (11), and (4), respectively, of this section.

(h) Financial exigency. A school district that declares a financial exigency must designate the fiscal year to which the exigency applies. A state of financial exigency expires at the end of that fiscal year unless renewed or may be terminated by action of the board of trustees at any time before the end of the fiscal year.

(1) Declaration for current fiscal year.

(A) Application for credit enhancement of new money issue. The commissioner will deny approval of an application for the credit enhancement of a new money issue if the applicant school district has declared a state of financial exigency for the district's current

fiscal year. The denial of approval will be in effect for the duration of the applicable fiscal year unless the district can demonstrate financial stability.

(B) Approval granted before declaration. If in a given district's fiscal year the commissioner grants approval for the credit enhancement of a new money issue and the school district subsequently declares a state of financial exigency for that same fiscal year, the district must immediately notify the commissioner and may not offer the bonds for sale unless the commissioner determines that the district may proceed.

(C) Application for credit enhancement of refunding issue. The commissioner will consider an application for the credit enhancement of a refunding issue that meets all applicable requirements specified in this section even if the applicant school district has declared a state of financial exigency for the district's current fiscal year. In addition to fulfilling all applicable requirements specified in this section, the applicant school district must also describe, in its application, the reason financial exigency was declared and how the refunding issue will support the district's financial recovery plan.

(2) Declaration in a previous fiscal year. An applicant school district that declared a state of financial exigency in a previous district fiscal year but that has not declared such a state for the district's current fiscal year will not be considered to be in a state of financial exigency for the purposes of this section.

(i) Defeasance. The credit enhancement will be completely removed when bonds provided credit enhancement under this section are defeased, and such a provision must be specifically stated in the bond resolution. If bonds provided credit enhancement under this section are defeased, the district must notify the commissioner in writing within ten calendar days of the action.

(j) Payments. For purposes of the provisions of the TEC, Chapter 45, Subchapter I, matured principal and interest payments are limited to amounts due on bonds provided credit enhancement under this section at scheduled maturity, at scheduled interest payment dates, and at dates when bonds are subject to mandatory redemption, including extraordinary mandatory redemption, in accordance with their terms. All such payment dates, including mandatory redemption dates, must be specified in the order or other document pursuant to which the bonds initially are issued. Without limiting the provisions of this subsection, payments attributable to an optional redemption or a right granted to a bondholder to demand payment upon a tender of such bonds in accordance with the terms of the bonds do not constitute matured principal and interest payments.

(k) Credit enhancement restrictions. The credit enhancement provided for eligible bonds in accordance with the provisions of the TEC, Chapter 45, Subchapter I, is restricted to matured bond principal and interest. The credit enhancement does not extend to any obligation of a district under any agreement with a third party relating to bonds that is defined or described in state law as a "bond enhancement agreement" or a "credit agreement," unless the right to payment of such third party is directly as a result of such third party being a bondholder.

(l) Notice of failure or inability to pay. A school district that has determined that it is or will be unable to pay maturing or matured principal or interest on a bond for which credit enhancement is provided under this section must immediately, but not later than the tenth business day before maturity date, notify the commissioner.

(m) Payment from intercepted funds.

(1) Immediately after the commissioner receives the notice described in subsection (l) of this section, the commissioner will instruct the comptroller to transfer to the district's paying agent from the

amount of funds available to make payments under the SDBEP from the FSP, as identified by the commissioner, the amount necessary to pay the maturing or matured principal or interest.

(2) Immediately after receipt of the funds for payment of the principal or interest, the paying agent must pay the amount due.

(3) The procedures described in paragraphs (1) and (2) of this subsection apply to each payment of principal or interest on bonds as the payment becomes due until the bonds mature or are defeased according to state law.

(4) If, as a result of payments made under this subsection, there is insufficient money to fully fund the FSP, the commissioner will, to the extent necessary, reduce each school district's foundation school fund allocations, other than any portion appropriated from the ASF, in the same manner provided by the TEC, §42.253(h), for a case in which school district entitlements exceed the amount appropriated. The following fiscal year, the commissioner will increase each school district's entitlement under the TEC, §42.253, by an amount equal to the reduction under this paragraph.

(5) A payment made under this subsection by the state on behalf of a school district of funds the district owes on bonds for which credit enhancement is provided under this section creates a repayment obligation of the district to the state regardless of the maturity date of, or any payment of interest on, the bonds.

(6) This subsection does not create a debt of the state under the Texas Constitution or, except to the extent provided by this section, create a payment obligation.

(n) Bonds not accelerated on failure to pay. If a school district fails to pay principal or interest on a bond for which credit enhancement is provided under this section when the amount matures, other amounts not yet mature are not accelerated and do not become due by virtue of the district's failure to pay amounts matured.

(o) Reimbursement of FSP. If payment from the money appropriated to the FSP is made on behalf of a school district, the school district must reimburse the amount of the payment in accordance with the requirements of the TEC, §45.261.

(p) Repeated failure to pay. If a total of two or more payments are made under the guarantee program authorized under §33.65 of this title or the SDBEP on the bonds of a school district, the commissioner will take action in accordance with the provisions of the TEC, §45.262.

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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19 TAC §61.1039

The Texas Education Agency (TEA) adopts new §61.1039, concerning open-enrollment charter school facilities credit enhance-

ment. The section is adopted with changes to the proposed text as published in the October 8, 2010, issue of the *Texas Register* (35 TexReg 9015). The adopted new section allows the commissioner to implement and administer the provisions of the Texas Education Code (TEC), Chapter 45, Subchapter J, as added by Section 75 of House Bill 3646, 81st Texas Legislature, 2009, which allows for the establishment of an open-enrollment charter school facilities credit enhancement program.

Section 75 of House Bill 3646, 81st Texas Legislature, 2009, added the TEC, Chapter 45, Subchapters I and J. Subchapter J allows for the establishment of a charter school facilities credit enhancement program to help charter holders obtain financing to purchase, repair, or renovate real property for facilities. The TEC, §45.308, requires the commissioner to adopt rules to administer the program if the commissioner establishes the program.

The adopted new 19 TAC §61.1039 sets out the statutory provisions for the credit enhancement program, provides definitions, and explains the requirements of and policies related to the program's application and approval process. The adopted new rule also provides limitations on access to the program and explains program payment conditions and restrictions.

The following technical corrections were made to the rule at adoption. The term "existing annual debt service" was changed to "annual debt service" in subsection (b)(2)(A). The definition for "existing annual debt service" in subsection (b)(10) as proposed was deleted, as after the technical correction to subsection (b)(2)(A) was made, the term "existing annual debt service" no longer appeared elsewhere in the rule. Subsequent subsections and references to these subsections were renumbered accordingly. Finally, in a technical correction in response to public comment, the term "annual debt service" was replaced with the term "proposed annual debt service" in the second sentence of subsection (b)(19) as proposed, adopted as subsection (b)(18).

The following changes were made at adoption in response to public comment.

The definition for "annual debt service" in subsection (b)(2) was modified to reflect that another entity would be issuing bonds on behalf of the charter holder and to provide for privately placed bonds that do not have a final official statement.

The definition for "bond resolution" in subsection (b)(6) was modified to specify that the resolution is adopted by the governing body of an issuer of debt for the benefit of a charter holder instead of by the governing body of the charter holder.

The definition for "combination issue" in subsection (b)(7) was modified to reference both the TEC, Chapter 53, and the Texas Government Code, Chapter 1207.

The definition for "new money issue" in subsection (b)(13) as proposed, adopted as subsection (b)(12), was modified to reference the term "educational facility," as defined in the TEC, §53.02, instead of the term "instructional facility," as defined in the TEC, §46.001.

The definition for "refunding issue" in subsection (b)(20) as proposed, adopted as subsection (b)(19), was modified to reference both the TEC, Chapter 53, and the Texas Government Code, Chapter 1207.

Subsection (c)(2) was modified to provide for charter schools that have not yet received an academic accountability rating or accreditation rating because they are in their first year of operation.

Subsection (d)(1)(B) was modified to make provisions for charter schools that have not yet received an accreditation rating because they are in their first year of operation.

Subsection (d)(1)(G) was modified to replace the term "complaints" with the term "formal complaints."

Subsection (d)(3) was modified to specify that the lien would be released insofar as the enhanced bonds were concerned but that the property would be presumed to be public property under the TEC, §12.128, and would remain so.

The debt service coverage ratio specified in subsection (e)(1) was changed from "1.25" to "at least 1.20."

Subsection (f)(3)(A) as proposed was deleted. Subsequent subsections were relettered accordingly.

In subsection (f)(3)(B) as proposed, adopted as subsection (f)(3)(A), the term "present value savings" was changed to "net present value savings."

A reference in subsection (f)(4) as proposed to debt issued "by" charter holders was changed to a reference to debt issued "for the benefit" of charter holders.

Subsection (g)(3) was modified to provide for notice to be provided in writing and for a notice of denial of approval that includes the reasons for the denial.

Subsection (g)(4)(B) was modified to reflect that another entity would be issuing bonds on behalf of the charter holder.

A charter holder that wishes to receive the credit enhancement for its bonds must submit an application for the enhancement that includes the following: the name of the charter holder and the principal amount of the bonds to be issued; the name and address of the charter holder's paying agent for those bonds; and the maturity schedule, estimated interest rate, and date of the bonds. An applicant charter holder must also submit any additional information related to the bonds that the commissioner specifically requests to make an approval determination. A charter holder that applies for credit enhancement of refunding bonds must provide evidence that issuing the refunding bonds will result in a net present value savings and that the refunding bonds do not have a maturity date later than the final maturity date of the bonds being refunded.

A charter holder that receives initial credit enhancement approval must provide a written notice by facsimile or email to the TEA two business days before issuing a preliminary official statement (POS) for the bonds that are eligible for the credit enhancement or two business days before soliciting investment offers, if the bonds will be privately placed without the use of a POS.

A charter holder that then receives confirmation from the TEA that program capacity continues to be available must provide written notice to the TEA of the placement of an agenda item on a meeting of the bond issuer's board of directors to approve the bond sale no later than two business days before the meeting. If the bond sale is to be completed pursuant to a delegation by the charter holder to a pricing officer or committee, notice must be given no later than two business days before the execution of a bond purchase agreement by such pricing officer or committee.

A charter holder that has bonds approved for the credit enhancement issued on its behalf must have its independent auditor confirm in the charter holder's annual financial report that bond funds have been used in accordance with the purpose specified in the

application. This data collection requirement will be added to the Financial Accountability System Resource Guide.

The adopted rule action has no locally maintained paperwork requirements.

The TEA determined that there is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The public comment period on the proposal began October 8, 2010, and ended November 8, 2010. Following is a summary of the public comments received and the corresponding agency responses.

Comment: Two bond counsels and the Texas Charter Schools Association (TCSA) commented that the rule should be revised to allow credit enhancement of bonds as well as other obligations. The commenters stated that the statute authorizing the issuance of charter school obligations, Texas Education Code (TEC), Chapter 53, authorizes the issuance of bonds and other obligations and that the credit enhancement program's authorizing statute uses the term "obligations," indicating legislative intent to include obligations other than bonds. One bond counsel asked that a definition be added for the term "debt" and that this definition include bonds or other obligations issued under the TEC, Chapter 53.

Agency Response: The agency disagrees with the comment and has maintained the rule provisions that specify the type of debt eligible for enhancement as proposed. Because these rule provisions have been maintained as proposed, adding a definition of the term "debt" as described by one commenter is unnecessary.

While the wording of the authorizing statute would allow for a credit enhancement program that permitted enhancement of obligations other than bonds, the statute does not require it. Creation of a credit enhancement program for charter schools is at the commissioner of education's discretion. Debt eligible for credit enhancement has been limited to bonds because bond issues are reviewed by the Office of the Attorney General, whereas other types of debt instruments are not. The agency does not have the resources or personnel to evaluate the soundness of other obligations not reviewed by the Office of the Attorney General. The agency may consider amending the rule to allow for enhancement of obligations other than bonds in the future after evaluating how well the program is working with eligible debt limited to bonds.

Additionally, in stakeholder meetings held during the drafting of the proposed rule language, the agency specifically asked for proposals for accommodating bond issuances that would be structured similarly to loans and would be privately placed. Nothing in the rule provisions as proposed would prevent such issuances.

Finally, the TEC, §45.302, states that the commissioner "may adopt a structure and procedures for the program that are substantially similar to the structure and procedures for the credit enhancement for school district bonds under Subchapter I" of the TEC, Chapter 45. In accordance with this provision and the proposed rules for the school district credit enhancement program (School District Bond Enhancement Program [SDBEP]), debt eligible for credit enhancement has been limited to bonds for the time being.

Comment: A bond counsel commented that the definitions for "annual debt service" and "existing annual debt service" should be modified to provide that the principal and interest amounts used be those amounts certified by the charter holder instead of the amounts reported by the Municipal Advisory Council (MAC) of Texas or its successor. The commenter stated that the change was necessary because the debt reported to the MAC would be the debt of the conduit issuer, which might mean that multiple reports would need to be obtained (if a charter holder had used multiple conduit issuers), and because private placements would not necessarily be reported to the MAC.

Agency Response: The agency disagrees with the comment and has maintained the definition for "annual debt service" as proposed. Its provisions are similar to those included in the proposed rules for the SDBEP, which provide that the debt service amounts used will be those reported to the MAC of Texas. The agency understands that the debt reported to the MAC of Texas will be the debt of the conduit issuer, and the agency will address this consideration in the program application by requiring the applicant to specify the conduit issuer. The agency will also address this consideration through communication with the MAC of Texas. Regarding the comment about private placements, because the rule provisions do specify that the principal and interest amounts to be used are those reported to the MAC, if a charter holder chooses to use a private placement, the charter holder must ensure that debt service payment information is reported to the MAC of Texas. In a technical correction, the definition for "existing annual debt service" in subsection (b)(10) as proposed has been deleted, as the term is not used in the rule.

Comment: A bond counsel commented that several provisions in the rule that suggest the charter holder would itself be issuing debt should be modified to reflect that another entity would be issuing debt on behalf of the charter holder. Specifically, the commenter stated that the definitions for "annual debt service" in subsection (b)(2) and "existing annual debt service" in subsection (b)(10) should be modified to strike the phrase "if the open-enrollment charter holder has outstanding bonded indebtedness," as technically this debt would be the debt of the conduit issuer. The commenter stated that the definition for "bond resolution" in subsection (b)(6) should be modified to specify that the resolution is adopted by the governing body of an issuer of debt for the benefit of a charter holder instead of by the governing body of the charter holder. The commenter also stated that a reference in subsection (f)(4) to debt issued "by" charter holders should be changed to a reference to debt issued "for the benefit" of charter holders and that similar changes be made in subparagraph (g)(4)(B) to clarify that the charter holder is not the entity that would actually issue the debt.

Agency Response: The agency agrees and has modified subsections (b)(2) and (6), (f)(4), and (g)(4)(B) to reflect that another entity would be issuing bonds on behalf of the charter holder. In a technical correction, the definition for "existing annual debt service" in subsection (b)(10) as proposed has been deleted, as the term is not used in the rule.

Comment: A bond counsel commented that the definitions for "annual debt service" and "existing annual debt service" should be modified to specify that debt service amounts for variable rate bonds without official statements would be determined on a historical average or by some other means. The commenter stated that some provision had to be made for variable rate bonds without official statements.

Agency Response: The agency provides the following clarification about final official statements. Whether bonds have a final official statement does not depend on the type of interest rate (variable or fixed) but instead depends on whether the bonds are privately placed.

The agency agrees that some provision should be made for privately placed bonds that do not have a final official statement and has modified the definition for "annual debt service" in subsection (b)(2) accordingly. In a technical correction, the definition for "existing annual debt service" in subsection (b)(10) as proposed has been deleted, as the term is not used in the rule.

Comment: A bond counsel commented that the definition for "annual debt service" should be modified to specify that debt service amounts for variable rate bonds without official statements would be determined on the actual basis of the amounts paid during the preceding fiscal year.

Agency Response: The agency agrees that some provision should be made for privately placed bonds that do not have a final official statement but has made a different modification from the one suggested. The agency has made provision for bonds that do not have a final official statement by adding the phrase "or final maturity schedule" to the definition for "annual debt service" in subsection (b)(2)(B).

Comment: A bond counsel commented that, in the definitions for "annual debt service," "existing annual debt service," and "proposed annual debt service," the provisions relating to payments into a sinking fund should be modified to allow for the charter holder itself to maintain the sinking fund.

Agency Response: The agency disagrees with the comment and has maintained the definitions for "annual debt service" and "proposed annual debt service" as proposed, as these provisions provide the greatest security for the Foundation School Program (FSP). The agency will consider modifying these provisions in the next four-year review of the rule required under Texas Government Code, §2001.039. In a technical correction, the definition for "existing annual debt service" in subsection (b)(10) as proposed has been deleted, as the term is not used in the rule.

Comment: A bond counsel commented that the rule should be revised to include a definition for balloon debt and to exclude such debt in the definition of "maximum annual debt service" in proposed subsection (b)(12), stating that the rule needed to make provisions for such debt.

Agency Response: The agency provides the following clarification. The rule's provisions as proposed already address balloon debt as it would affect debt for which the enhancement is sought, in that subsection (d)(2)(B) provides that a charter holder may not receive initial approval for the credit enhancement if the debt to be enhanced is structured to "balloon."

Consistency requires the agency to consider all payments of principal and interest in the same way. The agency will use the maximum annual debt service amount to calculate the charter holder's debt service coverage ratio. To be useful, this calculation must reflect the actual debt service to be paid by the charter holder.

Comment: A bond counsel asked how the bond resolution specified in subsection (b)(6) would be used.

Agency Response: The agency provides the following clarification. In the rule as proposed, the bond resolution is referenced only in subsections (b)(6) and (h). Subsection (h) specifies that

the bond resolution must specifically state that the credit enhancement is completely removed when debt approved for credit enhancement is defeased.

Comment: A bond counsel commented that the part of the definition for "combination issue" in subsection (b)(7) that references refunding bonds should be modified to reference the TEC, Chapter 53, instead of the Texas Government Code, Chapter 1207. The commenter stated that, generally, refunding bonds are issued under the TEC, Chapter 53, and not under the Texas Government Code, Chapter 1207.

Agency Response: The agency agrees with the comment in part. Because the refunding bonds may be issued under the TEC, Chapter 53, or the Texas Government Code, Chapter 1207, the agency has modified the definition in subsection (b)(7) to reference both chapters. The definition for "refunding issue" in subsection (b)(20) as proposed, adopted as subsection (b)(19), has been similarly modified.

Comment: A bond counsel commented that the calculation of debt service coverage ratio included in subsection (b)(8) should be modified to include the following items in the numerator: 1) any capital expenditures expensed in the income statement and 2) other noncash items.

Agency Response: The agency disagrees with the comment and has maintained language as published as proposed. The numerator already includes depreciation expenses, which partially include capital expenditures expensed. Explicitly including all capital expenditures expensed would require the agency to determine ownership of assets, which the agency does not have the resources to do. Also, the agency would not be able to verify capital expenditures expensed and other noncash items through the charter holder's audited financial statements, as it will be able to for the items specified in the definition as proposed.

Comment: A bond counsel commented that the definition for "new money issue" in subsection (b)(13) as proposed should be modified to reference the term "educational facility," as defined in the TEC, §53.02, instead of the term "instructional facility," as defined in the TEC, §46.001.

Agency Response: The agency agrees and has modified the definition in subsection (b)(13) as proposed, adopted as subsection (b)(12), accordingly.

Comment: The TCSA commented that, in the definition of "proposed annual debt service" in subsection (b)(19) as proposed, the phrase "by an open-enrollment charter school and" should be added after the first occurrence of the phrase "is sought."

Agency Response: The agency disagrees with the comment and has maintained the referenced provision as proposed. The context of the rule makes it clear which entity is seeking the credit enhancement. Adding the phrase would make the definition more cumbersome.

Comment: A bond counsel commented that, in the definition of "proposed annual debt service" in subsection (b)(19) as proposed, the beginning of the second sentence should be changed to read "Proposed annual debt service includes..." instead of "Annual debt service includes...."

Agency Response: The agency agrees and has made this technical correction to the definition adopted as subsection (b)(18).

Comment: A bond counsel commented that the definition of "refunding issue" in subsection (b)(20) as proposed should be mod-

ified to include debt not previously approved by the Office of the Attorney General.

Agency Response: The agency disagrees with the comment. As stated in the response to the first comment, the agency intends to maintain as proposed those rule provisions that limit the type of debt eligible for the enhancement to bonds. Allowing the enhancement of bonds that refund debt that was previously issued but not approved by the Office of the Attorney General would be detrimental to the stability and integrity of the credit enhancement program.

Comment: A bond counsel commented that the requirement that a charter holder agree in its application that the debt for which the enhancement is sought would be an obligation of all entities under common control of the charter holder, as specified in subsection (c)(1)(C), should be deleted from the rule. The commenter stated that the minimum debt service coverage ratio specified in the rule provided enough protection for the agency in the event of default.

Agency Response: The agency disagrees with the comment and has maintained language as published as proposed. The requirement provides additional protection by allowing the recovery of funds from any entity under control of the charter holder in the event of default and prevents a charter holder from moving assets between entities to avoid its financial responsibilities.

Comment: The TCSA and a bond counsel commented that a definition of the term "high-risk grantee" should be added to the rule to clarify which charter holders are eligible to apply under subsection (c)(1)(D), which states that a charter holder must "not be considered a high-risk grantee by the TEA office responsible for planning, grants, and evaluation." The TCSA requested that a definition of "high-risk grantee" that appeared in earlier drafts of the rule be reinserted.

Agency Response: The agency disagrees with the comment and has maintained language as published as proposed. The phrase "considered a high-risk grantee by the TEA office responsible for planning, grants, and evaluation" provides charter holders with enough information to determine their eligibility to apply for the credit enhancement. Also, a charter holder that is considered a high-risk grantee by the TEA office responsible for planning, grants, and evaluation will have received notification of its status from that office.

Comment: The TCSA commented that subsection (c)(2) should be modified to make provisions for charter schools that are exempt from academic accountability ratings and to specify that only final academic accountability ratings are to be considered.

Agency Response: The agency agrees that provisions should be made for charter schools that have not yet received an academic accountability rating because they are in their first year of operation and has modified subsection (c)(2) accordingly. The agency disagrees that certain charter schools are exempt since all charters are subject to accountability requirements specified under the TEC, Chapter 39. In addition, the agency disagrees with the need to clarify that the academic accountability rating should be specified as final. If the charter school receives a higher academic accountability rating as a result of a granted appeal, the rating would be updated at the completion of the appeals process.

Comment: A bond counsel commented that subsections (c)(2), (d)(1), and (d)(1)(B)(i) should be modified to make provisions for charter schools that are not yet rated with an accreditation

rating or an academic accountability rating. The commenter also stated that the term "Accredited" should be changed to "at least Accredited" in subsection (d)(1)(B)(i).

Agency Response: The agency agrees with the comment that provisions should be made for charter schools that have not yet received an academic accountability rating or accreditation rating because they are in their first year of operation and has modified subsections (c)(2) and (d)(1) accordingly. Also, the agency provides the following clarification regarding the request to add the phrase "at least." It is not necessary to state "at least Accredited" in subsection (d)(1)(B)(i) as there is no accreditation rating higher than Accredited.

Comment: The TCSA commented that the rule should explicitly state that the list of items for review provided in subsection (d)(1) is an exhaustive list of the criteria the commissioner will consider.

Agency Response: The agency disagrees with the comment and has maintained language as published as proposed. The purpose of the review is to protect the financial integrity of the FSP, and to add the requested statement could weaken the agency's ability to do that. Also, the SDBEP and Bond Guarantee Program rules, which contain similar lists of items for review by the commissioner before application approval, do not include such statements.

Comment: The TCSA commented that the list of items for review provided in subsection (d)(1) should be modified to include the charter holder's Financial Integrity Rating System of Texas (FIRST) rating and its financial solvency review. The commenter stated that perhaps these precise criteria could replace the more general criteria specified in subsection (d)(1)(C), (E), and (G). The commenter added that the criteria in subsection (d)(1)(C), (E), and (G) were too broadly worded.

Agency Response: The agency disagrees with the comment and has maintained the referenced provisions as proposed. The specific criteria the commenter suggests adding are already included within the broader criteria provided in subsection (d)(1)(C) and (E). The broad criteria provided in this subsection will allow the agency to more thoroughly evaluate applicants and to guard against approving applicants that may later default, protecting the financial integrity of the FSP.

Comment: A bond counsel commented that subsection (d)(1)(D) should be modified to specify whether "audit" refers to an agency audit or an audit by an independent auditor.

Agency Response: The agency disagrees that the subsection should be modified to specify a particular type of audit and has maintained language as published as proposed. The agency considers audit history to include all audits, including those conducted by the agency and by any other party.

Comment: A bond counsel commented that subsection (d)(1)(G) should be modified to specify "formal complaints made to the TEA" instead of simply "complaints."

Agency Response: The agency agrees with the comment in part. Subsection (d)(1)(G) has been modified to replace the term "complaints" with the term "formal complaints." The phrase "made to the TEA" has not been added, as the commissioner's review may consider formal complaints made to entities other than the agency.

Comment: A bond counsel commented that subsection (d)(2)(A) should be modified to explicitly provide for charter holders that do not have credit ratings.

Agency Response: The agency disagrees with the comment and has maintained language as published as proposed. If a charter holder does not have a credit rating, then the criterion specified in subsection (d)(2)(A) will simply not apply.

Comment: A bond counsel commented that subsection (d)(2)(B) should be modified to provide that only debt service payments that are enhanced would be included in the calculation specified in the subparagraph. The commenter also asked that the reference to proposed annual debt service be modified to remove the word "annual" and to remove the reference to the definition provided in subsection (b).

Agency Response: The agency disagrees with the comment and has maintained language as published as proposed. If a specific bonded debt is approved for credit enhancement, then all debt service payments for that debt, as described in the amortization schedule, would be considered enhanced. "Proposed annual debt service," as defined in proposed subsection (b)(19), adopted as subsection (b)(18), includes yearly principal and interest for all years described in the amortization schedule.

Comment: A bond counsel commented that subsection (d)(3) should be modified to specify what form the lien referenced would take and to delete language providing for circumstances in which the owner of the property is an entity other than the charter holder. The commenter also asked that the subparagraph be rewritten to remove a wordy phrase.

Agency Response: The agency disagrees with the comment and has maintained language as published as proposed. It is necessary to explicitly provide for circumstances in which the charter holder is not the owner of the property. Also, the phrase the commenter requested to delete is necessary to provide an antecedent for a later reference to "the property." The agency will consider providing the lien as a figure within the rule in the future.

Comment: A bond counsel commented that subsection (d)(3) should be modified to specify that the lien would end and be released on the payment or defeasance of the enhanced bonds.

Agency Response: The agency agrees with the comment in part and has modified subsection (d)(3) to specify that the lien would be released insofar as the enhanced bonds were concerned but that the property would be presumed to be public property under the TEC, §12.128, and would remain so.

Comment: The TCSA commented that the rule should include a provision requiring the commissioner to provide written notice to an applicant after an approval decision is made, similar to the provision included in the proposed rules for the SDBEP. The commenter added that the provision should also require notice to be provided if approval is denied and that the notice should state the reasons for denial.

Agency Response: The agency provides the following clarification. The rule already contains, in subsection (g)(3), notification provisions similar to those in the proposed rules for the SDBEP. The agency agrees that this subsection should provide for notice to be provided in writing and for a notice of denial of approval that includes the reasons for the denial. The agency has modified subsection (g)(3) accordingly.

Comment: The TCSA and a bond counsel commented that the projected debt service coverage ratio specified in subsection (e)(1) should be changed from 1.25 to 1.20. The TCSA stated that the ratio 1.20 is the industry standard and that using this ratio would allow more schools to qualify for the enhancement. The bond counsel stated that 1.20 is a more reasonable ratio

and also commented that the term "not less than" should be inserted before the ratio.

Agency Response: The agency agrees with the comment and has modified subsection (e)(1) accordingly.

Comment: A bond counsel asked that the wording of subsection (e)(1) and (3) be modified and that the order of the cross references in subsection (e)(2) be changed to numerical order.

Agency Response: The agency disagrees with the comment and has maintained language as published as proposed. Subsection (e)(1)-(3) is clear as written. The agency provides the following clarification regarding the order of the cross references listed in subsection (e)(2). The cross references appear in the order that the corresponding terms are listed, and the word "respectively" appears after the list of cross references for that reason.

Comment: A bond counsel commented that subsection (f)(3)(A) as proposed should be deleted, stating that it is redundant.

Agency Response: The agency agrees that the subsection is redundant, as its provisions are already included in subsection (d), which specifies the criteria to be met for initial approval, regardless of whether the bond issue is a combination, new money, or refunding issue. The agency has deleted subsection (f)(3)(A) as proposed.

Comment: A bond counsel commented that subsection (f)(3)(A) as proposed should be modified to clarify that the charter school referenced is the charter school benefiting from the issuance of the debt.

Agency Response: In response to another comment, the agency has deleted subsection (f)(3)(A) as proposed because it was redundant.

Comment: Two bond counsels commented that, in subsection (f)(3)(B) as proposed, the requirement that refunding bonds not have a maturity date later than that of the bonds being refunded should be deleted. However, one of the bond counsels also provided a suggested revised version of the subsection that still included the requirement.

Agency Response: The agency disagrees with the comments and has maintained language as published as proposed. The proposed rules for the SDBEP and the rules for the Bond Guarantee Program include this same requirement. The TEC, §45.302(b), requires that the structure and procedures for both the Charter School Bond Enhancement Program (CSBEP) and the SDBEP be "substantially similar."

Comment: A bond counsel commented that, in subsection (f)(3)(B) as proposed, the term "present value savings" should be changed to "net present value savings."

Agency Response: The agency agrees with the comment and has made this change in subsection (f)(3)(B) as proposed, adopted as subsection (f)(3)(A).

Comment: A bond counsel commented that subsection (f)(3)(D) as proposed should be deleted as it references requirements that are not specifically related to refunding issues.

Agency Response: The agency disagrees with the comment and has maintained language as published as proposed. While the requirements referenced do not specifically mention refunding issues, they do apply to refunding issues. Subsection (f)(3)(D) as proposed, adopted as subsection (f)(3)(C), is meant to make clear that applicants must meet the same requirements for refunding issues as for new money issues.

Comment: A bond counsel commented that subsection (f)(6), which describes application prioritization, should be deleted. The commenter stated that the prioritization criteria penalize those charters that have already issued debt.

Agency Response: The agency disagrees with the comment and has maintained language as published as proposed. Some type of prioritization method is required if demand exceeds program capacity. The agency believes that prioritizing applications from charter holders that have not previously had bonds issued is a fair prioritization method.

Comment: A bond counsel asked whether the term "bonds" that appears in subparagraph (f)(6)(A), referred to only bonds previously enhanced through the program.

Agency Response: The agency provides the following clarification. The term "bonds" refers to any bonds, not only those previously enhanced.

Comment: A bond counsel commented that subsection (h) should be modified to reference the trust agreement, stating that most debt is issued pursuant to a trust agreement, which is where defeasance provisions would appear.

Agency Response: The agency disagrees with the comment and has maintained language as published as proposed. Because only bonds are eligible for the credit enhancement, it is not necessary to reference trust agreements in addition to bond resolutions.

Comment: The TCSA commented that the consequence for failure to comply with statute or rules or for misrepresentations on the program application specified in subsection (l) is too stringent and that the subsection should be deleted. The commenter stated that the subsection's provisions could decrease investors' confidence in the program and that the state's financial interest is already adequately protected by the statutorily required lien and the agency's authority to recoup payments made by withholding funding.

Agency Response: The agency disagrees with the comment and has maintained language as published as proposed. Stringent consequences are necessary to protect the integrity of the FSP. Also, because the enhancement may not be removed from the bonds once granted, the provisions in subsection (l) do not jeopardize investor confidence in the credit enhancement program.

The new section is adopted under the Texas Education Code, Chapter 45, Subchapter J, §45.302 and §45.308, which authorize the commissioner to adopt rules to establish and administer the open-enrollment charter school facilities credit enhancement program. TEC, §45.303, authorizes the commissioner, in adopting rules under TEC, §45.302, to limit participation in the program to open-enrollment charter schools that meet standards established by the commissioner, including standards for financial stability, compliance with applicable state and federal program requirements, and student academic performance.

The new section implements the Texas Education Code, Chapter 45, Subchapter J.

§61.1039. *Open-Enrollment Charter School Bond Enhancement Program.*

(a) Statutory provision. The commissioner of education must administer the open-enrollment charter school facilities credit enhancement program according to the provisions of the Texas Education Code (TEC), Chapter 45, Subchapter J.

(b) Definitions. The following definitions apply to the open-enrollment charter school facilities credit enhancement program.

(1) Amortization expense--The annual expense of any debt and/or loan obligations.

(2) Annual debt service--Payments of principal and interest on outstanding bonded debt scheduled to occur between September 1 and August 31 during a fiscal year as reported by the Municipal Advisory Council (MAC) of Texas or its successor, if the open-enrollment charter holder is responsible for outstanding bonded indebtedness.

(A) The annual debt service will be determined by the current report of the bonded indebtedness of the open-enrollment charter holder as reported by the MAC of Texas or its successor as of the date of the application deadline.

(B) The debt service amounts used in this calculation for variable rate bonds will be those that are published in the final official statement or final maturity schedule.

(C) Annual debt service includes required payments into a sinking fund as authorized under 26 United States Code (USC) §54A(d)(4)(C), provided that the sinking fund is maintained by a trustee or other entity approved by the commissioner that is not under the control or common control of the charter holder.

(3) Application deadline--The last business day of the month in which an application for a credit enhancement is filed. Applications must be received by the Texas Education Agency (TEA) division responsible for state funding by 5:00 p.m. on the last business day of the month to be considered in that month's application processing.

(4) Average daily attendance (ADA)--Total refined average daily attendance as defined by the TEC, §42.005.

(5) Board resolution--The resolution adopted by the governing body of an open-enrollment charter holder that:

(A) requests credit enhancement of bonds through the Open-Enrollment Charter School Bond Enhancement Program; and

(B) authorizes the charter holder's administration to pursue bond financing.

(6) Bond resolution--The resolution authorizing the issuance of bonds adopted by the governing body of an issuer of bonds for the benefit of an open-enrollment charter holder.

(7) Combination issue--An issuance of bonds for which an application is filed for a credit enhancement that includes both a new money portion and a refunding portion, as permitted by the TEC, Chapter 53, or the Texas Government Code, Chapter 1207. The eligibility of combination issues for the credit enhancement is limited by the eligibility of the new money and refunding portions as defined in this subsection.

(8) Debt service coverage ratio--A measure of an open-enrollment charter holder's ability to pay interest and principal with cash generated from current operations. The debt service coverage ratio (total debt service coverage on all long-term capital debt) equals the excess of revenues over expenses plus interest expense plus depreciation expense plus amortization expense, all divided by maximum annual debt service. The calculation can be expressed as: (Excess of revenues over expenses + interest expense + depreciation expense + amortization expense) / Maximum annual debt service.

(9) Depreciation expense--The audited amount of depreciation that was expensed during the fiscal period.

(10) Foundation School Program (FSP)--The program established under the TEC, Chapters 41, 42, and 46, or any successor program of state appropriated funding for school districts in the state of Texas.

(11) Maximum annual debt service--As of any date of calculation, the highest annual debt service requirements with respect to all outstanding debt for any succeeding fiscal year.

(12) New money issue--An issuance of revenue bonds for the purposes of the purchase, repair, or renovation of real property, including improvements to real property, for an educational facility, as that term is defined in the TEC, §53.02, of an open-enrollment charter school and for purposes of equipping real property of an open-enrollment charter school. Eligibility for the credit enhancement for new money issues is limited to the issuance of bonds authorized under the TEC, Chapter 53. A new money issue does not include the issuance of bonds to purchase a facility from a public facility corporation created by the open-enrollment charter holder or to purchase any property that is currently under a lease-purchase contract under the Local Government Code, Chapter 271, Subchapter A.

(13) Open-enrollment charter--This term has the meaning assigned in §100.1011 of this title (relating to Definitions).

(14) Open-enrollment charter holder--This term has the meaning assigned to the term "charter holder" in the TEC, §12.1012.

(15) Open-enrollment charter school--This term has the meaning assigned to the term "charter school" in §100.1011 of this title.

(16) Open-Enrollment Charter School Bond Enhancement Program (CSBEP)--The program to provide credit enhancement for open-enrollment charter school bonds that is described by this section and established under the TEC, Chapter 45, Subchapter J.

(17) Open-enrollment charter school campus--This term has the meaning assigned to the term "charter school campus" in §100.1011 of this title.

(18) Proposed annual debt service--Payments of principal and interest on the outstanding bonded debt for which the enhancement is sought scheduled to occur between September 1 and August 31 during the fiscal year in which the credit enhancement is sought and each fiscal year for which the credit enhancement is or would be in effect as described in the amortization schedule for the bonded debt for which the enhancement is sought. Proposed annual debt service includes required payments into a sinking fund as authorized under 26 USC §54A(d)(4)(C), provided that the sinking fund is maintained by a trustee or other entity approved by the commissioner that is not under the control or common control of the charter holder.

(19) Refunding issue--An issuance of bonds for the purpose of refunding bonds that have previously been issued under the TEC, Chapter 53, or the Texas Government Code, Chapter 1207, and have previously been approved by the Office of the Attorney General.

(20) School year--The period beginning the fourth Monday of August of the current calendar year and ending the Sunday before the fourth Monday of August of the following calendar year.

(c) Eligibility to apply for the credit enhancement.

(1) To have its application for the credit enhancement considered, an open-enrollment charter holder must:

(A) have operated at least one open-enrollment charter school in the state of Texas for at least three years;

(B) identify in its application for which open-enrollment charter school and, if applicable, for which open-enrollment charter school campus the bond funds will be used;

(C) in its application, agree that the bonded indebtedness for which the credit enhancement is sought will be undertaken as an obligation of all tax-exempt entities under common control of the open-enrollment charter holder and agree that all such entities will be liable for the obligation if the open-enrollment charter holder defaults on the bonded indebtedness;

(D) not be considered a high-risk grantee by the TEA office responsible for planning, grants, and evaluation; and

(E) not have an unresolved corrective action that is more than one year old, unless the open-enrollment charter holder has taken appropriate steps to begin resolving the action.

(2) For an open-enrollment charter holder to have its application for the credit enhancement considered, each open-enrollment charter school operated under the charter must not have an accreditation rating of Not Accredited-Revoked and must have a rating of acceptable or higher as its most recent state academic accountability rating. However, if an open-enrollment charter school operated under the charter is not yet rated because the school is in its first year of operation, that fact will not impact the charter holder's eligibility to apply for the credit enhancement.

(d) Criteria to be met for open-enrollment charter holder to receive initial approval.

(1) In determining whether an open-enrollment charter holder applicant is eligible to receive initial approval for the credit enhancement, the commissioner will investigate the financial status of the applicant open-enrollment charter holder and the accreditation status of all open-enrollment charter schools operated under the charter. For the open-enrollment charter holder's application to be eligible for initial approval by the commissioner, each open-enrollment charter school operated under the charter must be accredited and the open-enrollment charter holder must be financially sound. The commissioner's review will include review of the following:

(A) the purpose of the bond issue;

(B) the accreditation status, as defined by §97.1055 of this title (relating to Accreditation Status), of all open-enrollment charter schools operated under the charter in accordance with the following, except that, if an open-enrollment charter school operated under the charter has not yet received an accreditation rating because it is in its first year of operation, that fact will not impact the charter holder's eligibility for consideration for the credit enhancement:

(i) if the accreditation status of all open-enrollment charter schools operated under the charter is Accredited, the open-enrollment charter holder will be eligible for consideration for the credit enhancement;

(ii) if the accreditation status of any open-enrollment charter school operated under the charter is Accredited-Warning or Accredited-Probation, the commissioner will investigate the underlying reason for the accreditation rating to determine whether the accreditation rating is related to the open-enrollment charter school's financial soundness. If the accreditation rating is related to the open-enrollment charter school's financial soundness, the open-enrollment charter holder will not be eligible for consideration for the credit enhancement; or

(iii) if the accreditation status of any open-enrollment charter school operated under the charter is Not Accredited-Re-

voked, the open-enrollment charter holder will not be eligible for consideration for the credit enhancement;

(C) the open-enrollment charter holder's financial status and stability, regardless of each open-enrollment charter school's accreditation rating, including approval of the bonds by the Office of the Attorney General under the provisions of the TEC, §53.40;

(D) the audit history of the open-enrollment charter holder and of all open-enrollment charter schools operated under the charter;

(E) the open-enrollment charter holder's compliance with statutes and rules of the TEA and with applicable state and federal program requirements and the compliance of all open-enrollment charter schools operated under the charter with these statutes, rules, and requirements;

(F) any interventions and sanctions to which the open-enrollment charter holder has been subject; to which any of the open-enrollment charter schools operated under the charter has been subject; and, if applicable, to which any of the open-enrollment charter school campuses operated under the charter has been subject;

(G) formal complaints made against the open-enrollment charter holder, against any of the open-enrollment charter schools operated under the charter, or against any of the open-enrollment charter school campuses operated under the charter;

(H) the state academic accountability rating of all open-enrollment charter schools operated under the charter and the campus ratings of all open-enrollment charter school campuses operated under the charter; and

(I) any unresolved corrective actions that are less than one year old.

(2) For an open-enrollment charter holder to receive initial approval for credit enhancement:

(A) the applicant open-enrollment charter holder's lowest credit rating from any credit rating agency may not be the same as or higher than that of the CSBEP;

(B) the bonded debt for which the credit enhancement is sought must be structured so that no single annual debt service payment exceeds two times the quotient produced by dividing the total proposed annual debt service, as defined in subsection (b)(18) of this section, for the term of the bonds by the number of years in the amortization schedule; and

(C) the open-enrollment charter holder must agree, in its application, that payments of all of the principal of the bonds will be scheduled during the first six months of the state fiscal year.

(3) To receive initial approval for credit enhancement of bonds to be issued for the purchase, repair, or renovation of real property, the open-enrollment charter holder must agree, in its application, to execute a lien or require the owner of the property, if different, to execute a lien on that real property in a form prescribed by the commissioner and approved by the Office of the Attorney General to secure repayment of all amounts due to the state from the open-enrollment charter holder, including reimbursement of any private funds paid on behalf of an open-enrollment charter school under this section. The lien must be filed in the real property records of each county in which the real property is located. In accordance with the TEC, §45.306, the lien has priority over any other claim against the real property except a lien granted to the holders of obligations issued to finance the acquisition of the real property and any security interest or lien existing before credit enhancement is provided under this section. The open-enroll-

ment charter holder must disclose all existing liens, security interests, or other encumbrances on the real property to be purchased, renovated, or improved and on any improvements proposed for the real property in the application and confirm that no additional liens or encumbrances have been placed on the property before the signing and filing of the lien under this subsection. On the payment or defeasance of the enhanced bonds, the lien will terminate and be released insofar as the paid or defeased bonds are concerned. Property purchased with the bond proceeds is presumed to be public property under the TEC, §12.128, and remains public property in accordance with that section.

(e) Limitations on access to the credit enhancement.

(1) The commissioner will limit approval of the credit enhancement to an open-enrollment charter holder with a historical debt service coverage ratio of at least 1.1 and a projected debt service coverage ratio of at least 1.20.

(2) The eligibility of bonds to receive the credit enhancement is limited to those new money, refunding, and combination issues as defined in subsection (b)(12), (19), and (7), respectively, of this section.

(3) To be eligible to receive the credit enhancement, bonds may not provide for acceleration of amounts of principal or interest not yet matured by virtue of a charter holder's failure to make payments or for any other reason.

(f) Application processing. To facilitate prioritization of applications for the credit enhancement, all applications received during a calendar month will be held until the twentieth business day of the subsequent month. On the twentieth business day of each month, the commissioner will announce the results of the prioritization described in paragraph (6) of this subsection, if prioritization was necessary, and process applications for initial approval of the credit enhancement up to the available capacity as of the application deadline, subject to the requirements of this subsection.

(1) The open-enrollment charter holder may not submit an application for a credit enhancement before the governing body of the open-enrollment charter holder adopts a board resolution as defined in subsection (b)(5) of this section.

(2) The actual credit enhancement of the bonds is subject to the initial approval process and the final approval process prescribed in subsection (g) of this section.

(3) Refunding issues must comply with the following requirements to retain eligibility for the credit enhancement for the refunding bonds.

(A) The open-enrollment charter holder must demonstrate that issuing the refunding bond(s) will result in a net present value savings to the open-enrollment charter holder and that the refunding bond or bonds will not have a maturity date later than the final maturity date of the bonds being refunded. Net present value savings is determined by computing the net present value of the difference between each scheduled payment on the original bonds and each scheduled payment on the refunding bonds. Net present value savings must be computed at the true interest cost of the refunding bonds.

(B) If an open-enrollment charter holder files an application for a combination issue, the application will be treated as a single issue for the purposes of eligibility for the credit enhancement. A credit enhancement for the combination issue will be awarded only if both the new money portion and the refunding portion meet all of the eligibility requirements described in this subsection. The open-enrollment charter holder making the application must present data to the commissioner

that demonstrate compliance for both the new money portion of the issue and the refunding portion of the issue.

(C) The refunding transaction must comply with the provisions of paragraphs (8) and (10) of this subsection.

(4) The commissioner in each month of each fiscal year will estimate the amount of funds available to make payments under the CSBEP from the FSP through the end of the fiscal year for purposes of providing initial approval to the credit enhancement of bonds issued for the benefit of open-enrollment charter holders under this section. The commissioner will confirm that a sufficient amount of these funds exists to enhance the credit of the bonds before the issuance of the final approval for the credit enhancement in accordance with subsection (g)(4) of this section.

(5) Before approving the credit enhancement of bonds issued by open-enrollment charter holders under the CSBEP, the commissioner must:

(A) allocate not more than 1.0% of the amount appropriated for the FSP purposes of the CSBEP; and

(B) make the determination described in paragraph (4) of this subsection.

(6) If prioritization of applications is necessary because of limited program capacity, the commissioner will prioritize applications for the credit enhancement in the following way.

(A) Applications from open-enrollment charter holders that have not had bonds issued previously will be considered before applications from open-enrollment charter holders that have had bonds issued previously.

(B) The commissioner first will prioritize by lottery all applications received from open-enrollment charter holders that have not had bonds issued previously.

(C) The commissioner then will prioritize by lottery all applications received from open-enrollment charter holders that have had bonds issued previously.

(7) An application received after the application deadline will be considered a valid application for the subsequent month, unless withdrawn by the submitting open-enrollment charter holder before the end of the subsequent month.

(8) Each open-enrollment charter holder that submits a valid application will be notified of the application status within 20 business days of the end of the month following the application deadline. If an open-enrollment charter holder is awarded initial approval for the credit enhancement as described in subsection (g)(3) of this section, the following requirements must be met.

(A) The open-enrollment charter holder must comply with the provisions for final approval described in subsection (g)(4) of this section to maintain approval for the credit enhancement.

(B) The bonds must be approved by the Office of the Attorney General within 270 days of the date of the letter granting the approval of the credit enhancement. The initial approval for the credit enhancement will expire at the end of the 270-day period. The commissioner may extend the 270-day period, based on extraordinary circumstances, on receiving a written request from the open-enrollment charter holder before the expiration of the 270-day period.

(9) If an open-enrollment charter holder does not receive a credit enhancement or for any reason does not receive approval of the bonds from the Office of the Attorney General within the specified time period, the open-enrollment charter holder may reapply in a subsequent

month. Applications that were denied a credit enhancement will not be retained for consideration in subsequent months.

(10) If the bonds are not approved by the Office of the Attorney General within 270 days of the date of the letter granting the approval of the credit enhancement, the commissioner will consider the application withdrawn, and the open-enrollment charter holder must reapply for a credit enhancement.

(11) An open-enrollment charter holder may not represent bonds as approved for credit enhancement for the purposes of pricing or marketing the bonds before the date of the letter granting approval of the credit enhancement.

(g) Application for the credit enhancement.

(1) Application process. Open-enrollment charter holders must apply to the commissioner for the credit enhancement of eligible bonds. The open-enrollment charter holder must submit, in a form specified by the commissioner, the information required under this section and any additional information the commissioner may require. The application and all additional information required by the commissioner must be received before the application will be processed. The application must be accompanied by a fee to be set by the commissioner.

(A) The fee is due at the time the application for the credit enhancement is submitted. An application will not be processed until the fee has been received in accordance with the process prescribed by the commissioner for remitting the fee on the application form.

(B) The fee will not be refunded to an open-enrollment charter holder that:

(i) is not approved for the credit enhancement; or

(ii) does not sell its bonds before the expiration of its approval for the credit enhancement.

(C) The fee may be transferred to a subsequent application for the credit enhancement by the open-enrollment charter holder if the open-enrollment charter holder withdraws its application and submits the subsequent application for the same charter school before the expiration of its initial approval for the credit enhancement.

(2) Application for the credit enhancement and charter renewal or amendment.

(A) If an open-enrollment charter holder applies for the credit enhancement during the school year in which the open-enrollment charter holder's charter is due to expire, application approval will be contingent on successful renewal of the charter, and the bonds for which the open-enrollment charter holder is applying for the credit enhancement may not be issued before the successful renewal of the charter.

(B) If an open-enrollment charter holder proposes to use the proceeds of the bonds for which it is applying for the credit enhancement for an expansion that requires a charter amendment, application approval will be contingent on approval of the amendment, and the bonds may not be issued before approval of the amendment.

(3) Initial approval; denial. The TEA will notify an applicant in writing of initial approval for or of denial for the credit enhancement on the TEA's determination of whether the applicant has met all applicable requirements. Notification of denial will include the reasons for denial.

(4) Final approval. An open-enrollment charter holder must receive final approval before completing the sale of the bonds

for which the open-enrollment charter holder has received notification of initial approval.

(A) An open-enrollment charter holder that has received initial approval must provide a written notice to the TEA two business days before issuing a preliminary official statement (POS) for the bonds that are eligible for the credit enhancement or two business days before soliciting investment offers, if the bonds will be privately placed without the use of a POS.

(i) The open-enrollment charter holder must receive written confirmation from the TEA that the available capacity of money allocated for the credit enhancement under this section continues to be available and must continue to meet the requirements of subsection (c) of this section before proceeding with the public or private offer to sell bonds.

(ii) The TEA will provide this notification within one business day of receiving the notice of the POS or notice of other solicitation offers to sell the bonds.

(B) An open-enrollment charter holder that received confirmation from the TEA in accordance with subparagraph (A) of this paragraph must provide written notice to the TEA of the placement of an agenda item on a meeting of the bond issuer's board of directors to approve the bond sale no later than two business days before the meeting. If the bond sale is completed pursuant to a delegation by the issuer to a pricing officer or committee, notice must be given to the TEA no later than two business days before the execution of a bond purchase agreement by such pricing officer or committee.

(i) The open-enrollment charter holder must receive written confirmation from the TEA that the capacity continues to be available for the bond sale before the approval of the sale by the bond issuer or by the pricing officer or committee.

