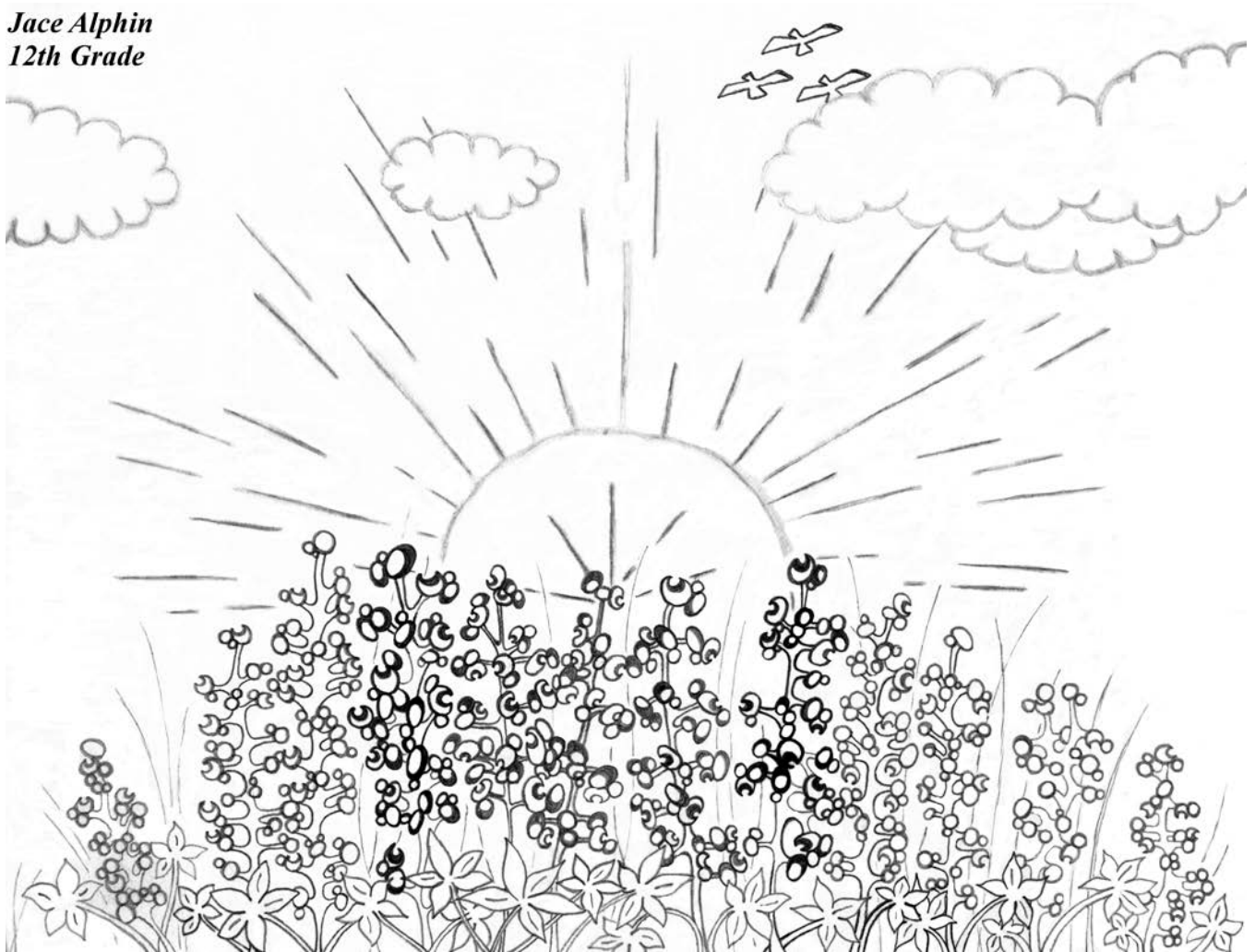

TEXAS REGISTER

Volume 38 Number 21

May 24, 2013

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*Jace Alphin
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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THE GOVERNOR

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

Appointments

Appointments for April 26, 2013

Appointed to the Texas Institute of Health Care Quality and Efficiency Board of Directors for a term to expire January 31, 2015, Steven N. Nguyen of Irving (replacing Jacinto Juarez of Laredo who resigned).

Designating Billy M. Atkinson, Jr. as presiding officer of the Texas Public Finance Authority for a term at the pleasure of the Governor. Mr. Atkinson is replacing D. Joseph Meister of Dallas as presiding officer.

Appointments for May 1, 2013

Designating John H. Walker, III as presiding officer of the Texas Department of Motor Vehicles Board for a term at the pleasure of the Governor. Mr. Walker is replacing Victor Vandergriff of Arlington as presiding officer.

Appointments for May 2, 2013

Designating Charles W. Beasley as presiding officer of the Texas Board of Licensure for Professional Medical Physicists for a term at the pleasure of the Governor. Dr. Beasley is replacing Richard Wendt, III of Bellaire as presiding officer.

Appointments for May 6, 2013

Appointed as the Student Regent for the Texas Tech University System, effective June 1, 2013, for a term to expire May 31, 2014, Joshua A. Heimbecker of San Angelo. Mr. Heimbecker is replacing Suzanne Taylor of Lubbock whose term expired.

Appointed as the Student Regent for Texas Woman's University, effective June 1, 2013, for a term to expire May 31, 2014, Joleesia Berry of Dallas. Ms. Berry is replacing Adriana Blanco of Fort Worth whose term expired.

Appointed as the Student Regent for the Texas State University System, effective June 1, 2013, for a term to expire May 31, 2014, Matthew A. Russell of San Marcos. Mr. Russell is replacing Andrew Greenberg of Rockwall whose term expired.

Appointed as the Student Regent for the University of North Texas System, effective June 1, 2013, for a term to expire May 31, 2014, Rodolfo "Rudy" Reynoso, Jr. of Sherman. Mr. Reynoso is replacing Alexandria Perez of Dallas whose term expired.

Appointed as the Student Regent for Stephen F. Austin State University, effective June 1, 2013, for a term to expire May 31, 2014, Matthew L. Logan of Nacogdoches. Mr. Logan is replacing Jourdan Dukes of Dallas whose term expired.

Appointed as the Student Regent for Texas Southern University, effective June 1, 2013, for a term to expire May 31, 2014, Faran Foy of Houston. Ms. Foy is replacing Juan Sorto of Houston whose term expired.

Appointed as the Student Regent for Midwestern State University, effective June 1, 2013, for a term to expire May 31, 2014, Shelby Davis

of Petrolia. Ms. Davis is replacing Holly Allsup of Wichita Falls whose term expired.

Appointed as the Student Representative for the Higher Education Coordinating Board, effective June 1, 2013, for a term to expire May 31, 2014, Alice Schneider of Austin. Ms. Schneider is replacing Ryan Bridges of Huntsville whose term expired.

Appointed as the Student Regent for the Texas A&M University System, effective June 1, 2013, for a term to expire May 31, 2014, Nicholas Madere of Austin. Mr. Madere is replacing John Quinten Womack of Mission whose term expired.

Appointed as the Student Regent for the University of Houston System, effective June 1, 2013, for a term to expire May 31, 2014, Benjamin Wells of Cypress. Mr. Wells is replacing Gage Raba of San Antonio whose term expired.

Appointed as the Student Regent for the University of Texas System, effective June 1, 2013, for a term to expire May 31, 2014, Nash Horne of Austin. Mr. Horne is replacing Ashley Purgason of Galveston whose term expired.

Appointments for May 7, 2013

Designating Mike Arismendez, Jr. as presiding officer of the Texas Commission of Licensing and Regulation for a term at the pleasure of the Governor. Mr. Arismendez is replacing Frank Denton of Conroe as presiding officer.

Appointments for May 10, 2013

Appointed to the OneStar National Service Commission for a term to expire March 15, 2016, Daphne Brookins of Forest Hill (replacing Beverly Ashley-Fridie of Edinburg whose term expired).

Appointed to the OneStar National Service Commission for a term to expire March 15, 2016, Aranda "Randi" Cooper of Nacogdoches (Ms. Cooper is being reappointed).

Appointed to the OneStar National Service Commission for a term to expire March 15, 2016, Mary M. Keller of Harker Heights (Dr. Keller is being reappointed).

Appointed to the OneStar National Service Commission for a term to expire March 15, 2016, Cynthia B. Nunn of Desoto (replacing Charlotte Keany of Colleyville whose term expired).

Appointed to the OneStar National Service Commission for a term to expire March 15, 2016, Charles "Chuck" Wall, Jr. of San Antonio (Mr. Wall is being reappointed).

Appointed to the OneStar National Service Commission for a term to expire March 15, 2016, Michael L. Williams of Arlington (Commissioner Williams is being reappointed).

Appointed to the Crime Victims' Institute Advisory Council for a term to expire January 31, 2015, Stefani Carter of Dallas (Representative Carter is being reappointed).

Appointed to the Crime Victims' Institute Advisory Council for a term to expire January 31, 2015, Robert Duncan of Lubbock (replacing Kel Seliger of Amarillo whose term expired).

Appointed to the Crime Victims' Institute Advisory Council for a term to expire January 31, 2015, Anahid "Ana" Estevez of Amarillo (replacing Ruben Reyes of Lubbock whose term expired).

Appointed to the Crime Victims' Institute Advisory Council for a term to expire January 31, 2015, Ann Matthews of Jourdanton (Ms. Matthews is being reappointed).

Appointed to the Crime Victims' Institute Advisory Council for a term to expire January 31, 2015, Geoffrey Puryear of Austin (replacing Dallas Barrington of Silsbee whose term expired).

Appointed to the Crime Victims' Institute Advisory Council for a term to expire January 31, 2015, Stephanie Anne Schulte of El Paso (Ms. Schulte is being reappointed).

Appointed to the Crime Victims' Institute Advisory Council for a term to expire January 31, 2015, Janie "Jane" Shafer of San Antonio (Ms. Shafer is being reappointed).

Appointed to the Crime Victims' Institute Advisory Council for a term to expire January 31, 2015, Mark H. Wilson of Brandon (Sergeant Wilson is being reappointed).

Rick Perry, Governor

TRD-201301976



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>.)

Requests for Opinions

RQ-1125-GA

Requestor:

The Honorable Jeri Yenne

Brazoria County Criminal District Attorney

Brazoria County Courthouse

111 East Locust Street, Suite 408 A

Angleton, Texas 77515

Whether an employee with consistent but periodic delivery of employment services qualifies for the nepotism continuous-employment exception in Government Code section 573.062 (RQ-1125-GA)

Briefs requested by May 28, 2013

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

TRD-201301975

Katherine Cary

General Counsel

Office of the Attorney General

Filed: May 15, 2013



TEXAS ETHICS COMMISSION

The Texas Ethics Commission is authorized by the Government Code, §571.091, to issue advisory opinions in regard to the following statutes: the Government Code, Chapter 302; the Government Code, Chapter 305; the Government Code, Chapter 572; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39. Requests for copies of the full text of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

Revised Advisory Opinion Request

AOR-579 Revised. The Texas Ethics Commission has been asked to consider whether a federal principal campaign committee established to support a candidate for federal office located in Texas that makes a contribution to a state or local office is required to file a campaign treasurer appointment or campaign finance reports with the Texas Ethics Commission.

The Texas Ethics Commission is authorized by §571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter

36, Penal Code; (9) Chapter 39, Penal Code; (10) §2152.064, Government Code; and (11) §2155.003, Government Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

TRD-201301962
Natalia Ashley
Special Counsel
Texas Ethics Commission
Filed: May 14, 2013



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 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 79. BUSINESS ENTITY FILINGS SUBCHAPTER B. DOCUMENT REVIEW

1 TAC §79.28

The Office of the Secretary of State ("Office") proposes to amend §79.28, concerning Registered Agent and Office. The proposed amendment of §79.28 will remove an inconsistency with the Texas Business Organizations Code (the "Code") with respect to use of a post office box as the sole registered office address. With the adoption of the Code, the registered office requirements were set forth in §5.201(c). Section 5.201(c)(3) specifies that the registered office address cannot be solely a mailbox service. As a result, the Office seeks to amend §79.28 to remove the provision allowing for a post office address for cities with a population of less than 5,000. The Office acknowledges that there are still sometimes situations in which a rural area may not have a physical street address that can receive mail. However, we have provided for those situations by accepting both a mailing address, including a P.O. Box, and an address where service can be made in person.

FISCAL NOTE

Briana Godbey, Attorney in the Business and Public Filings Division of the Office of the Secretary of State, has determined that for each year of the first five years that the amended section is in effect there will be no fiscal implications to state or local governments as a result of enforcing or administering the section as proposed.

PUBLIC BENEFIT AND SMALL BUSINESS COST NOTE

Ms. Godbey has determined that for each year of the first five years the amended section is in effect the public benefit anticipated as a result of enforcing or administering the section will be to view the rules as corrected. There will be no effect on small or micro businesses. There is no anticipated economic cost to persons who are required to comply with the amended section.

COMMENTS

Comments on the proposed amendment may be submitted in writing to: Briana Godbey, Office of the Secretary of State, Corporations Section, P.O. Box 13697, Austin, Texas 78711-3697. Comments must be received not later than 12:00 noon, June 24, 2013.

STATUTORY AUTHORITY

The amendment of §79.28 is proposed under the authority of §12.001 of the Texas Business Organizations Code, which authorizes the secretary of state to adopt procedural rules for the filing of instruments authorized to be filed with the secretary of state under the Code and gives the secretary of state the power and authority reasonably necessary to enable the secretary of state to perform the duties therein imposed upon the secretary of state.

CROSS REFERENCE TO STATUTE

Chapter 5 of the Texas Business Organizations Code is affected by this section.

§79.28. *Registered Agent and Office.*

(a) An entity may not serve as its own registered agent.

(b) A [Except as provided below, a] registered office address must include a street or building address for purposes of providing the public with notice of the physical street location at which process may be served on the registered agent. A [; a] post office box alone is not a sufficient address for the registered office, though a post office box will be accepted when accompanied by a physical address where the registered agent can be personally served with process during business hours. The address of a commercial business that [which] provides "private mail box" services is not sufficient as a registered office address, unless the commercial enterprise is the business of the designated registered agent. [If the registered office address is in a city with a population of less than 5,000, the secretary of state will accept an address other than a street address for the registered office.]

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 May 9, 2013.

TRD-201301859

Lorna Wassdorf

Director, Business and Public Filings

Office of the Secretary of State

Earliest possible date of adoption: June 23, 2013

For further information, please call: (512) 463-5562



PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES SUBCHAPTER J. PURCHASED HEALTH SERVICES

DIVISION 11. TEXAS HEALTHCARE TRANSFORMATION AND QUALITY IMPROVEMENT PROGRAM REIMBURSEMENT

1 TAC §355.8203

The Texas Health and Human Services Commission (HHSC) proposes new §355.8203, concerning Waiver Payments to Other Performers.

BACKGROUND AND JUSTIFICATION

In December 2011, HHSC received approval from the federal Centers for Medicare and Medicaid Services (CMS) for the Texas Transformation and Quality Improvement Program, a Section 1115 Waiver. One facet of the 1115 Waiver is the Delivery System Reform Incentive Payment (DSRIP) program in which providers gather together in Regional Healthcare Partnerships (RHPs) to propose and implement projects that further HHSC's goal of positive transformation for the state's healthcare system. Providers are given an incentive payment based upon the successful completion of metrics in each DSRIP project.

Reimbursement rules relating to the 1115 Waiver for hospitals and physician practice groups are already codified at §355.8201 and §355.8202. However, there are other types of providers involved in the DSRIP program, such as community mental health centers and local health departments. The Program Funding and Mechanics (PFM) Protocol, a CMS-approved document giving in-depth detail about the DSRIP program, allows for HHSC and CMS to agree to allow other providers to participate as performers. This proposed new rule describes the reimbursement rules for all other providers not addressed by §355.8201 or §355.8202.

The proposed new rule includes a description of eligibility requirements, payment methodologies, and the intergovernmental transfer and recoupment processes. This rule does not substantively differ from the reimbursement rules for hospitals or physician practice groups insofar as those rules address the DSRIP program.

SECTION-BY-SECTION SUMMARY

Proposed §355.8203(a) provides for an introduction to the new rule.

Proposed §355.8203(b) defines multiple terms.

Proposed §355.8203(c) describes the eligibility requirements for DSRIP.

Proposed §355.8203(d) describes the acceptable sources of intergovernmental transfers meant to fund waiver payments.

Proposed §355.8203(e) describes the frequency with which DSRIP payments may be made.

Proposed §355.8203(f) describes the maximum amount of funds available for DSRIP.

Proposed §355.8203(g) describes the maximum amount of a single DSRIP payment.

Proposed §355.8203(h) describes the DSRIP payment methodology.

Proposed §355.8203(i) describes the instances in which a recoupment may be necessary and the mechanics in the instance of a recoupment.

FISCAL NOTE

Greta Rymal, Deputy Director of Finance for HHSC, has determined that, for each year of the first five years the proposed rule will be in effect, there will be a fiscal impact to local governments. There will be no foreseeable fiscal impact to state government as a result of enforcing or administering the rule.

The effect on local governments for each of the first five years the proposed rule will be in effect cannot be determined but is anticipated to be positive as the local funds are matched with a greater amount of federal funds.

PUBLIC BENEFITS AND COSTS

Chris Traylor, Deputy Executive Commissioner for HHSC, has determined that, for each year of the first five years the rule will be in effect, the public benefit expected as a result of adopting the proposed rule is an increase in funding for targeted healthcare transformation projects.

Ms. Rymal anticipates that, for each year of the first five years the rule will be in effect, there will not be an economic cost to persons required to comply with the rule.

LOCAL EMPLOYMENT IMPACT

HHSC has determined that the rule will not affect a local economy or local employment.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

HHSC has determined that the rule would have no adverse economic effect on small businesses or micro-businesses, because there are no small businesses or micro-businesses involved in the DSRIP program.

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 Texas Government Code.

PUBLIC COMMENT

Written comments on the proposal may be submitted to Charles Greenberg, Assistant General Counsel, Office of General Counsel, Texas Health and Human Services Commission, Mail Code-1070, P.O. Box 13247, Austin, Texas 78711; by fax to (512) 424-6586; or by e-mail to charles.greenberg@hhsc.state.tx.us within 30 days after publication of this proposal in the *Texas Register*.

PUBLIC HEARING

A public hearing is scheduled for June 18, 2013 from 2:00 p.m. to 3:00 p.m. (central time) in the John H. Winters Building, Public Hearing Room 125, located at 701 W. 51st Street, Austin,

Texas 78751. Persons requiring further information, special assistance, or accommodations should contact Leigh A. Van Kirk at (512) 462-6284.

STATUTORY AUTHORITY

The new rule is proposed under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, §32.021, and Texas Government Code, §531.021, which authorize HHSC to administer the federal medical assistance (Medicaid) program in Texas.

The new rule implements Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§355.8203. Waiver Payments to Other Performers.

(a) Introduction. Texas Healthcare Transformation and Quality Improvement Program §1115(a) Medicaid demonstration waiver payments are available under this section for eligible performers described in subsection (c) of this section. Waiver payments to performers must be in compliance with the Centers for Medicare and Medicaid Services approved waiver Program Funding and Mechanics Protocol, HHSC waiver instructions and this section.

(b) Definitions.

(1) Centers for Medicare and Medicaid Services (CMS)--The federal agency within the United States Department of Health and Human Services responsible for overseeing and directing Medicare and Medicaid, or its successor.

(2) Delivery System Reform Incentive Payments (DSRIP)--Payments related to the development or implementation of a program of activity that supports a performer's efforts to enhance access to health care, the quality of care, and the health of patients and families it serves.

(3) Demonstration year--The 12-month period beginning October 1 for which the payments calculated under this section are made.

(4) Governmental entity--A state agency or a political subdivision of the state. A governmental entity includes a hospital authority, hospital district, city, county, or state entity.

(5) HHSC--The Texas Health and Human Services Commission or its designee.

(6) Intergovernmental transfer--A transfer of public funds from a governmental entity to HHSC.

(7) Performer--A Medicaid provider that implements one or more DSRIP projects. For purposes of this section, "performer" does not include hospitals or physician practice groups as those terms are defined in §355.8201 of this division (relating to Waiver Payment to Hospitals) or §355.8202 of this division (relating to Waiver Payments for Physician Services).

(8) Public funds--Funds derived from taxes, assessments, levies, investments, and other public revenues within the sole and unrestricted control of a governmental entity. Public funds do not include gifts, grants, trusts, or donations, the use of which is conditioned on supplying a benefit solely to the donor or grantor of the funds.

(9) Regional Healthcare Partnership (RHP)--A collaboration of interested participants that work collectively to develop and submit to the state a regional plan for health care delivery system reform. Regional Healthcare Partnerships will support coordinated, efficient delivery of quality care and a plan for investments in system

transformation that is driven by the needs of local hospitals, communities, and populations.

(10) RHP plan--A multi-year plan within which participants propose their portion of waiver funding and DSRIP projects.

(11) Waiver--The Texas Healthcare Transformation and Quality Improvement Program Medicaid demonstration waiver under §1115 of the Social Security Act.

(c) Eligibility for DSRIP. For a performer to be eligible to receive DSRIP, the performer must:

(1) be actively enrolled as a Medicaid provider in the State of Texas; and

(2) submit to HHSC documentation of completion of a milestone or quality measure identified in the approved RHP plan.

(d) Source of funding. The non-federal share of funding for payments under this section is limited to timely receipt by HHSC of public funds from a governmental entity.

(e) Payment frequency. DSRIP payments will be distributed at least annually, not to exceed two payments per performer per year. The payment schedule or frequency may be modified as specified by CMS or HHSC.

(f) Funding limitations. Payments made under this section are limited by the maximum aggregate amount of funds approved by CMS for DSRIP for each year that the waiver is in effect.

(g) DSRIP maximum payment amounts. The approved RHP plan establishes the payment amount associated with a particular milestone or quality measure. DSRIP payments cannot exceed the amount reported in the RHP Plan.

(h) Payment methodology.

(1) Notice. Prior to making any DSRIP payments, HHSC will give notice of the following information:

(A) the maximum payment amount for the payment period;

(B) the maximum intergovernmental transfer amount necessary for a performer to receive the amount described in subparagraph (A) of this paragraph; and

(C) the deadline for completing the intergovernmental transfer.

(2) Payment amount. The amount of the payment to a performer will be determined based on the amount of funds transferred by a governmental entity as follows:

(A) If a governmental entity transfers the maximum amount referenced in paragraph (1) of this subsection on behalf of a performer, that performer will receive the full payment amount calculated for that payment period.

(B) If a governmental entity does not transfer the maximum amount referenced in paragraph (1) of this subsection on behalf of a performer, that performer will receive a portion of the value associated with that milestone or quality measure (as specified in the RHP plan) that is proportionate to the total value of all milestones or quality measures that are completed for that period by the performer.

(3) Final payment opportunity. A governmental entity that does not transfer the maximum intergovernmental transfer amount described in paragraph (1) of this subsection during a demonstration year will be allowed to fund the remaining payments at the time of the final

payment for that demonstration year. The intergovernmental transfer will be applied in the following order:

(A) First, to the final payment up to the maximum amount.

(B) Second, to remaining balances for prior payment periods in the demonstration year.

(i) Recoupment.

(1) In the event of an overpayment identified by HHSC or a disallowance by CMS of federal financial participation related to a performer's receipt or use of payments under this section, HHSC may recoup an amount equivalent to the amount of the overpayment or disallowance. The non-federal share of any funds recouped from the performer will be returned to the governmental entity that was the source of those funds.

(2) Payments under this section may be subject to adjustment for payments made in error, including, without limitation, adjustments under §371.1711 of this title (relating to Recoupment of Overpayments and Debts), 42 CFR Part 455, and Chapter 403, Texas Government Code. HHSC may recoup an amount equivalent to any such adjustment.

(3) HHSC may recoup from any current or future Medicaid payments as follows:

(A) HHSC will recoup from the performer against which any overpayment was made or disallowance was directed.

(B) If, within 30 days of the performer's receipt of HHSC's written notice of recoupment, the performer has not paid the full amount of the recoupment or entered into a written agreement with HHSC to do so, HHSC may withhold any or all future Medicaid payments from the performer until HHSC has recovered an amount equal to the amount overpaid or disallowed.

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 May 9, 2013.

TRD-201301860

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: June 23, 2013

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



TITLE 13. CULTURAL RESOURCES

PART 2. TEXAS HISTORICAL COMMISSION

CHAPTER 11. ADMINISTRATIVE DEPARTMENT

13 TAC §§11.1 - 11.9, 11.11, 11.14

The Texas Historical Commission (hereafter referred to as the "commission") proposes amendments to §§11.1 - 11.9, 11.11, and 11.14, concerning the administrative department. The amendments are needed as part of the commission's overall effort to clarify language and eliminate outdated terminology in

order to implement necessary updates, additions, and changes to more precisely reflect the procedures of the administrative department.

Mark Wolfe, Executive Director, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the sections as proposed.

Mr. Wolfe has also determined that for each year of the first five-year period the amendments are in effect the public benefit anticipated as a result of the implementation of the amendments will be improvements in the administration of the commission. There will be minimal effects on small businesses 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 30 days after publication in the *Texas Register*.

The amendments are proposed under §442.005(q) of the Texas Government Code which provides the commission with the authority to promulgate rules and conditions to reasonably effect the purposes of those chapters.

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

§11.1. Commission Meetings.

(a) The Texas Historical Commission shall hold regular quarterly meetings. The commission may hold such other meetings at such other times and places as it may schedule in formal session. The chair [chairman] may call special meetings of the commission at his or her discretion, provided that 10-days' notification is given to the commission. The chair [chairman] shall call special meetings of the commission at any time upon written request to the chair [chairman] signed by six or more members, provided that 10-days' notification is given to the commission.

(b) A majority of the membership of the commission constitutes a quorum authorized to transact businesses of the commission.

(c) No proxies are allowed.

§11.2. Election of Officers.

(a) At the last quarterly meeting of even-numbered years, the chair [commission] shall appoint [elect (by the same election procedures as described in §11.3(b) of this title (relating to Filling Vacancies))] three people to serve on a nominating committee. The nominating committee will choose its own chair [chairman]. The positions available for nomination shall be the vice chair and secretary.

(b) The nominating committee will nominate only one person for each elective office. The committee shall contact each person it wishes to nominate in order to obtain the person's acceptance of nomination. A commission member may hold only one office at a time. [The governor shall designate a member of the commission as the chairman of the commission to serve in that capacity at the pleasure of the governor.]

(c) The nominating committee will present its report of nominees at the first commission meeting of odd-numbered years. The chair [chairman] shall call for further nomination from the floor. After all nominations are made, the chair [chairman] will close the nominations and ask for a vote by voice or show of hands. If there is a simple majority for one person for each elective office, those people are elected. If there is not a majority for any one person for each office, the commission shall hold an election runoff for each office between the two

people receiving the highest number of votes for that office. The chair [~~chairman~~] will only vote to make or break ties.

§11.3. Filling Vacancies.

(a) In the event of a vacancy in any elective office of the commission, an election shall be held at the next commission meeting, except the first commission meeting of odd-numbered years, to fill such vacancy.

(b) The chair shall call for nominations from the floor. After all nominations are made, the chair will close the nominations and ask for discussion. Upon the close of discussion, the chair will ask for [The election shall be held by] a vote by voice or show of hands. If there is a simple majority for one person, that person is elected. If there is not a majority for any one person, an election runoff shall immediately be held between the two people receiving the highest number of votes. The chair [~~chairman~~] will only vote to make or break ties.

§11.4. Duties of Officers.

(a) The chair [~~chairman~~] shall perform such duties as are properly required of him or her by the commission. He or she shall preside at all meetings. He or she shall have general supervision of the affairs of the commission, and shall have authority to interpret and carry out all policies established by its members. He or she shall answer directly to the commission. The chair [~~chairman~~] appoints all committees as he or she deems necessary, [~~except the nominating committee,~~] and is an ex officio member of all committees except the nominating committee.

(b) The vice-chair [~~vice-chairman~~] shall perform such duties as the commission or the chair [~~chairman~~] may direct, and shall preside in the absence of the chair [~~chairman~~].

(c) The secretary shall certify the minutes of all meetings of the commission and shall perform such other duties as may be prescribed by the commission or the chair [~~chairman~~]. The secretary shall preside in the absence of the chair [~~chairman~~] and the vice-chair [~~vice-chairman~~].

§11.5. Executive Committee.

This committee consists of the chair [~~chairman~~], vice-chair [~~vice-chairman~~], secretary, and immediate past chair [~~chairman~~] of the Texas Historical Commission, as well as other members of the commission appointed by the chair [~~chairman~~].

§11.6. Conduct of Meeting.

The chair, or in his or her absence, the vice-chair, shall preside at all meetings of the commission and shall make such parliamentary rulings as are reasonably necessary to carry out the business of the commission. [Robert's Rule of Order, Newly Revised (hardback) shall constitute the procedures to be followed in the conduct of meetings of the Texas Historical Commission, except where specifically provided for otherwise in the procedural rules of the commission.]

§11.7. Code of Conduct and Ethics Policy.

(a) If a member, agent, or employee of the Texas Historical Commission has a conflict of interest in any transaction involving the selection, award, or administration of historic preservation funds, state historic preservation grants, or museum grants, he or she may not participate in a vote, discussion, or decision about the matter.

(b) A person has a conflict of interest in such a transaction if a financial benefit as a result of such a transaction is likely to be received by any of the following:

- (1) the person;
- (2) any member of the person's immediately family, which includes spouse and any minor children;
- (3) a business partner of the person; or

(4) any organization for profit in which the person or any persons of paragraphs (2) and (3)[~~5~~] of this subsection is serving or is about to serve as an officer, director, trustee, partner, or employee.

(c) A financial benefit includes, but is not limited to, grant money, contract, subcontract, royalty, commission, contingency, brokerage fee, gratuity, favor, or any other thing of pecuniary [~~monetary~~] value.

(d) Ethics Policy.

(1) Pursuant to §572.051(c) of the Texas Government Code, the commission promulgates the following ethics policy.

(2) This ethics policy prescribes standards of conduct for all commission employees.

(3) This ethics policy does not supersede any applicable federal or Texas law or administrative rule.

(4) All commission employees must familiarize themselves with this ethics policy.

(5) All commission employees must abide by all applicable federal and Texas laws, administrative rules, and commission conduct policies, including this ethics policy. A commission employee who violates any provision of the commission's ethics policies is subject to termination of the employee's state employment or another employment-related sanction. A commission employee who violates any applicable federal or Texas law or rule may be subject to civil or criminal penalties in addition to any employment-related sanction.

(e) Standards of Conduct.

(1) A commission employee shall not:

(A) accept or solicit any gift, favor, or service that might reasonably tend to influence the employee in the discharge of official duties, or that the employee knows or should know is being offered with the intent to influence the employee's official conduct;

(B) intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised his or her official powers or performed his or her official duties in favor of another;

(C) disclose confidential information, information that is excepted from public disclosure under the Texas Public Information Act (Texas Government Code Annotated Chapter 552), or information that has been ordered sealed by a court, that was acquired by reason of the employee's official position, or accept other employment, including self-employment, or engage in a business, charity, nonprofit organization, or professional activity that the employee might reasonably expect would require or induce the employee to disclose confidential information, information that is excepted from public disclosure under the Texas Public Information Act, or information that has been ordered sealed by a court, that was acquired by reason of the employee's official position;

(D) accept other employment, including self-employment, or compensation or engage in a business, charity, nonprofit organization, or professional activity that could reasonably be expected to impair the employee's independence of judgment in the performance of the employee's official duties;

(E) make personal investments, or have a personal or financial interest, that could reasonably be expected to create a substantial conflict between the employee's private interest and the public interest;

(F) utilize state time, property, facilities, or equipment for any purpose other than official state business, unless such use is reasonable and incidental and does not result in any direct cost to the

state or commission, interfere with the employee's official duties, and interfere with commission functions;

(G) utilize his or her official position, or state issued items, such as a badge, indicating such position for financial gain, obtaining privileges, or avoiding consequences of illegal acts;

(H) knowingly make misleading statements, either oral or written, or provide false information, in the course of official state business; or

(I) engage in any political activity while on state time or utilize state resources for any political activity.

(2) A commission employee shall:

(A) perform his or her official duties in a lawful, professional, and ethical manner befitting the state and the commission; and

(B) report any conduct or activity that the employee believes to be in violation of this ethics policy to his or her division director, or, if the division director is involved in the conduct or activity, to the executive director.

§11.8. Use of Buildings and Grounds.

(a) Use requests. Requests for use of Gethsemane Church, Carrington-Covert House, Christianson-Leberman Building, and grounds shall be made in writing to the executive director not less than four weeks prior to the date of intended use. The executive director may, at his discretion, prohibit use of the buildings or grounds if such use would destroy, damage, or threaten to destroy or damage the properties or would require overtime work by commission employees. Intended use may not interfere with any regular, daily use of Gethsemane Church, Carrington-Covert House, Christianson-Leberman Building, or grounds.

(b) Expenses for use of properties. Any person or organization that uses the buildings or grounds listed in subsection (a) of this section shall reimburse the Texas Historical Commission for utilities consumed during the period of use, for staff time required for supervision of the activity, and the extra janitorial work required before and after such use.

(c) Liability for use of properties. People using the buildings and grounds listed in subsection (a) of this section will be liable for any damage to state property as a result of their activity.

§11.9. Donations and Relationship with Affiliated Non-Profit Organizations.

(a) Donations

(1) All funds received from donations to the commission will be deposited in [tø] the state treasury and used for the purpose specified by the donor, or for general commission programs when no purpose is specified.

(2) Donations to the commission will not be used for supplementation of salary of any employee of the commission.

(3) The commission will not accept donations from organizations or individuals administering grants from the commission or which have projects undergoing review by the commission.

(4) Donations other than money may be accepted at the discretion of the commission.

(b) Relationship with Affiliated Non-Profit Organization

(1) The commission is authorized to participate in the establishment and operation of an affiliated nonprofit organization whose purpose is to raise funds for or provide services or other benefits to the commission by Texas Government Code §442.005(p).

(2) The commission, by vote of the commission in a duly posted meeting, may authorize the establishment of a contractual relationship with a non-profit organization for any purpose authorized by law and in compliance with this section.

(3) The contract or other agreement with the affiliated non-profit organization shall set out fully the relationship between the commission and the affiliated non-profit organization, and shall meet the following requirements:

(A) Administration and investment of funds received by the organization for the benefit of the commission.

(i) All records of the affiliated non-profit organization shall be available for inspection or audit by the commission or its designee.

(ii) A representative of the affiliated non-profit organization shall regularly report to the commission on the operations of the affiliated non-profit organization.

(iii) Funds or other assets of the affiliated non-profit organization shall be administered and invested in a manner to be provided in the contract or other agreement. At a minimum, funds received by the affiliated non-profit organization shall be handled as follows:

(I) Funds shall be placed in an account at a financial institution within ten business days of receipt.

(II) Funds shall be placed in an interest-bearing or other investment account in accordance with the investment policy of the affiliated nonprofit organization.

(III) Funds shall be used only to support approved projects of the commission or to pay administrative expenses of an affiliated non-profit organization.

(IV) Employees of the commission shall not be signatories on accounts of an affiliated non-profit organization.

(B) Use of an employee or property of the agency by the affiliated non-profit organization.

(i) Staff of the commission may assist in the operation of the affiliated non-profit organization during regular work hours only with the written approval of the executive director.

(ii) Staff involved in regulatory functions of the commission shall not participate in the management of the affiliated non-profit organization except on a case-by-case basis with the written approval of the executive director. All staff involved in the development of grant proposals may provide subject-matter expertise for the grant proposals, including, with the written approval of the executive director, participating in the presentation of grant proposals to potential donors.

(iii) Property of the commission may be used in support of an affiliated non-profit organization so long as the use serves a public purpose and is within the limitations of this section and any contract or agreement between the commission and the affiliated non-profit organization. Any state property entrusted to the affiliated non-profit organization must remain on the inventory of the commission and be properly accounted for in accordance with state agency requirements.

(iv) The commission may provide office space, pay utilities, and pay other expenses of an affiliated non-profit organization as long as any such expense serves a public purpose and is within the limitations of this section and any contract or agreement between the commission and the affiliated non-profit organization.

(4) Prohibitions in relationship with affiliated non-profit organization.

(A) An employee of the commission may not also serve as an employee, elected officer or director of an affiliated non-profit organization. An employee of the commission may serve as an ex officio, non-voting director of an affiliated non-profit organization.

(B) A commissioner or employee of the commission shall not receive monetary enrichment from the affiliated non-profit organization except with the approval of the executive director, or, in the case of the executive director or a commissioner, with the approval of the commission.

(5) The commission may recommend or nominate individuals to serve as officers, directors, or employees of an affiliated non-profit organization.

(6) The commission shall have a formal liaison committee or other, similar group to monitor the operation of an affiliated non-profit organization.

(7) An affiliated non-profit organization will not knowingly accept donations from organizations or individuals administering grants from the commission or which have contracts with the commission. Should such a donation be accepted, it shall be returned upon discovery of such a relationship.

(8) An affiliated non-profit organization may not expend funds for the purpose of influencing legislative action, either directly or indirectly.

(9) The commission shall review its relationship with an affiliated non-profit organization on a schedule to be established by the commission, but not less than once every 10 years.

(c) The provisions of this rule shall not apply to non-profit organizations created for the support of individual state historic sites. Such organizations are subject to regulation in §16.7 of this title (relating to Friends Organizations).

§11.11. Restrictions on Assignment of Vehicles.

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

(1) THC--The Texas Historical Commission.

(2) Executive Director--The Executive Director of the Texas Historical Commission [~~of Texas~~] or the Executive Director's designee not below the level of division director.

(b) Motor pool. Each THC vehicle, with the exception of a vehicle assigned to a field employee, will be assigned to the THC motor pool and is available for checkout.

(c) Regular vehicle assignment. The THC may assign a vehicle to an individual administrative or executive employee on a regular or everyday basis only if the Executive Director makes a documented finding that the assignment is critical to the needs and mission of the department.

§11.14. Negotiated Rulemaking and Alternative Dispute Resolution.

(a) Negotiated rulemaking.

(1) The commission's policy is to encourage the use of negotiated rulemaking for the adoption of commission rules in appropriate situations.

(2) The commission's deputy director or his designee shall be the commission's negotiated rulemaking coordinator (NRC). The NRC shall perform the following functions, as required:

(A) coordinate the implementation of the policy set out in subsection (a)(1) of this section, and in accordance with the Negotiated Rulemaking Act, Chapter 2008, Government Code;

(B) serve as a resource for any staff training or education needed to implement negotiated rulemaking procedures; and[.]

(C) collect data to evaluate the effectiveness of negotiated rulemaking procedures implemented by the commission.

(3) The commission, its rules committee, or the executive director may direct the NRC to begin negotiated rulemaking procedures on a specified subject.

(b) Alternative Dispute Resolution (ADR).

(1) The commission's policy is to encourage the resolution and early settlement of internal and external disputes, including contested cases, through voluntary settlement processes, which may include any procedure or combination of procedures described by Chapter 154, Civil Practice and Remedies Code. Any ADR procedure used to resolve disputes before the commission shall comply with the requirements of Chapter 2009, Government Code, and any model guidelines for the use of ADR issued by the State Office of Administrative Hearings.

(2) The commission's deputy executive director or his designee shall be the commission's dispute resolution coordinator (DRC). The DRC shall perform the following functions, as required:

(A) coordinate the implementation of the policy set out in subsection (a) of this section;

(B) serve as a resource for any staff training or education needed to implement the ADR procedures; and

(C) collect data to evaluate the effectiveness of ADR procedures implemented by the commission.

(3) The commission, a committee of the commission, a respondent in a disciplinary matter pending before the commission, the executive director, or a commission employee engaged in a dispute with the executive director or another employee, may request that the contested matter be submitted to ADR. The request must be in writing, be addressed to the DRC, and state the issues to be determined. The person requesting ADR and the DRC will determine which method of ADR is most appropriate. If the person requesting ADR is the respondent in a disciplinary proceeding, the executive director shall determine if the commission will participate in ADR or proceed with the commission's normal disciplinary processes.

(4) Any costs associated with retaining an impartial third party mediator, moderator, facilitator, or arbitrator, shall be borne by the party requesting ADR.

(5) Agreements of the parties to ADR must be in writing and are enforceable in the same manner as any other written contract. Confidentiality of records and communications related to the subject matter of an ADR proceeding shall be governed by §154.073 of the Civil Practice and Remedies Code.

(6) If the ADR process does not result in an agreement, the matter shall be referred to the commission for other appropriate disposition.

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 May 8, 2013.

TRD-201301851



CHAPTER 14. TEXAS HISTORICAL ARTIFACTS ACQUISITION PROGRAM

13 TAC §14.3, §14.5

The Texas Historical Commission (hereinafter referred to as the "commission") proposes amendments to 13 TAC §14.3 and §14.5, concerning the Texas Historical Artifacts Acquisition Program. These amendments are needed as part of the commission's overall effort to clarify language in the administration of the program. The commission proposes to remove references to the American Association of Museums accreditation program and the now-defunct Council of Texas Archeologists accreditation process and replace them with references to the Texas Historical Commission's Curatorial Facilities Certification Program to hold state-associated held-in-trust collections, in accordance with 13 TAC Chapter 29, concerning Management and Care of Artifacts and Collections. Revisions were also necessary in order to maintain consistency with the commission's certification program.

The commission is specifically empowered to adopt reasonable rules concerning the acquisition of documents, records, or historical artifacts related to the history of Texas. Implementation of procedures for these acquisitions is the objective of this chapter.

Mark Wolfe, Executive Director, 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 enforcing or administering the amended rules.

Mr. Wolfe has determined that for each year of the first five-year period the amendments are in effect the public benefit anticipated as a result of administering the rules will be improved data access.

Mr. Wolfe has also determined that there will be no impact on small or micro-businesses or individuals as a result of implementing the amended rules.

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 30 days after publication in the *Texas Register*.

The amendments are proposed under the authority of Texas Government Code §442.005(q) which provides the commission with the authority to promulgate rules to reasonably effect the purposes of Chapter 442 of the Texas Government Code.

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

§14.3. Definitions.

When used in this chapter, the following words or terms have the following meanings unless the context indicates otherwise.

(1) Historical Artifacts--The [- Means the] tangible remains of existing and past inhabitants of, and visitors to, the state of Texas.

(2) Records--Documents [- Means documents] that are written, either by hand or mechanical impression, that provide important information related to the history of Texas.

(3) Documents--Written [- Means written] letters, diaries, journals, books, photographs, drawn pictures, or any other material accounts or portrayals of information related to the history of Texas.

(4) Acquisition--The [- Means the] purchase or other necessary expenditures associated with obtaining, transporting, packaging, and preparing documents, records, or historical artifacts for perpetual preservation, including cataloguing, collecting, analyzing, conserving, excavating, or curating. Ownership of all materials will be by the State of Texas.

(5) Museum--The [- Means the] Bob Bullock Texas State History Museum, or [and] any public or private institution that is organized on a permanent basis for mainly educational or aesthetic purposes, uses a professional staff, owns or uses tangible objects, whether animate or inanimate, cares for those objects and exhibits them to the public on a regular basis for at least 120 days a year, and has as a primary purpose the curation or display of documents, records, or historical artifacts important to Texas history. Such institutions must be certified by the commission's Curatorial Facility Certification Program to hold state-associated held-in-trust collections, in accordance with Chapter 29 of this title (relating to Management and Care of Artifacts and Collections) [accredited by the American Association of Museums or, after December 31, 2002, be accredited by the Council of Texas Archeologists Accreditation and Review Council].

[(6) Library. Means any publicly or privately supported institution that has as its primary purpose the maintenance and loan for public use of books and other written materials, and has the capability to provide appropriate care for historical documents and records.]

(6) [(7)] Repository--Any [- Means any] publicly or privately supported institution that has as its primary purpose the curation for public benefit of documents, records, or historical artifacts important to Texas history. Such institutions must be certified by the commission's Curatorial Facility Certification Program to hold state-associated held-in-trust collections, in accordance with Chapter 29 of this title. [After December 31, 2002 such institutions must be accredited by the Council of Texas Archeologists' Accreditation Review Council.]

(7) [(8)] Emergency acquisition--That [- Means that] the decision to purchase documents, records, or historical artifacts must be made before the next scheduled meeting of the commission. Such decisions would be necessary because the documents, records, or artifacts are available for immediate sale and are not likely to be available for acquisition at the next scheduled commission meeting. The decision to make an emergency acquisition will be made by the executive director with the advice of the chair of the commission.

§14.5. Acquisition Program.

(a) Documents, records, or historical artifacts, hereafter collectively referred to as historical items, may be identified for potential purchase by any person and brought to the attention of the commission.

(b) Only historical items that represent a unique opportunity to preserve the cultural heritage of Texas will be considered for acquisition. Historical artifacts, records, and documents [items] recommended for acquisition will be researched for authenticity and appropriateness of acquisition, by the staff of the commission, or consultants contracted by the commission for this purpose. Staff will make a recommendation to the commission.

(c) The commission will review the recommendation for the acquisition of historical items, including the staff findings and comments, and will make a final decision to proceed or to not proceed with

the acquisition. Commission review can occur at a regularly called meeting or by special meeting as called by the chair of the commission.

(d) In cases of emergency acquisition, the executive director, in consultation with the chair, may make a final decision to proceed or to not proceed with an acquisition of historical items. The decision shall be reported by the chair at the next regularly scheduled meeting of the commission. The commission [Commission] will not purchase items of questionable origin.

(e) The commission will decide if a museum[; library;] or repository will receive the acquired historical items. Acquisitions may also be made by the commission for historical items to be maintained at the commission's headquarters. For materials not housed at the commission's headquarters, held-in-trust agreements will be executed between the receiving museum or repository [library] and the commission to insure the safety and long-term care of the historical items. Exceptions to the certification [accreditation] requirement may be considered by the commission [Commission] on a case-by-case basis.

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 May 9, 2013.

TRD-201301852

Mark Wolfe

Executive Director

Texas Historical Commission

Earliest possible date of adoption: June 23, 2013

For further information, please call: (512) 463-8817



TITLE 16. ECONOMIC REGULATION

PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 402. CHARITABLE BINGO OPERATIONS DIVISION

SUBCHAPTER D. LICENSING REQUIREMENTS

16 TAC §402.404

The Texas Lottery Commission (Commission) proposes amendments to §402.404, concerning License Fees. The purpose of the proposed amendments is to impose a new fee for bingo worker registration applications and renewal applications and to increase the fees for licenses to conduct bingo and commercial licenses to lease bingo premises. The heading of §402.404 would be changed from "License Fees" to "License and Registry Fees" in order to reflect the changes proposed in these amendments.

The Commission proposes the amendments under the assumption that the General Appropriations Act for the 2014 - 2015 biennium will contain a provision making appropriations to the Commission to fund the redesign of the automated charitable bingo system (ACBS) and/or to restore the number of employees in the Commission's Charitable Bingo Operations Division (Division) contingent on the Commission assessing or increasing fees sufficient to generate a specified amount of revenue. If the Gen-

eral Appropriations Act for the 2014 - 2015 biennium does not contain such a provision, the proposed amendments will not be adopted by the Commission. The appropriations bills being considered by the Senate Bill 1 Conference Committee at the time the Commission voted to propose these amendments contain a provision requiring the Commission to submit to the Comptroller of Public Accounts information regarding the revenue estimated to be generated by the assessment or increase of fees. Under those appropriations bills, the relevant appropriations will only be made available to the Commission upon the Comptroller issuing a finding of fact that the Commission's proposed fee structure will support the projection of increased revenues. The Commission is proposing the amendments to §402.404 now, before final passage of the General Appropriations Act, so that there is sufficient time for the Commission to consider public comments on the proposed amendments and for the Comptroller to review information submitted by the Commission and issue the requisite finding of fact before September 1, 2013, the first day of the 2014 - 2015 biennium.

Additionally, the portion of the proposed amendments that imposes a fee for bingo worker registration original and renewal applications is proposed under the assumption that the Bingo Enabling Act will be amended in the 83rd Legislature to authorize the Commission to impose such a fee beginning September 1, 2013. If the Bingo Enabling Act is not so amended, that portion of the proposed amendments will not be adopted by the Commission. At the time the Commission voted to propose these amendments, §32 of House Bill 2197, which is the Commission's pending sunset legislation, contains language that would authorize the Commission to impose the bingo worker registration application fee under the Bingo Enabling Act.

Under the proposed amendments, the new fee for bingo worker registration original and renewal applications received by the Commission on or after September 1, 2013, will be \$25 per application. The \$25 application fee is an amount sufficient to cover the application processing costs, including a criminal history background check, identification card, and other administrative costs the Commission considers appropriate. The new bingo conductor and commercial lessor license fees will be based on the amount of annual gross receipts, or annual gross rentals, and the date on which a license becomes effective. The revenue generated by both the bingo worker application fee and the license fee increase for bingo conductors and commercial lessors will be used to fund the redesign of the ACBS and to restore the number of employees in the Division. If the Bingo Enabling Act is not amended to authorize the Commission to impose a bingo worker application fee, the new bingo conductor and commercial lessor license fees will be approximately 7% higher than the fees proposed in these amendments. This approximate 7% increase will generate the approximate amount of revenue that the Commission projected would have been generated by a \$25 bingo worker application fee.

The fees for bingo conductor and commercial lessor licenses that become effective before September 1, 2013, will remain at current levels, but the proposed amendments will increase fees for licenses that become effective on or after September 1, 2013. The fees for licenses that become effective on or after September 1, 2013, but before September 1, 2015, will be higher than the fees for licenses of the same class that become effective on or after September 1, 2015, because the redesign of the ACBS is anticipated to be complete before September 1, 2015, and will no longer need to be funded after that date. The fees for licenses that become effective on or after September 1, 2015, will

remain higher than current fee levels in order to continue funding the employee restoration. However, if the General Appropriations Act authorizes the Commission to assess or increase fees in order to obtain general revenue funds for the employee restoration, but not the ACBS redesign, the proposed fees for licenses that become effective on or after September 1, 2013, but before September 1, 2015, will be set at an amount equal to the proposed fees for licenses that become effective on or after September 1, 2015.

Kathy Pyka, Controller, has determined that the proposed amendments for the funding of employee restoration would be in effect as a permanent fee increase and would result in an estimated \$1.56 million for the 2014 - 2015 biennium. Ms. Pyka has also determined that the proposed amendments for the redesign of the ACBS would be in effect for fiscal years 2014 and 2015 and will result in an estimated \$1.25 million for the 2014 - 2015 biennium. The fee increase for the redesign of the ACBS will expire September 1, 2015.

Ms. Pyka has also determined that there is no anticipated impact on state or local employment as a result of the proposed amendments. There is, however, an anticipated adverse economic effect on small businesses and micro-businesses. There are approximately 125 licensed commercial lessors that are considered either small or micro-businesses. Furthermore, current and prospective bingo workers may be considered either small or micro-businesses. There are currently 15,196 registered bingo workers in the state. The anticipated economic effect of the proposed amendments on these small and micro-businesses will be negative due to the increase in fees the businesses will be required to pay. The proposed amendments will not have a disparate effect on micro-businesses as compared to small businesses because the same license fee increase and application fee are applied consistently to these businesses. The Commission recognizes the financial impact of the license fee increase and new application fee on these small and micro-businesses, but has determined that the ACBS redesign and employee restoration are vital to the Division's operations. The ACBS is used daily by Division staff for the administration and regulation of charitable bingo, and failure to redesign the system will hamper the Division's ability to fulfill these statutorily imposed duties. Furthermore, due to budget constraints, the Division has been understaffed for several years. This has placed a strain on the Division and limited its ability to fulfill its statutorily imposed duties. That strain will continue if the number of employees in the Division is not restored.

There are currently 1,093 licensed bingo conductors, 382 licensed commercial lessors, and 15,196 registered bingo workers. The anticipated amount of revenue generated by these proposed amendments is based on those figures. The proposed amendments represent the Commission's best estimate of the fees required to generate the requisite revenue, at the time the proposed amendments were approved for public comments. The Commission acknowledges that some pending legislation in the 83rd Legislature, including the proposal to require at least 5% of gross bingo revenue to be used for charitable purposes, could affect the number of licensed bingo conductors, licensed commercial lessors, and registered bingo workers if ultimately passed and signed into law. However, until the 83rd Legislature adjourns sine die and the Governor's signing period expires, the Commission cannot predict what legislation will become law or the ultimate effect such legislation will have on those figures or the specific fee amounts listed in the proposed amendments. Therefore, specific fee amounts in the adopted rule amend-

ments may be different, and possibly higher, than the fees listed in the proposed amendments.

The Commission requested the Legislature to fund the ACBS redesign entirely through additional general revenue funding, supported by a portion of the bingo prize fees collected by the state, but that request was not approved by the Legislature. Rather, in the General Appropriations bill for the 2014 - 2015 biennium, the Legislature has proposed to make any additional general revenue funding for the ACBS redesign and employee restoration contingent on the Commission generating a sufficient amount of funds through fees. Under §2006.002 of the Government Code, a state agency is required to consider alternative regulatory methods if the alternative methods would be consistent with the health, safety, and environmental and economic welfare of the state. In this instance, the Commission developed the proposed amendments in accordance with the Legislature's express condition to appropriate funds for the ACBS redesign and employee restoration only if the Commission assesses or increases fees. According to the Office of the Attorney General's small business impact guidelines, because the proposed amendments follow the regulatory method proposed by the Legislature in the General Appropriations bill, the proposed amendments may be considered per se consistent with the health, safety, and environmental and economic welfare of the state and no alternative regulatory methods need be considered. Therefore, no alternative regulatory methods were considered by the Commission.

The Commission did, however, consider different methods of structuring the license fee increase. For example, in order to reduce the impact on organizations with lower gross receipts or gross rentals, the Commission considered increasing license fees only for the higher classes of licenses. The Commission also considered increasing the license fees for higher classes by a greater percentage than the license fees for lower classes. Ultimately, the Commission determined that applying an equal percentage increase to fees for all license classes would be most equitable.

Sandra Joseph, Director of the Charitable Bingo Operations Division, has determined that for each year of the first five years the proposed amendments will be in effect the anticipated public benefit of redesigning the ACBS and restoring the number of employees in the Division would be to put the Commission in a better position to fairly enforce all statutes and regulations, to determine all proceeds derived from bingo are used for an authorized purpose, and to ultimately maintain the integrity of the charitable bingo industry throughout the State of Texas.

The Commission requests comments on the proposed amendments from any interested person. Comments on the proposed amendments may be submitted to James Person, Assistant General Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at legal.input@lottery.state.tx.us. Comments must be received within 30 days after publication of this proposal in order to be considered. The Commission will hold a public hearing on this proposal at 10:00 a.m. on Wednesday, May 29, 2013, at 611 E. 6th Street, Austin, Texas 78701. If an additional public comment hearing is necessary, it will be held at 10:00 a.m. on Wednesday, June 12, 2013, at the same location.

The amendments are proposed under §2001.054 of the Texas Occupations Code, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act, and under §467.102 of the Texas Government Code, which authorizes the Commission to adopt rules for the enforcement and admin-

istration of this chapter and the laws under the Commission's jurisdiction.

The proposed amendments implement Chapter 2001 of the Texas Occupations Code.

§402.404. License and Registry Fees.

(a) Definitions.

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

(3) Regular License Fee Amount:

(A) License to Conduct Bingo:

(i) The annual fee for [Før] a license to conduct bingo that becomes effective before September 1, 2013, shall be[;] an amount equal to the minimum license fee amounts based on annual gross receipts specified in Texas Occupations Code, §2001.104(a).

(ii) The annual fee for a license to conduct bingo that becomes effective on or after September 1, 2013, but before September 1, 2015, shall be as follows:

(I) Class A (annual gross receipts of \$25,000 or less) - \$157;

(II) Class B (annual gross receipts of more than \$25,000 but not more than \$50,000) - \$313;

(III) Class C (annual gross receipts of more than \$50,000 but not more than \$75,000) - \$470;

(IV) Class D (annual gross receipts of more than \$75,000 but not more than \$100,000) - \$626;

(V) Class E (annual gross receipts of more than \$100,000 but not more than \$150,000) - \$939;

(VI) Class F (annual gross receipts of more than \$150,000 but not more than \$200,000) - \$1,409;

(VII) Class G (annual gross receipts of more than \$200,000 but not more than \$250,000) - \$1,878;

(VIII) Class H (annual gross receipts of more than \$250,000 but not more than \$300,000) - \$2,348;

(IX) Class I (annual gross receipts of more than \$300,000 but not more than \$400,000) - \$3,130;

(X) Class J (annual gross receipts of more than \$400,000) - \$3,913.

(iii) The annual fee for a license to conduct bingo that becomes effective on or after September 1, 2015, shall be as follows:

(I) Class A (annual gross receipts of \$25,000 or less) - \$132;

(II) Class B (annual gross receipts of more than \$25,000 but not more than \$50,000) - \$264;

(III) Class C (annual gross receipts of more than \$50,000 but not more than \$75,000) - \$396;

(IV) Class D (annual gross receipts of more than \$75,000 but not more than \$100,000) - \$528;

(V) Class E (annual gross receipts of more than \$100,000 but not more than \$150,000) - \$792;

(VI) Class F (annual gross receipts of more than \$150,000 but not more than \$200,000) - \$1,188;

(VII) Class G (annual gross receipts of more than \$200,000 but not more than \$250,000) - \$1,584;

(VIII) Class H (annual gross receipts of more than \$250,000 but not more than \$300,000) - \$1,980;

(IX) Class I (annual gross receipts of more than \$300,000 but not more than \$400,000) - \$2,640;

(X) Class J (annual gross receipts of more than \$400,000) - \$3,300.

(B) Commercial Lessor License:

(i) The annual fee for [Før] a commercial lessor license that becomes effective before September 1, 2013, shall be[;] an amount equal to the minimum license fee amounts based on annual gross rentals specified in Texas Occupations Code, §2001.158(a).

(ii) The annual fee for a commercial lessor license that becomes effective on or after September 1, 2013, but before September 1, 2015, shall be as follows:

(I) Class A (annual gross rentals of \$25,000 or less) - \$157;

(II) Class B (annual gross rentals of more than \$25,000 but not more than \$50,000) - \$313;

(III) Class C (annual gross rentals of more than \$50,000 but not more than \$75,000) - \$470;

(IV) Class D (annual gross rentals of more than \$75,000 but not more than \$100,000) - \$626;

(V) Class E (annual gross rentals of more than \$100,000 but not more than \$150,000) - \$939;

(VI) Class F (annual gross rentals of more than \$150,000 but not more than \$200,000) - \$1,409;

(VII) Class G (annual gross rentals of more than \$200,000 but not more than \$250,000) - \$1,878;

(VIII) Class H (annual gross rentals of more than \$250,000 but not more than \$300,000) - \$2,348;

(IX) Class I (annual gross rentals of more than \$300,000 but not more than \$400,000) - \$3,130;

(X) Class J (annual gross rentals of more than \$400,000) - \$3,913.

(iii) The annual fee for a commercial lessor license that becomes effective on or after September 1, 2015, shall be as follows:

(I) Class A (annual gross rentals of \$25,000 or less) - \$132;

(II) Class B (annual gross rentals of more than \$25,000 but not more than \$50,000) - \$264;

(III) Class C (annual gross rentals of more than \$50,000 but not more than \$75,000) - \$396;

(IV) Class D (annual gross rentals of more than \$75,000 but not more than \$100,000) - \$528;

(V) Class E (annual gross rentals of more than \$100,000 but not more than \$150,000) - \$792;

(VI) Class F (annual gross rentals of more than \$150,000 but not more than \$200,000) - \$1,188;

(VII) Class G (annual gross rentals of more than \$200,000 but not more than \$250,000) - \$1,584;

(VIII) Class H (annual gross rentals of more than \$250,000 but not more than \$300,000) - \$1,980;

(IX) Class I (annual gross rentals of more than \$300,000 but not more than \$400,000) - \$2,640;

(X) Class J (annual gross rentals of more than \$400,000) - \$3,300.

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

(d) License Renewal Fee.

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

(6) If an organization requests its license be placed in administrative hold upon the renewal of the license and submits an estimated Class A license fee [(\$100 license fee)], the Commission may require an organization to submit an additional license fee when it files an application to amend a license to conduct charitable bingo if the organization amends its license to begin conducting bingo within the first six months of the license term.

(7) If an organization requests its license be placed in administrative hold upon the renewal of its lessor license and submits an estimated Class A license fee [(\$100 license fee)], the Commission may require an organization to submit an additional license fee when it files the application to amend a commercial license to lease bingo premises if the organization amends its license to begin leasing bingo premises within the first six months of the license term.

(e) Two-Year License Fee Payments.

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

(3) If the first anniversary of the date a two-year license became effective falls on or after September 1, 2013, but before September 1, 2015, the fee amount due for the second year of that license will be the amount set in §402.404(a)(3)(A)(ii) or §402.404(a)(3)(B)(ii).

(4) If the first anniversary of the date a two-year license became effective falls on or after September 1, 2015, the fee amount due for the second year of that license will be the amount set in §402.404(a)(3)(A)(iii) or §402.404(a)(3)(B)(iii).

(f) - (l) (No change.)

(m) Registry of Approved Bingo Workers. A fee of \$25 must accompany each Texas Application for Registry of Approved Bingo Workers, and each application to renew listing on the registry, submitted to the Commission on or after September 1, 2013. The Commission will not consider or act upon an application until the requisite fee is paid.

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 May 13, 2013.

TRD-201301928

Bob Biard

General Counsel

Texas Lottery Commission

Earliest possible date of adoption: June 23, 2013

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



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 74. CURRICULUM REQUIREMENTS

The State Board of Education (SBOE) proposes amendments to §§74.62-74.64, and 74.72-74.74, concerning curriculum requirements. The sections establish graduation requirements for high school programs in 19 TAC Chapter 74, Subchapter F, Graduation Requirements, Beginning with School Year 2007-2008, and Subchapter G, Graduation Requirements, Beginning with School Year 2012-2013. The proposed amendments would add course options for students to satisfy the fourth mathematics and the fourth science credit requirements under the Recommended High School Program and the Distinguished Achievement Program.

The 81st Texas Legislature, 2009, passed House Bill (HB) 3, amending the Texas Education Code, §28.025, to increase flexibility in graduation requirements for students. While HB 3 removed SBOE authority to designate a specific course or a specific number of credits in the enrichment curriculum as requirements for the Recommended High School Program, the SBOE retains authority in the foundation and enrichment curriculum for the Minimum High School Program and the Distinguished Achievement Program.

In January 2010, the SBOE adopted amendments to 19 TAC Chapter 74, Subchapter F, to incorporate changes to high school graduation programs in light of the graduation requirements from HB 3. The amendments were implemented beginning with the 2010-2011 school year. The amendments also allowed three Career and Technical Education (CTE) courses to count for the fourth mathematics credit for the Recommended High School Program and two CTE courses to count for the fourth mathematics credit under the Distinguished Achievement Program. The SBOE approved changes allowing five new CTE courses to count for the fourth science credit under the Recommended High School Program and Distinguished Achievement Program. Additionally, changes were adopted allowing the Professional Communications course to satisfy the speech graduation requirement and the Principles and Elements of Floral Design course to satisfy the fine arts graduation credit.

The amendments to 19 TAC Chapter 74, Subchapter G, Graduation Requirements, Beginning with School Year 2012-2013, adopted by the SBOE in January 2012, included changes to update the graduation requirements to align with legislation passed by the 82nd Texas Legislature, 2011; allowed additional courses to satisfy certain graduation requirements; and provided additional clarification regarding requirements.

At its April 2013 meeting, the SBOE approved proposed amendments to 19 TAC Chapter 74, Subchapters F and G, for first reading and filing authorization. The proposed amendments include the addition of certain CTE courses that would satisfy the fourth mathematics and fourth science graduation requirements under the Recommended High School Program and the Distinguished Achievement Program. The proposed amendments would also add certain CTE courses to satisfy the third mathematics graduation requirement under the Minimum High School Program.

The proposal approved by the SBOE includes an amendment to 19 TAC §74.64, Distinguished Achievement High School Program--Advanced High School Program, that lists Advanced

Quantitative Reasoning as a course that would satisfy the fourth mathematics credit. While this course is an option for high school programs under 19 TAC Chapter 74, Subchapter G, it is not an option for high school programs under Subchapter F and was inadvertently listed as one of the courses in 19 TAC §74.64(b)(2)(A). Staff will recommend that the SBOE approve a technical correction at its July 2013 meeting to remove Advanced Quantitative Reasoning from the list of courses that will satisfy the fourth mathematics credit.

The following related proposals to add additional courses to satisfy the fourth mathematics graduation requirement and the fourth science graduation requirement under the Recommended High School Program and the Distinguished Achievement Program are also published in this issue: proposed new 19 TAC Chapter 111, Texas Essential Knowledge and Skills for Mathematics, Subchapter C, High School, §111.46, Discrete Mathematics, Adopted 2013 (One-Half to One Credit); proposed revisions to 19 TAC Chapter 126, Texas Essential Knowledge and Skills for Technology Applications, Subchapter C, High School; and proposed revisions to 19 TAC Chapter 130, Texas Essential Knowledge and Skills for Career and Technical Education.

The proposed amendments to 19 TAC Chapter 74, Subchapters F and G, would have no new procedural and reporting implications. The proposed amendments 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 amendments are in effect there will be no additional costs for state or local government as a result of enforcing or administering the proposed amendments.

Ms. Givens has determined that for each year of the first five years the proposed amendments are in effect the public benefit anticipated as a result of enforcing the amendments would be added flexibility for students regardless of the graduation program they select. There is no anticipated economic cost to persons who are required to comply with the proposed amendments.

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, Rulemaking, 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) 463-5337. A request for a public hearing on the proposed amendments 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*.

SUBCHAPTER F. GRADUATION REQUIREMENTS, BEGINNING WITH SCHOOL YEAR 2007-2008

19 TAC §§74.62 - 74.64

The amendments 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 identify by rule 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 instructional materials; and §28.025, which authorizes the SBOE to determine by rule curriculum requirements for the minimum, recommended, and advanced high school programs that are consistent with the required curriculum under §28.002.

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

§74.62. *Minimum High School Program.*

(a) Credits. A student must earn at least 22 credits to complete the Minimum High School Program.

(b) Core Courses. A student must demonstrate proficiency in the following.

(1) English language arts--four credits. Three of the credits must consist of English I, II, and III (Students with limited English proficiency who are at the beginning or intermediate level of English language proficiency, as defined by §74.4(d) of this title (relating to English Language Proficiency Standards), may satisfy the English I and English II graduation requirements by successfully completing English I for Speakers of Other Languages and English II for Speakers of Other Languages). The final credit may be selected from the following courses:

- (A) English IV;
- (B) Research/Technical Writing;
- (C) Creative/Imaginative Writing;
- (D) Practical Writing Skills;
- (E) Literary Genres;
- (F) Business English;
- (G) Journalism;
- (H) Advanced Placement (AP) English Language and Composition; and
- (I) AP English Literature and Composition.

(2) Mathematics--three credits. Two of the credits must consist of Algebra I and Geometry. The final credit may be selected from the following courses:

- (A) Algebra II;
- (B) Precalculus;
- (C) Mathematical Models with Applications;
- (D) Independent Study in Mathematics;
- (E) AP Statistics;
- (F) AP Calculus AB;
- (G) AP Calculus BC;
- (H) AP Computer Science;
- (I) International Baccalaureate (IB) Mathematical Studies Standard Level;
- (J) IB Mathematics Standard Level;
- (K) IB Mathematics Higher Level;
- (L) IB Further Mathematics Standard Level;

(M) Mathematical Applications in Agriculture, Food, and Natural Resources;

(N) Engineering Mathematics; [and]

(O) Statistics and Risk Management;[-]

(P) Discrete Mathematics;

(Q) Robotics Programming and Design;

(R) Principles of Engineering; and

(S) Digital Electronics.

(3) Science--two credits. The credits must consist of Biology and Integrated Physics and Chemistry (IPC). A student may substitute Chemistry or Physics for IPC and then must use the second of these two courses as the academic elective credit identified in subsection (b)(6) of this section.

(4) Social studies--two and one-half credits. One and one-half of the credits must consist of United States History Studies Since Reconstruction (one credit) and United States Government (one-half credit). The final credit may be selected from the following courses:

(A) World History Studies; and

(B) World Geography Studies.

(5) Economics, with emphasis on the free enterprise system and its benefits--one-half credit. The credit must consist of Economics with Emphasis on the Free Enterprise System and Its Benefits.

(6) Academic elective--one credit. The credit must be selected from World History Studies, World Geography Studies, or any science course approved by the State Board of Education (SBOE) for science credit as found in Chapter 112 of this title (relating to Texas Essential Knowledge and Skills for Science). If a student elects to replace IPC with either Chemistry or Physics as described in subsection (b)(3) of this section, the academic elective must be the other of these two science courses.

(7) Physical education--one credit.

(A) The required credit may be from any combination of the following one-half to one credit courses:

(i) Foundations of Personal Fitness;

(ii) Adventure/Outdoor Education;

(iii) Aerobic Activities; and

(iv) Team or Individual Sports.

(B) In accordance with local district policy, credit for any of the courses listed in subparagraph (A) of this paragraph may be earned through participation in the following activities:

(i) Athletics;

(ii) Junior Reserve Officer Training Corps (JROTC) [JROTC]; and

(iii) appropriate private or commercially-sponsored physical activity programs conducted on or off campus. The district must apply to the commissioner of education for approval of such programs, which may be substituted for state graduation credit in physical education. Such approval may be granted under the following conditions.

(I) Olympic-level participation and/or competition includes a minimum of 15 hours per week of highly intensive, professional, supervised training. The training facility, instructors, and the activities involved in the program must be certified by the superinten-

dent to be of exceptional quality. Students qualifying and participating at this level may be dismissed from school one hour per day. Students dismissed may not miss any class other than physical education.

(II) Private or commercially-sponsored physical activities include those certified by the superintendent to be of high quality and well supervised by appropriately trained instructors. Student participation of at least five hours per week must be required. Students certified to participate at this level may not be dismissed from any part of the regular school day.

(C) In accordance with local district policy, up to one credit for any one of the courses listed in subparagraph (A) of this paragraph may be earned through participation in any of the following activities:

(i) Drill Team;

(ii) Marching Band; and

(iii) Cheerleading.

(D) All substitution activities allowed in subparagraphs (B) and (C) of this paragraph must include at least 100 minutes per five-day school week of moderate to vigorous physical activity.

(E) Credit may not be earned for any course identified in subparagraph (A) of this paragraph more than once. No more than four substitution credits may be earned through any combination of substitutions allowed in subparagraphs (B) and (C) of this paragraph.

(8) Speech--one-half credit. The credit may be selected from the following courses:

(A) Communication Applications; and

(B) Professional Communications.

(9) Fine arts--one credit, beginning with school year 2010-2011. A student entering Grade 9 beginning with the 2010-2011 school year must complete one credit in fine arts. The credit may be selected from the following courses:

(A) Art, Level I, II, III, or IV;

(B) Dance, Level I, II, III, or IV;

(C) Music, Level I, II, III, or IV;

(D) Theatre, Level I, II, III, or IV; and

(E) Principles and Elements of Floral Design.

(c) Elective Courses--seven and one-half credits. The credits must be selected from the list of courses specified in §74.61(j) of this title (relating to High School Graduation Requirements).

(d) Elective courses, beginning with school year 2010-2011. A student entering Grade 9 beginning with the 2010-2011 school year must complete six and one-half credits of electives in addition to one credit in fine arts. The credits must be selected from the list of courses specified in §74.61(j) of this title.

§74.63. *Recommended High School Program.*

(a) Credits. A student must earn at least 26 credits to complete the Recommended High School Program.

(b) Core Courses. A student must demonstrate proficiency in the following:

(1) English language arts--four credits. The credits must consist of English I, II, III, and IV (Students with limited English proficiency who are at the beginning or intermediate level of English language proficiency, as defined by §74.4(d) of this title (relating to English Language Proficiency Standards), may satisfy the English I and

English II graduation requirements by successfully completing English I for Speakers of Other Languages and English II for Speakers of Other Languages).

(2) Mathematics--four credits. Three of the credits must consist of Algebra I, Algebra II, and Geometry.

(A) The additional credit may be Mathematical Models with Applications [selected from the following courses] and must be successfully completed prior to Algebra II.[:]

~~[(i) Mathematical Models with Applications; and]~~

~~[(ii) Mathematical Applications in Agriculture, Food, and Natural Resources.]~~

(B) The fourth credit may be selected from the following courses after successful completion of Algebra I, Geometry, and Algebra II:

(i) Precalculus;

(ii) Independent Study in Mathematics;

(iii) Advanced Placement (AP) Statistics;

(iv) AP Calculus AB;

(v) AP Calculus BC;

(vi) AP Computer Science;

(vii) International Baccalaureate (IB) Mathematical Studies Standard Level;

(viii) IB Mathematics Standard Level;

(ix) IB Mathematics Higher Level;

(x) IB Further Mathematics Standard Level;

(xi) Discrete Mathematics;

(xii) Robotics Programming and Design; and

~~[(xiii) Engineering Mathematics;]~~

~~[(xiv) Statistics and Risk Management; and]~~

(xiii) pursuant to the Texas Education Code (TEC), §28.025(b-5), a mathematics course endorsed by an institution of higher education as a course for which the institution would award course credit or as a prerequisite for a course for which the institution would award course credit. The Texas Education Agency shall maintain a current list of courses approved under this clause.

(C) The additional credit may be selected from the following courses and may be taken after the successful completion of Algebra I and Geometry and either after the successful completion of or concurrently with Algebra II:

(i) Engineering Mathematics;

(ii) Mathematical Applications in Agriculture, Food, and Natural Resources;

(iii) Statistics and Risk Management;

(iv) Principles of Engineering; and

(v) Digital Electronics.

(3) Science--four credits. Three of the credits must consist of a biology credit (Biology, AP Biology, or IB Biology), a chemistry credit (Chemistry, AP Chemistry, or IB Chemistry), and a physics credit (Physics, Principles of Technology, AP Physics, or IB Physics).

(A) The additional credit may be Integrated Physics and Chemistry (IPC) and must be successfully completed prior to chemistry and physics.

(B) The fourth credit may be selected from the following laboratory-based courses:

(i) Aquatic Science;

(ii) Astronomy;

(iii) Earth and Space Science;

(iv) Environmental Systems;

(v) AP Biology;

(vi) AP Chemistry;

(vii) AP Physics B;

(viii) AP Physics C;

(ix) AP Environmental Science;

(x) IB Biology;

(xi) IB Chemistry;

(xii) IB Physics;

(xiii) IB Environmental Systems; and

~~[(xiv) Scientific Research and Design;]~~

~~[(xv) Anatomy and Physiology;]~~

~~[(xvi) Engineering Design and Problem Solving;]~~

~~[(xvii) Medical Microbiology;]~~

~~[(xviii) Pathophysiology;]~~

~~[(xix) Advanced Animal Science;]~~

~~[(xx) Advanced Biotechnology;]~~

~~[(xxi) Advanced Plant and Soil Science;]~~

~~[(xxii) Food Science;]~~

~~[(xxiii) Forensic Science; and]~~

(xiv) [(xxiv)] pursuant to the TEC, §28.025(b-5), a science course endorsed by an institution of higher education as a course for which the institution would award course credit or as a prerequisite for a course for which the institution would award course credit. The Texas Education Agency shall maintain a current list of courses approved under this clause.

(C) The additional credit may be selected from the following laboratory-based courses and may be taken after the successful completion of biology and chemistry and either after the successful completion of or concurrently with physics:

(i) Scientific Research and Design;

(ii) Anatomy and Physiology;

(iii) Engineering Design and Problem Solving;

(iv) Medical Microbiology;

(v) Pathophysiology;

(vi) Advanced Animal Science;

(vii) Advanced Biotechnology;

(viii) Advanced Plant and Soil Science;

(ix) Food Science;

- (x) Forensic Science;
- (xi) Veterinary Medical Applications;
- (xii) Advanced Environmental Technology; and
- (xiii) Human Body Systems.

(4) Social studies--three and one-half credits. The credits must consist of World History Studies (one credit), World Geography Studies (one credit), United States History Studies Since Reconstruction (one credit), and United States Government (one-half credit).

(5) Economics, with emphasis on the free enterprise system and its benefits--one-half credit. The credit must consist of Economics with Emphasis on the Free Enterprise System and Its Benefits.

(6) Languages other than English--two credits. The credits must consist of any two levels in the same language.

(7) Physical education--one credit.

(A) The required credit may be from any combination of the following one-half to one credit courses:

- (i) Foundations of Personal Fitness;
- (ii) Adventure/Outdoor Education;
- (iii) Aerobic Activities; and
- (iv) Team or Individual Sports.

(B) In accordance with local district policy, credit for any of the courses listed in subparagraph (A) of this paragraph may be earned through participation in the following activities:

- (i) Athletics;
- (ii) Junior Reserve Officer Training Corps (JROTC)

[JROTC]; and

(iii) appropriate private or commercially-sponsored physical activity programs conducted on or off campus. The district must apply to the commissioner of education for approval of such programs, which may be substituted for state graduation credit in physical education. Such approval may be granted under the following conditions.

(I) Olympic-level participation and/or competition includes a minimum of 15 hours per week of highly intensive, professional, supervised training. The training facility, instructors, and the activities involved in the program must be certified by the superintendent to be of exceptional quality. Students qualifying and participating at this level may be dismissed from school one hour per day. Students dismissed may not miss any class other than physical education.

(II) Private or commercially-sponsored physical activities include those certified by the superintendent to be of high quality and well supervised by appropriately trained instructors. Student participation of at least five hours per week must be required. Students certified to participate at this level may not be dismissed from any part of the regular school day.

(C) In accordance with local district policy, up to one credit for any one of the courses listed in subparagraph (A) of this paragraph may be earned through participation in any of the following activities:

- (i) Drill Team;
- (ii) Marching Band; and
- (iii) Cheerleading.

(D) All substitution activities allowed in subparagraphs (B) and (C) of this paragraph must include at least 100 minutes per five-day school week of moderate to vigorous physical activity.

(E) Credit may not be earned for any course identified in subparagraph (A) of this paragraph more than once. No more than four substitution credits may be earned through any combination of substitutions allowed in subparagraphs (B) and (C) of this paragraph.

(F) If a student is unable to comply with all of the requirements for a physical education course due to a physical limitation certified by a licensed medical practitioner, a modification to a physical education course does not prohibit the student from earning a Recommended High School Program diploma. A student with a physical limitation must still demonstrate proficiency in the relevant knowledge and skills in a physical education course that do not require physical activity.

(8) Speech--one-half credit. The credit may be selected from the following courses:

- (A) Communication Applications; and
- (B) Professional Communications.

(9) Fine arts--one credit. The credit may be selected from the following courses:

- (A) Art, Level I, II, III, or IV;
- (B) Dance, Level I, II, III, or IV;
- (C) Music, Level I, II, III, or IV;
- (D) Theatre, Level I, II, III, or IV; and
- (E) Principles and Elements of Floral Design.

(c) Elective Courses--five and one-half credits. The credits may be selected from the list of courses specified in §74.61(j) of this title (relating to High School Graduation Requirements). All students who wish to complete the Recommended High School Program are encouraged to study each of the four foundation curriculum areas (English language arts, mathematics, science, and social studies) every year in high school.

(d) Substitutions. No substitutions are allowed in the Recommended High School Program, except as specified in this chapter.

§74.64. Distinguished Achievement High School Program--Advanced High School Program.

(a) Credits. A student must earn at least 26 credits to complete the Distinguished Achievement High School Program.

(b) Core Courses. A student must demonstrate proficiency in the following:

(1) English language arts--four credits. The credits must consist of English I, II, III, and IV (Students with limited English proficiency who are at the beginning or intermediate level of English language proficiency, as defined by §74.4(d) of this title (relating to English Language Proficiency Standards), may satisfy the English I and English II graduation requirements by successfully completing English I for Speakers of Other Languages and English II for Speakers of Other Languages).

(2) Mathematics--four credits. Three of the credits must consist of Algebra I, Algebra II, and Geometry. [The fourth credit may be selected from the following courses after successful completion of Algebra I, Algebra II, and Geometry:]

(A) The fourth credit may be selected from the following courses after successful completion of Algebra I, Algebra II, and Geometry:

- (i) Precalculus;
- (ii) Independent Study in Mathematics;
- (iii) Advanced Quantitative Reasoning;
- (iv) Advanced Placement (AP) Statistics;
- (v) AP Calculus AB;
- (vi) AP Calculus BC;
- (vii) AP Computer Science;
- (viii) International Baccalaureate (IB) Mathematical

Studies Standard Level:

- (ix) IB Mathematics Standard Level;
- (x) IB Mathematics Higher Level;
- (xi) IB Further Mathematics Standard Level;
- (xii) Discrete Mathematics;
- (xiii) Robotics Programming and Design; and

(xiv) pursuant to the Texas Education Code (TEC), §28.025(b-5), a mathematics course endorsed by an institution of higher education as a course for which the institution would award course credit or as a prerequisite for a course for which the institution would award course credit. The Texas Education Agency (TEA) shall maintain a current list of courses approved under this clause.

(B) The additional credit may be selected from the following courses and may be taken after the successful completion of Algebra I and Geometry and either after the successful completion of or concurrently with Algebra II:

- (i) Engineering Mathematics;
- (ii) Statistics and Risk Management;
- (iii) Principles of Engineering; and
- (iv) Digital Electronics.