(ii) The TEA will provide this notification within one business day before the date that the bond issuer expects to complete the sale by official action of the bond issuer or of a pricing officer or committee.

(C) The TEA will process requests for final approval from open-enrollment charter holders that have received initial approval on a first come, first served basis. Requests for final approval must be received before the expiration of the initial approval.

(D) An open-enrollment charter holder may provide written notification as required by this paragraph by facsimile transmission or by electronic mail in a manner prescribed by the commissioner.

(h) Defeasance. The credit enhancement will be completely removed when bonds approved for credit enhancement by this CSBEP are defeased, and such a provision must be specifically stated in the bond resolution. If bonds approved for credit enhancement by this CSBEP are defeased, the open-enrollment charter holder must notify the commissioner in writing within ten calendar days of the action.

(i) Payments. For purposes of the provisions of the TEC, Chapter 45, Subchapter J, matured principal and interest payments are limited to amounts due on bonds approved for credit enhancement at scheduled maturity, at scheduled interest payment dates, and at dates when bonds are subject to mandatory redemption, including extraordinary mandatory redemption, in accordance with their terms. All such payment dates, including mandatory redemption dates, must be specified in the bond order or other document pursuant to which the bonds initially are issued. Without limiting the provisions of this subsection, payments attributable to an optional redemption or a right granted to a bondholder to demand payment on a tender of such bonds

according to the terms of the bonds do not constitute matured principal and interest payments.

(j) Credit enhancement restrictions. The credit enhancement provided for eligible bonds under the provisions of the TEC, Chapter 45, Subchapter J, is restricted to matured bond principal and interest. The credit enhancement does not extend to any obligation of an open-enrollment charter holder under any agreement with a third party relating to bonds that is defined or described in state law as a "bond enhancement agreement" or a "credit agreement," unless the right to payment of such third party is directly as a result of such third party being a bondholder.

(k) Report on the use of funds and confirmation of use of funds by independent auditor. An open-enrollment charter holder that issues bonds approved for credit enhancement by the CSBEP must report to the TEA annually in a form prescribed by the commissioner on the use of the bond funds until all bond proceeds have been spent. The open-enrollment charter holder's independent auditor must confirm in the open-enrollment charter holder's annual financial report that bond funds have been used in accordance with the purpose specified in the application for the credit enhancement.

(l) Failure to comply with statute or this section. An open-enrollment charter holder's failure to comply with the requirements of the TEC, Chapter 45, Subchapter J, or with the requirements of this section, including by making any misrepresentations in the open-enrollment charter holder's application for the credit enhancement, constitutes a material violation of the open-enrollment charter holder's charter.

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 February 15, 2011.

TRD-201100621

Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency

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

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TITLE 22. EXAMINING BOARDS

**PART 3. TEXAS BOARD OF
CHIROPRACTIC EXAMINERS**

**CHAPTER 71. APPLICATIONS AND
APPLICANTS**

22 TAC §71.3

The Texas Board of Chiropractic Examiners (Board) adopts an amendment to §71.3, concerning Qualifications of Applicants, with changes to the proposed text as published in the November 26, 2010, issue of the *Texas Register* (35 TexReg 10415) and will not be republished.

The adopted amendment removes sections of the rule that have been made obsolete by changes in the admissions requirements for chiropractic colleges accredited by the Council on Chiropractic Education (CCE), United States. The CCE is the agency au-

thorized by the federal government to accredit colleges of chiropractic in the United States. The adopted amendment replaces specific undergraduate course requirements with the requirement that all applicants be graduates of chiropractic colleges accredited by a member of the Councils on Chiropractic Education International. The amendment preserves the statutory requirement that all applicants who began chiropractic college on or after September 1, 2005, have at least 90 hours of undergraduate credits in order to meet licensing requirements.

No comments were received by the Board in response to the proposed amendment.

The amendment is adopted under Texas Occupations Code §201.152, relating to rules; §201.302, relating to licensing applicant requirements; and §201.303, relating to educational requirements for applicants. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic. Section 201.302 states that an applicant must be either a graduate or a final semester student of a bona fide reputable doctor of chiropractic degree program. Section 201.303 sets forth parameters for determining what qualifies as a bona fide reputable doctor of chiropractic degree program.

§71.3. *Qualifications of Applicants.*

(a) All applicants must comply with the application process and license requirements in the Chiropractic Act, Subchapter G of Chapter 201 of the Occupations Code.

(b) The board may deny an application for a chiropractic license if it receives information from an administering entity that the applicant has defaulted on a student loan or has breached a student loan repayment contract or scholarship contract by failing to perform his or her service obligation under the contract. The board may rescind a denial under this subsection upon receipt of information from an administering entity that the applicant whose application was denied is now in good standing. For the purposes of this subsection, "good standing" means that the applicant has:

(1) entered into an agreement with the administering entity to:

- (A) repay the student loan;
- (B) perform the service obligation; or
- (C) pay any damages required by the student loan repayment contract or scholarship contract; or

(2) taken other action resulting in the applicant no longer being in default on the loan or in breach of a repayment or scholarship contract.

(c) For each student admitted a Chiropractic College must document and retain evidence in the student's file regarding the basis upon which the student was judged to be qualified for admission, and clearly inform the student at the time of admission that limitations of practice venue and licensure might occur. Students must demonstrate that qualifications for student acceptance and resultant enrollment are appropriate to the program objectives, goals and educational mission of the program or institution. Each student admitted to begin the study of chiropractic on the basis of academic credentials from institutions within the United States must meet the following requirements:

(1) All applicants must furnish proof of having earned a minimum of 90 semester hour credits of courses at an institution or institutions accredited by a nationally recognized agency not including courses included in a doctor of chiropractic degree program.

(2) All applicants must present proof of graduation from a bona fide Chiropractic College that is accredited by chiropractic educational accrediting body that is a member of the Councils on Chiropractic Education International.

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 February 17, 2011.

TRD-201100668

Glenn Parker

Executive Director

Texas Board of Chiropractic Examiners

Effective date: March 9, 2011

Proposal publication date: November 26, 2010

For further information, please call: (512) 305-6716



CHAPTER 73. LICENSES AND RENEWALS

22 TAC §73.3

The Texas Board of Chiropractic Examiners (Board) adopts an amendment to §73.3, concerning Continuing Education, without changes to the proposed text as published in the September 3, 2010, issue of the *Texas Register* (35 TexReg 8043) and will not be republished.

The adopted amendment requires most licensed doctors of chiropractic (D.C.) to complete at least eight hours of the already-required 16 hours of yearly continuing education (CE) in coding and documentation for Medicare claims during calendar years 2011 or 2012. Except as noted below, no D.C. will be allowed to renew his or her D.C. license at any time during calendar year 2013 unless the D.C. affirms or proves to the Board that he or she has met all continuing education requirements, including at least eight hours of CE in coding and documentation for Medicare claims. D.C.s who receive their D.C. license on or after September 1, 2012, will be exempt from the eight hour requirement during 2012, but will be required to complete the eight hours of CE in coding and documentation within twelve months of receiving their D.C. license.

The Board adopts this amendment as a response to findings in a report issued by the Office of the Inspector General (OIG) of the United States in May of 2009. The OIG report concluded that "Medicare inappropriately paid \$178 million for chiropractic claims in 2006, representing 47 percent of claims meeting our study criteria." In addition, the OIG report found that "[c]hiropractors often do not comply with [Medicare] documentation requirements." The Board believes that adopting more stringent requirements for CE in coding and documentation will result in Texas chiropractors doing a better job of adhering to federal regulations when submitting claims to Medicare, thereby reducing unwarranted payments but also allowing for proper reimbursements for Medicare patients when justified.

Two comments were received by the Board in response to the proposed amendment. One commenter opposed the proposed amendment and stated the following: "Medicare is a federally mandated entitlement program and is therefore beyond administration and enforcement of TBCE. Further, Medicare documentation, coding and billing is a unique business specific activity

and unrelated to the clinic acumen required in patient care and safety." The Board disagrees. It is well within the authority of the Board to regulate CE of D.C.s in the state of Texas, regardless of the subject matter. The amendment does not change or attempt to regulate any requirements of the Medicare system; it merely requires D.C.s in the state of Texas to undergo additional training in Medicare coding and documentation. Because errors in coding and documentation can directly impact patients and cause unnecessary overcharging and out-of-pocket payments, the Board believes that this amendment will protect the public.

The other commenter also opposed the proposed amendment on multiple grounds. These grounds include the following arguments: (1) the Board is not in a position to measure the effectiveness of additional continuing education regarding documentation, (2) not all licensees accept Medicare patients, (3) many licensees accepting Medicare patients already have obtained additional continuing education in documentation and coding, (4) the OIG report does not represent what will likely happen in the future and does not correspond to any problems specific to Texas, (5) the eight hour requirement is excessive, (6) changes in the future to electronic health records will cause additional changes in documentation requirements, which may render the mandatory continuing education to be burdensome, and (7) the Board should wait to propose and implement this rule until the results of an ongoing audit of chiropractic Medicare claims are finalized. The Board disagrees with all of these arguments. The Board recognizes that the OIG report is not specific to Texas, but feels that the public will benefit from the mandatory CE. Licensees are not being required to complete additional CE over and above the already-required 16 hours. Instead, a portion of those hours for only one year will be required to cover a certain subject. The Board does not consider this to be burdensome, excessive, or premature. Although not all licensees primarily treat Medicare patients, the Board has seen a number of licensees unaware that they are required by law to file with Medicare if they see a Medicare-eligible patient. This causes financial harm to patients who are required to pay out-of-pocket costs or enter into a lengthy reimbursement process. Therefore, the Board believes these mandatory CE requirements will protect the public and will also help licensees protect themselves from inadvertently getting themselves in trouble with the Medicare system.

This amendment is adopted under Texas Occupations Code §201.152, relating to rules, and §201.356, relating to continuing education. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic. Section 201.356 authorizes the Board to require license holders to attend continuing education courses specified by the Board.

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 February 18, 2011.

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Glenn Parker

Executive Director

Texas Board of Chiropractic Examiners

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Proposal publication date: September 3, 2010

For further information, please call: (512) 305-6716



CHAPTER 75. RULES OF PRACTICE

22 TAC §75.11

The Texas Board of Chiropractic Examiners (Board) adopts an amendment to §75.11, concerning Schedule of Sanctions, with changes to the proposed text as published in the November 19, 2010, issue of the *Texas Register* (35 TexReg 10138).

The Board is adopting a new rule, §80.13, which outlines requirements for the use of prepaid treatment plans by licensees. The Board adopts this amendment to §75.11 to designate a violation of new §80.13 as a Category I offense and to set the maximum sanction in accordance with that designation.

One change made to the adopted amendment from the published proposal for amendment is to substitute "DSHS" and its definition for "TDH" and its definition in subsection (a)(11). As originally published, the Board substituted "DSHS" for "TDH" in the Maximum Sanctions Table, but erroneously neglected to change the designation in the text of the rule.

No comments were received by the Board in response to the proposed amendment.

This amendment is adopted under Texas Occupations Code §201.152, relating to rules, and §201.503, relating to schedule of sanctions. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic. Section 201.153 requires the Board to adopt a schedule of the maximum amount of sanctions that may be assessed against a licensee for each category of violation of Chapter 201 of the Occupations Code.

§75.11. Schedule of Sanctions.

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

- (1) APA--Administrative Procedure Act, Government Code, Chapter 2001;
- (2) Board--Texas Board of Chiropractic Examiners;
- (3) Chiropractic Act or CA--Occupations Code, Chapter 201 (formerly Texas Civil Statutes, Article 4512b);
- (4) HPCA--Health Professions Council Act, Occupations Code, Chapter 101;
- (5) HRC--Human Resources Code;
- (6) Licensee--A person who is licensed by the board to practice chiropractic in the State of Texas;
- (7) MRTCA--Medical Radiologic Technologist Certification Act, Occupations Code, Chapter 601;
- (8) Occ. Code--Occupations Code;
- (9) Respondent--an individual or facility regulated by the board against whom a complaint has been filed;
- (10) SOAH--State Office of Administrative Hearings;
- (11) DSHS--Department of State Health Services.

(b) The following table contains maximum sanctions that may be assessed for each category of violation listed in the table:
Figure: 22 TAC §75.11(b)

(c) In a case where a respondent has committed multiple violations or multiple occurrences of the same violation, board staff, the enforcement committee or an administrative law judge may recommend

and the board may impose sanctions in excess of a maximum sanction specified in the maximum sanction table provided by subsection (b) of this section, if otherwise authorized by law. For the fourth and subsequent offenses of any violation listed in the maximum sanction table with three levels of sanctions, the maximum sanction is revocation and/or \$1000 administrative penalty.

(d) An administrative penalty may not exceed \$1,000 per day for each violation. Each day a violation continues or occurs is a separate violation for the purposes of imposing an administrative penalty.

(e) For violation of a statute which is not listed in the maximum sanction table and for which the board is authorized to take disciplinary action, the maximum sanction is revocation and/or \$1000 administrative penalty.

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 February 17, 2011.

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Glenn Parker
Executive Director
Texas Board of Chiropractic Examiners
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Proposal publication date: November 19, 2010
For further information, please call: (512) 305-6716



CHAPTER 80. PROFESSIONAL CONDUCT

22 TAC §80.13

The Texas Board of Chiropractic Examiners (Board) adopts new §80.13, concerning Prepaid Treatment Plans, without changes to the proposed text as published in the November 19, 2010, issue of the *Texas Register* (35 TexReg 10140) and will not be republished.

The new rule establishes guidelines for licensees offering prepaid treatment plans to patients. The new rule protects the public by ensuring patients are fully aware of what is involved in the prepaid treatment plan and by allowing patients to cancel the plan with no risk of penalty, overcharging, or charging for services not rendered.

The Board received no comments on the proposed new rule.

This new rule is adopted under Texas Occupations Code §201.152, relating to rules. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic.

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 February 17, 2011.

TRD-201100670

Glenn Parker
Executive Director
Texas Board of Chiropractic Examiners
Effective date: March 9, 2011
Proposal publication date: November 19, 2010
For further information, please call: (512) 305-6716



PART 6. TEXAS BOARD OF PROFESSIONAL ENGINEERS

CHAPTER 133. LICENSING SUBCHAPTER C. PROFESSIONAL ENGINEER LICENSE APPLICATION REQUIREMENTS

22 TAC §133.27

The Texas Board of Professional Engineers (Board) adopts amendments to §133.27, relating to Application for Temporary License for Engineers Currently Licensed Outside the United States, without changes to the proposed text as published in the December 17, 2010, issue of the *Texas Register* (35 TexReg 11165) and will not be republished.

The adopted amendment modifies the requirements for Temporary License applicants from Canada based on the signed Mutual Recognition Agreement between the TBPE and Engineers Canada. The requirements for applicants from Canada will be the same as those in the current rule for applicants from Australia.

The Board received no comments on the proposed rule.

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 by-laws 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 February 18, 2011.

TRD-201100686
Lance Kinney, P.E.
Executive Director
Texas Board of Professional Engineers
Effective date: March 10, 2011
Proposal publication date: December 17, 2010
For further information, please call: (512) 440-7723



PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 291. PHARMACIES

SUBCHAPTER A. ALL CLASSES OF PHARMACIES

22 TAC §§291.3, 291.11, 291.16, 291.17

The Texas State Board of Pharmacy adopts amendments to §291.3, concerning Required Notifications, §291.11, concerning Operation of a Pharmacy, §291.17, concerning Inventory Requirements, and new §291.16, concerning Samples. The amendments to §§291.3, 291.11, and 291.17 are adopted with changes to the proposed text as published in the December 24, 2010, issue of the *Texas Register* (35 TexReg 11480). New §291.16 is adopted without changes and will not be republished. The Board voted to adopt the rule leaving in the word shall and not changing it to must. The Board voted to withdraw §291.1, concerning Pharmacy License Application, and will consider proposing the amendments at a later date. The withdrawn rule is published elsewhere in this issue of the *Texas Register*.

The adopted amendments to §291.3 and §291.11 change the definition regarding the length of time a pharmacy could discontinue operating as a pharmacy, without notifying the Board that the pharmacy is closed. The adopted amendments to §291.17 add Class F pharmacy to the inventory requirements for pharmacies, removes references to carisoprodol, removes references to products no longer available, and clarifies the requirements by changing the word shall to must. New §291.16 places the requirements for samples in Subchapter A, All Classes of Pharmacies.

No comments were received.

The amendments and new rule 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 the amendments and new rule: Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§291.3. Required Notifications.

(a) Change of Location and/or Name.

(1) When a pharmacy changes location and/or name, the following is applicable.

(A) A new completed pharmacy application containing the information outlined in §291.1 of this title (relating to Pharmacy License Application), must be filed with the board within 10 days of the change of location of the pharmacy.

(B) The previously issued license must be returned to the board office.

(C) An amended license reflecting the new location and/or name of the pharmacy will be issued by the board; and

(D) A fee as specified in §291.6 of this title (relating to Pharmacy License Fees) will be charged for issuance of the amended license.

(2) At least 14 days prior to the change of location of a pharmacy that dispenses prescription drug orders, the pharmacist-in-charge shall post a sign in a conspicuous place indicating that the pharmacy is changing locations. Such sign shall be in the front of the pre-

scription department and at all public entrance doors to the pharmacy and shall indicate the date the pharmacy is changing locations.

(3) Disasters, accidents, and emergencies which require the pharmacy to change location shall be immediately reported to the board. If a pharmacy changes location suddenly due to disasters, accidents, or other emergency circumstances and the pharmacist-in-charge cannot provide notification 14 days prior to the change of location, the pharmacist-in-charge shall comply with the provisions of paragraph (2) of this subsection as far in advance of the change of location as allowed by the circumstances.

(b) Change of Managing Officers.

(1) The owner of a pharmacy shall notify the board in writing within 10 days of a change of any managing officer of a partnership or corporation which owns a pharmacy. The written notification shall include the effective date of such change and the following information for all managing officers:

- (A) name and title;
- (B) home address and telephone number;
- (C) date of birth; and
- (D) social security number.

(2) For purposes of this subsection, managing officers are defined as the top four executive officers, including the corporate officer in charge of pharmacy operations, who are designated by the partnership or corporation to be jointly responsible for the legal operation of the pharmacy.

(c) Change of Ownership.

(1) When a pharmacy changes ownership, a new/completed pharmacy application must be filed with the board and the license issued to previous owner shall be returned to the board.

(2) The new application shall include the following information:

- (A) the name and address of pharmacy;
- (B) the type of ownership;
- (C) the names, home addresses, dates of birth, phone numbers, and social security numbers of all owners; if a partnership or corporation, the name, title, home address, home phone number, date of birth, and social security number of all managing officers;
- (D) the name and license number of the pharmacist-in-charge and of other pharmacists employed by the pharmacy;
- (E) a copy of lease agreement or if the location of the pharmacy is owned by the applicant, a notarized statement certifying such location ownership;
- (F) a copy of the purchase contract or mutual agreement between the buyer and seller, or a notarized statement of intent to convey ownership signed by both the buyer and seller, stating the proposed date of ownership change;
- (G) the signature of the pharmacist-in-charge;
- (H) the notarized signature of the owner, or if the pharmacy is owned by a partnership or corporation, the notarized signature of an owner or managing officer;
- (I) federal tax ID number;
- (J) description of business services that will be offered;

(K) name and address of malpractice insurance carrier or statement that the business will be self-insured;

(L) the certificate of authority, if applicant is an out-of-state corporation;

(M) the articles of incorporation, if the applicant is a corporation;

(N) a current Texas Franchise Tax Certificate of Good Standing; and

(O) any other information requested on the application.

(3) Paragraph (4) of this subsection applies to all change of ownership applications for Class A (Community) pharmacies or Class C (Institutional) pharmacies owned by a management company with the following exceptions.

(A) Paragraph (4) of this subsection does not apply to a change of ownership application submitted by an entity which already owns a pharmacy licensed in Texas.

(B) Paragraph (4)(A) and (C) of this subsection do not apply to each individual owner or managing officer listed on a new pharmacy application if the individual possesses an active pharmacist license in Texas.

(4) If the pharmacy is to be licensed as a Class A (Community) Pharmacy or a Class C (Institutional) pharmacy owned by a management company, the applicant must submit copies of the following documents in addition to the information required in paragraph (2) of this subsection:

(A) the birth certificate, passport, or other document proving the date of birth of the owner, or, if the pharmacy is owned by a partnership or a closely held corporation:

(i) one of these documents for each managing officer; and

(ii) a list of all owners of the corporation;

(B) an approved credit application from a primary wholesaler or other documents showing credit worthiness as approved by the Board; and

(C) a current driver license or state issued photo ID card of each individual owner, or, if the pharmacy is owned by a partnership or a closely held corporation, a current driver license or state issued photo ID card for each managing officer.

(5) A fee as specified in §291.6 of this title will be charged for issuance of a new license.

(d) Change of Pharmacist Employment.

(1) Change of pharmacist employed in a pharmacy. When a change in pharmacist employment occurs, the pharmacist shall report such change in writing to the board within 10 days. The pharmacist-in-charge shall delete or enter the name of the pharmacist changing employment on the license of such pharmacy.

(2) Change of pharmacist-in-charge of a pharmacy.

(A) On the date of change of the pharmacist-in-charge of a Class A (community), Class C (institutional), or Class F (Free-standing Emergency Medical Care Center) pharmacy, an inventory specified in §291.17 of this title (relating to Inventory Requirements) shall be taken.

(B) This inventory shall constitute, for the purpose of this section, the closing inventory of the departing pharma-

cist-in-charge and the beginning inventory of the incoming pharmacist-in-charge.

(C) If the departing and the incoming pharmacists-in-charge are unable to conduct the inventory together, a closing inventory shall be conducted by the departing pharmacist-in-charge and a new and separate beginning inventory shall be conducted by the incoming pharmacist-in-charge.

(D) The incoming pharmacist-in-charge shall be responsible for the following actions:

(i) deleting the name of the departing pharmacist-in-charge on the pharmacy license;

(ii) entering the name of the incoming pharmacist-in-charge on the pharmacy license;

(iii) notifying the board within 10 days in writing on a form provided by the board, that a change of pharmacist-in-charge has occurred. The notification shall include the following:

(I) the name and license number of the departing pharmacist-in-charge;

(II) the name and license number of the incoming pharmacist-in-charge;

(III) the date the incoming pharmacist-in-charge became the pharmacist-in-charge; and

(IV) a statement signed by the incoming pharmacist-in-charge attesting that:

(-a-) an inventory has been conducted by the departing and incoming pharmacists-in-charge; if the inventory was not taken by both pharmacists, the statement shall provide an explanation; and

(-b-) the incoming pharmacist-in-charge has read and understands the laws and rules relating to this class of pharmacy.

(e) Notification of Theft or Loss of a Controlled Substance or a Dangerous Drug.

(1) Controlled substances. For the purposes of the Act, §562.106, the theft or significant loss of any controlled substance by a pharmacy shall be reported in writing to the board immediately on discovery of such theft or loss. A pharmacy shall be in compliance with this subsection by submitting to the board a copy of the Drug Enforcement Administration (DEA) report of theft or loss of controlled substances, DEA Form 106, or by submitting a list of all controlled substances stolen or lost.

(2) Dangerous drugs. A pharmacy shall report in writing to the board immediately on discovery the theft or significant loss of any dangerous drug by submitting a list of the name and quantity of all dangerous drugs stolen or lost.

(f) Fire or Other Disaster. If a pharmacy experiences a fire or other disaster, the following requirements are applicable.

(1) Responsibilities of the pharmacist-in-charge.

(A) The pharmacist-in-charge shall be responsible for reporting the date of the fire or other disaster which may affect the strength, purity, or labeling of drugs, medications, devices, or other materials used in the diagnosis or the treatment of the injury, illness, and disease; such notification shall be immediately reported to the board, but in no event shall exceed 10 days from the date of the disaster.

(B) The pharmacist-in-charge or designated agent shall comply with the following procedures.

(i) If controlled substances, dangerous drugs, or Drug Enforcement Administration (DEA) order forms are lost or destroyed in the disaster, the pharmacy shall:

(I) notify the DEA, Department of Public Safety (DPS), and Texas State Board of Pharmacy (board) of the loss of the controlled substances or order forms. A pharmacy shall be in compliance with this section by submitting to each of these agencies a copy of the DEA's report of theft or loss of controlled substances, DEA Form-106, immediately on discovery of the loss; and

(II) notify the Texas State Board of Pharmacy in writing of the loss of the dangerous drugs by submitting a list of the dangerous drugs lost.

(ii) If the extent of the loss of controlled substances or dangerous drugs is not able to be determined, the pharmacy shall:

(I) take a new, complete inventory of all remaining drugs specified in §291.17(c) of this title (relating to Inventory Requirements);

(II) submit to DEA and DPS a statement attesting that the loss of controlled substances is indeterminable and that a new, complete inventory of all remaining controlled substances was conducted and state the date of such inventory; and

(III) submit to the board a statement attesting that the loss of controlled substances and dangerous drugs is indeterminable and that a new, complete inventory of the drugs specified in §291.17(c) of this title was conducted and state the date of such inventory.

(C) If the pharmacy changes to a new, permanent location, the pharmacist-in-charge shall comply with subsection (a) of this section.

(D) If the pharmacy moves to a temporary location, the pharmacist shall comply with subsection (a) of this section. If the pharmacy returns to the original location, the pharmacist-in-charge shall again comply with subsection (a) of this section.

(E) If the pharmacy closes due to fire or other disaster, the pharmacy may not be closed for longer than 90 days as specified in §291.11 of this title (relating to Operating a Pharmacy).

(F) If the pharmacy discontinues business (ceases to operate as a pharmacy), the pharmacist-in-charge shall comply with §291.5 of this title (relating to Closing a Pharmacy).

(G) The pharmacist-in-charge shall maintain copies of all inventories, reports, or notifications required by this section for a period of two years.

(2) Drug stock.

(A) Any drug which has been exposed to excessive heat, smoke, or other conditions which may have caused deterioration shall not be dispensed.

(B) Any potentially adulterated or damaged drug shall only be sold, transferred, or otherwise distributed pursuant to the provisions of the Texas Food Drug and Cosmetics Act (Chapter 431, Health and Safety Code) administered by the Bureau of Food and Drug Safety of the Texas Department of State Health Services.

(g) Notification to Consumers.

(1) Pharmacy.

(A) Every licensed pharmacy shall provide notification to consumers of the name, mailing address, Internet site address, and telephone number of the board for the purpose of directing complaints

concerning the practice of pharmacy to the board. Such notification shall be provided as follows.

(i) If the pharmacy serves walk-in customers, the pharmacy shall either:

(I) post in a prominent place that is in clear public view where prescription drugs are dispensed a sign furnished by the board which notifies the consumer that complaints concerning the practice of pharmacy may be filed with the board and list the board's name, mailing address, Internet site address, telephone number of the board, and if applicable a toll-free telephone number for filing complaints; or

(II) provide with each dispensed prescription a written notification in a type size no smaller than ten-point Times Roman which states the following: "Complaints concerning the practice of pharmacy may be filed with the Texas State Board of Pharmacy at: (list the mailing address, Internet site address, telephone number of the board, and if applicable a toll-free telephone number for filing complaints)."

(ii) If the prescription drug order is delivered to patients at their residence or other designated location, the pharmacy shall provide with each dispensed prescription a written notification in type size no smaller than ten-point Times Roman which states the following: "Complaints concerning the practice of pharmacy may be filed with the Texas State Board of Pharmacy at: (list the mailing address, Internet site address, telephone number of the board, and if applicable a toll-free telephone number for filing complaints)." If multiple prescriptions are delivered to the same location, only one such notice shall be required.

(iii) The provisions of this subsection do not apply to prescriptions for patients in facilities where drugs are administered to patients by a person required to do so by the laws of the state (i.e., nursing homes).

(B) A pharmacy that maintains a generally accessible site on the Internet that is located in Texas or sells or distributes drugs through this site to residents of this state shall post the following information on the pharmacy's initial home page and on the page where a sale of prescription drugs occurs.

(i) Information on the ownership of the pharmacy, to include at a minimum, the:

(I) owner's name or if the owner is a partnership or corporation, the partnership's or corporation's name and the name of the chief operating officer;

(II) owner's address;

(III) owner's telephone number; and

(IV) year the owner began operating pharmacies in the United States.

(ii) The Internet address and toll free telephone number that a consumer may use to:

(I) report medication/device problems to the pharmacy; and

(II) report business compliance problems.

(iii) Information about each pharmacy that dispenses prescriptions for this site, to include at a minimum, the:

(I) pharmacy's name, address, and telephone number;

(II) name of the pharmacist responsible for operation of the pharmacy;

(III) Texas pharmacy license number for the pharmacy and a link to the Internet site maintained by the Texas State Board of Pharmacy; and

(IV) the names of all other states in which the pharmacy is licensed, the license number in that state, and a link to the Internet site of the entity that regulates pharmacies in that state, if available.

(C) A pharmacy whose Internet site has been awarded a Verified Internet Pharmacy Practice Site (VIPPS) certification by the National Association of Boards of Pharmacy shall be in compliance with subparagraph (B) of this paragraph by displaying the VIPPS seal on the pharmacy internet site.

(2) Texas State Board of Pharmacy. On or before January 1, 2005, the board shall establish a pharmacy profile system as specified in §2054.2606, Government Code.

(A) The board shall make the pharmacy profiles available to the public on the agency's Internet site.

(B) A pharmacy profile shall contain at least the following information:

(i) name, address, and telephone number of the pharmacy;

(ii) pharmacy license number, licensure status, and expiration date of the license;

(iii) the class and type of the pharmacy;

(iv) ownership information for the pharmacy;

(v) names and license numbers of all pharmacists working at the pharmacy;

(vi) whether the pharmacy has had prior disciplinary action by the board;

(vii) whether the pharmacy's consumer service areas are accessible to disabled persons, as defined by law;

(viii) the type of language translating services, including translating services for persons with impairment of hearing, that the pharmacy provides for consumers; and

(ix) insurance information including whether the pharmacy participates in the state Medicaid program.

(C) The board shall gather this information on initial licensing and update the information in conjunction with the license renewal for the pharmacy.

(h) Notification of Licensees or Registrants Obtaining Controlled Substances or Dangerous Drugs by Forged Prescriptions. If a licensee or registrant obtains controlled substances or dangerous drugs from a pharmacy by means of a forged prescription, the pharmacy shall report in writing to the board immediately on discovery of such forgery. A pharmacy shall be in compliance with this subsection by submitting to the board the following:

(1) name of licensee or registrant obtaining controlled substances or dangerous drugs by forged prescription;

(2) date(s) of forged prescription(s);

(3) name(s) and amount(s) of drug(s); and

(4) copies of forged prescriptions.

§291.11. Operation of a Pharmacy.

(a) For the purposes of §565.002(7) of the Texas Pharmacy Act, the following words and terms shall be defined as follows.

(1) "Failure to engage in the business described in the application for a license" means the holder of a pharmacy license has not commenced operating the pharmacy within six months of the date of issuance of the license.

(2) "Ceased to engage in the business described in the application for a license" means the holder of a pharmacy license, once it has been in operation, discontinues operating the pharmacy for a period of 30 days or longer unless the pharmacy experiences a fire or disaster, in which case the pharmacy must comply with §291.3(f) of this title (relating to Notifications).

(b) For the purposes of this section, the term "operating the pharmacy" means the pharmacy shall demonstrate observable pharmacy business activity on a regular, routine basis, including a sufficient number of transactions of receiving, processing, or dispensing prescription drug orders or medication drug orders.

(c) No person may operate a pharmacy in a personal residence.

§291.17. Inventory Requirements.

(a) General requirements.

(1) The pharmacist-in-charge shall be responsible for taking all required inventories, but may delegate the performance of the inventory to another person(s).

(2) The inventory shall be maintained in a written, type-written, or printed form. An inventory taken by use of an oral recording device must be promptly transcribed.

(3) The inventory shall be kept in the pharmacy and shall be available for inspection for two years.

(4) The inventory shall be filed separately from all other records.

(5) The inventory shall be in a written, typewritten, or printed form and include all stocks of the following drugs on hand on the date of the inventory (including any which are out-of-date):

(A) all controlled substances; and

(B) all dosage forms containing nalbuphine (e.g., Nubain).

(6) The inventory may be taken either as of the opening of business or as of the close of business on the inventory date.

(7) The inventory record shall indicate whether the inventory is taken as of the opening of business or as of the close of business on the inventory date. If the pharmacy is open 24 hours a day, the opening of business shall be 12:01 a.m. and the close of business shall be 12 midnight. The inventory shall indicate that it is a record of drugs on-hand as of the opening or closing of the business day.

(8) The person(s) taking the inventory and the pharmacist-in-charge shall indicate the time the inventory was taken (as specified in paragraph (7) of this subsection) and shall sign and date the inventory with the date the inventory was taken. The signature of the pharmacist-in-charge and the date of the inventory shall be notarized within 72 hours or three working days of the completed initial, annual, change of ownership, and closing inventory.

(9) The person(s) taking the inventory shall make an exact count or measure of all substances listed in Schedule I or II.

(10) The person(s) taking the inventory shall make an estimated count or measure of all substances listed in Schedule III, IV, or V and dangerous drugs, unless the container holds more than 1,000 tablets or capsules in which case, an exact count of the contents must be made.

(11) The inventory of Schedule I and II controlled substances shall be listed separately from the inventory of Schedule III, IV, and V controlled substances which shall be listed separately from the inventory of dangerous drugs.

(12) If the pharmacy maintains a perpetual inventory of any of the drugs required to be inventoried, the perpetual inventory shall be reconciled on the date of the inventory.

(b) Initial inventory.

(1) A new Class A (community) pharmacy, Class C (institutional) pharmacy, or Class F (free standing emergency medical care center) pharmacy shall take an inventory on the opening day of business. Such inventory shall include all stocks (including any out-of-date drugs) of the following:

(A) all controlled substances; and

(B) all dosage forms containing nalbuphine (e.g., Nubain).

(2) In the event the Class A, C, or F pharmacy commences business with none of the drugs specified in paragraph (1) of this subsection on hand, the pharmacy shall record this fact as the initial inventory.

(3) The initial inventory shall serve as the pharmacy's inventory until the next May 1, or until the pharmacy's regular general physical inventory date, at which time the Class A, C, or F pharmacy shall take an annual inventory as specified in subsection (c) of this section. Such inventory may be taken within four days of the specified inventory date and shall include all stocks (including out-of-date drugs).

(c) Annual inventory.

(1) A Class A, C, or F pharmacy shall take an inventory on May 1 of each year, or on the pharmacy's regular general physical inventory date. Such inventory may be taken within four days of the specified inventory date and shall include all stocks (including out-of-date drugs) of the following:

(A) all controlled substances; and

(B) all dosage forms containing nalbuphine (e.g., Nubain).

(2) A Class A, C, or F pharmacy applying for renewal of a pharmacy license shall include as a part of the pharmacy license renewal application a statement attesting that an annual inventory has been conducted, the date of the inventory, and the name of the person taking the inventory.

(d) Change of ownership.

(1) A Class A, C, or F pharmacy that changes ownership shall take an inventory of all of the following drugs on hand (including any which are out-of-date) on the date of change of ownership:

(A) all controlled substances; and

(B) all dosage forms containing nalbuphine (e.g., Nubain).

(2) Such inventory shall constitute, for the purpose of this section, the closing inventory for the seller and the initial inventory for the buyer.

(3) Transfer of any controlled substances listed in Schedule I or II shall require the use of official DEA order forms (Form 222C).

(e) Closed pharmacies. The pharmacist-in-charge of a Class A, C, or F pharmacy that ceases to operate as a pharmacy shall forward to the board, within 10 days of the cessation of operation, a statement

attesting that an inventory of the drugs specified in subsection (c) of this section on hand has been conducted, the date of closing, and a statement attesting the manner by which the dangerous drugs and controlled substances possessed by such pharmacy were transferred or disposed.

(f) Requirements for Class C (Institutional) pharmacies.

(1) Perpetual inventory.

(A) A Class C pharmacy shall maintain a perpetual inventory of all Schedule II controlled substances.

(B) The perpetual inventory shall be reconciled on the date of the annual inventory.

(2) Annual inventory.

(A) An inventory shall be conducted on May 1 of each year, or on the pharmacy's regular general physical inventory date. Such inventory may be taken within four days of the specified inventory date and shall be in a written, typewritten, or printed form and include all stocks (including out-of-date drugs) of the following:

(i) all controlled substances; and

(ii) all dosage forms containing nalbuphine (e.g., Nubain).

(B) The annual inventory of the institution shall include all of the drugs specified in subparagraph (A) of this paragraph on hand in the pharmacy.

(C) The inventory of the institution shall be maintained in the pharmacy; if an inventory is conducted in other departments within the institution, the inventory of the pharmacy shall be listed separately, as follows:

(i) the inventory of drugs on hand in the pharmacy shall be listed separately from the inventory of drugs on hand in the other areas of the institution; and

(ii) the inventory of drugs on hand in all other departments shall be identified by department.

(g) Change of pharmacist-in-charge of a pharmacy.

(1) On the date of change of the pharmacist-in-charge of a Class A (community), Class C (institutional) pharmacy, or Class F (free standing emergency medical care center) pharmacy, an inventory of the following drugs shall be taken:

(A) all Schedule II controlled substances;

(B) all dosage forms containing pentazocine (e.g., Talwin);

(C) all dosage forms containing phentermine (e.g., Adipex-P, etc.);

(D) all dosage forms containing diazepam (e.g., Valium);

(E) all dosage forms containing phendimetrazine (e.g., Bontril, Prelu-2, etc.);

(F) all dosage forms containing codeine;

(G) all dosage forms containing hydrocodone (e.g., Tussionex, Tussend, Vicodin, etc.);

(H) all dosage forms containing alprazolam (e.g., Xanax);

(I) all dosage forms containing triazolam (e.g., Halcion);

- (J) all dosage forms containing butorphanol (e.g., Stadol);
- (K) all dosage forms containing nalbuphine (e.g., Nubain); and
- (L) all dosage forms containing carisoprodol (e.g., Soma).

(2) This inventory shall constitute, for the purpose of this section, the closing inventory of the departing pharmacist-in-charge and the beginning inventory of the incoming pharmacist-in-charge.

(3) If the departing and the incoming pharmacists-in-charge are unable to conduct the inventory together, a closing inventory shall be conducted by the departing pharmacist-in-charge and a new and separate beginning inventory shall be conducted by the incoming pharmacist-in-charge.

(4) The incoming pharmacist-in-charge shall be responsible for notifying the board within 10 days in writing on a form provided by the board, that a change of pharmacist-in-charge has occurred. The notification shall include the following:

- (A) the name and license number of the departing pharmacist-in-charge;
- (B) the name and license number of the incoming pharmacist-in-charge;
- (C) the date the incoming pharmacist-in-charge became the pharmacist-in-charge; and
- (D) a statement signed by the incoming pharmacist-in-charge attesting that:
 - (i) an inventory has been conducted by the departing and incoming pharmacists-in-charge; if the inventory was not taken by both pharmacists, the statement shall provide an explanation; and
 - (ii) the incoming pharmacist-in-charge has read and understands the laws and rules relating to this class of pharmacy.

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 February 18, 2011.

TRD-201100674
 Gay Dodson, R.Ph.
 Executive Director/Secretary
 Texas State Board of Pharmacy
 Effective date: March 10, 2011
 Proposal publication date: December 24, 2010
 For further information, please call: (512) 305-8028



SUBCHAPTER B. COMMUNITY PHARMACY (CLASS A)

22 TAC §291.33

The Texas State Board of Pharmacy adopts amendments to §291.33, concerning Operational Standards. The amendments are adopted with changes to the proposed text as published in the December 24, 2010, issue of the *Texas Register* (35 TexReg 11486). The Board voted to withdraw §291.32, concerning

Personnel. The withdrawn rule is published elsewhere in this issue of the *Texas Register*.

The adopted amendments remove the requirements regarding samples from the Class A rules and move the requirements to new §291.16 under Subchapter A, All Classes of Pharmacy published elsewhere in this issue of the *Texas Register*.

No comments were received.

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 the amendments: Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§291.33. Operational Standards.

(a) Licensing requirements.

(1) A Class A 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) A Class A pharmacy which changes ownership shall notify the board within ten 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).

(3) A Class A pharmacy which changes location and/or name shall notify the board within ten days of the change and file for an amended license as specified in §291.3 of this title.

(4) A Class A 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 ten days of the change, following the procedures in §291.3 of this title.

(5) A Class A pharmacy shall notify the board in writing within ten days of closing, following the procedures in §291.5 of this title (relating to Closed Pharmacies).

(6) A separate license is required for each principal place of business and only one pharmacy license may be issued to a specific location.

(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 Class A pharmacy, licensed under the provisions of the Act, §560.051(a)(1), which also operates another type of pharmacy which would otherwise be required to be licensed under the Act, §560.051(a)(2) concerning Nuclear Pharmacy (Class B), is not required to secure a license for such other type of pharmacy; provided, however, such licensee is required to comply with the provisions of §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.

(9) A Class A (community) pharmacy engaged in the compounding of non-sterile pharmaceuticals shall comply with the provisions of §291.131 of this title (relating to Pharmacies Compounding Non-Sterile Preparations).

(10) A Class A (community) pharmacy engaged in the compounding of sterile pharmaceuticals shall comply with the provisions of §291.133 of this title (relating to Pharmacies Compounding Sterile Preparations).

(11) A Class A (Community) 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).

(12) Class A (Community) 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 Centralized 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 pharmacy shall be arranged in an orderly fashion and kept clean. All required equipment shall be clean and in good operating condition.

(B) A Class A pharmacy shall have a sink with hot and cold running water within the pharmacy, exclusive of restroom facilities, available to all pharmacy personnel and maintained in a sanitary condition.

(C) A Class A pharmacy which serves the general public shall contain an area which is suitable for confidential patient counseling.

(i) Such counseling area shall:

(I) be easily accessible to both patient and pharmacists and not allow patient access to prescription drugs;

(II) be designed to maintain the confidentiality and privacy of the pharmacist/patient communication.

(ii) In determining whether the area is suitable for confidential patient counseling and designed to maintain the confidentiality and privacy of the pharmacist/patient communication, the board may consider factors such as the following:

(I) the proximity of the counseling area to the check-out or cash register area;

(II) the volume of pedestrian traffic in and around the counseling area;

(III) the presence of walls or other barriers between the counseling area and other areas of the pharmacy; and

(IV) any evidence of confidential information being overheard by persons other than the patient or patient's agent or the pharmacist or agents of the pharmacist.

(D) The pharmacy shall be properly lighted and ventilated.

(E) The temperature of the pharmacy shall be maintained within a range compatible with the proper storage of drugs; the temperature of the refrigerator shall be maintained within a range compatible with the proper storage of drugs requiring refrigeration.

(F) Animals, including birds and reptiles, shall not be kept within the pharmacy and in immediately adjacent areas under the control of the pharmacy. This provision does not apply to fish in aquariums, guide dogs accompanying disabled persons, or animals for sale

to the general public in a separate area that is inspected by local health jurisdictions.

(2) Security.

(A) Each pharmacist while on duty shall be responsible for the security of the prescription department, including provisions for effective control against theft or diversion of prescription drugs, and records for such drugs.

(B) The prescription department shall be locked by key, combination or other mechanical or electronic means to prohibit unauthorized access when a pharmacist is not on-site except as provided in subparagraphs (C) and (D) of this paragraph and paragraph (3) of this subsection. The following is applicable:

(i) If the prescription department is closed at any time when the rest of the facility is open, the prescription department must be physically or electronically secured. The security may be accomplished by means such as floor to ceiling walls; walls, partitions, or barriers at least 9 feet 6 inches high; electronically monitored motion detectors; pull down sliders; or other systems or technologies that will secure the pharmacy from unauthorized entrance when the pharmacy is closed. Pharmacies licensed prior to June 1, 2009, shall be exempt from this provision unless the pharmacy changes location. Change of location shall include the relocation of the pharmacy within the licensed address. A pharmacy licensed prior to June 1, 2009 that files a change of ownership but does not change location shall be exempt from the provisions.

(ii) The pharmacy's key, combination, or other mechanical or electronic means of locking the pharmacy may not be duplicated without the authorization of the pharmacist-in-charge or owner.

(iii) At a minimum, the pharmacy must have a basic alarm system with off-site monitoring and perimeter and motion sensors. The pharmacy may have additional security by video surveillance camera systems.

(C) Prior to authorizing individuals to enter the prescription department, the pharmacist-in-charge or owner may designate persons who may enter the prescription department to perform functions, other than dispensing functions or prescription processing, documented by the pharmacist-in-charge including access to the prescription department by other pharmacists, pharmacy personnel and other individuals. The pharmacy must maintain written documentation of authorized individuals other than individuals employed by the pharmacy who accessed the prescription department when a pharmacist is not on-site.

(D) Only persons designated either by name or by title including such titles as "relief" or "floater" pharmacist, in writing by the pharmacist-in-charge may unlock the prescription department except in emergency situations. An additional key to or instructions on accessing the prescription department may be maintained in a secure location outside the prescription department for use during an emergency or as designated by the pharmacist-in-charge for entry by another pharmacist.

(E) Written policies and procedures for the pharmacy's security shall be developed and implemented by the pharmacist-in-charge and/or the owner of the pharmacy. Such policies and procedures may include quarterly audits of controlled substances commonly abused or diverted; perpetual inventories for the comparison of the receipt, dispensing, and distribution of controlled substances; monthly reports from the pharmacy's wholesaler(s) of controlled substances purchased by the pharmacy; opening and closing procedures; product storage and placement; and central management oversight.

(3) Temporary absence of pharmacist.

(A) On-site supervision by pharmacist.

(i) If a pharmacy is staffed by only one pharmacist, the pharmacist may leave the prescription department for short periods of time without closing the prescription department and removing pharmacy technicians, pharmacy technician trainees, and other pharmacy personnel from the prescription department provided the following conditions are met:

(I) at least one pharmacy technician remains in the prescription department;

(II) the pharmacist remains on-site at the licensed location of the pharmacy and is immediately available;

(III) the pharmacist reasonably believes that the security of the prescription department will be maintained in his or her absence. If in the professional judgment of the pharmacist, the pharmacist determines that the prescription department should close during his or her absence, then the pharmacist shall close the prescription department and remove the pharmacy technicians, pharmacy technician trainees, and other pharmacy personnel from the prescription department during his or her absence; and

(IV) a notice is posted which includes the following information:

(-a-) the pharmacist is on a break and the time the pharmacist will return; and

(-b-) pharmacy technicians may begin the processing of prescription drug orders or refills brought in during the pharmacist's absence, but the prescription or refill may not be delivered to the patient or the patient's agent until the pharmacist verifies the accuracy of the prescription.

(ii) During the time a pharmacist is absent from the prescription department, only pharmacy technicians who have completed the pharmacy's training program may perform the following duties, provided a pharmacist verifies the accuracy of all acts, tasks, and functions performed by the pharmacy technicians prior to delivery of the prescription to the patient or the patient's agent:

(I) initiating and receiving refill authorization requests;

(II) entering prescription data into a data processing system;

(III) taking a stock bottle from the shelf for a prescription;

(IV) preparing and packaging prescription drug orders (i.e., counting tablets/capsules, measuring liquids and placing them in the prescription container);

(V) affixing prescription labels and auxiliary labels to the prescription container; and

(VI) prepackaging and labeling prepackaged drugs.

(iii) Upon return to the prescription department, the pharmacist shall:

(I) conduct a drug regimen review as specified in subsection (c)(2) of this section; and

(II) verify the accuracy of all acts, tasks, and functions performed by the pharmacy technicians prior to delivery of the prescription to the patient or the patient's agent.

(iv) An agent of the pharmacist may deliver a previously verified prescription to the patient or his or her agent provided a record of the delivery is maintained containing the following information:

(I) date of the delivery;

(II) unique identification number of the prescription drug order;

(III) patient's name;

(IV) patient's phone number or the phone number of the person picking up the prescription; and

(V) signature of the person picking up the prescription.

(v) Any prescription delivered to a patient when a pharmacist is not in the prescription department must meet the requirements for a prescription delivered to a patient as described in subsection (c)(1)(F) of this section.

(vi) During the times a pharmacist is absent from the prescription department a pharmacist intern shall be considered a registered pharmacy technician and may perform only the duties of a registered pharmacy technician.

(vii) In pharmacies with two or more pharmacists on duty, the pharmacists shall stagger their breaks and meal periods so that the prescription department is not left without a pharmacist on duty.

(B) Pharmacist is off-site.

(i) The prescription department must be secured with procedures for entry during the time that a pharmacy is not under the continuous on-site supervision of a pharmacist and the pharmacy is not open for pharmacy services.

(ii) Pharmacy technicians and pharmacy technician trainees may not perform any duties of a pharmacy technician or pharmacy technician trainee during the time that the pharmacist is off-site.

(iii) A pharmacy may use an automated storage and distribution device as specified in subsection (i) of this section for pick-up of a previously verified prescription by a patient or patient's agent, provided the following conditions are met:

(I) a notice is posted which includes the following information:

(-a-) the pharmacist is off-site and not present in the pharmacy;

(-b-) no new prescriptions may be prepared at the pharmacy but previously verified prescriptions may be delivered to the patient or the patient's agent; and

(-c-) the date/time when the pharmacist will return.

(II) the pharmacy must maintain documentation of the absences of the pharmacist(s); and

(III) the prescription department is locked and secured to prohibit unauthorized entry.

(iv) An agent of the pharmacist may deliver a previously verified prescription to a patient or patient's agent during short periods of time when a pharmacist is off-site, provided the following conditions are met:

(I) short periods of time may not exceed two consecutive hours in a 24 hour period;

(II) a notice is posted which includes the following information:

- (-a-) the pharmacist is off-site and not present in the pharmacy;
- (-b-) no new prescriptions may be prepared at the pharmacy but previously verified prescriptions may be delivered to the patient or the patient's agent; and
- (-c-) the date/time when the pharmacist will return.

(III) the pharmacy must maintain documentation of the absences of the pharmacist(s); and

(IV) the prescription department is locked and secured to prohibit unauthorized entry.

(v) During the time a pharmacist is absent from the prescription department and is off-site, a record of prescriptions delivered must be maintained and contain the following information:

- (I) date and time of the delivery;
- (II) unique identification number of the prescription drug order;
- (III) patient's name;
- (IV) patient's phone number or the phone number of the person picking up the prescription; and
- (V) signature of the person picking up the prescription.

(vi) Any prescription delivered to a patient when a pharmacist is not on-site at the pharmacy must meet the requirements for a prescription delivered to a patient as described in subsection (c)(1)(F) of this section.

(c) Prescription dispensing and delivery.

(1) Patient counseling and provision of drug information.