[(A) Precalculus;]

[(B) Independent Study in Mathematics;]

[(C) Advanced Placement (AP) Statistics;]

[(D) AP Calculus AB;]

[(E) AP Calculus BC;]

[(F) AP Computer Science;]

[(G) International Baccalaureate (IB) Mathematical Studies Standard Level;]

[(H) IB Mathematics Standard Level;]

[(I) IB Mathematics Higher Level;]

[(J) IB Further Mathematics Standard Level;]

[(K) Engineering Mathematics;]

[(L) Statistics and Risk Management; and]

[(M) pursuant to the Texas Education Code (TEC), §28.025(b-5), a mathematics course endorsed by an institution of higher education as a course for which the institution would award course credit or as a prerequisite for a course for which the institu-

tion would award course credit. The Texas Education Agency shall maintain a current list of courses approved under this subparagraph.]

(3) Science--four credits. Three of the credits must consist of a biology credit (Biology, AP Biology, or IB Biology), a chemistry credit (Chemistry, AP Chemistry, or IB Chemistry), and a physics credit (Physics, AP Physics, or IB Physics); and an additional approved laboratory-based science course. After successful completion of a biology course, a chemistry course, and a physics course, the fourth credit may be selected from the following laboratory-based courses:]

(A) The fourth credit may be selected from the following laboratory-based courses:

- (i) Aquatic Science;
- (ii) Astronomy;
- (iii) Earth and Space Science;
- (iv) Environmental Systems;
- (v) AP Biology;
- (vi) AP Chemistry;
- (vii) AP Physics B;
- (viii) AP Physics C;
- (ix) AP Environmental Science;
- (x) IB Biology;
- (xi) IB Chemistry;
- (xii) IB Physics;
- (xiii) IB Environmental Systems; and

(xiv) pursuant to the TEC, §28.025(b-5), a science course endorsed by an institution of higher education as a course for which the institution would award course credit or as a prerequisite for a course for which the institution would award course credit. The TEA shall maintain a current list of courses approved under this clause.

(B) The additional credit may be selected from the following laboratory-based courses and may be taken after the successful completion of biology and chemistry and either after the successful completion of or concurrently with physics:

- (i) Scientific Research and Design;
- (ii) Anatomy and Physiology;
- (iii) Engineering Design and Problem Solving;
- (iv) Medical Microbiology;
- (v) Pathophysiology;
- (vi) Advanced Animal Science;
- (vii) Advanced Biotechnology;
- (viii) Advanced Plant and Soil Science;
- (ix) Food Science;
- (x) Forensic Science;
- (xi) Veterinary Medical Applications;
- (xii) Advanced Environmental Technology; and
- (xiii) Human Body Systems.

[(A) Aquatic Science;]

[(B) Astronomy;]

- [(C) Earth and Space Science;]
- [(D) Environmental Systems;]
- [(E) AP Biology;]
- [(F) AP Chemistry;]
- [(G) AP Physics B;]
- [(H) AP Physics C;]
- [(I) AP Environmental Science;]
- [(J) IB Biology;]
- [(K) IB Chemistry;]
- [(L) IB Physics;]
- [(M) IB Environmental Systems;]
- [(N) Scientific Research and Design;]
- [(O) Anatomy and Physiology;]
- [(P) Engineering Design and Problem Solving;]
- [(Q) Medical Microbiology;]
- [(R) Pathophysiology;]
- [(S) Advanced Animal Science;]
- [(T) Advanced Biotechnology;]
- [(U) Advanced Plant and Soil Science;]
- [(V) Food Science;]
- [(W) Forensic Science; and]

[(X) pursuant to the TEC, §28.025(b-5), a science course endorsed by an institution of higher education as a course for which the institution would award course credit or as a prerequisite for a course for which the institution would award course credit. The Texas Education Agency shall maintain a current list of courses approved under this subparagraph.]

(4) Social studies--three and one-half credits. The credits must consist of World History Studies (one credit), World Geography Studies (one credit), United States History Studies Since Reconstruction (one credit), and United States Government (one-half credit).

(5) Economics, with emphasis on the free enterprise system and its benefits--one-half credit. The credit must consist of Economics with Emphasis on the Free Enterprise System and Its Benefits.

(6) Languages other than English--three credits. The credits must consist of any three levels in the same language.

(7) Physical education--one credit.

(A) The required credit may be from any combination of the following one-half to one credit courses:

- (i) Foundations of Personal Fitness;
- (ii) Adventure/Outdoor Education;
- (iii) Aerobic Activities; and
- (iv) Team or Individual Sports.

(B) In accordance with local district policy, credit for any of the courses listed in subparagraph (A) of this paragraph may be earned through participation in the following activities:

- (i) Athletics;

(ii) Junior Reserve Officer Training Corps (JROTC) [JROTC]; and

(iii) appropriate private or commercially-sponsored physical activity programs conducted on or off campus. The district must apply to the commissioner of education for approval of such programs, which may be substituted for state graduation credit in physical education. Such approval may be granted under the following conditions.

(I) Olympic-level participation and/or competition includes a minimum of 15 hours per week of highly intensive, professional, supervised training. The training facility, instructors, and the activities involved in the program must be certified by the superintendent to be of exceptional quality. Students qualifying and participating at this level may be dismissed from school one hour per day. Students dismissed may not miss any class other than physical education.

(II) Private or commercially-sponsored physical activities include those certified by the superintendent to be of high quality and well supervised by appropriately trained instructors. Student participation of at least five hours per week must be required. Students certified to participate at this level may not be dismissed from any part of the regular school day.

(C) In accordance with local district policy, up to one credit for any one of the courses listed in subparagraph (A) of this paragraph may be earned through participation in any of the following activities:

- (i) Drill Team;
- (ii) Marching Band; and
- (iii) Cheerleading.

(D) All substitution activities allowed in subparagraphs (B) and (C) of this paragraph must include at least 100 minutes per five-day school week of moderate to vigorous physical activity.

(E) Credit may not be earned for any course identified in subparagraph (A) of this paragraph more than once. No more than four substitution credits may be earned through any combination of substitutions allowed in subparagraphs (B) and (C) of this paragraph.

(F) If a student is unable to comply with all of the requirements for a physical education course due to a physical limitation certified by a licensed medical practitioner, a modification to a physical education course does not prohibit the student from earning a Distinguished Achievement Program diploma. A student with a physical limitation must still demonstrate proficiency in the relevant knowledge and skills in a physical education course that do not require physical activity.

(8) Speech--one-half credit. The credit may be selected from the following courses:

- (A) Communication Applications; and
- (B) Professional Communications.

(9) Fine arts--one credit. The credit may be selected from the following courses:

- (A) Art, Level I, II, III, or IV;
- (B) Dance, Level I, II, III, or IV;
- (C) Music, Level I, II, III, or IV;
- (D) Theatre, Level I, II, III, or IV; and
- (E) Principles and Elements of Floral Design.

(c) Elective Courses--four and one-half credits. The credits may be selected from the list of courses specified in §74.61(j) of this title (relating to High School Graduation Requirements). All students who wish to complete the Distinguished Achievement High School Program are encouraged to study each of the four foundation curriculum areas (English language arts, mathematics, science, and social studies) every year in high school.

(d) Advanced measures. A student also must achieve any combination of four of the following advanced measures. Original research/projects may not be used for more than two of the four advanced measures. The measures must focus on demonstrated student performance at the college or professional level. Student performance on advanced measures must be assessed through an external review process. The student may choose from the following options:

(1) original research/project that is:

(A) judged by a panel of professionals in the field that is the focus of the project; or

(B) conducted under the direction of mentor(s) and reported to an appropriate audience; and

(C) related to the required curriculum set forth in §74.1 of this title (relating to Essential Knowledge and Skills);

(2) test data where a student receives:

(A) a score of three or above on the College Board advanced placement examination;

(B) a score of four or above on an International Baccalaureate examination; or

(C) a score on the Preliminary SAT/National Merit Scholarship Qualifying Test (PSAT/NMSQT) that qualifies the student for recognition as a commended scholar or higher by the College Board and National Merit Scholarship Corporation, as part of the National Hispanic Recognition Program (NHRP) of the College Board or as part of the National Achievement Scholarship Program of the National Merit Scholarship Corporation. The PSAT/NMSQT score shall count as only one advanced measure regardless of the number of honors received by the student; or

(3) college academic courses, including those taken for dual credit, and advanced technical credit courses, including locally articulated courses, with a grade of 3.0 or higher.

(e) Substitutions. No substitutions are allowed in the Distinguished Achievement High School Program, except as specified in this chapter.

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 May 10, 2013.

TRD-201301866

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: June 23, 2013

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



SUBCHAPTER G. GRADUATION REQUIREMENTS, BEGINNING WITH SCHOOL YEAR 2012-2013

19 TAC §§74.72 - 74.74

The amendments 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 identify by rule 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 instructional materials; and §28.025, which authorizes the SBOE to determine by rule curriculum requirements for the minimum, recommended, and advanced high school programs that are consistent with the required curriculum under §28.002.

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

§74.72. *Minimum High School Program.*

(a) Credits. A student must earn at least 22 credits to complete the Minimum High School Program.

(b) Core courses. A student must demonstrate proficiency in the following.

(1) English language arts--four credits. Three of the credits must consist of English I, II, and III. (Students with limited English proficiency who are at the beginning or intermediate level of English language proficiency, as defined by §74.4(d) of this title (relating to English Language Proficiency Standards), may satisfy the English I and English II graduation requirements by successfully completing English I for Speakers of Other Languages and English II for Speakers of Other Languages.) The final credit may be selected from one full credit or a combination of two half credits from the following courses:

(A) English IV;

(B) Research and Technical Writing;

(C) Creative Writing;

(D) Practical Writing Skills;

(E) Literary Genres;

(F) Business English;

(G) Journalism;

(H) Advanced Placement (AP) English Language and Composition; and

(I) AP English Literature and Composition.

(2) Mathematics--three credits. Two of the credits must consist of Algebra I and Geometry.

(A) The final credit may be Algebra II. A student may not combine a half credit of Algebra II with a half credit from another mathematics course to satisfy the final mathematics credit requirement.

(B) The final credit may be selected from one full credit or a combination of two half credits from the following courses:

(i) Precalculus;

(ii) Mathematical Models with Applications;

(iii) Independent Study in Mathematics;

(iv) Advanced Quantitative Reasoning;

(v) AP Statistics;

- (vi) AP Calculus AB;
- (vii) AP Calculus BC;
- (viii) AP Computer Science;
- (ix) International Baccalaureate (IB) Mathematical Studies Standard Level;
- (x) IB Mathematics Standard Level;
- (xi) IB Mathematics Higher Level;
- (xii) IB Further Mathematics Standard Level;
- (xiii) Mathematical Applications in Agriculture, Food, and Natural Resources;
- (xiv) Engineering Mathematics; ~~and~~
- (xv) Statistics and Risk Management; [-]
- (xvi) Discrete Mathematics;
- (xvii) Robotics Programming and Design;
- (xviii) Principles of Engineering; and
- (xix) Digital Electronics.

(3) Science--two credits. The credits must consist of Biology and Integrated Physics and Chemistry (IPC). A student may substitute a chemistry credit (Chemistry, AP Chemistry, or IB Chemistry), or a physics credit (Physics, Principles of Technology, AP Physics, or IB Physics) and then must use the second of these two courses as the academic elective credit identified in subsection (b)(5) of this section.

(4) Social studies--three credits. Two of the credits must consist of United States History Studies Since 1877 (one credit), United States Government (one-half credit), and Economics with Emphasis on the Free Enterprise System and Its Benefits (one-half credit). The final credit may be selected from the following courses:

- (A) World History Studies; and
- (B) World Geography Studies.

(5) Academic elective--one credit. The credit must be selected from World History Studies, World Geography Studies, or science course(s) approved by the State Board of Education (SBOE) for science credit as found in Chapter 112 of this title (relating to Texas Essential Knowledge and Skills for Science). If a student elects to replace IPC with either Chemistry or Physics as described in subsection (b)(3) of this section, the academic elective must be the other of these two science courses. A student may not combine a half credit of either World History Studies or World Geography Studies with a half credit from another academic elective course to satisfy the academic elective credit requirement.

(6) Physical education--one credit.

(A) The required credit may be selected from any combination of the following one-half to one credit courses:

- (i) Foundations of Personal Fitness;
- (ii) Adventure/Outdoor Education;
- (iii) Aerobic Activities; and
- (iv) Team or Individual Sports.

(B) In accordance with local district policy, credit for any of the courses listed in subparagraph (A) of this paragraph may be earned through participation in the following activities:

- (i) Athletics;

(ii) Junior Reserve Officer Training Corps (JROTC) [JROTC]; and

(iii) appropriate private or commercially sponsored physical activity programs conducted on or off campus. The district must apply to the commissioner of education for approval of such programs, which may be substituted for state graduation credit in physical education. Such approval may be granted under the following conditions.

(I) Olympic-level participation and/or competition includes a minimum of 15 hours per week of highly intensive, professional, supervised training. The training facility, instructors, and the activities involved in the program must be certified by the superintendent to be of exceptional quality. Students qualifying and participating at this level may be dismissed from school one hour per day. Students dismissed may not miss any class other than physical education.

(II) Private or commercially sponsored physical activities include those certified by the superintendent to be of high quality and well supervised by appropriately trained instructors. Student participation of at least five hours per week must be required. Students certified to participate at this level may not be dismissed from any part of the regular school day.

(C) In accordance with local district policy, up to one credit for any one of the courses listed in subparagraph (A) of this paragraph may be earned through participation in any of the following activities:

- (i) Drill Team;
- (ii) Marching Band; and
- (iii) Cheerleading.

(D) All substitution activities allowed in subparagraphs (B) and (C) of this paragraph must include at least 100 minutes per five-day school week of moderate to vigorous physical activity.

(E) Credit may not be earned for any course identified in subparagraph (A) of this paragraph more than once. No more than four substitution credits may be earned through any combination of substitutions allowed in subparagraphs (B) and (C) of this paragraph.

(F) A student who is unable to participate in physical activity due to disability or illness may substitute an academic elective credit (English language arts, mathematics, science, or social studies) for the physical education credit requirement. The determination regarding a student's ability to participate in physical activity will be made by:

(i) the student's admission, review, and dismissal (ARD) committee if the student receives special education services under the Texas Education Code (TEC), Chapter 29, Subchapter A;

(ii) the committee established for the student under Section 504, Rehabilitation Act of 1973 (29 United States Code, §794) if the student does not receive special education services under the TEC, Chapter 29, Subchapter A, but is covered by the Rehabilitation Act of 1973; or

(iii) a committee established by the school district of persons with appropriate knowledge regarding the student if each of the committees described by clauses (i) and (ii) of this subparagraph is inapplicable. This committee shall follow the same procedures required of an ARD or a Section 504 committee.

(7) Speech--one-half credit. The credit may be selected from the following courses:

- (A) Communication Applications; and

(B) Professional Communications.

(8) Fine arts--one credit. The credit may be selected from the following courses:

- (A) Art, Level I, II, III, or IV;
- (B) Dance, Level I, II, III, or IV;
- (C) Music, Level I, II, III, or IV;
- (D) Theatre, Level I, II, III, or IV;
- (E) Principles and Elements of Floral Design;
- (F) Digital Art and Animation; and
- (G) 3-D Modeling and Animation.

(c) Elective courses--six and one-half credits. The credits must be selected from the list of courses specified in §74.71(h) of this title (relating to High School Graduation Requirements). A student may not combine a half credit of a course for which there is an end-of-course assessment with another elective credit course to satisfy an elective credit requirement.

(d) Substitutions. No substitutions are allowed in the Minimum High School Program, except as specified in this chapter.

§74.73. *Recommended High School Program.*

(a) Credits. A student must earn at least 26 credits to complete the Recommended High School Program.

(b) Core courses. A student must demonstrate proficiency in the following:

(1) English language arts--four credits. The credits must consist of English I, II, III, and IV. (Students with limited English proficiency who are at the beginning or intermediate level of English language proficiency, as defined by §74.4(d) of this title (relating to English Language Proficiency Standards), may satisfy the English I and English II graduation requirements by successfully completing English I for Speakers of Other Languages and English II for Speakers of Other Languages.)

(2) Mathematics--four credits. Three of the credits must consist of Algebra I, Algebra II, and Geometry.

(A) The additional credit may be Mathematical Models with Applications and must be successfully completed prior to Algebra II.

(B) The fourth credit may be selected from the following courses:

- (i) Precalculus;
- (ii) Independent Study in Mathematics;
- (iii) Advanced Quantitative Reasoning;
- (iv) Advanced Placement (AP) Statistics;
- (v) AP Calculus AB;
- (vi) AP Calculus BC;
- (vii) AP Computer Science;
- (viii) International Baccalaureate (IB) Mathematical Studies Standard Level;
- (ix) IB Mathematics Standard Level;
- (x) IB Mathematics Higher Level;
- (xi) IB Further Mathematics Standard Level; [and]

(xii) Discrete Mathematics;

(xiii) Robotics Programming and Design; and

(xiv) [(xii)] pursuant to the Texas Education Code (TEC), §28.025(b-5), a mathematics course endorsed by an institution of higher education as a course for which the institution would award course credit or as a prerequisite for a course for which the institution would award course credit. The Texas Education Agency (TEA) shall maintain a current list of courses approved under this clause.

(C) The additional credit may be selected from the following courses and may be taken after the successful completion of Algebra I and Geometry and either after the successful completion of or concurrently with Algebra II:

- (i) Engineering Mathematics;
- (ii) Mathematical Applications in Agriculture, Food, and Natural Resources; [and]
- (iii) Statistics and Risk Management;[-]
- (iv) Principles of Engineering; and
- (v) Digital Electronics.

(3) Science--four credits. Three of the credits must consist of a biology credit (Biology, AP Biology, or IB Biology), a chemistry credit (Chemistry, AP Chemistry, or IB Chemistry), and a physics credit (Physics, Principles of Technology, AP Physics, or IB Physics).

(A) The additional credit may be Integrated Physics and Chemistry (IPC) and must be successfully completed prior to chemistry and physics.

(B) The fourth credit may be selected from the following laboratory-based courses:

- (i) Aquatic Science;
- (ii) Astronomy;
- (iii) Earth and Space Science;
- (iv) Environmental Systems;
- (v) AP Biology;
- (vi) AP Chemistry;
- (vii) AP Physics B;
- (viii) AP Physics C;
- (ix) AP Environmental Science;
- (x) IB Biology;
- (xi) IB Chemistry;
- (xii) IB Physics;
- (xiii) IB Environmental Systems; and

(xiv) pursuant to the TEC, §28.025(b-5), a science course endorsed by an institution of higher education as a course for which the institution would award course credit or as a prerequisite for a course for which the institution would award course credit. The TEA shall maintain a current list of courses approved under this clause.

(C) The additional credit may be selected from the following laboratory-based courses and may be taken after the successful completion of biology and chemistry and either after the successful completion of or concurrently with physics:

- (i) Scientific Research and Design;

- (ii) Anatomy and Physiology;
- (iii) Engineering Design and Problem Solving;
- (iv) Medical Microbiology;
- (v) Pathophysiology;
- (vi) Advanced Animal Science;
- (vii) Advanced Biotechnology;
- (viii) Advanced Plant and Soil Science;
- (ix) Food Science; [and]
- (x) Forensic Science;[-]
- (xi) Veterinary Medical Applications;
- (xii) Advanced Environmental Technology; and
- (xiii) Human Body Systems.

(4) Social studies--four credits. The credits must consist of World History Studies (one credit), World Geography Studies (one credit), United States History Studies Since 1877 (one credit), United States Government (one-half credit), and Economics with Emphasis on the Free Enterprise System and Its Benefits (one-half credit).

(5) Languages other than English--two credits. The credits must consist of any two levels in the same language.

(6) Physical education--one credit.

(A) The required credit may be selected from any combination of the following one-half to one credit courses:

- (i) Foundations of Personal Fitness;
- (ii) Adventure/Outdoor Education;
- (iii) Aerobic Activities; and
- (iv) Team or Individual Sports.

(B) In accordance with local district policy, credit for any of the courses listed in subparagraph (A) of this paragraph may be earned through participation in the following activities:

- (i) Athletics;
- (ii) Junior Reserve Officer Training Corps (JROTC) [JROTC]; and
- (iii) appropriate private or commercially sponsored physical activity programs conducted on or off campus. The district must apply to the commissioner of education for approval of such programs, which may be substituted for state graduation credit in physical education. Such approval may be granted under the following conditions.

(I) Olympic-level participation and/or competition includes a minimum of 15 hours per week of highly intensive, professional, supervised training. The training facility, instructors, and the activities involved in the program must be certified by the superintendent to be of exceptional quality. Students qualifying and participating at this level may be dismissed from school one hour per day. Students dismissed may not miss any class other than physical education.

(II) Private or commercially sponsored physical activities include those certified by the superintendent to be of high quality and well supervised by appropriately trained instructors. Student participation of at least five hours per week must be required. Students certified to participate at this level may not be dismissed from any part of the regular school day.

(C) In accordance with local district policy, up to one credit for any one of the courses listed in subparagraph (A) of this paragraph may be earned through participation in any of the following activities:

- (i) Drill Team;
- (ii) Marching Band; and
- (iii) Cheerleading.

(D) All substitution activities allowed in subparagraphs (B) and (C) of this paragraph must include at least 100 minutes per five-day school week of moderate to vigorous physical activity.

(E) Credit may not be earned for any course identified in subparagraph (A) of this paragraph more than once. No more than four substitution credits may be earned through any combination of substitutions allowed in subparagraphs (B) and (C) of this paragraph.

(F) If a student is unable to comply with all of the requirements for a physical education course due to a physical limitation certified by a licensed medical practitioner, a modification to a physical education course does not prohibit the student from earning a Recommended High School Program diploma. A student with a physical limitation must still demonstrate proficiency in the relevant knowledge and skills in a physical education course that do not require physical activity.

(G) A student who is unable to participate in physical activity due to disability or illness may substitute an academic elective credit (English language arts, mathematics, science, or social studies) for the physical education credit requirement. The determination regarding a student's ability to participate in physical activity will be made by:

(i) the student's admission, review, and dismissal (ARD) committee if the student receives special education services under the Texas Education Code, Chapter 29, Subchapter A;

(ii) the committee established for the student under Section 504, Rehabilitation Act of 1973 (29 United States Code, §794) if the student does not receive special education services under the TEC, Chapter 29, Subchapter A, but is covered by the Rehabilitation Act of 1973; or

(iii) a committee established by the school district of persons with appropriate knowledge regarding the student if each of the committees described by clauses (i) and (ii) of this subparagraph is inapplicable. This committee shall follow the same procedures required of an ARD or a Section 504 committee.

(7) Speech--one-half credit. The credit may be selected from the following courses:

- (A) Communication Applications; and
- (B) Professional Communications.

(8) Fine arts--one credit. The credit may be selected from the following courses:

- (A) Art, Level I, II, III, or IV;
- (B) Dance, Level I, II, III, or IV;
- (C) Music, Level I, II, III, or IV;
- (D) Theatre, Level I, II, III, or IV;
- (E) Principles and Elements of Floral Design;
- (F) Digital Art and Animation; and
- (G) 3-D Modeling and Animation.

(c) Elective courses--five and one-half credits. The credits may be selected from the list of courses specified in §74.71(h) of this title (relating to High School Graduation Requirements). All students who wish to complete the Recommended High School Program are encouraged to study each of the four foundation curriculum areas (English language arts, mathematics, science, and social studies) every year in high school. A student may not combine a half credit of a course for which there is an end-of-course assessment with another elective credit course to satisfy an elective credit requirement.

(d) Substitutions. No substitutions are allowed in the Recommended High School Program, except as specified in this chapter.

§74.74. *Distinguished Achievement High School Program--Advanced High School Program.*

(a) Credits. A student must earn at least 26 credits to complete the Distinguished Achievement High School Program.

(b) Core courses. A student must demonstrate proficiency in the following:

(1) English language arts--four credits. The credits must consist of English I, II, III, and IV. (Students with limited English proficiency who are at the beginning or intermediate level of English language proficiency, as defined by §74.4(d) of this title (relating to English Language Proficiency Standards), may satisfy the English I and English II graduation requirements by successfully completing English I for Speakers of Other Languages and English II for Speakers of Other Languages.)

(2) Mathematics--four credits. Three of the credits must consist of Algebra I, Algebra II, and Geometry.

(A) The fourth credit may be selected from the following courses after successful completion of Algebra I, Algebra II, and Geometry:

- (i) Precalculus;
- (ii) Independent Study in Mathematics;
- (iii) Advanced Quantitative Reasoning;
- (iv) Advanced Placement (AP) Statistics;
- (v) AP Calculus AB;
- (vi) AP Calculus BC;
- (vii) AP Computer Science;
- (viii) International Baccalaureate (IB) Mathematical Studies Standard Level;
- (ix) IB Mathematics Standard Level;
- (x) IB Mathematics Higher Level;
- (xi) IB Further Mathematics Standard Level; ~~and~~
- (xii) Discrete Mathematics;
- (xiii) Robotics Programming and Design; and

(xiv) [~~(xiii)~~] pursuant to the Texas Education Code (TEC), §28.025(b-5), a mathematics course endorsed by an institution of higher education as a course for which the institution would award course credit or as a prerequisite for a course for which the institution would award course credit. The Texas Education Agency (TEA) shall maintain a current list of courses approved under this clause.

(B) The additional credit may be selected from the following courses and may be taken after the successful completion of Algebra I and Geometry and either after the successful completion of or concurrently with Algebra II:

- (i) Engineering Mathematics; ~~and~~
- (ii) Statistics and Risk Management;[-]
- (iii) Principles of Engineering; and
- (iv) Digital Electronics.

(3) Science--four credits. Three of the credits must consist of a biology credit (Biology, AP Biology, or IB Biology), a chemistry credit (Chemistry, AP Chemistry, or IB Chemistry), and a physics credit (Physics, AP Physics, or IB Physics).

(A) The fourth credit may be selected from the following laboratory-based courses:

- (i) Aquatic Science;
- (ii) Astronomy;
- (iii) Earth and Space Science;
- (iv) Environmental Systems;
- (v) AP Biology;
- (vi) AP Chemistry;
- (vii) AP Physics B;
- (viii) AP Physics C;
- (ix) AP Environmental Science;
- (x) IB Biology;
- (xi) IB Chemistry;
- (xii) IB Physics;
- (xiii) IB Environmental Systems; and

(xiv) pursuant to the TEC, §28.025(b-5), a science course endorsed by an institution of higher education as a course for which the institution would award course credit or as a prerequisite for a course for which the institution would award course credit. The TEA shall maintain a current list of courses approved under this clause.

(B) The additional credit may be selected from the following laboratory-based courses and may be taken after the successful completion of biology and chemistry and either after the successful completion of or concurrently with physics:

- (i) Scientific Research and Design;
- (ii) Anatomy and Physiology;
- (iii) Engineering Design and Problem Solving;
- (iv) Medical Microbiology;
- (v) Pathophysiology;
- (vi) Advanced Animal Science;
- (vii) Advanced Biotechnology;
- (viii) Advanced Plant and Soil Science;
- (ix) Food Science; ~~and~~
- (x) Forensic Science;[-]
- (xi) Veterinary Medical Applications;
- (xii) Advanced Environmental Technology; and
- (xiii) Human Body Systems.

(4) Social studies--four credits. The credits must consist of World History Studies (one credit), World Geography Studies (one

credit), United States History Studies Since 1877 (one credit), United States Government (one-half credit), and Economics with Emphasis on the Free Enterprise System and Its Benefits (one-half credit).

(5) Languages other than English--three credits. The credits must consist of any three levels in the same language.

(6) Physical education--one credit.

(A) The required credit may be selected from any combination of the following one-half to one credit courses:

- (i) Foundations of Personal Fitness;
- (ii) Adventure/Outdoor Education;
- (iii) Aerobic Activities; and
- (iv) Team or Individual Sports.

(B) In accordance with local district policy, credit for any of the courses listed in subparagraph (A) of this paragraph may be earned through participation in the following activities:

- (i) Athletics;
- (ii) Junior Reserve Officer Training Corps (JROTC) [JROTC]; and
- (iii) appropriate private or commercially sponsored physical activity programs conducted on or off campus. The district must apply to the commissioner of education for approval of such programs, which may be substituted for state graduation credit in physical education. Such approval may be granted under the following conditions.

(I) Olympic-level participation and/or competition includes a minimum of 15 hours per week of highly intensive, professional, supervised training. The training facility, instructors, and the activities involved in the program must be certified by the superintendent to be of exceptional quality. Students qualifying and participating at this level may be dismissed from school one hour per day. Students dismissed may not miss any class other than physical education.

(II) Private or commercially sponsored physical activities include those certified by the superintendent to be of high quality and well supervised by appropriately trained instructors. Student participation of at least five hours per week must be required. Students certified to participate at this level may not be dismissed from any part of the regular school day.

(C) In accordance with local district policy, up to one credit for any one of the courses listed in subparagraph (A) of this paragraph may be earned through participation in any of the following activities:

- (i) Drill Team;
- (ii) Marching Band; and
- (iii) Cheerleading.

(D) All substitution activities allowed in subparagraphs (B) and (C) of this paragraph must include at least 100 minutes per five-day school week of moderate to vigorous physical activity.

(E) Credit may not be earned for any course identified in subparagraph (A) of this paragraph more than once. No more than four substitution credits may be earned through any combination of substitutions allowed in subparagraphs (B) and (C) of this paragraph.

(F) If a student is unable to comply with all of the requirements for a physical education course due to a physical limitation certified by a licensed medical practitioner, a modification to a physi-

cal education course does not prohibit the student from earning a Distinguished Achievement Program diploma. A student with a physical limitation must still demonstrate proficiency in the relevant knowledge and skills in a physical education course that do not require physical activity.

(G) A student who is unable to participate in physical activity due to disability or illness may substitute an academic elective credit (English language arts, mathematics, science, or social studies) for the physical education credit requirement. The determination regarding a student's ability to participate in physical activity will be made by:

(i) the student's admission, review, and dismissal (ARD) committee if the student receives special education services under the Texas Education Code (TEC), Chapter 29, Subchapter A;

(ii) the committee established for the student under Section 504, Rehabilitation Act of 1973 (29 United States Code, §794) if the student does not receive special education services under the TEC, Chapter 29, Subchapter A, but is covered by the Rehabilitation Act of 1973; or

(iii) a committee established by the school district of persons with appropriate knowledge regarding the student if each of the committees described by clauses (i) and (ii) of this subparagraph is inapplicable. This committee shall follow the same procedures required of an ARD or a Section 504 committee.

(7) Speech--one-half credit. The credit may be selected from the following courses:

- (A) Communication Applications; and
- (B) Professional Communications.

(8) Fine arts--one credit. The credit may be selected from the following courses:

- (A) Art, Level I, II, III, or IV;
- (B) Dance, Level I, II, III, or IV;
- (C) Music, Level I, II, III, or IV;
- (D) Theatre, Level I, II, III, or IV;
- (E) Principles and Elements of Floral Design;
- (F) Digital Art and Animation; and
- (G) 3-D Modeling and Animation.

(c) Elective courses--four and one-half credits. The credits may be selected from the list of courses specified in §74.71(h) of this title (relating to High School Graduation Requirements). All students who wish to complete the Distinguished Achievement High School Program are encouraged to study each of the four foundation curriculum areas (English language arts, mathematics, science, and social studies) every year in high school. A student may not combine a half credit of a course for which there is an end-of-course assessment with another elective credit course to satisfy an elective credit requirement.

(d) Advanced measures. A student also must achieve any combination of four of the following advanced measures. Original research/projects may not be used for more than two of the four advanced measures. The measures must focus on demonstrated student performance at the college or professional level. Student performance on advanced measures must be assessed through an external review process. The student may choose from the following options:

- (1) original research/project that is:

(A) judged by a panel of professionals in the field that is the focus of the project; or

(B) conducted under the direction of mentor(s) and reported to an appropriate audience; and

(C) related to the required curriculum set forth in §74.1 of this title (relating to Essential Knowledge and Skills);

(2) test data showing a student has earned:

(A) a score of three or above on the College Board advanced placement examination;

(B) a score of four or above on an International Baccalaureate examination; or

(C) a score on the Preliminary SAT/National Merit Scholarship Qualifying Test (PSAT/NMSQT) that qualifies the student for recognition as a commended scholar or higher by the College Board and National Merit Scholarship Corporation, as part of the National Hispanic Recognition Program (NHRP) of the College Board or as part of the National Achievement Scholarship Program of the National Merit Scholarship Corporation. The PSAT/NMSQT score shall count as only one advanced measure regardless of the number of honors received by the student; or

(3) college academic courses, including those taken for dual credit, and advanced technical credit courses, including locally articulated courses, with a grade of 3.0 or higher.

(e) Substitutions. No substitutions are allowed in the Distinguished Achievement High School Program, except as specified in this chapter.

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 May 10, 2013.

TRD-201301867

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: June 23, 2013

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



CHAPTER 111. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR MATHEMATICS

SUBCHAPTER C. HIGH SCHOOL

19 TAC §111.46

The State Board of Education (SBOE) proposes new §111.46, concerning Texas essential knowledge and skills for Discrete Mathematics. The proposed new section would add a new mathematics course to satisfy the fourth mathematics graduation requirement.

In 2009, Discrete Mathematics was approved by the commissioner of education as an innovative course in the foundation area of mathematics. The innovative course is scheduled to expire at the end of the 2013-2014 school year.

The 81st Texas Legislature, 2009, passed House Bill (HB) 3, amending the Texas Education Code, §28.025, to increase flex-

ibility in graduation requirements for students. In January 2010, the SBOE adopted amendments to 19 TAC Chapter 74, Subchapter F, to incorporate changes to high school graduation programs in light of the graduation requirements from HB 3. The amendments also allowed three Career and Technical Education (CTE) courses to count for the fourth mathematics credit for the Recommended High School Program and two CTE courses to count for the fourth mathematics credit under the Distinguished Achievement Program. The SBOE approved changes allowing five new CTE courses to count for the fourth science credit under the Recommended High School Program and Distinguished Achievement Program. Additionally, changes were adopted allowing the Professional Communications course to satisfy the speech graduation requirement and the Principles and Elements of Floral Design course to satisfy the fine arts graduation credit.

The amendments to 19 TAC Chapter 74, Subchapter G, Graduation Requirements, Beginning with School Year 2012-2013, adopted by the SBOE in January 2012, included changes to update the graduation requirements to align with legislation passed by the 82nd Texas Legislature, 2011; allowed additional courses to satisfy certain graduation requirements; and provided additional clarification regarding requirements.

At its April 2013 meeting, the SBOE approved proposed new 19 TAC §111.46 for first reading and filing authorization. The proposed new rule would add the innovative course Discrete Mathematics as a new mathematics course and option to satisfy the fourth mathematics graduation requirement.

The following related proposals to add additional courses to satisfy the fourth mathematics graduation requirement and the fourth science graduation requirement under the Recommended High School Program and the Distinguished Achievement Program are also published in this issue: proposed amendments to 19 TAC Chapter 74, Curriculum Requirements, Subchapter F, Graduation Requirements, Beginning with School Year 2007-2008, and Subchapter G, Graduation Requirements, Beginning with School Year 2012-2013; proposed revisions to 19 TAC Chapter 126, Texas Essential Knowledge and Skills for Technology Applications, Subchapter C, High School; and proposed revisions to 19 TAC Chapter 130, Texas Essential Knowledge and Skills for Career and Technical Education.

The proposed new section would have no new procedural and reporting implications. The proposed new section 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 new section is in effect there will be no additional costs for state or local government as a result of enforcing or administering the proposed new section.

Ms. Givens has determined that for each year of the first five years the proposed new section is in effect the public benefit anticipated as a result of enforcing the new section would be added flexibility for students regardless of the graduation program they select. There is no anticipated economic cost to persons who are required to comply with the proposed new section.

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, Rulemaking, 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) 463-5337. A request for a public hearing on the proposed new section submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register*.

The new section is 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 identify by rule 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 instructional materials; and §28.025, which authorizes the SBOE to determine by rule curriculum requirements for the minimum, recommended, and advanced high school programs that are consistent with the required curriculum under §28.002.

The new section implements the Texas Education Code, §§7.102(c)(4), 28.002, and 28.025.

§111.46. Discrete Mathematics, Adopted 2013 (One-Half to One Credit).

(a) General requirements. Students shall be awarded one-half to one credit for successful completion of this course. Prerequisite: Algebra II.

(b) Introduction.

(1) The desire to achieve educational excellence is the driving force behind the Texas essential knowledge and skills for mathematics, guided by the college and career readiness standards. By embedding statistics, probability, and finance, while focusing on fluency and solid understanding, Texas will lead the way in mathematics education and prepare all Texas students for the challenges they will face in the 21st century.

(2) The process standards describe ways in which students are expected to engage in the content. The placement of the process standards at the beginning of the knowledge and skills listed for each grade and course is intentional. The process standards weave the other knowledge and skills together so that students may be successful problem solvers and use mathematics efficiently and effectively in daily life. The process standards are integrated at every grade level and course. When possible, students will apply mathematics to problems arising in everyday life, society, and the workplace. Students will use a problem-solving model that incorporates analyzing given information, formulating a plan or strategy, determining a solution, justifying the solution, and evaluating the problem-solving process and the reasonableness of the solution. Students will select appropriate tools such as real objects, manipulatives, paper and pencil, and technology and techniques such as mental math, estimation, and number sense to solve problems. Students will effectively communicate mathematical ideas, reasoning, and their implications using multiple representations such as symbols, diagrams, graphs, and language. Students will use mathematical relationships to generate solutions and make connections and predictions. Students will analyze mathematical relationships to connect and communicate mathematical ideas. Students will display, explain, or justify mathematical ideas and arguments using precise mathematical language in written or oral communication.

(3) In Discrete Mathematics, students are introduced to the improved efficiency of mathematical analysis and quantitative techniques over trial-and-error approaches to management problems involving organization, scheduling, project planning, strategy, and decision making. Students will learn how mathematical topics such as

graph theory, planning and scheduling, group decision making, fair division, game theory, and theory of moves can be applied to management and decision making. Students will research mathematicians of the past whose work is relevant to these topics today and read articles about current mathematicians who either teach and conduct research at major universities or work in business and industry solving real-world logistical problems. Through the study of the applications of mathematics to society's problems today, students will become better prepared for and gain an appreciation for the value of a career in mathematics.

(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) Mathematical process standards. The student uses mathematical processes to acquire and demonstrate mathematical understanding. The student is expected to:

(A) apply mathematics to problems arising in everyday life, society, and the workplace;

(B) use a problem-solving model that incorporates analyzing given information, formulating a plan or strategy, determining a solution, justifying the solution, and evaluating the problem-solving process and the reasonableness of the solution;

(C) select tools, including real objects, manipulatives, paper and pencil, and technology as appropriate, and techniques, including mental math, estimation, and number sense as appropriate, to solve problems;

(D) communicate mathematical ideas, reasoning, and their implications using multiple representations, including symbols, diagrams, graphs, and language as appropriate;

(E) create and use representations to organize, record, and communicate mathematical ideas;

(F) analyze mathematical relationships to connect and communicate mathematical ideas; and

(G) display, explain, and justify mathematical ideas and arguments using precise mathematical language in written or oral communication.

(2) Graph theory. The student applies the concept of graphs to determine possible solutions to real-world problems. The student is expected to:

(A) explain the concept of graphs;

(B) use graph models for simple problems in management science;

(C) find the valences of the vertices of a graph;

(D) identify Euler circuits in a graph;

(E) solve route inspection problems by Eulerizing a graph;

(F) determine solutions modeled by edge traversal in a graph;

(G) compare the results of solving the traveling salesman problem (TSP) using the nearest neighbor algorithm and using a greedy algorithm;

(H) distinguish between real-world problems modeled by Euler circuits and those modeled by Hamiltonian circuits;

(I) distinguish between algorithms that yield optimal solutions and those that give nearly optimal solutions;

(J) find minimum-cost spanning trees using Kruskal's algorithm;

(K) use the critical path method to determine the earliest possible completion time for a collection of tasks; and

(L) explain the difference between a graph and a directed graph.

(3) Planning and scheduling. The student uses heuristic algorithms to solve real-world problems. The student is expected to:

(A) use the list processing algorithm to schedule tasks on identical processors;

(B) recognize situations appropriate for modeling or scheduling problems;

(C) determine whether a schedule is optimal using the critical path method together with the list processing algorithm;

(D) identify situations appropriate for modeling by bin packing;

(E) use any of six heuristic algorithms to solve bin packing problems;

(F) solve independent task scheduling problems using the list processing algorithm; and

(G) explain the relationship between scheduling problems and bin packing problems.

(4) Group decision making. The student uses mathematical processes to apply decision-making schemes. The student analyzes the effects of multiple types of weighted voting and applies multiple voting concepts to real-world situations. The student is expected to:

(A) describe the concept of a preference schedule and how to use it;

(B) explain how particular decision-making schemes work;

(C) determine the outcome for various voting methods, given the voters' preferences;

(D) explain how different voting schemes or the order of voting can lead to different results;

(E) describe the impact of various strategies on the results of the decision-making process;

(F) explain the impact of Arrow's Impossibility Theorem;

(G) relate the meaning of approval voting;

(H) explain the need for weighted voting and how it works;

(I) identify voting concepts such as Borda count, Condorcet winner, dummy voter, and coalition; and

(J) compute the Banzhaf power index and explain its significance.

(5) Fair division. The student applies the adjusted winner procedure and Knaster inheritance procedure to real-world situations. The student is expected to:

(A) use the adjusted winner procedure to determine a fair allocation of property;

(B) use the adjusted winner procedure to resolve a dispute;

(C) explain how to reach a fair division using the Knaster inheritance procedure;

(D) solve fair division problems with three or more players using the Knaster inheritance procedure;

(E) explain the conditions under which the trimming procedure can be applied to indivisible goods;

(F) identify situations appropriate for the techniques of fair division;

(G) compare the advantages of the divider and the chooser in the divider-chooser method;

(H) discuss the rules and strategies of the divider-chooser method;

(I) identify the message of Aesop's fable "The Lion's Share";

(J) resolve cake-division problems for three players using the last-diminisher method;

(K) analyze the relative importance of the three desirable properties of fair division: equitability, envy-freeness, and Pareto optimality; and

(L) identify fair division procedures that exhibit envy-freeness.

(6) Game (or competition) theory. The student uses knowledge of basic game theory concepts to calculate optimal strategies. The student analyzes situations and identifies the use of gaming strategies. The student is expected to:

(A) recognize competitive game situations;

(B) represent a game with a matrix;

(C) identify basic game theory concepts and vocabulary;

(D) find the optimal pure strategies and value of a game with a saddle point by means of the minimax technique;

(E) explain the concept of and need for a mixed strategy;

(F) compute the optimal mixed strategy and the expected value for a player in a game who has only two pure strategies;

(G) model simple two-by-two, bimatrix games of partial conflict;

(H) identify the nature and implications of the game called "Prisoners' Dilemma";

(I) explain the game known as "chicken";

(J) identify examples that illustrate the prevalence of Prisoners' Dilemma and chicken in our society; and

(K) determine when a pair of strategies for two players is in equilibrium.

(7) Theory of moves. The student analyzes the theory of moves (TOM). The student uses the TOM and game theory to analyze conflicts. The student is expected to:

(A) compare and contrast TOM and game theory;

(B) explain the rules of TOM;

(C) describe what is meant by a cyclic game;

(D) use a game tree to analyze a two-person game;

(E) determine the effect of approaching Prisoners' Dilemma and chicken from the standpoint of TOM and contrast that to the effect of approaching them from the standpoint of game theory;

(F) describe the use of TOM in a larger, more complicated game; and

(G) model a conflict from literature or from a real-life situation as a two-by-two strict ordinal game and compare the results predicted by game theory and by TOM.

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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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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



CHAPTER 126. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR TECHNOLOGY APPLICATIONS SUBCHAPTER C. HIGH SCHOOL

The State Board of Education (SBOE) proposes the repeal of §126.37 and an amendment to §126.40, concerning Texas essential knowledge and skills (TEKS) for technology applications. Section 126.37 establishes technology applications TEKS for Discrete Mathematics. Section 126.40 establishes technology applications TEKS for Robotics Programming and Design. The proposal would repeal §126.37 in order to add Discrete Mathematics to 19 TAC Chapter 111, Texas Essential Knowledge and Skills for Mathematics. The proposal would also amend §126.40 so that the Robotics Programming and Design course can be added as an option to satisfy the fourth mathematics graduation requirement.

The 81st Texas Legislature, 2009, passed House Bill (HB) 3, amending the Texas Education Code, §28.025, to increase flexibility in graduation requirements for students. In January 2010, the SBOE adopted amendments to 19 TAC Chapter 74, Subchapter F, to incorporate changes to high school graduation programs in light of the graduation requirements from HB 3. The amendments also allowed three Career and Technical Education (CTE) courses to count for the fourth mathematics credit for the Recommended High School Program and two CTE courses to count for the fourth mathematics credit under the Distinguished Achievement Program. The SBOE approved changes allowing five new CTE courses to count for the fourth science credit under the Recommended High School Program and Distinguished Achievement Program. Additionally, changes were adopted allowing the Professional Communications course to satisfy the speech graduation requirement and the Principles and Elements of Floral Design course to satisfy the fine arts graduation credit.

The amendments to 19 TAC Chapter 74, Subchapter G, Graduation Requirements, Beginning with School Year 2012-2013, adopted by the SBOE in January 2012, included changes to update the graduation requirements to align with legislation passed by the 82nd Texas Legislature, 2011; allowed additional courses to satisfy certain graduation requirements; and provided additional clarification regarding requirements.

At its April 2013 meeting, the SBOE approved proposed revisions to 19 TAC Chapter 126, Subchapter C, for first reading and filing authorization. The proposed revisions would amend §126.40, Robotics Programming and Design (One-Half to One Credit), Beginning with School Year 2012-2013, and would repeal §126.37, Discrete Mathematics (One-Half to One Credit), Beginning with School Year 2012-2013. The proposed repeal would be necessary since Discrete Mathematics is proposed as a new mathematics course in 19 TAC Chapter 111. The proposed revisions would allow the courses to be added as options to satisfy the fourth mathematics graduation requirement.

The following related proposals to add additional courses to satisfy the fourth mathematics graduation requirement and the fourth science graduation requirement under the Recommended High School Program and the Distinguished Achievement Program are also published in this issue: proposed amendments to 19 TAC Chapter 74, Curriculum Requirements, Subchapter F, Graduation Requirements, Beginning with School Year 2007-2008, and Subchapter G, Graduation Requirements, Beginning with School Year 2012-2013; proposed new 19 TAC Chapter 111, Texas Essential Knowledge and Skills for Mathematics, Subchapter C, High School, §111.46, Discrete Mathematics, Adopted 2013 (One-Half to One Credit); and proposed revisions to 19 TAC Chapter 130, Texas Essential Knowledge and Skills for Career and Technical Education.

The proposed repeal and amendment would have no new procedural and reporting implications. The proposed repeal and amendment 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 repeal and amendment are in effect there will be no additional costs for state or local government as a result of enforcing or administering the proposed repeal and amendment.

Ms. Givens has determined that for each year of the first five years the proposed repeal and amendment are in effect the public benefit anticipated as a result of enforcing the repeal and amendment would be added flexibility for students regardless of the graduation program they select. There is no anticipated economic cost to persons who are required to comply with the proposed repeal and amendment.

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

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, 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) 463-5337. A request for a public hearing on the proposed repeal and amendment 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*.

19 TAC §126.37

(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, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeal is 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 identify by rule 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 instructional materials; and §28.025, which authorizes the SBOE to determine by rule curriculum requirements for the minimum, recommended, and advanced high school programs that are consistent with the required curriculum under §28.002.

The repeal implements the Texas Education Code, §§7.102(c)(4), 28.002, and 28.025.

§126.37. *Discrete Mathematics (One-Half to One Credit), Beginning with School Year 2012-2013.*

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 May 10, 2013.

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Cristina De La Fuente-Valadez

Director, Rulemaking

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



19 TAC §126.40

The amendment is 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 identify by rule 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 instructional materials; and §28.025, which authorizes the SBOE to determine by rule curriculum requirements for the minimum, recommended, and advanced high school programs that are consistent with the required curriculum under §28.002.

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

§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) The process standards describe ways in which students are expected to engage in the content. The placement of the process standards at the beginning of the knowledge and skills listed for each grade and course is intentional. The process standards weave the other knowledge and skills together so that students may be successful problem solvers and use mathematics efficiently and effectively in daily life. The process standards are integrated at every grade level and course. When possible, students will apply mathematics to problems arising in everyday life, society, and the workplace. Students will use a problem-solving model that incorporates analyzing given information, formulating a plan or strategy, determining a solution, justifying the solution, and evaluating the problem-solving process and the reasonableness of the solution. Students will select appropriate tools such as real objects, manipulatives, paper and pencil, and technology and techniques such as mental math, estimation, and number sense to solve problems. Students will effectively communicate mathematical ideas, reasoning, and their implications using multiple representations such as symbols, diagrams, graphs, and language. Students will use mathematical relationships to generate solutions and make connections and predictions. Students will analyze mathematical relationships to connect and communicate mathematical ideas. Students will display, explain, or justify mathematical ideas and arguments using precise mathematical language in written or oral communication.

(3) ~~[(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.

(4) ~~[(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) Mathematical process standards. The student uses mathematical processes to acquire and demonstrate mathematical understanding. The student is expected to:

(A) apply mathematics to problems arising in everyday life, society, and the workplace;

(B) use a problem-solving model that incorporates analyzing given information, formulating a plan or strategy, determining a solution, justifying the solution, and evaluating the problem-solving process and the reasonableness of the solution;

(C) select tools, including real objects, manipulatives, paper and pencil, and technology as appropriate, and techniques, including mental math, estimation, and number sense as appropriate, to solve problems;

(D) communicate mathematical ideas, reasoning, and their implications using multiple representations, including symbols, diagrams, graphs, and language as appropriate;

(E) create and use representations to organize, record, and communicate mathematical ideas;

(F) analyze mathematical relationships to connect and communicate mathematical ideas; and

(G) display, explain, and justify mathematical ideas and arguments using precise mathematical language in written or oral communication.

(2) [(4)] 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.

(3) [(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.

(4) [(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.

(5) [(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.

(6) [(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.

(7) [(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.

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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Cristina De La Fuente-Valadez

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CHAPTER 130. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR CAREER AND TECHNICAL EDUCATION

The State Board of Education (SBOE) proposes amendments to §130.6 and §130.12 and new §§130.210, 130.375, and 130.376, concerning Texas essential knowledge and skills (TEKS) for career and technical education (CTE). Section 130.6 establishes CTE TEKS for Veterinary Medical Applications. Section 130.12 establishes CTE TEKS for Advanced Environmental Technology. The proposal would amend §130.6 and §130.12 in Subchapter A, Agriculture, Food, and Natural Resources, so that the courses can be added as options to satisfy the fourth science graduation requirement. The proposal would add new §130.210, Human Body Systems (One Credit), to Subchapter H, Health Science, as an additional option to satisfy the fourth science graduation requirement. The proposal would add new §130.375, Principles of Engineering (One Credit), and new §130.376, Digital Electronics (One Credit), to Subchapter O, Science, Technology, Engineering, and Mathematics, as additional options to satisfy the fourth mathematics graduation requirement.

The 81st Texas Legislature, 2009, passed House Bill (HB) 3, amending the Texas Education Code, §28.025, to increase flexibility in graduation requirements for students. In January 2010, the SBOE adopted amendments to 19 TAC Chapter 74, Subchapter F, to incorporate changes to high school graduation programs in light of the graduation requirements from HB 3. The amendments also allowed three CTE courses to count for the fourth mathematics credit for the Recommended High School Program and two CTE courses to count for the fourth math-

ematics credit under the Distinguished Achievement Program. The SBOE approved changes allowing five new CTE courses to count for the fourth science credit under the Recommended High School Program and the Distinguished Achievement Program. Additionally, changes were adopted allowing the Professional Communications course to satisfy the speech graduation requirement and the Principles and Elements of Floral Design course to satisfy the fine arts graduation credit.

The amendments to 19 TAC Chapter 74, Subchapter G, Graduation Requirements, Beginning with School Year 2012-2013, adopted by the SBOE in January 2012, included changes to update the graduation requirements to align with legislation passed by the 82nd Texas Legislature, 2011; allowed additional courses to satisfy certain graduation requirements; and provided additional clarification regarding requirements.

At its April 2013 meeting, the SBOE approved proposed revisions to 19 TAC Chapter 130, Subchapters A, H, and O, for first reading and filing authorization. The proposed revisions would amend §130.6, Veterinary Medical Applications (One Credit), and §130.12, Advanced Environmental Technology (One Credit), and add new §130.210, Human Body Systems (One Credit), §130.375, Principles of Engineering (One Credit), and §130.376, Digital Electronics (One Credit). The proposed revisions would add CTE course options for students to satisfy the fourth mathematics and the fourth science credit requirements under the Recommended High School Program and the Distinguished Achievement Program.

The following related proposals to add additional courses to satisfy the fourth mathematics graduation requirement and the fourth science graduation requirement under the Recommended High School Program and the Distinguished Achievement Program are also published in this issue: proposed amendments to 19 TAC Chapter 74, Curriculum Requirements, Subchapter F, Graduation Requirements, Beginning with School Year 2007-2008, and Subchapter G, Graduation Requirements, Beginning with School Year 2012-2013; proposed new 19 TAC Chapter 111, Texas Essential Knowledge and Skills for Mathematics, Subchapter C, High School, §111.46, Discrete Mathematics, Adopted 2013 (One-Half to One Credit); and proposed revisions to 19 TAC Chapter 126, Texas Essential Knowledge and Skills for Technology Applications, Subchapter C, High School.

The proposed amendments and new sections would have no new procedural and reporting implications. The proposed amendments and new sections 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 amendments and new sections are in effect there will be no additional costs for state or local government as a result of enforcing or administering the proposed amendments and new sections.

Ms. Givens has determined that for each year of the first five years the proposed amendments and new sections are in effect the public benefit anticipated as a result of enforcing the amendments and new sections would be added flexibility for students regardless of the graduation program they select. There is no anticipated economic cost to persons who are required to comply with the proposed amendments and new sections.

In addition, there is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexi-

bility analysis, specified in Texas Government Code, §2006.002, is required.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, 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) 463-5337. A request for a public hearing on the proposed amendments and new sections 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*.

SUBCHAPTER A. AGRICULTURE, FOOD, AND NATURAL RESOURCES

19 TAC §130.6, §130.12

The amendments 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 identify by rule 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 instructional materials; and §28.025, which authorizes the SBOE to determine by rule curriculum requirements for the minimum, recommended, and advanced high school programs that are consistent with the required curriculum under §28.002.

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

§130.6. *Veterinary Medical Applications (One Credit)*.

(a) General requirements. This course is recommended for students in Grades 11-12 [10-12]. To receive credit in science, students must meet the 40% laboratory and fieldwork requirement identified in §74.3(b)(2)(C) of this title (relating to Description of a Required Secondary Curriculum).

(b) Introduction. [To be prepared for careers in the field of animal science, students need to attain academic skills and knowledge, acquire technical knowledge and skills related to animal systems and the workplace, and develop knowledge and skills regarding career opportunities, entry requirements, and industry expectations. To prepare for success, students need opportunities to learn, reinforce, apply, and transfer knowledge and skills and technologies in a variety of settings. Topics covered in this course include, but are not limited to, veterinary practices as they relate to both large and small animal species.]

(1) Veterinary Medical Applications. To be prepared for careers in the field of animal science, students need to attain academic skills and knowledge, acquire technical knowledge and skills related to animal systems and the workplace, and develop knowledge and skills regarding career opportunities, entry requirements, and industry expectations. To prepare for success, students need opportunities to learn, reinforce, apply, and transfer knowledge and skills and technologies in a variety of settings. Topics covered in this course include, but are not limited to, veterinary practices as they relate to both large and small animal species.

(2) Nature of science. Science, as defined by the National Academy of Sciences, is the "use of evidence to construct testable explanations and predictions of natural phenomena, as well as the knowledge generated through this process." This vast body of changing and increasing knowledge is described by physical, mathematical, and conceptual models. Students should know that some questions are outside

the realm of science because they deal with phenomena that are not scientifically testable.

(3) Scientific inquiry. Scientific inquiry is the planned and deliberate investigation of the natural world. Scientific methods of investigation are experimental, descriptive, or comparative. The method chosen should be appropriate to the question being asked.

(4) Science and social ethics. Scientific decision making is a way of answering questions about the natural world. Students should be able to distinguish between scientific decision-making methods (scientific methods) and ethical and social decisions that involve science (the application of scientific information).

(5) Science, systems, and models. A system is a collection of cycles, structures, and processes that interact. All systems have basic properties that can be described in space, time, energy, and matter. Change and constancy occur in systems as patterns and can be observed, measured, and modeled. These patterns help to make predictions that can be scientifically tested. Students should analyze a system in terms of its components and how these components relate to each other, to the whole, and to the external environment.

(c) Knowledge and skills.

(1) The student, for at least 40% of instructional time, conducts laboratory and field investigations using safe, environmentally appropriate, and ethical practices. The student is expected to:

(A) demonstrate safe practices during laboratory and field investigations; and

(B) demonstrate an understanding of the use and conservation of resources and the proper disposal or recycling of materials.

(2) The student uses scientific methods and equipment during laboratory and field investigations. The student is expected to:

(A) know the definition of science and understand that it has limitations, as specified in subsection (b)(2) of this section;

(B) know that hypotheses are tentative and testable statements that must be capable of being supported or not supported by observational evidence. Hypotheses of durable explanatory power which have been tested over a wide variety of conditions are incorporated into theories;

(C) know scientific theories are based on natural and physical phenomena and are capable of being tested by multiple independent researchers. Unlike hypotheses, scientific theories are well-established and highly-reliable explanations, but they may be subject to change as new areas of science and new technologies are developed;

(D) distinguish between scientific hypotheses and scientific theories;

(E) plan and implement descriptive, comparative, and experimental investigations, including asking questions, formulating testable hypotheses, and selecting equipment and technology;

(F) collect and organize qualitative and quantitative data and make measurements with accuracy and precision using tools such as spreadsheet software, data-collecting probes, computers, standard laboratory glassware, microscopes, various prepared slides, animal restraints, stereoscopes, electronic balances, micropipettors, hand lenses, surgical and imaging equipment, thermometers, hot plates, lab notebooks or journals, timing devices, Petri dishes, lab incubators, dissection equipment, and models, diagrams, or samples of biological specimens or structures;

(G) analyze, evaluate, make inferences, and predict trends from data; and

(H) communicate valid conclusions supported by the data through methods such as lab reports, labeled drawings, graphic organizers, journals, summaries, oral reports, and technology-based reports.

(3) The student uses critical thinking, scientific reasoning, and problem solving to make informed decisions within and outside the classroom. The student is expected to:

(A) in all fields of science, analyze, evaluate, and critique scientific explanations by using empirical evidence, logical reasoning, and experimental and observational testing, including examining all sides of scientific evidence of those scientific explanations, so as to encourage critical thinking by the student;

(B) communicate and apply scientific information extracted from various sources such as current events, news reports, published journal articles, and marketing materials;

(C) draw inferences based on data related to promotional materials for products and services;

(D) evaluate the impact of scientific research on society and the environment;

(E) evaluate models according to their limitations in representing objects or events; and

(F) research and describe the history of veterinary medicine and contributions of scientists in that field.

(4) [(+)] The student learns the employability characteristics of a successful employee. The student is expected to:

(A) identify career development and entrepreneurship opportunities in the field of veterinary science;

(B) demonstrate competencies related to resources, information, interpersonal skills, and systems of operation in veterinary science;

(C) demonstrate knowledge of personal and occupational health and safety practices in the workplace; and

(D) identify employers' expectations, including appropriate work habits, ethical conduct, legal responsibilities, and good citizenship skills.

(5) [(2)] The student researches current topics in veterinary medicine, recognizes the importance of animals in society, and discusses professional ethics and laws that relate to veterinary medicine. The student is expected to:

(A) explain the human-animal bond and how to interact with clients and their animals;

(B) identify trends, issues, and historical events that have influenced animal use and care;

(C) describe the legal aspects of animal welfare and animal rights;

(D) evaluate the principals of veterinary medical ethics; and

(E) review policies and procedures in veterinary medicine that are considered a reflection of various local, state, and federal laws.

(6) [(3)] The student evaluates veterinary hospital management and marketing to determine its importance to the success of veterinary clinics and hospitals. The student is expected to:

(A) identify skills needed to communicate effectively with clients and pet owners in the community;

(B) identify vital information and demonstrate effective communication skills necessary to solve problems;

(C) explain the role and importance of marketing and its effects [affects] on the success of a veterinary hospital; and

(D) develop skills involving the use of electronic technology commonly found in a veterinary hospital.

(7) [(4)] The student communicates the importance of medical terminology, evaluates veterinary terms to discover their meanings, and demonstrates the ability to use terms correctly. The student is expected to:

(A) analyze veterinary terms to discover their meanings and recognize common Greek and Latin prefixes, suffixes, and roots;

(B) develop appropriate use of directional anatomical terms;

(C) identify anatomical structures of animals;

(D) describe the major body systems by using appropriate medical terminology; and

(E) recognize, pronounce, spell, and define medical terms relating to diagnosis, pathology, and treatment of animals.

(8) [(5)] The student explores the area of animal management as it relates to animal identification, animal characteristics, and behavioral temperament. The student is expected to:

(A) identify a variety of animal species according to common breed characteristics;

(B) recognize common animal behavioral problems;

(C) identify correct handling protocols and discuss the relevance to veterinary medical staff; and

(D) demonstrate appropriate methods of handling a variety of animal behavioral situations.

(9) [(6)] The student investigates the body systems and gains a working knowledge of each system's purpose and functions and how each system is affected by disease. The student is expected to:

(A) identify the parts of the skeletal, muscular, respiratory, circulatory, excretory, reproductive, digestive, endocrine, and nervous systems;

(B) describe the functions of the skeletal, muscular, respiratory, circulatory, excretory, reproductive, digestive, endocrine, and nervous systems;

(C) identify appropriate anatomical sites for injections, measuring vital signs, and collecting blood samples for various animal species; and

(D) use medical terminology to describe normal animal behavior and vital signs compared to sick animals.

(10) [(7)] The student performs mathematical calculations used in veterinary medicine. The student is expected to:

(A) add, subtract, multiply, and divide whole numbers, fractions, and decimals as related to veterinary medicine;

(B) apply mathematical skills needed for accurate client assessment such as measurement, conversion, and data analysis;

(C) find solutions to veterinary problems by calculating percentages and averages;

- (D) convert between English and metric units;
- (E) use scientific calculations to determine weight, volume, and linear measurements;
- (F) solve word problems using ratios and dimensional analysis;
- (G) interpret data using tables, charts, and graphs; and
- (H) use mathematical equations to calculate and prepare chemical concentrations.

(11) [(8)] The student evaluates animal diseases and identifies internal and external parasites. The student is expected to:

- (A) identify factors that influence the health of animals;
- (B) identify pathogens and describe the effects that diseases have on various body systems;
- (C) explain the best courses of treatment for common diseases;
- (D) describe the process of immunity and disease transmission;
- (E) identify internal and external parasites using common and scientific names;
- (F) describe life cycles of common parasites;
- (G) explain how parasites are transmitted and their effect on the host;
- (H) conduct parasitic diagnostic procedures; and
- (I) describe types of treatments for diseases and parasites.

(12) [(9)] The student evaluates an animal's health during a clinical examination. The student is expected to:

- (A) describe the characteristics and signs of a healthy animal;
- (B) recognize examples of abnormalities and relate them to the associated problems and illnesses;
- (C) take temperature, pulse, and respiration for a variety of animals;
- (D) describe effects of age, stress, and environmental factors on vital signs of animals;
- (E) explain procedures for physical examinations; and
- (F) explain the regional approach to assess an animal's health.

(13) [(40)] The student identifies imaging equipment and demonstrates how to safely operate and maintain equipment. The student is expected to:

- (A) identify imaging equipment such as ultrasonograph, endoscope, electrocardiograph, and radiograph;
- (B) explain safety procedures, maintenance, and operation of imaging equipment; and
- (C) demonstrate patient restraint and positioning methods used for imaging purposes.

(14) [(11)] The student determines nutritional requirements for ruminant and non-ruminant animals and communicates the importance of animal nutrition in maintaining a healthy animal. The student is expected to:

(A) identify the anatomy of the digestive system of ruminant and non-ruminant animals;

(B) describe the process of digestion in ruminant and non-ruminant animals;

(C) identify types and sources of nutrients and classes of feeds;

(D) identify feed additives and describe how additives affect the food supply;

(E) evaluate animal dietary needs and feeding factors;

(F) calculate energy requirements and formulate rations;

(G) discuss feeding practices and feed-quality issues; and

(H) analyze the quality of commercially prepared feeds.

(15) [(12)] The student examines various aspects of clinical hematology. The student is expected to:

(A) describe laboratory tests and explain the importance of proper laboratory procedures;

(B) demonstrate the procedures used in collecting, handling, preparing, and examining fecal, blood, and urine specimens;

(C) discuss normal and abnormal results obtained in complete blood counts;

(D) explain sensitivity testing and how to read testing results; and

(E) prepare microscope slides, preserve specimens, and perform several of the most common laboratory tests.

(16) [(13)] The student identifies hospital procedures, skills, and objectives that are included in the job description of an animal care assistant. The student is expected to:

(A) explain the care, maintenance, and use of equipment and instruments found in veterinary practice;

(B) explain appropriate hospital procedures;

(C) discuss emergency protocols and describe first aid procedures for small and large animals, including cardiopulmonary resuscitation, control of bleeding, and treatment for shock;

(D) demonstrate animal care skills such as administering medications, nail trimming, bathing, grooming, ear cleaning, expressing anal sacs, dental prophylaxis, enema administration, and identification of animals;

(E) demonstrate therapeutic care such as patient observation, maintaining and administering fluids, applying bandages, caring for open wounds, and managing hydrotherapy and physical therapy; and

(F) describe skills involved in the reproductive and genetic evaluation of animals.

(17) [(14)] The student identifies and discusses surgical-assisting procedures, skills, and objectives that are included in the job description of an animal care assistant. The student is expected to:

(A) explain the protocol for pre-surgical and post-surgical care of a patient;

(B) describe methods used in the sterilization and preparation of small and large animal surgery packs;

(C) review skills involved in patient and surgical room preparation;

(D) describe surgical skills such as castration, spaying, dehorning, and docking;

(E) describe care of newborn, orphan, and recumbent patients; and

(F) identify and monitor equipment used in surgical procedures.

(18) [(45)] The student identifies pharmacology-assisting procedures, skills, and objectives that are included in the job description of an animal care assistant. The student is expected to:

(A) identify medications according to their classification, form, routes, and methods of administration;

(B) explain handling and distribution, protocol, and laws for controlled substances;

(C) calculate dosage using factors such as concentration of drug, weight of animal, and required dosage;

(D) complete a prescription label with identifiers that are required by the United States Food and Drug Administration; and

(E) select equipment and instruments used to give medications.

(19) [(46)] The student develops an improved supervised agriculture experience program as it relates to agriculture, food, and natural resources. The student is expected to:

(A) plan, propose, conduct, and evaluate entrepreneurship; placement; exploratory; research, either experimental or analytical; improvement; supplementary; laboratory-based; or other identified, supervised agricultural experience as an experiential learning activity;

(B) apply proper record-keeping skills as they relate to a supervised experience;

(C) design and use a customized record-keeping system for the individual supervised experience;

(D) participate in youth leadership opportunities to create a well-rounded experience program in agriculture; and

(E) produce a challenging approach for a local program of activities in agriculture.

§130.12. *Advanced Environmental Technology (One Credit).*

(a) General requirements. This course is recommended for students in Grades 11-12. Recommended prerequisite: a minimum of one credit from the courses in the Agriculture, Food, and Natural Resources cluster. To receive credit in science, students must meet the 40% laboratory and fieldwork requirement identified in §74.3(b)(2)(C) of this title (relating to Description of a Required Secondary Curriculum).

(b) Introduction. [To be prepared for careers in environmental service systems, students need to attain academic skills and knowledge, acquire advanced technical knowledge and skills related to environmental service systems and the workplace, and develop knowledge and skills regarding career opportunities, entry requirements, and industry expectations. To prepare for success, students need opportunities to learn, reinforce, apply, and transfer their knowledge and skills and technologies in a variety of settings. This course examines the interrelatedness of environmental issues and production agriculture. Students evaluate sustainable resources and green technologies which will

provide environmental benefits. Instruction is designed to allow for the application of science and technology to measure environmental impacts resulting from production agriculture through field and laboratory experiences.]

(1) Advanced Environmental Technology. To be prepared for careers in environmental service systems, students need to attain academic skills and knowledge, acquire advanced technical knowledge and skills related to environmental service systems and the workplace, and develop knowledge and skills regarding career opportunities, entry requirements, and industry expectations. To prepare for success, students need opportunities to learn, reinforce, apply, and transfer their knowledge and skills and technologies in a variety of settings. This course examines the interrelatedness of environmental issues and production agriculture. Students evaluate sustainable resources and green technologies which will provide environmental benefits. Instruction is designed to allow for the application of science and technology to measure environmental impacts resulting from production agriculture through field and laboratory experiences.

(2) Nature of science. Science, as defined by the National Academy of Sciences, is the "use of evidence to construct testable explanations and predictions of natural phenomena, as well as the knowledge generated through this process." This vast body of changing and increasing knowledge is described by physical, mathematical, and conceptual models. Students should know that some questions are outside the realm of science because they deal with phenomena that are not scientifically testable.

(3) Scientific inquiry. Scientific inquiry is the planned and deliberate investigation of the natural world. Scientific methods of investigation are experimental, descriptive, or comparative. The method chosen should be appropriate to the question being asked.

(4) Science and social ethics. Scientific decision making is a way of answering questions about the natural world. Students should be able to distinguish between scientific decision-making methods (scientific methods) and ethical and social decisions that involve science (the application of scientific information).

(5) Science, systems, and models. A system is a collection of cycles, structures, and processes that interact. All systems have basic properties that can be described in space, time, energy, and matter. Change and constancy occur in systems as patterns and can be observed, measured, and modeled. These patterns help to make predictions that can be scientifically tested. Students should analyze a system in terms of its components and how these components relate to each other, to the whole, and to the external environment.

(c) Knowledge and skills.

(1) The student, for at least 40% of instructional time, conducts laboratory and field investigations using safe, environmentally appropriate, and ethical practices. The student is expected to:

(A) demonstrate safe practices during laboratory and field investigations; and

(B) demonstrate an understanding of the use and conservation of resources and the proper disposal or recycling of materials.

(2) The student uses scientific methods and equipment during laboratory and field investigations. The student is expected to:

(A) know the definition of science and understand that it has limitations, as specified in subsection (b)(2) of this section;

(B) know that hypotheses are tentative and testable statements that must be capable of being supported or not supported by observational evidence. Hypotheses of durable explanatory power

which have been tested over a wide variety of conditions are incorporated into theories;

(C) know scientific theories are based on natural and physical phenomena and are capable of being tested by multiple independent researchers. Unlike hypotheses, scientific theories are well-established and highly-reliable explanations, but they may be subject to change as new areas of science and new technologies are developed;

(D) distinguish between scientific hypotheses and scientific theories;

(E) plan and implement descriptive, comparative, and experimental investigations, including asking questions, formulating testable hypotheses, and selecting equipment and technology;

(F) collect and organize qualitative and quantitative data and make measurements with accuracy and precision using tools such as spreadsheet software, data-collecting probes, computers, standard laboratory glassware, microscopes, various prepared slides, animal restraints, stereoscopes, electronic balances, micropipettors, hand lenses, surgical and imaging equipment, thermometers, hot plates, lab notebooks or journals, timing devices, Petri dishes, lab incubators, dissection equipment, and models, diagrams, or samples of biological specimens or structures;

(G) analyze, evaluate, make inferences, and predict trends from data; and

(H) communicate valid conclusions supported by the data through methods such as lab reports, labeled drawings, graphic organizers, journals, summaries, oral reports, and technology-based reports.

(3) The student uses critical thinking, scientific reasoning, and problem solving to make informed decisions within and outside the classroom. The student is expected to:

(A) in all fields of science, analyze, evaluate, and critique scientific explanations by using empirical evidence, logical reasoning, and experimental and observational testing, including examining all sides of scientific evidence of those scientific explanations, so as to encourage critical thinking by the student;

(B) communicate and apply scientific information extracted from various sources such as current events, news reports, published journal articles, and marketing materials;

(C) draw inferences based on data related to promotional materials for products and services;

(D) evaluate the impact of scientific research on society and the environment;

(E) evaluate models according to their limitations in representing objects or events; and

(F) research and describe the history of environmental science and contributions of environmental scientists.

(4) [(4)] The student learns the employability characteristics of a successful employee. The student is expected to:

(A) identify career development and entrepreneurship opportunities in the field of environmental technology;

(B) apply competencies related to resources, information, interpersonal skills, and systems of operation in environmental technology;

(C) demonstrate knowledge of personal and occupational safety practices in the workplace;

(D) identify employers' expectations, including appropriate work habits, ethical conduct, legal responsibilities, and good citizenship skills; and

(E) demonstrate leadership skills to accomplish organizational goals and objectives.

(5) [(2)] The student develops an advanced supervised agriculture experience program as it relates to agriculture, food, and natural resources. The student is expected to:

(A) plan, propose, conduct, and evaluate entrepreneurship; placement; exploratory; research, either experimental or analytical; improvement; supplementary; laboratory-based; or other identified, supervised agricultural experience as an experiential learning activity;

(B) apply proper record-keeping skills as they relate to a supervised experience;

(C) design and use a customized record-keeping system for the individual supervised experience;

(D) participate in youth leadership opportunities to create a well-rounded experience program in agriculture; and

(E) produce a challenging approach for a local program of activities in agriculture.

(6) [(3)] The student uses a minimum of 40% of instructional time to conduct field and laboratory investigations using safe, environmentally appropriate, and ethical practices in a documented supervised experience. The student is expected to:

(A) demonstrate safe practices during field and laboratory investigations in a documented supervised experience; and

(B) use accepted procedures for the use and conservation of resources and for the safe handling of materials.

(7) [(4)] The student determines the importance and scope of natural resources. The student is expected to:

(A) identify various types of natural resources;

(B) discuss renewable and non-renewable energy resources and the impact on the environment;

(C) analyze the impacts of natural resources and their effects on the agricultural economy; and

(D) map the geographic and demographic distribution of natural resources.

(8) [(5)] The student identifies water use and management in agricultural settings. The student is expected to:

(A) identify the distribution and properties of water in the hydrologic cycle;

(B) identify agricultural uses of water, including the benefits of recycling;

(C) discuss how agricultural uses may impact water resources;

(D) define point source and non-point source pollution;

(E) identify sources of point source and non-point source pollution associated with agriculture;

(F) identify effective management practices commonly used to abate point and non-point sources of pollution;

(G) explain the impact of agriculture production on water quality as related to the functioning of watersheds;

(H) evaluate how the different agricultural water uses may impact water availability, including availability of water from aquifers;

(I) research water use legislation; and

(J) research water quality policy, including the agricultural storm water exclusion, and how it affects the decisions made in agricultural production.

(9) The student knows biotic factors associated with agricultural production. The student is expected to:

(A) describe the role of plants and animals, including insects and microorganisms;

(B) understand the interaction of biotic and abiotic factors, including the relationships between soil composition and microorganisms, water quantity and crop selection, and air quality and human health;

(C) identify issues related to biodiversity such as invasive species, chemical applications, and crop selection; and

(D) research and explain the causes of species diversity and predict changes that may occur in an ecosystem if species and genetic diversity is increased or reduced.

(10) [(6)] The student describes air quality associated with agricultural production. The student is expected to:

(A) describe the anatomy of the atmosphere and the atmospheric cycle;

(B) define air pollution;

(C) analyze air quality legislation;

(D) identify sources and effects of air pollution from agricultural production;

(E) discuss different emission management strategies; and

(F) identify common air pollution controls used in agricultural production.

(11) [(7)] The student examines soil erosion as related to agricultural production. The student is expected to:

(A) describe the components, dynamics, properties, and functions of soils;

(B) identify agriculture production practices that can contribute to soil erosion;

(C) graph harmful effects of soil erosion;

(D) discuss the legal aspects of soil erosion;

(E) explain soil erosion control methods and programs; [and]

(F) identify how soil erosion affects the environment; and [-]

(G) discuss agricultural practices that may preserve soil quality and quantity such as permaculture practices, organic farming, agroforestry, and integrated farming.

(12) [(8)] The student explains the use and abuse of natural resources. The student is expected to:

(A) identify the progression of use of natural resources leading to environmental degradation;

(B) explain the impact of human population dynamics on the environment;

(C) discuss the abuse of natural resources; and

(D) communicate the resulting environmental consequences, including those on living organisms.

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 May 10, 2013.

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: June 23, 2013

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



SUBCHAPTER H. HEALTH SCIENCE

19 TAC §130.210

The new section is 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 identify by rule 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 instructional materials; and §28.025, which authorizes the SBOE to determine by rule curriculum requirements for the minimum, recommended, and advanced high school programs that are consistent with the required curriculum under §28.002.

The new section implements the Texas Education Code, §§7.102(c)(4), 28.002, and 28.025.

§130.210. Human Body Systems (One Credit).

(a) General requirements. This course is recommended for students in Grades 11-12. Prerequisite: Biology. Recommended prerequisite: a minimum of one credit from the courses in the Health Science cluster. To receive credit in science, students must meet the 40% laboratory and fieldwork requirement identified in §74.3(b)(2)(C) of this title (relating to Description of a Required Secondary Curriculum).

(b) Introduction.

(1) Human Body Systems. In Human Body Systems, students examine the interactions of body systems as they explore identity, communication, power, movement, protection, and homeostasis. Students design experiments, investigate the structures and functions of the human body, and use data acquisition software to monitor body functions such as muscle movement, reflex and voluntary action, and respiration.

(2) Nature of science. Science, as defined by the National Academy of Sciences, is the "use of evidence to construct testable explanations and predictions of natural phenomena, as well as the knowledge generated through this process." This vast body of changing and increasing knowledge is described by physical, mathematical, and conceptual models. Students should know that some questions are outside the realm of science because they deal with phenomena that are not scientifically testable.

(3) Scientific inquiry. Scientific inquiry is the planned and deliberate investigation of the natural world. Scientific methods of in-

vestigation are experimental, descriptive, or comparative. The method chosen should be appropriate to the question being asked.

(4) Science and social ethics. Scientific decision making is a way of answering questions about the natural world. Students should be able to distinguish between scientific decision-making methods (scientific methods) and ethical and social decisions that involve science (the application of scientific information).

(5) Science, systems, and models. A system is a collection of cycles, structures, and processes that interact. All systems have basic properties that can be described in space, time, energy, and matter. Change and constancy occur in systems as patterns and can be observed, measured, and modeled. These patterns help to make predictions that can be scientifically tested. Students should analyze a system in terms of its components and how these components relate to each other, to the whole, and to the external environment.

(c) Knowledge and skills.

(1) The student, for at least 40% of instructional time, conducts laboratory and field investigations using safe, environmentally appropriate, and ethical practices. The student is expected to:

(A) demonstrate safe practices during laboratory and field investigations; and

(B) demonstrate an understanding of the use and conservation of resources and the proper disposal or recycling of materials.

(2) The student uses scientific methods and equipment during laboratory and field investigations. The student is expected to:

(A) know the definition of science and understand that it has limitations, as specified in subsection (b)(2) of this section;

(B) know that hypotheses are tentative and testable statements that must be capable of being supported or not supported by observational evidence. Hypotheses of durable explanatory power which have been tested over a wide variety of conditions are incorporated into theories;

(C) know scientific theories are based on natural and physical phenomena and are capable of being tested by multiple independent researchers. Unlike hypotheses, scientific theories are well-established and highly-reliable explanations, but they may be subject to change as new areas of science and new technologies are developed;

(D) distinguish between scientific hypotheses and scientific theories;

(E) plan and implement descriptive, comparative, and experimental investigations, including asking questions, formulating testable hypotheses, and selecting equipment and technology;

(F) collect and organize qualitative and quantitative data and make measurements with accuracy and precision using tools such as spreadsheet software, data-collecting probes, computers, standard laboratory glassware, microscopes, various prepared slides, animal restraints, stereoscopes, electronic balances, micropipettors, hand lenses, surgical and imaging equipment, thermometers, hot plates, lab notebooks or journals, timing devices, Petri dishes, lab incubators, dissection equipment, and models, diagrams, or samples of biological specimens or structures;

(G) analyze, evaluate, make inferences, and predict trends from data; and

(H) communicate valid conclusions supported by the data through methods such as lab reports, labeled drawings, graphic organizers, journals, summaries, oral reports, and technology-based reports.

(3) The student uses critical thinking, scientific reasoning, and problem solving to make informed decisions within and outside the classroom. The student is expected to:

(A) in all fields of science, analyze, evaluate, and critique scientific explanations by using empirical evidence, logical reasoning, and experimental and observational testing, including examining all sides of scientific evidence of those scientific explanations, so as to encourage critical thinking by the student;

(B) communicate and apply scientific information extracted from various sources such as current events, news reports, published journal articles, and marketing materials;

(C) draw inferences based on data related to promotional materials for products and services;

(D) evaluate the impact of scientific research on society and the environment;

(E) evaluate models according to their limitations in representing objects or events; and

(F) research and describe the history of human biology and contributions of scientists in that field.