(A) To optimize drug therapy, a pharmacist shall communicate to the patient or the patient's agent, information about the prescription drug or device which in the exercise of the pharmacist's professional judgment the pharmacist deems significant, such as the following:

- (i) the name and description of the drug or device;
- (ii) dosage form, dosage, route of administration, and duration of drug therapy;
- (iii) special directions and precautions for preparation, administration, and use by the patient;
- (iv) common severe side or adverse effects or interactions and therapeutic contraindications that may be encountered, including their avoidance, and the action required if they occur;
- (v) techniques for self monitoring of drug therapy;
- (vi) proper storage;
- (vii) refill information; and
- (viii) action to be taken in the event of a missed dose.

(B) Such communication:

- (i) shall be provided with each new prescription drug order;
- (ii) shall be provided for any prescription drug order dispensed by the pharmacy on the request of the patient or patient's agent;

(iii) shall be communicated orally in person unless the patient or patient's agent is not at the pharmacy or a specific communication barrier prohibits such oral communication;

(iv) effective, June 1, 2010, shall be documented by recording the initials or identification code of the pharmacist providing the counseling in the prescription dispensing record on either the original hard-copy prescription. in the pharmacy's data processing system or in an electronic logbook; and

(v) shall be reinforced with written information relevant to the prescription and provided to the patient or patient's agent. The following is applicable concerning this written information.

(I) Written information must be in plain language designed for the consumer and printed in an easily readable font size comparable to but no smaller than ten-point Times Roman.

(II) When a compounded product is dispensed, information shall be provided for the major active ingredient(s), if available.

(III) For new drug entities, if no written information is initially available, the pharmacist is not required to provide information until such information is available, provided:

- (-a-) the pharmacist informs the patient or the patient's agent that the product is a new drug entity and written information is not available;
- (-b-) the pharmacist documents the fact that no written information was provided; and
- (-c-) if the prescription is refilled after written information is available, such information is provided to the patient or patient's agent.

(IV) Effective January 1, 2011, the written information accompanying the prescription or the prescription label shall contain the statement "Do not flush unused medications or pour down a sink or drain." A drug product on a list developed by the Federal Food and Drug Administration of medicines recommended for disposal by flushing is not required to bear this statement.

(C) Only a pharmacist may verbally provide drug information to a patient or patient's agent and answer questions concerning prescription drugs. Non-pharmacist personnel may not ask questions of a patient or patient's agent which are intended to screen and/or limit interaction with the pharmacist.

(D) Nothing in this subparagraph shall be construed as requiring a pharmacist to provide consultation when a patient or patient's agent refuses such consultation. The pharmacist shall document such refusal for consultation.

(E) In addition to the requirements of subparagraphs (A) - (D) of this paragraph, if a prescription drug order is delivered to the patient at the pharmacy, the following is applicable.

(i) So that a patient will have access to information concerning his or her prescription, a prescription may not be delivered to a patient unless a pharmacist is in the pharmacy, except as provided in subsection (b)(3) of this section.

(ii) Any prescription delivered to a patient when a pharmacist is not in the pharmacy must meet the requirements described in subparagraph (F) of this paragraph.

(iii) A Class A pharmacy shall make available for use by the public a current or updated edition of the United States Pharmacopeia Dispensing Information, Volume II (Advice to the Patient), or another source of such information designed for the consumer.

(F) In addition to the requirements of subparagraphs (A) - (D) of this paragraph, if a prescription drug order is delivered to the patient or his or her agent at the patient's residence or other designated location, the following is applicable.

(i) The information specified in subparagraph (A) of this paragraph shall be delivered with the dispensed prescription in writing.

(ii) If prescriptions are routinely delivered outside the area covered by the pharmacy's local telephone service, the pharmacy shall provide a toll-free telephone line which is answered during normal business hours to enable communication between the patient and a pharmacist.

(iii) The pharmacist shall place on the prescription container or on a separate sheet delivered with the prescription container in both English and Spanish the local and if applicable, toll-free telephone number of the pharmacy and the statement: "Written information about this prescription has been provided for you. Please read this information before you take the medication. If you have questions concerning this prescription, a pharmacist is available during normal business hours to answer these questions at (insert the pharmacy's local and toll-free telephone numbers)."

(iv) The pharmacy shall maintain and use adequate storage or shipment containers and use shipping processes to ensure drug stability and potency. Such shipping processes shall include the use of appropriate packaging material and/or devices to ensure that the drug is maintained at an appropriate temperature range to maintain the integrity of the medication throughout the delivery process.

(v) The pharmacy shall use a delivery system which is designed to assure that the drugs are delivered to the appropriate patient.

(G) Except as specified in subparagraph (B) of this paragraph, in the best interest of the public health and to optimize drug therapy, upon delivery of a refill prescription, a pharmacist shall ensure that the patient or patient's agent is offered information about the refilled prescription. Either a pharmacist or other pharmacy personnel shall inform the patient or patient's agent that a pharmacist is available to discuss the patient's prescription and provide information.

(H) A pharmacy shall post a sign no smaller than 8.5 inches by 11 inches in clear public view at all locations in the pharmacy where a patient may pick up prescriptions. The sign shall contain the following statement in a font that is easily readable: "Do you have questions about your prescription? Ask the pharmacist." Such notification shall be in both English and Spanish.

(I) The provisions of this paragraph do not apply to patients in facilities where drugs are administered to patients by a person required to do so by the laws of the state (i.e., nursing homes).

(2) Pharmaceutical care services.

(A) Drug regimen review.

(i) For the purpose of promoting therapeutic appropriateness, a pharmacist shall, prior to or at the time of dispensing a prescription drug order, review the patient's medication record. Such review shall at a minimum identify clinically significant:

- (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; and
- (X) proper utilization, including overutilization or underutilization.

(ii) Upon identifying any clinically significant conditions, situations, or items listed in clause (i) of this subparagraph, the pharmacist shall take appropriate steps to avoid or resolve the problem including consultation with the prescribing practitioner. The pharmacist shall document such occurrences.

(iii) The drug regimen review may be conducted by remotely accessing the pharmacy's electronic data base from outside the pharmacy by:

(I) 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; or

(II) a pharmacist employed by a Class E pharmacy provided the pharmacies have entered into a written contract or agreement which outlines the services to be provided and the responsibilities and accountabilities of each pharmacy in compliance with federal and state laws and regulations.

(iv) Any questions regarding a prescription drug order must be resolved with the prescriber and written documentation of these discussions made and maintained.

(B) Other pharmaceutical care services which may be provided by pharmacists include, but are not limited to, the following:

- (i) managing drug therapy as delegated by a practitioner as allowed under the provisions of the Medical Practices;
- (ii) administering immunizations and vaccinations under written protocol of a physician;
- (iii) managing patient compliance programs;
- (iv) providing preventative health care services; and
- (v) 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.

(3) Generic Substitution. A pharmacist may dispense a generically equivalent drug product and shall comply with the provisions of §309.3 of this title (relating to Generic Substitution).

(4) Substitution of dosage form.

(A) As specified in §562.002 of the Act, a pharmacist may dispense a dosage form of a drug product different from that prescribed, such as a tablet instead of a capsule or liquid instead of tablets, provided:

- (i) the patient consents to the dosage form substitution;
- (ii) the pharmacist notifies the practitioner of the dosage form substitution; and
- (iii) the dosage form so dispensed:

(I) contains the identical amount of the active ingredients as the dosage prescribed for the patient;

(II) is not an enteric-coated or time release product;

(III) does not alter desired clinical outcomes;

(B) Substitution of dosage form may not include the substitution of a product that has been compounded by the pharmacist unless the pharmacist contacts the practitioner prior to dispensing and obtains permission to dispense the compounded product.

(5) Therapeutic Drug Interchange. A switch to a drug providing a similar therapeutic response to the one prescribed shall not be made without prior approval of the prescribing practitioner. This paragraph does not apply to generic substitution. For generic substitution, see the requirements of paragraph (3) of this subsection.

(A) The patient shall be notified of the therapeutic drug interchange prior to, or upon delivery, of the dispensed prescription to the patient. Such notification shall include:

(i) a description of the change;

(ii) the reason for the change;

(iii) whom to notify with questions concerning the change; and

(iv) instructions for return of the drug if not wanted by the patient.

(B) The pharmacy shall maintain documentation of patient notification of therapeutic drug interchange which shall include:

(i) the date of the notification;

(ii) the method of notification;

(iii) a description of the change; and

(iv) the reason for the change.

(6) Prescription containers.

(A) A drug dispensed pursuant to a prescription drug order shall be dispensed in a child-resistant container unless:

(i) the patient or the practitioner requests the prescription not be dispensed in a child-resistant container; or

(ii) the product is exempted from requirements of the Poison Prevention Packaging Act of 1970.

(B) A drug dispensed pursuant to a prescription drug order shall be dispensed in an appropriate container as specified on the manufacturer's container.

(C) Prescription containers or closures shall not be reused. However, if a patient or patient's agent has difficulty reading or understanding a prescription label, a prescription container may be reused provided:

(i) the container is designed to provide audio-recorded information about the proper use of the prescription medication;

(ii) the container is reused for the same patient;

(iii) the container is cleaned; and

(iv) a new safety closure is used each time the prescription container is reused.

(7) Labeling.

(A) At the time of delivery of the drug, the dispensing container shall bear a label in plain language and printed in an easily readable font size, unless otherwise specified, with at least the following information:

(i) name, address and phone number of the pharmacy;

(ii) unique identification number of the prescription that is printed in an easily readable font size comparable to but no smaller than ten-point Times Roman;

(iii) date the prescription is dispensed;

(iv) initials or an identification code of the dispensing pharmacist;

(v) name of the prescribing practitioner;

(vi) name of the patient or if such drug was prescribed for an animal, the species of the animal and the name of the owner that is printed in an easily readable font size comparable to but no smaller than ten-point Times Roman;

(vii) instructions for use that is printed in an easily readable font size comparable to but no smaller than ten-point Times Roman;

(viii) quantity dispensed;

(ix) appropriate ancillary instructions such as storage instructions or cautionary statements such as warnings of potential harmful effects of combining the drug product with any product containing alcohol;

(x) if the prescription is for a Schedules II - IV controlled substance, the statement "Caution: Federal law prohibits the transfer of this drug to any person other than the patient for whom it was prescribed";

(xi) if the pharmacist has selected a generically equivalent drug pursuant to the provisions of the Act, Chapters 562 and 563, the statement "Substituted for Brand Prescribed" or "Substituted for 'Brand Name'" where "Brand Name" is the actual name of the brand name product prescribed;

(xii) the name of the advanced practice nurse or physician assistant, if the prescription is carried out or signed by an advanced practice nurse or physician assistant in compliance with Subtitle B, Chapter 157, Occupations Code;

(xiii) the name of the pharmacist who signed the prescription for a dangerous drug under delegated authority of a physician as specified in Subtitle B, Chapter 157, Occupations Code;

(xiv) the name and strength of the actual drug product dispensed that is printed in an easily readable font size comparable to but no smaller than ten-point Times Roman, unless otherwise directed by the prescribing practitioner;

(I) The name shall be either:

(-a-) the brand name; or

(-b-) if no brand name, then the generic name and name of the manufacturer or distributor of such generic drug. (The name of the manufacturer or distributor may be reduced to an abbreviation or initials, provided the abbreviation or initials are sufficient to identify the manufacturer or distributor. For combination drug products or non-sterile compounded drug products having no brand name, the principal active ingredients shall be indicated on the label.)

(II) Except as provided in clause (xi) of this subparagraph, the brand name of the prescribed drug shall not appear on

the prescription container label unless it is the drug product actually dispensed.

(xv) effective June 1, 2010, if the drug is dispensed in a container other than the manufacturer's original container, the date after which the prescription should not be used or beyond-use-date. Unless otherwise specified by the manufacturer, the beyond-use-date shall be one year from the date the drug is dispensed or the manufacturer's expiration date, whichever is earlier. The beyond-use-date may be placed on the prescription label or on a flag label attached to the bottle. A beyond-use-date is not required on the label of a prescription dispensed to a person at the time of release from prison or jail if the prescription is for not more than a 10-day supply of medication; and

(xvi) effective January 1, 2011, either on the prescription label or the written information accompanying the prescription, the statement "Do not flush unused medications or pour down a sink or drain." A drug product on a list developed by the Federal Food and Drug Administration of medicines recommended for disposal by flushing is not required to bear this statement.

(B) If the prescription label required in subparagraph (A) of this paragraph is printed in a type size smaller than ten-point Times Roman, the pharmacy shall provide the patient written information containing the information specified in subparagraph (A) of this paragraph in an easily readable font size comparable to but no smaller than ten-point Times Roman.

(C) The label is not required to include the initials or identification code of the dispensing pharmacist specified in subparagraph (A) of this paragraph if the identity of the dispensing pharmacist is recorded in the pharmacy's data processing system. The record of the identity of the dispensing pharmacist shall not be altered in the pharmacy's data processing system.

(D) The dispensing container is not required to bear the label specified in subparagraph (A) of this paragraph if:

(i) the drug is prescribed for administration to an ultimate user who is institutionalized in a licensed health care institution (e.g., nursing home, hospice, hospital);

(ii) no more than a 34-day supply or 100 dosage units, whichever is less, is dispensed at one time;

(iii) the drug is not in the possession of the ultimate user prior to administration;

(iv) the pharmacist-in-charge has determined that the institution:

(I) maintains medication administration records which include adequate directions for use for the drug(s) prescribed;

(II) maintains records of ordering, receipt, and administration of the drug(s); and

(III) provides for appropriate safeguards for the control and storage of the drug(s); and

(v) the dispensing container bears a label that adequately:

(I) identifies the:

(-a-) pharmacy by name and address;

(-b-) unique identification number of the prescription;

prescription;

(-c-) name and strength of the drug dispensed;

dispensed;

(-d-) name of the patient; and

(-e-) name of the prescribing practitioner and, if applicable, the name of the advanced practice nurse or physician assistant who signed the prescription drug order;

(II) effective June 1, 2010, if the drug is dispensed in a container other than the manufacturer's original container, specifies the date after which the prescription should not be used or beyond-use-date. Unless otherwise specified by the manufacturer, the beyond-use-date shall be one year from the date the drug is dispensed or the manufacturer's expiration date, whichever is earlier. The beyond-use-date may be placed on the prescription label or on a flag label attached to the bottle. A beyond-use-date is not required on the label of a prescription dispensed to a person at the time of release from prison or jail if the prescription is for not more than a 10-day supply of medication; and

(III) sets forth the directions for use and cautionary statements, if any, contained on the prescription drug order or required by law.

(d) Equipment and supplies. Class A pharmacies dispensing prescription drug orders shall have the following equipment and supplies:

(1) data processing system including a printer or comparable equipment;

(2) refrigerator;

(3) adequate supply of child-resistant, light-resistant, tight, and if applicable, glass containers;

(4) adequate supply of prescription, poison, and other applicable labels;

(5) appropriate equipment necessary for the proper preparation of prescription drug orders; and

(6) metric-apothecary weight and measure conversion charts.

(e) Library. A reference library shall be maintained which includes the following in hard-copy or electronic format:

(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 rules; and

(D) Federal Controlled Substances Act and rules (or official publication describing the requirements of the Federal Controlled Substances Act and rules);

(2) at least one current or updated reference from each of the following categories:

(A) patient information:

(i) United States Pharmacopeia Dispensing Information, Volume II (Advice to the Patient); or

(ii) a reference text or information leaflets which provide patient information;

(B) 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;

(C) 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) Clinical Pharmacology;

(iv) American Hospital Formulary Service with current supplements; or

(v) Remington's Pharmaceutical Sciences; and

(3) basic antidote information and the telephone number of the nearest Regional Poison Control Center.

(f) Drugs.

(1) Procurement 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 relative to such responsibility.

(B) Prescription drugs and devices and nonprescription Schedule V controlled substances shall be stored within the prescription department or a locked storage area.

(C) All drugs shall be stored at the proper temperature, as defined in the USP/NF and §291.15 of this title (relating to Storage of Drugs).

(2) Out-of-date drugs or devices.

(A) Any drug or device bearing an expiration date shall not be dispensed beyond the expiration date of the drug or device.

(B) Outdated drugs or devices shall be removed from dispensing stock and shall be quarantined together until such drugs or devices are disposed of properly.

(3) Nonprescription Schedule V controlled substances.

(A) Schedule V controlled substances containing codeine, dihydrocodeine, or any of the salts of codeine or dihydrocodeine may not be distributed without a prescription drug order from a practitioner.

(B) A pharmacist may distribute nonprescription Schedule V controlled substances which contain no more than 15 milligrams of opium per 29.5729 ml or per 28.35 Gm provided:

(i) such distribution is made only by a pharmacist; a nonpharmacist employee may not distribute a nonprescription Schedule V controlled substance even if under the supervision of a pharmacist; however, after the pharmacist has fulfilled professional and legal responsibilities, the actual cash, credit transaction, or delivery may be completed by a nonpharmacist:

(ii) not more than 240 ml (eight fluid ounces), or not more than 48 solid dosage units of any substance containing opium, may be distributed to the same purchaser in any given 48-hour period without a prescription drug order;

(iii) the purchaser is at least 18 years of age; and

(iv) the pharmacist requires every purchaser not known to the pharmacist to furnish suitable identification (including proof of age where appropriate).

(C) A record of such distribution shall be maintained by the pharmacy in a bound record book. The record shall contain the following information:

(i) true name of the purchaser;

(ii) current address of the purchaser;

(iii) name and quantity of controlled substance purchased;

(iv) date of each purchase; and

(v) signature or written initials of the distributing pharmacist.

(4) Class A Pharmacies may not sell, purchase, trade or possess prescription drug samples, unless the pharmacy meets the requirements as specified in §291.16 of this title (relating to Samples).

(g) Prepackaging of drugs.

(1) Drugs may be prepackaged in quantities suitable for internal distribution only by a pharmacist or by pharmacy technicians or pharmacy technician trainees under the direction and direct supervision of a pharmacist.

(2) The label of a prepackaged unit shall indicate:

(A) brand name and strength of the drug; or if no brand name, then the generic name, strength, and name of the manufacturer or distributor;

(B) facility's lot number;

(C) expiration date; and

(D) quantity of the drug, if the quantity is greater than one.

(3) Records of prepackaging shall be maintained to show:

(A) name of the drug, strength, and dosage form;

(B) facility's lot number;

(C) manufacturer or distributor;

(D) manufacturer's lot number;

(E) expiration date;

(F) quantity per prepackaged unit;

(G) number of prepackaged units;

(H) date packaged;

(I) name, initials, or electronic signature of the packer; and

(J) signature, or electronic signature of the responsible pharmacist.

(4) Stock packages, repackaged units, and control records shall be quarantined together until checked/released by the pharmacist.

(h) Customized patient medication packages.

(1) Purpose. In lieu of dispensing two or more prescribed drug products in separate containers, a pharmacist may, with the consent of the patient, the patient's caregiver, or the prescriber, provide a customized patient medication package (patient med-pak).

(2) Definition. A patient med-pak is a package prepared by a pharmacist for a specific patient comprising a series of containers and containing two or more prescribed solid oral dosage forms. The patient med-pak is so designed or each container is so labeled as to indicate the day and time, or period of time, that the contents within each container are to be taken.

(3) Label.

(A) The patient med-pak shall bear a label stating:

(i) the name of the patient;

(ii) the unique identification number for the patient med-pak itself and a separate unique identification number for each of the prescription drug orders for each of the drug products contained therein;

(iii) the name, strength, physical description or identification, and total quantity of each drug product contained therein;

(iv) the directions for use and cautionary statements, if any, contained in the prescription drug order for each drug product contained therein;

(v) if applicable, a warning of the potential harmful effect of combining any form of alcoholic beverage with any drug product contained therein;

(vi) any storage instructions or cautionary statements required by the official compendia;

(vii) the name of the prescriber of each drug product;

(viii) the date of preparation of the patient med-pak and the beyond-use date assigned to the patient med-pak (which such beyond-use date shall not be later than 60 days from the date of preparation);

(ix) the name, address, and telephone number of the pharmacy;

(x) the initials or an identification code of the dispensing pharmacist;

(xi) effective June 1, 2010, the date after which the prescription should not be used or beyond-use-date. Unless otherwise specified by the manufacturer, the beyond-use-date shall be one year from the date the med-pak is dispensed or the earliest manufacturer's expiration date for a product contained in the med-pak if it is less than one-year from the date dispensed. The beyond-use-date may be placed on the prescription label or on a flag label attached to the bottle. A beyond-use-date is not required on the label of a prescription dispensed to a person at the time of release from prison or jail if the prescription is for not more than a 10-day supply of medication; and

(xii) effective January 1, 2011, either on the prescription label or the written information accompanying the prescription, the statement "Do not flush unused medications or pour down a sink or drain." A drug product on a list developed by the Federal Food and Drug Administration of medicines recommended for disposal by flushing is not required to bear this statement.

(xiii) any other information, statements, or warnings required for any of the drug products contained therein.

(B) If the patient med-pak allows for the removal or separation of the intact containers therefrom, each individual container shall bear a label identifying each of the drug product contained therein.

(C) The dispensing container is not required to bear the label specified in subparagraph (A) of this paragraph if:

(i) the drug is prescribed for administration to an ultimate user who is institutionalized in a licensed health care institution (e.g., nursing home, hospice, hospital);

(ii) no more than a 34-day supply or 100 dosage units, whichever is less, is dispensed at one time;

(iii) the drug is not in the possession of the ultimate user prior to administration;

(iv) the pharmacist-in-charge has determined that the institution:

(I) maintains medication administration records which include adequate directions for use for the drug(s) prescribed;

(II) maintains records of ordering, receipt, and administration of the drug(s); and

(III) provides for appropriate safeguards for the control and storage of the drug(s); and

(v) the dispensing container bears a label that adequately:

(I) identifies the:

(-a-) pharmacy by name and address;

(-b-) unique identification number of the prescription;

(-c-) name and strength of each drug product dispensed;

(-d-) name of the patient; and

(-e-) name of the prescribing practitioner of each drug product and if applicable, the name of the advanced practice nurse or physician assistant who signed the prescription drug order;

(II) effective June 1, 2010, the date after which the prescription should not be used or beyond-use-date. Unless otherwise specified by the manufacturer, the beyond-use-date shall be one year from the date the med-pak is dispensed or the earliest manufacturer's expiration date for a product contained in the med-pak if it is less than one-year from the date dispensed. The beyond-use-date may be placed on the prescription label or on a flag label attached to the bottle. A beyond-use-date is not required on the label of a prescription dispensed to a person at the time of release from prison or jail if the prescription is for not more than a 10-day supply of medication; and

(III) for each drug product sets forth the directions for use and cautionary statements, if any, contained on the prescription drug order or required by law.

(4) Labeling. The patient med-pak shall be accompanied by a patient package insert, in the event that any drug contained therein is required to be dispensed with such insert as accompanying labeling. Alternatively, such required information may be incorporated into a single, overall educational insert provided by the pharmacist for the total patient med-pak.

(5) Packaging. In the absence of more stringent packaging requirements for any of the drug products contained therein, each container of the patient med-pak shall comply with official packaging standards. Each container shall be either not reclosable or so designed as to show evidence of having been opened.

(6) Guidelines. It is the responsibility of the dispensing pharmacist when preparing a patient med-pak, to take into account any applicable compendial requirements or guidelines and the physical and chemical compatibility of the dosage forms placed within each container, as well as any therapeutic incompatibilities that may attend the simultaneous administration of the drugs.

(7) Recordkeeping. In addition to any individual prescription filing requirements, a record of each patient med-pak shall be made and filed. Each record shall contain, as a minimum:

(A) the name and address of the patient;

(B) the unique identification number for the patient med-pak itself and a separate unique identification number for each of the prescription drug orders for each of the drug products contained therein;

(C) the name of the manufacturer or distributor and lot number for each drug product contained therein;

(D) information identifying or describing the design, characteristics, or specifications of the patient med-pak sufficient to allow subsequent preparation of an identical patient med-pak for the patient;

(E) the date of preparation of the patient med-pak and the beyond-use date that was assigned;

(F) any special labeling instructions; and

(G) the initials or an identification code of the dispensing pharmacist.

(8) The patient med-pak label is not required to include the initials or identification code of the dispensing pharmacist specified in paragraph (3)(A) of this subsection if the identity of the dispensing pharmacist is recorded in the pharmacy's data processing system. The record of the identity of the dispensing pharmacist shall not be altered in the pharmacy's data processing system.

(i) 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 bulk or unlabeled drugs only by a pharmacist or by pharmacy technicians 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 bulk or 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 pharmacy dispensing systems.

(A) Authority to use automated pharmacy dispensing systems. A pharmacy may use an automated pharmacy dispensing system to fill prescription drug orders provided that:

(i) the pharmacist-in-charge is responsible for the supervision of the operation of the system;

(ii) the automated pharmacy dispensing 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 pharmacy dispensing 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 pharmacy dispensing system to fill prescription drug orders shall operate according to a written program for quality assurance of the automated pharmacy dispensing system which:

(i) requires continuous monitoring of the automated pharmacy dispensing system; and

(ii) establishes mechanisms and procedures to test the accuracy of the automated pharmacy dispensing 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 pharmacy dispensing system is used to fill prescription drug 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 pharmacy dispensing 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, approval, and accountability for the transmission of each original or new prescription drug order to the automated pharmacy dispensing system before the transmission is made;

(III) provide for access to the automated pharmacy dispensing system for stocking and retrieval of medications which is limited to licensed healthcare professionals or pharmacy technicians acting under the supervision of a pharmacist;

(IV) require prior to use, that a pharmacist checks, verifies, and documents that the automated pharmacy dispensing system has been accurately filled each time the system is stocked;

(V) provide for an accountability record to be maintained which documents all transactions relative to stocking and removing medications from the automated pharmacy dispensing system;

(VI) require a prospective drug regimen review is conducted as specified in subsection (c)(2) of this section; and

(VII) establish and make provisions for documentation of a preventative maintenance program for the automated pharmacy dispensing system.

(ii) A pharmacy which uses an automated pharmacy dispensing system to fill prescription drug orders shall, at least annually, review its written policies and procedures, revise them if necessary, and document the review.

(D) Recovery Plan. A pharmacy which uses an automated pharmacy dispensing system to fill prescription drug orders shall maintain a written plan for recovery from a disaster or any other situation which interrupts the ability of the automated pharmacy dispensing 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 pharmacy dispensing system is experiencing downtime;

(ii) procedures for response when an automated pharmacy dispensing 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, each patient of the pharmacy, and other appropriate agencies whenever an automated pharmacy dispensing 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) Final check of prescriptions dispensed using an automated pharmacy dispensing system. For the purpose of §291.32(b)(2) of this title (relating to Personnel), a pharmacist must perform the final check of all prescriptions prior to delivery to the patient to ensure that the prescription is dispensed accurately as prescribed.

(A) This final check shall be considered accomplished if:

(i) a check of the final product is conducted by a pharmacist after the automated system has completed the prescription and prior to delivery to the patient; or

(ii) the following checks are conducted by a pharmacist:

(I) if the automated pharmacy dispensing system contains bulk stock drugs, a pharmacist verifies that those drugs have been accurately stocked as specified in paragraph (2)(C)(i)(IV) of this subsection; and

(II) a pharmacist checks the accuracy of the data entry of each original or new prescription drug order entered into the automated pharmacy dispensing system.

(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 dispensing process must be fully automated from the time the pharmacist releases the prescription to the automated system until a completed, labeled prescription 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 pharmacy dispensing system dispenses accurately as specified in paragraph (2)(A) and (B) of this subsection.

(iii) The automated pharmacy dispensing 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 who performs any other portion of the dispensing process.

(iv) The pharmacy establishes mechanisms and procedures to test the accuracy of the automated pharmacy dispensing 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 dispensing 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) For the purpose of §291.32(b)(2) of this title, the final check of a dispensed prescription 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 prescription drug order.

(ii) the prescription is dispensed, labeled, and made ready for delivery to the patient in compliance with Class A (Community) 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 prescription has been dispensed 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 or pharmacy technician who perform any other portion of the dispensing process.

(iii) The pharmacy establishes mechanisms and procedures to test the accuracy of the automated checking device at least monthly.

(5) Automated storage and distribution device. A pharmacy may use an automated storage and distribution device to deliver a previously verified prescription to a patient or patient's agent when the pharmacy is open or when the pharmacy is closed as specified in subsection (b)(3)(B)(iii) of this section, provided:

(A) the device is used to deliver refills of prescription drug orders and shall not be used to deliver new prescriptions as defined by §291.31(26) of this title (relating to Definitions);

(B) the automated storage and distribution device may not be used to deliver a controlled substance;

(C) drugs stored in the automated storage and distribution device are stored at proper temperatures;

(D) the patient or patient's agent is given the option to use the system;

(E) the patient or patient's agent has access to a pharmacist for questions regarding the prescription at the pharmacy where the automated storage and distribution device is located, by a telephone available at the pharmacy that connects directly to another pharmacy, or by a telephone available at the pharmacy and a posted telephone number to reach another pharmacy;

(F) the pharmacist-in-charge is responsible for the supervision of the operation of the system;

(G) the automated storage and distribution device has been tested by the pharmacy and found to dispense prescriptions accurately. The pharmacy shall make the results of such testing available to the board upon request;

(H) the automated storage and distribution device may be loaded with previously verified prescriptions only by a pharmacist or by pharmacy technicians or pharmacy technician trainees under the direction and direct supervision of a pharmacist;

(I) the pharmacy will make the automated storage and distribution device available for inspection by the board;

(J) the automated storage and distribution device is located within the pharmacy building whereby pharmacy staff has access to the device from within the prescription department and patients have access to the device from outside the prescription department. The device may not be located on an outside wall of the pharmacy and may not be accessible from a drive-thru;

(K) the automated storage and distribution device is secure from access and removal of prescription drug orders by unauthorized individuals;

(L) the automated storage and distribution device has adequate security system to prevent unauthorized access and to maintain patient confidentiality; and

(M) the automated storage and distribution device records a digital image of the individual accessing the device to pick-up a prescription and such record is maintained by the pharmacy for two years.

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

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SUBCHAPTER D. INSTITUTIONAL PHARMACY (CLASS C)

22 TAC §291.74, §291.76

The Texas State Board of Pharmacy adopts amendments to §291.74, concerning Operational Standards and §291.76,

concerning Class C Pharmacies Located in a Freestanding Ambulatory Surgical Center. The amendments are adopted with changes to the proposed text as published in the December 24, 2010, issue of the *Texas Register* (35 TexReg 11487). The Board voted to adopt the rule leaving in the word shall and not changing it to must.

The adopted amendments remove the requirements regarding samples from the specific pharmacy classes and move the requirements to new §291.16 under Subchapter A, All Classes of Pharmacy published elsewhere in this issue of the *Texas Register*.

No comments were received.

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 the amendments: 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).

(14) A Class C (Institutional) pharmacy with an ongoing clinical pharmacy program that proposes to allow a pharmacy technician to verify the accuracy of work performed by another pharmacy technician relating to the filling of floor stock and unit dose distribution systems for a patient admitted to the hospital if the patient's orders have previously been reviewed and approved by a pharmacist shall make application to the board as follows.

(A) The pharmacist-in-charge must submit an application on a form provided by the board, containing the following information:

- (i) name, address, and pharmacy license number;
- (ii) name and license number of the pharmacist-in-charge;
- (iii) name and registration numbers of the pharmacy technicians;

(iv) anticipated date the pharmacy plans to begin allowing a pharmacy technician to verify the accuracy of work performed by another pharmacy technician;

(v) documentation that the pharmacy has an ongoing clinical pharmacy program; and

(vi) any other information specified on the application.

(B) The pharmacy may not allow a pharmacy technician to check the work of another pharmacy technician until the board has reviewed and approved the application and issued an amended license to the pharmacy.

(C) Every two years, in connection with the application for renewal of the pharmacy license, the pharmacy shall provide updated documentation that the pharmacy continues to have an ongoing clinical pharmacy program as specified in subparagraph (A)(v) of this paragraph.

(15) A rural hospital that wishes to allow a pharmacy technician to perform the duties specified in §291.73(e)(2)(D) of this title (relating to Personnel), shall make application to the board as follows.

(A) For an initial applications prior to September 1, 2010, the pharmacist-in-charge must submit a letter to the board containing the following information:

- (i) name, address, and pharmacy license number;
- (ii) name and license number of the pharmacist-in-charge;
- (iii) name and registration number of the pharmacy technicians;
- (iv) a statement indicating that pharmacy technicians will be performing the duties specified in §291.73(e)(2)(D) of this title; and
- (v) documentation that the hospital is a rural hospital with 75 or fewer beds and that the rural hospital is either:

(I) located in a county with a population of 50,000 or less as defined by the United States Census Bureau in the most recent U.S. census; or

(II) designated by the Centers for Medicare and Medicaid Services as a critical access hospital, rural referral center, or sole community hospital.

(B) After September 1, 2010 and prior to allowing a pharmacy technician to perform the duties specified in §291.73(e)(2)(D) of this title, the pharmacist-in-charge must submit an application on a form provided by the board, containing the following information:

- (i) name, address, and pharmacy license number;
- (ii) name and license number of the pharmacist-in-charge;
- (iii) name and registration number of the pharmacy technicians;
- (iv) proposed date the pharmacy wishes to start allowing pharmacy technicians to perform the duties specified in §291.73(e)(2)(D) of this title;
- (v) documentation that the hospital is a rural hospital with 75 or fewer beds and that the rural hospital is either:

(I) located in a county with a population of 50,000 or less as defined by the United States Census Bureau in the most recent U.S. census; or

(II) designated by the Centers for Medicare and Medicaid Services as a critical access hospital, rural referral center, or sole community hospital; and

(vi) any other information specified on the application.

(C) A rural hospital that makes application after September 1, 2010 may not allow a pharmacy technician to perform the duties specified in §291.73(e)(2)(D) of this title until the board has reviewed and approved the application and issued an amended license to the pharmacy.

(D) Every two years in conjunction with the application for renewal of the pharmacy license, the pharmacist-in-charge shall update the application for pharmacy technicians to perform the duties specified in §291.73(e)(2)(D) of this title.

(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.

(3) Rural hospitals. In rural hospitals when a pharmacy technician performs the duties listed in §291.73(e)(2)(D) of this title, the following is applicable:

(A) the pharmacy technician shall make a record of all drugs distributed from the pharmacy. The record shall be maintained in the pharmacy for two years and contain the following information:

- (i) name of patient or location where floor stock is distributed;
- (ii) name of device or drug, strength, and dosage form;
- (iii) dose prescribed or ordered;
- (iv) quantity distributed;
- (v) time and date of the distribution; and
- (vi) signature (first initial and last name or full signature) or electronic signature of nurse or practitioner that verified the actions of the pharmacy technician.

(B) The original or direct copy of the medication order may substitute for the record specified in subparagraph (A) of this paragraph, provided the medication order meets all the requirements of subparagraph (A) of this paragraph.

(C) The pharmacist shall:

(i) verify and document the verification of all distributions made from the pharmacy in the absence of a pharmacist as soon as practical, but in no event more than seven (7) days from the time of such distribution;

(ii) perform a drug regimen review for all medication orders as specified in subsection (g)(1)(B) of this section as soon as practical, but in no event more than seven (7) days from the time of such distribution and document such verification including any discrepancies noted by the pharmacist;

(iii) review any discrepancy noted by the pharmacist with the pharmacy technician(s) and make any change in procedures or processes necessary to prevent future problems; and

(iv) report any adverse events that have a potential for harm to a patient to the appropriate committee of the hospital that reviews adverse events.

(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 the requirements as specified in §291.16 of this title (relating to Samples).

(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 preparer; 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 preparer;

(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;

(XXXV) procedures for a pharmacy technician to verify the accuracy of work performed by another pharmacy technician, if applicable;

(XXXVI) operation of the pharmacy when a pharmacist is not on-site; and

(XXXVII) 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 pre-labeled (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.

§291.76. Class C Pharmacies Located in a Freestanding Ambulatory Surgical Center.

(a) Purpose. The purpose of this section is to provide standards in the conduct, practice activities, and operation of a pharmacy located in a freestanding ambulatory surgical center that is licensed by the Texas Department of State Health Services. Class C pharmacies located in a freestanding ambulatory surgical center shall comply with this section, in lieu of §§291.71 - 291.75 of this title (relating to Purpose; Definitions; Personnel; Operational Standards; and Records).

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

(1) Act--The Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Occupations Code, as amended.

(2) Ambulatory surgical center (ASC)--A freestanding facility that is licensed by the Texas Department of State Health Services to provide surgical services to patients who do not require overnight hospital care.

(3) Automated drug dispensing system--An automated device that measures, counts, and/or packages a specified quantity of dosage units for a designated drug product.

(4) Board--The Texas State Board of Pharmacy.

(5) Consultant pharmacist--A pharmacist retained by a facility on a routine basis to consult with the ASC in areas that pertain to the practice of pharmacy.

(6) Controlled substance--A drug, immediate precursor, or other substance listed in Schedules I - V or Penalty Groups 1 - 4 of the Texas Controlled Substances Act, as amended, or a drug immediate precursor, or other substance included in Schedule I - V of the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended (Public Law 91-513).

(7) Direct copy--Electronic copy or carbonized copy of a medication order including a facsimile (FAX) or digital image.

(8) Dispense--Preparing, packaging, compounding, or labeling for delivery a prescription drug or device in the course of professional practice to an ultimate user or his agent by or pursuant to the lawful order of a practitioner.

(9) Distribute--The delivery of a prescription drug or device other than by administering or dispensing.

(10) Downtime--Period of time during which a data processing system is not operable.

(11) Electronic signature--A unique security code or other identifier which specifically identifies the person entering information into a data processing system. A facility which utilizes electronic signatures must:

(A) maintain a permanent list of the unique security codes assigned to persons authorized to use the data processing system; and

(B) have an ongoing security program which is capable of identifying misuse and/or unauthorized use of electronic signatures.

(12) Floor stock--Prescription drugs or devices not labeled for a specific patient and maintained at a nursing station or other ASC department (excluding the pharmacy) for the purpose of administration to a patient of the ASC.

(13) Formulary--List of drugs approved for use in the ASC by an appropriate committee of the ambulatory surgical center.

(14) Hard copy--A physical document that is readable without the use of a special device (i.e., data processing system, computer, etc.).

(15) Investigational new drug--New drug intended for investigational use by experts qualified to evaluate the safety and effectiveness of the drug as authorized by the federal Food and Drug Administration.

(16) Medication order--A written order from a practitioner or a verbal order from a practitioner or his authorized agent for administration of a drug or device.

(17) Pharmacist-in-charge--Pharmacist designated on a pharmacy license as the pharmacist who has the authority or responsibility for a pharmacy's compliance with laws and rules pertaining to the practice of pharmacy.

(18) Pharmacy--Area or areas in a facility, separate from patient care areas, where drugs are stored, bulk compounded, delivered, compounded, dispensed, and/or distributed to other areas or departments of the ASC, or dispensed to an ultimate user or his or her agent.

(19) Prescription drug--

(A) A substance for which federal or state law requires a prescription before it may be legally dispensed to the public;

(B) A drug or device that under federal law is required, prior to being dispensed or delivered, to be labeled with either of the following statements:

(i) Caution: federal law prohibits dispensing without prescription or "Rx only" or another legend that complies with federal law; or

(ii) Caution: federal law restricts this drug to use by or on order of a licensed veterinarian; or

(C) A drug or device that is required by any applicable federal or state law or regulation to be dispensed on prescription only or is restricted to use by a practitioner only.

(20) Prescription drug order--

(A) A written order from a practitioner or verbal order from a practitioner or his authorized agent to a pharmacist for a drug or device to be dispensed; or

(B) A written order or a verbal order pursuant to Subtitle B, Chapter 157, Occupations Code.

(21) Full-time pharmacist--A pharmacist who works in a pharmacy from 30 to 40 hours per week or if the pharmacy is open less than 60 hours per week, one-half of the time the pharmacy is open.

(22) Part-time pharmacist--A pharmacist who works less than full-time.

(23) Pharmacy technician--An individual who is registered with the board as a pharmacy technician and whose responsibility in a pharmacy is to provide technical services that do not require professional judgment regarding preparing and distributing drugs and who works under the direct supervision of and is responsible to a pharmacist.

(24) Pharmacy technician trainee--An individual who is registered with the board as a pharmacy technician trainee and is authorized to participate in a pharmacy's technician training program.

(25) Texas Controlled Substances Act--The Texas Controlled Substances Act, the Health and Safety Code, Chapter 481, as amended.

(c) Personnel.

(1) Pharmacist-in-charge.

(A) General. Each ambulatory surgical center shall have one pharmacist-in-charge who is employed or under contract, at least on a consulting or part-time basis, but may be employed on a full-time basis.

(B) Responsibilities. The pharmacist-in-charge shall have the responsibility for, at a minimum, the following:

(i) establishment of specifications for procurement and storage of all materials, including drugs, chemicals, and biologicals;

(ii) participation in the development of a formulary for the ASC, subject to approval of the appropriate committee of the ASC;

(iii) distribution of drugs to be administered to patients pursuant to an original or direct copy of the practitioner's medication order;

(iv) filling and labeling all containers from which drugs are to be distributed or dispensed;

(v) maintaining and making available a sufficient inventory of antidotes and other emergency drugs, both in the pharmacy and patient care areas, as well as current antidote information, telephone numbers of regional poison control center and other emergency assistance organizations, and such other materials and information as may be deemed necessary by the appropriate committee of the ASC;

(vi) records of all transactions of the ASC pharmacy as may be required by applicable state and federal law, and as may be necessary to maintain accurate control over and accountability for all pharmaceutical materials;

(vii) participation in those aspects of the ASC's patient care evaluation program which relate to pharmaceutical material utilization and effectiveness;

(viii) participation in teaching and/or research programs in the ASC;

(ix) implementation of the policies and decisions of the appropriate committee(s) relating to pharmaceutical services of the ASC;

(x) effective and efficient messenger and delivery service to connect the ASC pharmacy with appropriate areas of the ASC on a regular basis throughout the normal workday of the ASC;

(xi) labeling, storage, and distribution of investigational new drugs, including maintenance of information in the pharmacy and nursing station where such drugs are being administered, concerning the dosage form, route of administration, strength, actions, uses, side effects, adverse effects, interactions, and symptoms of toxicity of investigational new drugs;

(xii) meeting all inspection and other requirements of the Texas Pharmacy Act and this subsection; and

(xiii) maintenance of records in a data processing system such that the data processing system is in compliance with the requirements for a Class C (institutional) pharmacy located in a free-standing ASC.

(2) Consultant pharmacist.

(A) The consultant pharmacist may be the pharmacist-in-charge.

(B) A written contract shall exist between the ASC and any consultant pharmacist, and a copy of the written contract shall be made available to the board upon request.

(3) Pharmacists.

(A) General.

(i) The pharmacist-in-charge shall be assisted by a sufficient number of additional licensed pharmacists as may be required to operate the ASC pharmacy competently, safely, and adequately to meet the needs of the patients of the facility.

(ii) All pharmacists shall assist the pharmacist-in-charge in meeting the responsibilities as outlined in paragraph (1)(B) of this subsection and in ordering, administering, and accounting for pharmaceutical materials.

(iii) All pharmacists shall be responsible for any delegated act performed by pharmacy technicians or pharmacy technician trainees under his or her supervision.

(iv) All pharmacists while on duty shall be responsible for complying with all state and federal laws or rules governing the practice of pharmacy.

(B) Duties. Duties of the pharmacist-in-charge and all other pharmacists shall include, but need not be limited to, the following:

(i) receiving and interpreting prescription drug orders and oral medication orders and reducing these orders to writing either manually or electronically;

(ii) selection of prescription drugs and/or devices and/or suppliers; and

(iii) interpreting patient profiles.

(C) Special requirements for compounding.

(i) Non-Sterile Preparations. All pharmacists engaged in compounding non-sterile preparations shall meet the training requirements specified in §291.131 of this title (relating to Pharmacies Compounding Non-Sterile Preparations).

(ii) Sterile Preparations. All pharmacists engaged in compounding sterile preparations shall meet the training requirements specified in §291.133 of this title (relating to Pharmacies Compounding Sterile Preparations).

(4) Pharmacy technicians and pharmacy technician trainees.

(A) General. All pharmacy technicians and pharmacy technician trainees shall meet the training requirements specified in §297.6 of this title (relating to Pharmacy Technician and Pharmacy Technician Trainee Training).

(B) Duties. Duties may include, but need not be limited to, the following functions, under the direct supervision of a pharmacist:

(i) prepacking and labeling unit and multiple dose packages, provided a pharmacist supervises and conducts a final check and affixes his or her name, initials, electronic signature to the appropriate quality control records prior to distribution;

(ii) preparing, packaging, compounding, or labeling prescription drugs pursuant to medication orders, provided a pharmacist supervises and checks the preparation;

(iii) compounding non-sterile preparations pursuant to medication orders provided the pharmacy technicians or pharmacy technician trainees have completed the training specified in §291.131 of this title;

(iv) compounding sterile preparations pursuant to medication orders provided the pharmacy technicians or pharmacy technician trainees:

(I) have completed the training specified in §291.133 of this title; and

(II) are supervised by a pharmacist who has completed the sterile preparations training specified in §291.133 of this title, conducts in-process and final checks, and affixes his or her name, initials, or electronic signature to the label or if batch prepared to the appropriate quality control records. (The name, initials, or electronic signature are not required on the label if it is maintained in a permanent record of the pharmacy.)

(v) bulk compounding, provided a pharmacist supervises and conducts in-process and final checks and affixes his or her name, initials, or electronic signature to the appropriate quality control records prior to distribution;

(vi) distributing routine orders for stock supplies to patient care areas;

(vii) entering medication order and drug distribution information into a data processing system, provided judgmental decisions are not required and a pharmacist checks the accuracy of the information entered into the system prior to releasing the order or in compliance with the absence of pharmacist requirements contained in subsection (d)(6)(E) and (F) of this section;

(viii) maintaining inventories of drug supplies;

(ix) maintaining pharmacy records; and

(x) loading bulk unlabeled drugs into an automated drug dispensing system provided a pharmacist supervises, verifies that the system was properly loaded prior to use, and affixes his or her name, initials or electronic signature to the appropriate quality control records.

(C) Procedures.

(i) Pharmacy technicians and pharmacy technician trainees shall handle medication orders in accordance with standard written procedures and guidelines.

(ii) Pharmacy technicians and pharmacy technician trainees shall handle prescription drug orders in the same manner as pharmacy technicians or pharmacy technician trainees working in a Class A pharmacy.

(D) Special requirements for compounding.

(i) Non-Sterile Preparations. All pharmacy technicians and pharmacy technician trainees engaged in compounding non-sterile preparations shall meet the training requirements specified in §291.131 of this title.

(ii) Sterile Preparations. All pharmacy technicians and pharmacy technician trainees engaged in compounding sterile preparations shall meet the training requirements specified in §291.133 of this title.

(5) Owner. The owner of an ASC pharmacy shall have responsibility for all administrative and operational functions of the pharmacy. The pharmacist-in-charge may advise the owner on administrative and operational concerns. The owner shall have responsibility for, at a minimum, the following, and if the owner is not a Texas licensed pharmacist, the owner shall consult with the pharmacist-in-charge or another Texas licensed pharmacist:

(A) establishment of policies for procurement of prescription drugs and devices and other products dispensed from the ASC pharmacy;

(B) establishment and maintenance of effective controls against the theft or diversion of prescription drugs;

(C) if the pharmacy uses an automated pharmacy dispensing system, reviewing and approving all policies and procedures for system operation, safety, security, accuracy and access, patient confidentiality, prevention of unauthorized access, and malfunction;

(D) providing the pharmacy with the necessary equipment and resources commensurate with its level and type of practice; and

(E) establishment of policies and procedures regarding maintenance, storage, and retrieval of records in a data processing system such that the system is in compliance with state and federal requirements.

(6) Identification of pharmacy personnel. All pharmacy personnel shall be identified as follows:

(A) Pharmacy technicians. All pharmacy technicians shall wear an identification tag or badge that bears the person's name

and identifies him or her as a pharmacy technician trainee a registered pharmacy technician, or a certified pharmacy technician, if the technician maintains current certification with the Pharmacy Technician Certification Board or any other entity providing an examination approved by the board.

(B) Pharmacy technician trainees. All pharmacy technician trainees shall wear an identification tag or badge that bears the person's name and identifies him or her as a pharmacy technician trainee.

(C) Pharmacist interns. All pharmacist interns shall wear an identification tag or badge that bears the person's name and identifies him or her as a pharmacist intern.

(D) Pharmacists. All pharmacists shall wear an identification tag or badge that bears the person's name and identifies him or her as a pharmacist.

(d) Operational standards.

(1) Licensing requirements.

(A) An ASC pharmacy shall register annually 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).

(B) If the ASC pharmacy is owned or operated by a pharmacy management or consulting firm, the following conditions apply.

(i) The pharmacy license application shall list the pharmacy management or consulting firm as the owner or operator.

(ii) The pharmacy management or consulting firm shall obtain DEA and DPS controlled substances registrations that are issued in the name of the firm, unless the following occur:

(I) the pharmacy 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 pharmacy management or consulting firm maintains dual responsibility for the controlled substances.

(C) An ASC 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).

(D) An ASC pharmacy which changes location and/or name shall notify the board of the change within 10 days and file for an amended license as specified in §291.3 of this title.

(E) An ASC 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.

(F) An ASC 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).

(G) A fee as specified in §291.6 of this title (relating to Pharmacy License Fees) will be charged for issuance and renewal of a license and the issuance of an amended license.

(H) A separate license is required for each principal place of business and only one pharmacy license may be issued to a specific location.

(I) An ASC pharmacy, licensed under the Act, §560.051(a)(3), concerning institutional pharmacy (Class C), which also operates another type of pharmacy which would otherwise be required to be licensed under the Act, §560.051(a)(1), concerning community pharmacy (Class A), or the Act, §560.051(a)(2), concerning nuclear pharmacy (Class B), is not required to secure a license for the other type of pharmacy; provided, however, such license 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), 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.

(J) An ASC pharmacy engaged in the compounding of non-sterile preparations shall comply with the provisions of §291.131 of this title.

(K) An ASC pharmacy engaged in the compounding of sterile preparations shall comply with the provisions of §291.133 of this title.

(L) An ASC 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).

(M) An ASC 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 Centralized Prescription Drug or Medication Order Processing) and/or §291.125 of this title (relating to Centralized Prescription Dispensing).

(2) Environment.

(A) General requirements.

(i) Each ambulatory surgical center shall have a designated work area separate from patient areas, and which shall have space adequate for the size and scope of pharmaceutical services and shall have adequate space and security for the storage of drugs.

(ii) The ASC pharmacy shall be arranged in an orderly fashion and shall be kept clean. All required equipment shall be clean and in good operating condition.

(B) Special requirements.

(i) The ASC pharmacy shall have locked storage for Schedule II controlled substances and other controlled drugs requiring additional security.

(ii) The ASC pharmacy shall have a designated area for the storage of poisons and externals separate from drug storage areas.

(C) Security.

(i) Only authorized personnel may have access to storage areas for prescription drugs and/or devices.

(ii) All storage areas for prescription drugs and/or devices shall be locked by key or combination, so as to prevent access by unauthorized personnel.

(iii) The pharmacist-in-charge shall consult with ASC personnel with respect to security of the drug storage areas,

including provisions for adequate safeguards against theft or diversion of prescription drugs and/or devices.