(4) The student understands how complex body systems and structures contribute to identity. The student is expected to:

(A) identify complex systems and structures that make up the human body and function together to maintain homeostasis;

(B) describe the similarities in function and overall anatomical organization;

(C) use directional terms to describe the position of anatomical structures in relation to other structures or locations in the body and regional terms to specify specific anatomical landmarks on the body;

(D) identify the structures and function of a cell and of human deoxyribonucleic acid (DNA);

(E) explain the purpose of restriction enzymes;

(F) explain how gel electrophoresis is used in Restriction Fragment Length Polymorphism (RFLP) analysis;

(G) compare and contrast the structure and function of various types of human tissue;

(H) explain how the structure and distribution of tissues in the body contribute to human identity;

(I) identify and locate bones of the human skeletal system;

(J) explain the purpose of the bones of the human skeletal system, including protecting the body's internal organs, allowing for movement, and providing a great range of mobility; and

(K) describe how the specific structure of bones reveals characteristics such as gender, stature, age, and ethnicity.

(5) The student understands that communication between body systems is crucial in maintaining homeostasis and understands the role that electrical and chemical communication play. The student is expected to:

(A) explain how communication between body systems plays a role in maintaining homeostasis and how errors in electrical communication can impact homeostasis;

(B) identify the two main subdivisions of the nervous system: the central nervous system (CNS), including the brain and

spinal cord, and the peripheral nervous system (PNS), including all nervous tissues outside the brain and spinal cord;

(C) explain how the brain receives stimuli from the outside world, interprets the information, and generates an appropriate response;

(D) identify each region within the brain and the specific functions in the body each region helps control;

(E) describe the purpose and function of neurons in the nervous system;

(F) define an action potential;

(G) describe the impact of the degree of processing in the nervous system on the body's reaction time to reflex and voluntary actions;

(H) analyze the purpose of the endocrine system, including helping the body to communicate through the use of chemical signals called hormones;

(I) describe how hormones interact with receptors on the cell membrane or inside the cell to bring about change in a target organ;

(J) compare the function of endocrine glands and exocrine glands;

(K) describe how hormones help maintain homeostasis and explain the impact of a hormone imbalance;

(L) explain the function of the human eye, including conversion of light into a stream of nerve signals to be interpreted by the brain and perception of color, depth, brightness, and optical illusions; and

(M) describe problems resulting from errors in the structure and function of the eye, including deterioration in acuity or debilitating disease and dysfunction.

(6) The student understands what resources power the human body and the systems that convert these resources into energy. The student is expected to:

(A) investigate how the human body is powered, including by food, water, and air;

(B) evaluate how factors unique to a person such as age, weight, and overall health affect the body's ability to use biological resources and maintain homeostasis;

(C) analyze how factors in the environment such as climate or temperature affect the body's ability to use biological resources and maintain homeostasis;

(D) describe the components and functions of the digestive system;

(E) investigate the effect of factors such as temperature, pH, and enzyme and substrate concentration on the rate of an enzyme-catalyzed reaction;

(F) explain what occurs when a process in the body requires energy;

(G) explain why oxygen is essential for human life;

(H) identify the structure of the lungs and explain the significance of the association between the lungs and the vessels of the cardiovascular system;

(I) analyze how various diseases or medical conditions can affect lung capacity and efficiency;

(J) analyze the purpose of the urinary system;

(K) define the nephron and explain its purpose in the human body; and

(L) compare and contrast the functions of the aldosterone hormone and antidiuretic hormone (ADH).

(7) The student understands how various body systems work to move the human body. The student is expected to:

(A) analyze how the skeletal system works with the muscular system to move the human body;

(B) define joints, including synovial joints, sarcomeres, calcium ions, adenosine triphosphate (ATP), neurons, and nerves, and explain their functions;

(C) explain the ways joints can be classified;

(D) identify the three different types of muscle tissue and explain their purpose;

(E) describe the roles of the heart, arteries, veins, and capillaries in the function of the human body;

(F) discuss the impact of changes in cardiac output on the function of other body systems;

(G) discuss the impact of certain lifestyle choices such as poor diet and smoking in the function of human body systems;

(H) analyze the coordinated effort needed for human body systems, including the nervous system, muscular system, skeletal system, cardiovascular system, and respiratory system, to perform exercise;

(I) analyze the impact of performance-enhancing drugs on the human body; and

(J) identify the factors, including diet, exercise, hydration, and injury prevention, an athlete training for an intense physical event needs to consider.

(8) The student understands how body systems provide protection for the human body. The student is expected to:

(A) describe the composition of skin, including the epidermis, the dermis, and accessory organs such as sweat glands and hair follicles;

(B) describe the functions of the skin, including protection, temperature regulation, sensation, excretion, and absorption;

(C) analyze the body functions and body systems that are impacted by burn damage to skin;

(D) explain the purpose of the body's ability to sense and suppress pain;

(E) describe the structure and purpose of bones in the human body;

(F) define osteoclasts and osteoblasts and compare their functions;

(G) investigate the impact that damage to bone through a sprain or a fracture has on the function of other body organs and systems;

(H) describe what occurs during the process of bone remodeling;

(I) analyze the functions of the lymphatic and immune systems;

(J) define antibodies and describe their function in the human body;

(K) evaluate the types and purpose of white blood cells; and

(L) analyze ways in which cells, tissues, organs, organ systems, and secretions play a role in protecting the human body.

(9) The student understands how human body systems work together to defend against disease and injury and to maintain health and wellness. The student is expected to:

(A) describe factors in the external environment that affect the body's internal environment and overall ability to maintain homeostasis;

(B) explain how human body systems work together to defend against disease and injury and to maintain health and wellness; and

(C) identify medical interventions and measures, including preventative measures, diagnostic tests, treatments, and rehabilitation, that improve health or alter the course of a disease.

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 May 10, 2013.

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: June 23, 2013

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



SUBCHAPTER O. SCIENCE, TECHNOLOGY, ENGINEERING, AND MATHEMATICS

19 TAC §130.375, §130.376

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 identify by rule 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 instructional materials; and §28.025, which authorizes the SBOE to determine by rule 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.

§130.375. Principles of Engineering (One Credit).

(a) General requirements. This course is recommended for students in Grades 11-12.

(b) Introduction.

(1) Principles of Engineering is an engineering survey course designed to expose students to some of the major concepts that they will encounter in a postsecondary engineering course of study. Students have an opportunity to investigate engineering and high-tech careers. In Principles of Engineering, students will employ engineering and scientific concepts in the solution of engineering

design problems. Students will develop problem-solving skills and apply their knowledge of research and design to create solutions to various challenges. Students will also learn how to document their work and communicate their solutions to their peers and members of the professional community.

(2) The process standards describe ways in which students are expected to engage in the content. The placement of the process standards at the beginning of the knowledge and skills listed for each grade and course is intentional. The process standards weave the other knowledge and skills together so that students may be successful problem solvers and use mathematics efficiently and effectively in daily life. The process standards are integrated at every grade level and course. When possible, students will apply mathematics to problems arising in everyday life, society, and the workplace. Students will use a problem-solving model that incorporates analyzing given information, formulating a plan or strategy, determining a solution, justifying the solution, and evaluating the problem-solving process and the reasonableness of the solution. Students will select appropriate tools such as real objects, manipulatives, paper and pencil, and technology and techniques such as mental math, estimation, and number sense to solve problems. Students will effectively communicate mathematical ideas, reasoning, and their implications using multiple representations such as symbols, diagrams, graphs, and language. Students will use mathematical relationships to generate solutions and make connections and predictions. Students will analyze mathematical relationships to connect and communicate mathematical ideas. Students will display, explain, or justify mathematical ideas and arguments using precise mathematical language in written or oral communication.

(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) Mathematical process standards. The student uses mathematical processes to acquire and demonstrate mathematical understanding. The student is expected to:

(A) apply mathematics to problems arising in everyday life, society, and the workplace;

(B) use a problem-solving model that incorporates analyzing given information, formulating a plan or strategy, determining a solution, justifying the solution, and evaluating the problem-solving process and the reasonableness of the solution;

(C) select tools, including real objects, manipulatives, paper and pencil, and technology as appropriate, and techniques, including mental math, estimation, and number sense as appropriate, to solve problems;

(D) communicate mathematical ideas, reasoning, and their implications using multiple representations, including symbols, diagrams, graphs, and language as appropriate;

(E) create and use representations to organize, record, and communicate mathematical ideas;

(F) analyze mathematical relationships to connect and communicate mathematical ideas; and

(G) display, explain, and justify mathematical ideas and arguments using precise mathematical language in written or oral communication.

(2) Principles of engineering. The student investigates engineering-related fields and career opportunities. The student is expected to:

(A) evaluate models according to their limitations in representing objects or events;

(B) differentiate between engineering and engineering technology;

(C) identify the job opportunities available in engineering and engineering technology;

(D) identify and differentiate among different engineering disciplines; and

(E) demonstrate appropriate oral, written, and visual forms of technical communication.

(3) Design problems. The student demonstrates an understanding of design problems and works individually and as a member of a team to solve design problems. The student is expected to:

(A) solve design problems individually and in a team;

(B) create solutions to existing problems using a design process;

(C) use a design brief to identify problem specifications and establish project constraints;

(D) use communication to achieve a desired goal within a team; and

(E) work as a member of a team to conduct research to develop a knowledge base, stimulate creative ideas, and make informed decisions.

(4) Energy and power. The student understands mechanisms, including simple and compound machines, and performs calculations related to mechanical advantage, drive ratios, work, and power. The student is expected to:

(A) explain how components, including gears, sprockets, pulley systems, and simple machines, make up mechanisms;

(B) distinguish between the six simple machines and their attributes and components;

(C) measure forces and distances related to a mechanism;

(D) calculate work and power in mechanical systems;

(E) determine efficiency in mechanical systems; and

(F) calculate mechanical advantage and drive ratios of mechanisms.

(5) Energy and power. The student understands energy sources, energy conversion, and circuits and performs calculations related to work and power. The student is expected to:

(A) identify and categorize energy sources as nonrenewable, renewable, or inexhaustible;

(B) define and calculate work and power;

(C) calculate power in a system that converts energy from electrical to mechanical; and

(D) define voltage, current, and resistance and calculate each using Ohm's law.

(6) Energy and power. The student understands system energy requirements and how energy sources can be combined to convert energy into useful forms. The student calculates material conductivity, resistance, and energy transfer. The student is expected to:

(A) explain the purpose of energy management;

(B) evaluate system energy requirements in order to select the proper energy source;

(C) explain how multiple energy sources can be combined to convert energy into useful forms;

(D) describe how hydrogen fuel cells create electricity and heat and how solar cells create electricity;

(E) explain how thermal energy is transferred via convection, conduction, and radiation and complete calculations for conduction, R-values, and radiation; and

(F) calculate resistance, energy transfer, and material conductivity.

(7) Materials and structures. The student understands the interaction of forces acting on a body and performs calculations related to structural design. The student is expected to:

(A) illustrate and calculate all forces acting upon a given body;

(B) locate the centroid of structural members mathematically;

(C) calculate moment of inertia of structural members;

(D) define and calculate static equilibrium;

(E) differentiate between scalar and vector quantities;

(F) identify magnitude, direction, and sense of a vector;

(G) calculate the X and Y components given a vector;

(H) calculate moment forces given a specified axis;

(I) calculate unknown forces using equations of equilibrium; and

(J) calculate external and internal forces in a statically determinate truss using translational and rotational equilibrium equations.

(8) Materials and structures. The student understands material properties and the importance of choosing appropriate materials for design. The student is expected to:

(A) conduct investigative non-destructive material property tests on selected common household products;

(B) calculate the weight, volume, mass, density, and surface area of selected common household products; and

(C) identify the manufacturing processes used to create selected common household products.

(9) Materials and structures. The student uses material testing to determine a product's function and performance. The student is expected to:

(A) use a design process and mathematical formulas to solve and document design problems;

(B) obtain measurements of material samples;

(C) use material testing to determine a product's reliability, safety, and predictability in function;

(D) identify and calculate test sample material properties using a stress-strain curve; and

(E) identify and calculate sample material properties such as elastic range, proportional limit, modulus of elasticity, elastic limit, resilience, yield point, plastic deformation, ultimate strength, failure, and ductility using stress-strain data points.

(10) Control systems. The student understands that control systems are designed to provide consentient process control and reliability and uses computer software to create flowcharts and control system operating programs. The student is expected to:

(A) create detailed flowcharts using a computer software application;

(B) create control system operating programs using computer software;

(C) create system control programs that use flowchart logic;

(D) select appropriate inputs and output devices based on the need of a technological system; and

(E) judge between open- and closed-loop systems in order to select the most appropriate system for a given technological problem.

(11) Materials and structures. The student demonstrates an understanding of fluid power systems and calculates values in a variety of systems. The student is expected to:

(A) identify and explain basic components and functions of fluid power devices;

(B) differentiate between pneumatic and hydraulic systems and between hydrodynamic and hydrostatic systems;

(C) use Pascal's Law to calculate values in a fluid power system;

(D) distinguish between pressure and absolute pressure and between temperature and absolute temperature;

(E) calculate values in a pneumatic system using the perfect gas laws; and

(F) calculate flow rate, flow velocity, and mechanical advantage in a hydraulic system.

(12) Statistics and kinematics. The student demonstrates an understanding of statistics and kinematics and applies both to engineering design problems. The student is expected to:

(A) calculate the theoretical probability that an event will occur;

(B) calculate the experimental frequency distribution of an event occurring;

(C) apply the Bernoulli process to events that only have two distinct possible outcomes;

(D) apply AND, OR, and NOT logic to probability;

(E) apply Bayes's theorem to calculate the probability of multiple events occurring;

(F) calculate the central tendency of a data array, including mean, median, and mode;

(G) calculate data variation, including range, standard deviation, and variance;

(H) create a histogram to illustrate frequency distribution;

(I) calculate distance, displacement, speed, velocity, and acceleration from data;

(J) calculate acceleration due to gravity given data from a free-fall device;

(K) calculate the X and Y components of a projectile motion; and

(L) determine the angle needed to launch a projectile a specific range given the projectile's initial velocity.

§130.376. Digital Electronics (One Credit).

(a) General requirements. This course is recommended for students in Grades 11-12.

(b) Introduction.

(1) Digital Electronics is the study of electronic circuits that are used to process and control digital signals. In contrast to analog electronics, where information is represented by a continuously varying voltage, digital signals are represented by two discreet voltages or logic levels. This distinction allows for greater signal speed and storage capabilities and has revolutionized the world of electronics. Digital electronics is the foundation of modern electronic devices such as cellular phones, MP3 players, laptop computers, digital cameras, and high-definition televisions. The primary focus of Digital Electronics is to expose students to the design process of combinational and sequential logic design, teamwork, communication methods, engineering standards, and technical documentation.

(2) The process standards describe ways in which students are expected to engage in the content. The placement of the process standards at the beginning of the knowledge and skills listed for each grade and course is intentional. The process standards weave the other knowledge and skills together so that students may be successful problem solvers and use mathematics efficiently and effectively in daily life. The process standards are integrated at every grade level and course. When possible, students will apply mathematics to problems arising in everyday life, society, and the workplace. Students will use a problem-solving model that incorporates analyzing given information, formulating a plan or strategy, determining a solution, justifying the solution, and evaluating the problem-solving process and the reasonableness of the solution. Students will select appropriate tools such as real objects, manipulatives, paper and pencil, and technology and techniques such as mental math, estimation, and number sense to solve problems. Students will effectively communicate mathematical ideas, reasoning, and their implications using multiple representations such as symbols, diagrams, graphs, and language. Students will use mathematical relationships to generate solutions and make connections and predictions. Students will analyze mathematical relationships to connect and communicate mathematical ideas. Students will display, explain, or justify mathematical ideas and arguments using precise mathematical language in written or oral communication.

(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) The student uses mathematical processes to acquire and demonstrate mathematical understanding. The student is expected to:

(A) apply mathematics to problems arising in everyday life, society, and the workplace;

(B) use a problem-solving model that incorporates analyzing given information, formulating a plan or strategy, determining a solution, justifying the solution, and evaluating the problem-solving process and the reasonableness of the solution;

(C) select tools, including real objects, manipulatives, paper and pencil, and technology as appropriate, and techniques, including mental math, estimation, and number sense as appropriate, to solve problems;

(D) communicate mathematical ideas, reasoning, and their implications using multiple representations, including symbols, diagrams, graphs, and language as appropriate;

(E) create and use representations to organize, record, and communicate mathematical ideas;

(F) analyze mathematical relationships to connect and communicate mathematical ideas; and

(G) display, explain, and justify mathematical ideas and arguments using precise mathematical language in written or oral communication.

(2) The student explores the fundamentals of analog and digital electronics. The student uses appropriate notation and understands the logic of circuit design and logic gates. The student is expected to:

(A) use scientific notation, engineering notation, and Systems International (SI) notation to conveniently write very large or very small numbers frequently encountered when working with electronics;

(B) describe the process of soldering and how it is used in the assembly of electronic components;

(C) explain the different waveforms and distinctive characteristics of analog and digital signals;

(D) identify the voltage levels of analog and digital signals;

(E) determine whether a material is a conductor, an insulator, or a semiconductor based on its atomic structure;

(F) analyze the three fundamental concepts of voltage, current, and resistance;

(G) define circuit design software and explain its purpose;

(H) identify the fundamental building block of sequential logic;

(I) identify the components of a manufacturer's datasheet, including a logic gate's general description, connection diagram, and function table;

(J) categorize integrated circuits by their underlying circuitry, scale of integration, and packaging style;

(K) describe the advantages and disadvantages of the various sub-families of transistor-transistor logic (TTL) gates;

(L) explain that a logic gate is depicted by its schematic symbol, logic expression, and truth table;

(M) evaluate the different functions of input and output values of combinational and sequential logic;

(N) explain combinational logic designs implemented with AND gates, OR gates, and INVERTER gates; and

(O) identify the fundamental building block of sequential logic.

(3) The student understands and uses multiple forms of AND-OR-Invert (AOI) logic. The student is expected to:

(A) develop an understanding of the binary number system and its relationship to the decimal number system as an essential component in the combinational logic design process;

(B) translate a set of design specifications into a truth table to describe the behavior of a combinational logic design by listing all possible input combinations and the desired output for each;

(C) derive logic expressions from a given truth table;

(D) demonstrate logic expressions in sum-of-products (SOP) form and products-of-sum (POS) form;

(E) explain how all logic expressions, whether simplified or not, can be implemented using AND gates, OR gates, and Inverter gates; and

(F) apply a formal design process to translate a set of design specifications into a functional combinational logic circuit.

(4) The student understands, explains, and applies NAND and NOR Logic and understands the benefits of using universal gates. The student is expected to:

(A) apply the Karnaugh Mapping graphical technique to simplify logic expressions containing two, three, and four variables;

(B) define a "don't care" condition and explain its significance;

(C) explain why NAND and NOR gates are considered universal gates;

(D) demonstrate implementation of a combinational logic expression using only NAND gates or only NOR gates;

(E) discuss the formal design process used for translating a set of design specifications into a functional combinational logic circuit implemented with NAND or NOR gates; and

(F) explain why combinational logic designs implemented with NAND gates or NOR gates will typically require fewer integrated circuits (IC) than AOI equivalent implementations.

(5) The student understands combinational logic systems, including seven-segment displays, Exclusive OR and Exclusive NOR gates, and multiplexer/de-multiplexer pairs. The student understands the relative value of various logic approaches. The student is expected to:

(A) use seven-segment displays used to display the digits 0-9 as well as some alpha characters;

(B) identify the two varieties of seven-segment displays;

(C) describe the formal design process used for translating a set of design specifications into a functional combinational logic circuit;

(D) develop an understanding of the hexadecimal and octal number systems and their relationships to the decimal number system;

(E) explain the primary intended purpose of Exclusive OR (XOR) and Exclusive NOR (XNOR) gates;

(F) describe how to accomplish the addition of two binary numbers of any bit length;

(G) explain when multiplexer/de-multiplexer pairs are most frequently used;

(H) explain the purpose of using de-multiplexers in electronic displays that use multiple seven-segment displays;

(I) identify the most commonly used method for handling negative numbers in digital electronics;

(J) discuss the use of programmable logic devices and explain designs for which they are best suited; and

(K) compare and contrast circuits implemented with programmable logic devices with circuits implemented with discrete logic.

(6) The student understands and describes multiple types of sequential logic and various uses of sequential logic. The student is expected to:

(A) explain the capabilities of flip-flop and transparent latch logic devices;

(B) discuss synchronous and asynchronous inputs of flip-flops and transparent latches;

(C) explore the use of flip-flops, including designing single event detection circuits, data synchronizers, shift registers, and frequency dividers;

(D) explain how asynchronous counters are characterized and how they can be implemented;

(E) explore the use of the asynchronous counter method to implement up counters, down counters, and modulus counters;

(F) explain how synchronous counters are characterized and how they can be implemented;

(G) explore the use of the synchronous counter method to implement up counters, down counters, and modulus counters;

(H) describe a state machine;

(I) identify common everyday devices that state machines are used to control such as elevator doors, traffic lights, and combinational or electronic locks; and

(J) discuss various ways state machines can be implemented.

(7) The student explores microcontrollers, specifically their usefulness in real-world applications. The student is expected to:

(A) understand the use of flowcharts as graphical organizers by technicians, computer programmers, engineers, and other professionals and the benefits of various flowcharting techniques;

(B) develop an understanding of basic programming skills, including variable declaration, loops, and debugging;

(C) identify everyday products that use microcontrollers such as robots, garage door openers, traffic lights, and home thermostats;

(D) describe a servo motor;

(E) explore the way microcontrollers sense and respond to outside stimuli;

(F) explain why digital devices are only relevant if they can interact with the real world;

(G) explain the importance of digital control devices, including microcontrollers in controlling mechanical systems; and

(H) understand that realistic problem solving with a control system requires the ability to interface analog inputs and outputs with a digital device.

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 May 10, 2013.

TRD-201301873

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: June 23, 2013

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



TITLE 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 108. PROFESSIONAL CONDUCT SUBCHAPTER A. PROFESSIONAL RESPONSIBILITY

22 TAC §108.12

The State Board of Dental Examiners (Board) proposes new §108.12, concerning the dental treatment of sleep disorders.

This new rule will define the scope of practice of a dentist in the treatment of sleep disorders.

Glenn Parker, Executive Director, has determined that for the first five-year period the new rule is in effect enforcing or administering the rule will not have foreseeable implications relating to cost or revenue of state or local government.

Mr. Parker has determined that for each year of the first five years the new rule is effect the public benefit anticipated as a result of enforcing the rule will be to ensure the protection of public health and safety.

Mr. Parker has determined that for the first five-year period the new rule is in effect enforcing or administering the rule will not have foreseeable economic costs to small businesses or persons who are required to comply with the rule as proposed.

Mr. Parker has also determined that for the first five-year period the new rule is in effect enforcing or administering the rule will have no foreseeable impact on employment in any regional area where the rule is enforced or administered.

Comments on the proposed new rule may be submitted to Sarah Carnes-Lemp, Assistant General Counsel, 333 Guadalupe, Suite 3-800, Austin, Texas 78732; by fax to (512) 463-7452; or by e-mail to sarah@tsbde.texas.gov no later than 30 days from the date that the proposal is published in the *Texas Register*.

The new rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

No other statutes, articles, or codes are affected by the proposed new rule.

§108.12. Dental Treatment of Sleep Disorders.

(a) A dentist may diagnose, treat, operate, or prescribe for a disease, pain, injury, deficiency, deformity, or physical condition of the human teeth, oral cavity, alveolar process, gums, jaws, or directly related and adjacent masticatory structures.

(b) A sleep disorder is a medical condition. A dentist shall not diagnose or independently treat a patient for obstructive respirations during sleep, defined as snoring, upper airway resistance syndrome and obstructive sleep apnea.

(c) Any dental treatment of a patient for a sleep disorder must be done in collaboration with a qualified, Texas licensed physician. The dentist shall ensure that the patient has been evaluated by the physician for a sleep disorder in compliance with the Texas Medical Practice Act and Texas Medical Board rules, and is being monitored by the physician for potential complications of the sleep disorder.

(d) The dentist should screen a dental patient for a sleep disorder. A dentist shall not order or interpret a diagnostic sleep study or diagnose, treat or monitor the patient's medical condition.

(e) Pursuant to a physician's order for oral appliance therapy, a dentist may fabricate an oral appliance. A dentist shall be responsible for monitoring and maintaining the oral appliance to ensure the patient's dental health.

(f) A dentist treating a sleep disorder patient shall comply with the Dental Practice Act and Board rules, including but not limited to provisions related to fair dealing, standard of care, records, and business promotion.

(g) A dentist shall maintain records as required by the Dental Practice Act and Board rules including, but not limited to records related to treatment planning, recommendations and options, informed consent, consultations and recommended referrals, and post treatment recommendations.

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

Filed with the Office of the Secretary of State on May 9, 2013.

TRD-201301855

Glenn Parker

Executive Director

State Board of Dental Examiners

Proposed date of adoption: August 2, 2013

For further information, please call: (512) 475-0989



CHAPTER 110. SEDATION AND ANESTHESIA

22 TAC §110.10

The State Board of Dental Examiners (Board) proposes new §110.10, concerning the use of general anesthetic agents.

This new rule will limit the use of certain general anesthetic agents to dentists that possess a valid Level 4 - General Anesthesia or Deep Sedation permit issued by the Board.

Glenn Parker, Executive Director, has determined that for the first five-year period the new rule is in effect enforcing or administering the rule will not have foreseeable implications relating to cost or revenue of state or local government.

Mr. Parker has determined that for each year of the first five years the new rule is in effect the public benefit anticipated as a result of enforcing the rule will be to ensure the protection of public health and safety.

Mr. Parker has determined that for the first five-year period the new rule is in effect enforcing or administering the rule will not

have foreseeable economic costs to small businesses or persons who are required to comply with the rule as proposed.

Mr. Parker has determined that for the first five-year period the new rule is in effect enforcing or administering the rule will have no foreseeable impact on employment in any regional area where the rule is enforced or administered.

Comments on the proposed new rule may be submitted to Sarah Carnes-Lemp, Assistant General Counsel, 333 Guadalupe, Suite 3-800, Austin, Texas 78732; by fax to (512) 463-7452; or by e-mail to sarah@tsbde.texas.gov no later than 30 days from the date that the proposal is published in the *Texas Register*.

The new rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

No other statutes, articles, or codes are affected by the proposed new rule.

§110.10. Use of General Anesthetic Agents.

(a) No dentist shall administer or employ the general anesthetic agent(s) listed in subsection (b) of this section, which has a narrow margin for maintaining consciousness, unless the dentist possesses a valid Level 4 - General Anesthesia or Deep Sedation permit issued by the Board.

(b) The following drugs are general anesthesia agents with a narrow margin for maintaining consciousness and must only be used by a dentist holding a Level 4 - General Anesthesia or Deep Sedation permit:

(1) short acting barbiturates including, but not limited to thiopental, sodium methohexital, and thiamylal;

(2) short acting analogues of fentanyl including, but not limited to remifentanyl, alfentanil, and sufentanyl;

(3) alkylphenols including precursors or derivatives, which includes, but is not limited to propofol and fospropofol;

(4) etomidate;

(5) dissociative anesthetics - ketamine;

(6) volatile inhalation anesthetics including, but not limited to sevoflurane, desflurane and isoflurane; and

(7) similarly acting drugs or quantity of agent(s), or technique(s), or any combination thereof that would likely render a patient deeply sedated, generally anesthetized or otherwise not meeting the conditions of the definition of moderate sedation as stated in §110.1 of this chapter (relating to Definitions).

(c) No permit holder shall have more than one person under general anesthesia at the same time exclusive of recovery.

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 May 9, 2013.

TRD-201301856

Glenn Parker

Executive Director

State Board of Dental Examiners

Proposed date of adoption: August 2, 2013

For further information, please call: (512) 475-0989

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PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 535. GENERAL PROVISIONS SUBCHAPTER F. PRE-LICENSE EDUCATION AND EXAMINATION

22 TAC §§535.62, 535.64, 535.65

The Texas Real Estate Commission (TREC) proposes amendments to §535.62, concerning Acceptable Courses of Study; §535.64, concerning Obtaining Approval to Offer a Course; and §535.65, concerning Operation of Core Education Schools. The proposed amendments are recommended by the Education Standards Advisory Committee (ESAC), a committee formed, in part, to review and recommend revisions to existing core course curricula and TREC rules addressing school, course and instructor approval.

The proposed amendments to §535.62 establish Principles of Real Estate I and II as two 30-hour core courses with specific topics and subtopics and mandated time periods in which instructors must teach each topic or subtopic. The amendments to §535.62 also establish that new Principles of Real Estate I and II must be taken before other core courses are taken and establish a time period of 12 months, or 15 months for alternative delivery courses, for acceptability of previously approved courses for core credit if such course are not revised pursuant to the new standards.

The proposed amendments to §535.64 change the deadlines for renewal of previously approved core courses; adopt by reference forms to be used for schools in requesting approval to offer the new Principles of Real Estate courses; establish the requirements for requesting approval and teaching core courses once a revised curriculum has been adopted by the commission; and establish the requirements and deadlines for submitting previously approved courses for approval subject to the new curriculum requirements.

The proposed amendments to §535.65 address the way newly adopted core courses must be delivered and establish new requirements for schools to place start and completion dates on core course certificates issued to students.

Loretta R. DeHay, General Counsel, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the sections. There is an anticipated impact on small businesses, micro-businesses or local or state employment as a result of implementing the sections. There is an anticipated economic cost to persons who are required to comply with the proposed amendments. The additional costs would apply to schools that seek re-approval for an alternative delivery course in that the school would need to submit such course for recertification by a distance learning certification center as part of the TREC re-approval process.

Ms. DeHay also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be improved core course curricula and better educated applicants resulting in improved protection for consumers of real estate services.

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 or via email to general.counsel@trec.texas.gov. 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 adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

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

§535.62. *Acceptable Courses of Study.*

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

(c) An applicant may obtain credit for completing an approved Principles of Real Estate core course described by this subsection consisting of 30 hours in Principles of Real Estate I or 30 hours in Principles of Real Estate II, or a combined 60 hour course consisting of both Principles of Real Estate I and II.

(1) Principles of Real Estate I shall contain the following subtopics, the units of which are outlined in PRINS 1-0, Core Real Estate Course Approval Form, Principles of Real Estate I adopted by reference in §535.64(h) of this title (relating to Obtaining Approval to Offer a Course):

(A) Introduction to Modern Real Estate Practice - 200 minutes;

(B) Real Property - 60 minutes;

(C) Concepts and Responsibilities of Home Ownership - 95 minutes;

(D) Real Estate Brokerage and the Law of Agency - 180 minutes;

(E) Fair Housing Laws - 150 minutes;

(F) Ethics of Practice as a License Holder - 30 minutes;

(G) Texas Real Estate License Act - 180 minutes;

(H) Legal Descriptions - 100 minutes;

(I) Real Estate Contracts - 135 minutes;

(J) Interests in Real Estate - 180 minutes;

(K) How Home Ownership is Held - 70 minutes; and

(L) Listing Agreements - 120 minutes.

(2) Principles of Real Estate II shall contain the following subtopics, the units of which are outlined in PRINS 2-0, Core Real Estate Course Approval Form, Principles of Real Estate II adopted by reference in §535.64(h) of this title:

(A) Real Estate Math - 200 minutes;

(B) Real Estate Appraisal - 200 minutes;

(C) Real Estate Financing Principles - 210 minutes;

(D) Control of Land Use - 115 minutes;

(E) Specializations - 50 minutes;

(F) Real Estate Investments - 110 minutes;

(G) Leases - 95 minutes;

(H) Property Management - 120 minutes;

(I) Estates, Transfers, and Titles - 200 minutes; and

(J) Closing Procedures/Closing the Real Estate Transaction - 200 minutes.

(d) [(e)] The commission shall grant classroom credit for qualifying courses as follows:

(1) 15 hours of classroom credit will be granted for one semester hour.

(2) 10 hours of classroom credit will be granted for one quarter hour.

(3) 10 hours of classroom credit will be granted for one qualifying continuing education unit.

(e) [(d)] A core real estate course must meet each of the following requirements to be accepted for core credit.

(1) The course contained the content required by §1101.003 of the Act or this section.

(2) The daily course presentation did not exceed ten hours.

(3) The course was of broader applicability than just techniques or procedures utilized by a particular brokerage or organization.

(4) The course was not awarded credit by an accredited college or university based on life experience or solely by examination.

(f) [(e)] A classroom course must meet the following additional requirements to be accepted for core credit.

(1) The course was offered in a location conducive to instruction that is separate and apart from the work area, such as a classroom, training room, conference room, or assembly hall.

(2) The student was present in the classroom for the hours of credit granted by the course provider, or completed makeup in accordance with the requirements of the provider, or by applicable commission rule.

(3) Successful completion of a final examination or other form of final assessment of the student was a requirement for receiving credit from the provider.

(g) [(f)] A correspondence course must meet the following additional requirements to be accepted for core credit.

(1) The course was offered by or in association with an accredited college or university, and students receiving credit for the course were required to pass either:

(A) a proctored final examination administered under controlled conditions to positively identified students and graded by the instructor or, if the examination was graded mechanically or by use of a computer, by the provider, using answer keys approved by the instructor or provider; or

(B) an examination by use of a computer under conditions that satisfy the commission that the examinee is the same person who seeks course credit.

(2) If a correspondence course was offered by a school in association with an accredited college or university, the school has certified to the commission that the course was offered in accordance with the college or university's curriculum accreditation standards. Using the name of the school "in association with" the name of the college or university on the course completion certificate or electronic course submission constitutes certification to the commission that the course

was offered in compliance with the college or university's curriculum accreditation standards.

(h) [(g)] A course offered by an alternative delivery method must meet the following additional requirements to be accepted for core credit.

(1) The course was certified by a distance learning certification center that is acceptable to the commission.

(2) An approved instructor or the provider's coordinator/director graded the written course work; and

(3) The provider:

(A) ensured that a qualified person was available to answer students' questions or provide assistance as necessary;

(B) certified students as successfully completing the course only if the student:

(i) completed all instructional modules required to demonstrate mastery of the material;

(ii) attended any hours of live instruction and/or testing required for a given course; and

(iii) passed either:

(I) a proctored final examination administered under controlled conditions to positively identified students, at a location and by an official approved by the commission and graded by the instructor or, if the examination is being graded mechanically or by use of a computer, by the provider, using answer keys approved by the instructor or provider; or

(II) an examination by use of a computer under conditions that satisfy the commission that the examinee is the same person who seeks credit.

(i) Effective September 1, 2014, Principles of Real Estate I and II as defined by this section must be completed before a student takes any other core course for credit.

(j) After twelve months, or fifteen months for alternative delivery courses, from the effective date of a commission action dividing a core course curriculum into subtopics, a core real estate course, including an advanced or tiered course, which was previously approved by the commission may not be accepted for core course credit unless the course has been revised to meet the new requirements.

(k) A previously approved core course that is not revised to meet the new curriculum requirements may nevertheless be accepted for elective core credit provided it does not violate §535.54(c) of this title (relating to General Provisions Regarding Education and Experience Requirements for a License).

§535.64. *Obtaining Approval to Offer a Course.*

(a) - (e) (No change.)

(f) A course approval expires four years from the date of approval. A course that has been approved by the commission may be offered by the original applicant until the expiration date, except that courses approved prior to January 1, 2011 expire December 31, 2015 [2014]. For a course approved after January 1, 2011 and subsequently revised and approved as required by this section, a school may no longer offer the prior version of the course for core or related credit. If any school other than the original applicant obtains approval from the commission to offer the same course, the expiration date remains unchanged.

(g) (No change.)

(h) The Texas Real Estate Commission adopts by reference PRINS 1-0, Core Real Estate Course Approval Form, Principles of Real Estate I and PRINS 2-0, Core Real Estate Course Approval Form, Principles of Real Estate II approved by the Texas Real Estate Commission in 2013 for use in obtaining approval to offer a Principals of Real Estate I or II course. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.texas.gov.

(i) Each core course must cover all topic areas associated with the course in the Act unless otherwise authorized or amended by this subchapter. Course topic areas required by the Act may be further divided into subtopics by this subchapter. Subtopics may contain subject matter from a single topic area or a combination of topic areas. Subtopics required to be addressed in each core course may be further divided into units. A subtopic may have a required time period ascribed to it by rule.

(j) A core course submitted to the commission for approval must comply with any rule or form adopted by reference which divides selected core course topics into subtopics and units, and must devote the assigned amount of time to each topic or subtopic.

(k) If a form has been adopted by the commission for that purpose, a school applying for approval or revision of a core course shall use the form to indicate the inclusive page numbers where the course materials address each topic or subtopic as required by this subchapter.

(l) If the commission adopts a form that divides topic areas into subtopics and units for a core course required by the Act, a school must revise and supplement a previously approved course no later than 12 months after the effective date of the form adoption. Alternative delivery courses that must be recertified by a distance learning certification center acceptable to the commission must be revised, supplemented, and recertified no later than 15 months after the effective date of the form adoption. A school must provide proof to the commission of the revisions to the course using the form adopted by the commission. A school may not offer a previously approved course for core credit more than 12 months, or 15 months for alternative delivery courses, after the commission has divided topic areas into subtopics unless the commission has approved the revisions required by this subsection.

(m) A school seeking approval of revisions to a previously approved core course pursuant to subsection (l) of this section must pay the fee required by §535.101(b)(13) of this title (relating to Fees). If the school paid a fee for the previous approval, it shall receive a prorated credit for the unexpired time remaining on the approval. The commission shall calculate the unexpired credit by dividing the fee paid by 48 months and multiplying the monthly prorated fee times the number of full months remaining between the date of approval and the expiration date of the prior version. A revised course approved under subsection (l) of this section expires four years from the date of approval.

§535.65. *Operation of Core Education Schools.*

The following provisions apply to schools accredited by the commission to offer core education programs.

(1) - (6) (No change.)

(7) Presentation of courses.

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

(C) To the extent the commission has divided a core course into subtopics and has assigned time periods for each topic or subtopic, a school must ensure that each topic or subtopic is devoted the appropriate amount of time and that all of the units of the topic or subtopic are covered. In the forms adopted by the commission, suggested time periods assigned to each unit of a topic or subtopic are

provided merely for guidance to the schools and instructors. Course subtopics and/or units need not be offered in the order listed on the form.

(8) (No change.)

(9) Course credit and records.

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

(C) A school shall issue to the students successfully completing a course of instruction an official certificate which reflects the school's name, branch, course title, course numbers, and the number of classroom hours (or other recognized educational unit) involved in the course. All core course certificates must show the statutory core course title or other identification as prescribed by the commission. Certificates also must show the date of issuance, the dates the student started and completed the course, and be signed by an official of the school, or if the certificate is computer printed, the school logo may be substituted for the signature. Letters or other official communications also may be provided to students for submission to the commission as evidence of satisfactory completion of the course. Such letters must fully reflect the school name, the course title and number, educational units, the dates the student started and completed the course, and be dated and signed by an official of the school, or if the letter is computer printed, the school logo may be substituted for the signature. A school shall maintain adequate security for completion certificates and letters. Compliance with this requirement will be determined by the commission during all school audits. A school may withhold a student's certificate of completion of a course until the student has fulfilled the student's financial obligation to the school.

(D) - (E) (No change.)

(10) - (11) (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 May 10, 2013.

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Loretta R. DeHay

General Counsel

Texas Real Estate Commission

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For further information, please call: (512) 936-3092



PART 24. TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

CHAPTER 573. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER B. SUPERVISION OF PERSONNEL

22 TAC §573.10

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §573.10, concerning the Supervision of Non-Licensed Persons.

The Board proposes this amendment to clarify that any person can perform musculoskeletal manipulation on animals as an independent contractor under the supervision of a veterinarian, to

show that the provision does not apply only to licensed chiropractors. The necessity for this amendment arises from a conflict between the Veterinary Licensing Act, Texas Occupations Code, which requires that the Board adopt rules to ensure that alternate therapies, including chiropractic treatments, are performed only by a veterinarian or under the supervision of a veterinarian, and the Texas Chiropractic Act, Texas Occupations Code, which limits the use of "chiropractor" and "chiropractic" to licensed chiropractors performing musculoskeletal manipulation exclusively on humans. The Board intends the proposed amendment to prevent §573.10 from being interpreted to state that licensed chiropractors have the legal right to advertise or practice on animals under their chiropractic license. The Board does not regulate the use of the words "chiropractic" or "chiropractor" or define the scope of practice for a licensed chiropractor--those are the exclusive jurisdiction of the Texas Board of Chiropractic Examiners. The Board intends the amended rule only to fulfill the rulemaking requirements of the Veterinary Licensing Act by defining the level of supervision and liability that a veterinarian must assume when he or she refers musculoskeletal manipulation treatments to a person who is not licensed to practice veterinary medicine. The Board does not intend the amendment to substantively change the meaning of the rule.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect, there will be no impact on revenue to either state or local government as a result of the proposed rule. Ms. Oria has also determined that there will be no increase or reduction in costs to either state or local government as a result of enforcing or administering the rule as proposed. Ms. Oria has further determined that the amendment to the rule will have no impact on local employment.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to clarify that individuals who perform musculoskeletal manipulation on animals under veterinary supervision are not necessarily licensed chiropractors and to more clearly delineate for the public the Board's scope of regulation from that of the Texas Board of Chiropractic Examiners.

Ms. Oria has determined that there will not be any economic cost to persons required to comply with the amended rule, because individuals who perform musculoskeletal manipulation on animals and are not licensed as veterinarians in Texas are already required to work only under veterinary supervision. There is thus no adverse impact expected for small or micro businesses and no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment to the rule from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register*. Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendment is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; §801.151(b), which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the

veterinary medicine profession; and §801.151(c), which states that the board shall adopt rules to protect the public and ensure that alternate therapies, including chiropractic treatment, are performed only by a veterinarian or under the supervision of a veterinarian.

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

§573.10. Supervision of Non-Licensed Persons.

(a) With appropriate supervision and after establishing a veterinarian-client-patient relationship, a veterinarian may delegate veterinary care and treatment duties to non-veterinarian employees, or to the following independent contractors:

(1) licensed equine dental providers, in accordance with §573.19 of this title (relating to Dentistry); or

(2) individuals performing any form of musculoskeletal manipulation, including but not limited to animal chiropractic [chiropractors], in accordance with §573.14 of this title (relating to Alternate Therapies--Chiropractic and Other Forms of Musculoskeletal Manipulation).

(b) A veterinarian shall determine when general, direct, or immediate supervision of a non-veterinarian's actions is appropriate, except where such actions of the non-veterinarian may otherwise be prohibited by law. A veterinarian shall consider both the level of training and experience of the non-veterinarian when determining the level of supervision and duties of non-veterinarians.

(c) A veterinarian is subject to discipline if he or she improperly delegates care and/or treatment duties to a non-veterinarian, or fails to properly supervise the non-veterinarian performing delegated duties.

(d) A non-veterinarian shall not perform the following health care services:

(1) surgery;

(2) invasive dental procedures except as allowed for licensed equine dental providers under §573.19 of this title;

(3) diagnosis and prognosis of animal diseases and/or conditions; or

(4) prescribing drugs and appliances.

(e) Euthanasia may be performed by a non-veterinarian only under the immediate supervision of a veterinarian.

(f) A non-veterinarian may administer a rabies vaccine only under the direct supervision of a veterinarian, and only after the veterinarian has properly established a veterinarian-client-patient relationship.

(g) The use of a veterinarian's signature stamp or electronic signature pad on an official health document by a non-veterinarian shall be authorized only under the direct supervision of the vaccinating veterinarian.

(h) When feasible, a veterinarian should delegate greater responsibility to a registered veterinary technician (RVT) registered by the Texas Veterinary Medical Association than to an unlicensed person that is not a RVT.

(1) Under the direct or immediate supervision of a veterinarian, an RVT may:

(A) suture to close existing surgical skin incisions and skin lacerations; and

(B) induce anesthesia.

(2) The procedures authorized to be performed by an RVT in paragraph (1) of this subsection may be performed by a non-RVT only under the immediate supervision of a veterinarian.

(i) Exception for Emergency Care. In an emergency situation where prompt treatment is essential for the prevention of death or alleviation of extreme suffering, a veterinarian may, after determining the nature of the emergency and the condition of the animal, issue treatment directions to a non-veterinarian by means of telephone, electronic mail or messaging, radio, or facsimile communication. The Board may take action against a veterinarian if, in the Board's sole discretion, the veterinarian uses this authorization to circumvent this rule. The veterinarian assumes full responsibility for such treatment. However, nothing in this rule requires a veterinarian to accept an animal treated under this rule as a patient under these circumstances.

(j) Exception for Care of Hospitalized Animals. A non-veterinarian may, in the absence of direct supervision, follow the oral or written treatment orders of a veterinarian who is caring for a hospitalized animal, so long as the veterinarian has examined the animal(s) and a valid veterinarian-client-patient relationship exists.

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 May 13, 2013.

TRD-201301900

Loris Jones

Executive Assistant

Texas Board of Veterinary Medical Examiners

Earliest possible date of adoption: June 23, 2013

For further information, please call: (512) 305-7563



22 TAC §573.14

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §573.14, concerning Alternate Therapies--Chiropractic and Other Forms of Musculoskeletal Manipulation.

The Board proposes this amendment to clarify that the rule only applies to musculoskeletal manipulation performed on animals and is in no way intended to regulate chiropractic treatments that licensed chiropractors perform on humans. The necessity for this amendment arises from a conflict between the Veterinary Licensing Act, Texas Occupations Code, which requires that the Board adopt rules to ensure that alternate therapies including chiropractic treatment are performed only by a veterinarian or under the supervision of a veterinarian, and the Texas Chiropractic Act, Texas Occupations Code, which limits the use of "chiropractor" and "chiropractic" to licensed chiropractors performing musculoskeletal manipulation exclusively on humans. The Board intends the proposed amendment to prevent §573.14 from being interpreted to state that licensed chiropractors have the legal right to advertise or practice on animals under their chiropractic license. The Board does not regulate the use of the words "chiropractic" or "chiropractor" nor define the scope of practice for a licensed chiropractor--those are the exclusive jurisdiction of the Texas Board of Chiropractic Examiners. The Board intends the amended rule only to fulfill the rulemaking requirements of the Veterinary Licensing Act by defining the level of supervision and liability that a veterinarian must assume when he or she refers musculoskeletal manipulation treatments to a person who is not

licensed to practice veterinary medicine. The Board does not intend the amendment to substantively change the meaning of the rule.

The Board also proposes the amendment to employ the term "non-veterinarian employee," which is defined in a proposed amendment to §573.80, which is also published elsewhere in this issue of the *Texas Register*. The Board intends the proposed amendment to clarify and standardize the terminology used across all of Chapter 573 and thereby eliminate confusion regarding and potential conflict in the usage of "employee" in various parts of the chapter. The Board also does not intend this amendment to substantively change the meaning of the rule.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect, there will be no impact on revenue to either state or local government as a result of the proposed rule. Ms. Oria has also determined that there will be no increase or reduction in costs to either state or local government as a result of enforcing or administering the rule as proposed. Ms. Oria has further determined that the amendment to the rule will have no impact on local employment.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to clarify that the Board's rules are not intended to apply to licensed chiropractors performing chiropractic treatments on humans, to more clearly delineate for the public the Board's scope of regulation from that of the Texas Board of Chiropractic Examiners, and to clarify the meaning of "non-veterinarian employee" as used in the Board's rules.

Ms. Oria has determined that there will not be any economic cost to persons required to comply with the amended rule, because individuals who perform musculoskeletal manipulation on animals and are not licensed as veterinarians in Texas are already required to work only under veterinary supervision. There is thus no adverse impact expected for small or micro businesses and no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment to the rule from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register*. Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendment is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; §801.151(b), which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession; and §801.151(c), which states that the board shall adopt rules to protect the public and ensure that alternate therapies, including chiropractic treatment, are performed only by a veterinarian or under the supervision of a veterinarian.

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

§573.14. *Alternate Therapies--Chiropractic and Other Forms of Musculoskeletal Manipulation.*

(a) Definition. For the purpose of this rule, animal chiropractic and other forms of musculoskeletal manipulation (MSM) are systems of therapeutic application of mechanical forces applied manually through the hands or any mechanical device to diagnose, treat, and/or alleviate impaired or altered function of related components of the musculoskeletal system of nonhuman animals. Animal chiropractic [~~Chiropractic~~] and other forms of MSM in nonhuman animals are considered to be alternate therapies in the practice of veterinary medicine.

(b) Treatment using animal chiropractic and other forms of MSM. Animal chiropractic [~~Chiropractic~~] and other forms of MSM may only be performed by the following.

(1) A licensed veterinarian. Animal chiropractic [~~Chiropractic~~] and MSM may be performed by a licensed veterinarian under the following conditions:

(A) a valid veterinarian/client/patient relationship has been established as defined in the Act;

(B) an examination has been made by the licensee to determine that animal chiropractic/MSM will not likely be harmful to the patient; and

(C) the licensee obtains as a part of the patient's permanent record a signed acknowledgment by the owner or other caretaker of the patient that animal chiropractic or MSM is considered by Texas law to be an alternate therapy.

(2) A non-veterinarian employee [~~veterinarian's employee~~] or an independent contractor. A non-veterinarian [~~An~~] employee or an independent contractor may perform these procedures on an animal under the direct or general supervision of the veterinarian if the conditions in paragraph (1)(A) - (C) of this subsection have been met.

(3) An individual to whom the exceptions of the Act, §801.004, apply.

(c) Responsibility. Whether the animal chiropractic/MSM is performed by a veterinarian or a non-veterinarian [~~the veterinarian's~~] employee or an independent contractor working under the supervision of a licensee, the Board will hold the veterinarian to a level of professional judgment as would be exercised by the average Texas veterinarian who performs or recommends chiropractic/MSM treatments in his/her practice.

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

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Loris Jones

Executive Assistant

Texas Board of Veterinary Medical Examiners

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For further information, please call: (512) 305-7563



22 TAC §573.19

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §573.19, concerning Dentistry.

The Board proposes the amendment to add the term "non-veterinarian employee," which is defined in a proposed amendment to §573.80 also published elsewhere in this issue of the *Texas Register*. The Board intends the proposed amendment to clarify and standardize the terminology used across all of Chapter 573, to

eliminate confusion regarding and potential conflict in the usage of "employee" in various parts of the chapter. The Board does not intend the amendment to substantively change the meaning of the rule.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect, there will be no impact on revenue to either state or local government as a result of the proposed rule. Ms. Oria has also determined that there will be no increase or reduction in costs to either state or local government as a result of enforcing or administering the rule as proposed. Ms. Oria has further determined that the amendment to the rule will have no impact on local employment.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to clarify the meaning of "employee" as used in the Board's rules and thereby to clarify the level of liability, supervision, and delegation of tasks required when a veterinarian employs a non-veterinarian to perform dentistry.

Ms. Oria has determined that there will not be any economic cost to persons required to comply with the amended rule, because the amendment does not substantively change the meaning or impact of the rule. There is thus no adverse impact expected for small or micro businesses and no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment to the rule from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register*. Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendment is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter, and §801.151(b), which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession.

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

§573.19. Dentistry.

(a) Dentistry, a subset of the practice of veterinary medicine, is:

(1) The application or use of any instrument or device to any portion of an animal's tooth, gum or any related tissue for the prevention, cure or relief of any wound, fracture, injury or disease of an animal's tooth, gum or related tissue; and

(2) Preventive dental procedures including, but not limited to, the removal of calculus, soft deposits, plaque, stains or the smoothing, filing or polishing of tooth surfaces.

(b) A non-licensed person may not perform any invasive dental procedure, as defined in §573.80 of this title (relating to Definitions), and as limited by subsection (d) of this section.

(c) Nothing in this regulation shall prohibit any person from utilizing cotton swabs, gauze, dental floss, dentifrice, or toothbrushes to clean an animal's teeth.

(d) The following treatments may be performed to an equid by a licensed equine dental provider under general supervision by a veterinarian, and by a non-veterinarian [~~non-licensed~~] employee [~~of a veterinarian~~] under direct supervision by the veterinarian:

- (1) removing sharp enamel points;
- (2) removing small dental overgrowths;
- (3) rostral profiling of the first cheek teeth;
- (4) reducing incisors;
- (5) extracting loose, deciduous teeth;
- (6) removing supragingival calculus;
- (7) extracting loose, mobile, or diseased teeth or dental fragments with minimal periodontal attachments by hand and without the use of an elevator; and
- (8) removing erupted, non-displaced wolf teeth.

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

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Loris Jones

Executive Assistant

Texas Board of Veterinary Medical Examiners

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For further information, please call: (512) 305-7563



SUBCHAPTER C. RESPONSIBILITIES TO CLIENTS

22 TAC §573.20

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §573.20, concerning Responsibility for Acceptance of Medical Care.

The Board proposes the amendment to clarify the Board's interpretation of §801.351 of the Veterinary Licensing Act, Texas Occupations Code, which requires that a veterinarian establish a veterinarian-client-patient relationship (VCPR) prior to practicing veterinary medicine. To establish a VCPR under §801.351, a veterinarian must attain sufficient knowledge of the animal to initiate at least a general or preliminary diagnosis of the animal's medical condition by either examining the animal or making medically appropriate and timely visits to the premises on which the animal is kept. The Board interprets subsection (b)(2) of §801.351, which allows a veterinarian to attain sufficient knowledge of an animal by visiting the premises on which the animal is kept, to apply only to animals that are members of a herd. Thus, the Board interprets §801.351 to require that a veterinarian individually and personally examine all animals that are not members of a herd prior to practicing veterinary medicine on them. The Board believes that simply visiting the premises on which an animal is kept does not provide the veterinarian sufficient information about non-herd animals to make a diagnosis of an individual animal's medical condition. For example, the Board does not believe that a veterinarian can obtain sufficient information about a single cat or dog by simply visiting the home in which

it lives. The proposed amendment therefore states that a veterinarian can only establish a VCPR by visiting the premises on which the animal is kept if the animal is a member of a herd. In conjunction with the proposed amendment to §573.20, the Board has also proposed an amendment to §573.80 elsewhere in this issue of the *Texas Register*, defining the term "herd" that is used in §573.20. The proposed amendment is not a change to either Board policy or to the Board's interpretation of §801.351.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect, there will be no impact on revenue to either state or local government as a result of the proposed rule. Ms. Oria has also determined that there will be no increase or reduction in costs to either state or local government as a result of enforcing or administering the rule as proposed. Ms. Oria has further determined that the amendment to the rule will have no impact on local employment.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to clarify when an individual examination is required to establish or maintain a VCPR.

Ms. Oria has determined that there will not be any economic cost to persons required to comply with the amended rule, because the amendment does not change the Board's interpretation of the Veterinary Licensing Act or the Board's policy and procedures. There is thus no adverse impact expected for small or micro businesses and no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment to the rule from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register*. Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendment is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; §801.151(b), which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession; and §801.151(c), which states that the board shall adopt rules to protect the public.

Texas Occupations Code, Chapter 801, is affected by this proposal.

§573.20. Responsibility for Acceptance of Medical Care.

(a) The decision to accept an animal as a patient is at the sole discretion of a veterinarian. The veterinarian is responsible for determining the diagnosis and course of treatment for an animal that has been accepted as a patient and for advising the client as to the diagnosis and treatment to be provided.

(b) For purposes of establishing a veterinarian-client-patient relationship under §801.351 of the Veterinary Licensing Act, Texas Occupations Code, a veterinarian can obtain sufficient knowledge of an animal by making medically appropriate and timely visits to the premises on which the animal is kept only if the animal is a member of a herd.

(c) [(b)] A veterinarian must inform a client when:

(1) the client has specifically requested that the veterinarian diagnose and/or treat the client's animal; and

(2) the veterinarian reasonably believes there is a likelihood or possibility that another veterinarian may perform some or all of the diagnosis and/or treatment of the patient.

(d) [(e)] Once a patient/client/veterinarian relationship has been established, a veterinarian may discontinue treatment:

(1) at the request of the client;

(2) after the veterinarian substantially completes the treatment or diagnostics prescribed;

(3) upon referral to another veterinarian; or

(4) after notice to the client providing a reasonable period for the client to secure the services of another veterinarian.

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

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Loris Jones

Executive Assistant

Texas Board of Veterinary Medical Examiners

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For further information, please call: (512) 305-7563



SUBCHAPTER G. OTHER PROVISIONS

22 TAC §573.70

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §573.70, concerning Reporting of Criminal Activity.

The Board proposes the amendment to clarify that a licensee must inform the Board when he or she is either charged with a felony or charged with a misdemeanor that is associated with the practice of veterinary medicine. Since only felony charges receive indictments, the proposed change replaces "indictment" with "charged" to encompass all means that prosecutors may employ in bringing criminal charges. The proposed amendment is not intended to require veterinarians to report arrests. Moreover, the Board does not intend the proposed amendment as a change to the Board's policy or interpretation regarding when licensees must report convictions, but rather as a means to clear up confusion that some licensees have expressed over the wording of the current rule.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect, there will be no impact on revenue to either state or local government as a result of the proposed rule. Ms. Oria has also determined that there will be no increase or reduction in costs to either state or local government as a result of enforcing or administering the rule as proposed. Ms. Oria has further determined that the amendment to the rule will have no impact on local employment.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be

to clarify when a licensee must report that he or she has been charged with a crime.

Ms. Oria has determined that there will not be any economic cost to persons required to comply with the amended rule, because there is no material cost to a licensee to report criminal charges to the Board. There is thus no adverse impact expected for small or micro businesses and no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment to the rule from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register*. Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendment is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; §801.151(b), which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession; and §801.151(c), which states that the Board shall adopt rules to protect the public.

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

§573.70. *Reporting of Criminal Activity.*

(a) A licensee or an applicant for a license from the Board shall report to the Board no later than the 30th day after he or she is charged with, or convicted of [~~any indictment for, or a conviction for~~], any misdemeanor related to the practice of veterinary medicine or equine dentistry, or any [~~indictment for or a conviction for a~~] felony.

(b) On a finding by the Board that a licensee has engaged in non-drug related criminal conduct or committed a non-drug related felony or misdemeanor, other than a misdemeanor under the Uniform Act Regulating Traffic or Highways, Texas Civil Statutes, Article 6701d, or a similar misdemeanor traffic offense, the executive director shall notify the district attorney or county attorney of the county in which the licensee resides. The notice must be in writing and contain a copy of the Board's finding and any order of the Board relating to the licensee's conduct.

(c) On a finding by the Board that a licensee has engaged in drug related criminal conduct or committed a drug related felony or misdemeanor, the executive director shall notify the Narcotics Service, Texas Department of Public Safety and/or the U.S. Drug Enforcement Administration. The notice must be in writing and contain a copy of the Board's finding and any order of the Board relating to the licensee's conduct.

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 May 13, 2013.

TRD-201301904



22 TAC §573.80

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §573.80, concerning Definitions.

The Board proposes the amendment to create standardized definitions that clarify the terms "non-veterinarian employee" and "herd" as used throughout Chapter 573. With regard to the definition of "non-veterinarian employee," the Board proposes the definition to clarify that the Board does not use the United States Internal Revenue Service (IRS) definitions of "employee" and "independent contractor" in its rules. Instead, the Board's definition of "non-veterinarian employee" requires that the non-veterinarian employee is paid directly by the veterinarian, rather than being paid directly by the client, regardless of whether the non-veterinarian employee is an employee or an independent contractor under IRS rules. The Board's intent in proposing this amendment is to make the definition of "non-veterinarian employee" more expansive than the IRS definition of employee.

With regard to the definition of "herd," the Board proposes the definition to clarify the Board's long-standing interpretation and understanding the term "herd" as used in veterinary medicine--that a herd animal must be one that lives communally with other animals of the same species and that dogs, cats, and animals that are in individual training or competition are not herd animals. For example, under the proposed definition, dogs and cats raised or kept communally in homes or in animal shelters, racehorses, and show cattle are all not considered herd animals. On the other hand, examples of herd animals under the proposed definition include retired racehorses that no longer train or compete as individuals, exotic animals raised communally by breeders, lab mice, and food production livestock, provided they are managed as a group with other animals of the same species and in the same location. Under the proposed amendment to §573.20 that is also published elsewhere in this issue of the *Texas Register*, a veterinarian can establish a veterinarian-client-patient relationship with a herd simply by visiting the premises on which the animal is kept, while a veterinarian must personally and individually examine an animal that is not herd animal in order to establish a veterinarian-client-patient relationship (VCPR). While it is certainly more efficient to establish a VCPR by visiting premises rather than by individually examining each animal, an individual examination vastly reduces the potential for misdiagnosis, which in turn reduces the potential for economic harm and for endangering public health. The Board therefore proposes this amendment to allow herd medicine only in situations where the economic efficiencies of herd medicine outweigh the potential risk to the public caused by misdiagnosis or incorrect treatment.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect, there will be no impact on revenue to either state or local government as a result of the proposed rule. Ms. Oria has also determined that there will be no increase in cost to state or local government as a result of enforcing or administering the proposed rule. Ms. Oria has determined that there may be a slight decrease in cost to state government, as these clarifying definitions in the proposed rule

may reduce the number of enforcement cases the Board must bring against veterinarians who fail to properly supervise unlicensed persons or failed to properly establish a VCPR prior to practicing veterinary medicine. There is no expected reduction in costs to local government as a result of enforcing or administering the rule as proposed. Ms. Oria has further determined that the amendment to the rule will have no impact on local employment.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to clarify and standardize the terms "non-veterinarian employee" and "herd" in the Board's rules and thereby allow the public to understand better the Board's policies on supervision of non-veterinarian employees and on establishing VCPR.

Ms. Oria has determined that there will not be any economic cost to persons required to comply with the amended rule, because the amendments do not change board policy or procedure. There is thus no adverse impact expected for small or micro businesses and no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed rule from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register*. Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendment is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; §801.151(b), which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession; and §801.151(c), which states that the Board shall adopt rules to protect the public.

Texas Occupations Code, Chapter 801, is affected by this proposal.

§573.80. Definitions.

The following words and terms, when used in the Veterinary Licensing Act (Chapter 801, Texas Occupations Code) or the Rules of the Board (Texas Administrative Code, Title 22, Part 24, Chapters 571, 573, 575, and 577) shall have the following meanings, unless the context clearly indicates otherwise:

(1) Accepted livestock management practices--those practices involving animals raised or produced primarily for food, fiber, or other products for human consumption, and may include the following:

- (A) branding, tattooing, ear tags or identifying marks of any kind;
- (B) tail docking, except cosmetic tail docking that is performed for appearance purposes only;
- (C) earmarking;
- (D) routine dehorning, except cosmetic dehorning that reshapes or alters the poll area for appearance purposes;
- (E) castration;
- (F) non-surgical assistance with birthing;

(G) implantation with approved implant products;

(H) administration of a biologic, except where restricted by law to administration by a veterinarian, and not including deworming by use of stomach tubing;

(I) artificial insemination;

(J) shoeing and trimming hooves; and

(K) application or administration of parasiticides, except where restricted by law.

(2) Designated caretaker--a person to whom the owner of an animal has given specific authority to care for the animal and who has not been designated, by using the pretext of being a designated caretaker, to circumvent the Veterinary Licensing Act (Chapter 801, Texas Occupations Code) by engaging in any aspect of the practice of veterinary medicine (including alternate therapies). A designated caretaker who treats an animal for a condition that the animal was known or suspected of having prior to the person being named a designated caretaker, is presumed to be attempting to circumvent the Veterinary Licensing Act unless the designated caretaker is following the instruction of a veterinarian and is under the appropriate level of supervision per board rules. In this situation, the designated caretaker may present evidence to rebut the presumption.

(3) Food production animals--any mammals, poultry, fowl, fish or other animals that are raised primarily for human food consumption.

(4) Biologic--any serum, vaccine, antitoxin, or antigen used in the prevention or treatment of disease.

(5) Pregnancy testing--the diagnosis of the physical condition of pregnancy by any method other than the gross visual observation of the animal.

(6) Invasive dentistry or invasive dental procedures--exposing of the dental pulp, or performing extractions.

(7) Consultation--the act of rendering professional advice (diagnosis and prognosis) about a specific veterinary medical case, but does not include treatment or surgery.

(8) General Supervision--a veterinarian required to generally supervise a non-veterinarian must be readily available to communicate with the person under supervision.

(9) Direct Supervision--a veterinarian required to directly supervise a non-veterinarian must be physically present on the same premises as the person under supervision.

(10) Immediate Supervision--a veterinarian required to immediately supervise a non-veterinarian must be within audible and visual range of both the animal patient and the person under supervision.

(11) Official Health Documents--any certificate attesting to the health, vaccination status, physical condition and/or soundness of an animal.

(12) Specialist--a veterinarian that is a Board Certified Diplomate of a specialty organization recognized by the American Veterinary Medical Association.

(13) Non-veterinarian employee--an individual paid directly by a veterinarian for work involving the practice of veterinary medicine, as defined in the Veterinary Licensing Act, Texas Occupations Code, §801.002(5), regardless of the defined status of the employment relationship between the individual and the veterinarian under Internal Revenue Service regulations.

(14) Herd--a group of animals of the same species, managed as a group and confined to a specific geographic location. A herd may not include dogs, cats, any animal in individual training, or any animal that competes as an individual.

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 May 13, 2013.

TRD-201301905

Loris Jones

Executive Assistant

Texas Board of Veterinary Medical Examiners

Earliest possible date of adoption: June 23, 2013

For further information, please call: (512) 305-7563



CHAPTER 575. PRACTICE AND PROCEDURE

22 TAC §575.38

The Texas Board of Veterinary Medical Examiners (Board) proposes new §575.38, concerning Proceeding for the Modification or Termination of Agreed Orders and Disciplinary Orders.

The Board proposes new §575.38 in response to a request for rulemaking that asked the Board to create a procedure whereby a licensee who is subject to ongoing discipline under a board order can request to have the order terminated or modified. The procedure proposed in new §575.38 allows a licensee to request an informal conference with the Board's Enforcement Committee and present evidence that the agreed order should be terminated or modified. If the Enforcement Committee finds that modification or termination is appropriate, the Enforcement Committee will issue an agreed order for the licensee to consider. As with other agreed orders issued by the Enforcement Committee, the full Board reviews the agreed modification or termination order and either approves, modifies or denies it. If the Enforcement Committee finds that modification or termination is inappropriate, or if the licensee fails to sign an agreed order, or if the full Board denies an agreed order recommended by the Enforcement Committee, the licensee is not entitled to a contested case hearing before the State Office of Administrative Hearings. Under the proposed new rule, a licensee can only request modification or termination of an agreed order once per year. The Board intends these proposed procedures to allow a means for the Board to evaluate a licensee's request for modification or termination of an agreed order, without overtaxing the limited resources of the Board.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect, there will be no impact on revenue to either state or local government as a result of the proposed rule. Ms. Oria has also determined that there will be no significant increase in cost to state or local government as a result of enforcing or administering the proposed rule, as the Board already holds informal conferences with the Enforcement Committee to decide its disciplinary and licensure issues. Ms. Oria has determined that there will be no expected reduction in costs to state or local government as a result of enforcing or administering the rule as proposed. Ms. Oria has further determined that the new rule will have no impact on local employment.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to allow a means for licensees to receive modification or termination of a board order when the ongoing terms of the order are no longer necessary or appropriate.

Ms. Oria has determined that there will be no economic cost to persons required to comply with the new rule because licensees are not required to attend the informal conference. There is thus no adverse impact expected for small or micro businesses, and no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed new rule from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register*. Comments must be received within 30 days after publication of this proposal in order to be considered.

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

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

§575.38. Proceeding for the Modification or Termination of Agreed Orders and Disciplinary Orders.

(a) This rule is intended to provide a procedure whereby licensees presently subject to a board order can, if otherwise eligible, petition for the modification or termination of their board order.

(b) The decision to modify or terminate all or any part of a board order is at the sole discretion of the Board unless otherwise specified in the licensee's order.

(c) A request for modification or termination of an existing board order must be submitted in writing by the licensee subject to the board order. The writing must specifically detail the desired action being requested.

(d) After receipt of the licensee's petition and an initial determination by board staff of the licensee's eligibility for a hearing to modify or terminate their board order, a date and time for an informal conference with the Board's enforcement committee to consider the licensee's petition for modification or termination of an existing board order shall be set and the licensee shall be provided written notice.

(e) If the licensee desires to submit evidence in support of his or her petition to modify or terminate, the licensee must submit such evidence no less than seven calendar days prior to the informal conference.

(f) When considering a licensee's petition for modification or termination of a board order, the Board or the enforcement committee may consider:

- (1) evidence presented by the licensee;
- (2) the existence of any pending investigations;
- (3) past compliance with the board order;
- (4) the existence of prior board orders;

(5) whether there has been a significant change in circumstances that indicates that it is in the best interest of the public and licensee to modify or terminate the board order;

(6) whether there has been an unanticipated, unique hardship on the licensee as a result of the board order that goes beyond the natural adverse ramifications of the disciplinary action (i.e. impossibility of requirement, geographical problems);

(7) whether the licensee has engaged in special activities that are particularly commendable or so meritorious as to make modification or termination appropriate; and

(8) any other information or evidence the Board or the enforcement committee deems necessary to make an informed decision.

(g) At the conclusion of the informal conference, the enforcement committee shall determine whether to grant the licensee's modification or termination request, in whole or in part. The enforcement committee may deny the licensee's request, or recommend to the Board that the licensee's existing order be modified or terminated.

(1) If the enforcement committee determines that a licensee's order should be modified, the Executive Director, or their designee, shall offer the licensee a modified agreed order with 14 days of the informal conference. If the licensee accepts the modified agreed order, it will be presented to the Board for consideration.

(A) Additional negotiations may be held between board staff and the licensee or the authorized representative. The members of the enforcement committee shall be consulted and must concur with any subsequent substantive modifications to an offered agreed order before it is recommended to the full Board for approval.

(B) If the licensee does not accept a modified agreed order, the licensee's petition for modification or termination is considered denied.

(2) If the enforcement committee determines that a licensee's order should be terminated, the recommendation to terminate an order will be presented to the Board for consideration.

(h) The recommendations of the enforcement committee for modification or termination of an existing order may be adopted, modified or denied by the Board. If the Board approves a modified agreed order with amendments or in lieu of termination of an existing agreed order, the licensee shall have fourteen (14) days from receipt to accept the amended agreed order by signing and returning it to the Board. If a licensee does not sign an amended agreed order or does not respond within the fourteen (14) days, the licensee's request for modification or termination is denied.

(i) If either the enforcement committee or the Board denies the licensee's petition for modification or termination, the licensee is not entitled to a contested case hearing under §575.30 of this title (relating to Contested Case Hearing at SOAH), §801.407 of the Texas Occupations Code, or Chapter 2001 of the Texas Government Code.

(j) Unless the original board order otherwise specifies, modification or termination requests may be made only once a year since the effective date of the original board order or since the effective date of any orders subsequently granting or denying modification or termination of the board order.

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

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Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
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For further information, please call: (512) 305-7563



PART 39. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS

CHAPTER 851. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS LICENSING AND ENFORCEMENT RULES

The Texas Board of Professional Geoscientists (Board) proposes amendments to 22 TAC §§851.20, 851.28, 851.32, and 851.156, concerning the licensure and regulation of Professional Geoscientists.

BACKGROUND AND PURPOSE

The Board proposes amendments to clarify the process for the first renewal of a Professional Geoscientist's (P.G.) license and the late renewal of a P.G. license; to clarify the continuing education requirements for a P.G. license that is renewed for less than one year; and to clarify the P.G. seal requirement when using an electronically-generated seal.

SECTION BY SECTION SUMMARY

An amendment to §851.20 is proposed to remove language from this section and incorporate the removed language into §851.28 for the purpose of clarity. An amendment to §851.28 is proposed to clarify the language and process by which a Professional Geoscientist's license is renewed. It clarifies that a Professional Geoscientist's license is eligible to be renewed for up to three years after the license is expired. The proposed amendment also clarifies that the first renewal of a Professional Geoscientist's license will be prorated to correspond with the license holder's birth month. It also specifies that a P.G. license that is renewed more than sixty days after its expiration date will incur a late penalty fee. An amendment to §851.32 is proposed to clarify the continuing education requirements for a license that has been renewed for less than one year. An amendment to §851.156 is proposed to clarify the P.G. seal requirement when using an electronically-generated seal.

FISCAL NOTE

Charles Horton, Executive Director of the Texas Board of Professional Geoscientists, has determined that for each fiscal year of the first five years the sections are in effect there is no cost to the state as a result of enforcing or administering the sections as proposed.

SMALL AND MICRO-BUSINESS ECONOMIC IMPACT ANALYSIS

Mr. Horton has determined that there will be little to no anticipated economic costs to small businesses or micro-businesses required to comply with proposed amendments to §§851.20, 851.28, 851.32, and 851.156. Consequently, an economic impact statement or regulatory flexibility analysis is not required. There will be no anticipated economic cost to individuals who are required to comply with the proposed amendments. There is no anticipated negative impact on state or local government.

PUBLIC BENEFIT

Mr. Horton has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections is that the Texas Board of Professional Geoscientists' licensing application rules are clarified, licensing renewal guidelines and continuing education requirements are clarified, and the Board will be able to more effectively regulate the public practice of geoscience in Texas, which will protect and promote public health, safety, and welfare.

REGULATORY ANALYSIS OF MAJOR ENVIRONMENTAL RULES

The Board has determined that these proposals are not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. Although Professional Geoscientists and Registered Geoscience Firms play a key role in environmental protection for the state of Texas, this proposal is not specifically intended to protect the environment nor reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Comments on the proposal may be submitted in writing to Charles Horton, Executive Director, Texas Board of Professional Geoscientists, 333 Guadalupe Street, Tower I-530, Austin, Texas 78701; by mail to P.O. Box 13225, Austin, Texas 78711; or by e-mail to chorton@tbpge.state.tx.us. When e-mailing comments, please indicate "Comments on Proposed Rules" in the e-mail subject line. Please submit comments within 30 days following publication of the proposal in the *Texas Register*.

SUBCHAPTER B. P.G. LICENSING, FIRM REGISTRATION, AND GIT CERTIFICATION

22 TAC §§851.20, 851.28, 851.32

STATUTORY AUTHORITY

The proposed amendments are authorized by the Texas Occupations Code §1002.151 which provides that the Board shall adopt and enforce rules consistent with the Texas Geoscience Practice Act (the Act); Texas Occupations Code §1002.154 which provides that Board shall enforce the Act; Texas Occupations Code §1002.262 which provides that the Board shall establish a schedule for license duration and expiration; and Texas Occupation Code §1002.302 which authorizes the Board to establish rules regarding continuing professional education.

The proposed amendments affect Texas Occupations Code, Chapter 1002.

§851.20. *Professional Geoscientist Licensing Requirements and Application Procedure.*

- (a) Requirements for licensure:

(1) Passing score on an examination or examinations required by the Board covering the fundamentals and practice of the appropriate discipline of geoscience documented as specified in §851.21 of this chapter;

(2) A minimum of five years of qualifying work experience during which the applicant has demonstrated being qualified to assume responsible charge of geoscientific work documented as specified in §851.23 of this chapter and Texas Occupations Code §1002.256;

(3) Good moral character as demonstrated by the submission of a minimum of five reference letters submitted on behalf of the applicant attesting to the good moral and ethical character of the applicant as specified in §851.24 of this chapter or as otherwise determined by the Board;

(4) Academic requirements for licensure as specified in Texas Occupations Code §1002.255 and §851.25 of this chapter; and

(5) Supporting documentation of any license requirement, as determined by TBPG staff or the Board, relating to criminal convictions as specified in §851.108 of this chapter; relating to substance abuse issues as specified in §851.109 of this chapter; and relating to issues surrounding reasons the Board may deny a license as specified in the Geoscience Practice Act at Texas Occupations Code §1002.401 and §1002.402.

(b) The Board may accept qualifying work experience in lieu of the education requirement required by Texas Occupations Code §1002.255(a)(2).

(c) Examination requirements and examination procedure: A qualified person who has not passed qualifying licensing examination(s) as specified in §851.21 of this chapter may access one of the following procedures to sit for a qualifying examination(s) in the appropriate discipline:

(1) ASBOG Fundamentals of Geology examination:

(A) Requirements: Completion of the education qualifications for licensure as specified in Texas Occupations Code §1002.255 and §851.25 of this chapter or currently enrolled in a course of study that meets the education requirements for licensure and within two regular semesters of completion of the qualifying course of study.

(B) Procedure:

(i) The applicant shall complete and submit examination application Form [FORM] E and any required attachments to the Board, along with the appropriate fee by the deadline posted on the TBPG website for the examination date desired by the applicant.

(ii) The Board will review the application and inform the applicant of any deficiencies in the application. Upon determination that the requirements have been met, the Board will mail an ASBOG examination application form to the applicant.

(iii) The applicant shall submit the ASBOG examination application form and send the form, along with the examination fee to ASBOG. A copy of the examination application form shall be provided to the Board.

(iv) The applicant shall follow all examination administration procedures and take the examination.

(v) The Board shall notify the applicant of the results of the examination after the Board receives the results from ASBOG.

(2) ASBOG Practice of Geology examination:

(A) Requirements:

(i) Under application for licensure as a Professional Geoscientist with the TBPG.

(ii) Meet all qualifications for licensure in subsection (a) of this section, with the exception of the examination requirement.

(B) Procedure:

(i) The applicant shall complete and submit both Application for Professional Geoscientist (Form [FORM] A), in accordance with the application procedures specified in subsection (d) of this section, along with the appropriate fee and Application for Geology examination (Form [FORM] E) along with the appropriate fee and any required attachments to the Board, by the deadline posted on the TBPG website for the examination date desired by the applicant.

(ii) The Board will review the application and inform the applicant of any deficiencies in the application. Upon determination that the requirements have been met, the Board will mail an ASBOG examination application form to the applicant.

(iii) The applicant shall submit the ASBOG examination application form and send the form, along with the examination fee to ASBOG. A copy of the examination application form shall be provided to the Board.

(iv) The applicant shall follow all examination administration procedures and take the examination.

(v) The Board shall notify the applicant of the results of the examination after the Board receives the results from ASBOG.

(3) Texas Geophysics Examination:

(A) Requirements:

(i) Under application for licensure as a Professional Geoscientist with the TBPG and meet all qualifications for licensure in subsection (a) of this section, with the exception of the examination requirement; or

(ii) Under application for certification as a Geoscientist-in-Training with the TBPG and meet all qualifications for certification as a Geoscientist-in-Training in §851.41 of this chapter with the exception of having passed the Texas Geophysics Examination.

(B) Procedure:

(i) The applicant shall complete and submit both Application for Professional Geoscientist (Form [FORM] A), in accordance with the application procedures specified in subsection (d) of this section, along with the appropriate fee and Application for Texas Geophysics Examination (Form [FORM] F) along with the appropriate fee and any required attachments to the Board.

(ii) The Board will review the application and inform the applicant of any deficiencies in the application. Upon determination that the requirements have been met, the Board will provide Texas Geophysics Examination scheduling and examination payment information to the applicant.

(iii) The applicant shall submit the required information, along with the examination fee to the TBPG.

(iv) The applicant shall follow all examination administration procedures and take the examination.

(v) The Board shall notify the applicant of the results of the examination.

(4) Council of Soil Science Examiners (CSSE) Fundamentals of Soil Science and Practice of Soil Science Examinations: An

applicant who chooses to apply for licensure as a Professional Geoscientist under the discipline of soil science must meet the examination requirements of the CSSE; apply to take the required examinations directly with the CSSE and submit the required fees; follow all examination procedures of the CSSE; take and pass both parts of the examination; and follow CSSE procedures to ensure that the passing scores are forwarded to the Board.

(d) Professional Geoscientist application procedure.

(1) To be eligible for a Professional Geoscientist license under this chapter, an applicant must submit or ensure the transmission (as applicable) of the following to the Board:

(A) A completed, signed, notarized application for licensure as a Professional Geoscientist;

(B) Documentation of having passed an examination as specified in §851.21 of this chapter;

(C) Documentation of having met the experience requirements as specified in §851.23 of this chapter;

(D) A minimum of five (5) reference letters as specified in §851.24 of this chapter;

(E) Official transcript(s), as specified in §851.25 of this chapter, unless the applicant is applying for the license on the basis of subsection (b) of this section;

(F) The application/first year licensing fee as specified in §851.80(b) of this chapter;

(G) Verification of every licensure, current or expired, in any regulated profession in any jurisdiction; and

(H) Any written explanation and other documentation as required by instructions on the application or as communicated by Board staff, if applicable.

(2) Upon receipt of all required materials and fees and satisfying all requirements in this section, the applicant shall be licensed and a unique Professional Geoscientist license number shall be assigned to the license. A new license shall be set to expire at the end of the calendar month occurring one year after the license is issued. Board staff shall send a new license certificate, initial license expiration card, and an initial wallet license expiration card as provided in subsection (m) of this section.

(e) With the initial filing of an application or at anytime that the application remains open, an applicant may request, in writing, licensure by the waiver of one or more qualifications for licensure. Upon written request and a showing of good cause, if the Board determines that the applicant is otherwise qualified for a license, the Board may waive any licensure requirement except for the payment of required fees. An applicant's written request for a waiver of licensure requirements must include a detailed justification for why good cause exists to waive specific licensure requirements. An approval for a waiver request may be recommended to the full Board by an appropriate committee of the Board.

(f) An application is active for one year including the date that it is filed with the Board. After one year an application expires.

(g) Obtaining or attempting to obtain a license by fraud or false misrepresentation is grounds for an administrative sanction and/or penalty.

(h) Applications are not reviewed until the application and fee have been received in the TBPG office. Applicants are initially notified of any deficiencies in the application within approximately thirty (30) days after the receipt of the application and fee.

(i) An applicant should respond to a deficiency notice within forty-five (45) days from the date of notification for applicants to correct deficiencies. If an applicant does not respond to a deficiency notice or does not ensure that necessary documents are provided to the TBPG office, the application will expire as scheduled one year after the date it became active.