(3) Equipment and supplies. Ambulatory surgical centers supplying drugs for postoperative use shall have the following equipment and supplies:

(A) data processing system including a printer or comparable equipment;

(B) adequate supply of child-resistant, moisture-proof, and light-proof containers; and

(C) adequate supply of prescription labels and other applicable identification labels;

(4) 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:

(A) current copies of the following:

(i) Texas Pharmacy Act and rules;

(ii) Texas Dangerous Drug Act and rules;

(iii) Texas Controlled Substances Act and rules;

(iv) Federal Controlled Substances Act and rules or official publication describing the requirements of the Federal Controlled Substances Act and rules;

(B) at least one current or updated reference from each of the following categories:

(i) 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;

(ii) General information. 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;

(C) a current or updated reference on injectable drug products, such as Handbook of Injectable Drugs;

(D) basic antidote information and the telephone number of the nearest regional poison control center;

(E) if the pharmacy compounds sterile preparations, specialty references appropriate for the scope of services provided by the pharmacy, e.g., if the pharmacy prepares cytotoxic drugs, a reference text on the preparation of cytotoxic drugs, such as Procedures for Handling Cytotoxic Drugs; and

(F) metric-apothecary weight and measure conversion charts.

(5) Drugs.

(A) Procurement, preparation, and storage.

(i) 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.

(ii) The pharmacist-in-charge shall have the responsibility for determining specifications of all drugs procured by the facility.

(iii) ASC pharmacies may not sell, purchase, trade, or possess prescription drug samples, unless the pharmacy meets the requirements as specified in §291.16 of this title (relating to Samples).

(iv) 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.)

(v) Any drug bearing an expiration date may not be dispensed or distributed beyond the expiration date of the drug.

(vi) Outdated drugs shall be removed from dispensing stock and shall be quarantined together until such drugs are disposed of.

(B) Formulary.

(i) A formulary may be developed by an appropriate committee of the ambulatory surgical center.

(ii) The pharmacist-in-charge or consultant pharmacist shall be a full voting member of any committee which involves pharmaceutical services.

(C) Prepackaging of drugs and loading of bulk unlabeled drugs into automated drug dispensing system.

(i) Prepackaging of drugs.

(I) Drugs may be prepackaged in quantities suitable for internal distribution only 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:

(-a-) brand name and strength of the drug; or if no brand name, then the generic name, strength, and name of the manufacturer or distributor;

(-b-) facility's lot number;

(-c-) expiration date; and

(-d-) quantity of the drug, if quantity is greater than one.

(III) Records of prepackaging shall be maintained to show:

(-a-) the name of the drug, strength, and dosage form;

(-b-) facility's lot number;

(-c-) manufacturer or distributor;

(-d-) manufacturer's lot number;

(-e-) expiration date;

(-f-) quantity per prepackaged unit;

(-g-) number of prepackaged units;

(-h-) date packaged;

(-i-) name, initials, or electronic signature of the packer; and

(-j-) signature or electronic signature of the responsible pharmacist.

(IV) Stock packages, repackaged units, and control records shall be quarantined together until checked/released by the pharmacist.

(ii) Loading bulk unlabeled drugs into automated drug dispensing systems.

(I) Automated drug dispensing systems may be loaded with bulk unlabeled drugs only by a pharmacist or by pharmacy technicians or pharmacy technician trainees under the direction and direct supervision of a pharmacist.

(II) The label of an automated drug dispensing system 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.

(III) Records of loading bulk unlabeled drugs into an automated drug dispensing system shall be maintained to show:

(-a-) name of the drug, strength, and dosage form;

(-b-) manufacturer or distributor;

(-c-) manufacturer's lot number;

(-d-) expiration date;

(-e-) date of loading;

(-f-) name, initials, or electronic signature of the person loading the automated drug dispensing system; and

(-g-) signature or electronic signature of the responsible pharmacist.

(IV) The automated drug dispensing system shall not be used until a pharmacist verifies that the system is properly loaded and affixes his or her signature or electronic signature to the record specified in subclause (III) of this clause.

(6) Medication orders.

(A) Drugs may be administered to patients in ASCs only on the order of a practitioner. No change in the order for drugs may be made without the approval of a practitioner.

(B) Drugs may be distributed only pursuant to the original or a direct copy of the practitioner's medication order.

(C) Pharmacy technicians and pharmacy technician trainees may not receive oral medication orders.

(D) ASC 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.

(E) In ASCs 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 of a patient may be removed from the ASC 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 the patient;

(II) name of device or drug, strength, and dosage form;

(III) dose prescribed;

- (IV) quantity taken;
- (V) time and date; and
- (VI) signature or electronic signature of person making withdrawal.

(iv) The original or direct copy of the medication order may substitute for such record, provided the medication order meets all the requirements of clause (iii) of this subparagraph.

(v) The pharmacist shall verify the withdrawal as soon as practical, but in no event more than 72 hours from the time of such withdrawal.

(F) In ASCs with a part-time or consultant pharmacist, if a practitioner orders a drug for administration to a bona fide patient of the ASC 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 ASC 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 (E)(iii) of this paragraph.

(iv) The pharmacist shall verify each distribution after a reasonable interval, but in no event may such interval exceed seven days.

(7) Floor stock. In facilities using a floor stock method of drug distribution, the following is applicable for removing drugs or devices in the absence of a pharmacist.

(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 or electronic signature of person making the withdrawal.

(D) A pharmacist shall verify the withdrawal according to the following schedule.

(i) In facilities with a full-time pharmacist, the withdrawal shall be verified as soon as practical, but in no event more than 72 hours from the time of such withdrawal.

(ii) In facilities with a part-time or consultant pharmacist, the withdrawal shall be verified after a reasonable interval, but in no event may such interval exceed seven days.

(8) Policies and procedures. Written policies and procedures for a drug distribution system, appropriate for the ambulatory

surgical center, shall be developed and implemented by the pharmacist-in-charge with the advice of the appropriate committee. The written policies and procedures for the drug distribution system shall include, but not be limited to, procedures regarding the following:

- (A) controlled substances;
- (B) investigational drugs;
- (C) prepackaging and manufacturing;
- (D) medication errors;
- (E) orders of physician or other practitioner;
- (F) floor stocks;
- (G) adverse drug reactions;
- (H) drugs brought into the facility by the patient;
- (I) self-administration;
- (J) emergency drug tray;
- (K) formulary, if applicable;
- (L) drug storage areas;
- (M) drug samples;
- (N) drug product defect reports;
- (O) drug recalls;
- (P) outdated drugs;
- (Q) preparation and distribution of IV admixtures;
- (R) procedures for supplying drugs for postoperative use, if applicable;
- (S) use of automated drug dispensing systems; and
- (T) use of data processing systems.

(9) Drugs supplied for postoperative use. Drugs supplied to patients for postoperative use shall be supplied according to the following procedures.

(A) Drugs may only be supplied to patients who have been admitted to the ambulatory surgical center.

(B) Drugs may only be supplied in accordance with the system of control and accountability established for drugs supplied from the ambulatory surgical center; such system shall be developed and supervised by the pharmacist-in-charge or staff pharmacist designated by the pharmacist-in-charge.

(C) Only drugs listed on the approved postoperative drug list may be supplied; such list shall be developed by the pharmacist-in-charge and the medical staff and shall consist of drugs of the nature and type to meet the immediate postoperative needs of the ambulatory surgical center patient.

(D) Drugs may only be supplied in prepackaged quantities not to exceed a 72-hour supply in suitable containers and appropriately pre-labeled (including necessary auxiliary labels) by the pharmacy, provided, however that topicals and ophthalmics in original manufacturer's containers may be supplied in a quantity exceeding a 72-hour supply.

(E) At the time of delivery of the drug, the practitioner shall complete the label, such that the prescription container bears a label with at least the following information:

- (i) date supplied;

(ii) name of practitioner;

(iii) name of patient;

(iv) directions for use;

(v) brand name and strength of the drug; or if no brand name, then the generic name of the drug dispensed, strength, and the name of the manufacturer or distributor of the drug; and

(vi) unique identification number.

(F) After the drug has been labeled by the practitioner, the practitioner or a licensed nurse under the supervision of the practitioner shall give the appropriately labeled, prepackaged medication to the patient.

(G) A perpetual record of drugs which are supplied from the ASC shall be maintained which includes:

(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 drug; or if no brand name, then the generic name of the drug dispensed, strength, and the name of the manufacturer or distributor of the drug; and

(vii) unique identification number.

(H) The pharmacist-in-charge, or a pharmacist designated by the pharmacist-in-charge, shall review the records at least once every seven days.

(e) Records.

(1) Maintenance of records.

(A) Every inventory or other record required to be kept under the provisions of this section (relating to Institutional Pharmacy (Class C)) shall be:

(i) kept by the pharmacy and be available, for at least two years from the date of such inventory or record, for inspecting and copying by the board or its representative, and other authorized local, state, or federal law enforcement agencies; and

(ii) supplied by the pharmacy within 72 hours, if requested by an authorized agent of the Texas State Board of Pharmacy. If the pharmacy maintains the records in an electronic format, the requested records must be provided in a mutually agreeable electronic format if specifically requested by the board or its representative. Failure to provide the records set out in this subsection, either on site or within 72 hours, constitutes prima facie evidence of failure to keep and maintain records in violation of the Act.

(B) Records of controlled substances listed in Schedules I and II shall be maintained separately from all other records of the pharmacy.

(C) Records of controlled substances listed in Schedules III - V shall be maintained separately or readily retrievable from all other records of the pharmacy. For purposes of this subsection, readily retrievable means that the controlled substances shall be asterisked, red-lined, or in some other manner readily identifiable apart from all other items appearing on the record.

(D) Records, except when specifically required to be maintained in original or hard-copy form, may be maintained in an

alternative data retention system, such as a data processing or direct imaging system, e.g., microfilm or microfiche, provided:

(i) the records in the alternative data retention system contain all of the information required on the manual record; and

(ii) the alternative data retention system is capable of producing a hard copy of the record upon the request of the board, its representative, or other authorized local, state, or federal law enforcement or regulatory agencies.

(2) Outpatient records.

(A) Only a registered pharmacist may receive, certify, and receive prescription drug orders.

(B) Outpatient records shall be maintained as provided in §291.34 and §291.35 of this title contained in Community Pharmacy (Class A).

(C) Outpatient prescriptions, including, but not limited to, discharge prescriptions, that are written by the practitioner, must be written on a form which meets the requirements of the Act, §562.006. Medication order forms or copies thereof do not meet the requirements for outpatient forms.

(D) Controlled substances listed in Schedule II must be written on an electronic prescription form in accordance with the Texas Controlled Substances Act, §481.075, and rules promulgated pursuant to the Texas Controlled Substances Act, unless exempted by the Texas Controlled Substances Rules, 37 TAC §13.74. Outpatient prescriptions for Schedule II controlled substances that are exempted from the official prescription requirement must be manually signed by the practitioner.

(3) Patient records.

(A) Each original medication order or set of orders issued together shall bear the following information:

(i) patient name;

(ii) drug name, strength, and dosage form;

(iii) directions for use;

(iv) date; and

(v) signature or electronic signature of the practitioner or that of his or her authorized agent, defined as a licensed nurse employee or consultant/full or part-time pharmacist of the ASC.

(B) Original medication orders shall be maintained with the medication administration record in the medical records of the patient.

(C) Controlled substances records shall be maintained as follows.

(i) All records for controlled substances shall be maintained in a readily retrievable manner.

(ii) Controlled substances records shall be maintained in a manner to establish receipt and distribution of all controlled substances.

(D) Records of controlled substances listed in Schedule II shall be maintained as follows.

(i) Records of controlled substances listed in Schedule II shall be maintained separately from records of controlled substances in Schedules III, IV, and V, and all other records.

(ii) An ASC pharmacy shall maintain a perpetual inventory of any controlled substance listed in Schedule II.

(iii) Distribution records for Schedule II - V controlled substances floor stock shall include the following information:

- (I) patient's name;
- (II) practitioner who ordered drug;
- (III) name of drug, dosage form, and strength;
- (IV) time and date of administration to patient and quantity administered;
- (V) signature or electronic signature of individual administering controlled substance;
- (VI) returns to the pharmacy; and
- (VII) waste (waste is required to be witnessed and cosigned, manually or electronically, by another individual).

(E) Floor stock records shall be maintained as follows.

(i) Distribution records for Schedules III - V controlled substances floor stock shall include the following information:

- (I) patient's name;
- (II) practitioner who ordered controlled substance;
- (III) name of controlled substance, dosage form, and strength;
- (IV) time and date of administration to patient;
- (V) quantity administered;
- (VI) signature or electronic signature of individual administering drug;
- (VII) returns to the pharmacy; and
- (VIII) waste (waste is required to be witnessed and cosigned, manually or electronically, by another individual).

(ii) The record required by clause (i) of this subparagraph shall be maintained separately from patient records.

(iii) A pharmacist shall review distribution records with medication orders on a periodic basis to verify proper usage of drugs, not to exceed 30 days between such reviews.

(F) General requirements for records maintained in a data processing system are as follows.

(i) If an ASC pharmacy's data processing system is not in compliance with the board's requirements, the pharmacy must maintain a manual recordkeeping system.

(ii) Requirements for backup systems. The facility shall maintain a backup copy of information stored in the data processing system using disk, tape, or other electronic backup system and update this backup copy on a regular basis to assure that data is not lost due to system failure.

(iii) Change or discontinuance of a data processing system.

(I) Records of distribution and return for all controlled substances, nalbuphine (Nubain), and carisoprodol (Soma). A pharmacy that changes or discontinues use of a data processing system must:

- (-a-) transfer the records to the new data processing system; or
- (-b-) purge the records to a printout which contains the same information as required on the audit trail printout as

specified in subparagraph (G)(ii) of this paragraph. The information on this printout shall be sorted and printed by drug name and list all distributions/returns chronologically.

(II) Other records. A pharmacy that changes or discontinues use of a data processing system must:

(-a-) transfer the records to the new data processing system; or

(-b-) purge the records to a printout which contains all of the information required on the original document.

(III) Maintenance of purged records. Information purged from a data processing system must be maintained by the pharmacy for two years from the date of initial entry into the data processing system.

(iv) Loss of data. The pharmacist-in-charge shall report to the board in writing any significant loss of information from the data processing system within 10 days of discovery of the loss.

(G) Data processing system maintenance of records for the distribution and return of all controlled substances, nalbuphine (Nubain), or carisoprodol (Soma) to the pharmacy.

(i) Each time a controlled substance, nalbuphine (Nubain), or carisoprodol (Soma) is distributed from or returned to the pharmacy, a record of such distribution or return shall be entered into the data processing system.

(ii) The data processing system shall have the capacity to produce a hard-copy printout of an audit trail of drug distribution and return for any strength and dosage form of a drug (by either brand or generic name or both) during a specified time period. This printout shall contain the following information:

(I) patient's name and room number or patient's facility identification number;

(II) prescribing or attending practitioner's name;

(III) name, strength, and dosage form of the drug product actually distributed;

(IV) total quantity distributed from and returned to the pharmacy;

(V) if not immediately retrievable via electronic image, the following shall also be included on the printout:

(-a-) prescribing or attending practitioner's address; and

(-b-) practitioner's DEA registration number, if the medication order is for a controlled substance.

(iii) An audit trail printout for each strength and dosage form of these drugs distributed during the preceding month shall be produced at least monthly and shall be maintained in a separate file at the facility. The information on this printout shall be sorted by drug name and list all distributions/returns for that drug chronologically.

(iv) The pharmacy may elect not to produce the monthly audit trail printout if the data processing system has a workable (electronic) data retention system which can produce an audit trail of drug distribution and returns for the preceding two years. The audit trail required in this clause shall be supplied by the pharmacy within 72 hours, if requested by an authorized agent of the Texas State Board of Pharmacy, or other authorized local, state, or federal law enforcement or regulatory agencies.

(H) Failure to maintain records. Failure to provide records set out in this subsection, either on site or within 72 hours for

whatever reason, constitutes prima facie evidence of failure to keep and maintain records.

(I) Data processing system downtime. In the event that an ASC pharmacy which uses a data processing system experiences system downtime, the pharmacy must have an auxiliary procedure which will ensure that all data is retained for on-line data entry as soon as the system is available for use again.

(4) Distribution of controlled substances to another registrant. A pharmacy may distribute controlled substances to a practitioner, another pharmacy, or other registrant, without being registered to distribute, under the following conditions.

(A) The registrant to whom the controlled substance is to be distributed is registered under the Controlled Substances Act to dispense that controlled substance.

(B) The total number of dosage units of controlled substances distributed by a pharmacy may not exceed 5.0% of all controlled substances dispensed by the pharmacy during the 12-month period in which the pharmacy is registered; if at any time it does exceed 5.0%, the pharmacy is required to obtain an additional registration to distribute controlled substances.

(C) If the distribution is for a Schedule III, IV, or V controlled substance, a record shall be maintained which indicates:

(i) the actual date of distribution;

(ii) the name, strength, and quantity of controlled substances distributed;

(iii) the name, address, and DEA registration number of the distributing pharmacy; and

(iv) the name, address, and DEA registration number of the pharmacy, practitioner, or other registrant to whom the controlled substances are distributed.

(D) If the distribution is for a Schedule I or II controlled substance, the following is applicable.

(i) The pharmacy, practitioner, or other registrant who is receiving the controlled substances shall issue Copy 1 and Copy 2 of a DEA order form (DEA 222C) to the distributing pharmacy.

(ii) The distributing pharmacy shall:

(I) complete the area on the DEA order form (DEA 222C) titled "To Be Filled in by Supplier";

(II) maintain Copy 1 of the DEA order form (DEA 222C) at the pharmacy for two years; and

(III) forward Copy 2 of the DEA order form (DEA 222C) to the divisional office of the Drug Enforcement Administration.

(5) Other records. Other records to be maintained by the pharmacy include:

(A) a permanent log of the initials or identification codes which will identify each pharmacist by name. The initials or identification code shall be unique to ensure that each pharmacist can be identified, i.e., identical initials or identification codes cannot be used;

(B) Copy 3 of DEA order form (DEA 222C), which has been properly dated, initialed, and filed, and all copies of each unaccepted or defective order form and any attached statements or other documents;

(C) a hard copy of the power of attorney to sign DEA 222C order forms (if applicable);

(D) suppliers' invoices of dangerous drugs and controlled substances; a pharmacist shall verify that the controlled drugs listed on the invoices were actually received by clearly recording his/her initials and the actual date of receipt of the controlled substances;

(E) supplier's credit memos for controlled substances and dangerous drugs;

(F) a hard copy of inventories required by §291.17 of this title (relating to Inventory Requirements) except that a perpetual inventory of controlled substances listed in Schedule II may be kept in a data processing system if the data processing system is capable of producing a hard copy of the perpetual inventory on-site;

(G) hard-copy reports of surrender or destruction of controlled substances and/or dangerous drugs to an appropriate state or federal agency;

(H) a hard-copy Schedule V nonprescription register book;

(I) records of distribution of controlled substances and/or dangerous drugs to other pharmacies, practitioners, or registrants; and

(J) a hard copy of any notification required by the Texas Pharmacy Act or these rules, including, but not limited to, the following:

(i) reports of theft or significant loss of controlled substances to DEA, DPS, and the board;

(ii) notification of a change in pharmacist-in-charge of a pharmacy; and

(iii) reports of a fire or other disaster which may affect the strength, purity, or labeling of drugs, medications, devices, or other materials used in the diagnosis or treatment of injury, illness, and disease.

(6) Permission to maintain central records. Any pharmacy that uses a centralized recordkeeping system for invoices and financial data shall comply with the following procedures.

(A) Controlled substance records. Invoices and financial data for controlled substances may be maintained at a central location provided the following conditions are met.

(i) Prior to the initiation of central recordkeeping, the pharmacy submits written notification by registered or certified mail to the divisional director of the Drug Enforcement Administration as required by the Code of Federal Regulations, Title 21, §1304(a), and submits a copy of this written notification to the Texas State Board of Pharmacy. Unless the registrant is informed by the divisional director of the Drug Enforcement Administration that permission to keep central records is denied, the pharmacy may maintain central records commencing 14 days after receipt of notification by the divisional director.

(ii) The pharmacy maintains a copy of the notification required in this subparagraph.

(iii) The records to be maintained at the central record location shall not include executed DEA order forms, prescription drug orders, or controlled substance inventories, which shall be maintained at the pharmacy.

(B) Dangerous drug records. Invoices and financial data for dangerous drugs may be maintained at a central location.

(C) Access to records. If the records are kept on microfilm, computer media, or in any form requiring special equipment to render the records easily readable, the pharmacy shall provide access to such equipment with the records.

(D) Delivery of records. The pharmacy agrees to deliver all or any part of such records to the pharmacy location within two business days of written request of a board agent or any other authorized official.

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

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SUBCHAPTER H. OTHER CLASSES OF PHARMACY

22 TAC §291.151

The Texas State Board of Pharmacy adopts amendments to §291.151, concerning Pharmacies Located in a Freestanding Emergency Medical Care Center (Class F). The amendments are adopted with changes to the proposed text as published in the December 24, 2010, issue of the *Texas Register* (35 TexReg 11488). The Board voted to adopt the rule leaving in the word shall and not changing it to must.

The adopted amendments remove the requirements regarding samples from the specific pharmacy classes and move the requirements to new §291.16 under Subchapter A, All Classes of Pharmacy, published elsewhere in this issue of the *Texas Register*.

No comments were received.

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 the amendments: Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§291.151. *Pharmacies Located in a Freestanding Emergency Medical Care Center (Class F).*

(a) Purpose. The purpose of this section is to provide standards in the conduct, practice activities, and operation of a pharmacy located in a freestanding emergency medical care center that is licensed by the Texas Department of State Health Services or in a freestanding emergency medical care center operated by a hospital that is exempt from

registration as provided by §254.052, Health and Safety Code. Class F pharmacies located in a freestanding emergency medical care center shall comply with this section.

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

(1) Act--The Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Occupations Code, as amended.

(2) Automated drug dispensing system--An automated device that measures, counts, and/or packages a specified quantity of dosage units for a designated drug product.

(3) Board--The Texas State Board of Pharmacy.

(4) Consultant pharmacist--A pharmacist retained by a facility on a routine basis to consult with the FEMCC in areas that pertain to the practice of pharmacy.

(5) Controlled substance--A drug, immediate precursor, or other substance listed in Schedules I - V or Penalty Groups 1 - 4 of the Texas Controlled Substances Act, as amended, or a drug immediate precursor, or other substance included in Schedule I - V of the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended (Public Law 91-513).

(6) Direct copy--Electronic copy or carbonized copy of a medication order including a facsimile (FAX) or digital image.

(7) Dispense--Preparing, packaging, compounding, or labeling for delivery a prescription drug or device in the course of professional practice to an ultimate user or his agent by or pursuant to the lawful order of a practitioner.

(8) Distribute--The delivery of a prescription drug or device other than by administering or dispensing.

(9) Downtime--Period of time during which a data processing system is not operable.

(10) Electronic signature--A unique security code or other identifier which specifically identifies the person entering information into a data processing system. A facility which utilizes electronic signatures must:

(A) maintain a permanent list of the unique security codes assigned to persons authorized to use the data processing system; and

(B) have an ongoing security program which is capable of identifying misuse and/or unauthorized use of electronic signatures.

(11) Floor stock--Prescription drugs or devices not labeled for a specific patient and maintained at a nursing station or other FEMCC department (excluding the pharmacy) for the purpose of administration to a patient of the FEMCC.

(12) Formulary--List of drugs approved for use in the FEMCC by an appropriate committee of the freestanding emergency medical care center.

(13) Freestanding emergency medical care center (FEMCC)--A freestanding facility that is licensed by the Texas Department of State Health Services pursuant to Chapter 254, Health and Safety Code, to provide emergency care to patients.

(14) Hard copy--A physical document that is readable without the use of a special device (i.e., data processing system, computer, etc.).

(15) Investigational new drug--New drug intended for investigational use by experts qualified to evaluate the safety and effectiveness of the drug as authorized by the federal Food and Drug Administration.

(16) Medication order--A written order from a practitioner or a verbal order from a practitioner or his authorized agent for administration of a drug or device.

(17) Pharmacist-in-charge--Pharmacist designated on a pharmacy license as the pharmacist who has the authority or responsibility for a pharmacy's compliance with laws and rules pertaining to the practice of pharmacy.

(18) Pharmacy--Area or areas in a facility, separate from patient care areas, where drugs are stored, bulk compounded, delivered, compounded, dispensed, and/or distributed to other areas or departments of the FEMCC, or dispensed to an ultimate user or his or her agent.

(19) Prescription drug--

(A) A substance for which federal or state law requires a prescription before it may be legally dispensed to the public;

(B) A drug or device that under federal law is required, prior to being dispensed or delivered, to be labeled with either of the following statements:

(i) Caution: federal law prohibits dispensing without prescription or "Rx only" or another legend that complies with federal law; or

(ii) Caution: federal law restricts this drug to use by or on order of a licensed veterinarian; or

(C) A drug or device that is required by any applicable federal or state law or regulation to be dispensed on prescription only or is restricted to use by a practitioner only.

(20) Prescription drug order--

(A) A written order from a practitioner or verbal order from a practitioner or his authorized agent to a pharmacist for a drug or device to be dispensed; or

(B) A written order or a verbal order pursuant to Subtitle B, Chapter 157, Occupations Code.

(21) Full-time pharmacist--A pharmacist who works in a pharmacy from 30 to 40 hours per week or if the pharmacy is open less than 60 hours per week, one-half of the time the pharmacy is open.

(22) Part-time pharmacist--A pharmacist who works less than full-time.

(23) Pharmacy technician--An individual who is registered with the board as a pharmacy technician and whose responsibility in a pharmacy is to provide technical services that do not require professional judgment regarding preparing and distributing drugs and who works under the direct supervision of and is responsible to a pharmacist.

(24) Pharmacy technician trainee--An individual who is registered with the board as a pharmacy technician trainee and is authorized to participate in a pharmacy's technician training program.

(25) Texas Controlled Substances Act--The Texas Controlled Substances Act, the Health and Safety Code, Chapter 481, as amended.

(c) Personnel.

(1) Pharmacist-in-charge.

(A) General. Each freestanding emergency medical care center shall have one pharmacist-in-charge who is employed or under contract, at least on a consulting or part-time basis, but may be employed on a full-time basis.

(B) Responsibilities. The pharmacist-in-charge shall have the responsibility for, at a minimum, the following:

(i) establishment of specifications for procurement and storage of all materials, including drugs, chemicals, and biologicals;

(ii) participation in the development of a formulary for the FEMCC, subject to approval of the appropriate committee of the FEMCC;

(iii) distribution of drugs to be administered to patients pursuant to an original or direct copy of the practitioner's medication order;

(iv) filling and labeling all containers from which drugs are to be distributed or dispensed;

(v) maintaining and making available a sufficient inventory of antidotes and other emergency drugs, both in the pharmacy and patient care areas, as well as current antidote information, telephone numbers of regional poison control center and other emergency assistance organizations, and such other materials and information as may be deemed necessary by the appropriate committee of the FEMCC;

(vi) records of all transactions of the FEMCC pharmacy as may be required by applicable state and federal law, and as may be necessary to maintain accurate control over and accountability for all pharmaceutical materials;

(vii) participation in those aspects of the FEMCC's patient care evaluation program which relate to pharmaceutical material utilization and effectiveness;

(viii) participation in teaching and/or research programs in the FEMCC;

(ix) implementation of the policies and decisions of the appropriate committee(s) relating to pharmaceutical services of the FEMCC;

(x) effective and efficient messenger and delivery service to connect the FEMCC pharmacy with appropriate areas of the FEMCC on a regular basis throughout the normal workday of the FEMCC;

(xi) labeling, storage, and distribution of investigational new drugs, including maintenance of information in the pharmacy and nursing station where such drugs are being administered, concerning the dosage form, route of administration, strength, actions, uses, side effects, adverse effects, interactions, and symptoms of toxicity of investigational new drugs;

(xii) meeting all inspection and other requirements of the Texas Pharmacy Act and this section; and

(xiii) maintenance of records in a data processing system such that the data processing system is in compliance with the requirements for a FEMCC.

(2) Consultant pharmacist.

(A) The consultant pharmacist may be the pharmacist-in-charge.

(B) A written contract shall exist between the FEMCC and any consultant pharmacist, and a copy of the written contract shall be made available to the board upon request.

(3) Pharmacists.

(A) General.

(i) The pharmacist-in-charge shall be assisted by a sufficient number of additional licensed pharmacists as may be required to operate the FEMCC pharmacy competently, safely, and adequately to meet the needs of the patients of the facility.

(ii) All pharmacists shall assist the pharmacist-in-charge in meeting the responsibilities as outlined in paragraph (1)(B) of this subsection and in ordering, administering, and accounting for pharmaceutical materials.

(iii) All pharmacists shall be responsible for any delegated act performed by pharmacy technicians or pharmacy technician trainees under his or her supervision.

(iv) All pharmacists while on duty shall be responsible for complying with all state and federal laws or rules governing the practice of pharmacy.

(B) Duties. Duties of the pharmacist-in-charge and all other pharmacists shall include, but need not be limited to, the following:

(i) receiving and interpreting prescription drug orders and oral medication orders and reducing these orders to writing either manually or electronically;

(ii) selection of prescription drugs and/or devices and/or suppliers; and

(iii) interpreting patient profiles.

(C) Special requirements for compounding.

(i) Non-Sterile Preparations. All pharmacists engaged in compounding non-sterile preparations shall meet the training requirements specified in §291.131 of this title (relating to Pharmacies Compounding Non-Sterile Preparations).

(ii) Sterile Preparations. All pharmacists engaged in compounding sterile preparations shall meet the training requirements specified in §291.133 of this title (relating to Pharmacies Compounding Sterile Preparations).

(4) Pharmacy technicians and pharmacy technician trainees.

(A) General. All pharmacy technicians and pharmacy technician trainees shall meet the training requirements specified in §297.6 of this title (relating to Pharmacy Technician and Pharmacy Technician Trainee Training).

(B) Duties. Duties may include, but need not be limited to, the following functions, under the direct supervision of a pharmacist:

(i) prepacking and labeling unit and multiple dose packages, provided a pharmacist supervises and conducts a final check and affixes his or her name, initials, electronic signature to the appropriate quality control records prior to distribution;

(ii) preparing, packaging, compounding, or labeling prescription drugs pursuant to medication orders, provided a pharmacist supervises and checks the preparation;

(iii) compounding non-sterile preparations pursuant to medication orders provided the pharmacy technicians or pharmacy

technician trainees have completed the training specified in §291.131 of this title;

(iv) compounding sterile preparations pursuant to medication orders provided the pharmacy technicians or pharmacy technician trainees:

(I) have completed the training specified in §291.133 of this title; and

(II) are supervised by a pharmacist who has completed the sterile preparations training specified in §291.133 of this title, conducts in-process and final checks, and affixes his or her name, initials, or electronic signature to the label or if batch prepared to the appropriate quality control records. (The name, initials, or electronic signature are not required on the label if it is maintained in a permanent record of the pharmacy.)

(v) bulk compounding, provided a pharmacist supervises and conducts in-process and final checks and affixes his or her name, initials, or electronic signature to the appropriate quality control records prior to distribution;

(vi) distributing routine orders for stock supplies to patient care areas;

(vii) entering medication order and drug distribution information into a data processing system, provided judgmental decisions are not required and a pharmacist checks the accuracy of the information entered into the system prior to releasing the order or in compliance with the absence of pharmacist requirements contained in subsection (d)(6)(E) and (F) of this section;

(viii) maintaining inventories of drug supplies;

(ix) maintaining pharmacy records; and

(x) loading bulk unlabeled drugs into an automated drug dispensing system provided a pharmacist supervises, verifies that the system was properly loaded prior to use, and affixes his or her name, initials or electronic signature to the appropriate quality control records.

(C) Procedures.

(i) Pharmacy technicians and pharmacy technician trainees shall handle medication orders in accordance with standard written procedures and guidelines.

(ii) Pharmacy technicians and pharmacy technician trainees shall handle prescription drug orders in the same manner as pharmacy technicians or pharmacy technician trainees working in a Class A pharmacy.

(D) Special requirements for compounding.

(i) Non-Sterile Preparations. All pharmacy technicians and pharmacy technician trainees engaged in compounding non-sterile preparations shall meet the training requirements specified in §291.131 of this title.

(ii) Sterile Preparations. All pharmacy technicians and pharmacy technician trainees engaged in compounding sterile preparations shall meet the training requirements specified in §291.133 of this title.

(5) Owner. The owner of a FEMCC pharmacy shall have responsibility for all administrative and operational functions of the pharmacy. The pharmacist-in-charge may advise the owner on administrative and operational concerns. The owner shall have responsibility for, at a minimum, the following, and if the owner is not a Texas licensed pharmacist, the owner shall consult with the pharmacist-in-charge or another Texas licensed pharmacist:

(A) establishment of policies for procurement of prescription drugs and devices and other products dispensed from the FEMCC pharmacy;

(B) establishment and maintenance of effective controls against the theft or diversion of prescription drugs;

(C) if the pharmacy uses an automated pharmacy dispensing system, reviewing and approving all policies and procedures for system operation, safety, security, accuracy and access, patient confidentiality, prevention of unauthorized access, and malfunction;

(D) providing the pharmacy with the necessary equipment and resources commensurate with its level and type of practice; and

(E) establishment of policies and procedures regarding maintenance, storage, and retrieval of records in a data processing system such that the system is in compliance with state and federal requirements.

(6) Identification of pharmacy personnel. All pharmacy personnel shall be identified as follows:

(A) Pharmacy technicians. All pharmacy technicians shall wear an identification tag or badge that bears the person's name and identifies him or her as a pharmacy technician trainee a registered pharmacy technician, or a certified pharmacy technician, if the technician maintains current certification with the Pharmacy Technician Certification Board or any other entity providing an examination approved by the board.

(B) Pharmacy technician trainees. All pharmacy technician trainees shall wear an identification tag or badge that bears the person's name and identifies him or her as a pharmacy technician trainee.

(C) Pharmacist interns. All pharmacist interns shall wear an identification tag or badge that bears the person's name and identifies him or her as a pharmacist intern.

(D) Pharmacists. All pharmacists shall wear an identification tag or badge that bears the person's name and identifies him or her as a pharmacist.

(d) Operational standards.

(1) Licensing requirements.

(A) A FEMCC 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).

(B) If the FEMCC pharmacy is owned or operated by a pharmacy management or consulting firm, the following conditions apply.

(i) The pharmacy license application shall list the pharmacy management or consulting firm as the owner or operator.

(ii) The pharmacy management or consulting firm shall obtain DEA and DPS controlled substances registrations that are issued in the name of the firm, unless the following occur:

(I) the pharmacy 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 pharmacy management or consulting firm maintains dual responsibility for the controlled substances.

(C) A FEMCC 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).

(D) A FEMCC pharmacy which changes location and/or name shall notify the board of the change within 10 days and file for an amended license as specified in §291.3 of this title.

(E) A FEMCC 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.

(F) A FEMCC 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).

(G) A fee as specified in §291.6 of this title (relating to Pharmacy License Fees) will be charged for issuance and renewal of a license and the issuance of an amended license.

(H) A separate license is required for each principal place of business and only one pharmacy license may be issued to a specific location.

(I) A FEMCC pharmacy engaged in the compounding of non-sterile preparations shall comply with the provisions of §291.131 of this title.

(J) A FEMCC pharmacy engaged in the compounding of sterile preparations shall comply with the provisions of §291.133 of this title.

(2) Environment.

(A) General requirements.

(i) Each freestanding emergency medical care center shall have a designated work area separate from patient areas, and which shall have space adequate for the size and scope of pharmaceutical services and shall have adequate space and security for the storage of drugs.

(ii) The FEMCC pharmacy shall be arranged in an orderly fashion and shall be kept clean. All required equipment shall be clean and in good operating condition.

(B) Special requirements.

(i) The FEMCC pharmacy shall have locked storage for Schedule II controlled substances and other controlled drugs requiring additional security.

(ii) The FEMCC pharmacy shall have a designated area for the storage of poisons and externals separate from drug storage areas.

(C) Security.

(i) Only authorized personnel may have access to storage areas for prescription drugs and/or devices.

(ii) All storage areas for prescription drugs and/or devices shall be locked by key, combination or other mechanical or electronic means, so as to prohibit unauthorized access.

(iii) The pharmacist-in-charge shall consult with FEMCC personnel with respect to security of the drug storage areas, including provisions for adequate safeguards against theft or diversion of prescription drugs and/or devices.

(3) Equipment and supplies. Freestanding emergency medical care centers supplying drugs for outpatient use shall have the following equipment and supplies:

(A) data processing system including a printer or comparable equipment;

(B) adequate supply of child-resistant, moisture-proof, and light-proof containers; and

(C) adequate supply of prescription labels and other applicable identification labels.

(4) 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:

(A) current copies of the following:

(i) Texas Pharmacy Act and rules;

(ii) Texas Dangerous Drug Act and rules;

(iii) Texas Controlled Substances Act and rules; and

(iv) Federal Controlled Substances Act and rules or official publication describing the requirements of the Federal Controlled Substances Act and rules;

(B) at least one current or updated reference from each of the following categories:

(i) 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;

(ii) General information. 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;

(C) a current or updated reference on injectable drug products, such as Handbook of Injectable Drugs;

(D) basic antidote information and the telephone number of the nearest regional poison control center;

(E) if the pharmacy compounds sterile preparations, specialty references appropriate for the scope of services provided by the pharmacy, e.g., if the pharmacy prepares cytotoxic drugs, a reference text on the preparation of cytotoxic drugs, such as Procedures for Handling Cytotoxic Drugs; and

(F) metric-apothecary weight and measure conversion charts.

(5) Drugs.

(A) Procurement, preparation, and storage.

(i) 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.

(ii) The pharmacist-in-charge shall have the responsibility for determining specifications of all drugs procured by the facility.

(iii) FEMCC pharmacies may not sell, purchase, trade, or possess prescription drug samples, unless the pharmacy meets the requirements as specified in §291.16 of this title (relating to Samples).

(iv) 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).

(v) Any drug bearing an expiration date may not be dispensed or distributed beyond the expiration date of the drug.

(vi) Outdated drugs shall be removed from dispensing stock and shall be quarantined together until such drugs are disposed of.

(B) Formulary.

(i) A formulary may be developed by an appropriate committee of the freestanding emergency medical center.

(ii) The pharmacist-in-charge or consultant pharmacist shall be a full voting member of any committee which involves pharmaceutical services.

(C) Prepackaging of drugs and loading of bulk unlabeled drugs into automated drug dispensing system.

(i) Prepackaging of drugs.

(I) Drugs may be prepackaged in quantities suitable for internal distribution only 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:

(-a) brand name and strength of the drug; or if no brand name, then the generic name, strength, and name of the manufacturer or distributor;

(-b) facility's lot number;

(-c) expiration date; and

(-d) quantity of the drug, if quantity is greater than one.

(III) Records of prepackaging shall be maintained to show:

(-a) the name of the drug, strength, and dosage form;

(-b) facility's lot number;

(-c) manufacturer or distributor;

(-d) manufacturer's lot number;

(-e) expiration date;

(-f) quantity per prepackaged unit;

(-g) number of prepackaged units;

(-h) date packaged;

(-i) name, initials, or electronic signature of the packer; and

(-j) signature or electronic signature of the responsible pharmacist.

(IV) Stock packages, repackaged units, and control records shall be quarantined together until checked/released by the pharmacist.

(ii) Loading bulk unlabeled drugs into automated drug dispensing systems.

(I) Automated drug dispensing systems may be loaded with bulk unlabeled drugs only by a pharmacist or by pharmacy technicians or pharmacy technician trainees under the direction and direct supervision of a pharmacist.

(II) The label of an automated drug dispensing system 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.

(III) Records of loading bulk unlabeled drugs into an automated drug dispensing system shall be maintained to show:

- (-a-) name of the drug, strength, and dosage form;
- (-b-) manufacturer or distributor;
- (-c-) manufacturer's lot number;
- (-d-) expiration date;
- (-e-) date of loading;
- (-f-) name, initials, or electronic signature of the person loading the automated drug dispensing system; and
- (-g-) signature or electronic signature of the responsible pharmacist.

(IV) The automated drug dispensing system shall not be used until a pharmacist verifies that the system is properly loaded and affixes his or her signature or electronic signature to the record specified in subclause (III) of this clause.

(6) Medication orders.

(A) Drugs may be administered to patients in FEMCCs only on the order of a practitioner. No change in the order for drugs may be made without the approval of a practitioner.

(B) Drugs may be distributed only pursuant to the original or a direct copy of the practitioner's medication order.

(C) Pharmacy technicians and pharmacy technician trainees may not receive oral medication orders.

(D) FEMCC 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.

(E) In FEMCCs 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 of a patient may be removed from the FEMCC 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 the patient;
- (II) name of device or drug, strength, and dosage form;
- (III) dose prescribed;
- (IV) quantity taken;
- (V) time and date; and

(VI) signature or electronic signature of person making withdrawal.

(iv) The original or direct copy of the medication order may substitute for such record, provided the medication order meets all the requirements of clause (iii) of this subparagraph.

(v) The pharmacist shall verify the withdrawal as soon as practical, but in no event more than 72 hours from the time of such withdrawal.

(F) In FEMCCs with a part-time or consultant pharmacist, if a practitioner orders a drug for administration to a bona fide patient of the FEMCC 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 FEMCC 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 (E)(iii) of this paragraph.

(iv) The pharmacist shall verify each distribution after a reasonable interval, but in no event may such interval exceed seven days.

(7) Floor stock. In facilities using a floor stock method of drug distribution, the following is applicable for removing drugs or devices in the absence of a pharmacist.

(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 or electronic signature of person making the withdrawal.

(D) A pharmacist shall verify the withdrawal according to the following schedule.

(i) In facilities with a full-time pharmacist, the withdrawal shall be verified as soon as practical, but in no event more than 72 hours from the time of such withdrawal.

(ii) In facilities with a part-time or consultant pharmacist, the withdrawal shall be verified after a reasonable interval, but in no event may such interval exceed seven days.

(8) Policies and procedures. Written policies and procedures for a drug distribution system, appropriate for the freestanding emergency medical center, shall be developed and implemented by the pharmacist-in-charge with the advice of the appropriate committee. The written policies and procedures for the drug distribution system

shall include, but not be limited to, procedures regarding the following:

- (A) controlled substances;
- (B) investigational drugs;
- (C) prepackaging and manufacturing;
- (D) medication errors;
- (E) orders of physician or other practitioner;
- (F) floor stocks;
- (G) adverse drug reactions;
- (H) drugs brought into the facility by the patient;
- (I) self-administration;
- (J) emergency drug tray;
- (K) formulary, if applicable;
- (L) drug storage areas;
- (M) drug samples;
- (N) drug product defect reports;
- (O) drug recalls;
- (P) outdated drugs;
- (Q) preparation and distribution of IV admixtures;
- (R) procedures for supplying drugs for postoperative use, if applicable;
- (S) use of automated drug dispensing systems; and
- (T) use of data processing systems.

(9) Drugs supplied for outpatient use. Drugs supplied to patients for outpatient use shall be supplied according to the following procedures.

(A) Drugs may only be supplied to patients who have been admitted to the freestanding emergency medical center.

(B) Drugs may only be supplied in accordance with the system of control and accountability established for drugs supplied from the freestanding emergency medical center; such system shall be developed and supervised by the pharmacist-in-charge or staff pharmacist designated by the pharmacist-in-charge.

(C) Only drugs listed on the approved outpatient drug list may be supplied; such list shall be developed by the pharmacist-in-charge and the medical staff and shall consist of drugs of the nature and type to meet the immediate postoperative needs of the freestanding emergency medical center patient.

(D) Drugs may only be supplied in prepackaged quantities not to exceed a 72-hour supply in suitable containers and appropriately pre-labeled (including necessary auxiliary labels) by the pharmacy, provided, however that topicals and ophthalmics in original manufacturer's containers may be supplied in a quantity exceeding a 72-hour supply.

(E) At the time of delivery of the drug, the practitioner shall complete the label, such that the prescription container bears a label with at least the following information:

- (i) date supplied;
- (ii) name of practitioner;
- (iii) name of patient;

(iv) directions for use;

(v) brand name and strength of the drug; or if no brand name, then the generic name of the drug dispensed, strength, and the name of the manufacturer or distributor of the drug; and

(vi) unique identification number.

(F) After the drug has been labeled by the practitioner, the practitioner or a licensed nurse under the supervision of the practitioner shall give the appropriately labeled, prepackaged medication to the patient.

(G) A perpetual record of drugs which are supplied from the FEMCC shall be maintained which includes:

(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 drug; or if no brand name, then the generic name of the drug dispensed, strength, and the name of the manufacturer or distributor of the drug; and

(vii) unique identification number.

(H) The pharmacist-in-charge, or a pharmacist designated by the pharmacist-in-charge, shall review the records at least once every seven days.

(e) Records.

(1) Maintenance of records.

(A) Every inventory or other record required to be kept under the provisions of this section (relating to Freestanding Emergency Medical Care Center) shall be:

(i) kept by the pharmacy and be available, for at least two years from the date of such inventory or record, for inspecting and copying by the board or its representative, and other authorized local, state, or federal law enforcement agencies; and

(ii) supplied by the pharmacy within 72 hours, if requested by an authorized agent of the Texas State Board of Pharmacy. If the pharmacy maintains the records in an electronic format, the requested records must be provided in a mutually agreeable electronic format if specifically requested by the board or its representative. Failure to provide the records set out in this subsection, either on site or within 72 hours, constitutes prima facie evidence of failure to keep and maintain records in violation of the Act.

(B) Records of controlled substances listed in Schedules I and II shall be maintained separately from all other records of the pharmacy.

(C) Records of controlled substances listed in Schedules III - V shall be maintained separately or readily retrievable from all other records of the pharmacy. For purposes of this subsection, readily retrievable means that the controlled substances shall be asterisked, red-lined, or in some other manner readily identifiable apart from all other items appearing on the record.

(D) Records, except when specifically required to be maintained in original or hard-copy form, may be maintained in an alternative data retention system, such as a data processing or direct imaging system, e.g., microfilm or microfiche, provided:

(i) the records in the alternative data retention system contain all of the information required on the manual record; and

(ii) the alternative data retention system is capable of producing a hard copy of the record upon the request of the board, its representative, or other authorized local, state, or federal law enforcement or regulatory agencies.

(2) Outpatient records.

(A) Only a registered pharmacist may receive, certify, and receive prescription drug orders.

(B) Outpatient records shall be maintained as provided in §291.34 and §291.35 of this title contained in Community Pharmacy (Class A).

(C) Outpatient prescriptions, including, but not limited to, discharge prescriptions, that are written by the practitioner, must be written on a form which meets the requirements of the Act, §562.006. Medication order forms or copies thereof do not meet the requirements for outpatient forms.

(D) Controlled substances listed in Schedule II must be written on an official prescription form in accordance with the Texas Controlled Substances Act, §481.075, and rules promulgated pursuant to the Texas Controlled Substances Act, unless exempted by the Texas Controlled Substances Rules, 37 TAC §13.74. Outpatient prescriptions for Schedule II controlled substances that are exempted from the official prescription requirement must be manually signed by the practitioner.

(3) Patient records.

(A) Each original medication order or set of orders issued together shall bear the following information:

- (i) patient name;
- (ii) drug name, strength, and dosage form;
- (iii) directions for use;
- (iv) date; and
- (v) signature or electronic signature of the practitioner or that of his or her authorized agent, defined as a licensed nurse employee or consultant/full or part-time pharmacist of the FEMCC.

(B) Original medication orders shall be maintained with the medication administration record in the medical records of the patient.

(C) Controlled substances records shall be maintained as follows.

(i) All records for controlled substances shall be maintained in a readily retrievable manner.

(ii) Controlled substances records shall be maintained in a manner to establish receipt and distribution of all controlled substances.

(D) Records of controlled substances listed in Schedule II shall be maintained as follows.

(i) Records of controlled substances listed in Schedule II shall be maintained separately from records of controlled substances in Schedules III, IV, and V, and all other records.

(ii) A FEMCC pharmacy shall maintain a perpetual inventory of any controlled substance listed in Schedule II.

(iii) Distribution records for Schedule II - V controlled substances floor stock shall include the following information:

(I) patient's name;

(II) practitioner who ordered drug;

(III) name of drug, dosage form, and strength;

(IV) time and date of administration to patient and quantity administered;

(V) signature or electronic signature of individual administering controlled substance;

(VI) returns to the pharmacy; and

(VII) waste (waste is required to be witnessed and cosigned, manually or electronically, by another individual).

(E) Floor stock records shall be maintained as follows.

(i) Distribution records for Schedules III - V controlled substances floor stock shall include the following information:

(I) patient's name;

(II) practitioner who ordered controlled substance;

(III) name of controlled substance, dosage form, and strength;

(IV) time and date of administration to patient;

(V) quantity administered;

(VI) signature or electronic signature of individual administering drug;

(VII) returns to the pharmacy; and

(VIII) waste (waste is required to be witnessed and cosigned, manually or electronically, by another individual).

(ii) The record required by clause (i) of this subparagraph shall be maintained separately from patient records.

(iii) A pharmacist shall review distribution records with medication orders on a periodic basis to verify proper usage of drugs, not to exceed 30 days between such reviews.

(F) General requirements for records maintained in a data processing system are as follows.

(i) If an FEMCC pharmacy's data processing system is not in compliance with the board's requirements, the pharmacy must maintain a manual recordkeeping system.

(ii) Requirements for backup systems. The facility shall maintain a backup copy of information stored in the data processing system using disk, tape, or other electronic backup system and update this backup copy on a regular basis to assure that data is not lost due to system failure.

(iii) Change or discontinuance of a data processing system.

(I) Records of distribution and return for all controlled substances and nalbuphine (Nubain). A pharmacy that changes or discontinues use of a data processing system must:

(-a-) transfer the records to the new data processing system; or

(-b-) purge the records to a printout which contains the same information as required on the audit trail printout as specified in subparagraph (G)(ii) of this paragraph. The information on this printout shall be sorted and printed by drug name and list all distributions/returns chronologically.

(II) Other records. A pharmacy that changes or discontinues use of a data processing system must:

(-a-) transfer the records to the new data processing system; or

(-b-) purge the records to a printout which contains all of the information required on the original document.

(III) Maintenance of purged records. Information purged from a data processing system must be maintained by the pharmacy for two years from the date of initial entry into the data processing system.

(iv) Loss of data. The pharmacist-in-charge shall report to the board in writing any significant loss of information from the data processing system within 10 days of discovery of the loss.

(G) Data processing system maintenance of records for the distribution and return of all controlled substances and nalbuphine (Nubain) to the pharmacy.

(i) Each time a controlled substance, or nalbuphine (Nubain) is distributed from or returned to the pharmacy, a record of such distribution or return shall be entered into the data processing system.