(j) An original license is valid for a period of one year from the date it is issued. Upon the first timely renewal of a license, the renewal period shall be from the date the license is renewed until the last day of the next birth month for the licensee. ~~[The fee for the first renewal period shall be prorated. The second timely renewal and every subsequent timely renewal period shall be the one year period following the expiration date of the license.]~~ A license that is renewed late (one day after the expiration date of the license through the end of the 36th month past the expiration date of the license) is renewed in accordance to the rules set forth in §851.28 of this chapter.

(k) A license number is not transferable.

(l) Any violation of the law or the rules and regulations resulting in disciplinary action for one license may result in disciplinary action for any other license.

(m) Altering a license certificate, certificate expiration card, or wallet expiration card in any way is prohibited and is grounds for a sanction and/or penalty.

(n) The Professional Geoscientist license is the legal authority granted the holder to actively practice geoscience upon meeting the requirements as set out in the Act and this chapter. When a license is issued, a license certificate, the first license certificate expiration card, and the first wallet license card is provided to the new licensee. The license certificate shall bear the name of the licensee, the licensee's unique Professional Geoscientist license number, the discipline in which the person is licensed, and the date the license was originally issued. The license certificate is not valid proof of licensure unless the license certificate expiration card is accompanying the license certificate and the date on the license certificate card is not expired. The license certificate expiration card shall bear the name of the licensee, the licensee's unique Professional Geoscientist license number, and the date the license will expire, unless it is renewed. The wallet license card shall bear the name of the licensee, the licensee's unique Professional Geoscientist license number, the date the license was originally issued, the discipline in which the person is licensed, and the date the license will expire, unless it is renewed.

(o) An applicant who is a citizen of another country and is physically present in this country shall show sufficient documentation to the Board to verify the immigration status for the determination of their eligibility for a professional license in accordance with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

(p) All applications must be submitted on paper and on forms prescribed by the Board with original signatures, notaries, and seals.

(q) Any transcripts, reference statements, evaluations, experience records or other similar documents submitted to the Board in previous applications may be included in a current application provided the applicant requests its use in writing at the time the application is filed and the Executive Director authorizes its use.

(r) An application may be forwarded to the Board at the Executive Director's discretion.

(s) Once the requirements for licensure have been satisfied and the new license and license certificate has been issued, within sixty (60) days of notification the new licensee must then:

(1) Obtain a seal and place the seal imprint on a form provided by the Board and return it to the Board office;

(2) Register as a sole proprietor, if the licensee plans to engage in the independent practice of geoscience as an unincorporated sole proprietor, as described in §851.30 of this chapter on a full or part-time basis; and

(3) Provide to the Board the following information: the name of every firm, governmental agency, or other organization with which the licensee is employed on a full-time or part-time basis, if the employment includes the practice of geoscience. If the practice of geoscience includes the public practice of geoscience, the licensee shall report the employer's Geoscience Firm registration number, unless the employer is a governmental agency or otherwise exempt from the requirement of registration with the Board.

§851.28. Professional Geoscientist License Renewal and Reinstatement.

(a) The Board will mail a renewal notice to the last recorded address of each license holder, at least sixty (60) days prior to the date the license is about to expire. Regardless of whether the renewal notice is received, it is the sole responsibility of the license holder to pay the required renewal fee together with any applicable penalty at the time of payment. A licensee may renew a current license up to sixty (60) days in advance of its expiration. An expired license may be renewed within three years of the license expiration date. [online by accessing the process from the Board's website. A licensee may also renew by paper application for renewal (form B) by accessing the form on the agency website or calling for a copy of the form up to ninety (90) days in advance of the expiration of the license through up to but not including three years after the expiration of the license.]

(b) Upon the first renewal of a license, the licensure period will be prorated so that the new expiration date will be the last day of the license holder's birth month. The prorated renewal period will be for a minimum of four months and a maximum of fifteen months. Every subsequent expiration date shall be set for one year past the previous renewal date.

~~[(b) The first renewal period shall be set no more than 12 months from the first renewal date and the expiration of the first renewal term shall be set to coincide with the last day of the licensee's birth month. The first year renewal fee shall be prorated for the number of months in the first renewal period. Every subsequent expiration date shall be set for one year past the previous renewal date.]~~

(c) A late penalty fee of \$50 will be charged for a complete [each] renewal application and fee received or postmarked sixty-one (61) days after the licensee's expiration date. If the complete renewal application and fee is not deficient and is received or is postmarked on or before sixty (60) days after the date of expiration, a late penalty fee shall not apply. [; unless the renewal is received by mail or courier and is postmarked on or before sixty (60) days after the date of expiration.]

(d) The Board may refuse to renew a license if the license holder is the subject of a lawsuit regarding his/her practice of geoscience or is found censurable for a violation of Board laws or rules that would warrant such disciplinary action under §851.157 of this chapter.

(e) A license that has been expired for sixty (60) days or less may be renewed by submitting a renewal application (Form B) and the annual renewal fee to the Board [and the continuing education documentation as required in §851.32 of this chapter]. The renewal fee for a license that is renewed within [the first] sixty (60) days of expiration is the fee that was [or is] in place at the time the license expired. The licensee must also submit a signed statement of affirmation (Form

VII) indicating whether the licensee practiced as a P.G. when their license was expired. Information regarding unlicensed non-exempt public geoscience practice received under this section shall be referred to the enforcement division for appropriate action that could include the initiation of a complaint by the Board.

(f) A license that has been expired for more than two months [sixty (60) days] and less than ten months [three years] from the license [original] expiration date may be renewed by submitting to the Board a renewal application (Form B), the annual renewal [and] fee, and the late penalty fee[; any increase in fees as required by §851.80 of this chapter, and the continuing education documentation as required in §851.32 of this chapter. The licensee must also submit a signed affirmation indicating whether the licensee practiced as a P.G. when their license was expired]. The renewal fee for a license that is renewed for more than two months and less than ten months [within the first year] of expiration is the fee that was [or is] in place at the time the license expired. The licensee must also submit a signed statement of affirmation (Form VII) indicating whether the licensee practiced as a P.G. when their license was expired. Information regarding unlicensed non-exempt public geoscience practice received under this section shall be referred to the enforcement division for appropriate action that could include the initiation of a complaint by the Board.

(g) A license that has expired for ten months or more [than one year] but less than three years after the license [original] expiration date may be renewed by submitting to the Board a [an annual] renewal application (Form B), [and fee, plus] the annual renewal fee for each year missed plus the current year's renewal fee, and [that was in place at each expiration/renewal that would have occurred if the license had been renewed on time each year since it expired,] the late penalty fee [which would have applied after every scheduled license renewal was delinquent for sixty (60) days, and proof of having met the continuing education requirements as required in §851.32(e) of this chapter]. The licensee must also submit a signed statement of affirmation (Form VII) indicating whether the licensee practiced as a P.G. when the license was expired. If an applicant for renewal who has met the requirements for renewal has practiced as a P.G. with the license expired, [unless certain allegations of misconduct are present,] the license shall be renewed. Information regarding unlicensed practice received under this section shall be referred to the enforcement division for appropriate action that could include the initiation of a complaint by the Board.

(h) A license that is allowed to expire for a period of three years after the license [original] expiration date is permanently expired and may not be renewed. The former license holder may re-apply for a new license as provided by the Act and applicable Board rules and will have to meet all licensure requirements in said Act and rules at the time of re-application.

(i) As per §1002.403 of the Act, the Board may suspend or revoke a license as disciplinary action against a license holder who is found censurable for a violation of the Act or rules.

(1) A license that has been suspended can be reinstated by the Board only if the suspended licensee complies with all conditions of the suspension, which may include payment of fines, continuing education requirements, participation in a peer review program or any other disciplinary action outlined in §1002.403 of the Act.

(2) A license that has been revoked can be re-instated only if by a majority vote the Board approves reinstatement, given the applicant:

(A) Re-applies and submits all required application materials and fees;

(B) Successfully completes an examination in the required discipline of geoscience being sought for reinstatement if the applicant has not previously passed said examination; and

(C) Provides evidence to demonstrate competency and that future non-compliance with the statute and rules of the Board will not occur.

(j) Pursuant to Texas Occupations Code §55.002, a license holder is exempt from any increased fee or other penalty imposed in this section for failing to renew the license in a timely manner if the license holder provides adequate documentation, including copies of orders, to establish to the satisfaction of the Board that the license holder failed to renew in a timely manner because the license holder was serving on active duty in the United States armed forces outside of Texas.

(k) The application fee is non-refundable.

§851.32. *Continuing Education Program.*

(a) Each license holder shall meet the Continuing Education Program (CEP) requirements for professional development as a condition for license renewal.

(b) Terms used in this section are defined as follows:

(1) Professional Development Hour (PDH)--A contact hour (clock hour) of CEP activity. PDH is the basic unit for CEP reporting.

(2) Continuing Education Unit (CEU)--Unit of credit customarily used for continuing education courses. One continuing education unit equals 10 hours of class in an approved continuing education course.

(3) College/Unit Semester/Quarter Hour--Credit for course in a discipline of geoscience or other related technical elective of the discipline.

(4) Course/Activity--Any qualifying course or activity with a clear purpose and objective which will maintain, improve, or expand the skills and knowledge relevant to the license holder's field of practice.

(c) Every P.G. license holder is required to obtain 15 continuing education hours (PDH units) [~~PDH units~~] during a standard [the] renewal period year (one year). The required PDH units needed for a license renewal for a period less than one year per §851.28(b) of this chapter shall be prorated.

(d) A minimum of 1 PDH per renewal period must be in the area of professional ethics, roles and responsibilities of Professional Geoscientists, or review on-line of the Texas Geoscientist Practice Act and Board rules.

(e) If a license holder exceeds the annual requirement in any renewal period, a maximum of 30 PDH units may be carried forward into the subsequent renewal periods.

(f) PDH units may be earned as follows:

(1) Successful completion or auditing of college credit courses.

(2) Successful completion of continuing education courses, either offered by a professional or trade organization, university or college, or offered in-house by a corporation, other business entity, professional or technical societies, associations, agencies, or organizations, or other group.

(3) Successful completion of correspondence, on-line, televised, videotaped, and other short courses/tutorials.

(4) Presenting or attending qualifying seminars, in-house courses, workshops, or professional or technical presentations made at meetings, conventions, or conferences sponsored by a corporation, other business entity, professional or technical societies, associations, agencies, or organizations, or other group.

(5) Teaching or instructing as listed in paragraphs (1) - (4) of this subsection.

(6) Authoring published papers, articles, books, or accepted licensing examination items.

(7) Active participation in professional or technical societies, associations, agencies, or organizations, including:

(A) Serving as an elected or appointed official;

(B) Serving on a committee of the organization; or

(C) Serving in other official positions.

(8) Patents Issued.

(9) Engaging in self-directed course work.

(10) Software Programs Published.

(g) All activities described in subsection (f) of this section shall be relevant to the practice of a discipline of geoscience and may include technical, ethical, or managerial content.

(h) The conversion of other units of credit to PDH units is as follows and subject to subsection (g) of this section:

(1) 1 College or unit semester hour--15 PDH.

(2) 1 College or unit quarter hour--10 PDH.

(3) 1 Continuing Education Unit--10 PDH.

(4) 1 Hour of professional development in course work, seminars, or professional or technical presentations made at meetings, conventions, or conferences--1 PDH.

(5) 1 Hour of professional development through self-directed course study (Not to exceed 5 PDH)--1 PDH.

(6) Each published paper or article--10 PDH and book--45 PDH.

(7) Active participation, as defined in subsection (f)(7) of this section, in professional or technical society, association, agency, or organization (Not to exceed 5 PDH per year)--1 PDH.

(8) Each patent issued--15 PDH.

(9) Each software program published--15 PDH.

(10) Teaching or instructing as described in subsection (f)(5) of this section--3 times the PDH credit earned.

(i) Determination of Credit:

(1) The Board shall be the final authority with respect to whether a course or activity meets the requirements of this chapter.

(2) The Board shall not pre-approve or endorse any CEP activities. It is the responsibility of each license holder to use his/her best professional judgment by reading and utilizing the rules and regulations to determine whether all PDH credits claimed and activities being considered meet the continuing education requirement. However, a course provider may contact the Board for an opinion for whether or not a course or technical presentation would meet the CEP requirements.

(3) Credit for college or community college approved courses will be based upon course credit established by the college.

(4) Credit for qualifying seminars and workshops will be based on one PDH unit for each hour of attendance. Attendance at qualifying programs presented at professional and/or technical society meetings will earn PDH units for the actual time of each program.

(5) Credit for self-directed course work will be based on one PDH unit for each hour of study and is not to exceed 5 PDH per renewal period. Credit determination for self-directed course work is the responsibility of the license holder and subject to review as required by the Board.

(6) Credit determination for activities described in subsection (h)(6) of this section is the responsibility of the license holder and subject to review as required by the Board.

(7) Credit for activity described in subsection (h)(7) of this section requires that a license holder serve as an officer of the organization, actively participate in a committee of the organization, or perform other activities such as making or attending a presentation at a meeting or writing a paper presented at a meeting. PDH credits are not earned until the end of each year of service is completed.

(8) Teaching credit, as defined in subsection (f)(5) of this section, is valid for teaching a course or seminar for the first time only.

(j) The license holder is responsible for maintaining records to be used to support credits claimed. Records required include, but are not limited to:

(1) A log, on a form provided by TBPG, showing the type of activity claimed, sponsoring organization, location, duration, instructor's or speaker's name, and PDH credits earned; and

(2) Attendance verification records in the form of completion certificates, receipts, attendance roster, or other documents supporting evidence of attendance.

(k) The license holder must submit CEP certification on the log form provided by TBPG and a list of each activity, date, and hours claimed that satisfy the CEP requirement for that renewal year when audited. A percentage of the licenses will be randomly audited each year.

Figure: 22 TAC §851.32(k) (No change.)

(l) CEP records for each license holder must be maintained for a period of three years by the license holder.

(m) CEP records for each license holder are subject to audit by the Board or its authorized representative.

(1) Copies must be furnished, if requested, to the Board or its authorized representative for audit verification purposes.

(2) If upon auditing a license holder, the Board finds that the activities cited do not fall within the bounds of educational, technical, ethical, or professional management activities related to the practice of geoscience; the Board may require the license holder to acquire additional PDH as needed to fulfill the minimum CEP requirements.

(n) A license holder may be exempt from the professional development educational requirements for one of the following reasons listed in paragraphs (1) - (4) of this subsection:

(1) New license holders that were licensed by all [way] of a required licensing examination shall be exempt for their first renewal period.

(2) A license holder serving on active duty and deployed outside the United States, its possessions and territories, in or for the military service of the United States for a period of time exceeding one hundred twenty (120) consecutive days in a year shall be exempt from obtaining the professional development hours required during that year.

(3) A license holder employed outside the United States, its possessions and territories, actively engaged in the practice of geoscience for a period of time exceeding three hundred (300) consecutive days in a year shall be exempt from obtaining the professional development hours required during that year except for five (5) hours of self-directed course work.

(4) License holders experiencing long term physical disability or illness may be exempt. Supporting documentation must be furnished to the Board.

(o) A license holder may bring an expired license to active status by obtaining all delinquent PDH units. However, if the total number required to become current exceeds 30 units, then 30 units shall be the maximum number required.

(p) Noncompliance:

(1) If a license holder does not certify that CEP requirements have been met for a renewal period, the license shall be considered expired and subject to late fees and penalties.

(2) A determination by audit that CEP requirements have been falsely reported shall be considered to be misconduct and will subject the license holder to disciplinary action.

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 May 8, 2013.

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Charles Horton

Executive Director

Texas Board of Professional Geoscientists

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For further information, please call: (512) 936-4405



SUBCHAPTER D. COMPLIANCE AND ENFORCEMENT

22 TAC §851.156

STATUTORY AUTHORITY

The proposed amendments are authorized by the Texas Occupations Code §1002.151 which provides that the Board shall adopt and enforce rules consistent with the Texas Geoscience Practice Act (the Act); Texas Occupations Code §1002.154 which provides that Board shall enforce the Act; and Texas Occupation Code §1002.263 which authorizes the Board to establish guidelines regarding a P.G.'s seal.

The proposed amendments affect Texas Occupations Code, Chapter 1002.

§851.156. *Professional Geoscientist's Seal.*

(a) The purpose of the Professional Geoscientist's seal is to show that geoscience work was performed by a qualified licensed Professional Geoscientist and to identify the Professional Geoscientist who performed the work [assure the user of the geoscience product that the work has been performed by the Professional Geoscientist named and to identify the Professional Geoscientist's work].

(b) The Professional Geoscientist shall utilize [the designation "P.G." or the] titles set forth in the Texas Geoscience Practice Act (Act), §1002.251. Physical seals of two different sizes will be acceptable: a

pocket seal (the size commercially designated as 1-5/8-inch seal) or desk seal (commercially designated as a two-inch seal) to be of the design shown in this subsection. Computer-applied seals may be of a reduced size provided that the Professional Geoscientist's name and number are clearly legible. [All seals obtained and used by license holders must contain any given name or initial combination except for nicknames, provided the surname currently listed with the Board appears on the seal and in the usual written signature.]
Figure: 22 TAC §851.156(b) (No change.)

(c) A Professional Geoscientist [Professional Geoscientists] shall only seal work [done by them or] performed by or under his/her [their] direct supervision. Upon sealing, the Professional Geoscientist takes [Professional Geoscientists take] full professional responsibility for that work.

(d) It shall be misconduct to knowingly sign or seal any geoscience document or work [product] if its use or implementation may endanger the health, safety[, property] or welfare of the public.

(e) It shall be [misconduct or an] unlawful [act] for a license holder whose license has been revoked, suspended, or has expired, to sign or affix a seal on any document or work [product].

(f) All seals utilized [obtained and used] by a license holder [license holders] shall be capable of leaving a permanent ink or impression [representation] on the geoscience work[, or shall be capable of placing a computer-generated representation in a computer file containing the geoscience work].

(g) [(4)] Electronically conveyed geoscience work requiring [that would require] a seal [as per subsection (j) of this section] must contain an electronic seal and electronic signature [if hard copies with the licensee's ink or embossed seal and original signature will not be submitted]. Such seals should conform to the design requirements set forth in this section [in subsection (b) of this section].

(1) A Professional Geoscientist must employ reasonable security measures to make the document unalterable. The Professional Geoscientist shall maintain the security of his/her electronic seal and electronic signature. The following methods are allowed:

(A) The Professional Geoscientist may electronically copy the original hard copy of the work that bears his/her seal, original signature, and date and transmit this work in a secure electronic format.

(B) The Professional Geoscientist may create an electronic seal and electronic signature for use in transmitting geoscientific work by making a secure electronic graphic of his/her original seal and signature.

(2) The use of an electronically-generated signature is not allowed by changing the word processing font from a "normal text" to a signature/handwriting font.

(A) Shown below is a sample of an unauthorized electronically-generated signature using the Lucida Handwriting FONT.
Figure: 22 TAC §851.156(g)(2)(A)

(B) Shown below is a sample of a digital image of a geoscientist's seal and original signature saved as a digital image (JPEG Format, for example).
Figure: 22 TAC §851.156(g)(2)(B)

[(2)] Geoscience work transmitted in an electronic format that contains a computer generated seal shall be accompanied by the following text or similar wording: "The seal appearing on this document was authorized by (Example: Leslie H. Doe, P.G. 0112) on (date).", unless accompanied by an electronic signature as described in this section. A license holder may use a computer-generated repre-

sentation of his or her seal on electronically conveyed work; however, the final hard copy documents of such geoscience work must contain an original signature of the license holder(s) and date of the documents must be accompanied by an electronic signature as described in this section.]

[(3)] A scanned image of an original signature shall not be used in lieu of an original signature or electronic signature. An electronic signature is a digital authentication process attached to or logically associated with an electronic document and shall carry the same weight, authority, and effects as an original signature. The electronic signature, which can be generated by using either public key infrastructure or signature dynamics technology, must be as follows:]

[(A)] Unique to the person using it;]

[(B)] Capable of verification;]

[(C)] Under the sole control of the person using it; and]

[(D)] Linked to a document in such a manner that the electronic signature is invalidated if any data in the document are changed.]

(h) [(g)] Preprinting of blank forms with a Professional Geoscientist's seal[, or the use of decal or other seal replicas] is prohibited. [Signature reproductions, including but not limited to rubber stamps or computer-generated signatures, shall not be used in lieu of the Professional Geoscientist's actual signature.]

(i) Signature reproductions, including but not limited to rubber stamps, decals or other replicas, and electronically-generated signatures shall not be used in lieu of the Professional Geoscientist's actual signature or a true digital graphic copy of the actual signature.

(j) [(h)] A Professional Geoscientist [Professional Geoscientists] shall take reasonable steps to insure the security of his/her [their] physical or electronically-generated [computer-generated] seals at all times. In the event of loss of a seal, the Professional Geoscientist will immediately give written notification of the facts concerning the loss to the Executive Director.

(k) [(i)] Professional Geoscientists shall affix an unobscured seal, original signature, and date of signature to the originals of all documents containing the final version of any geoscience work as outlined in subsection (l) [(j)] of this section before such work is released from their control. Preliminary documents released from their control shall identify the purpose of the document, the Professional Geoscientist(s) of record and the Professional Geoscientist license number(s), and the release date by placing the following text or similar wording instead of a seal: "This document is released for the purpose of (Examples: interim review, mark-up, drafting) under the authority of (Example: Leslie H. Doe, P.G. 0112) on (date). It is not to be used for (Examples: construction, bidding, permit) purposes."

(l) [(j)] The Professional Geoscientist shall sign, seal and date the original title sheet of bound geoscience reports, specifications, details, calculations or estimates, and each separable sheet of maps, drawings, cross sections or other figures representing geoscientific work regardless of size or binding. All other geoscience work, including but not limited to research reports, opinions, recommendations, evaluations, addenda, documents produced for litigation, and geoscience software shall bear the Professional Geoscientist's printed name, date, signature and the designation "P.G." or other terms allowed under §1002.251 of the Act, unless the work is exempt under §1002.252 of the Texas Occupations Code. Electronic correspondence of this type shall include an electronic signature as described in subsection (f) of this section or be followed by a hard copy containing

the Professional Geoscientist's printed name, date, signature and the designation "P.G." or other terms allowed under §1002.251 of the Act.

(m) [~~(k)~~] Work performed by more than one Professional Geoscientist shall be sealed in a manner such that all geoscience can be clearly attributed to the responsible Professional Geoscientist or Professional Geoscientists. When sealing plans or documents on which two or more Professional Geoscientists have worked, the seal of each Professional Geoscientist shall be placed on the plan or document with a notation describing the work done under each Professional Geoscientist's responsible charge.

(n) [~~(h)~~] Licensed employees of the state, its political subdivisions, or other public entities are responsible for sealing their original geoscience work; however, such licensed employees engaged in review and evaluation for compliance with applicable law or regulation of geoscience work submitted by others, or in the preparation of general planning documents, a proposal for decision in a contested case or any similar position statement resulting from a compliance review, need not seal the review reports, planning documents, proposals for decision, or position statements.

(o) [~~(m)~~] When a Professional Geoscientist elects to use standards or general guideline specifications, those items shall be clearly labeled as such, shall bear the identity of the publishing entity, and shall be:

- (1) Individually sealed by the Professional Geoscientist; or
- (2) Specified on an integral design/title/contents sheet that bears the Professional Geoscientist's seal, signature, and date with a statement authorizing its use.

(p) [~~(n)~~] Alteration of a sealed document without proper notification to the responsible Professional Geoscientist is misconduct or an offense under the Act.

(q) [~~(o)~~] A license holder is not required to use a seal for a work product for which the license holder is not required to hold a license under Texas Occupations Code, Chapter 1002.

(r) [~~(p)~~] All geoscience documents released, issued, or submitted by a licensee shall clearly indicate the Geoscience Firm name and registration number by which the Professional Geoscientist is employed. If the Professional Geoscientist is employed by a local, State, or Federal Government agency or a firm that is exempt from the requirement of registration under Texas Occupations Code, Chapter 1002, Subchapter H, then only the name of the agency shall be required.

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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Charles Horton

Executive Director

Texas Board of Professional Geoscientists

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For further information, please call: (512) 936-4405

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 65. WILDLIFE

SUBCHAPTER N. MIGRATORY GAME BIRD PROCLAMATION

31 TAC §§65.314, 65.315, 65.318 - 65.321

The Texas Parks and Wildlife Department (the department) proposes amendments to §§65.314, 65.315, and 65.318 - 65.321, concerning the Migratory Game Bird Proclamation. The United States Fish and Wildlife Service (Service) issues annual frameworks for the hunting of migratory game birds in the United States. Regulations adopted by individual states may be more restrictive than the federal frameworks, but may not be less restrictive. Responsibility for establishing seasons, bag limits, means, methods, and devices for harvesting migratory game birds within Service frameworks is delegated to the Texas Parks and Wildlife Commission (Commission) under Parks and Wildlife Code, Chapter 64, Subchapter C. Parks and Wildlife Code, §64.022, authorizes the Commission to delegate rulemaking authority to the Executive Director. 31 Texas Administrative Code §65.313(f) authorizes the Executive Director, after notification of the Chairman of the Commission, to engage in rulemaking.

At present, the Service has not issued either of the annual regulatory frameworks for migratory game birds. Typically, the Service issues the preliminary early-season (dove, teal, snipe, woodcock, rails, gallinules) frameworks in late June and the preliminary late-season (ducks, geese, cranes) frameworks in early August. The Service typically issues the final early-season frameworks in early August and the final late-season frameworks in late September. Because no Commission meetings occur between May and August, the early-season regulations are adopted by the Executive Director in early July.

The proposed amendment to §65.314, concerning Zones and Boundaries for Early Season Species, would expand the Special White Winged Dove Area (SWWDA). For the last two decades, white-winged dove populations have steadily expanded both their numbers and their geographical extent. The department believes this expansion warrants enlargement of the SWWDA in South Texas to provide more hunting opportunity. The Service has determined that expansion of the SWWDA will not result in any negative impacts to dove populations in South Texas. The department has determined, based on scientific findings of fact, that the zone expansion will not result in either depletion or waste.

The proposed amendment to §65.315, concerning Open Seasons and Bag and Possession Limits--Early Season, would adjust the season dates for early-season migratory game birds to allow for calendar shift (i.e., to ensure that seasons open on the desired day of the week, since dates from a previous year do not fall on the same days in following years).

The proposed amendment to §65.315 also would implement a 16-day statewide teal season to run from September 14 - 29, 2013, which must be approved by the Service before it can be implemented. If the Service does not approve a 16-day season, the department would instead adopt a nine-day season to run from September 21 - 29, 2013. The department cautions that the federal frameworks could alter the total number of days for teal hunting if population data warrant. By federal rule, the

number of days in the September teal season count against the 107 days of total hunting opportunity allowed for ducks, coots, and mergansers. In addition, the proposed amendment would implement a 16-day early Canada goose season in the Eastern Zone to run from September 14 - 29, 2013 (with the proviso that if a nine-day teal season is selected, the early Canada goose season would run concurrently).

The proposed amendment to §65.318, concerning Open Seasons and Bag and Possession Limits--Late Season, would lengthen the first segment in the North Zone to include an additional seven days after the week of Thanksgiving and open the second segment one week later than last year. The proposed amendment is intended to provide additional hunter opportunity because the split in the North Zone season will not be concurrent with the split in the South Zone season. The seasons in the High Plains Mallard Management and South Zone retain the season structure and bag limits from last year and adjust the season dates to account for calendar shift.

The portion of the proposed amendment to §65.318 involving goose seasons would open the season for white-fronted geese two weeks later than last year in the Eastern Zone and run it for the maximum number of days allowed under the federal frameworks. Department survey data indicate that hunter preference is for a later opener that closes concurrent with both the duck and other goose seasons in the Eastern Zone. The remaining seasons (Western Goose Zone, Sandhill Crane, and Youth Waterfowl) retain the season structure and bag limits from last year and adjust the season dates to account for calendar shift.

The proposed amendment to §65.319, concerning Extended Falconry Season--Early Season Species, would adjust season dates to reflect calendar shift.

The proposed amendment to §65.320, concerning Extended Falconry Season--Late Season Species, would adjust season dates to reflect calendar shift.

The proposed amendment to §65.321, concerning Special Management Provisions, would adjust the dates for the conservation season on light geese to account for calendar shift.

The proposed amendments are generally necessary to implement commission policy to provide the greatest hunter opportunity possible, consistent with hunter and landowner preference for starting dates and segment lengths, under frameworks issued by the Service. The Service has not issued regulatory frameworks for the 2013 - 2014 hunting seasons for migratory game birds; thus, the department cautions that the proposed regulations are tentative and may change significantly, depending on federal actions prior to the release of the early-season frameworks in late June and the late-season frameworks in August. However, it is the policy of the commission to adopt the most liberal provisions possible, consistent with hunter preference, under the Service frameworks in order to provide maximum hunter opportunity.

Clayton Wolf, Wildlife Division Director, has determined that for the first five years that the amendments as proposed are in effect, there will be no additional fiscal implications to state or local governments of enforcing or administering the rules as proposed.

Mr. Wolf also has determined that for each of the first five years the proposed rules are in effect, the public benefit anticipated as a result of enforcing the rules as proposed will be the department's discharge of its statutory obligation to manage and

conserve the state's populations of migratory game birds for the use and enjoyment of the public, consistent with the principles of sound biological management.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. The department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that the proposed rules regulate various aspects of recreational license privileges that allow individual persons to pursue and harvest migratory game bird resources in this state and therefore do not directly affect small businesses or micro-businesses. Therefore, neither the economic impact statement nor the regulatory flexibility analysis described in Government Code, Chapter 2006, is required.

There also will be no adverse economic effect on persons required to comply with the rules as proposed.

The department has not filed a local impact statement with the Texas Workforce Commission as required by Government Code, §2001.022, as the department has determined that the rules as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2008, as a result of the proposed rules.

Comments on the proposed rules may be submitted to Robert Macdonald, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4775 or 1-800-792-1112 (e-mail: robert.macdonald@tpwd.state.tx.us).

The amendments are proposed under Parks and Wildlife Code, Chapter 64, which authorizes the Commission and the Executive Director to provide the open season and means, methods, and devices for the hunting and possessing of migratory game birds.

The proposed amendments affect Parks and Wildlife Code, Chapter 64.

§65.314. Zones and Boundaries for Early Season Species.

- (a) Rails: statewide.
- (b) Mourning and white-winged doves.

(1) North Zone: That portion of the state north of a line beginning at the International Bridge south of Fort Hancock; thence north along FM 1088 to State Highway 20; thence west along State Highway 20 to State Highway 148; thence north along State Highway 148 to Interstate Highway 10 at Fort Hancock; thence east along Interstate Highway 10 to Interstate Highway 20; thence northeast along Interstate Highway 20 to Interstate Highway 30 at Fort Worth; thence northeast along Interstate Highway 30 to the Texas-Arkansas state line.

(2) Central Zone: That portion of the state between the North Zone and the South Zone.

(3) South Zone: That portion of the state south of a line beginning at the International Toll Bridge in Del Rio; thence northeast along U.S. Highway 277 Spur to U.S. Highway 90 in Del Rio; thence east along U.S. Highway 90 to State Loop 1604; thence following Loop 1604 south and east to Interstate Highway 10; thence east along Interstate Highway 10 to the Texas-Louisiana State Line.

(4) Special white-winged dove area: That portion of the state south and west of a line beginning at the International Toll Bridge in Del Rio; thence northeast along U.S. Highway 277 Spur to U.S. Highway 90 in Del Rio; thence east along U.S. Highway 90 to State Loop 1604; thence along Loop 1604 south and east to Interstate Highway 37; thence south along Interstate Highway 37 to U.S. Highway 181 in Corpus Christi; thence north and east along U.S. 181 to the Corpus Christi Ship Channel, thence eastwards along the south shore of the Corpus Christi Ship Channel to the Gulf of Mexico [Interstate Highway 35, thence south along Interstate Highway 35 to State Highway 44; thence east along State Highway 44 to State Highway 16 at Freer; thence south along State Highway 16 to Randado; thence south on FM 649 to FM 2686; thence east on FM 2686 to FM 1017; thence southeast along FM 1017 to State Highway 186 at Linn; thence east along State Highway 186 to the Mansfield Channel at Port Mansfield; thence east along the Mansfield Channel to the Gulf of Mexico].

(c) Gallinules (Moorhen or common gallinule and purple gallinule): statewide.

(d) Teal ducks (blue-winged, green-winged, and cinnamon): statewide.

(e) Woodcock: statewide.

(f) Wilson's (Common) snipe: statewide.

§65.315. *Open Seasons and Bag and Possession Limits--Early Season.*

(a) Rails.

(1) Dates: September 14 - 29, 2013 and November 2 - December 25, 2013 [September 15 - 30, 2012 and November 3 - December 26, 2012].

(2) Daily bag and possession limits:

(A) king and clapper rails: 15 in the aggregate per day; 30 in the aggregate in possession.

(B) sora and Virginia rails: 25 in the aggregate per day; 25 in the aggregate in possession.

(b) Dove seasons.

(1) North Zone.

(A) Dates: September 1 - October 23, 2013 and December 20, 2013 - January 5, 2014 [September 1 - October 24, 2012 and December 22, 2012 - January 6, 2013].

(B) Daily bag limit: 15 mourning doves, white-winged doves, and white-tipped (white-fronted) doves in the aggregate, including no more than two white-tipped doves per day.

(C) Possession limit: 30 mourning doves, white-winged doves, and white-tipped doves in the aggregate, including no more than four white-tipped doves in possession.

(2) Central Zone.

(A) Dates: September 1 - October 23, 2013 and December 20, 2013 - January 5, 2014 [September 1 - October 24, 2012 and December 22, 2012 - January 6, 2013].

(B) Daily bag limit: 15 mourning doves, white-winged doves, and white-tipped (white-fronted) doves in the aggregate, including no more than two white-tipped doves per day.

(C) Possession limit: 30 mourning doves, white-winged doves, and white-tipped doves in the aggregate, including no more than four white-tipped doves in possession.

(3) South Zone.

(A) Dates: Except in the special white-winged dove area as defined in §65.314 of this title (relating to Zones and Boundaries for Early Season Species), September 20 - October 27, 2013 and December 20, 2013 - January 20, 2014 [September 21 - October 28, 2012 and December 22, 2012 - January 22, 2013].

(B) Daily bag limit: 15 mourning doves, white-winged doves, and white-tipped (white-fronted) doves in the aggregate, including no more than two white-tipped doves per day.

(C) Possession limit: 30 mourning doves, white-winged doves, and white-tipped doves in the aggregate, including no more than four white-tipped doves in possession.

(4) Special white-winged dove area.

(A) Dates: September 1, 2, 7, and 8, 2013 [September 1, 2, 8, and 9, 2012].

(i) Daily bag limit: 15 white-winged doves, mourning doves, and white-tipped (white-fronted) doves, in the aggregate to include no more than two [~~four~~] mourning doves and two white-tipped doves per day.

(ii) Possession limit: 30 white-winged doves, mourning doves, and white-tipped doves in the aggregate to include no more than four [~~eight~~] mourning doves and four white-tipped doves in possession.

(B) Dates: September 20 - October 23, 2013 and December 20, 2013 - January 20, 2014 [September 21 - October 28, 2012 and December 22, 2012 - January 18, 2013].

(i) Daily bag limit: 15 white-winged doves, mourning doves, and white-tipped (white-fronted) doves, in the aggregate to include no more than two white-tipped doves per day;

(ii) Possession limit: 30 white-winged doves, mourning doves, and white-tipped doves in the aggregate to include no more than four white-tipped doves in possession.

(c) Gallinules.

(1) Dates: September 14 - 29, 2013 and November 2 - December 25, 2013 [September 15 - 30, 2012 and November 3 - December 26, 2012].

(2) Daily bag and possession limits: 15 in the aggregate per day; 30 in the aggregate in possession.

(d) September teal-only season.

(1) Dates: September 14 - 29, 2013 [September 15 - 30, 2012].

(2) Daily bag and possession limits: four in the aggregate per day; eight in the aggregate in possession.

(e) Red-billed pigeons, and band-tailed pigeons. No open season.

(f) Shorebirds. No open season.

(g) Woodcock: December 18, 2013 - January 31, 2014 [~~December 18, 2012 - January 31, 2013~~]. The daily bag limit is three. The possession limit is six.

(h) Wilson's snipe (Common snipe): November 2, 2013 - February 16, 2014 [~~November 3, 2012 - February 17, 2013~~]. The daily bag limit is eight. The possession limit is 16.

(i) Canada geese: September 14 - 29, 2013 [~~September 15 - 30, 2012~~] in the Eastern Goose Zone as defined in §65.317(b) of this title (relating to Zones and Boundaries for Late Season Species). The daily bag limit is three. The possession limit is six.

§65.318. *Open Seasons and Bag and Possession Limits--Late Season.*

Except as specifically provided in this section, the possession limit for all species listed in this section shall be twice the daily bag limit.

(1) Ducks, mergansers, and coots. The daily bag limit for ducks is six, which may include no more than five mallards (only two of which may be hens); three wood ducks; six scaup (lesser scaup and greater scaup in the aggregate); two redheads; two pintail; one canvas-back; and one "dusky" duck (mottled duck, Mexican like duck, black duck and their hybrids) during the seasons established in subparagraphs (A)(ii), (B)(ii), and (C)(ii) of this paragraph. For all other species not listed, the bag limit shall be six. The daily bag limit for coots is 15. The daily bag limit for mergansers is five, which may include no more than two hooded mergansers.

(A) High Plains Mallard Management Unit:

(i) all species other than "dusky ducks": October 26 - 27, 2013 and November 1, 2013 - January 26, 2014 [~~October 27 - 28, 2012 and November 2, 2012 - January 27, 2013~~].

(ii) "dusky ducks": November 4, 2013 - January 26, 2014 [~~November 5, 2012 - January 27, 2013~~].

(B) North Zone:

(i) all species other than "dusky ducks": November 2 - December 8, 2013 and December 21, 2013 - January 26, 2014 [~~November 3 - 25, 2012 and December 8, 2012 - January 27, 2013~~].

(ii) "dusky ducks": November 7 - December 8, 2013 and December 21, 2013 - January 26, 2014 [~~November 8 - 25, 2012 and December 8, 2012 - January 27, 2013~~].

(C) South Zone:

(i) all species other than "dusky ducks": November 2 - December 1, 2013 and December 14, 2013 - January 26, 2014 [~~November 3 - 25, 2012 and December 8, 2012 - January 27, 2013~~].

(ii) "dusky ducks": November 7 - December 1, 2013 and December 14, 2013 - January 26, 2014 [~~November 8 - 25, 2012 and December 8, 2012 - January 27, 2013~~].

(2) Geese.

(A) Western Zone.

(i) Light geese: November 2, 2013 - February 2, 2014 [~~November 3, 2012 - February 3, 2013~~]. The daily bag limit for light geese is 20, and there is no possession limit.

(ii) Dark geese: November 2, 2013 - February 2, 2014 [~~November 3, 2012 - February 3, 2013~~]. The daily bag limit for dark geese is five, to include no more than one white-fronted goose.

(B) Eastern Zone.

(i) Light geese: November 2, 2013 - January 26, 2014 [~~November 3, 2012 - January 27, 2013~~]. The daily bag limit for light geese is 20, and there is no possession limit.

(ii) Dark geese:

(I) White-fronted geese: November 16, 2013 - January 26, 2014 [~~November 3, 2012 - January 13, 2013~~]. The daily bag limit for white-fronted geese is two.

(II) Canada geese: November 2, 2013 - January 26, 2014 [~~November 3, 2012 - January 27, 2013~~]. The daily bag limit for Canada geese is three.

(3) Sandhill cranes. A free permit is required of any person to hunt sandhill cranes in areas where an open season is provided under this proclamation. Permits will be issued on an impartial basis with no limitation on the number of permits that may be issued.

(A) Zone A: November 2, 2013 - February 2, 2014 [~~November 3, 2012 - February 3, 2013~~]. The daily bag limit is three. The possession limit is six.

(B) Zone B: November 22, 2013 - February 2, 2014 [~~November 23, 2012 - February 3, 2013~~]. The daily bag limit is three. The possession limit is six.

(C) Zone C: December 21, 2013 - January 26, 2014 [~~December 22, 2012 - January 27, 2013~~]. The daily bag limit is two. The possession limit is four.

(4) Special Youth-Only Season. There shall be a special youth-only waterfowl season during which the hunting, taking, and possession of geese, ducks, mergansers, and coots is restricted to licensed hunters 15 years of age and younger accompanied by a person 18 years of age or older, except for persons hunting by means of falconry under the provisions of §65.320 of this chapter (relating to Extended Falconry Season--Late Season Species). Bag and possession limits in any given zone during the season established by this paragraph shall be as provided for that zone by paragraphs (1) and (2) of this section. Season dates are as follows:

(A) High Plains Mallard Management Unit: October 19 - 20, 2013 [~~October 20 - 21, 2012~~];

(B) North Zone: October 26 - 27, 2013 [~~October 27 - 28, 2012~~]; and

(C) South Zone: October 26 - 27, 2013 [~~October 27 - 28, 2012~~].