(ii) The data processing system shall have the capacity to produce a hard-copy printout of an audit trail of drug distribution and return for any strength and dosage form of a drug (by either brand or generic name or both) during a specified time period. This printout shall contain the following information:

(I) patient's name and room number or patient's facility identification number;

(II) prescribing or attending practitioner's name;

(III) name, strength, and dosage form of the drug product actually distributed;

(IV) total quantity distributed from and returned to the pharmacy;

(V) if not immediately retrievable via electronic image, the following shall also be included on the printout:

(-a-) prescribing or attending practitioner's address; and

(-b-) practitioner's DEA registration number, if the medication order is for a controlled substance.

(iii) An audit trail printout for each strength and dosage form of these drugs distributed during the preceding month shall be produced at least monthly and shall be maintained in a separate file at the facility. The information on this printout shall be sorted by drug name and list all distributions/returns for that drug chronologically.

(iv) The pharmacy may elect not to produce the monthly audit trail printout if the data processing system has a workable (electronic) data retention system which can produce an audit trail of drug distribution and returns for the preceding two years. The audit trail required in this clause shall be supplied by the pharmacy within 72 hours, if requested by an authorized agent of the Texas State Board of Pharmacy, or other authorized local, state, or federal law enforcement or regulatory agencies.

(H) Failure to maintain records. Failure to provide records set out in this subsection, either on site or within 72 hours for whatever reason, constitutes prima facie evidence of failure to keep and maintain records.

(I) Data processing system downtime. In the event that an FEMCC pharmacy which uses a data processing system experiences system downtime, the pharmacy must have an auxiliary procedure which will ensure that all data is retained for on-line data entry as soon as the system is available for use again.

(4) Distribution of controlled substances to another registrant. A pharmacy may distribute controlled substances to a practitioner, another pharmacy, or other registrant, without being registered to distribute, under the following conditions.

(A) The registrant to whom the controlled substance is to be distributed is registered under the Controlled Substances Act to dispense that controlled substance.

(B) The total number of dosage units of controlled substances distributed by a pharmacy may not exceed 5.0% of all controlled substances dispensed by the pharmacy during the 12-month period in which the pharmacy is registered; if at any time it does exceed 5.0%, the pharmacy is required to obtain an additional registration to distribute controlled substances.

(C) If the distribution is for a Schedule III, IV, or V controlled substance, a record shall be maintained which indicates:

(i) the actual date of distribution;

(ii) the name, strength, and quantity of controlled substances distributed;

(iii) the name, address, and DEA registration number of the distributing pharmacy; and

(iv) the name, address, and DEA registration number of the pharmacy, practitioner, or other registrant to whom the controlled substances are distributed.

(D) If the distribution is for a Schedule I or II controlled substance, the following is applicable.

(i) The pharmacy, practitioner, or other registrant who is receiving the controlled substances shall issue Copy 1 and Copy 2 of a DEA order form (DEA 222C) to the distributing pharmacy.

(ii) The distributing pharmacy shall:

(I) complete the area on the DEA order form (DEA 222C) titled "To Be Filled in by Supplier";

(II) maintain Copy 1 of the DEA order form (DEA 222C) at the pharmacy for two years; and

(III) forward Copy 2 of the DEA order form (DEA 222C) to the divisional office of the Drug Enforcement Administration.

(5) Other records. Other records to be maintained by the pharmacy include:

(A) a permanent log of the initials or identification codes which will identify each pharmacist by name. The initials or identification code shall be unique to ensure that each pharmacist can be identified, i.e., identical initials or identification codes cannot be used;

(B) Copy 3 of DEA order form (DEA 222C), which has been properly dated, initialed, and filed, and all copies of each unaccepted or defective order form and any attached statements or other documents;

(C) a hard copy of the power of attorney to sign DEA 222C order forms (if applicable);

(D) suppliers' invoices of dangerous drugs and controlled substances; a pharmacist shall verify that the controlled drugs listed on the invoices were actually received by clearly recording his/her initials and the actual date of receipt of the controlled substances;

(E) supplier's credit memos for controlled substances and dangerous drugs;

(F) a hard copy of inventories required by §291.17 of this title (relating to Inventory Requirements) except that a perpetual inventory of controlled substances listed in Schedule II may be kept in a data processing system if the data processing system is capable of producing a hard copy of the perpetual inventory on-site;

(G) hard-copy reports of surrender or destruction of controlled substances and/or dangerous drugs to an appropriate state or federal agency;

(H) a hard-copy Schedule V nonprescription register book;

(I) records of distribution of controlled substances and/or dangerous drugs to other pharmacies, practitioners, or registrants; and

(J) a hard copy of any notification required by the Texas Pharmacy Act or these rules, including, but not limited to, the following:

(i) reports of theft or significant loss of controlled substances to DEA, DPS, and the board;

(ii) notification of a change in pharmacist-in-charge of a pharmacy; and

(iii) reports of a fire or other disaster which may affect the strength, purity, or labeling of drugs, medications, devices, or other materials used in the diagnosis or treatment of injury, illness, and disease.

(6) Permission to maintain central records. Any pharmacy that uses a centralized recordkeeping system for invoices and financial data shall comply with the following procedures.

(A) Controlled substance records. Invoices and financial data for controlled substances may be maintained at a central location provided the following conditions are met.

(i) Prior to the initiation of central recordkeeping, the pharmacy submits written notification by registered or certified mail to the divisional director of the Drug Enforcement Administration as required by the Code of Federal Regulations, Title 21, §1304(a), and submits a copy of this written notification to the Texas State Board of Pharmacy. Unless the registrant is informed by the divisional director of the Drug Enforcement Administration that permission to keep central records is denied, the pharmacy may maintain central records commencing 14 days after receipt of notification by the divisional director.

(ii) The pharmacy maintains a copy of the notification required in this subparagraph.

(iii) The records to be maintained at the central record location shall not include executed DEA order forms, prescription drug orders, or controlled substance inventories, which shall be maintained at the pharmacy.

(B) Dangerous drug records. Invoices and financial data for dangerous drugs may be maintained at a central location.

(C) Access to records. If the records are kept on microfilm, computer media, or in any form requiring special equipment to render the records easily readable, the pharmacy shall provide access to such equipment with the records.

(D) Delivery of records. The pharmacy agrees to deliver all or any part of such records to the pharmacy location within two business days of written request of a board agent or any other authorized official.

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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Texas State Board of Pharmacy

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CHAPTER 295. PHARMACISTS

22 TAC §295.8

The Texas State Board of Pharmacy adopts amendments to §295.8, concerning Continuing Education Requirements. The amendments are adopted with changes to the proposed text as published in the December 24, 2010, issue of the *Texas Register* (35 TexReg 11489). The Board voted to adopt the rule leaving in the word shall.

The adopted amendments clarify the requirements for continuing education during a licensee's initial licensure period.

No comments were received.

The amendments are adopted under §§551.002, 554.051, and 559.051 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 Board interprets §559.051 as authorizing the agency to adopt rules regarding continuing education requirements.

The statutes affected by the amendments: Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§295.8. *Continuing Education Requirements.*

(a) Authority and purpose.

(1) Authority. In accordance with §559.003 of the Texas Pharmacy Act, (Chapters 551 - 566, and 568 - 569, Occupations Code), all pharmacists must complete and report 30 contact hours (3.0 CEUs) of approved continuing education obtained during the previous license period in order to renew their license to practice pharmacy.

(2) Purpose. The board recognizes that the fundamental purpose of continuing education is to maintain and enhance the professional competency of pharmacists licensed to practice in Texas, for the protection of the health and welfare of the citizens of Texas.

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

(1) ACPE--Accreditation Council for Pharmacy Education.

(2) Act--The Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Occupations Code.

(3) Approved programs--Live programs, home study, and other mediated instruction delivered by an approved provider or a program specified by the board and listed as an approved program in subsection (e) of this section.

(4) Approved provider--An individual, institution, organization, association, corporation, or agency that is approved by the board and recognized by ACPE in accordance with its policy and procedures, as having met criteria indicative of the ability to provide quality continuing education programs.

(5) Board--The Texas State Board of Pharmacy.

(6) Certificate of completion--A certificate or other official document presented to a participant upon the successful completion of a continuing education program. Certificates presented by an ACPE approved provider must contain the following information:

(A) name of the participant;

(B) title and date of the program;

(C) name of the approved provider sponsoring or cosponsoring the program;

(D) number of contact hours and/or CEUs awarded;

(E) the assigned ACPE universal program number, and for CE obtained on or after January 1, 2009, a "P" designation indicating that the CE is targeted to pharmacists;

(F) a dated certifying signature of the approved provider; and

(G) the official ACPE logo.

(7) Contact hour--A unit of measure of educational credit which is equivalent to approximately 50 to 60 minutes of participation in an organized learning experience.

(8) Continuing education unit (CEU)--A unit of measure of education credit which is equivalent to 10 contact hours (i.e., one CEU = 10 contact hours).

(9) Credit hour--A unit of measurement for continuing education equal to 15 contact hours.

(10) Home-study and other mediated instruction--Continuing education activities that are not conducted as live programs, including audiotapes, videotapes, cable television, computer assisted instruction, journal articles, or monographs.

(11) Initial license period--The time period between the date of issuance of a pharmacist's license and the next expiration date.

(12) License period--The time period between consecutive expiration dates of a license.

(13) Live programs--On-site continuing education activities including lectures, symposia, live teleconferences, or workshops.

(14) Standardized pharmacy examination--The North American Pharmacy Licensing Examination (NAPLEX).

(c) Methods for obtaining continuing education. A pharmacist may satisfy the continuing education requirements by either:

(1) successfully completing the number of continuing education hours necessary to renew a license as specified in subsection (a)(1) of this section;

(2) successfully completing during the preceding license period, one credit hour for each year of their license period, which is a part of the professional degree program in a college of pharmacy the professional degree program of which has been accredited by ACPE;

(3) taking and passing the standardized pharmacy examination (NAPLEX) during the preceding license period, which shall be equivalent to the number of continuing education hours necessary to renew a license as specified in subsection (a)(1) of this section; or

(4) having a Texas pharmacist license issued by examination or reciprocity within the previous thirty (30) months.

(d) Reporting Requirements.

(1) Renewal of a pharmacist license. To renew a license to practice pharmacy, a pharmacist must report on the renewal application completion of the required number of contact hours of continuing education. The following is applicable to the reporting of continuing education contact hours.

(A) The renewal application issued by the board shall state the number of contact hours the pharmacist must complete in order to be eligible to renew the license.

(B) Any continuing education requirements which are imposed upon a pharmacist as a part of a board order or agreed board order shall be in addition to the requirements of this section.

(2) Failure to report completion of required continuing education. The license of a pharmacist who fails to report completion of the required number of continuing education contact hours shall not be renewed and the pharmacist shall not be issued a renewal certificate for the license period. A pharmacist who practices pharmacy without a current renewal certificate is subject to all penalties of practicing pharmacy without a license. The following is also applicable if a pharmacist fails to report completion of the required continuing education.

(A) The pharmacist's license shall not be renewed until such time as the pharmacist successfully completes the required continuing education and reports the completion to the board.

(B) The pharmacist shall be subject to the delinquent fees specified in the Act, §559.003.

(3) Extension of time for reporting. A pharmacist who has had a physical disability, illness, or other extenuating circumstances which prohibits the pharmacist from obtaining continuing education credit during the preceding license period may be granted an extension of time to complete the continued education requirement. The following is applicable for this extension:

(A) The pharmacist shall submit a petition to the board with his/her license renewal application which contains:

(i) the name, address, and license number of the pharmacist;

(ii) statement of the reason for the request for extension which includes the dates the pharmacist was incapacitated; and

(iii) if the reason for the request for extension is health related, a statement from the attending physician(s) treating the pharmacist which includes the nature of the physical disability or illness and the dates the pharmacist was incapacitated.

(B) After review and approval of the petition, a pharmacist may be granted an extension of time to comply with the continuing education requirement which shall not exceed one license renewal period.

(C) An extension of time to complete continuing education credit does not relieve a pharmacist from the continuing education requirement during the current license period.

(D) If a petition for extension to the reporting period for continuing education is denied, the pharmacist shall:

(i) have 60 days to complete and report completion of the required continuing education requirements; and

(ii) be subject to the requirements of paragraph (2) of this subsection relating to failure to report completion of the required continuing education if the required continuing education is not completed and reported within the required 60-day time period.

(4) Exemptions from reporting requirements.

(A) All pharmacists licensed in Texas shall be exempt from the continuing education requirements during their initial license period.

(B) Pharmacists who have been licensed for 50 years are subject to the following.

(i) Pharmacists who are actively practicing pharmacy shall complete the continuing education requirements in order to renew their license.

(ii) Pharmacists who are not actively practicing pharmacy shall be granted an exemption to the reporting requirements for continuing education provided the pharmacists submit a completed renewal application for each license period which states that they are not practicing pharmacy. Upon submission of the completed renewal application, the pharmacist shall be issued a renewal certificate which states that pharmacist is inactive.

(iii) Pharmacists who wish to return to the practice of pharmacy after being exempted from the continuing education requirements as specified in clause (ii) of this subparagraph must:

(I) notify the board of their intent to actively practice pharmacy;

(II) pay the licensing fee as specified in §295.5 of this title (relating to Pharmacist License or Renewal Fees); and

(III) provide copies of completion certificates from approved continuing education programs as specified in subsection (e) of this section for 30 hours. Approved continuing education earned within two years prior to the licensee applying for the return to active status may be applied toward the continuing education requirement for reactivation of the license but may not be counted toward subsequent renewal of the license.

(e) Approved Programs.

(1) Any program presented by an ACPE approved provider subject to the following conditions.

(A) Pharmacists may receive credit for the completion of the same ACPE course only once during a license period.

(B) Pharmacists who present approved ACPE continuing education programs may receive credit for the time expended during the actual presentation of the program. Pharmacists may receive credit for the same presentation only once during a license period.

(C) Proof of completion of an ACPE course shall be a certificate of completion as defined by subsection (b)(6) of this section.

(2) Courses which are part of a professional degree program or an advanced pharmacy degree program offered by a college of pharmacy which has a professional degree program accredited by ACPE.

(A) Pharmacists may receive credit for the completion of the same course only once during a license period.

(B) Pharmacists who teach these courses may receive credit towards their continuing education, but such credit may be received only once for teaching the same course during a license period.

(3) Basic cardiopulmonary resuscitation (CPR) courses which lead to CPR certification by the American Red Cross or the American Heart Association or its equivalent shall be recognized as approved programs. Pharmacists may receive credit for one contact hour (0.1 CEU) towards their continuing education requirement for completion of a CPR course only once during a license period. Proof of completion of a CPR course shall be the certificate issued by the American Red Cross or the American Heart Association or its equivalent.

(4) Advanced cardiovascular life support courses (ACLS) or pediatric advanced life support (PALS) courses which lead to initial ACLS or PALS certification by the American Heart Association or its equivalent shall be recognized as approved programs. Pharmacists may receive credit for twelve contact hours (1.2 CEUs) towards their continuing education requirement for completion of an ACLS or PALS course only once during a license period. Proof of completion of an ACLS or PALS course shall be the certificate issued by the American Heart Association or its equivalent.

(5) Advanced cardiovascular life support courses (ACLS) or pediatric advanced life support (PALS) courses which lead to ACLS or PALS recertification by the American Heart Association or its equivalent shall be recognized as approved programs. Pharmacists may receive credit for four contact hours (0.4 CEUs) towards their continuing education requirement for completion of an ACLS or PALS recertification course only once during a license period. Proof of completion of an ACLS or PALS recertification course shall be the certificate issued by the American Heart Association or its equivalent.

(6) Attendance at Texas State Board of Pharmacy Board Meetings shall be recognized for continuing education credit as follows.

(A) Pharmacists shall receive credit for three contact hours (0.3 CEUs) towards their continuing education requirement for attending a full, public board business meeting in its entirety.

(B) A maximum of six contact hours (0.6 CEUs) are allowed for attendance at a board meeting during a license period.

(C) Proof of attendance for a complete board meeting shall be a certificate issued by the Texas State Board of Pharmacy.

(7) Participation in a Texas State Board of Pharmacy appointed Task Force shall be recognized for continuing education credit as follows.

(A) Pharmacists shall receive credit for three contact hours (0.3 CEUs) towards their continuing education requirement for participating in a Texas State Board of Pharmacy appointed Task Force.

(B) Proof of participation for a Task Force shall be a certificate issued by the Texas State Board of Pharmacy.

(8) Completion of an Institute for Safe Medication Practices' (ISMP) Medication Safety Self Assessment for hospital pharmacies or for community/ambulatory pharmacies shall be recognized for continuing education credit as follows.

(A) Pharmacists shall receive credit for three contact hours (0.3 CEUs) towards their continuing education requirement for completion of an ISMP Medication Safety Self Assessment.

(B) Proof of completion of an ISMP Medication Safety Self Assessment shall be:

(i) a continuing education certificate provided by an ACPE approved provider for completion of an assessment; or

(ii) a document from ISMP showing completion of an assessment.

(9) Pharmacists shall receive credit for three contact hours (0.3 CEUs) toward their continuing education requirements for taking and successfully passing the initial Geriatric Pharmacy Practice certification examination administered by the Commission for Certification in Geriatric Pharmacy. Proof of successfully passing the examination shall be a certificate issued by the Commission for Certification in Geriatric Pharmacy.

(10) Pharmacist shall receive credit for three contact hours (0.3 CEUs) toward their continuing education requirements for taking and successfully passing an initial Board of Pharmaceutical Specialties certification examination administered by the Board of Pharmaceutical Specialties. Proof of successfully passing the examination shall be a certificate issued by the Board of Pharmaceutical Specialties.

(11) Attendance at programs presented by the Texas State Board of Pharmacy or courses offered by the Texas State Board of Pharmacy as follows:

(A) Pharmacists shall receive credit for the number of hours for the program or course as stated by the Texas State Board of Pharmacy.

(B) Proof of attendance at a program presented by the Texas State Board of Pharmacy or completion of a course offered by the Texas State Board of Pharmacy shall be a certificate issued by the Texas State Board of Pharmacy.

(12) Upon demonstrated need the board may establish criteria to approve programs presented by non-ACPE approved providers.

(f) Retention of continuing education records and audit of records by the board.

(1) Retention of records. Pharmacists are required to maintain certificates of completion of approved continuing education for three years from the date of reporting the contact hours on a license renewal application.

(2) Audit of records by the board. The board shall audit the records of pharmacists for verification of reported continuing education credit. The following is applicable for such audits.

(A) Upon written request, a pharmacist shall provide to the board documentation of proof for all continuing education contact hours reported during a specified license period(s). Failure to provide all requested records during the specified time period constitutes prima facie evidence of failure to keep and maintain records and shall subject the pharmacist to disciplinary action by the board.

(B) Credit for continuing education contact hours shall only be allowed for approved programs for which the pharmacist submits documentation of proof reflecting that the hours were completed during the specified license period(s). Any other reported hours shall

be disallowed. A pharmacist who has received credit for continuing education contact hours disallowed during an audit shall be subject to disciplinary action.

(C) A pharmacist who submits false or fraudulent records to the board shall be subject to disciplinary action by the board.

(g) Reinstatement of pharmacist's license.

(1) Any person seeking reinstatement of a license which has been revoked or canceled by the board shall submit documentation of completion of the required number of continuing education contact hours for all years the license has been revoked or canceled prior to reinstatement of the license.

(2) Persons who seek reinstatement of a pharmacist license which has expired shall meet the requirements of §283.10 of this title (relating to Requirements for Application for a Pharmacist License Which Has Expired).

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 February 18, 2011.

TRD-201100678

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

Effective date: March 10, 2011

Proposal publication date: December 24, 2010

For further information, please call: (512) 305-8028



CHAPTER 311. CODE OF CONDUCT

22 TAC §311.1

The Texas State Board of Pharmacy adopts amendments to §311.1, concerning Procedures. The amendments are adopted with changes to the proposed text as published in the December 24, 2010, issue of the *Texas Register* (35 TexReg 11492). The Board voted to adopt the rule leaving in the word shall and not changing it to must.

The adopted amendments clarify the requirements for filing a complaint against a Board employee, including peace officers.

No comments were received.

The amendments are adopted under §§551.002, 554.051, and 556.056 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets §559.051 as authorizing the agency to adopt rules regarding continuing education requirements. The Board interprets §556.056 as authorizing the agency to adopt a code of professional responsibility and to establish procedures for receiving and investigating a complaint of a code violation.

The statutes affected by the amendments: Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§311.1. *Procedures.*

(a) Complaints alleging violations of the Board Code of Conduct by a board employee shall be submitted in writing to the executive director. If a board member is notified of a complaint against an employee, the board member shall direct the complainant to file a written complaint with the executive director. Complaints filed against a peace officer employee must comply with §614.023 of the Government Code (relating to Copy of Complaint to be Given to Officer or Employee).

(b) The executive director shall notify the employee's supervisor that a complaint has been filed against the employee. The supervisor shall provide the employee with written notice that a complaint has been filed, which contains the date the complaint was filed and a description of the complaint. An anonymous complaint or a complaint filed by e-mail will not be considered a valid complaint for the purposes of this section.

(c) In order for a complaint concerning violations of the Code of Conduct to be considered valid, such complaint shall contain the following information:

- (1) the date the complaint is filed;
- (2) the date the violation occurred;
- (3) the complainant's name, address, and telephone number;
- (4) the name of the board employee;
- (5) detailed description of the alleged violation;
- (6) any written documentation or name of witnesses to the alleged violation; and
- (7) the signature of the complainant.

(d) The executive director shall acknowledge receipt of the complaint in writing to the complainant. Such acknowledgment may include a request for additional information concerning the complaint or questions about the occurrence or statements.

(e) In reviewing the complaint, the executive director may contact the complainant if necessary and shall conduct a personal interview with the employee and give the employee ample opportunity to present evidence to support his or her explanation of the circumstances surrounding the complaint. The employee shall have the right to submit any relevant records, materials, comments, and documents to the executive director for review. Additionally, the employee has the right to review all documents and records involving the complaint. The employee may request the executive director to allow the board's legal counsel to advise the employee of his or her rights.

(f) Upon completing the review of the complaint and relevant statements or documents, the executive director shall render a decision concerning the complaint within 10 days and provide written notification of the decision to the employee, and his or her supervisor within five days of rendering the decision. The executive director shall notify the complainant of the disposition of the complaint. If the disposition of the complaint affects the employee's employment status, the employee has the right to exercise the board's grievance procedure.

(g) Complaints alleging violations of the Board Code of Conduct by the executive director shall be directed to the president of the board. The procedures set out in this section shall be followed in disposing of such complaints; provided, however, that for the purposes of this subsection, where the term "executive director" appears in the procedures set out in this section, the term "president of the board" shall be substituted therefor.

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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Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
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For further information, please call: (512) 305-8028

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PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 463. APPLICATIONS AND EXAMINATIONS

22 TAC §463.10

The Texas State Board of Examiners of Psychologists adopts an amendment to §463.10, Provisionally Licensed Psychologists, without changes to the proposed text published in the November 12, 2010, issue of the *Texas Register* (35 TexReg 10022) and will not be republished.

The amendment is being adopted to ensure the protection and safety of the public.

The amendment is being adopted to recognize the quality of doctoral programs in psychology that are accredited by the American Psychological Association.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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-201100692
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: March 10, 2011
Proposal publication date: November 12, 2010
For further information, please call: (512) 305-7706

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CHAPTER 465. RULES OF PRACTICE

22 TAC §465.2

The Texas State Board of Examiners of Psychologists adopts amendments to §465.2, Supervision, without changes to the proposed text published in the November 12, 2010, issue of the *Texas Register* (35 TexReg 10024) and will not be republished.

The amendments are being adopted to ensure the protection and safety of the public.

The amendments being adopted will add text back to this section of the rule that was erroneously removed by a prior amendment.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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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Sherry L. Lee

Executive Director

Texas State Board of Examiners of Psychologists

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Proposal publication date: November 12, 2010

For further information, please call: (512) 305-7706



22 TAC §465.18

The Texas State Board of Examiners of Psychologists adopts an amendment to §465.18, Forensic Services, without changes to the proposed text published in the November 12, 2010, issue of the *Texas Register* (35 TexReg 10024) and will not be republished.

The amendment is being adopted to ensure the protection and safety of the public.

The amendment is being adopted to allow the rule to comply with Texas Family Code, Title 5, Subtitle B, Chapter 153, Subchapter K.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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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Sherry L. Lee

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Texas State Board of Examiners of Psychologists

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PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 535. GENERAL PROVISIONS SUBCHAPTER N. SUSPENSION AND REVOCACTION OF LICENSURE

22 TAC §535.154

The Texas Real Estate Commission (TREC or the commission) adopts the repeal of §535.154, regarding Misleading Advertising, without changes to the proposed text as published in the September 10, 2010, issue of the *Texas Register* (35 TexReg 8273) and will not be republished.

The repeal is necessary because the subject is addressed in the section is covered in revisions to Subchapter N which TREC is simultaneously adopting as part of a comprehensive rule review of Chapter 535. As the reformation of the subchapters comprehensively addresses the subjects of the repealed rule, repeal of the rule is necessary to avoid confusion and repetition.

The reasoned justification for the amendments is more streamlined, consistent and readable rules.

No comments were received on the repeal as proposed.

The repeal is 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, Chapter 1101 and Chapter 1102. No other statute, code or article is affected by the adoption.

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

Filed with the Office of the Secretary of State on February 17, 2011.

TRD-201100660

Loretta R. DeHay

General Counsel

Texas Real Estate Commission

Effective date: March 9, 2011

Proposal publication date: September 10, 2010

For further information, please call: (512) 465-3926

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22 TAC §535.154

The Texas Real Estate Commission (TREC or the commission) adopts new §535.154, regarding Advertising, with changes to the proposed text as published in the September 10, 2010, issue of the *Texas Register* (35 TexReg 8768). The difference between the rule as proposed and as finally adopted is as follows: The requirement that licensees include their license number in advertising is deleted; the definition of clear and conspicuous in terms of font or type size is removed from subsections (c); use of an assumed name and use of a salesperson's name in advertising are clarified, and a provision is added regarding use of a copyrighted trade name.

New §535.154 replaces existing §535.154. Subsection (a) provides a definition of "advertisement;" subsection (b) clarifies what types of communications are not considered advertisements for purposes of the Act and Rules. Subsection (c) requires salespersons and brokers to clearly and conspicuously include the broker's name in all advertising and permits the use of a broker's assumed name if it has been filed with the commission. If the broker's name includes the name of a salesperson, the advertisement must include another assumed name of the broker that does not include the salesperson's name or the name of the broker's designated broker. Subsection (d) provide a laundry list of types of advertising that are considered deceptive and misleading; subsection (e) requires brokers to file assumed names with the commission; subsection (f) requires an advertisement to contain a designation such as broker or agent; subsection (g) prohibits advertising that implies that a salesperson is the person responsible for the operation of a real estate brokerage business, or causes someone to believe that an unlicensed person is personally engaged in real estate brokerage; subsection (h) permits a business entity to do business in the name in which it was chartered or registered at the Office of the Secretary of State with certain exceptions; subsection (i) prohibits a licensee from using a copyrighted trade name unless the licensee has the authority to use the name; subsection (j) addresses use of advertisements on the Internet; subsection (k) addresses electronic communications; subsection (l) addresses road signs; subsection (m) addresses advertisements that contain an offer to rebate a portion of a licensee's commission; subsection (n) addresses advertising that recommends or promotes the use of a service provider; subsection (o) prohibits licensees from advertising information regarding service providers that ranks the providers unless the ranking is based on disclosed objective criteria; and subsection (p) prohibits licensees from advertising that a licensee offers, sponsors, or conducts commission approved courses unless the licensee is approved to offer the courses. 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 versions and do not materially alter the issues raised in the proposed rules. The changes in the rules reflect a non-substantive variation from the proposed rules to make the affected rule consistent with other rules.

The reasoned justification for the amendments is more streamlined, consistent and readable rules. Additional justification is provided below in response to the comments on the advertising rules as proposed.

The Texas Association of Realtors, the Texas Apartment Association, and the Metrotex Association of Realtors commented on the rules proposed under Subchapter N.

The commission received 84 comments on the rules as proposed

Comments: Approximately 82 comments expressed concerns about the costs and burden of complying with §535.154 as proposed.

Comment: One commenter noted that the requirements of subsection (d) of §535.154 are also overly burdensome because it places potential liability on a licensee for inadvertent advertising inaccuracies.

Comment: One commenter suggested that adding the broker's license number to advertisements and requiring the broker's name to be identified in a clear and conspicuous manner will potentially clutter advertisements making them harder to read by the general public.

Response: The commission has considered the comments to the rules as proposed and has amended the rules accordingly by removing the requirement to include the broker's license number in all advertising, and removing the definition of clear and conspicuous in terms of font or type size.

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, Chapter 1101 and Chapter 1102. No other statute, code or article is affected by the adoption.

§535.154. Advertising.

(a) For the purposes of this section, an "advertisement" is a written or oral statement or communication by or on behalf of a licensee which induces or attempts to induce a member of the public to use the services of the licensee or service provider. The term "advertisement" includes, but is not limited to, all publications, radio or television broadcasts, all electronic media including email, text messages, social networking websites, and the Internet, business stationery, business cards, signs and billboards. The provisions of this section apply to all advertisements by or on behalf of a licensee unless the context of a particular provision indicates that it is intended to apply to a specific form of advertisement.

(b) The following information is not considered an advertisement or advertising:

(1) a communication from a licensee to a member of the public after the member of the public agreed for the licensee to provide services, provided the first communication from the licensee contains the information required by this section; or

(2) real estate information, including listings, available to the public on a licensee's website, extranet or similar site that is behind a firewall or similar filtering software which requires a password or registration to access that information.

(c) An advertisement must clearly and conspicuously contain the name of the broker, either a business entity or an individual. For purposes of this section, the broker, or a salesperson sponsored by the broker, may use the broker's assumed name instead of the name in which the broker is licensed, if the assumed name is registered with

the commission under subsection (e) of this section. An advertisement may not contain an assumed name unless a broker has registered that assumed name with the commission. If the broker's name or its assumed name includes a salesperson's name, the advertisement must include another assumed name of the broker that does not include a salesperson's name, or the designated agent's name.

(d) For purposes of this section and §1101.652(b)(23) of the Act, deceptive or misleading advertising includes, but is not limited to, the following:

(1) advertising that is inaccurate in any material fact or in any way misrepresents any property, terms, values, services, or policies;

(2) advertising a property that is subject to an exclusive listing agreement without the permission of the listing broker and without disclosing the name of the listing broker unless the listing broker has expressly agreed to waive disclosure;

(3) failing to remove an advertisement about a listed property within a reasonable time after closing or termination of a listing agreement, unless the status is included in the advertisement;

(4) an advertisement by a salesperson which identifies the salesperson as a broker; or

(5) advertising a property in a manner that creates a reasonable likelihood of confusion regarding the permitted use of the property.

(e) A broker, individually or as the designated officer, manager or partner of a business entity licensed as a broker shall notify the commission in writing within 30 days after the broker, or a salesperson sponsored by the broker, starts or stops using an assumed name in business other than the name in which the person is licensed.

(f) An advertisement placed by a licensee must include a designation such as "agent," "broker" or a trade association name that serves clearly to identify the advertiser as a real estate agent.

(g) A broker or salesperson may not place an advertisement that in any way:

(1) implies that a salesperson is the person responsible for the operation of a real estate brokerage business; or

(2) causes a member of the public to believe that a person not authorized to conduct real estate brokerage is personally engaged in real estate brokerage.

(h) Except as provided by subsections (c) and (g) of this section, a business entity licensed as a real estate broker may do business in the name in which it was chartered or registered by the Office of the Secretary of State.

(i) A licensee may not utilize a copyrighted trade name unless the licensee has legal authority to use the name.

(j) A real estate licensee placing an advertisement on the Internet, electronic bulletin board or the like must include on each page on which the licensee's advertisement appears any information required by this section and §1101.652(b)(23) of the Act. For purposes of this subsection, "page" means each html document of a website, which may include several screens of information that are viewed by scrolling down to the end of the document.

(k) A real estate licensee placing an advertisement by using an electronic communication, including but not limited to email and email discussion groups, text messages, and social networking websites must include in the communication and in any attachment which is an advertisement, the information required by this section and §1101.652(b)(23) of the Act. For purposes of advertising on

social networking websites that limit the number of characters in a communication and the required information would consume more than 10% of the available character limit, a licensee may include a direct hyperlink containing the words "TREC DISCLOSURE" which links to the information required by this section and §1101.652(b)(23) of the Act.

(l) An advertisement placed where it is likely to attract the attention of passing motorists or pedestrians must contain language that clearly and conspicuously identifies the person publishing the advertisement as a real estate broker or agent. This subsection does not apply to signs placed on or providing directions to real property listed for sale, rental or lease with the broker who has placed the sign, provided the signs otherwise comply with this section and the Act.

(m) An advertisement containing an offer to rebate a portion of a licensee's commission must disclose that payment of the rebate is subject to the consent of the party the licensee represents in the transaction. If payment of the rebate is contingent upon a party's use of a selected service provider, the advertisement also must contain a disclosure that payment of the rebate is subject to restrictions.

(n) If an advertisement offers, recommends or promotes the use of services of a real estate service provider other than the licensee and the licensee expects to receive compensation if a party uses those services, the advertisement must contain a disclosure that the licensee may receive compensation from the service provider.

(o) A licensee may not advertise information regarding service providers that ranks such providers unless the ranking is based on disclosed objective criteria.

(p) A licensee may not advertise that such licensee offers, sponsors, or conducts commission approved courses in conjunction with an approved school or other approved organization unless the licensee is approved by the commission to offer such courses.

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-201100659

Loretta R. DeHay

General Counsel

Texas Real Estate Commission

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For further information, please call: (512) 465-3926



SUBCHAPTER T. EASEMENT OR RIGHT-OF-WAY AGENTS

22 TAC §535.400, §535.403

The Texas Real Estate Commission (TREC) adopts amendments to §535.400, concerning Registration of Easement or Right-of-Way Agents, and §535.403, concerning Renewal of Registration, without changes to the proposed text as published in the January 7, 2011, issue of the *Texas Register* (36 TexReg 16) and will not be republished.

Application forms will no longer be promulgated by the commission, but they will be approved when substantive changes are

made. The amendments to §535.403 change the renewal fee from \$83 to \$80 to remove the \$3 fee that registrants are required to pay for TexasOnline fees. Since such fees are adopted by Department of Information Resources Rules, the fee does not need to be separately adopted as a fee by the commission.

The reasoned justification for the rules is an enhanced application and renewal processes for Easement or Right-of-Way Agents.

No comments were received on the rules as proposed.

The amendments are adopted under Texas Occupations Code, §1101.051, which authorizes the Texas Real Estate Commission to adopt rules necessary to implement 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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CHAPTER 539. RULES RELATING TO THE RESIDENTIAL SERVICE COMPANY ACT

SUBCHAPTER G. APPLICATION FOR LICENSE

22 TAC §539.61

The Texas Real Estate Commission (TREC) adopts amendments to §539.61, concerning Application and Licensing, without changes to the proposed text as published in the January 7, 2011, issue of the *Texas Register* (36 TexReg 17) and will not be republished.

The amendments add new subsection (c) to provide a deadline for applicants to provide information to the commission in connection with an application.

There is currently no deadline for responding to a request for information. Creating a time certain for termination of an incomplete application will allow the Commission to create a records retention period for TREC to maintain the application and related materials.

The reasoned justification for the amendments is enhanced consumer protection for purchasers of residential service contracts.

No comments were received on the rule as proposed.

The amendments are adopted under Texas Occupations Code, §1303.051, which authorizes the Texas Real Estate Commission to adopt rules necessary to implement Chapter 1303.

The statute affected by this adoption is Texas Occupations Code, Chapter 1303. No other statute, code or article is affected by the proposed 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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For further information, please call: (512) 465-3926



SUBCHAPTER M. EXAMINATIONS

22 TAC §539.121

The Texas Real Estate Commission (TREC) adopts amendments to §539.121, concerning Examinations, without changes to the proposed text as published in the January 7, 2011, issue of the *Texas Register* (36 TexReg 18) and will not be republished.

The amendments change the examination period from three to five years. Experience with recent examinations has shown that most, if not all, licensees are generally in compliance with the commission's requirements and that examinations may be conducted less frequently without compromising consumer protection. In addition, the significant increase in the number of licensed companies in recent years combined with limited staff and resources further necessitate extending the time between examinations from three years to five years.

The reasoned justification for the amendments is enhanced consumer protection for purchasers of residential service contracts.

No comments were received on the amendments as proposed.

The amendments are adopted under Texas Occupations Code, §1303.051, which authorizes the Texas Real Estate Commission to adopt rules necessary to implement Chapter 1303.

The statute affected by this adoption is Texas Occupations Code, Chapter 1303. 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 February 17, 2011.

TRD-201100656

Loretta R. DeHay

General Counsel

Texas Real Estate Commission

Effective date: March 9, 2011

Proposal publication date: January 7, 2011

For further information, please call: (512) 465-3926



SUBCHAPTER P. COMPLAINTS

22 TAC §539.150

The Texas Real Estate Commission (TREC) adopts new Subchapter P, §539.150, concerning Complaints, without changes to the proposed text as published in the January 7, 2011, issue of the *Texas Register* (36 TexReg 18) and will not be republished.

The new section establishes a complaint procedure for filing complaints against residential service companies licensed by the commission. The new section also establishes a deadline in which complaints may be filed with the commission and establishes a deadline in which respondents must respond to requests for information from the commission. The procedure and time periods are the same as those established by rule for other licensees subject to the commission's jurisdiction.

The reasoned justification for the new section is enhanced consumer protection for purchasers of residential service contracts.

No comments were received on the section as proposed.

The new section is adopted under Texas Occupations Code, §1303.051, which authorizes the Texas Real Estate Commission to adopt rules necessary to implement Chapter 1303.

The statute affected by this adoption is Texas Occupations Code, Chapter 1303. No other statute, code or article is affected by the new section.

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

Filed with the Office of the Secretary of State on February 17, 2011.

TRD-201100655
Loretta R. DeHay
General Counsel
Texas Real Estate Commission
Effective date: March 9, 2011
Proposal publication date: January 7, 2011
For further information, please call: (512) 465-3926



TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER C. CRUDE OIL PRODUCTION TAX

34 TAC §3.37

The Comptroller of Public Accounts adopts an amendment to §3.37, concerning enhanced oil recovery projects, without changes to the proposed text as published in the December 31, 2010, issue of the *Texas Register* (35 TexReg 11807). This section is being amended pursuant to House Bill 3732, 80th Legislature, 2007. House Bill 3732 amends Tax Code, §202.0545, by adding language relating to the establishment of incentives by this state for the implementation of enhanced oil recovery projects that capture and sequester carbon dioxide that would otherwise be emitted into the atmosphere.

No comments were received regarding adoption of the amendment.

This amendment is adopted under Tax Code, §111.002 and §111.0022, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2, and taxes, fees, or other charges which the comptroller administers under other law.

The amendment implements Tax Code, §202.0545.

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 February 17, 2011.

TRD-201100662
Ashley Harden
General Counsel
Comptroller of Public Accounts
Effective date: March 9, 2011
Proposal publication date: December 31, 2010
For further information, please call: (512) 475-0387



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

Office of the Governor, Economic Development and Tourism Division

Title 10, Part 5

In accordance with §2001.039, Texas Government Code, the Office of the Governor, Economic Development and Tourism Division, submits notice of the agency's intention to review the rules found in the following chapters: 175 (Defense Economic Readjustment Zones), 176 (Enterprise Zone Program), 177 (Product Development and Small Business Incubator Fund), 180 (Industrial Projects), 181 (Texas Leverage Fund Program), 182 (Business Assistance), 183 (Office of the Governor, Economic Development and Tourism Division Investment Policy), 186 (Smart Jobs Fund Program), 187 (Capital Access Program), 188 (Fuel Ethanol and Biodiesel Production Incentive Program), 197 (Private Donations), and 198 (Advertising Rules). Review of the rules under these chapters will determine whether the reasons for adoption of the rules continue to exist.

Comments on this rule review may be submitted to Jeri Ernst, Research Specialist, Office of the Governor, Economic Development and Tourism Division, P.O. Box 12428, Austin, Texas 78711; (512) 936-0294; jeri.ernst@governor.state.tx.us. Comments must be received no later than 30 days from the date of publication of this rule review in the *Texas Register*.

TRD-201100713

David Zimmerman

Assistant General Counsel

Office of the Governor, Economic Development and Tourism Division

Filed: February 18, 2011



Department of Information Resources

Title 1, Part 10

The Department of Information Resources (DIR) files this notice of intention to review and consider for re-adoption, revision or repeal 1 Texas Administrative Code Chapter 201, §§201.1 - 201.2, 201.4 - 201.6, 201.9, 201.15, and 201.17, concerning Planning and Management of Information Resources Technologies. The review and consideration of the rules are conducted in accordance with Texas Government Code, §2001.039. The review will include, at a minimum, an assessment by DIR of whether the reasons the rule was initially adopted continue to exist and whether the rule should be re-adopted.

Any questions or written comments pertaining to this rule review may be submitted to Martin Zelinsky, Interim General Counsel,

via mail at P.O. Box 13564, Austin, Texas 78711, via facsimile transmission at (512) 475-4759 or via electronic mail to martin.zelinsky@dir.texas.gov. The deadline for comments is 30 days after publication of this notice in the *Texas Register*. Any proposed changes to the rule as a result of the rule review will be published in the Proposed Rules section of the *Texas Register*. The proposed rule changes will be open for public comment prior to final adoption or repeal of the rule by DIR in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

TRD-201100644

Martin Zelinsky

Interim General Counsel

Department of Information Resources

Filed: February 17, 2011



The Department of Information Resources (DIR) files this notice of intention to review and consider for re-adoption, revision or repeal 1 Texas Administrative Code Chapter 203, §§203.1 - 203.3, 203.20 - 203.27, and 203.40 - 203.46, concerning Management of Electronic Transactions and Signed Records. The review and consideration of the rules are conducted in accordance with Texas Government Code, §2001.039. The review will include, at a minimum, an assessment by DIR of whether the reasons the rule was initially adopted continue to exist and whether the rule should be re-adopted.

Any questions or written comments pertaining to this rule review may be submitted to Martin Zelinsky, Interim General Counsel, via mail at P.O. Box 13564, Austin, Texas 78711, via facsimile transmission at (512) 475-4759 or via electronic mail to martin.zelinsky@dir.texas.gov. The deadline for comments is 30 days after publication of this notice in the *Texas Register*. Any proposed changes to the rule as a result of the rule review will be published in the Proposed Rules section of the *Texas Register*. The proposed rule changes will be open for public comment prior to final adoption or repeal of the rule by DIR in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

TRD-201100645

Martin Zelinsky

Interim General Counsel

Department of Information Resources

Filed: February 17, 2011



The Department of Information Resources (DIR) files this notice of intention to review and consider for re-adoption, revision or repeal 1 Texas Administrative Code Chapter 206, §§206.1 - 206.3, 206.50 -

206.55, and 206.70 - 206.75, concerning State Web Sites. The review and consideration of the rules are conducted in accordance with Texas Government Code, §2001.039. The review will include, at a minimum, an assessment by DIR of whether the reasons the rule was initially adopted continue to exist and whether the rule should be re-adopted.

Any questions or written comments pertaining to this rule review may be submitted to Martin Zelinsky, Interim General Counsel, via mail at P.O. Box 13564, Austin, Texas 78711, via facsimile transmission at (512) 475-4759 or via electronic mail to martin.zelinsky@dir.texas.gov. The deadline for comments is 30 days after publication of this notice in the *Texas Register*. Any proposed changes to the rule as a result of the rule review will be published in the Proposed Rules section of the *Texas Register*. The proposed rule changes will be open for public comment prior to final adoption or repeal of the rule by DIR in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

TRD-201100646
Martin Zelinsky
Interim General Counsel
Department of Information Resources
Filed: February 17, 2011



The Department of Information Resources (DIR) files this notice of intention to review and consider for re-adoption, revision or repeal 1 Texas Administrative Code Chapter 208, §§208.1 - 208.3, 208.10, and 208.20, concerning Communications Wiring Standards. The review and consideration of the rules are conducted in accordance with Texas Government Code, §2001.039. The review will include, at a minimum, an assessment by DIR of whether the reasons the rule was initially adopted continue to exist and whether the rule should be re-adopted.

Any questions or written comments pertaining to this rule review may be submitted to Martin Zelinsky, Interim General Counsel, via mail at P.O. Box 13564, Austin, Texas 78711, via facsimile transmission at (512) 475-4759 or via electronic mail to martin.zelinsky@dir.texas.gov. The deadline for comments is 30 days after publication of this notice in the *Texas Register*. Any proposed changes to the rule as a result of the rule review will be published in the Proposed Rules section of the *Texas Register*. The proposed rule changes will be open for public comment prior to final adoption or repeal of the rule by DIR in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

TRD-201100647
Martin Zelinsky
Interim General Counsel
Department of Information Resources
Filed: February 17, 2011



The Department of Information Resources (DIR) files this notice of intention to review and consider for re-adoption, revision or repeal 1 Texas Administrative Code Chapter 209, §§209.1 - 209.3, 209.10 - 209.13, and 209.30 - 209.33, concerning Minimum Standards for Meetings Held by Videoconference. The review and consideration of the rules are conducted in accordance with Texas Government Code, §2001.039. The review will include, at a minimum, an assessment by DIR of whether the reasons the rule was initially adopted continue to exist and whether the rule should be re-adopted.

Any questions or written comments pertaining to this rule review may be submitted to Martin Zelinsky, Interim General Counsel, via mail at P.O. Box 13564, Austin, Texas 78711, via facsimile

transmission at (512) 475-4759 or via electronic mail to martin.zelinsky@dir.texas.gov. The deadline for comments is 30 days after publication of this notice in the *Texas Register*. Any proposed changes to the rule as a result of the rule review will be published in the Proposed Rules section of the *Texas Register*. The proposed rule changes will be open for public comment prior to final adoption or repeal of the rule by DIR in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

TRD-201100648
Martin Zelinsky
Interim General Counsel
Department of Information Resources
Filed: February 17, 2011



The Department of Information Resources (DIR) files this notice of intention to review and consider for re-adoption, revision or repeal 1 Texas Administrative Code Chapter 210, §§210.1 - 210.5, concerning TexasOnline. The review and consideration of the rules are conducted in accordance with Texas Government Code, §2001.039. The review will include, at a minimum, an assessment by DIR of whether the reasons the rule was initially adopted continue to exist and whether the rule should be re-adopted.

Any questions or written comments pertaining to this rule review may be submitted to Martin Zelinsky, Interim General Counsel, via mail at P.O. Box 13564, Austin, Texas 78711, via facsimile transmission at (512) 475-4759 or via electronic mail to martin.zelinsky@dir.texas.gov. The deadline for comments is 30 days after publication of this notice in the *Texas Register*. Any proposed changes to the rule as a result of the rule review will be published in the Proposed Rules section of the *Texas Register*. The proposed rule changes will be open for public comment prior to final adoption or repeal of the rule by DIR in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

TRD-201100649
Martin Zelinsky
Interim General Counsel
Department of Information Resources
Filed: February 17, 2011



The Department of Information Resources (DIR) files this notice of intention to review and consider for re-adoption, revision or repeal 1 Texas Administrative Code Chapter 212, §§212.1, 212.10 - 212.12, and 212.20 - 212.23, concerning Purchases of Commodity Items. The review and consideration of the rules are conducted in accordance with Texas Government Code, §2001.039. The review will include, at a minimum, an assessment by DIR of whether the reasons the rule was initially adopted continue to exist and whether the rule should be re-adopted.

Any questions or written comments pertaining to this rule review may be submitted to Martin Zelinsky, Interim General Counsel, via mail at P.O. Box 13564, Austin, Texas 78711, via facsimile transmission at (512) 475-4759 or via electronic mail to martin.zelinsky@dir.texas.gov. The deadline for comments is 30 days after publication of this notice in the *Texas Register*. Any proposed changes to the rule as a result of the rule review will be published in the Proposed Rules section of the *Texas Register*. The proposed rule changes will be open for public comment prior to final adoption or repeal of the rule by DIR in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

TRD-201100650
Martin Zelinsky
Interim General Counsel
Department of Information Resources
Filed: February 17, 2011



State Securities Board

Title 7, Part 7

The State Securities Board (Agency), beginning March 2011, will review and consider for readoption, revision, or repeal Chapter 105, Rules of Practice in Contested Cases, and Chapter 106, Guidelines for the Assessment of Administrative Fines, in accordance with Texas Government Code, §2001.039. The rules to be reviewed are located in Title 7, Part 7, of the Texas Administrative Code.

The assessment made by the Agency at this time indicates that the reasons for initially adopting the chapters continue to exist.

The Agency's Board will consider, among other things, whether the reasons for adoption of these rules continue to exist and whether amendments are needed. Any changes to the rules proposed by the Agency's Board after reviewing the rules and considering the comments received in response to this notice will appear in the "Proposed Rules" section of the *Texas Register* and will be adopted in accordance with the requirements of the Administrative Procedure Act, Texas Government Code Annotated, Chapter 2001. The comment period will last for 30 days beginning with the publication of this notice of intention to review.

Comments or questions regarding this notice of intention to review may be submitted in writing, within 30 days following the publication of this notice in the *Texas Register*, to Kara L. Kennedy, General Counsel, P.O. Box 13167, Austin, Texas 78711-3167, or sent by facsimile to Ms. Kennedy at (512) 305-8310. Comments will be reviewed and discussed in a future Board meeting.

TRD-201100689
Denise Voigt Crawford
Securities Commissioner
State Securities Board
Filed: February 18, 2011



Adopted Rule Reviews

Credit Union Department

Title 7, Part 6

The Credit Union Commission (Commission) has completed the review of Chapter 91, §91.503 (Change in Credit Union President), §91.510 (Bond and Insurance Requirements), §91.515 (Financial Reporting), §91.601 (Share and Deposit Accounts), §91.602 (Solicitation and Acceptance of Brokered Deposits), §91.608 (Confidentiality of Member Records), and §91.610 (Safe Deposit Box Facilities) as published in the November 5, 2010, issue of the *Texas Register* (35 TexReg 9925).

The rules were reviewed as a result of the Credit Union Department's (Department's) general rule review.

The Commission received no comments with respect to these rules. The Department believes that the reasons for initially adopting these rules continue to exist. The Commission finds that the reasons for initially adopting §§91.503, 91.510, 91.515, 91.601, 91.602, 91.608, and

91.610 continue to exist and readopts these rules without changes pursuant to the requirements of Government Code, §2001.039.

TRD-201100709
Harold E. Feeney
Commissioner
Credit Union Department
Filed: February 18, 2011



Texas Education Agency

Title 19, Part 2

The Texas Education Agency (TEA) adopts the review of 19 TAC Chapter 150, Commissioner's Rules Concerning Educator Appraisal, Subchapter AA, Teacher Appraisal, and Subchapter BB, Administrator Appraisal, pursuant to the Texas Government Code, §2001.039. The TEA proposed the review of 19 TAC Chapter 150, Subchapters AA and BB, in the December 10, 2010, issue of the *Texas Register* (35 TexReg 10995).

Relating to the review of 19 TAC Chapter 150, Subchapters AA and BB, the TEA finds that the reasons for adopting Subchapters AA and BB continue to exist and readopts the rules. The TEA received no comments related to the review of Subchapters AA and BB. No changes are necessary as a result of the review.

This concludes the review of 19 TAC Chapter 150.

TRD-201100735
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: February 22, 2011



The Texas Education Agency (TEA) adopts the review of 19 TAC Chapter 153, School District Personnel, Subchapter AA, Commissioner's Rules Concerning School District Personnel Duties and Benefits; Subchapter BB, Commissioner's Rules Concerning Professional Development; Subchapter CC, Commissioner's Rules on Creditable Years of Service; and Subchapter DD, Criminal History Record Information Review, pursuant to the Texas Government Code, §2001.039. The TEA proposed the review of 19 TAC Chapter 153, Subchapters AA-DD, in the December 10, 2010, issue of the *Texas Register* (35 TexReg 10995).

Relating to the review of 19 TAC Chapter 153, Subchapters AA-CC, the TEA finds that the reasons for adopting Subchapters AA-CC continue to exist and readopts the rules. The TEA received no comments related to the review of Subchapters AA-CC. No changes are necessary as a result of the review.

Relating to the review of 19 TAC Chapter 153, Subchapter DD, the TEA finds that the reasons for adopting Subchapter DD continue to exist and readopts the rules. The TEA received no comments related to the review of Subchapter DD. At a later date, the TEA plans to propose changes related to criminal history record information review as a result of House Bill 2730, 81st Texas Legislature, 2009.

This concludes the review of 19 TAC Chapter 153.

TRD-201100736
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: February 22, 2011



Texas State Board of Pharmacy

Title 22, Part 15

The Texas State Board of Pharmacy adopts the review of Chapter 291 (§§291.1 - 291.3, 291.5 - 291.11, 291.14, 291.15, 291.17 - 291.19, 291.22 - 291.24, and 291.27 - 291.29) concerning All Classes of Pharmacies, pursuant to the Texas Government Code §2001.039, regarding Agency Review of Existing Rules. The proposed review was published in the December 24, 2010, issue of the *Texas Register* (35 TexReg 11716).

No comments were received.

The agency finds the reason for adopting the rule continues to exist.

TRD-201100687

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

Filed: February 18, 2011



The Texas State Board of Pharmacy adopts the review of Chapter 291 (§§291.91 - 291.94) concerning Clinic Pharmacy (Class D), pursuant to the Texas Government Code §2001.039, regarding Agency Review of Existing Rules. The proposed review was published in the December 24, 2010, issue of the *Texas Register* (35 TexReg 11716).

No comments were received.

The agency finds the reason for adopting the rule continues to exist.

TRD-201100688

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

Filed: February 18, 2011



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: 4 TAC §19.602(b)

Scientific Name	Common Name(s)
<i>Acoelorrhaphe wrightii</i>	Everglades palm
<i>Adonidia merrilli</i> (=Veitchia)	Manila palm, Christmas palm
<u>Aiphanes caryotfolia</u>	<u>Coyure palm, ruffle palm, spine palm</u>
<i>Aiphanes</i> spp.	Multiple crown palm, Ruffle palm
<i>Areca catechu</i>	Betel nut palm
<i>Areca</i> spp.	
<u>Archontophoenix alexandrae</u>	<u>Alexander palm, king palm</u>
<u>Arenga pinnata</u>	<u>Gomuti palm, sugar palm</u>
<i>Bactris plumeriana</i>	Coco macaco, Prickly pole
<i>Bismarckia nobilis</i>	Bismarck palm
<i>Caryota mitis</i>	Fishtail palm
<u>Beccariophoenix madagascariensis</u>	<u>Giant windowpane palm</u>
<u>Butia capitata</u>	<u>Pindo palm, Jelly palm</u>
<i>Chamaedorea</i> spp.	Chamaedorea palm
<i>Cocos nucifera</i>	Coconut palm
<u>Coccothrinax miraquama</u>	<u>Miraquama palm</u>
<u>Corypha umbraculifera</u>	<u>Talipot palm</u>
<i>Dictyosperma album</i>	Princess palm, Hurricane palm
<i>Dypsis decaryi</i>	Triangle palm
<i>Dypsis lutescens</i> (= <i>Chrysalidocarpus</i>)	Areca palm, Golden cane palm, Butterfly palm
<i>Elaeis guineensis</i>	African oil palm
<u>Howea forsteriana</u>	<u>Kentia palm, sentry palm</u>
<i>Licuala grandis</i>	Licuala palm, Ruffled fan palm
<i>Livistona chinensis</i>	Chinese fan palm

<i>Phoenix canariensis</i>	Canary Island date palm
<i>Phoenix dactylifera</i>	Date palm
<i>Phoenix reclinata</i>	Senegal date palm
<i>Phoenix roebelenii</i>	Pygmy date palm, Roebelenii palm
<i>Pritchardia pacifica</i>	Fiji fan palm
<i>Pseudophoenix sargentii</i>	Buccaneer palm
<i>Pseudophoenix vinifera</i>	Cacheo, Katié
<i>Ptychosperma elegans</i>	Solitaire palm, Alexander palm
<i>Ptychosperma macarthurii</i>	Macarthur palm
<i>Rhapis excelsa</i>	Lady palm, bamboo palm
<i>Roystonea borinquena</i>	<u>Puerto Rico</u> Royal palm
<u>Roystonea regia</u>	<u>Florida royal palm</u>
<u>Schippia concolor</u>	<u>Silver pimento palm</u>
<i>Syagrus romanzoffiana</i>	Queen palm
<i>Syagrus schizophylla</i>	Arikury palm
<u>Thrinax radiata</u>	<u>Florida thatch palm</u>
<u>Veitchia spp.</u>	<u>Manila palm</u>
<i>Washingtonia filifera</i>	Fan palm
<i>Washingtonia robusta</i>	Mexican fan palm
<u>Washingtonia spp.</u>	
<u>Wodyetia</u> [<i>Wedyetis</i>] <i>bifurcata</i>	Foxtail palm
<i>Heliconia bihai</i>	Macaw flower
<i>Heliconia caribaea</i>	Wild plantain, Balisier
<i>Heliconia psittacorum</i>	Parrot flower
<i>Heliconia rostrata</i>	Lobster claw heliconia
<u>Heliconia spp.</u>	
<i>Musa <u>acuminata</u></i> [<i>acuminata</i>]	Edible banana, Plantain

<i>Musa balbisiana</i>	Wild banana
<i>Musa coccinea</i> (= <i>Musa uranoscopus</i>)	Red flowering banana
<i>Musa</i> x <i>paradisiaca</i> [<i>paradisiaca</i>] (= <i>Musa sapientum</i>)	Edible banana, Plantain
<i>Musa corniculata</i>	Red banana
<i>Musa</i> spp	Banana, Plantain
<i>Pandanus utilis</i>	Screw pine
<i>Strelitzia reginae</i>	Bird of paradise, Crane flower
<i>Ravenala madagascariensis</i>	Traveler's tree
<i>Etlingera elatior</i> (= <i>Nicolaia</i>)	Red torch ginger
<i>Alpinia purpurata</i>	Red ginger, Jungle king/queen
<i>Alpinia zerumbet</i> (Pers.)	Shell ginger; Pink porcelain lily; Shell plant

Figure: 7 TAC §80.9(b)

RESIDENTIAL MORTGAGE LOAN ORIGINATOR DISCLOSURE

Residential Mortgage Loan Originator: _____

License Number: _____

The information in this disclosure is provided to clarify the nature of our relationship, my duties to you, and how I am to be compensated as a Residential Mortgage Loan Originator. This disclosure is a requirement of the Texas Mortgage Broker License Act.

Since I may be working for a company, references to "we" or "us" refer to me and any company for which I am working.

Check ALL that apply

Duties and Nature of Relationship

You, the applicant(s), have applied with us for a loan secured by residential real estate.

We will submit your loan application to a participating lender which we may from time to time contract upon such terms as you may request or a lender may require. In connection with this mortgage loan, we are acting as an independent contractor and not as your agent. We will enter into separate independent contractor agreements with various lenders. While we will seek to assist you in meeting your financial needs, we do not distribute the products of all lenders or investors in the market and cannot guarantee the lowest or best terms available in the market.

In connection with this mortgage loan, we are acting as an independent contractor and not as your agent. We will make your loan ourselves. We may either sell the loan to an investor or retain it. (You will receive a separate disclosure as to how we will handle servicing rights on any such loan.) We have a number of established independent contractor relationships with various investors to whom we sell closed loans. We are not an agent for any such investor in connection with the sale of a loan. While we will seek to assist you in meeting your financial needs, we cannot guarantee the lowest or best terms available in the market.

We will be acting as follows:

How we will be compensated

The retail price we offer you - your interest rate, total points, and fees - will include our compensation. In some cases we may be paid all of our compensation by you or by the lender or investor. For example, in some cases, if you would rather pay a lower interest rate, you may pay higher up-front points and fees. Also, in some cases, if you would rather pay less up-front, you may be able to pay a higher rate, in which case my compensation will be paid by the lender. We also may be paid by the lender based on other goods, services, or facilities performed or provided by us to the lender.

Our pricing for your loan is based upon:

At the time of this disclosure, we are receiving \$ _____ in fees. The services which these fees are being charged include the following:

Application fee \$ _____

Appraisal fee \$ _____

Credit report fee \$ _____

Other (list):

_____ \$ _____
_____ \$ _____

Of this amount, \$ _____ is not refundable unless the amount is required to be refunded under applicable state or federal law upon the exercise of a right of rescission (such as the Truth in Lending Act, 15 U.S.C. §1600, et seq. and Regulation Z, 12 C.F.R. Part 226 or the provisions of the Home Equity provisions of the Texas Constitution, Article XVI, Section 50.

If applicable:

The estimated fees which we will charge will be as shown on the good faith estimate which we are providing to you now or which we will provide you within three (3) days in accordance with the requirements of the Real Estate Settlement Procedures Act and its implementing regulations.

_____ IS LICENSED UNDER THE LAWS OF THE STATE OF TEXAS AND BY STATE LAW IS SUBJECT TO REGULATORY OVERSIGHT BY THE DEPARTMENT OF SAVINGS AND MORTGAGE LENDING. ANY CONSUMER WISHING TO FILE A COMPLAINT AGAINST _____ SHOULD COMPLETE, SIGN, AND SEND A COMPLAINT FORM TO THE DEPARTMENT OF SAVINGS AND MORTGAGE LENDING, 2601 NORTH LAMAR, SUITE 201, AUSTIN, TEXAS 78705. COMPLAINT FORMS AND INSTRUCTIONS MAY BE DOWNLOADED AND PRINTED FROM THE DEPARTMENT'S WEB SITE LOCATED AT <http://www.sml.texas.gov> OR OBTAINED FROM THE DEPARTMENT UPON REQUEST BY MAIL AT THE ADDRESS ABOVE, BY TELEPHONE AT ITS TOLL-FREE CONSUMER HOTLINE AT 1-877-276-5550, BY FAX AT (512) 475-1360, OR BY E-MAIL AT smlinfo@sml.texas.gov.

THE DEPARTMENT MAINTAINS THE MORTGAGE BROKER RECOVERY FUND TO MAKE PAYMENTS OF CERTAIN ACTUAL OUT OF POCKET DAMAGES SUSTAINED BY BORROWERS CAUSED BY ACTS OF LICENSED RESIDENTIAL MORTGAGE LOAN ORIGINATORS. A WRITTEN APPLICATION FOR REIMBURSEMENT FROM THE RECOVERY FUND MUST BE FILED WITH AND INVESTIGATED BY THE DEPARTMENT PRIOR TO THE PAYMENT OF A CLAIM. FOR MORE INFORMATION ABOUT THE RECOVERY FUND, PLEASE CONSULT SUBCHAPTER F OF THE MORTGAGE BROKER LICENSE ACT ON THE DEPARTMENT'S WEB SITE REFERENCED ABOVE.

Applicant(s)	Residential Mortgage Loan Originator:
Signed: _____	Signed: _____
Name: _____	Name: _____
Date: _____	Date: _____
Signed: _____	
Name: _____	

Figure: 22 TAC §75.11(b)

MAXIMUM SANCTIONS TABLE

CATEGORY I. 1st Offense: \$1000* 2nd Offense: \$1000* 3rd Offense: \$1000* *and/or revocation	
Violation	Reference
Practicing without a chiropractic license	22 TAC §75.10(d) CA §201.301
Practicing with an expired license (nonrenewal due to default student loan)	22 TAC §73.2(c)(6) and (e) CA §§201.301, 201.351, 201.354(f)
Practicing with an expired license (nonrenewal)	22 TAC §73.2(i) CA §§201.301, 201.351, 201.354(f)
Practicing while on inactive status	22 TAC §73.4(f) CA §201.301, §201.311(b)(2)
Practicing in non-compliance with continuing education requirements	22 TAC §73.3, §73.5(g) CA §201.301, §201.354(f)
Improper control of patient care and treatment	22 TAC §74.5(c)
Grossly unprofessional conduct	22 TAC §75.1 CA §201.502(a)(7)
Lack of diligence/gross inefficient practice	22 TAC §75.2 CA §201.502(a)(18)
Performing radiologic procedures without registering, with an expired registration, or without DSHS approval; failure to renew (including non-payment of fees)	22 TAC §78.1(a), (d), (h)
MRTCA, DSHS rules or order	22 TAC §78.1(h), (j), (o)
Performing: (1) radiologic procedures without supervision; or (2) cineradiography or other restricted procedure	22 TAC §78.1(g), (k), (l), (m)
Permitting a non-registered or non-DSHS approved person to perform radiologic procedures or CRT to perform procedures without supervision	22 TAC §78.1(k), (n)
Delegating to a non- licensee authority to perform adjustments or manipulations	22 TAC §80.1(a)
Failure to supervise a student	22 TAC §80.1(b)
Delegating authority to a licensee whose license has been suspended or revoked	22 TAC §80.1(d)
Failure to comply with the CA, other law or a board order or rule	22 TAC §75.10(c) CA §201.501, §201.502(a)(1)

Failure to comply with down-time restrictions	22 TAC §75.10(f)
Medicaid fraud	CA §201.502(a)(2), (7) HRC §36.002, §36.005
Solicitation	Occ. Code §102.001, §102.006
Default on Student Loan	Occ. Code Chapter 56 22 TAC §80.2
Failure to comply with requirements/restrictions on prepaid treatment plans	22 TAC §80.13
Other statutory violations	CA §201.502(a)(2) - (8), (10), (12) - (17), (19) - (20)
CATEGORY II. 1st Offense: \$500 2nd Offense: \$750* 3rd Offense: \$1000* *and/or suspension	
Violation	Reference
Submitting an untrue continuing education certification	22 TAC §73.3(1)(E) CA §201.502(a)(2)
Operating a facility without a certificate of registration or with an expired registration	CA §201.312 22 TAC §§74.2(a), 74.3(e), 74.5(a)
Practicing in a facility without a certificate of registration or with an expired registration	CA §201.312 22 TAC §74.2(k)
Unauthorized disclosure of patient records	22 TAC §80.3 CA §201.402, §201.405
Overtreating/overcharging a patient	22 TAC §75.1(a)(4) HPCA §101.203
Deceptive advertising and other prohibited advertising	22 TAC §77.2 CA §201.502(a)(2), (9), (11) HPCA §101.201
CATEGORY III. 1st Offense: \$250 2nd Offense: \$500* 3rd Offense: \$1000* *and/or suspension	
Violation	Reference
Failure to furnish patient records Overcharging for copies of patient records	22 TAC §80.3 CA §201.405(f)
Failure to disclose charges to patient	22 TAC §75.1(a)(6), §77.3(a) HPCA §101.202
Failure to submit to medical examination	22 TAC §80.3(h)
Failure to maintain patient records	22 TAC §80.5

CATEGORY IV. 1st Offense: \$250 2nd Offense: \$500 3rd Offense: \$1000	
Violation	Reference
Failure to respond to board inquiries	22 TAC §§73.3(1)(C), 75.3(h), 75.6, 80.3(g)
Failure to display public interest information Displaying an invalid license or renewal card	22 TAC §75.7(d), (e), §75.8 CA §201.502(a)(2), (9)
Failure to complete CRT continuing education	22 TAC §78.1(i)
CATEGORY V. 1st Offense: \$250 2nd Offense: \$400 3rd Offense: \$500	
Violation	Reference
Failure to report change of address	22 TAC §73.1
Failure to report change of facility address/ownership	22 TAC §74.5(d)
Failure to report <i>locum tenens</i> information	22 TAC §73.2(b)
Failure to report criminal conviction	22 TAC §75.3(f)
Use of the term "physician," "chiropractic physician"	CA §201.502(a)(22)
Failure to use "chiropractor," "D.C." in advertising	22 TAC §75.1(a)(2)

IN

ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas Department of Agriculture

Request for Applications: Urban Schools Agricultural Competitive Grant Program

Statement of Purpose. Pursuant to the Texas Agriculture Code, §§48.001 - 48.005 and Texas Administrative Code, Title 4, Part 1, Chapter 1, §§1.800 - 1.804, the Texas Department of Agriculture (TDA) hereby requests proposals for agricultural projects designed to foster an understanding and awareness of agriculture in elementary and middle school students for the period of September 1, 2011 through August 31, 2012, from certain Texas urban school districts. A total amount of up to \$2,500 may be awarded to an eligible elementary or middle school in a single grant cycle.

Agriculture is defined as the science, art, or practice of cultivating the soil, producing crops, raising livestock, and in varying degrees the preparation and marketing of the resulting products. TDA encourages schools to consider partnerships with organizations such as a local Master Gardner program, 4-H or FFA clubs. Projects funded must be dedicated to education and/or awareness of agriculture in elementary and middle school students in certain Urban School districts in Texas and should be designed to improve students' understanding and appreciation of agriculture.

A non-comprehensive list of project ideas and resources can be found in Attachment 1 to this Request for Applications (RFA).

Eligibility. Proposals must be submitted by a Texas public elementary or middle school from an urban school district with an enrollment of at least 49,000 students. According to Texas Education Agency's (TEA) October 2009 records, the eligible school districts are:

Aldine Independent School District;
Arlington Independent School District;
Austin Independent School District;
Brownsville Independent School District;
Conroe Independent School District;
Cypress-Fairbanks Independent School District;
Dallas Independent School District;
El Paso Independent School District;
Fort Bend Independent School District;
Fort Worth Independent School District;
Garland Independent School District;
Houston Independent School District;
Katy Independent School District;
Lewisville Independent School District;
North East Independent School District;
Northside Independent School District;
Pasadena Independent School District;

Plano Independent School District; and

San Antonio Independent School District.

If your school district is not listed above and you feel it meets the minimum student enrollment of 49,000 you will need to attach a TEA verification of enrollment to your application.

Please note that TDA will enter into a cost-reimbursement grant agreement with the school district of the applying elementary and/or middle school.

Funding Parameters. Awards are subject to the availability of funds. If no funds are appropriated or collected for this purpose, applicants will be informed accordingly.

TDA reserves the right to fund projects partially or fully. TDA reserves the right to negotiate individual elements of any proposal and to reject any and all proposals. Where more than one proposal is acceptable for funding, TDA may request cooperation between grantees or revisions/adjustments to a proposal in order to avoid duplication and to realize the maximum benefit to the state. Selected projects will receive funding on a cost-reimbursement basis.

All costs, directly or indirectly related to preparation of a response to this RFA or any oral presentation required to supplement and/or clarify the RFA, which may be required by TDA, shall be the sole responsibility of, and shall be borne by the applicant.

Application Requirements.

Form Requirements:

Applications must be submitted on Form ER-150 for consideration. Responses, including Form ER-150, may not exceed six pages. The required forms are available by accessing TDA's website at: www.TexasAgriculture.gov.

Technical Requirements:

The following must be included:

- 1. Applicant Contact Information:** Include name and mailing address of applicant organization; and name, title, and contact information for both primary program contact and name of authorized representative (usually the superintendent).
- 2. Project Title:** Title must be brief, descriptive and capture the primary focus of the project.
- 3. Project Summary:** In 200 words or less include the summary of the project to be completed.
- 4. Scope of Work.** In this section, list the activities that will be completed, how and what the project will accomplish and who will participate in this project. This detailed description should include the role of the students. If more than one grade level is participating, please explain the role of each. Make sure a correlation between each activity and its purpose in meeting the goal(s) of the project is clear.
- 5. Educational Statement:** A statement of the educational benefits of the project, including how the project will improve the students' understanding of agriculture and the role agriculture plays in their daily lives.

6. Anticipated Project Results: Provide a detailed description of how quantifiable results have, or will be, demonstrated by the nutrition education program/activity.

7. Project Sustainability: Provide a statement on how this project will be sustainable or otherwise supports continuation of the students' understanding of agriculture long-term or beyond the grant award period

8. Project Budget: A project budget including a detailed list of anticipated costs for the project totaling no more than \$2,500.

Proposal Evaluations: Proposals will be evaluated based on the following criteria:

1. *Agricultural education component* - How well does this project increase the students' understanding of agriculture and the role it plays in their daily lives?

2. *Achievability of the proposed project and objectives* - How well do the anticipated project results support the project's purpose?

3. *Project Budget* - Is the requested budget reasonable? Is the project budget dedicated to student education and not campus beautification?

4. *Sustainability of the project* - Are there lasting benefits after the end of the project?

A panel appointed by the Commissioner of the Texas Department of Agriculture shall review the proposals and make funding recommendations to the Commissioner. The panel shall consist of representatives from the following: Texas Department of Agriculture, education industry, livestock industry, specialty crop industry, row crop industry, horticulture industry and the Texas AgriLife Extension Service.

Approved Projects: The announcement of the grant awards will be made by August 2011. All approved projects will have a start date of September 1, 2011 and must be completed by August 31, 2012.

Funded projects will require the school district to enter into a grant agreement with TDA.

Reporting Requirements. Approved projects are required to submit the following reports:

1. *Payment Requests.* The Urban Schools Agricultural Grant Program is administered on a cost reimbursement basis. Funds will be disbursed once a proper payment request, including back-up documentation, has been received by TDA. Payment requests may be submitted with no greater frequency than monthly.

2. *Project Progress Reports.* These reports are due on a quarterly basis from one to three pages in length detailing accomplishment of project objectives for the time periods specified in the grant agreement.

3. *Final Compliance Report.* These reports are due either thirty (30) days after completion of the project or upon termination of the Grant Agreement. The final report shall be submitted in a hard copy format and an electronic format should be emailed to the Department. The final report shall contain:

a. A project summary - history of the project, its objectives, importance, effort and results of the project;

b. A description of the successes, challenges, and any limitations of the program;

c. A description of future plans, including how the project will continue after the grant is expended and how additional funding might address expansion efforts; and

d. Photographs to document results.

4. *Quarterly Project Budget Reports.* Budget reports are due on a quarterly basis for the time periods specified in the award document that details the grant award spent to date.

5. *Final Budget Report.* The final budget report is due thirty (30) days after the completion of the project or the termination of the contract.

General Compliance Information.

1. All grant awards are subject to the availability of appropriations and authorizations by the Texas Legislature.

2. Any delegation by the Grantee to a subcontractor regarding any duties and responsibilities imposed by the grant award shall be approved in advance by TDA and shall not relieve the Grantee of its responsibilities to TDA for their performance.

3. Any information or documentation submitted to TDA as part of the project grant proposal is subject to disclosure under the Texas Public Information Act.

4. Awarded grant projects must remain in full compliance with state and federal laws and regulations. Noncompliance with such law may result in termination by TDA.

5. Grant recipients must keep a separate bookkeeping account with a complete record of all expenditures relating to the research project. Records shall be maintained for three years after the completion of the research project or as otherwise agreed upon with TDA. TDA and the Texas State Auditor's Office reserve the right to examine all books, documents, records, and accounts relating to the research project at any time throughout the duration of the agreement and for three years immediately following completion of the project. If there has been any litigation, claim, negotiation, audit or other action started prior to the expiration of the three-year period involving the records, then the records must be retained until the completion of the action and resolution of all issues which arise from it, or until the end of the regular three-year period, whichever is later. TDA and the Texas State Auditor's Office reserve the right to inspect the research locations and to obtain from the research team full information regarding all project activities.

6. If the Grantee has a financial audit performed in any year during which Grantee receives funds from TDA, and if TDA requests information about the audit, the Grantee shall provide such information to TDA or provide information as to where the audit report can be publicly viewed, including the audit transmittal letter, management letter, and any schedules in which the Grantee's funds are included.

7. Grant awards to Texas institutions shall comply in all respects with the Uniform Grant Management Standards (UGMS). A copy may be downloaded from the following website: www.governor.state.tx.us/divisions/stategrants/guidelines/files/UGMS012001.doc

Deadline for Submission of Responses. Responses to this request should be submitted to:

Physical Address (For hand-delivery and overnight mail carriers)

Texas Department of Agriculture, Urban Schools Grant Program, Attn: Mindy Fryer, 1700 N. Congress Ave., 11th Floor, Austin, TX 78701.

Mailing Address (For US Postal Service mailings):

Texas Department of Agriculture, Urban Schools Grant Program, Attn: Mindy Fryer, P.O. Box 12847, Austin, TX 78711

A hard copy of the proposal must be postmarked by Friday, May 13, 2011. In addition to the copy mailed, an emailed copy must also be submitted in a Microsoft Word document.

TDA will send an acknowledgement receipt by email indicating the response was received.

For questions regarding submission of the proposal and TDA documentation requirements, please contact Mr. Rick Sumner, Grants Specialist, at (512) 463-2805 or by email at grants@TexasAgriculture.gov.

Texas Public Information Act. All proposals shall be deemed, once submitted, to be the property of the TDA and are subject to the Texas Public Information Act, Texas Government Code, Chapter 552.

ATTACHMENT 1

Definition of Agriculture

Agriculture is defined as the science, art, or practice of cultivating the soil, producing crops, and raising livestock, and in varying degrees the preparation and marketing of the resulting products.

If the students in your classroom were asked where hamburger meat, milk, carrots, ham, bread or cereal come from, how would they answer? Would they know that all food comes from farms and ranches or would they answer, "the grocery store"?

Project Examples:

School gardens (vegetable, salsa, pizza, etc.);

Classroom projects (herb gardens, hatchery, etc.);

Field trips (Livestock shows, Farmers' Markets, farms and ranches);

Guest speakers;

After school projects.

Please consider using the following suggested online resources to enhance the agriculture emphasis in your project. This list is also located on TDA's website (www.TexasAgriculture.gov) under the grants/funding tab. TDA strives to provide the most up to date information and will be periodically updating this information as needed.

National 4-H - www.4-hmall.org

National Cotton Council - www.cotton.org/pubs/cottoncounts/resources.cfm

National Peanut Board - <http://www.nationalpeanutboard.org/>

Popcorn Board - www.popcorn.org

Texas 4-H - <http://texas4-h.tamu.edu/>

Texas Sheep and Goat Raisers Association - www.tsga.com/learn.htm

The Texas Farm Bureau - www.txfb.org or www.beagsmart.org

USDA - Agriculture in the Classroom - www.agclassroom.org

Many teachers have taken the opportunity to use the Urban Schools Agriculture Grant Program to teach TEKS in new, exciting and hands-on ways. The following list is not exhaustive, but rather an assimilation of general ideas that you may tailor to your needs or merely use as a starting point for your own unique ideas.

Animal Care - Students could select a livestock project, and become responsible for that animal(s)' care, round the clock. This includes duty schedules during weekends and holidays, identifying costs and budget, record maintenance, and preparing the animal(s) for a livestock show or similar forum. As part of the project, they could prepare photographs, video, etc. that focus on the project and lessons learned. The documentation could include visits to farms and ranches to review the scope of large operations and to find lessons that apply to the school project.

Agriculture and the Environment - Students can get permission to work on a piece of property in or around their school where soil quality, drainage, topsoil or pollution and litter problems exist. They can arrange a planting project (vegetables, fruit trees, etc.) that will mitigate or improve the existing problem to help make the land productive again. They can study the impact of poor land management, urbanization and pollution, and then suggest improvements.

Exploring Aquaculture - An often-overlooked aspect of agriculture is the fish and shellfish industry. Students can develop a project to raise fish, study the nutrient requirements of water for various species, learn about pollution and water quality and study the differences among freshwater and saltwater species. The research could include visits to Aquaculture centers and seafood restaurants to focus on the industry. As part of the project, they could prepare photographs and educational materials that focus on Aquaculture. They could present this to young students through assemblies or by allowing the primary and pre-school students to visit the classroom for a "meet the fish day."

School Gardens and Land Management - Students could use a piece of district-owned property on which to plant and maintain a garden. They could include "test" areas to measure the effects of proper land management, drainage, drought, etc. on their produce. Based upon the size and output of the garden, the students could serve the "fruits of their labors" at a school function, as part of a cafeteria meal or donate it to a food bank or other community outlet. If the students elect to do a horticulture project, they could share the plants and flowers with shut-ins, nursing homes, or volunteer organizations. In addition, they could use them for a school ceremony or special recognition.

Texas Products - Using resources such as Go Texan and commodity group data, students can study the school cafeteria menu to identify Texas agriculture products. They can do the same at area restaurants. The students then can work with the lunchroom and restaurants to use photography, articles and videos for artistic and informative lobby displays about the products and their Texas sources.

TRD-201100661

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Filed: February 17, 2011

Department of Assistive and Rehabilitative Services

Notice of Request for Comments on DARS Annual Application for Federal Funds for Early Childhood Intervention Services

The Texas Department of Assistive and Rehabilitative Services, Division for Early Childhood Intervention, is soliciting comments related to its annual application for federal funds for early childhood intervention services. DARS will be requesting funding under the Individuals with Disabilities Education Act, Part C. The annual funding application will be submitted to the U.S. Department of Education, Office of Special Education Programs on May 10, 2011. The application can be viewed on the DARS web site at: <http://www.dars.state.tx.us> The Texas Department of Assistive and Rehabilitative Services, Division for Early Childhood Intervention is providing an opportunity to comment on the application from March 4, 2011 until May 3, 2011. To request copies of the application or to make comments concerning early childhood intervention services in Texas, please, contact:

Cynthia Henderson, M.Ed.

Senior Policy Analyst

Texas Department of Assistive and Rehabilitative Services
Division of Early Childhood Intervention
4900 North Lamar Boulevard
Austin, Texas 78751-2399, Mail Code 3029
ECL.policy@dars.state.tx.us.
TRD-201100642
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Filed: February 16, 2011

◆ ◆ ◆

Office of the Attorney General

Notice of Settlement of a Texas Water Code Enforcement Action

The State of Texas gives notice of the following proposed resolution of an environmental enforcement action under the Texas Water Code. Before the State may enter into a voluntary settlement agreement, pursuant to §7.110 of the Texas Water Code the State shall permit the public to comment in writing. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreement if the comments disclose facts or considerations indicating that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the law.

Case Title: *United States of America and State of Texas v. Halliburton Energy Services, Inc., et al.*, CA No. 4:07-cv-3795; In the United States District Court for the Southern District of Texas.

Background: During 2001-2003 the United States Environmental Protection Agency ("EPA") conducted cleanups of contaminated sites in Houston, Webster and Odessa, Texas, owned by The GNI Group, Inc., or related entities, known as the "Gulf Nuclear Sites." Pursuant to an agreement with EPA, the Texas Commission on Environmental Quality contributed funds for those cleanups. Subsequently the United States and the State of Texas brought actions against various parties to recover their costs, and other matters.

Nature of the Settlement: The action by the State of Texas against Pengo Industries, Inc., will be settled by a consent decree in the district court.

Proposed Settlement: The proposed judgment provides for the recovery of response costs and attorneys' fees.

The Office of the Attorney General will accept written comments relating to the proposed judgment for 30 days from the date of publication of this notice. Copies of the proposed judgment may be examined at the Office of the Attorney General, 300 W. 15th Street, 10th Floor, Austin, Texas. A copy of the proposed judgment may also be obtained in person or by mail at the above address for the cost of copying. Requests for copies of the judgment, and written comments on the same, should be directed to Thomas H. Edwards, Assistant Attorney General, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78711-2548; telephone (512) 463-2012, fax (512) 320-0052.

For information regarding this publication, contact Zindia Thomas, Agency Liaison, at (512) 936-9901.

TRD-201100653

Jay Dyer
Deputy Attorney General
Office of the Attorney General
Filed: February 17, 2011

◆ ◆ ◆

Cancer Prevention and Research Institute of Texas

Request for Applications R-11-RCI-1 Recruitment of Clinical Investigators

The Cancer Prevention and Research Institute of Texas (CPRIT) seeks grant applications from qualified organizations located in the State of Texas to support investigators performing clinical research who have the ability to make outstanding contributions to the field of cancer research, promote inquiry into new areas, foster collaboration, and stimulate growth in the field. This request for applications specifically addresses the recognized shortage of clinical investigators. Applicants may address any research topic or issue related to cancer biology, causation, prevention, detection or screening, treatment, or cure by conducting studies of human subjects in relevant cancer settings. Institutions must apply for a specific candidate. Unless the candidate is a newly independent investigator, the candidate must not reside in Texas at the time the application is submitted. Successful applicants would be eligible for a grant award of up to \$5,000,000 depending upon experience level for a period not to exceed five 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 March 25, 2011, 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-201100750
William "Bill" Gimson
Executive Director
Cancer Prevention and Research Institute of Texas
Filed: February 23, 2011

◆ ◆ ◆

Request for Applications R-12-CFSA-1 Core Facilities Support Award

The Cancer Prevention and Research Institute of Texas (CPRIT) seeks grant applications from qualified organizations located in the State of Texas for the development or enhancement of core facilities that will provide valuable services to enhance the outcomes of scientifically meritorious cancer research projects. Successful applicants should be working in a research environment capable of supporting potentially high-impact cancer studies. The maximum duration of the award is 5 years. The maximum amount that may be requested is \$2 million for the first year and up to \$1 million for each subsequent year.

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 April 15, 2011, 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 May 31, 2011. CPRIT will not accept late applications or applications that are not submitted via the portal.

TRD-201100749

William "Bill" Gimson
Executive Director
Cancer Prevention and Research Institute of Texas
Filed: February 23, 2011



Request for Applications R-12-HIHR-1 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 \$200,000 for up to 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 April 15, 2011, 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 May 31, 2011. 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-201100747
William "Bill" Gimson
Executive Director
Cancer Prevention and Research Institute of Texas
Filed: February 23, 2011



Request for Applications R-12-IIRA-1 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 \$500,000 annually for up to 3 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 April 15, 2011, 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 May 31, 2011. CPRIT will not accept late applications or applications that are not submitted via the portal.

TRD-201100748
William "Bill" Gimson
Executive Director
Cancer Prevention and Research Institute of Texas
Filed: February 23, 2011



Comptroller of Public Accounts

Certification of the Average Taxable Price of Gas and Oil - January 2011

The Comptroller of Public Accounts, administering agency for the collection of the Crude Oil Production Tax, has determined that the average taxable price of crude oil for reporting period January 2011, as required by Tax Code, §202.058, is \$68.39 per barrel for the three-month period beginning on October 1, 2010, and ending December 31, 2010. Therefore, pursuant to Tax Code, §202.058, crude oil produced during the month of January 2011, from a qualified Low-Producing Oil Lease, is not eligible for exemption from the crude oil production tax imposed by Tax Code, Chapter 202.

The Comptroller of Public Accounts, administering agency for the collection of the Natural Gas Production Tax, has determined that the average taxable price of gas for reporting period January 2011, as required by Tax Code, §201.059, is \$3.12 per mcf for the three-month period beginning on October 1, 2010, and ending December 31, 2010. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of January 2011, from a qualified Low-Producing Well, is eligible for 25% credit on the natural gas production tax imposed by Tax Code, Chapter 201.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of West Texas Intermediate crude oil for the month of January 2011, is \$89.58 per barrel. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall not exclude total revenue received from oil produced during the month of January 2011, from a qualified low-producing oil well.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of gas for the month of January 2011, is \$4.50 per MMBtu. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall exclude total revenue received from gas produced during the month of January 2011, from a qualified low-producing gas well.

Inquiries should be directed to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

TRD-201100643
Ashley Harden
General Counsel
Comptroller of Public Accounts
Filed: February 17, 2011



Notice of Request for Applications

Pursuant to Chapters 403, 447 and 2305, Texas Government Code; and the State Energy Plan (SEP) and related legal authority and regulations, the Comptroller of Public Accounts (Comptroller), State Energy Conservation Office (SECO), announces this Request for Applications (RFA #RE-G1-2011) and Notice of Funding Availability of \$962,392.00 (individual awards, if any, are not-to-exceed \$50,000) in grant funding and invites applications from eligible interested publicly funded entities for grant funds for the Innovative Energy Demonstration Program of the State Energy Conservation Office (SECO). Eligible entities must be Texas cities, counties, independent school districts, state agencies and public institutes of higher education and applications must include twenty percent (20%) match of total project costs. The Comptroller reserves the right to award more than one grant under the terms of this RFA. If a grant award is made under the terms of the RFA, Grantee will be expected to begin performance of the grant agreement on or about May 31, 2011, or as soon thereafter as practical.

Contact: For general questions about these instructions or the application form, please submit your question in writing to William Clay Harris, Assistant General Counsel, Contracts, via facsimile to: (512) 463-3669. This notice is the RFA and will be published after 10:00 a.m. Central Time (CT) on Friday, March 4, 2011 and posted on the Electronic State Business Daily (ESBD) at: <http://esbd.cpa.state.tx.us> after 10:00 a.m. CT on Friday, March 4, 2011. The application and sample grant agreement will be posted shortly thereafter on the following website shortly thereafter: <http://www.seco.cpa.state.tx.us/funding/>

Questions: All written inquiries or questions must be received at the above-referenced address, also called Issuing Office, not later than 2:00 p.m. (CT) on Friday, March 11, 2011. The Comptroller expects to post responses to questions on the ESBD on or about Thursday, March 31, 2011, or as soon thereafter as practical. Late Questions will not be considered under any circumstances. Applicants shall be solely responsible for verifying timely receipt of Non-Mandatory Letters of Intent and Questions in the Issuing Office.

Closing Date: Applications must be delivered to the Issuing Office to the attention of the Assistant General Counsel, Contracts, no later than 2:00 p.m. (CT), on Friday, April 15, 2011. Late Applications will not be considered under any circumstances; Applicants shall be solely responsible for verifying time receipt of applications in the Issuing Office.

Evaluation Criteria: Applications will be evaluated under the criteria outlined in the grant application and instructions for this RFA. The Comptroller reserves the right to accept or reject any or all applications submitted. The Comptroller is not obligated to execute a grant agreement on the basis of this notice or the distribution of any RFA. The Comptroller shall not pay for any costs incurred by any entity in responding to this Notice or to the RFA.

The anticipated schedule of events pertaining to this RFA is as follows: Issuance of RFA - March 4, 2011, after 10:00 a.m. CT; Questions Due - March 11, 2011, 2:00 p.m. CT; Official Responses to Questions posted - March 31, 2011; Applications Due - April 15, 2011, 2:00 p.m. CT; Grant Agreement Execution - May 1, 2011, or as soon thereafter as practical; Commencement of Project - May 31, 2011, or as soon thereafter as practical.

TRD-201100756
William Clay Harris
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: February 23, 2011



Notice of Request for Proposals

Pursuant to Chapters 403, 447, and 2156, §2156.121; as well as Chapter 2305, Texas Government Code; and the American Recovery and Reinvestment Act of 2009 (ARRA) Public Law (PL) 111-5 (2009), and related laws, rules and regulations, as amended, the Comptroller of Public Accounts (Comptroller), State Energy Conservation Office (SECO) announces its Request for Proposals (RFP #201e) and invites proposals from qualified, interested firms and individuals to provide statewide training and support to increase compliance with the updated commercial and residential provisions of the Texas Building Energy Performance Standards and updated codes (Code). The Comptroller reserves the right to award more than one contract under the terms of this RFP. If a contract award is made under the terms of this RFP, Contractors will be expected to begin performance of the contract on or about April 8, 2011, or as soon thereafter as practical.

Contact: Parties interested in submitting a proposal should contact William Clay Harris, Assistant General Counsel, Contracts, Comptroller of Public Accounts, in the Issuing Office at: 111 E. 17th St., Room 201, Austin, Texas 78774, (512) 305-8673, to obtain a complete copy of the RFP. The Comptroller will mail copies of the RFP only to those parties specifically requesting a copy. The RFP will be available for pick-up at the above referenced address on Friday, March 4, 2011, after 10:00 a.m. Central Time (CT) and during normal business hours thereafter. The Comptroller will also make the entire RFP available electronically on the Electronic State Business Daily (ESBD) at: <http://esbd.cpa.state.tx.us> after 10:00 a.m. CT on Friday, March 4, 2011.

Questions and Non-Mandatory Letters of Intent: All written inquiries, questions, and Non-Mandatory Letters of Intent to propose must be received at the above-referenced address not later than 2:00 p.m. CT on Friday, March 11, 2011. Prospective proposers are encouraged to fax Non-Mandatory Letters of Intent and Questions to (512) 463-3669 to ensure timely receipt. Non-Mandatory Letters of Intent must be addressed to William Clay Harris, Assistant General Counsel, Contracts, and must contain the information as stated in the corresponding Section of the RFP and be signed by an official of that entity. On or about Tuesday, March 22, 2011, the Comptroller expects to post responses to questions on the ESBD. Late Non-Mandatory Letters of Intent and Questions will not be considered under any circumstances. Respondents shall be solely responsible for verifying timely receipt of Non-Mandatory Letters of Intent and Questions in the Issuing Office.

Closing Date: Proposals must be delivered in the Issuing Office to the attention of the Assistant General Counsel, Contracts, no later than 2:00 p.m. CT, on Wednesday, March 30, 2011. Late Proposals will not be considered under any circumstances. Respondents shall be solely responsible for verifying timely receipt of Proposals in the Issuing Office.

Evaluation Criteria: Proposals will be evaluated under the evaluation criteria outlined in the RFP. The Comptroller will make the final decision. The Comptroller reserves the right to accept or reject any or all proposals submitted. The Comptroller is not obligated to execute a contract on the basis of this notice or the distribution of any RFP. The Comptroller shall not pay for any costs incurred by any entity in responding to this Notice or to the RFP.

The anticipated schedule of events pertaining to this solicitation is as follows: Issuance of RFP - March 4, 2011, after 10:00 a.m. CT; Non-Mandatory Letters of Intent and Questions Due - March 11, 2011, 2:00 p.m. CT; Official Responses to Questions posted - March 22, 2011, or as soon thereafter as practical; Proposals Due - March 30, 2011, 2:00 p.m. CT; Contract Execution - April 8, 2011, or as soon thereafter as practical; Commencement of Services - April 8, 2011.

TRD-201100757
William Clay Harris
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: February 23, 2011



Concho Valley Workforce Development Board

Public Notice - Request for Qualifications

The Concho Valley Workforce Development Board is issuing a Request for Qualifications (RFQ) for Evaluators for a Request for Proposal (RFP) for Workforce and Child Care Services. If interested, a copy of the RFQ is available at <http://www.cvworkforce.org/rfp.asp>.

TRD-201100745

Johnny Griffin
Executive Director
Concho Valley Workforce Development Board
Filed: February 22, 2011

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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, 303.009, and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 02/28/11 - 03/06/11 is 18% for Consumer¹/Agricultural/Commercial² credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 02/28/11 - 03/06/11 is 18% for Commercial over \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 03/01/11 - 03/31/11 is 5.00% for Consumer/Agricultural/Commercial/credit through \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 03/01/11 - 03/31/11 is 5.00% for Commercial over \$250,000.

¹Credit for personal, family or household use.

²Credit for business, commercial, investment or other similar purpose.

TRD-201100751
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: February 23, 2011

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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 **April 4, 2011**. 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 April 4, 2011**. 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: AJITNATH INVESTMENT, INCORPORATED dba Space Center Food Mart; DOCKET NUMBER: 2010-1958-PST-E; IDENTIFIER: RN102898715; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 Texas Administrative Code (TAC) §115.245(2) and Texas Health and Safety Code (THSC), §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months or upon major system replacement or modification, whichever occurs first; PENALTY: \$4,380; ENFORCEMENT COORDINATOR: Clinton Sims, (512) 239-6933; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: Akzo Nobel Surface Chemistry, LLC; DOCKET NUMBER: 2010-1709-AIR-E; IDENTIFIER: RN100219393; LOCATION: Houston, Fort Bend County; TYPE OF FACILITY: chemical manufacturing; RULE VIOLATED: Federal Operating Permit (FOP) Number O-01328, Special Terms and Conditions (STC) Number 9, New Source Review (NSR) Permit Number 562, Special Conditions (SC) Number 4; 30 TAC §122.143(4) and §116.115(c), and THSC, §382.085(b), by failing to operate the K-400B scrubber system with no less than a 99% efficiency in the removal of carbon compounds captured by the collection system; PENALTY: \$9,675; ENFORCEMENT COORDINATOR: Rebecca Johnson, (361) 825-3420; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: Aqua Utilities, Incorporated; DOCKET NUMBER: 2010-1725-MWD-E; IDENTIFIER: RN101518926; LOCATION: Burnet County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: the Code, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0011332001, and Interim Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permit effluent limits for five-day biochemical oxygen demand and total suspended solids (TSS); and 30 TAC §305.125(1) and (17) and §319.1 and TPDES Permit Number WQ0011332001, Monitoring and Reporting Requirements Number 1, by failing to provide monitoring results at intervals specified in the permit; PENALTY: \$4,247; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(4) COMPANY: Aqua Utilities, Incorporated; DOCKET NUMBER: 2009-1792-MWD-E; IDENTIFIER: RN101518926; LOCATION: Sunrise Beach, Burnet County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §305.125(1) and (5) and TPDES Permit Number WQ0011332001, Operational Requirements Number 4, by failing to maintain adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failures by means of alternate power sources, standby generators, and/or retention of inadequately treated wastewater; PENALTY: \$2,725; ENFORCEMENT COORDINATOR: Jordan Jones, (512) 239-2569; REGIONAL OFFICE: 2800 S IH 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929

(5) COMPANY: Bayou Forest Village, Incorporated dba Bayou Forest Village Mobile Home Park; DOCKET NUMBER: 2010-1790-UTL-E; IDENTIFIER: RN102684933; LOCATION: Houston, Harris County; TYPE OF FACILITY: mobile home park with a public water supply (PWS); RULE VIOLATED: 30 TAC §290.39(o)(1), §291.162(a) and

(j) and the Code, §13.1395(b)(2), by failing to adopt and submit to the executive director for approval by March 1, 2010, an emergency preparedness plan that demonstrates the facility's ability to provide emergency operations; PENALTY: \$404; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(6) COMPANY: BIG SCORE INVESTORS, LLC; DOCKET NUMBER: 2010-1692-PST-E; IDENTIFIER: RN102326642; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months; PENALTY: \$2,417; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: Chevron Phillips Chemical Company, LP; DOCKET NUMBER: 2010-1845-AIR-E; IDENTIFIER: RN103919817; LOCATION: Baytown, Harris County; TYPE OF FACILITY: petrochemical plant; RULE VIOLATED: 30 TAC §116.115(c) and §101.221(a), 40 Code of Federal Regulations (CFR) §60.18(c)(2), Air Permit Number 2462C, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$10,000; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3629; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(8) COMPANY: City of Alamo; DOCKET NUMBER: 2010-1732-MWD-E; IDENTIFIER: RN102075967; LOCATION: Hidalgo County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: the Code, §26.121(a)(1), 30 TAC §305.125(1), TPDES Permit Number WQ0013633001, Effluent Limitations and Monitoring Requirements Numbers 1 and 6, by failing to comply with the permitted effluent limitations for biochemical oxygen demand, dissolved oxygen, and TSS; 30 TAC §305.125(1) and (17), §319.7(d) and TPDES Permit Number WQ0013633001, Biomonitoring Requirements Number 3.b.3, by failing to timely submit the discharge monitoring report (DMR); and 30 TAC §305.125(1) and (17) and §319.7(d) and TPDES Permit Number WQ0013633001, Monitoring and Reporting Requirements Number 1, by failing to submit complete DMRs; PENALTY: \$23,655; ENFORCEMENT COORDINATOR: Jennifer Graves, (956) 430-6023; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(9) COMPANY: City of Quanah; DOCKET NUMBER: 2010-1875-MWD-E; IDENTIFIER: RN102080215; LOCATION: Quanah, Hardeman County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: the Code, §26.121(a)(1), 30 TAC §305.125(1), and TPDES Permit Number WQ0010600001 Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits for ammonia nitrogen (NH₃N); and 30 TAC §305.125(1) and (17) and TPDES Permit Number WQ0010600001, Monitoring and Reporting Requirements Number 1, by failing to timely submit the DMR; PENALTY: \$3,735; ENFORCEMENT COORDINATOR: Heather Brister, (254) 761-3034; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(10) COMPANY: City of Quinlan; DOCKET NUMBER: 2010-1920-MWD-E; IDENTIFIER: RN101917565; LOCATION: Hunt County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §305.125(17) and TPDES Permit Number WQ0013725001, Sludge Provisions, by failing to submit the annual sludge report by the due date; and 30 TAC §§305.125(1), 319.1, and 319.7(a)(5) and TPDES Permit Number WQ0013725001, Monitoring and Reporting Requirements Number 1, by failing to

accurately complete monthly effluent reports; PENALTY: \$13,130; ENFORCEMENT COORDINATOR: Thomas Jecha, P.G., (512) 239-2576; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: COUNTRY TERRACE WATER COMPANY, INCORPORATED; DOCKET NUMBER: 2010-1911-UTL-E; IDENTIFIER: RN101282010; LOCATION: Highlands, Harris County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.39(o)(1), §291.162(a) and (j) and the Code, §13.1395(b)(2), by failing to adopt and submit to the executive director for approval by the extension due date an emergency preparedness plan that demonstrates the facility's ability to provide emergency operations; PENALTY: \$303; ENFORCEMENT COORDINATOR: Amanda Henry, (713) 767-3672; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(12) COMPANY: CRAWDAD'S, INCORPORATED dba Crawdads 6; DOCKET NUMBER: 2010-2017-PST-E; IDENTIFIER: RN105013445; LOCATION: Cove, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment, vapor space manifold, and dynamic back pressure at least once every 36 months or upon major system replacement or modification, whichever occurs first; PENALTY: \$4,500; ENFORCEMENT COORDINATOR: Bridgett Lee, (512) 239-2565; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(13) COMPANY: Cray Valley USA, LLC; DOCKET NUMBER: 2010-1580-MLM-E; IDENTIFIER: RN102342813; LOCATION: Houston, Harris County; TYPE OF FACILITY: resin manufacturing facility; RULE VIOLATED: 30 TAC §335.69(a)(1)(B) and 40 CFR §262.34(a)(1)(ii) and §265.193(e)(1)(iii), by failing to comply with the requirements of 40 CFR Part 265, Subpart J, for tanks storing or treating hazardous waste; 30 TAC §335.474 and §335.479, by failing to maintain a five-year pollution prevention plan on-site that can be made available to commission personnel upon request and failing to provide an executive summary of the pollution prevention plan to the Commission that contains all necessary information, 30 TAC §335.13(k), by failing to submit a manifest exception report within 45 days of the date that waste was accepted by an initial transporter; 30 TAC §335.69(a)(3) and 40 CFR §262.34(a)(3), by failing to ensure that while being accumulated on-site, each container and tank is labeled or marked clearly with the words "Hazardous Waste"; and 30 TAC §335.69(a)(1)(B) and 40 CFR §265.192(g), by failing to comply with the requirements of 40 CFR Part 265, Subpart J, for tanks storing or treating hazardous waste; PENALTY: \$17,980; ENFORCEMENT COORDINATOR: Michaelle Sherlock, (210) 403-4076; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(14) COMPANY: DTE Gas Resources, LLC.; DOCKET NUMBER: 2010-1976-WR-E; IDENTIFIER: RN106019862; LOCATION: Perrin, Jack County; TYPE OF FACILITY: drill site property; RULE VIOLATED: the Code, §11.121 and 30 TAC §297.11, by failing to obtain the required authorization prior to impounding, diverting, or using state water; PENALTY: \$902; ENFORCEMENT COORDINATOR: Jordan Jones, (512) 239-2569; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(15) COMPANY: Eastman Chemical Company; DOCKET NUMBER: 2010-1834-AIR-E; IDENTIFIER: RN100219815; LOCATION: Longview, Harrison County; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §122.143(4), Air Permit Number 21832, SC Number 1, FOP Number O1977, General Terms and Conditions (GTC), and THSC, §382.085(b), by failing to

prevent unauthorized emissions; PENALTY: \$10,000; Supplemental Environmental Project (SEP) offset amount of \$4,000 applied to Texas Association of Resource Conservation and Development Areas, Inc. - Clean School Buses; ENFORCEMENT COORDINATOR: Raymond Marlow, P.G., (409) 899-8785; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(16) COMPANY: Harris County Municipal Utility District Number 366; DOCKET NUMBER: 2010-1571-MWD-E; IDENTIFIER: RN101399103; LOCATION: Houston, Harris County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: the Code, §26.121(a)(1), 30 TAC §305.125(1), and TPDES Permit Number WQ0014359001, Interim Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permit effluent limits for NH₃N and TSS; PENALTY: \$2,950; ENFORCEMENT COORDINATOR: Heather Brister, (254) 761-3034; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(17) COMPANY: IBI BUSINESS, INCORPORATED dba Pecan Creek; DOCKET NUMBER: 2010-1630-PST-E; IDENTIFIER: RN101185718; LOCATION: Richmond, Fort Bend County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a) and the Code, §26.3475(d), by failing to provide proper corrosion protection for the underground storage tank (UST) system; 30 TAC §334.50(b)(1)(A), (2)(A)(i)(III) and (d)(1)(B)(ii) and the Code, §26.3475(a) and (c)(1), by failing to monitor USTs for releases at a frequency of at least once every month; 30 TAC §115.242(3)(G) and THSC, §382.085(b), by failing to maintain the Stage II vapor recovery system in proper operating condition and free of defects that would impair the effectiveness of the system, and 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment, vapor space manifold, and dynamic back-pressure at least once every 36 months or upon major system replacement or modification, whichever occurs first; PENALTY: \$8,678; ENFORCEMENT COORDINATOR: Wallace Myers, (512) 239-6580; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(18) COMPANY: Jamie J. Fernandez dba Texas Irrigation & Landscaping Services; DOCKET NUMBER: 2010-0544-LII-E; IDENTIFIER: RN104692892; LOCATION: Spring, Harris County; TYPE OF FACILITY: irrigation and landscaping services; RULE VIOLATED: 30 TAC §344.61(a) and §344.63(4), by failing to prepare an irrigation plan; and 30 TAC §344.72(a), by failing to provide a warranty; PENALTY: \$739; ENFORCEMENT COORDINATOR: Audra Benoit, (409) 899-8799; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(19) COMPANY: Kaneka High-Tech Materials, Incorporated; DOCKET NUMBER: 2010-0978-AIR-E; IDENTIFIER: RN100683291; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §116.604(2) and §116.617, and THSC, §382.085(b), by failing to include the required information in the standard permit registration renewal; 30 TAC §122.143(4) and §122.145(2)(B), FOP Number O-2800, GTC and STC Numbers 8 and 12, and THSC, §382.085(b), by failing to submit semi-annual deviation reports; 30 TAC §122.143(4) and §122.146(1), FOP Number O-2800, GTC and STC Numbers 8 and 12, and THSC, §382.085(b), by failing to submit annual permit compliance certifications, and 30 TAC §§106.8(c)(2), 116.115(b)(2)(E)(iii) and 122.143(4), FOP Permit Number O-2800, GTC and STC Numbers 2F, 2G, 3A, 2E, 3B, 4A, 9B(iv) and 12, and THSC, §382.016(b) and §382.085(b), by failing to provide records necessary for the TCEQ to conduct an investigation; PENALTY: \$42,275; ENFORCEMENT COORDINATOR: Nadia Hameed,

713-767-3629; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(20) COMPANY: Leslie L. Morris dba Space Estates Mobile Home Park; DOCKET NUMBER: 2010-1762-UTL-E; IDENTIFIER: RN103998811; LOCATION: Houston, Harris County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.39(o)(1), §291.162(a) and (j) and the Code, §13.1395(b)(2), by failing to adopt and submit to the executive director for approval by March 1, 2010, an emergency preparedness plan that demonstrates the facility's ability to provide emergency operations; PENALTY: \$388; ENFORCEMENT COORDINATOR: Jordan Jones, (512) 239-2569; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(21) COMPANY: LIBERTY HILL THF HOUSING, L.P.; DOCKET NUMBER: 2010-1985-EAQ-E; IDENTIFIER: RN106011976; LOCATION: Liberty Hill, Williamson County; TYPE OF FACILITY: residential construction site; RULE VIOLATED: 30 TAC §213.23(a)(1), by failing to obtain approval of an Edwards Aquifer Contributing Zone Plan prior to beginning construction of a regulated activity over the Edwards Aquifer Contributing Zone; PENALTY: \$2,250; ENFORCEMENT COORDINATOR: Lanae Foard, (512) 239-2554; REGIONAL OFFICE: 2800 S IH 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(22) COMPANY: Pasadena Refining System, Inc.; DOCKET NUMBER: 2009-1807-AIR-E; IDENTIFIER: RN100716661; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §115.725(c)(1) and (2), and §122.143(4), FOP Number O-01544, SC Number 1A, and THSC, §382.085(b), by failing to continuously monitor two pressure safety valves, 14PSV-1320 and 14PSV-1321, that vent directly to the atmosphere; 30 TAC §§116.115(c), 101.20(1) and 101.221(a), Air Permit Numbers 56389 and 20246, SC Number 1, 40 CFR §60.18(c)(2), and THSC, §382.085(b), by failing to prevent unauthorized emissions; 30 TAC §§116.115(c), 101.20(1) and 101.221(a), Air Permit Numbers 56389 and 20246, SC Number 1, 40 CFR §60.18(c)(2), and THSC, §382.085(b), by failing to prevent unauthorized emissions; 30 TAC §115.782(c)(2), (2)(A), (A)(i) and (ii) and THSC, §382.085(b), by failing to demonstrate the requirements for placing a leaking valve on delay of repair; 30 TAC §115.782(c)(2) and THSC, §382.085(b), by failing to conduct an extraordinary repair attempt within 30 days or isolate a leaking valve from the process and to remove it from highly reactive volatile organic compound service; 30 TAC §116.115(c), Standard Permit Registration Number 82764, Air Quality Standard Permit for Boilers Condition Number (4)(B)(iii) and THSC, §382.085(b), by failing to comply with the nitrogen oxides emission limit; and 30 TAC §116.115(c), Air Permit Number 56389, SC Number 1, and THSC §382.085(b), by failing to prevent unauthorized emissions; 30 TAC §101.201(a)(1)(B) and THSC, §382.085(b), by failing to submit the initial notification for a reportable emissions event within 24 hours of discovery; PENALTY: \$279,125; ENFORCEMENT COORDINATOR: Nadia Hameed, 713-767-3629; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(23) COMPANY: R.E. SWEENEY COMPANY, INCORPORATED; DOCKET NUMBER: 2010-1738-PST-E; IDENTIFIER: RN100856871; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §334.49(a) and (c)(2)(C) and the Code, §26.3475(d), by failing to ensure that a corrosion protection system is designed, installed, operated, and maintained in a manner that corrosion protection is continuously provided to all underground metal components of the UST system; 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 to ensure that the rectifier and other system components are operating properly; 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor the USTs for releases; 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(b)(2)(B) and the Code, §26.3475(b), by failing to provide proper release detection for the suction piping associated with the USTs; 30 TAC §334.50(d)(1)(B)(ii) and the Code, §26.3475(c)(1), by failing to provide release detection for the UST system by failing to conduct reconciliation of inventory control at least once each month, sufficiently accurate to detect a release as small as the sum of 1.0% of the total substance flow-through for the month plus 130 gallons; and 30 TAC §334.50(d)(1)(B)(iii)(I) and the Code, §26.3475(c)(1), by failing to record inventory volume measurement for the regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day; PENALTY: \$4,996; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(24) COMPANY: RAMBLEWOOD UTILITY & WATER SUPPLY CORPORATION; DOCKET NUMBER: 2010-1727-UTL-E; IDENTIFIER: RN102679370; LOCATION: Harris County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.39(o)(1), §291.162(a) and (j) and the Code, §13.1395(b)(2), by failing to adopt and submit to the executive director for approval an emergency preparedness plan that demonstrates the facility's ability to provide emergency operations; PENALTY: \$420; ENFORCEMENT COORDINATOR: Katy Schumann, (512) 239-2602; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(25) COMPANY: Steubing Farm, Limited; DOCKET NUMBER: 2010-1761-EAQ-E; IDENTIFIER: RN105929160; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval of a water pollution abatement plan prior to beginning a regulated activity over the Edwards Aquifer Recharge Zone; PENALTY: \$750; ENFORCEMENT COORDINATOR: Jordan Jones, (512) 239-2569; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(26) COMPANY: Sunbelt Fresh Water Supply District; DOCKET NUMBER: 2010-2046-MWD-E; IDENTIFIER: RN102075413; LOCATION: Harris County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: the Code, §26.121(a), 30 TAC §305.125(1), and TPDES Permit Number WQ0011791001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations for NH₃N, and flow; PENALTY: \$970; ENFORCEMENT COORDINATOR: Thomas Jecha, P.G., (512) 239-2576; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(27) COMPANY: The Commons Water Supply, Incorporated; DOCKET NUMBER: 2010-1833-UTL-E; IDENTIFIER: RN102690864; LOCATION: Huffman, Harris County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.39(o)(1), §291.162(a) and (j) and the Code, §13.1395(b)(2), by failing to adopt and submit to the executive director for approval an emergency preparedness plan that demonstrates the facility's ability to provide emergency operations; PENALTY: \$436; ENFORCEMENT COORDINATOR: Amanda Henry, (713) 767-3672; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(28) COMPANY: The Dow Chemical Company; DOCKET NUMBER: 2010-1781-AIR-E; IDENTIFIER: RN100225945; LOCATION:

Freeport, Brazoria County; TYPE OF FACILITY: polyethylene plant; RULE VIOLATED: 30 TAC §101.20(1) and §116.115(c), THSC, §382.085(b), 40 CFR §60.18(c)(2), and NSR Permit Number 834, SC Numbers 1 and 4(B), by failing to keep emissions capture and abatement equipment in operation when emissions were routed to it and by failing to prevent unauthorized emissions during an event lasting 34 minutes; PENALTY: \$10,000; SEP offset amount of \$4,000 applied to Brazoria County - Brazoria County Vehicle and Equipment Program; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(29) COMPANY: United Structures of America, Incorporated; DOCKET NUMBER: 2010-1598-AIR-E; IDENTIFIER: RN100219708; LOCATION: Houston, Harris County; TYPE OF FACILITY: metal coating; RULE VIOLATED: FOP Number O-01107, GTC and STC Number 7, 30 TAC §§122.143(4), 122.145(2)(A) and (C), and 122.146(1), and THSC, §382.085(b), by failing to submit an annual compliance certification and deviation report within 30 days after the end of the reporting period and include all instances of deviations; FOP Number O-01107, STC Number 4, NSR Permit Number 18557, SC Numbers 9C, 9F, and 9H, 30 TAC §116.115(c) and §122.143(4), and THSC, §382.085(b), by failing to produce monthly reports that demonstrate the emissions from each Emission Point Number, the coatings' VOC content, and the coatings' hazardous air pollutant content; FOP Number O-01107, STC Number 3.A.(iv)1, 30 TAC §122.143(4), and THSC, §382.085(b), by failing to conduct quarterly opacity readings; 30 TAC §122.142(b)(2)(A) and THSC, §382.085(b), by failing to include the applicability of 40 CFR Part 63, Subpart Mmmm in FOP Number O-01107; FOP Number O-01107, STC Number 4, NSR Permit Number 18557, SC Number 3.B., 40 CFR §63.3910(b) and (c), 30 TAC §§113.960, 116.115(c), and 122.143(4), and THSC, §382.085(b), by failing to submit an initial notification and initial compliance report for 40 CFR Part 63, Subpart Mmmm; and FOP Number O-01107, STC Number 4, NSR Permit Number 18557, SC Number 3.B., 40 CFR §63.3920(a), 30 TAC §§113.960, 116.115(c), and 122.143(4), and THSC, §382.085(b), by failing to submit semi-annual compliance reports for 40 CFR Part 63, Subpart Mmmm; PENALTY: \$66,048; ENFORCEMENT COORDINATOR: Rebecca Johnson, (361) 825-3420; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(30) COMPANY: Williams Production - Gulf Coast Company, L.P.; DOCKET NUMBER: 2010-1476-AIR-E; IDENTIFIER: RN105933154; LOCATION: Krum, Denton County; TYPE OF FACILITY: storage tanks related to oil and gas production; RULE VIOLATED: 30 TAC §116.110(a) and THSC, §382.0518(a) and §382.085(b), by failing to obtain permit authorization; PENALTY: \$9,000; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201100732
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: February 22, 2011

◆ ◆ ◆
Correction of Error

The Texas Commission on Environmental Quality (TCEQ) adopted amendments to 30 TAC §§116.12, 116.115, 116.180, 116.182, 116.186, 116.188, 116.190, 116.192, 116.601, and 116.617; new §116.127; and

the repeal of §116.121 in the February 25, 2011, issue of the *Texas Register* (36 TexReg 1305).

In the same issue, TCEQ adopted separate rulemaking actions for 30 TAC §116.12 and §116.150, which appear on page 1324.

Due to errors in the rule text submitted by TCEQ, the phrase ", or are being authorized" was omitted from §116.12(3)(E) on both page 1313 and page 1331.

The corrected subparagraph reads as follows:

"(E) The actual average emissions rate shall include fugitive emissions to the extent quantifiable. Until March 1, 2016, emissions previously demonstrated as resulting from planned maintenance, startup, or shut-down activities; historically unauthorized; and subject to reporting under Chapter 101 of this title (relating to General Air Quality Rules) shall be included to the extent that they have been authorized, or are being authorized."

TRD-201100758



Correction of Error

The Texas Commission on Environmental Quality (TCEQ) adopted the repeal of 30 TAC §106.352 and new §106.352 in the February 18, 2011, issue of the *Texas Register* (36 TexReg 943).

Figure: 30 TAC §106.352(m) was published in the on-line edition of the *Texas Register*, but was omitted from the print *Texas Register* because of the length of the tables.

On page 34 of the on-line graphic, Table 9, first column, the tenth row should read:

"Instrument monitoring is not required when the aggregate partial pressure or vapor pressure is less than 0.044 psia at 68°F or at maximum process operating temperature."

On page 35, Table 9, first column, the third row should read:

"Instrument monitoring is not required for CO₂ lines after VOC is removed. This is referred to as Dry Gas lines in 40 CFR Part 60 Subpart KKK, and defined as a stream having a VOC weight percentage less than 4%; a weighted average Effects Screening Level (ESL) of the combined VOC stream is > 3,500 µg/m³; and total uncontrolled emissions for all such sources is < 1 ton per year at any OGS."

On page 35, Table 9, second column, the third row should read:

"Uncontrolled Emissions should be estimated as follows:

"The weighted average ESL_x for process stream, X, with multiple VOC species will be determined by:

$$ESL_x = f_a/ESL_a + f_b/ESL_b + f_c/ESL_c + \dots + f_n/ESL_n$$

"Where:

"n = total number of VOC species in process stream;

"ESL_n = the effects screening level in µg/m³ for the contaminant being evaluated (published in the most recent edition of the TCEQ ESL list);

"f_n = the weight fraction of the appropriate VOC species in relation to all other VOC in process stream."

The table has been corrected in the Texas Administrative Code on-line.

TRD-201100762



Enforcement Orders

An agreed order was entered regarding BASF Catalysts LLC, Docket No. 2009-1271-AIR-E on February 14, 2011 assessing \$4,365 in administrative penalties with \$873 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 City of Oakwood, Docket No. 2009-1306-MWD-E on February 14, 2011 assessing \$5,375 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Marshall Coover, Staff Attorney at (512) 239-0620, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding David L. Sheffield dba Texas Landing Utilities, Docket No. 2009-1556-PWS-E on February 14, 2011 assessing \$273 in administrative penalties with \$54 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 Flo Community Water Supply Corporation, Docket No. 2009-1652-PWS-E on February 14, 2011 assessing \$1,510 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tammy L. Mitchell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Westlake Municipal Utility District No. 1, Docket No. 2009-1901-MWD-E on February 14, 2011 assessing \$18,875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Anna M. Treadwell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding WINGER MACHINE & TOOL, INC., Docket No. 2009-2004-MLM-E on February 14, 2011 assessing \$13,490 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.

An agreed order was entered regarding City of Dallas Water Utilities, Docket No. 2009-2053-WQ-E on February 14, 2011 assessing \$9,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tammy L. Mitchell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Oscar Palacios dba Tres Palacios Elsa Pit, Docket No. 2010-0013-MSW-E on February 14, 2011 assessing \$7,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Stephanie J. Frazee, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lukes Mobile Home Park Inc, Docket No. 2010-0037-PWS-E on February 14, 2011 assessing \$1,313 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Michaelle Sherlock, Enforcement Coordinator at (210) 403-4076, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Matt R. Phillips, Docket No. 2010-0114-LII-E on February 14, 2011 assessing \$250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Marshall Coover, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding The Kippur Corporation, Docket No. 2010-0241-AIR-E on February 14, 2011 assessing \$16,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jeffrey J. Huhn, Staff Attorney at (210) 403-4023, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Edgewood, Docket No. 2010-0242-MWD-E on February 14, 2011 assessing \$5,380 in administrative penalties with \$5,380 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 Granbury Materials, LLC, Docket No. 2010-0276-WQ-E on February 14, 2011 assessing \$14,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Phillip M. 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 One Stop Landscape Shop, LLC, Docket No. 2010-0356-LII-E on February 14, 2011 assessing \$500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Marshall Coover, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Stice Enterprises, Inc., Docket No. 2010-0430-AIR-E on February 14, 2011 assessing \$3,550 in administrative penalties with \$710 deferred.

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 City of Fredericksburg, Docket No. 2010-0471-MWD-E on February 14, 2011 assessing \$14,987 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tammy L. Mitchell, Staff Attorney at (512) 239-0701, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Rita Laura Redow Karbalai, Docket No. 2010-0497-MWD-E on February 14, 2011 assessing \$89,531 in administrative penalties with \$17,905 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 Alvin, Docket No. 2010-0523-MWD-E on February 14, 2011 assessing \$68,160 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting JR Cao, Enforcement Coordinator at (512) 239-2543, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Dustin Whaley, Docket No. 2010-0530-PST-E on February 14, 2011 assessing \$3,675 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rudy Calderon, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding BOO KOOZ, INC. dba Boo Kooz C-S, Docket No. 2010-0547-PST-E on February 14, 2011 assessing \$13,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tammy L. Mitchell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Westfield Mobile Home Community, Ltd., Docket No. 2010-0683-MWD-E on February 14, 2011 assessing \$11,450 in administrative penalties with \$2,290 deferred.

Information concerning any aspect of this order may be obtained by contacting Tom Jecha, P.G., Enforcement Coordinator at (512) 239-2676, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Naseen Khan dba Lucky One Stop, Docket No. 2010-0750-PST-E on February 14, 2011 assessing \$3,936 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Marshall Coover, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Pro Star Roll-off Dumpsters LLC, Docket No. 2010-0755-MSW-E on February 14, 2011 assessing \$6,750 in administrative penalties with \$1,350 deferred.

Information concerning any aspect of this order may be obtained by contacting Wallace Myers, Enforcement Coordinator at (512) 239-6580, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Gloria Ann Poppe dba Poppes Pub & Grub and Kenneth John Poppe dba Poppes Pub & Grub, Docket No. 2010-0768-PWS-E on February 14, 2011 assessing \$6,643 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tammy L. Mitchell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DCP Midstream, LP, Docket No. 2010-0784-AIR-E on February 14, 2011 assessing \$55,350 in administrative penalties with \$11,070 deferred.

Information concerning any aspect of this order may be obtained by contacting Kimberly Morales, Enforcement Coordinator at (713) 422-8938, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Dimitrious Georgopoulos dba Tech Caf, Docket No. 2010-0785-PWS-E on February 14, 2011 assessing \$1,994 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sharesa Y. 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 GARRETT CONSTRUCTION CO., Docket No. 2010-0809-MLM-E on February 14, 2011 assessing \$8,312 in administrative penalties with \$1,662 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 A.A.G. TEXAS, INC. dba Chevron 6, Docket No. 2010-0849-PST-E on February 14, 2011 assessing \$4,165 in administrative penalties with \$833 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael 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 American Heritage Housing Corporation, Docket No. 2010-0860-PWS-E on February 14, 2011 assessing \$349 in administrative penalties with \$69 deferred.

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 SHAHZ BROTHERS INC. dba K-2 Food Mart, Docket No. 2010-0891-PST-E on February 14, 2011 assessing \$3,330 in administrative penalties with \$666 deferred.

Information concerning any aspect of this order may be obtained by contacting Theresa Hagood, Enforcement Coordinator at (512) 239-2540, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Great Chambers Investment Inc. dba Cove Country Store, Docket No. 2010-0899-PST-E on February 14, 2011 assessing \$14,155 in administrative penalties with \$2,831 deferred.

Information concerning any aspect of this order may be obtained by contacting Tate Barrett, Enforcement Coordinator at (713) 422-8968, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Dolen, Danny J. Dolen dba Green Lake Estates Water Supply, Docket No. 2010-0908-PWS-E on February 14, 2011 assessing \$437 in administrative penalties with \$87 deferred.

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 Ikoankar LLC dba One Stop, Docket No. 2010-0921-PST-E on February 14, 2011 assessing \$3,661 in administrative penalties with \$732 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Pace, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Cedar Hill, Docket No. 2010-0935-PST-E on February 14, 2011 assessing \$12,025 in administrative penalties with \$2,405 deferred.

Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Roscoe, Docket No. 2010-0938-MLM-E on February 14, 2011 assessing \$2,100 in administrative penalties with \$420 deferred.

Information concerning any aspect of this order may be obtained by contacting Danielle Porras, 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 Randy Hebert, Docket No. 2010-0945-WQ-E on February 14, 2011 assessing \$950 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sharesa Y. 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 DELTA ENTERPRISE, INC. dba Hempstead Texaco Crescent Star Foodmart, Docket No. 2010-0966-PST-E on February 14, 2011 assessing \$4,143 in administrative penalties with \$828 deferred.

Information concerning any aspect of this order may be obtained by contacting Elvia Maske, Enforcement Coordinator at (512) 239-0789, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding NZSA, INC dba Zeta Food Mart., Docket No. 2010-0971-PST-E on February 14, 2011 assessing \$8,735 in administrative penalties with \$1,747 deferred.

Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding COMPASS USA ENTERPRISES, INC. dba Sunrise Super Stop, Docket No. 2010-0972-PST-E on February 14, 2011 assessing \$2,225 in administrative penalties with \$445 deferred.

Information concerning any aspect of this order may be obtained by contacting Elvia Maske, Enforcement Coordinator at (512) 239-0789, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding James Rodriguez dba Rioseco Dairy, Docket No. 2010-0974-AGR-E on February 14, 2011 assessing \$4,955 in administrative penalties with \$991 deferred.

Information concerning any aspect of this order may be obtained by contacting Merrilee Hupp, Enforcement Coordinator at (512) 239-4490, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Carolyn Maxey dba Channel Oaks Water System, Docket No. 2010-0983-PWS-E on February 14, 2011 assessing \$1,789 in administrative penalties with \$357 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 Peter Wilfridus Deridder dba Deridder Dairy, Docket No. 2010-0986-AGR-E on February 14, 2011 assessing \$14,183 in administrative penalties with \$2,836 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 Franklin Duncan dba Little Lils Septic Tank Service, Docket No. 2010-0988-MLM-E on February 14, 2011 assessing \$6,770 in administrative penalties with \$1,354 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, P.E., Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding 153 Inc. dba Quick Stop Food Store, Docket No. 2010-0992-PST-E on February 14, 2011 assessing \$3,621 in administrative penalties with \$724 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 Navasota Concrete, Inc., Docket No. 2010-0998-IWD-E on February 14, 2011 assessing \$12,000 in administrative penalties with \$2,400 deferred.

Information concerning any aspect of this order may be obtained by contacting Tom Jecha, P.G., 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 City of Port Lavaca, Docket No. 2010-1021-MWD-E on February 14, 2011 assessing \$19,950 in administrative penalties with \$3,990 deferred.

Information concerning any aspect of this order may be obtained by contacting Jordan Jones, Enforcement Coordinator at (512) 239-2569, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MURPHY OIL USA, INC. dba Murphy USA 7437, Docket No. 2010-1025-PST-E on February 14, 2011 assessing \$19,029 in administrative penalties with \$3,805 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrea Park, Enforcement Coordinator at (512) 239-4575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Brookeland Fresh Water Supply District, Docket No. 2010-1029-PWS-E on February 14, 2011 assessing \$3,242 in administrative penalties with \$648 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Clausewitz, Enforcement Coordinator at (210) 403-4012, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sofia Enterprises, L.P. dba HTC Industries, Docket No. 2010-1033-AIR-E on February 14, 2011 assessing \$9,302 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.

An agreed order was entered regarding Lawn Appeal, LLC, Docket No. 2010-1034-LII-E on February 14, 2011 assessing \$450 in administrative penalties with \$90 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Benoit, Enforcement Coordinator at (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Belvan Corp., Docket No. 2010-1038-AIR-E on February 14, 2011 assessing \$63,600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Audra Benoit, Enforcement Coordinator at (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CITY INT'L., LTD. dba Snappy Mart 3, Docket No. 2010-1044-PST-E on February 14, 2011 assessing \$15,376 in administrative penalties with \$3,075 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 Waller, Docket No. 2010-1062-MWD-E on February 14, 2011 assessing \$1,990 in administrative penalties with \$398 deferred.

Information concerning any aspect of this order may be obtained by contacting JR Cao, Enforcement Coordinator at (512) 239-2543, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Feron Corporation dba Zebra Show Bar, Docket No. 2010-1075-PWS-E on February 14, 2011 assessing \$10,318 in administrative penalties with \$2,063 deferred.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (361) 825-3425, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lucite International, Inc., Docket No. 2010-1079-AIR-E on February 14, 2011 assessing \$14,550 in administrative penalties with \$2,910 deferred.

Information concerning any aspect of this order may be obtained by contacting Raymond Marlow, P.G., 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 RIMO, INC. dba Motion 30, Docket No. 2010-1082-PST-E on February 14, 2011 assessing \$3,240 in administrative penalties with \$648 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 Zeway Corp. dba Zack Shell & Deli, Docket No. 2010-1089-PST-E on February 14, 2011 assessing \$2,161 in administrative penalties with \$432 deferred.

Information concerning any aspect of this order may be obtained by contacting Theresa Hagood, Enforcement Coordinator at (512) 239-2540, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding NALLA IDAYAN INC. dba Yellow Jacket Grocery, Docket No. 2010-1090-PST-E on February 14, 2011 assessing \$6,756 in administrative penalties with \$1,351 deferred.

Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Flint Hills Resources, LP, Docket No. 2010-1099-AIR-E on February 14, 2011 assessing \$28,350 in administrative penalties with \$5,670 deferred.

Information concerning any aspect of this order may be obtained by contacting John Muennink, Enforcement Coordinator at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Formosa Plastics Corporation Texas, Docket No. 2010-1112-IHW-E on February 14, 2011 assessing \$67,675 in administrative penalties with \$13,535 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 Chem-Pruf Door Co., Ltd., Docket No. 2010-1123-AIR-E on February 14, 2011 assessing \$8,325 in administrative penalties with \$1,665 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 Place Properties Development Services, LLC, Docket No. 2010-1125-EAQ-E on February 14, 2011 assessing \$2,650 in administrative penalties with \$530 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 QUICK PAY ENTERPRISES, INC. dba Quick Stop 2, Docket No. 2010-1134-PST-E on February 14, 2011 assessing \$9,304 in administrative penalties with \$1,860 deferred.

Information concerning any aspect of this order may be obtained by contacting Philip Aldridge, Enforcement Coordinator at (512) 239-0855, 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. 2010-1151-AIR-E on February 14, 2011 assessing \$23,250 in administrative penalties with \$4,650 deferred.

Information concerning any aspect of this order may be obtained by contacting Allison Fischer, Enforcement Coordinator at (512) 239-2574, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ALMEDA MART INC, Docket No. 2010-1161-PST-E on February 14, 2011 assessing \$4,369 in administrative penalties with \$873 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 Unimin Corporation, Docket No. 2010-1164-IWD-E on February 14, 2011 assessing \$8,820 in administrative penalties with \$1,764 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 MAHNAZ ENTERPRISES, INC. dba Moon Mart, Docket No. 2010-1166-PST-E on February 14, 2011 assessing \$2,290 in administrative penalties with \$458 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrea Park, Enforcement Coordinator at (512) 239-4575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TRAILSWEST MOBILE HOME PARK, LLC, Docket No. 2010-1174-PWS-E on February 14, 2011 assessing \$2,148 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Katy Schumann, Enforcement Coordinator at (512) 239-2602, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Port O'Connor Municipal Utility District, Docket No. 2010-1175-MWD-E on February 14, 2011 assessing \$5,280 in administrative penalties with \$1,056 deferred.

Information concerning any aspect of this order may be obtained by contacting Martha Hott, Enforcement Coordinator at (512) 239-2587, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Diamond Gulf, Inc. dba Almeda Food Store, Docket No. 2010-1178-PST-E on February 14, 2011 assessing \$3,646 in administrative penalties with \$729 deferred.

Information concerning any aspect of this order may be obtained by contacting Michaelle Sherlock, Enforcement Coordinator at (210) 403-4076, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding the University of Texas Medical Branch At Galveston, Docket No. 2010-1180-AIR-E on February 14, 2011 assessing \$5,000 in administrative penalties with \$1,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Todd Huddleson, Enforcement Coordinator at (512) 239-2541, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DHARANI ENTERPRISES INC. dba Rosenberg Shamrock, Docket No. 2010-1202-PST-E on February 14, 2011 assessing \$9,030 in administrative penalties with \$1,806 deferred.

Information concerning any aspect of this order may be obtained by contacting Philip Aldridge, Enforcement Coordinator at (512) 239-0855, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Capital Metropolitan Transportation Authority, Docket No. 2010-1206-EAQ-E on February 14, 2011 assessing \$3,000 in administrative penalties with \$600 deferred.

Information concerning any aspect of this order may be obtained by contacting Jordan Jones, Enforcement Coordinator at (512) 239-2569, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Conroe Independent School District, Docket No. 2010-1207-MWD-E on February 14, 2011 assessing \$3,255 in administrative penalties with \$651 deferred.

Information concerning any aspect of this order may be obtained by contacting JR Cao, Enforcement Coordinator at (512) 239-2543, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PVR Natural Gas Gathering LLC, Docket No. 2010-1221-AIR-E on February 14, 2011 assessing \$14,961 in administrative penalties with \$2,992 deferred.

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 CCC GROUP, INC., Docket No. 2010-1228-IHW-E on February 14, 2011 assessing \$2,875 in administrative penalties with \$575 deferred.

Information concerning any aspect of this order may be obtained by contacting Michaelle Sherlock, Enforcement Coordinator at (210) 403-4076, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Matheson Tri-Gas, Inc., Docket No. 2010-1242-AIR-E on February 14, 2011 assessing \$4,750 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 Linde Gas North America LLC, Docket No. 2010-1248-IHW-E on February 14, 2011 assessing \$3,220 in administrative penalties with \$644 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 Mario Espinoza dba El Potosino Body Shop, Docket No. 2010-1282-AIR-E on February 14, 2011 assessing \$5,250 in administrative penalties with \$1,050 deferred.

Information concerning any aspect of this order may be obtained by contacting Allison Fischer, Enforcement Coordinator at (512) 239-2574, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Rosebud, Docket No. 2010-1285-MWD-E on February 14, 2011 assessing \$5,850 in administrative penalties with \$1,170 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 J.E. KINGHAM CONSTRUCTION COMPANY, Ltd, Docket No. 2010-1289-WQ-E on February 14, 2011 assessing \$2,625 in administrative penalties with \$525 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 Moss Bluff Hub, LLC, Docket No. 2010-1322-AIR-E on February 14, 2011 assessing \$3,375 in administrative penalties with \$675 deferred.

Information concerning any aspect of this order may be obtained by contacting Georgena Hawkins, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Esperanza Water Service Company, Inc., Docket No. 2010-1349-PWS-E on February 14, 2011 assessing \$221 in administrative penalties with \$44 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 DCP Midstream, LP, Docket No. 2010-1358-AIR-E on February 14, 2011 assessing \$2,625 in administrative penalties with \$525 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator at (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding West Yukon Estates LLC, Docket No. 2010-1362-PWS-E on February 14, 2011 assessing \$3,310 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 South Freestone County Water Supply Corporation, Docket No. 2010-1363-PWS-E on February 14, 2011 assessing \$1,290 in administrative penalties with \$258 deferred.

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 Ahmad Yousef, dba Stop-N-Go Docket No. 2010-1403-PST-E on February 14, 2011 assessing \$8,454 in administrative penalties with \$1,690 deferred.

Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Millspaugh Operations, Inc., Docket No. 2010-1417-PWS-E on February 14, 2011 assessing \$3,093 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca Clausewitz, Enforcement Coordinator at (210) 403-4012, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Paul D. Reed dba Reed's Lawn Service, LLC, Docket No. 2010-1433-LII-E on February 14, 2011 assessing \$193 in administrative penalties with \$38 deferred.

Information concerning any aspect of this order may be obtained by contacting John Muennink, Enforcement Coordinator at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Keithville WELL DRILLING & SERVICE INC, Docket No. 2010-1502-WR-E on February 14, 2011 assessing \$605 in administrative penalties with \$121 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.

A field citation was entered regarding Nazario Sanchez, Jr., Docket No. 2010-1905-WOC-E on February 14, 2011 assessing \$210 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, Citation Coordinator at (512) 239-1769, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Bownds Construction, Inc., Docket No. 2010-1866-WQ-E on February 14, 2011 assessing \$700 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, Citation Coordinator at (512) 239-1769, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Gardner Production, LLC, Docket No. 2010-1899-WR-E on February 14, 2011 assessing \$350 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, Citation Coordinator at (512) 239-1769, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Best Petroleum Explorations, Inc., Docket No. 2010-1878-WR-E on February 14, 2011 assessing \$350 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, Citation Coordinator at (512) 239-1769, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201100761

LaDonna Castañuela
Chief Clerk

Texas Commission on Environmental Quality
Filed: February 23, 2011



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 **April 4, 2011**. 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 April 4, 2011**. 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: BA Properties Management, Inc. dba Sunmart 317; DOCKET NUMBER: 2009-1653-PST-E; TCEQ ID NUMBER: RN101951226; LOCATION: 3033 Elgin Street, Houston, Harris County; TYPE OF FACILITY: three underground storage tanks (USTs) and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.245(2) and Texas Health and Safety Code (THSC), §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months or upon major system replacement or modification; PENALTY: \$3,112; STAFF ATTORNEY: Xavier Guerra, Litigation Division, MC R-13, (210) 403-4016; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: BA Properties Management, Inc. dba Sunmart 318; DOCKET NUMBER: 2009-1615-PST-E; TCEQ ID NUMBER: RN101964542; LOCATION: 3305 Dowling Street, Houston, Harris County; TYPE OF FACILITY: three USTs and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months or upon major system replacement or modification, whichever occurs first; and 30 TAC §115.242(3) and THSC, §382.085(b), by failing to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable California Air Resources Board Executive Order, and free of defects that would impair the effectiveness of the system; PENALTY: \$4,203; STAFF ATTORNEY: Xavier Guerra, Litigation Division, MC R-13, (210) 403-4016; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(3) COMPANY: Beacon Estates Water Supply Corporation; DOCKET NUMBER: 2009-1545-MLM-E; TCEQ ID NUMBER: RN101917573 and RN101262897; LOCATION: 513 West Navigation Street, Brookshire, Waller County; TYPE OF FACILITY: public water system provides water for human consumption, has 73 service connections and serves at least 25 people per day for at least 60 days per year

and a wastewater treatment facility; RULES VIOLATED: Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0012848001, Effluent Limitations and Monitoring Requirements Number 1, 30 TAC §305.125(1), TWC, §26.121(a), by failing to comply with permit effluent limits; TPDES Permit Number WQ0012848001 Sludge Provisions and 30 TAC §305.125(17), by failing to timely submit monitoring results at the intervals specified in the permit; TPDES Permit Number WQ0012848001 Monitoring and Reporting Requirements Number 1 and 30 TAC §305.125(17), by failing to submit complete and accurate Discharge Monitoring Reports (DMRs); 30 TAC §290.109(f)(3) and THSC, §341.031(a), by exceeding the maximum contaminant level for total coliform in July 2007; 30 TAC §290.109(c)(2)(A)(ii) and §290.122(c)(2)(A), and THSC, §341.033(d), by failing to collect routine distribution coliform samples during the months of October 2007 - June 2008 and September 2008 and by failing to provide public notice of the failure to collect routine samples during the months of October 2007 - March 2008; 30 TAC §290.51(a)(6) and TWC, §5.702, by failing to pay all annual and late Public Health Service fees TCEQ Financial Administration Account Number 92370047 for Fiscal Years 2008 - 2009 to the TCEQ in a timely manner; and 30 TAC §26.121(a)(1) and 30 TAC §305.125(2) and §305.65, by failing to maintain a TPDES permit as required; PENALTY: \$16,997; STAFF ATTORNEY: Rudy Calderon, Litigation Division, MC 175, (512) 239-0205; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(4) COMPANY: City of Omaha; DOCKET NUMBER: 2010-0534-MWD-E; TCEQ ID NUMBER: RN101919934; LOCATION: approximately 2,800 feet southwest of the intersection of United States (U.S.) Highway 67 and U.S. Highway 259, Morris County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and TPDES Permit Number WQ0010239001, Final Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits for Ammonia Nitrogen (NH₃-N) Daily Average Loading Limit, NH₃-N Daily Average Concentrations, Total Suspended Solids (TSS) Daily Average Concentrations, Carbonaceous Biochemical Oxygen Demand (CBOD) Daily Average Concentrations for November 2009; 30 TAC §305.125(1), TWC, §26.121(a)(1), TPDES Permit Number WQ0010239001, Final Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits for NH₃-N Daily Average Concentrations for October 2009, TSS Daily Average Concentrations for February and October 2009, TSS Daily Average Loading Limit for October 2009, and TSS Single Grab Maximum Limit for October 2009; and 30 TAC §305.125(17) and TPDES Permit Number WQ0010239001, Sludge Provisions, by failing to submit the annual sludge report for the monitoring period ending July 31, 2009, by September 1, 2009; PENALTY: \$9,020, Supplemental Environmental Projects (SEP) offset amount of \$9,020 applied to Texas Association of Resource Conservation & Development Areas, Inc. - Cleanup of Unauthorized Trash Dumps; STAFF ATTORNEY: Tammy Mitchell, Litigation Division, MC 175, (512) 239-0736; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(5) COMPANY: Felix DeHerrera and Christine DeHerrera; DOCKET NUMBER: 2010-0941-WQ-E; TCEQ ID NUMBER: RN105788905; LOCATION: 8319 Lime Creek Road, Volente, Travis County; TYPE OF FACILITY: real property; RULES VIOLATED: TWC, §26.121, by failing to prevent the unauthorized discharge of sediment adjacent to water in the state; PENALTY: \$1,050; STAFF ATTORNEY: Anna Treadwell, Litigation Division, MC 175, (512) 239-0974; REGIONAL OFFICE: Austin Regional Office, 2800 South Interstate Highway 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(6) COMPANY: Hermenegildo Bueno dba Paisano Truck Stop; DOCKET NUMBER: 2010-1428-PST-E; TCEQ ID NUMBER: RN100809995; LOCATION: 311 West Paisano Drive, El Paso, El Paso County; TYPE OF FACILITY: five USTs and a former convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.7(d)(3), by failing to notify the agency of any change or additional information regarding the UST system within 30 days of the date of the occurrence of the change or addition; 30 TAC §334.54(b)(2), by failing to maintain all piping, pumps, manways, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons; 30 TAC §334.54(c)(1) and TWC, §26.3475(d), by failing to ensure that a corrosion protection system is operating and maintained in a manner that will ensure continuous corrosion protection to all underground components of the UST system; 30 TAC §334.54(c)(2) and TWC, §26.3475(c)(1), by failing to monitor for releases a UST system that has not been emptied of all regulated substances at the time it was temporarily removed from service; and 30 TAC §334.54(d)(2), by failing to ensure that any residue from stored substances which remained in the temporarily out-of-service UST system did not exceed a depth of 2.5 centimeters at the deepest point and did not exceed 0.3% by weight of the system at full capacity; PENALTY: \$5,145; STAFF ATTORNEY: Marshall Coover, Litigation Division, MC 175, (512) 239-0620; REGIONAL OFFICE: El Paso Regional Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(7) COMPANY: LAPORTE BUSINESS, INC dba Quick Stop; DOCKET NUMBER: 2010-0118-PST-E; TCEQ ID NUMBER: RN102257359; LOCATION: 2204 Red Bluff Road, Pasadena, Harris County; TYPE OF FACILITY: three USTs and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.45(c)(3)(A), by failing to ensure that the emergency shut-off valves (also known as shear or impact valves) are securely anchored at the base of the dispensers; and 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months and the Stage II vapor space manifolding and dynamic back pressure at least once every 36 months or upon major system replacement or modification, whichever occurs first; PENALTY: \$9,401; STAFF ATTORNEY: Rudy Calderon, Litigation Division, MC 175, (512) 239-0205; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(8) COMPANY: Mikyan Retail Inc dba Quick Shop; DOCKET NUMBER: 2010-1489-PST-E; TCEQ ID NUMBER: RN102254646; LOCATION: 1430 Aldine Mail Route, Houston, Harris County; TYPE OF FACILITY: two USTs and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(5)(B)(ii), by failing to renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; and 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to the common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the UST; PENALTY: \$2,811; STAFF ATTORNEY: Phillip Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(9) COMPANY: Raul Chapa; DOCKET NUMBER: 2010-1678-WOC-E; TCEQ ID NUMBER: RN105954077; LOCATION: 3202 Davis Avenue, Laredo, Webb County; TYPE OF FACILITY: municipal wastewater collection system; RULES VIOLATED: TWC, §26.0301(c) and §37.003 and 30 TAC §30.5(a) and §30.331(b), by failing to obtain the required occupational license; PENALTY: \$1,875; STAFF ATTORNEY: Marshall Coover, Litigation Division, MC 175, (512) 239-0620;

REGIONAL OFFICE: Laredo Regional Office, 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(10) COMPANY: Shell Oil Company; DOCKET NUMBER: 2010-1351-MLM-E; TCEQ ID NUMBER: RN100211879; LOCATION: 5900 Highway 225, Deer Park, Harris County; TYPE OF FACILITY: petroleum refinery; RULES VIOLATED: 30 TAC §116.115(b)(2)(E)(iii), Air Permit Number 21262 and PSD-TX-928, and THSC, §382.085(b), by failing to provide first repair attempt records for three leaking pumps; 30 TAC §§101.20(1) - (3), 115.352(2), 116.715(a), and 122.143(4), 40 Code of Federal Regulations (CFR) §§60.482-7(d)(1), 61.112(a), 61.242-7(d)(1), 63.648(a), Air Permit Number 21262 and PSD-TX-928, Special Conditions (SCs) Numbers 2, 3(A), (B), 4(D), and 9(I), Federal Operating Permit (FOP) Number O-01669, Special Terms and Conditions (STCs) Numbers 1(A) and 24(A), and THSC, §382.085(b), by failing to repair or place the valve on delay of repair by the 15th day after the detection of a leak; 30 TAC §122.143(4) and §122.145(2)(A), FOP Number O-01669, General Terms and Conditions (GTC) and THSC, §382.085(b), by failing to report all instances of deviations; 30 TAC §115.421(a)(9)(A)(ii) and THSC, §382.085(b), by failing to prevent the exceedence of 3.5 pounds per gallon (lbs/gal) volatile organic compounds (VOC) on a daily basis; 30 TAC §§101.20(1) - (3), 116.715(a), and 122.143(4), 40 CFR §60.18(c)(3)(ii) and §63.11(b)(6)(ii), Air Permit Number 21262 and PSD-TX-928, SC Numbers 2, 4, and 24, FOP Number O-01669, STC Numbers 1(A) and 24(A), and THSC, §382.085(b), by failing to maintain a minimum of 300 British thermal units per standard cubic foot (Btu/scf) for Emission Point Number (EPN) COKEFLARE; 30 TAC §§116.115(b)(2)(F), 116.115(c), and 122.143(4), Air Permit Number 46535, General Condition Number 8, and SC Number 1, FOP Number O-01669, STC Number 24(A), and THSC, §382.085(b), by failing to maintain compliance with the Maximum Allowable Emission Rate Table (MAERT) for sulfur dioxide (SO₂) for the Cracked Gas Hydrotreater Furnace (EPN H36100); 30 TAC §101.20(3) and §116.715(a), Air Permit Number 21262 and PSD-TX-928, SC Number 1, and THSC, §382.085(b), by failing to prevent the unauthorized release of air contaminants into the atmosphere when the V-5102 Crude Column was overpressured when the wash water entered the feed crude train at the DU2; 30 TAC §335.221(a)(6), 40 CFR §266.102(e)(2)(i)(E), and Industrial and Hazardous Waste Permit Number 50099, Permit Provision (PP) V.I.3.b.(1), by failing to maintain the minimum combustion temperature at the boiler industrial furnace (BIF) of 1800 degrees Fahrenheit; 30 TAC §335.221(a)(6), 40 CFR §266.102(e)(7)(ii), and Industrial and Hazardous Waste Permit Number 50099, PP V.I.7.d., by failing to test or document the rationale that the BIF was being tested at least every 30 days; 30 TAC §335.152(a)(1), 40 CFR §264.15(d) and Industrial and Hazardous Waste Permit Number 50099, PP V.I.7.e., by failing to record observations in an inspection log or summary at the BIF area; and 30 TAC §335.221(a)(6), 40 CFR §266.102(e)(2)(i)(E), Industrial and Hazardous Waste Permit Number 50099, PP V.I.3.b.(1), by failing to maintain the minimum combustion temperature of 1,800 degrees Fahrenheit while hazardous waste is being fed to the BIF unit; PENALTY: \$158,450, SEP offset amount of \$79,225 applied to Friends of the River San Bernard - Natural Area Acquisition and Conservation Program; STAFF ATTORNEY: Jennifer Cook, Litigation Division, MC 175, (512) 239-1873; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(11) COMPANY: Thomas Osborn Hammond dba Loco Coyote Grill Music Ranch; DOCKET NUMBER: 2009-1348-PWS-E; TCEQ ID NUMBER: RN105161194; LOCATION: 1795 County Road (CR) 1004, Glen Rose, Somervell County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and

§290.122(c)(2)(B) and THSC, §341.033(d), by failing to collect routine distribution water samples for coliform analysis in August 2007 - May 2009 and by failing to provide public notification of the failure to sample in August 2007 - May 2009; 30 TAC §290.121(a) and (b), by failing to develop and maintain an up-to-date chemical and microbiological monitoring plan for the facility; 30 TAC §290.46(f)(2), by failing to provide operating records at the time of the investigation; 30 TAC §290.46(m)(1), by failing to conduct an annual inspection of the facility's pressure tank; 30 TAC §290.42(e)(3), by failing to provide disinfection equipment so that continuous and effective disinfection can be secured under all conditions; 30 TAC §290.45(c)(1)(A)(ii), by failing to provide pressure tank capacity of at least 220 gallons; 30 TAC §290.110(d)(1), by failing to measure the free chlorine residual to a minimum accuracy of plus or minus 0.1 milligrams per liter (mg/L) using amperometric titration, N, N-diethyl-p-phenylenediamine (DPD) Ferrous titration, or DPD colorimetric; 30 TAC §290.41(c)(3)(A), by failing to submit well completion data prior to placing the facility's well into service; 30 TAC §290.41(c)(3)(J), by failing to provide the well with a concrete sealing block extending a minimum of three feet from the exterior well casing in all directions, with a minimum thickness of six inches and sloped to drain away at not less than 0.25 inches per foot; 30 TAC §290.41(c)(3)(K), by failing to provide a well casing vent with an opening that is covered with a 16-mesh or finer corrosion resistant screen, facing downward, elevated, and located as to minimize the drawing of contaminants into the well; 30 TAC §290.41(c)(3)(M), by failing to provide a suitable sampling cock on the discharge pipe of the well; 30 TAC §290.41(c)(3)(N), by failing to provide a flow-measuring device for the well to measure production yields and provide for the accumulation of water production data; and 30 TAC §290.51(a)(6) and TWC, §5.702, by failing to pay all annual and late Public Health Service fees for TCEQ Financial Administration Account Number 92130040 for Fiscal Year 2009 to the TCEQ in a timely manner; PENALTY: \$15,443; STAFF ATTORNEY: Peipey Tang, Litigation Division, MC 175, (512) 239-0654; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(12) COMPANY: Water Association of North Lake, Inc.; DOCKET NUMBER: 2010-0413-PWS-E; TCEQ ID NUMBER: RN101450047; LOCATION: 2094 Dove Creek Circle, Aubrey, Denton County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.45(b)(1)(B)(i) and THSC, §341.0315(c), by failing to provide a well capacity of 0.6 gallons per minute (gpm) per connection; 30 TAC §290.43(c)(8), failing to maintain the facility's ground storage tank in strict accordance with current American Water Works Association standards; 30 TAC §290.46(m)(1)(A), by failing to conduct an annual inspection of the ground storage tank; 30 TAC §290.46(m)(1)(B), by failing to conduct an annual inspection of the 220 gallon pressure tank; 30 TAC §290.45(b)(1)(B)(iv) and THSC, §341.0315(c), by failing to provide a pressure tank capacity of 20 gallons per connection; 30 TAC §290.41(c)(1)(F) and TCEQ Default Order (DO) Docket Number 2006-1750-PWS-E, Ordering Provision Number 2.a.i., by failing to provide a sanitary control easement or obtain an exception to the easement requirement that covers the land within 150 feet of Well Number 2; 30 TAC §290.46(u) and TCEQ DO Number 2006-1750-PWS-E, Ordering Provision Number 2.c., by failing to plug and seal an abandoned public water supply well in accordance with 16 TAC Chapter 76 or return the well to a non-deteriorated condition; 30 TAC §290.51(a)(3) and TWC §5.702, by failing to pay public health service fees, including late fees for TCEQ Financial Administration Account Number 90610171 for Fiscal Year 2010; PENALTY: \$9,842; STAFF ATTORNEY: Stephanie J. Frazee, Litigation Division, MC 175, (512) 239-3693; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201100744
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: February 22, 2011



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 **April 4, 2011**. 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 April 4, 2011**. 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: Cary Cantu dba Cary's Lawn & Landscaping; DOCKET NUMBER: 2010-0957-LII-E; TCEQ ID NUMBER: RN105390538; LOCATION: 316 Quail Ridge Drive, Nacogdoches, Nacogdoches County; TYPE OF FACILITY: landscaping business; RULES VIOLATED: 30 TAC §30.5(b) and §344.30(d) and TWC, §37.003, by failing to refrain from advertising or representing himself to the public as a person who can perform a service for which a license is required; PENALTY: \$262; STAFF ATTORNEY: Rudy Calderon, Litigation Division, MC 175, (512) 239-0205; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(2) COMPANY: Mithani's Inc. dba Indio Food Mart; DOCKET NUMBER: 2010-1607-PST-E; TCEQ ID NUMBER: RN102461506; LOCATION: 1540 El Indio Highway, Eagle Pass, Maverick County; TYPE OF FACILITY: two underground storage tanks (USTs) and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.7(d)(3), by failing to update the UST registration infor-

mation to reflect the current operational status of the USTs, and TWC, §26.3475(d) and 30 TAC §334.49(a) and §334.54(b)(2), (c)(1), and (d)(2), by failing to provide corrosion protection for the UST system, failing to empty the USTs to less than 2.5 centimeters (one inch) of petroleum product, and failing to ensure that all piping, pumps, manways, and ancillary equipment have been capped, plugged, locked, and/or otherwise secured to prevent access, tampering, or vandalism by unauthorized persons; PENALTY: \$3,675; STAFF ATTORNEY: Phillip Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Laredo Regional Office, 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(3) COMPANY: NPJ Enterprises, Inc. d/b/a Z-P Mart; DOCKET NUMBER: 2010-0400-PST-E; TCEQ ID NUMBER: RN101662955; LOCATION: 428 North Coulter Drive, Bryan, Brazos County; TYPE OF FACILITY: three USTs and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.47(a)(2) and §334.54(b)(2), by failing to perform the permanent removal from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; PENALTY: \$2,625; STAFF ATTORNEY: Marshall Coover, Litigation Division, MC 175, (512) 239-0620; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

TRD-201100743
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: February 22, 2011



Notice of Opportunity to Comment on Shut Down/Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (commission) staff is providing an opportunity for written public comment on the listed Shutdown/Default Orders (S/DOs). Texas Water Code (TWC), §26.3475 authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes a Shutdown Order after the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection violations documented at the facility. The commission proposes a Default Order when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. In accordance with TWC, §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **April 4, 2011**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a S/DO if a comment discloses facts or considerations that indicate that consent to the proposed S/DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits

issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed S/DO is not required to be published if those changes are made in response to written comments.

Copies of each of the proposed S/DO are available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the S/DO shall be sent to the attorney designated for the S/DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on April 4, 2011**. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission attorneys are available to discuss the S/DOs and/or the comment procedure at the listed phone numbers; however, comments on the S/DOs shall be submitted to the commission in **writing**.

(1) COMPANY: Houston Corner Store, Inc.; DOCKET NUMBER: 2010-0914-PST-E; TCEQ ID NUMBER: RN102266442; LOCATION: 11900 Veterans Memorial Drive, Houston, Harris County; TYPE OF FACILITY: three USTs and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.10(b) and §334.12, by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; 30 TAC §334.49(c)(4)(C) and TWC, §26.3475(d), by failing to inspect and test the cathodic protection system for operability and adequacy of protection at a frequency of at least once every three years; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to ensure that all USTs are monitored in a manner which will detect a release at a frequency of at least once every month (not to exceed 35 days between each monitoring); 30 TAC §334.51(b)(2)(C) and TWC, §26.3475(c)(2), by failing to equip each tank with a valve or other device designed to automatically shut off the flow of regulated substances into the tank when the liquid level in the tank reaches no higher than 95% capacity; 30 TAC §334.42(i), by failing to inspect all sumps including the dispenser sumps, manways, overspill containers, or catchment basins associated with the UST system at least once every 60 days to assure that the sides, bottoms, and any penetration points are maintained liquid-tight and free of any liquid or debris; 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; PENALTY: \$11,589; STAFF ATTORNEY: Tammy Mitchell, Litigation Division, MC 175, (512) 239-0736; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: Sami H. Awad dba Sammy's Memorial Texaco; DOCKET NUMBER: 2010-0910-PST-E; TCEQ ID NUMBER: RN101737138; LOCATION: 14403 Memorial Drive, Houston, Harris County; TYPE OF FACILITY: four USTs and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.7(d)(3) and §334.8(c)(5)(B)(ii), by failing to provide an amended registration for any change or additional information regarding the USTs within 30 days from the date of the occurrence of the change or addition, and failing to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days prior to expiration date; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to the common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the UST; 30 TAC §334.50(b)(1)(A), (d)(1)(B)(ii) and (iii)(I) and TWC, §26.3475(c)(1), by failing to monitor USTs for releases at a frequency

of at least once every month (not to exceed 35 days between each monitoring, failing to conduct reconciliation of inventory control records at least once a month, in a manner sufficiently accurate to detect a release which equals or exceeds the sum of 1.0% of the total substance flow-through for the month plus 130 gallons, and failing to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day; 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for the UST system at the station; 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking with the tank number, according to the UST registration and self-certification form, is permanently applied upon or affixed to either the top of the fill tube or to a non-removable point in the immediate area of the fill tube for each UST at the station; 30 TAC §334.51(a)(6) and (b)(2)(C) and TWC, §26.3475(c)(2), by failing to ensure that all spill and overfill prevention devices are maintained in good operating condition, and failing to provide proper overfill prevention equipment; and 30 TAC §115.226(1) and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain a record at the station of the dates on which gasoline was delivered to the dispensing station; PENALTY: \$15,997; STAFF ATTORNEY: Tammy Mitchell, Litigation Division, MC 175, (512) 239-0736; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-201100742

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: February 22, 2011



Notice of Opportunity to Request a Public Meeting for a New Municipal Solid Waste Facility Registration Application No. 43032

APPLICATION. Meridian BioEnergy, Inc., 11983 Tamiami Trail, Suite 113, Naples, Florida 34110, has applied to the Texas Commission on Environmental Quality (TCEQ) for proposed Registration (No. 43032), to construct and operate a Type V municipal solid waste processing and recycling facility. The proposed facility, Ley Road Renewable Energy Facility, will be located 0.8 miles east of the Ley Road and Mesa Drive intersection, Houston, Texas 77078, in Harris County. This facility is requesting authorization to process and recycle municipal solid waste which includes grease trap, processed liquid, food, beverage, slaughterhouse, and rendering plant wastes; dead animal carcasses, oils, and greases; and Class 2 industrial non-hazardous waste containing fats and oils, ethylene glycol, and glycerin. The registration application is available for viewing and copying at the Houston Public Library, and may be viewed online at www.cook-joyce.com.

PUBLIC COMMENT/PUBLIC MEETING. Written public comments or written requests for a public meeting must be submitted to the Office of Chief Clerk at the address included in the information section below. Comments may also be received if a public meeting is held on the facility. A public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the development is to be located, or if there is a substantial public interest in the proposed development. The purpose of the public meeting is for the public to provide input for consideration by the commission, and for the applicant and the commission staff to provide information to the public. A public meeting is not a contested case hearing. The executive director will review and consider public comments and written requests for a public meeting submitted prior to the notice of final

determination. The executive director is not required to file a response to comments.

EXECUTIVE DIRECTOR ACTION. The executive director shall, after review of an application for registration, determine if the application will be approved or denied in whole or in part. If the executive director acts on an application, the chief clerk shall mail or otherwise transmit notice of the action and an explanation of the opportunity to file a motion to reconsider the executive director's decision. The chief clerk shall mail this notice to the owner and operator, the public interest counsel, to adjacent landowners as shown on the required land ownership map and landowners list, and to other persons who timely filed public comment in response to public notice. Not all persons on the mailing list for this notice will receive the notice letter from the Office of the Chief Clerk.

INFORMATION. Written public comments or requests to be placed on the permanent mailing list for this application should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087 or electronically submitted to <http://www10.tceq.state.tx.us/epic/ecmnts/>. Individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us. Further information may also be obtained from Meridian BioEnergy, Inc., at the address stated above or by calling Mr. Brian Dudley, P.E., Senior Project Engineer, Cook-Joyce Inc. at (512) 474-9097.

TRD-201100759

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: February 23, 2011



Notice of Water Quality Applications

The following notice was issued on February 11, 2011 through February 18, 2011.

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

VALERO REFINING TEXAS L P which operates Valero Texas City Refinery, a petroleum refining facility, has applied for a major amendment to TPDES Permit No. WQ0000449000 to remove Outfall 001, include definition for utility wastewater for Outfall 009, correct critical dilution for biomonitoring requirements, and authorize the discharge of hydrostatic test water via Outfalls 006 and 007 on an intermittent and flow variable basis. The current permit authorizes the discharge of treated process wastewater, PTU effluent, utility wastewater, hydrostatic test water, treated domestic wastewater, laboratory wastewater, and storm water at a daily average flow not to exceed 4,500,000 gallons per day via Outfalls 001 and 009; storm water, exchanger filter backwash, steam condensate, water softener, boiler blowdown, and hydrostatic test water on an intermittent and flow variable basis via Outfall 002; hydrostatic test water, steam condensate, boiler blowdown, and storm water (including Coker Unit storm water) on an intermittent and flow variable basis via Outfall 004; storm water on an intermittent and flow variable basis via Outfall 005; and raw water clarifier water, steam condensate, water softener, boiler blowdown, gravity filter backwash,

steam condensate, reverse osmosis reject water, tank farm water, and storm water on an intermittent and flow variable basis via Outfalls 006, and 007. The facility is located approximately 1600 feet northeast of the intersection of State Highway 519 and Loop 197 East in the City of Texas City, Galveston County, Texas 77590.

PAMPA ENERGY CENTER LLC which operates the Pampa Energy Center, has applied for an amendment with renewal of TCEQ Permit No. WQ0002891000, to remove tracts K and Q from the approved irrigation areas. The current permit authorizes the disposal of cooling tower blowdown at a daily average flow not to exceed 650,000 gallons per day via irrigation of 118 acres; and the disposal of treated process wastewater and process storm water at a daily average flow not to exceed 1,250,000 gallons per day via irrigation of 382 acres. The draft permit authorizes the disposal of cooling tower blowdown at a daily average flow not to exceed 650,000 gallons per day via irrigation of 63 acres; and the disposal of treated process wastewater and process storm water at a daily average flow not to exceed 1,250,000 gallons per day via irrigation of 382 acres. This permit will not authorize a discharge of pollutants into water in the State. The facility and land application site are located southwest of the intersection of U.S. Highway 60 and Farm-to-Market Road 2300, approximately 3.5 miles southwest of the City of Pampa, Gray County, Texas.

TEXAS BARGE AND BOAT INC which operates the Texas Barge & Boat Freeport Facility, has applied for a renewal of TPDES Permit No. WQ0004696000, which authorizes the discharge of ballast and bilge water from marine vessels on an intermittent and flow variable basis via Outfall 004, and ballast and bilge water from marine vessels, drydock water and pressure wash water on an intermittent and flow variable basis via Outfall 005. The facility is located approximately 2.5 miles south of the intersection of State Highway 288 and County Road 242A, Brazoria County, Texas 77542.

HAPPY HEN EGG FARMS INC which proposes to operate Happy Hen Farms, has applied for a new permit, proposed Permit No. WQ0004928000, to authorize the disposal of egg washing and equipment cleaning wastewater at a daily average flow not to exceed 500 gallons per day via irrigation of 0.51 acres of land. This permit will not authorize a discharge of pollutants into water in the State. The facility and land application site will be located approximately 1.25 miles east of the intersection of County Road 125 (Boon Bend Road) and County Road 121 (Barnhill Rd), Wharton County, Texas 77488.

CITY OF BLUE RIDGE has applied for a renewal of TPDES Permit No. WQ0010039001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 280,000 gallons per day. The facility is located approximately 0.5 mile southeast of the intersection of Farm-to-Market Road 545 and Farm-to-Market Road 1377 in Collin County, Texas 75424.

CITY OF KERMIT has applied for a renewal of TCEQ Permit No. WQ0010200001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 1,000,000 gallons per day via evaporation. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located approximately 1.5 miles south of the intersection of State Highway 18 and State Highway 302 in Winkler County, Texas 79745.

CITY OF NEW BOSTON has applied for a renewal of TPDES Permit No. WQ0010482001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,700,000 gallons per day. The facility is located 2,500 feet southeast of the intersection of State Highway 8 and Farm-to-Market Road 1840 and approximately 1.75 miles southeast of the City of New Boston in Bowie County, Texas 75570.

SUNBELT FRESH WATER SUPPLY DISTRICT has applied for a renewal of TPDES Permit No. WQ0010518001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 450,000 gallons per day. The facility is located approximately 1,000 feet east of Sweetwater Street on the south side of Halls Bayou in Harris County, Texas 77037.

WARM SPRINGS FOUNDATION INC has applied for a renewal of TPDES Permit No. WQ0010943001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 40,000 gallons per day. The facility is located approximately 1,000 feet south of the intersection of Farm-Market Road 1586 and Farm-to-Market Road 2091, at a point 2.0 miles west of U.S. Highway 183 in Gonzales County, Texas 78629.

CITY OF NEW WAVERLY has applied for a renewal of TPDES Permit No. WQ0011020001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 88,000 gallons per day. The facility is located at 550 Cedar Lane, on the west bank of the Chicken Creek, approximately 1,600 feet south of the intersection of the Chicken Creek to State Highway 150 in Walker County, Texas 77358.

BISSONNET MUNICIPAL UTILITY DISTRICT has applied for a renewal of TPDES Permit No. WQ0011461001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 600,000 gallons per day. The facility is located at 13026 Old Richmond Road, approximately 0.5 mile southeast of the intersection of Synott Road and Bissonnet Street in Harris County, Texas 77099.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO 238 has applied for a renewal of TPDES Permit No. WQ0012802001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 825,000 gallons per day. The facility is located at 18915 Morton Road, approximately 1 mile north of the intersection of Saums Road and Barker-Cypress Road, approximately 2.1 miles north-northwest of the intersection of Interstate Highway 10 and Barker-Cypress Road in the City of Houston in Harris County, Texas 77084.

CITY OF HUXLEY has applied for a renewal of TPDES Permit No. WQ0013932001, which authorizes the discharge of treated filter backwash effluent from a water treatment plant at a daily average flow not to exceed 30,000 gallons per day. The facility is located at an unnamed County Road between Farm-to-Market Road 2694 and Toledo Bend Reservoir in the City of Huxley in Shelby County, Texas 75973.

CHAMBERS COUNTY IMPROVEMENT DISTRICT NO 1 has applied for a renewal of TPDES Permit No. WQ0014661001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 980,000 gallons per day. The facility is located approximately 1,400 feet east of Farm-to-Market Road 1405 and approximately 2,200 feet north of the intersection of Farm-to-Market Road 1405 and McKinney Street in Chambers County, Texas 77523.

SABINE RIVER AUTHORITY OF TEXAS has applied for a renewal of TPDES Permit No. WQ0014705001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 29,500 gallons per day. The facility is located approximately 200 feet east of Farm-to-Market Road 2946, approximately 1.2 miles south of the intersection of Farm-to-Market Road 2946 and State Highway 514, and approximately 7.5 miles east-northeast of the City of Emory in Rains County, Texas 75440.

SILVERLEAF RESORTS INC has applied for a major amendment to TCEQ Permit No. WQ0014731001, to authorize an increase in the daily average flow from 5,000 gallons per day to 20,000 and increase the area being irrigated to 6.83 acres. The current permit authorizes

the disposal of treated domestic wastewater at a daily average flow not to exceed 5,000 gallons per day via public access subsurface area drip dispersal system with a minimum area of 2.10 acres. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located 0.5 mile east of the intersection of Highway 155 and Tealwood Drive, south of County Road 1313 in Smith County, Texas 75762.

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-201100760

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: February 23, 2011

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Texas Facilities Commission

Request for Proposals #303-1-20271

The Texas Facilities Commission (TFC), on behalf of the Department of Family and Protective Services (DFPS), announces the issuance of Request for Proposals (RFP) #303-1-20271. TFC seeks a five (5) or ten (10) year lease of approximately 6,735 square feet of usable office space in the City of Kingsville, Kleberg County, Texas.

The deadline for questions is March 18, 2011, at 5:00 p.m. and the deadline for proposals is March 25, 2011, at 3:00 p.m. The target award date is May 18, 2011. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

All inquiries shall be submitted in writing with the RFP number in the subject line to Sandy M. Williams, CTPM at facsimile 512-236-6171 or by email to sandy.williams@tfc.state.tx.us. Inquiries must be submitted no later than 5:00 p.m. on March 18, 2011, as stated above. TFC will not respond to telephone inquiries or visits by prospective respondents or their representatives, after the question submittal deadline.

All inquiries that result in a change to the specifications or that TFC deems necessary for clarifications will result in written addenda posted to the Electronic State Business Daily at the Internet address listed below. If respondents do not have Internet access, copies may be obtained through TFC point of contact listed above.

Parties interested in submitting a proposal may obtain information by contacting TFC Contract Specialist Sandy Williams at sandy.williams@tfc.state.tx.us. The RFP and any addendum to the original RFP will be posted to the Electronic State Business Daily (ESBD). A copy of the RFP may be downloaded from the Electronic State Business Daily at http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=93252.

TRD-201100731

Kay Molina

General Counsel

Texas Facilities Commission

Filed: February 22, 2011

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Request for Proposals #303-1-20275

The Texas Facilities Commission (TFC), on behalf of the Texas Department of Public Safety, announces the issuance of Request for Proposals (RFP) #303-1-20275. TFC seeks a five lease of approximately 2,738 square feet of office space in Hebronville, Jim Hogg County, Texas.

The deadline for questions is March 24, 2011, and the deadline for proposals is March 31, 2011, at 3:00 p.m. The target award date is May 18, 2011. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TFC Contract Specialist Sandy Williams at (512) 475-0453 or sandy.williams@tfc.state.tx.us. Any addendum to the original RFP will be posted to the Electronic State Business Daily. A copy of the RFP may be downloaded from the Electronic State Business Daily at http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=93266.

TRD-201100765

Kay Molina

General Counsel

Texas Facilities Commission

Filed: February 23, 2011

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Texas Health and Human Services Commission

Public Notice

The Texas Health and Human Services Commission (HHSC) intends to submit to the Centers for Medicare and Medicaid Services (CMS) a request for an amendment to the State of Texas Access Reform (STAR) waiver program, under the authority of §1915(b) of the Social Security Act. The STAR waiver program is currently approved for the two-year period beginning July 1, 2010, and ending June 30, 2012.

It is expected that CMS will approve a previous amendment to the STAR waiver program submitted in December 2010, whereby SSI/SSI-related adults will be automatically enrolled into the STAR+PLUS Program. SSI/SSI-related children with or without Medicare may voluntarily enroll in the STAR+PLUS program, as the result of an expansion of the STAR+PLUS program into the Dallas and Tarrant Service Areas. Upon approval of the previous STAR amendment, this STAR amendment will be submitted to CMS.

STAR services include all of the traditional Medicaid benefits plus unlimited prescriptions for adults, no limit on necessary hospital days, and health education classes. STAR provides clients with access to a primary care provider that knows their health-care needs and can coordinate their care through a "medical home." Clients who join one of the Health Maintenance Organizations may also have access to value-added services and additional services. Value-added services are additional health-care services, benefits, or positive incentives that a Health Maintenance Organization voluntarily elects to provide to its clients at no additional cost to the state. Health Maintenance Organizations offer value-added services to attract clients to enroll with them. Additional services may be offered to clients on a case-by-case basis at the discretion of the Health Maintenance Organization. The Health Maintenance Organization may provide these services based on medical necessity, cost-effectiveness, the needs of the client, and the potential for improved health status of the client. Value-added services and additional services can vary from one Health Maintenance Organization to another. The STAR program exists in Bexar, Dallas, El Paso, Harris, Harris Expansion, Lubbock, Nueces, Tarrant and Travis Service Areas. These nine service areas consist of 52 counties.

This amendment will expand the number of counties in six of the current Medicaid managed care service areas, combine the Harris and Harris Expansion service areas into one Harris Service Area, and form a new Jefferson Service Area. The counties added to the Bexar, El Paso, Lubbock, Nueces and Travis Service Areas are: Bandera, Hudspeth, Carson, Deaf Smith, Hutchinson, Potter, Randall, Swisher, Brooks, Goliad, Karnes, Kenedy, Live Oak and Fayette. The single Harris Service Area will add the following counties: Austin, Matagorda and Wharton. The new Jefferson Service Area will comprise the following counties: Chambers, Hardin, Jasper, Jefferson, Liberty, Newton, Orange, Polk, San Jacinto, Tyler and Walker.

Currently individuals in the counties added to the Medicaid managed care service areas enroll in Primary Care Case Management (PCCM). PCCM will no longer be an enrollment choice for individuals in the added counties.

Individuals receiving Temporary Assistance for Needy Families (TANF) or TANF-related benefits in all of the added counties must enroll in STAR. Individuals receiving SSI or SSI-related benefits in Carson, Deaf Smith, Hudspeth, Hutchinson, Potter, Randall and Swisher counties may choose to enroll in STAR. In the other added counties, adult individuals receiving SSI or SSI-related benefits must enroll in STAR+PLUS, and children receiving SSI or SSI-related benefits may choose to enroll in STAR+PLUS.

HHSC is requesting that the waiver amendment be approved for the period beginning September 1, 2011, through June 30, 2012. This amendment maintains cost neutrality for the State for the remaining two-year period covering 2011 through 2012.

To obtain copies of the proposed waiver application, interested parties may contact Christine Longoria by mail at Texas Health and Human Services Commission, P.O. Box 85200, mail code H-620, Austin, Texas 78708-5200, phone (512) 491-1152, fax (512) 491-1953, or by e-mail at Christine.Longoria@hhsc.state.tx.us.

TRD-201100715

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Filed: February 18, 2011

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Public Notice

The Texas Health and Human Services Commission (HHSC) intends to submit to the Centers for Medicare and Medicaid Services (CMS) a request for a renewal to the NorthSTAR waiver program, under the authority of §1915(b) of the Social Security Act. The NorthSTAR waiver program is currently approved for the two-year period beginning October 1, 2009, and ending September 30, 2011. The proposed effective date for the renewal is October 1, 2011.

The NorthSTAR waiver program provides behavioral health services (mental health and substance abuse) in a managed care setting to Medicaid-eligible individuals in the Dallas service delivery area. Individuals enrolled in NorthSTAR have access to coordinated mental health and substance abuse services that exceed those available through traditional Medicaid. The Dallas service delivery area consists of: Collin, Dallas, Ellis, Hunt, Kaufman, Navarro and Rockwall counties.

HHSC is requesting that the waiver renewal be approved for the period beginning October 1, 2011, through September 30, 2013. This renewal maintains cost effectiveness for waiver years 2011 through 2013.

To obtain copies of the proposed waiver renewal, interested parties may contact Christine Longoria by mail at Texas Health and Human Ser-

vices Commission, P.O. Box 85200, mail code H-370, Austin, Texas 78708-5200, phone (512) 491-1152, fax (512) 491-1957, or by email at Christine.Longoria@hhsc.state.tx.us.

TRD-201100728

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Filed: February 22, 2011



Public Notice

The Texas Health and Human Services Commission (HHSC) intends to submit to the Centers for Medicare and Medicaid Services a request for amendments to the three STAR+PLUS program waivers, under the authority of §1915(b) and (c) of the Social Security Act. The STAR+PLUS 1915(b) waiver, TX-12, is currently approved for the two-year period beginning September 1, 2010, and ending August 31, 2012. The STAR+PLUS 1915(c) waivers, 0325 and 0862, are currently approved for the five-year period beginning February 1, 2011, and ending January 31, 2016. The proposed effective date for the amendments is September 1, 2011.

The STAR+PLUS 1915(b) waiver requires participation in managed care by adult recipients of Medicaid who live in a STAR+PLUS service area and who are aged, blind or disabled. The STAR+PLUS 1915(c) waivers allow persons age 65 and older and persons over the age of 21 with a disability, who are eligible for nursing facility level of care, to receive services in the community rather than in an institutional facility. These waivers provide personal assistance, adaptive aids and medical supplies, minor home modifications, nursing services, occupational therapy, physical therapy, speech therapy, respite, transition assistance, financial management, support consultation, adult foster care, assisted living, dental, emergency response and home delivered meals to allow individuals to remain in the community. The purpose of the STAR+PLUS Program is to integrate delivery of acute health care and long-term services and supports through a managed care system for individuals who reside in the following counties:

Bexar Service Area - Atascosa, Bexar, Comal, Guadalupe, Kendall, Medina, and Wilson counties;

Harris/Harris Expansion Service Area - Brazoria, Fort Bend, Galveston, Harris, Montgomery, and Waller counties;

Nueces Service Area - Aransas, Bee, Calhoun, Jim Wells, Kleberg, Nueces, Refugio, San Patricio, and Victoria counties;

Travis Service Area - Bastrop, Burnet, Caldwell, Hays, Lee, Travis and Williamson counties;

Dallas Service Area - Collin, Dallas, Ellis, Hunt, Kaufman, Navarro, and Rockwall counties; and

Tarrant Service Area - Denton, Hood, Johnson, Parker, Tarrant, and Wise counties.

These amendments will expand the STAR+PLUS program waivers to include additional counties in the existing service areas as follows:

Bexar Service Area - Bandera county;

Harris/Harris Expansion Service Area - Austin, Matagorda, and Wharton counties;

Nueces Service Area - Brooks, Goliad, Karnes, Kenedy, and Live Oak counties; and

Travis Service Area - Fayette County;

In addition, a new service delivery area will be added and serve the following counties:

Jefferson Service Area - Chambers, Hardin, Jasper, Jefferson, Liberty, Newton, Orange, Polk, San Jacinto, Tyler and Walker.

HHSC is requesting that the 0325 and 0862 waiver amendments be approved for the period beginning September 1, 2011, through January 31, 2016 and the TX-12 waiver amendment be approved for the period beginning September 1, 2011, through August 31, 2012. These amendments maintain cost neutrality for waiver years 2011 through 2016 and cost effectiveness for waiver years 2011 through 2012.

To obtain copies of the proposed waiver amendment, interested parties may contact Christine Longoria by mail at Texas Health and Human Services Commission, P.O. Box 85200, mail code H-370, Austin, Texas 78708-5200, phone (512) 491-1152, fax (512) 491-1957, or by e-mail at Christine.Longoria@hhsc.state.tx.us.

TRD-201100729

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Filed: February 22, 2011



Texas Department of Insurance

Company Licensing

Application for incorporation in the State of Texas by AMERIGROUP INSURANCE COMPANY, a domestic life, accident and/or health company. The home office is in Houston, Texas.

Application to change the name of BCS LIFE INSURANCE COMPANY to 4 EVER LIFE INSURANCE COMPANY, a foreign life, accident and/or health company. The home office is in Oakbrook Terrace, Illinois.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-201100730

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Filed: February 22, 2011



Texas Department of Licensing and Regulation

Vacancies on Property Tax Consultants Advisory Council

The Texas Department of Licensing and Regulation (TDLR) announces two vacancies on the Property Tax Consultants Advisory Council (Council) established by Texas Occupations Code, Chapter 1152. The pertinent rules may be found in 16 Texas Administrative Code §66.65. The purpose of the Property Tax Consultants Advisory Council is to advise the Texas Commission of Licensing and Regulation (Commission) on standards of practice, conduct, and ethics for registrants; setting fees; examination contents and standards of performance for senior property tax consultants; recognition of continuing education programs and courses for registrants; and establishing educational requirements for initial applicants.

The Council is composed of seven members appointed by the presiding officer of the Commission, with the Commission's approval. The

Council consists of six registered property tax consultants and one public member. Each person appointed for membership on the council must: be a registered senior property tax consultant; be a member of a nonprofit, voluntary trade association that has a membership primarily composed of individuals who perform property tax consulting services in this state or who engage in property tax management in this state for other persons, has written experience and examination requirements for membership, and subscribes to a code of professional conduct or ethics; be a resident of this state for the five years preceding the date of the appointment; and have performed or supervised the performance of property tax consulting services as the individual's primary occupation continuously for the five years preceding the date of the appointment. Members serve staggered three-year terms. This announcement is for two registered property tax consultants.

Interested persons should download an application from the Texas Department of Licensing and Regulation website: www.license.state.tx.us. Applications may also be requested by telephone (800) 803-9202, fax (512) 475-2874 or email advisory.boards@license.state.tx.us.

Applicants may be asked to appear for an interview; however any required travel for an interview would be at the applicant's expense.

TRD-201100763

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Filed: February 23, 2011



Vacancies on Towing, Storage and Booting Advisory Board

The Texas Department of Licensing and Regulation (Department) announces four vacancies on the Towing, Storage and Booting Advisory Board (Board) established by Texas Occupations Code, Chapter 2308 and Chapter 2303. The pertinent rules may be found in 16 Texas Administrative Code §§85.650 and §86.650. The purpose of the Towing, Storage and Booting Advisory Board is to advise the Texas Commission of Licensing and Regulation (Commission) and the Department on technical matters relevant to the administration and enforcement of Chapter 2308 and Chapter 2303, including examination content, licensing standards, and continuing education requirements.

The Board is composed of ten members appointed by the presiding officer of the Commission, with the Commission's approval. The Board consists of the following members: one representative of a towing company operating in a county with a population of less than one million; one representative of a towing company operating in a county with a population of one million or more; one owner of a vehicle storage facility located in a county with a population of less than one million; one owner of a vehicle storage facility located in a county with a population of one million or more; one parking facility owner; one law enforcement officer from a county with a population of less than one million; one law enforcement officer from a county with a population of one million or more; one representative of property and casualty insurers who write automobile insurance in this state; one representative of a booting company; and one public member. Members serve terms of six years, with the terms of two or three members, as appropriate, expiring on February 1 of each odd-numbered year. This announcement is for the positions of a representative of booting company, one

law enforcement officer from a county with a population of less than one million, one owner of a vehicle storage facility located in a county with a population of less than one million and a one owner of a vehicle storage facility located in a county with a population of less than one million.

Interested persons may download an application from the Texas Department of Licensing and Regulation at: www.license.state.tx.us. Applications may also be requested by telephone (800) 803-9202, fax (512) 475-2874 or email advisory.boards@license.state.tx.us. Applicants may be asked to appear for an interview; however, any required travel for an interview would be at the applicant's expense.

TRD-201100764

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Filed: February 23, 2011



Texas Lottery Commission

Instant Game Number 1316 "Loteria® Texas"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1316 is "LOTERIA® TEXAS". The play style is "coordinate with prize legend".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1316 shall be \$3.00 per ticket.

1.2 Definitions in Instant Game No. 1316.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: THE ARROWS SYMBOL, THE BELL SYMBOL, THE BOOT SYMBOL, THE CACTUS SYMBOL, THE CANOE SYMBOL, THE CROWN SYMBOL, THE DEER SYMBOL, THE DRUM SYMBOL, THE FISH SYMBOL, THE FLOWERPOT SYMBOL, THE FROG SYMBOL, THE HAND SYMBOL, THE LADDER SYMBOL, THE MERMAID SYMBOL, THE MOON SYMBOL, THE MUSICIAN SYMBOL, THE PARROT SYMBOL, THE PEAR SYMBOL, THE PITCHER SYMBOL, THE ROOSTER SYMBOL, THE ROSE SYMBOL, THE STAR SYMBOL, THE SUN SYMBOL, THE TREE SYMBOL, THE UMBRELLA SYMBOL, THE VIOLIN SYMBOL, THE WATERMELON SYMBOL, THE WORLD SYMBOL and THE BARREL SYMBOL.

D. Play Symbol Caption - the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1316 - 1.2D

PLAY SYMBOL	CAPTION
THE ARROWS SYMBOL	THE ARROWS
THE BELL SYMBOL	THE BELL
THE BOOT SYMBOL	THE BOOT
THE CACTUS SYMBOL	THE CACTUS
THE CANOE SYMBOL	THE CANOE
THE CROWN SYMBOL	THE CROWN
THE DEER SYMBOL	THE DEER
THE DRUM SYMBOL	THE DRUM
THE FISH SYMBOL	THE FISH
THE FLOWERPOT SYMBOL	THE FLOWERPOT
THE FROG SYMBOL	THE FROG
THE HAND SYMBOL	THE HAND
THE LADDER SYMBOL	THE LADDER
THE MERMAID SYMBOL	THE MERMAID
THE MOON SYMBOL	THE MOON
THE MUSICIAN SYMBOL	THE MUSICIAN
THE PARROT SYMBOL	THE PARROT
THE PEAR SYMBOL	THE PEAR
THE PITCHER SYMBOL	THE PITCHER
THE ROOSTER SYMBOL	THE ROOSTER
THE ROSE SYMBOL	THE ROSE
THE STAR SYMBOL	THE STAR
THE SUN SYMBOL	THE SUN
THE TREE SYMBOL	THE TREE
THE UMBRELLA SYMBOL	THE UMBRELLA
THE VIOLIN SYMBOL	THE VIOLIN
THE WATERMELON SYMBOL	THE WATERMELON
THE WORLD SYMBOL	THE WORLD
THE BARREL SYMBOL	THE BARREL

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$3.00, \$4.00, \$7.00, \$10.00, \$17.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$30.00, \$33.00, \$50.00, \$80.00 or \$300.

H. High-Tier Prize - A prize of \$3,000 or \$33,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1316), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 1316-0000001-001.

K. Pack - A pack of "LOTERIA® TEXAS". Instant Game tickets contains 125 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). There will be 2 fanfold configurations for this game. Configuration A will show the front of ticket 001 and the back of ticket 125. Configuration B will show the back of ticket 001 and the front of ticket 125.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "LOTERIA® TEXAS". Instant Game No. 1316 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "LOTERIA® TEXAS". Instant Game is determined once the latex on the ticket is scratched off to expose 30 (thirty) play symbols. The player scratches off the CALLER'S CARD area to reveal 14 symbols. The player scratches only the symbols on the LOTERIA® CARD that match the symbols revealed on the CALLER'S CARD to reveal a bean. The player reveals 4 beans in any complete horizontal or vertical line in the LOTERIA® CARD to win the prize shown for that line. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 30 (thirty) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 30 (thirty) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 30 (thirty) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 30 (thirty) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. A ticket may win up to three (3) times per the prize structure.

C. No adjacent tickets will contain identical CALLER'S CARD play symbols in exactly the same locations.

D. No duplicate play symbols in the CALLER'S CARD play area.

E. On non-winning tickets, there will be at least one near win. A near win is defined as matching 3 of the 4 symbols to the CALLER'S CARD for a given row or column.

F. There will be no occurrence of all 4 symbols in either diagonal matching the CALLER'S CARD symbols.

G. At least 8, but no more than 12, CALLER'S CARD play symbols will match a symbol on the LOTERIA® CARD on a ticket.

H. No duplicate play symbols on a LOTERIA® CARD as indicated in the artwork section.

I. Each LOTERIA® CARD will have an occurrence of the rooster symbol as indicated in the artwork section.

2.3 Procedure for Claiming Prizes.

A. To claim a "LOTERIA® TEXAS". Instant Game prize of \$3.00, \$4.00, \$7.00, \$10.00, \$17.00, \$20.00, \$30.00, \$33.00, \$50.00, \$80.00 or \$300, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$30.00, \$33.00, \$50.00, \$80.00 or \$300 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim

is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "LOTERIA® TEXAS". Instant Game prize of \$3,000 or \$33,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "LOTERIA® TEXAS". Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General;
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "LOTERIA® TEXAS". Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "LOTERIA® TEXAS". Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 10,080,000 tickets in the Instant Game No. 1316. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1316 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$3	1,370,880	7.35
\$4	322,560	31.25
\$7	282,240	35.71
\$10	181,440	55.56
\$17	161,280	62.50
\$20	161,280	62.50
\$30	16,800	600.00
\$33	8,400	1,200.00
\$50	7,980	1,263.16
\$80	6,720	1,500.00
\$300	5,040	2,000.00
\$3,000	152	66,315.79
\$33,000	20	504,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.99. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1316 without advance notice, at which point no further tickets in that game may be sold. The determination of the closing date and reasons for closing the game will be made in accordance with the instant game closing procedures and the Instant Game Rules, 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1316, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201100754
 Kimberly L. Kiplin
 General Counsel
 Texas Lottery Commission
 Filed: February 23, 2011



Instant Game Number 1324 "Texas Lottery® Black Series II - Limited Edition"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1324 is "TEXAS LOTTERY® BLACK SERIES II - LIMITED EDITION". The play style is "key number match with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1324 shall be \$10.00 per ticket.

1.2 Definitions in Instant Game No. 1324.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol- The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, COIN SYMBOL, \$10.00, \$20.00, \$50.00, \$100, \$200, \$500, \$1,000, \$10,000 and \$1MILL SYMBOL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1324 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
COIN SYMBOL	COIN
\$10.00	TEN\$
\$20.00	TWENTY
\$50.00	FIFTY
\$100	ONE HUND
\$200	TWO HUND

\$500	FIV HUND
\$1,000	ONE THOU
\$10,000	10 THOU
\$1MILL SYMBOL	ONE MILL

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$50.00, \$100, \$200 or \$500.

H. High-Tier Prize - A prize of \$1,000, \$5,000, \$10,000 or \$1,000,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1324), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 050 within each pack. The format will be: 1324-0000001-001.

K. Pack - A pack of "TEXAS LOTTERY® BLACK SERIES II - LIMITED EDITION" Instant Game tickets contains 50 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket back 001 and 050 will both be exposed.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "TEXAS LOTTERY® BLACK SERIES II - LIMITED EDITION" Instant Game No. 1324 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "TEXAS LOTTERY® BLACK SERIES II - LIMITED EDITION" Instant Game is determined once the latex on the ticket is scratched off to expose 66 (sixty-six) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to any of the WINNING NUMBERS play symbols, the player wins the PRIZE for that number. If a player reveals a "coin" play symbol, the player wins the PRIZE for that symbol. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 66 (sixty-six) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 66 (sixty-six) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 66 (sixty-six) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 66 (sixty-six) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award

of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

C. No duplicate WINNING NUMBERS play symbols on a ticket.

D. No more than five duplicate non-winning prize symbols on a ticket.

E. A non-winning prize symbol will never be the same as a winning prize symbol.

F. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e., 10 and \$10).

G. The "COIN" (auto win) play symbol will only appear once on a ticket.

H. The top prize symbol will appear on every ticket unless otherwise restricted.

2.3 Procedure for Claiming Prizes.

A. To claim a "TEXAS LOTTERY® BLACK SERIES II - LIMITED EDITION" Instant Game prize of \$10.00, \$20.00, \$50.00, \$100, \$200 or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to pay a \$50.00, \$100, \$200 or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "TEXAS LOTTERY® BLACK SERIES II - LIMITED EDITION" Instant Game prize of \$1,000, \$5,000 or \$10,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. To claim a "TEXAS LOTTERY® BLACK SERIES II - LIMITED EDITION" top level prize of \$1,000,000 the claimant must sign the

winning ticket and present it at Texas Lottery Commission headquarters in Austin, Texas. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. As an alternative method of claiming a "TEXAS LOTTERY® BLACK SERIES II - LIMITED EDITION" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

E. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

F. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "TEXAS LOTTERY® BLACK SERIES II - LIMITED EDITION" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "TEXAS LOTTERY® BLACK SERIES II - LIMITED EDITION" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member

of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by

the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 6,000,000 tickets in the Instant Game No. 1324. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1324 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$10	840,000	7.14
\$20	840,000	7.14
\$50	90,000	66.67
\$100	25,000	240.00
\$200	9,000	666.67
\$500	4,300	1,395.35
\$1,000	400	15,000.00
\$5,000	100	60,000.00
\$10,000	16	375,000.00
\$1,000,000	6	1,000,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.32. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1324 without advance notice, at which point no further tickets in that game may be sold. The determination of the closing date and reasons for closing the game will be made in accordance with the instant game closing procedures and the Instant Game Rules, 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1324, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201100755

Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: February 23, 2011

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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 February 18, 2011, to amend a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Time Warner Cable for Amendment to a State-Issued Certificate of Franchise Authority, Project Number 39164.

The requested amendment is to expand the service area footprint to include the City of Dalworthington Gardens, 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 use Relay Texas (toll free) (800) 735-2989. All inquiries should reference Project Number 39164.

TRD-201100740
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 22, 2011



Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on February 18, 2011, to amend a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Comcast of Houston, LLC for Amendment to a State-Issued Certificate of Franchise Authority, Project Number 39167.

The requested amendment is to expand the service area footprint to include Galveston, 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 use Relay Texas (toll free) (800) 735-2989. All inquiries should reference Project Number 39167.

TRD-201100741
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 22, 2011



Notice of Application for Waiver of Denial of Numbering Resources

Notice is given to the public of the filing with the Public Utility Commission of Texas an application on February 15, 2011, for waiver of denial by the Pooling Administrator (PA) of Verizon Southwest's (Verizon) request for assignment of one (1) thousand-block of numbers in the Plano rate center.

Docket Title and Number: Petition of Verizon Southwest for Waiver of Denial of Numbering Resources for Plano Rate Center, Docket Number 39150.

The Application: Verizon requested one (1) thousand-block of numbers on behalf of its customer, Plano Independent School District, in the Plano rate center. Verizon submitted an application to the PA for

the requested blocks in accordance with the current guidelines. The PA denied the request because Verizon did not meet the months-to-exhaust and utilization criteria established by the Federal Communications Commission.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477 no later than March 11, 2011. Hearing and speech impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at (800) 735-2989. All comments should reference Docket Number 39150.

TRD-201100739
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 22, 2011



Notice of Filing to Withdraw TLS Customer Service Management and Protected Access Line Pursuant to P.U.C. Substantive Rule §26.208(h)

Notice is given to the public of Verizon Southwest's application filed with the Public Utility Commission of Texas (commission) on February 1, 2011, to withdraw TLS Customer Service Management and Protected Access Line pursuant to P.U.C. Substantive Rule §26.208(h).

Docket Title and Number: Application of Verizon Southwest to withdraw TLS Customer Service Management and Protected Access Line Pursuant to P.U.C. Substantive Rule §26.208(h). Docket Number 39117.

The Application: Verizon Southwest (Verizon) filed an application with the Public Utility Commission of Texas (commission) to withdraw TLS Customer Service Management (CSM) and Protected Access Line (PAL) from its Texas Facilities for State Access Tariff as active offerings. Verizon proposes an effective date of March 8, 2011. CSM will be limited to existing customers with no changes through the end of their term commitment. Verizon will be launching a Verizon Enterprise Center web portal, which will offer access to similar web based reports and is more user friendly. The proceedings were docketed and suspended on February 2, 2011, to allow adequate time for review and intervention.

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 use Relay Texas (toll free) (800) 735-2989. All inquiries should reference Docket Number 39117.

TRD-201100738
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 22, 2011



Notice of Intent to Implement a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171

Notice is given to the public of Industry Telephone Company's (Industry) application filed with the Public Utility Commission of Texas

(commission) on February 7, 2011, for approval of a minor rate change pursuant to P.U.C. Substantive Rule §26.171.

Tariff Control Title and Number: Application of Industry Telephone Company for Approval of a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171, Tariff Control Number 39126.

The Application: On February 7, 2011, Industry filed an application with the Public Utility Commission of Texas for a minor rate change pursuant to P.U.C. Substantive Rule §26.171. The applicant is proposing to increase its residential and business access line rates by 10%. The proposed effective date is June 1, 2011. The estimated annual revenue increase recognized by Industry is \$27,070 or less than 5% of Industry's gross annual intrastate revenues. Industry has 2,215 access lines in service in the State of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by April 30, 2011, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by April 30, 2011. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326, or you may call the commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Tariff Control Number 39126.

TRD-201100737

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: February 22, 2011

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South East Texas Regional Planning Commission

Request for Proposals

The South East Texas Regional Planning Commission (SETRPC) seeks a qualified consultant to provide a NIMS compliant Functional Exercise for the South East Texas region of Hardin, Jefferson and Orange Counties on May 25 and 26, 2011. The overarching goal of the exercise is to improve interoperability in the region and successfully meet the National Emergency Communications Plan Goal 2 objectives. The consultant must be familiar with interoperable communications, interoperable communications planning, possess a working knowledge of the current State of Texas Interoperable initiatives, the National Incident Management System and the National Emergency Communications Plan.

The functional exercise will:

involve multiple jurisdictions and agencies;

determine how existing communications policies, procedures, and Memorandum of Understanding (MOU) are enacted during response to major regional events;

determine the ability of participating agencies to establish communications within one hour of a major, jurisdictional event;

identify gaps in current capabilities processes;

Deliverables:

Concept and Objective Meeting by March 23, 2011

At least two planning meetings by April 13, 2011

Exercise Scenario, Master Scenario Events List (MSEL) by April 20, 2011

Functional Exercise 4 - 8 hours in length on May 25 and 26, 2011

Draft AAR which contains jurisdictional reports on or before June 25, 2011

Final report no later than July 8, 2011

Interested parties should contact Sue Landry at slandry@setrpc.org or Robert Grimm at rgrimm@setrpc.org to obtain the complete Request for Proposals (RFP). Responses to the RFP are due to SETRPC no later than March 11, 2011 at 5:00 p.m. Central Daylight Savings time.

TRD-201100663

Jim Borel

Director of Finance

South East Texas Regional Planning Commission

Filed: February 17, 2011

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Texas Department of Transportation

Public Notice - Aviation

Pursuant to Transportation Code, §21.111, and 43 Texas Administrative Code §30.209, the Texas Department of Transportation conducts public hearings to receive comments from interested parties concerning proposed approval of various aviation projects.

For information regarding actions and times for aviation public hearings, please go to the following web site:

http://www.txdot.gov/public_involvement/hearings_meetings.

Or visit www.txdot.gov, click on Public Involvement and click on Hearings and Meetings.

Or contact Texas Department of Transportation, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4501 or 1-800-68-PI-LOT.

TRD-201100733

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: February 22, 2011

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The University of Texas System

Addendum 1

DATE: February 17, 2011

PROJECT: Creating a Communications Program

IFO NO: 744-1111 - Creating a Communications Program

OWNER: The University of Texas Health Science Center at Houston, Texas

TO: Prospective Proposers

This Addendum forms part of and modifies Proposal Documents dated January 24, 2011, published in the February 4, 2011, issue of the *Texas Register* (36 TexReg 681), with amendments and additions noted below.

SUBMITTAL DUE DATE EXTENDED

Section 2.1 Submittal Deadline:

University will accept proposals no later than 2:00 p.m. Central Standard Time on **Friday, March 4, 2011.**

Further information may be found at http://buy.uth.tmc.edu/bid_list.htm.

TRD-201100727

Francie A. Frederick

General Counsel to the Board of Regents

The University of Texas System

Filed: February 22, 2011



Texas Veterans Commission

Request for Applications Concerning the Texas Veterans Commission Fund for Veterans' Assistance Grant Program

Filing Authority. The availability of grant funds is authorized by Texas Government Code, §434.017.

Eligible Applicants. The Texas Veterans Commission (TVC) is requesting applications from organizations eligible to apply for grant funding. Eligible applicants are units of local government, IRS Code 501(c)(19) Posts or Organizations of Past or Present Members of the Armed Forces, IRS Code 501(c)(3) private nonprofit corporations authorized to conduct business in Texas, Texas chapters of IRS Code 501(c)(4) veterans service organizations, and nonprofit organizations authorized to do business in Texas with experience providing services to veterans.

Description. The purpose of this solicitation is to receive applications proposing projects that meet the needs of veterans and their families. These needs include, but are not limited to: emergency financial assistance; transportation services; family and/or individual counseling for Post-Traumatic Stress Disorder (PTSD) and Traumatic Brain Injury (TBI); employment, training/job placement assistance; housing assistance for homeless veterans; family and child services; non-criminal legal services; development of professional services networks; and enhancement or improvement of veterans' assistance programs, including veterans' representation and counseling. Grant funds must be used to supplement, not supplant, existing funds and/or services.

Dates of Project. The projected start date for these grants is July 1, 2011, or the date that the grant agreement is executed, whichever is

later, with an ending date of June 30, 2012. TVC will require periodic performance and expenditure reports.

Project Amount. For this solicitation, the minimum grant award will be \$10,000. The maximum grant award will be \$1,000,000. This project is funded 100% from state funds.

Selection Criteria. Applications will be selected based on the ability of each applicant to carry out all requirements contained in the solicitation. Reviewers from the TVC Fund for Veterans' Assistance Advisory Committee will evaluate applications and make award recommendations to the Commission based on the overall quality of the proposed project and the extent to which the project addresses the needs of veterans and their families. Applications must address all requirements of the application to be considered for funding.

TVC is not obligated to approve an application, provide funds, or endorse any application submitted in response to this solicitation. This solicitation does not commit TVC to pay any costs before an application is approved and a grant agreement is signed. This issuance does not obligate TVC to award a grant or pay any costs incurred in preparing a response.

Requesting the Materials Needed to Complete an Application. All information needed to respond to this solicitation will be posted to the TVC website at <http://www.tvc.state.tx.us> on or about March 4, 2011.

Further Information. 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 via email to grants@tvc.state.tx.us. All questions and the written answers will be posted on the TVC website in the format of Frequently Asked Questions (FAQs).

Deadline for Receipt of an Application. Applications must be received by TVC no later than 5:00 p.m. (Central Time), March 28, 2011, to be considered eligible for funding.

TRD-201100753

Bill Wilson

Director, Fund for Veterans' Assistance

Texas Veterans Commission

Filed: February 23, 2011



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 36 (2011) is cited as follows: 36 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 "36 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 36 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 at: <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 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 *Index of Rules*. The *Index of Rules* 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 the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION

Part 4. Office of the Secretary of State

Chapter 91. Texas Register

40 TAC §3.704.....950 (P)