§65.319. *Extended Falconry Season--Early Season Species.*

(a) It is lawful to take the species of migratory birds listed in this section by means of falconry during the following Extended Falconry Seasons:

(1) mourning doves, white-winged doves and white-tipped doves: November 9 - December 15, 2013 [~~November 15 - December 21, 2012~~].

(2) rails and gallinules: January 27 - February 10, 2014 [~~January 28 - February 11, 2013~~].

(3) woodcock: January 27 - February 10, 2014 [~~January 28 - February 11, 2013~~].

(b) The daily bag and possession limits for migratory game birds under this section shall not exceed three and six birds respectively, singly or in the aggregate.

§65.320. *Extended Falconry Season--Late Season Species.*

It is lawful to take the species of migratory birds listed in this section by means of falconry during the following Extended Falconry Seasons.

(1) Ducks, coots, and mergansers:

(A) High Plains Mallard Management Unit: no extended season;

(B) North Duck Zone: January 27 - February 10, 2014 [~~January 28 - February 11, 2013~~];

(C) South Duck Zone: January 27 - February 10, 2014 [~~January 28 - February 11, 2013~~].

(2) The daily bag and possession limits for migratory game birds under this section shall not exceed three and six birds, respectively, singly or in the aggregate.

§65.321. Special Management Provisions.

The provisions of paragraphs (1) - (3) of this section apply only to the hunting of light geese. All provisions of this subchapter continue in effect unless specifically provided otherwise in this section; however, where this section conflicts with the provisions of this subchapter, this section prevails.

(1) Means and methods. The following means and methods are lawful during the time periods set forth in paragraph (4) of this section:

(A) shotguns capable of holding more than three shells; and

(B) electronic calling devices.

(2) Possession. During the time periods set forth in paragraph (4) of this section:

(A) there shall be no bag or possession limits; and

(B) the provisions of §65.312 of this title (relating to Possession of Migratory Game Birds) do not apply; and

(C) a person may give, leave, receive, or possess legally taken light geese or their parts, provided the birds are accompanied by a wildlife resource document (WRD) from the person who killed the birds. A properly executed WRD satisfies the tagging requirements of 50 CFR Part 20. The WRD is not required if the possessor lawfully killed the birds; the birds are transferred at the personal residence of the donor or donee; or the possessor also possesses a valid hunting license, a valid waterfowl stamp, and is HIP certified. The WRD shall accompany the birds until the birds reach their final destination, and must contain the following information:

(i) the name, signature, address, and hunting license number of the person who killed the birds;

(ii) the name of the person receiving the birds;

(iii) the number and species of birds or parts;

(iv) the date the birds were killed; and

(v) the location where the birds were killed (e.g., name of ranch; area; lake, bay, or stream; county).

(3) Shooting hours. During the time periods set forth in paragraph (4) of this section, shooting hours are from one half-hour before sunrise until one half-hour after sunset.

(4) Special Light Goose Conservation Period.

(A) From January 27 - March 23, 2014 [~~January 28 - March 24, 2013~~], the take of light geese is lawful in Eastern Zone as defined in §65.317 of this title (relating to Zones and Boundaries for Late Season Species).

(B) From February 3 - March 23, 2014 [~~February 4 - March 24, 2013~~], the take of light geese is lawful in the Western Zone as defined in §65.317 of this title.

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

Filed with the Office of the Secretary of State on May 9, 2013.

TRD-201301863

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Earliest possible date of adoption: June 23, 2013

For further information, please call: (512) 389-4775

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TITLE 34. PUBLIC FINANCE

PART 5. TEXAS COUNTY AND DISTRICT RETIREMENT SYSTEM

CHAPTER 105. CREDITABLE SERVICE

34 TAC §105.6

The Texas County and District Retirement System proposes new §105.6, concerning the calculation of current service credit. The proposed new rule will provide clarification to employers and members that participate in Texas County and District Retirement System concerning how creditable service is calculated. As proposed, the new rule provides that a member will be credited with one month of credited service for each month for which contributions are made, reported and certified by the participating employer, which is consistent with the statutes governing establishment of current service credit codified in Chapter 843, Subchapter E of the Texas Government Code.

Tom Harrison, General Counsel of the Texas County and District Retirement System, has determined that for the first five-year period the rule is in effect there will be no material fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Harrison 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 administering the rule will be improved understanding of how retirement eligibility is calculated. There will be no costs to small businesses. There are no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Tom Harrison, General Counsel, Texas County and District Retirement System, P.O. Box 2034, Austin, Texas 78768-2034.

The new rule is proposed under the Texas Government Code, §843.401, which provides that the Texas County and District Retirement System Board of Trustees may adopt rules concerning how current service credit is calculated.

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

§105.6. Calculation of Current Service Credit.

(a) Except as otherwise provided by law or rules established by the System, the System shall credit a member with one month of current service for each calendar month for which contributions are made,

reported, and certified by the employing subdivision for purposes of determining length-of-service requirements and calculating benefits.

(b) Except as otherwise provided by law or rules established by the System, if an elected county or precinct official who is a member declines compensation pursuant to §152.052 of the Texas Local Government Code, the System shall credit such member with one month of credited service for each month worked without compensation that is reported and certified by the employing subdivision for purposes of determining length-of-service requirements, but shall not credit such member with service credit (monetary credit) for months worked without compensation for purposes of calculating benefits.

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 May 10, 2013.

TRD-201301874

Tom Harrison

General Counsel

Texas County and District Retirement System

Earliest possible date of adoption: June 23, 2013

For further information, please call: (512) 637-3247



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 2. DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES

CHAPTER 108. DIVISION FOR EARLY CHILDHOOD INTERVENTION SERVICES

The Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of Assistive and Rehabilitative Services (DARS), proposes amendments, repeals, and new rules for DARS rules in Chapter 108, Division for Early Childhood Intervention Services. DARS proposes amendments to Subchapter A, General Rules; Subchapter B, Procedural Safeguards and Due Process Procedures; Subchapter C, Staff Qualifications; Subchapter G, Referral, Pre-Enrollment, and Developmental Screening; Subchapter J, Individualized Family Service Plan (IFSP); Subchapter K, Service Delivery; and Subchapter L, Transition. DARS also proposes the repeals of Subchapter H, Eligibility; Subchapter I, Evaluation and Assessment; Subchapter M, Child and Family Outcomes; Subchapter O, Public Outreach; and Subchapter P, Contract Requirements. Additionally, DARS proposes new Subchapter F, Public Outreach; new Subchapter H, Eligibility, Evaluation, and Assessment; new Subchapter M, Child and Family Outcomes; and new Subchapter P, Contract Requirements. Specifically, DARS proposes amendments to §§108.103, 108.203, 108.209, 108.309, 108.313, 108.315, 108.317, 108.701, 108.707, 108.709, 108.1001, 108.1003, 108.1007, 108.1009, 108.1015, 108.1019, 108.1103, 108.1105, 108.1111, 108.1211, and 108.1217. DARS proposes the repeals of §§108.801, 108.803, 108.804, 108.805, 108.807, 108.901, 108.903, 108.905, 108.907, 108.909, 108.911, 109.913, 108.915, 108.917, 108.1013, 108.1017, 108.1021, 108.1301, 108.1303, 108.1501, 108.1502, 108.1503, 108.1505, 108.1507, 108.1509, 108.1511, 108.1513, 108.1515,

108.1601, 108.1603, 108.1605, 108.1607, 108.1609, 108.1611, 108.1613, 108.1615, and 108.1617. DARS proposes new §§108.202, 108.204, 108.206, 108.310, 108.601, 108.603, 108.605, 108.607, 108.609, 108.611, 108.613, 108.615, 108.617, 108.706, 108.801, 108.803, 108.805, 108.807, 108.809, 108.811, 108.813, 108.815, 108.817, 108.819, 108.821, 108.823, 108.825, 108.827, 108.829, 108.831, 108.833, 108.1013, 108.1016, 108.1106, 108.1108, 108.1301, 108.1303, 108.1307, 108.1309, 108.1601, 108.1603, 108.1605, 108.1607, 108.1609, 108.1611, 108.1613, 108.1615, 108.1617, 108.1619, 108.1621, 108.1623, and 108.1625.

The repeals and new rules with regard to Subchapters H, I, M, O, and P are being proposed as the result of the review that DARS conducted on these subchapters in accordance with Texas Government Code, §2001.039, which requires rule review every four years. Elsewhere in this issue of the *Texas Register*, DARS contemporaneously proposes the rule review of Subchapters H, I, M, O, and P in Chapter 108.

BACKGROUND AND PURPOSE

The purpose of the proposed changes to Chapter 108 is to increase clarity for DARS Division for Early Childhood Intervention Services (ECI) contractors and families receiving ECI services and to modify certain requirements for ECI contractors. With regard to the rule review of Subchapters H, I, M, O, and P, DARS determined that the reason for originally adopting the rules continues to exist. However, DARS determined that these subchapters needed language revisions and extensive reorganization, including renumbering, to be consistent with DARS' rules style and format, to align rules with statutes and current operations, and to delete rules that are no longer necessary.

SECTION-BY-SECTION SUMMARY

DARS proposes amendments, repeals, and new rules in the following subchapters for the reasons stated below.

Subchapter A, General Rules: §108.103, Definitions: The proposed amendments add a definition of Assessment and move the content of the definitions of Assessment from current §108.901 in order to reflect that the term is used throughout the chapter and emphasize federal language relating to assessment, as directed by the US Department of Education; add a definition of Comprehensive Needs Assessment and move the content of the definitions from current §108.901 to reflect that the term is used throughout the chapter; clarify the definition of Early Childhood Intervention Services; add a definition of Evaluation and move the content of definitions from current §108.901 to reflect that the term is used throughout the chapter; clarify the definitions of IFSP Team and Interdisciplinary Team to include requirements in 34 CFR §303.24 relating to Multidisciplinary, as directed by the US Department of Education; clarify the definition of Routine Caregiver; delete the definition of Comprehensive Evaluation because the term is outdated; transfer the content of the definition of Public Outreach to new Subchapter F, Public Outreach, to reflect the term is only used in that subchapter; and add a new definition of Native Language, to reflect 34 CFR §303.25, as directed by the US Department of Education.

Subchapter B, Procedural Safeguards and Due Process Procedures: DARS proposes amendments to §108.203, Responsibilities, and §108.209, Parent Rights, in the IFSP Process, to clarify language related to use of native language.

Subchapter B, Procedural Safeguards and Due Process Procedures: DARS proposes new §108.202, Procedural Safeguards, to clarify the purpose of procedural safeguards.

Subchapter B, Procedural Safeguards and Due Process Procedures: DARS proposes new §108.204, Prior Written Notice, to clarify the purpose of prior written notice.

Subchapter B, Procedural Safeguards and Due Process Procedures: DARS proposes new §108.206, Written Parental Consent, to clarify the purpose of written parental consent.

Subchapter C, Staff Qualifications: DARS proposes an amendment to §108.309, Minimum Requirements for All Direct Service Staff, to remove requirements relating to criminal background checks from §108.309(b). The content of §108.309(b) will be moved to new §108.310, Criminal Background Checks.

Subchapter C, Staff Qualifications: DARS proposes amendments to §108.313, Early Intervention Specialist (EIS), to provide an allowance of 40 clock hours of training in lieu of the 3 hours of college credit for the early intervention specialist qualifications; and to clarify the type of coursework considered to be early childhood development.

Subchapter C, Staff Qualifications: DARS proposes amendments to §108.315, Service Coordinator, to update terminology related to native language.

Subchapter C, Staff Qualifications: DARS proposes amendments to §108.317, Staff Who Do Not Hold a License or EIS Credential and Provide Early Childhood Intervention Services to Children and Families, for technical corrections.

Subchapter C, Staff Qualifications: DARS proposes new §108.310, Criminal Background Checks, to align restrictions related to criminal convictions that would prevent a person from having direct contact with ECI families with the restrictions required by Medicaid and the Texas Department of Family and Protective Services Division for Child Care Licensing; and to provide for a risk assessment option for certain criminal convictions.

DARS proposes the repeal of current Subchapter O, Public Outreach, in its entirety and further proposes the content be moved to new Subchapter F, Public Outreach, for improved flow and readability.

Subchapter F, Public Outreach: DARS proposes new §108.601, Purpose, to establish the purpose of the subchapter.

Subchapter F, Public Outreach: DARS proposes new §108.603, Legal Authority, to establish the legal authority for the subchapter.

Subchapter F, Public Outreach: DARS proposes new §108.605, Definitions, to add the content from current §108.1502, Definitions, that is proposed for repeal; and to move the definition of Public Outreach from current §108.103(33) because this term is only used in the public outreach subchapter.

Subchapter F, Public Outreach: DARS proposes new §108.607, Public Outreach, to move content from current §108.1501, Public Outreach, that is proposed for repeal; and to emphasize the requirement that contractors must use language provided by DARS when communicating with primary referral sources, parents of infants and toddlers with disabilities, and the general public.

Subchapter F, Public Outreach: DARS proposes new §108.609, Child Find, to move content from current §108.1503, Child Find,

that is proposed for repeal; add the purpose of child find; correct the federal citation; and clarify language.

Subchapter F, Public Outreach: DARS proposes new §108.611, Public Awareness, to move content from current §108.1505, Public Awareness, that is proposed for repeal; add the purpose of public awareness; and clarify language.

Subchapter F, Public Outreach: DARS proposes new §108.613, Publications, to move content from current §108.1507, Publications, that is proposed for repeal.

Subchapter F, Public Outreach: DARS proposes new §108.615, Interagency Coordination, to move the content from current §108.1509, Interagency Coordination with Texas Education Agency, §108.1511, Interagency Coordination with Head Start and Early Head Start, §108.1513, Interagency Coordination with the Texas Department of Family and Protective Services (DFPS), and §108.1515, Interagency Coordination with Local Agencies, that are being proposed for repeal; to add the purpose of interagency coordination; and to specify the requirement that the contractor identify systemic issues with interagency coordination efforts.

Subchapter F, Public Outreach: DARS proposes new §108.617, Public Outreach, Planning and Evaluation, to describe the requirements for general planning and evaluating public outreach efforts necessary to strategically implement federal public outreach requirements.

Subchapter G, Referral, Pre-enrollment, and Developmental Screening: DARS proposes amendments to §108.701, Referral Requirements, to clarify language; and to add language that emphasizes the federal requirement that the state education agency (SEA) and the local educational agencies (LEA) be notified of children who are potentially eligible for special education services, as directed by the US Department of Education. The contractor must notify the LEA, and DARS will coordinate the notification to the SEA, when a child who is referred fewer than 45 days before his or her third birthday is potentially eligible for special education services.

Subchapter G, Referral, Pre-enrollment, and Developmental Screening: DARS proposes new §108.706, Child Referred with an Out-of-State IFSP, to establish requirements for determining eligibility and establishing a new IFSP for children moving to Texas with an out-of-state IFSP.

Subchapter G, Referral, Pre-enrollment, and Developmental Screening: DARS proposes amendments to §108.707, Pre-Enrollment Activities, to clarify language and emphasize the requirement that pre-enrollment activities be conducted in the parent's native language, as defined by federal law.

Subchapter G, Referral, Pre-enrollment, and Developmental Screening: DARS proposes amendments to §108.709, Optional Developmental Screenings, for clarity.

DARS proposes the repeal of current Subchapter H, Eligibility, and Subchapter I, Evaluation and Assessment, in their entireties. Specifically, DARS proposes the repeal of §108.801, Definitions; §108.803, Eligibility; §108.804, Eligibility Statement; §108.805, Initial Eligibility Statement; §108.807, Continuing Eligibility Criteria; §108.901, Definitions; §108.903, Evaluations; §108.905, Determination of Hearing and Auditory Status; §108.907, Determination of Vision Status; §108.909, Comprehensive Needs Assessment; §108.911, Ongoing Assessment; §108.913 Identifying Nutritional Needs; §108.915, Identifying Assistive Technology Needs; and §108.917, Autism Screening.

DARS proposes new Subchapter H, Eligibility, Evaluation, and Assessment, which combines the content of current Subchapter H, Eligibility, and Subchapter I, Evaluation and Assessment, for improved clarity and readability.

Subchapter H, Eligibility, Evaluation, and Assessment: DARS proposes new §108.801, Purpose, to add the purpose of subchapter.

Subchapter H, Eligibility, Evaluation, and Assessment: DARS proposes new §108.803, Legal Authority, to add the legal authority for the subchapter.

Subchapter H, Eligibility, Evaluation, and Assessment: DARS proposes new §108.805, Definitions, to define the term Adjusted Age.

Subchapter H, Eligibility, Evaluation, and Assessment: DARS proposes new §108.807, Eligibility, to move some of the content from current §108.803, Eligibility, and to specify that a child must meet Texas eligibility requirements to receive early childhood intervention services.

Subchapter H, Eligibility, Evaluation, and Assessment: DARS proposes new §108.809, Initial Eligibility Criteria, to move some content from current §108.803, Eligibility, and §108.805, Initial Eligibility Criteria.

Subchapter H, Eligibility, Evaluation, and Assessment: DARS proposes new §108.811, Eligibility Determination Based on Medical Diagnosed Condition That Has a High Probability of Resulting in a Developmental Delay, to move some content from current §108.805, Initial Eligibility Criteria.

Subchapter H, Eligibility, Evaluation, and Assessment: DARS proposes new §108.813, Assessment of Hearing and Auditory Status, to move content from current §108.905, Determination of Hearing and Auditory Status; and to improve quality assessments of hearing and auditory status by removing the option to conduct a hearing screening in lieu of an analysis of the evaluation protocol results.

Subchapter H, Eligibility, Evaluation, and Assessment: DARS proposes new §108.815, Assessment of Vision Status, to move content of current §108.907, Determination of Vision Status; and to improve quality assessments of vision status by removing the option to conduct a vision screening in lieu of an analysis of the evaluation protocol results.

Subchapter H, Eligibility, Evaluation, and Assessment: DARS proposes new §108.817, Eligibility Determination Based on Developmental Delay, to move content from current §108.803, Eligibility; §108.805, Eligibility Criteria; and §108.903, Evaluations; and to emphasize federal regulations relating to evaluations, as directed by the US Department of Education.

Subchapter H, Eligibility, Evaluation, and Assessment: DARS proposes new §108.819, Adjustment for Children Born Prematurely, to move some content of current §108.803, Eligibility.

Subchapter H, Eligibility, Evaluation, and Assessment: DARS proposes new §108.821, Qualitative Determination of Delay, to move some content of current §108.805, Initial Eligibility Criteria.

Subchapter H, Eligibility, Evaluation, and Assessment: DARS proposes new §108.823, Continuing Eligibility Criteria, to move some content of current §108.807, Continuing Eligibility Criteria.

Subchapter H, Eligibility, Evaluation, and Assessment: DARS proposes new §108.825, Eligibility Statement, to move the content of current §108.804, Eligibility Statement.

Subchapter H, Eligibility, Evaluation, and Assessment: DARS proposes new §108.827, Needs Assessment, to move the content of current §108.909, Comprehensive Needs Assessment, and §108.911, Ongoing Assessment; and to emphasize federal regulation, as directed by the US Department of Education.

Subchapter H, Eligibility, Evaluation, and Assessment: DARS proposes new §108.829, Review of Nutrition Status, to move the content of current §108.913, Identifying Nutritional Needs.

Subchapter H, Eligibility, Evaluation, and Assessment: DARS proposes new §108.831, Assistive Technology, to move the content of current §108.915, Identifying Assistive Technology Needs.

Subchapter H, Eligibility, Evaluation, and Assessment: DARS proposes new §108.833, Autism Screening, to move the content of current §108.917, Autism Screening; and to improve the scope and quality of autism screenings. In order to better direct the evaluation of children for developmental delays, autism screening requirements are broadened to include 16-17 month old toddlers and children age 16 months and older who are not yet enrolled, if they have been evaluated for a developmental delay and were determined ineligible for early childhood intervention services.

Subchapter J, Individualized Family Service Plan (IFSP): DARS proposes an amendment to §108.1001, Definitions, to add new definition of Periodic Review.

Subchapter J, Individualized Family Service Plan (IFSP): DARS proposes amendments to §108.1003, IFSP, to clarify the requirement that the IFSP must address the developmental needs of the child and the case management needs of the family as identified in comprehensive needs assessment; clarify and streamline language; and update the requirement that the contractor give the family a copy of the IFSP, in accordance with federal regulations.

Subchapter J, Individualized Family Service Plan (IFSP): DARS proposes amendments to §108.1007, Interim IFSP, to emphasize that the evaluation, comprehensive needs assessment, and the IFSP must be completed within federal timelines.

Subchapter J, Individualized Family Service Plan (IFSP): DARS proposes amendments to §108.1009, Participants in Initial and Annual Meetings to Evaluate the IFSP, to make a technical correction.

Subchapter J, Individualized Family Service Plan (IFSP): DARS proposes amendments to §108.1015, Content of the IFSP, to list the required IFSP elements; emphasize the requirement to monitor specialized skills training and child progress; establish requirements for documenting that early childhood intervention services will be provided with a routine caregiver; clarify and streamline language; and add requirements for IFSP documentation when the contractor assigns a new service coordinator.

Subchapter J, Individualized Family Service Plan (IFSP): DARS proposes amendments to §108.1019, Annual Meeting to Evaluate the IFSP, to strengthen the requirements for the annual meeting to evaluate the IFSP to include a current description of the child, including health, vision, hearing and nutrition status, as well as present level of development related to the three annual child outcome ratings described in §108.1301, Child Outcomes.

Subchapter J, Individualized Family Service Plan (IFSP): DARS proposes the repeal of §108.1021, Partial Review of the IFSP, because this process is no longer necessary. The requirements

for IFSP documentation when the contractor assigns a new service coordinator is moved to §108.1015, Content of the IFSP.

Subchapter J, Individualized Family Service Plan (IFSP): DARS proposes the repeals of §108.1013, Participants in Periodic Reviews, and §108.1017, Complete Periodic Review. DARS proposes new §108.1013, Periodic Reviews, to combine and expand on the contents of current §108.1013, Participants in Periodic Reviews, and current §108.1017, Complete Periodic Review; and to clarify that a change of service coordinator does not require a periodic review.

Subchapter J, Individualized Family Service Plan (IFSP): DARS proposes new §108.1016, Planning for Services to be Delivered with the Routine Caregiver, to establish requirements related to planning for services to be delivered with a routine caregiver.

Subchapter K, Service Delivery: DARS proposes amendments to §108.1103, Early Childhood Intervention Services Delivery, to clarify that only qualified staff are authorized to provide early childhood intervention services; and to clarify that the contractor must assign a service coordinator and an interdisciplinary team to the child and family throughout the child's enrollment.

Subchapter K, Service Delivery: DARS proposes amendments to §108.1105, Capacity to Provide Early Childhood Intervention Services, to make technical corrections.

Subchapter K, Service Delivery: DARS proposes amendments to §108.1111, Service Delivery Documentation Requirements, to clarify documentation requirements.

Subchapter K, Service Delivery: DARS proposes new §108.1106, Routine Caregiver, to establish requirements for delivering services with the routine caregiver.

Subchapter K, Service Delivery: DARS proposes new §108.1108, State Funded Respite Services, to establish requirements for providing state funded respite services.

Subchapter L, Transition: DARS proposes amendments to §108.1211, LEA Notification of Potentially Eligible for Special Education Services, to emphasize the requirement that DARS will coordinate the notification to the state education agency when ECI-referred toddlers are potentially eligible for special education services.

Subchapter L, Transition: DARS proposes amendments to §108.1217, LEA Transition Conference, to emphasize that a face-to-face meeting with the parent and the service coordinator is required by federal regulation for the LEA transition conference.

DARS proposes the repeal of current Subchapter M, Child and Family Outcomes, in its entirety and further proposes new Subchapter M, Child and Family Outcomes, to improve readability. Specifically, DARS proposes the repeal of Subchapter M, Child and Family Outcomes, §108.1301 Child Outcomes; and §108.1303, Family Outcomes.

DARS proposes new Subchapter M, Child and Family Outcomes: §108.1301, Purpose, to establish the purpose of the subchapter; §108.1303, Legal Authority, to establish the legal authority for the subchapter; §108.1307, Child Outcomes, to move content of current §108.1301, Child Outcomes; and §108.1309, Family Outcomes, to move content of current §108.1303, Family Outcomes.

DARS proposes the repeal of current Subchapter O, Public Outreach, in its entirety, and further proposes the content be moved

to new Subchapter F, Public Outreach, for improved flow and readability. Specifically, DARS proposes the repeal of Subchapter O, Public Outreach, §108.1501, Public Outreach; §108.1502, Definitions; §108.1503, Child Find; §108.1505, Public Awareness; §108.1507, Publications; §108.1509, Interagency Coordination with Texas Education Agency; §108.1511, Interagency Coordination with Head Start; §108.1513, Interagency Coordination with the Texas Department of Family and Protective Services (DFPS); and §108.1515, Interagency Coordination with Local Agencies.

DARS proposes the repeal of current Subchapter P, Contract Requirements, in its entirety and further proposes new Subchapter P, Contract Requirements, to improve readability and modify certain program requirements. Specifically, DARS proposes to repeal §108.1601, Definitions; §108.1603, Application and Program Requirements for Early Childhood Intervention Services; §108.1605, Contract Award; §108.1607, Contract; §108.1609, Performance Management; §108.1611, Remedial Contract Actions; §108.1613, Financial Management and Recordkeeping Requirements; §108.1615, Data Collection and Reporting; and §108.1617, Local Reporting.

Subchapter P, Contract Requirements: DARS proposes new §108.1601, Purpose, to establish the purpose of the subchapter.

Subchapter P, Contract Requirements: DARS proposes new §108.1603, Legal Authority, to establish the legal authority for the subchapter.

Subchapter P, Contract Requirements: DARS proposes new §108.1605, Definitions, to move the content of current §108.1601, Definitions; to add definitions for Applicant, Application, Competition, Contract, Proposal, Respondent, Solicitation, and Subrecipient; and to make technical changes.

Subchapter P, Contract Requirements: DARS proposes new §108.1607, Application and Program Requirements for Early Childhood Intervention Services, to move the content from current §108.1603, Application and Program Requirements for Early Childhood Intervention Services; and clarify that requirements also apply to proposals; and make technical corrections.

Subchapter P, Contract Requirements: DARS proposes new §108.1609, Contract Award, to move content from current §108.1605, Contract Award; specify the protest options if a respondent believes DARS has violated laws in awarding the contract; and make technical corrections.

Subchapter P, Contract Requirements: DARS proposes new §108.1611, Contract, to move content from current §108.1607, Contract; and make technical corrections.

Subchapter P, Contract Requirements: DARS proposes new §108.1613, Performance Management, to move content from current §108.609, Performance Management; and make technical corrections.

Subchapter P, Contract Requirements: DARS proposes new §108.1615, Remedial Contract Actions, to move content of current §108.1611, Remedial Contract Actions; and make technical corrections.

Subchapter P, Contract Requirements: DARS proposes new §108.1617, Transition of Contractors, to establish requirements related to ensuring a functional transition for ECI children and families when a DARS ECI contract is terminated.

Subchapter P, Contract Requirements: DARS proposes new §108.1619 to establish requirements for renewing a DARS ECI contract.

Subchapter P, Contract Requirements: DARS proposes new §108.1621, Financial Management and Recordkeeping Requirements, to move the content of current §108.1613, Financial Management and Recordkeeping Requirements; and to emphasize federal requirements related to IDEA as payor of last resort and coordination of funding sources, as directed by the US Department of Education.

Subchapter P, Contract Requirements: DARS proposes new §108.1623, Data Collection and Reporting, to move content of current §108.1615, Data Collection and Reporting; and make technical corrections.

Subchapter P, Contract Requirements: DARS proposes new §108.1625, Local Reporting, to move content of current §108.1617, Local Reporting.

FISCAL NOTE

Mary Wright, DARS chief financial officer, has determined that for each year of the first five years that the proposed amendments, repeals, and new rules will be in effect, there is no fiscal impact expected as a result of enforcing or administering the proposed amendments, repeals, and new rules.

PUBLIC BENEFIT

Ms. Wright also has determined that for each year of the first five years the proposed amendments, repeals, and new rules will be in effect, the public benefit anticipated as a result of enforcing the proposal will be assurances to the public that the necessary rules are in place to provide clear guidance to ECI contractors and families, relating to the compliance of DARS and ECI contractors with federal regulations. Ms. Wright has also determined that there is no probable economic cost to persons who are required to comply with the proposed amendments, repeals, and new rules.

SMALL AND MICRO-BUSINESS ANALYSIS AND ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

Further, in accordance with Texas Government Code, §2001.022, Ms. Wright has determined that the proposed amendments, repeals, and new rules will not affect a local economy, and, therefore, no local employment impact statement is required. Finally, Ms. Wright has determined that the proposed amendments, repeals, and new rules will have no adverse economic effect on small businesses or micro-businesses.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

DARS has determined that the proposed amendments, repeals, and new rules do not restrict or limit an owner's right to his or her

property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

PUBLIC COMMENT

Written comments on the proposed amendments, repeals, and new rules may be submitted within 30 days of publication of this proposal in the *Texas Register* to Rules Coordinator, Texas Department of Assistive and Rehabilitative Services, 4800 North Lamar Boulevard, Suite 340, Austin, Texas 78756 or electronically to DARSRules@dars.state.tx.us.

SUBCHAPTER A. GENERAL RULES

40 TAC §108.103

STATUTORY AUTHORITY

The proposed amendment is authorized by the Texas Human Resources Code, Chapters 73 and 117; and the Individuals with Disabilities Education Act, as amended, 20 USC §1400 et seq., and its implementing regulations, 34 CFR Part 303, as amended. These amendments are proposed pursuant to HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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

§108.103. Definitions.

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

(1) Assessment--As defined in 34 CFR §303.321(a)(2)(ii), the ongoing procedures used by appropriate qualified personnel throughout the period of a child's eligibility for early childhood intervention services to assess the child's individual strengths and needs and determine the appropriate services to meet those needs.

(2) [(4)] Child--An infant or toddler as defined in 34 CFR §303.21.

(3) [(2)] Child Find--As described in 34 CFR §§303.115, 303.302 and 303.303, activities and strategies designed to locate and identify, as early as possible, infants and toddlers with developmental delay.

(4) [(3)] Complaint--A formal written allegation submitted to DARS stating that a requirement of the Individuals with Disabilities Education Act, or an applicable federal or state regulation has been violated.

(5) Comprehensive Needs Assessment--The process for identifying a child's unique strengths and needs, and the family's resources, concerns, and priorities in order to develop an IFSP. The comprehensive assessment process gathers information across developmental domains regarding the child's abilities to participate in the everyday routines and activities of the family.

[(4)] Comprehensive Evaluation--The procedures used by qualified personnel to determine a child's initial and continuing eligibility for early childhood intervention services that comply with the requirements described in 34 CFR §303.21 and §303.321-]

(6) [(5)] Condition With a High Probability of Resulting in Developmental Delay--A medical diagnosis known and widely accepted within the medical community to result in a developmental delay over the natural course of the diagnosis.

(7) [(6)] Consent--As defined in 34 CFR §303.7 and meeting all requirements in 34 CFR §303.420.

(8) [(7)] Contractor--A local private or public agency with proper legal status and governed by a board of directors or governing authority that accepts funds from DARS to administer an early childhood intervention program.

(9) [(8)] Co-visits--When two or more service providers deliver different services to the child during the same period of time.

(10) [(9)] Days--Calendar days.

(11) [(10)] DARS--The Texas Department of Assistive and Rehabilitative Services. The entity designated as the lead agency by the governor under the Individuals with Disabilities Education Act, Part C. DARS has the final authority and responsibility for the administration, supervision, and monitoring of programs and activities under this system. DARS has the final authority for the obligation and expenditure of funds and compliance with all applicable laws and rules.

(12) [(11)] DARS ECI--The Texas Department of Assistive and Rehabilitative Services Division for Early Childhood Intervention Services. The state program responsible for maintaining and implementing the statewide early childhood intervention system required under the Individuals with Disabilities Education Act, Part C, as amended in 2004.

(13) [(12)] Developmental Delay--As defined in Texas Human Resources Code §73.001(3) and determined to be significant in compliance with the criteria and procedures in Subchapter H of this chapter (relating to Eligibility, Evaluation, and Assessment).

(14) [(13)] Developmental Screenings--General screenings provided by the early childhood intervention program to assess the child's need for further evaluation.

(15) [(14)] Early Childhood Intervention Program--In addition to the definition of early intervention service program as defined in 34 CFR §303.11, a program operated by the contractor with the express purpose of implementing a system to provide early childhood intervention services to children with developmental delays and their families.

(16) [(15)] Early Childhood Intervention Services--Individualized early childhood intervention services determined by the IFSP team to be necessary to support the family's ability to enhance their child's [the] development [of their child]. Early childhood intervention services are further defined in 34 CFR §303.13 and §303.16 and §108.1105 of this title (relating to Capacity to Provide Early Childhood Intervention Services).

(17) [(16)] ECI Professional--An individual employed by an Early Childhood Intervention Program who meets the requirements of qualified personnel as defined in 34 CFR §303.13(c) and §303.31, and who is knowledgeable in child development and developmentally appropriate behavior, possesses the requisite education and experience, and demonstrates competence to provide ECI services.

(18) [(17)] EIS--Early Intervention Specialist. A credentialed professional who meets specific educational requirements established by DARS ECI and has specialized knowledge in early childhood cognitive, physical, communication, social-emotional, and adaptive development.

(19) Evaluation--The procedures used by qualified personnel to determine a child's initial and continuing eligibility for early childhood intervention services that comply with the requirements described in 34 CFR §303.21 and §303.321.

(20) [(18)] FERPA--Family Educational Rights and Privacy Act of 1974, 20 USC §1232g, as amended, and implementing regulations at 34 CFR Part 99. Federal law that outlines privacy protection for parents and children enrolled in the ECI program. FERPA includes rights to confidentiality and restrictions on disclosure of personally identifiable information, and the right to inspect records.

(21) [(19)] Group Services--Early childhood intervention services provided at the same time to multiple non-related children and their parents or routine caregivers.

(22) [(20)] IFSP--Individualized Family Service Plan as defined in 34 CFR §303.20. A written plan of care for providing early childhood intervention services and other medical, health and social services to an eligible child and the child's family when necessary to enhance the child's development.

(23) [(21)] IFSP Services--The individualized early childhood intervention services listed in the IFSP that have been determined by the IFSP team to be necessary to enhance an eligible child's development.

(24) [(22)] IFSP Team--An interdisciplinary team that meets the requirements in 34 CFR §303.24(b) (relating to Multidisciplinary), and develops, reviews, modifies, and approves the IFSP and includes the parent, the service coordinator, all ECI professionals providing services to the child, as planned on the IFSP, certified Teachers of the Deaf and Hard of Hearing, as appropriate, and certified Teachers of Students with Visual Impairments, as appropriate. [As described in 34 CFR §303.24(b) and meeting the requirements in §108.1009 of this title (relating to Participants in Initial and Annual Meetings to Evaluate the IFSP).]

(25) [(23)] Interdisciplinary Team--In addition to the definition of multidisciplinary team as defined in 34 CFR §303.24 (relating to Multidisciplinary), a [A] team that consists of at least two ECI professionals from different disciplines.

(26) [(24)] LEA--Local educational agency as defined in 34 CFR §303.23.

(27) [(25)] LPHA--Licensed Practitioner of the Healing Arts. A licensed physician, registered nurse, licensed physical therapist, licensed occupational therapist, licensed speech language pathologist, licensed professional counselor, licensed clinical social worker, licensed psychologist, licensed dietitian, licensed audiologist, licensed physician assistant, licensed specialist in school psychology, licensed marriage and family therapist, licensed intern in speech language pathology, or advanced practice nurse.

(28) [(26)] Medicaid--The medical assistance entitlement program administered by the Texas Health and Human Services Commission.

(29) [(27)] Natural Environments--As defined in 34 CFR §303.26, settings that are natural or typical for a same-aged infant or toddler without a disability, may include the home or community settings, and must be consistent with the provisions of 34 CFR §303.126.

(30) Native Language--As defined in 34 CFR §303.25.

(A) When used with respect to an individual who is limited English proficient (as that term is defined in section 602(18) of the Act), native language means:

(i) the language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child; and

(ii) for evaluations and assessments conducted pursuant to 34 CFR §303.321(a)(5) and (a)(6), the language normally used

by the child, if developmentally appropriate for the child by qualified personnel conducting the evaluation or assessment.

(B) When used with respect to an individual who is deaf or hard of hearing, blind or visually impaired, for an individual with no written language, native language means the mode of communication that is normally used by the individual (such as sign language, braille, or oral communication).

(31) [(28)] Parent--As defined in 20 USC §1401 and 34 CFR §303.27.

(32) [(29)] Personally Identifiable Information--As defined in 34 CFR §99.3 and 34 CFR §303.29.

(33) [(30)] Pre-Enrollment--All family related activities from the time the referral is received up until the time the parent signs the initial IFSP.

(34) [(31)] Primary Referral Sources--As defined in 34 CFR §303.303(c).

(35) [(32)] Public Agency--DARS and any other state agency or political subdivision of the state that is responsible for providing early childhood intervention services to eligible children under the Individuals with Disabilities Education Act, Part C.

[(33) Public Outreach--Comprises public awareness, child find, and interagency coordination.]

(36) [(34)] Referral Date--The date the child's name and sufficient information to contact the family was obtained by the contractor.

(37) Routine Caregiver--An adult who:

(A) has written authorization from the parent to participate in early childhood intervention services with the child, even in the absence of the parent;

(B) participates in the child's daily routines;

(C) knows the child's likes, dislikes, strengths, and needs; and

(D) may be the child's relative, childcare provider, or other person who regularly cares for the child.

[(35) Routine Caregiver--An individual who participates in the child's daily routines; who knows the child's likes, dislikes, strengths, and needs; and cares for the child on a regular basis. Routine caregivers may include relatives and childcare providers. Routine caregiver does not include medical practitioners.]

(38) [(36)] Service Coordinator--The contractor's employee or subcontractor who:

(A) meets all applicable requirements in Subchapter C of this chapter (relating to Staff Qualifications);

(B) is assigned to be the single contact point for the family;

(C) is responsible for providing case management services as described in §108.405 of this title (relating to Case Management Services); and

(D) is from the profession most relevant to the child's or family's needs or is otherwise qualified to carry out all applicable responsibilities.

(39) [(37)] Sign Language and Cued Language--As defined in 34 CFR §303.13(b)(12).

(40) [(38)] Surrogate Parent--A person assigned to act as a surrogate for the parent in compliance with the Individuals with Disabilities Education Act, Part C and this chapter.

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 May 13, 2013.

TRD-201301907

Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

Earliest possible date of adoption: June 23, 2013

For further information, please call: (512) 424-4050



SUBCHAPTER B. PROCEDURAL SAFEGUARDS AND DUE PROCESS PROCEDURES

40 TAC §§108.202 - 108.204, 108.206, 108.209

The proposed amendments and new rules are authorized by the Texas Human Resources Code, Chapters 73 and 117; and the Individuals with Disabilities Education Act, as amended, 20 USC §1400 et seq., and its implementing regulations, 34 CFR Part 303, as amended. The amendments are proposed pursuant to HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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

§108.202. Procedural Safeguards.

The purpose of procedural safeguards is to enforce the legal rights of children with developmental delays or disabilities and their families pertaining to early childhood intervention services. Procedural safeguards are integrated through every stage of a family's early childhood intervention services experience. These procedures are a part of, not separate from, the required programmatic processes.

§108.203. Responsibilities.

(a) The contractor shall be responsible for:

(1) establishing or adopting procedural safeguards that meet the requirements of the federal and state regulations listed in §108.101 of this title (relating to Purpose) and that also meet additional requirements of this subchapter;

(2) implementing the procedural safeguards; and

(3) providing oral and written explanation to the parent regarding procedural safeguards during the pre-enrollment process and at other times when parental consent is required.

(b) The contractor must make reasonable effort to provide appropriate interpreter or translation services in the child's native language as defined in 34 CFR §303.25 or other communication assistance necessary for a parent or child with limited English proficiency or communication impairments to participate in early childhood intervention services. Interpreter, translation, and communication assistance services are provided at no cost to the family.

(c) The contractor must provide the family the DARS ECI family rights publication. The contractor must document the following were explained:

- (1) the family's rights;
- (2) the early childhood intervention process; and
- (3) early childhood intervention services.

§108.204. Prior Written Notice.

The purpose of prior written notice is to inform the parent when the contractor is scheduling an event or proposing to take or not take certain actions as well as to remind the parent about his or her rights regarding these actions. Through prior written notice, the contractor:

(1) provides the parent with sufficient notice of meetings to allow the parent time to prepare for and to invite other individuals if they choose;

(2) keeps the parent informed about any action the contractor is proposing or refusing to take; and

(3) provides the parent with sufficient notice of actions the contractor will take unless the parent exercises his or her due process rights.

§108.206. Written Parental Consent.

Written parental consent provides documentation that the parent has been informed of and agrees, in writing, to the proposed action. Consent is voluntary and can be withdrawn by the parent at any time. Any action for which the parent has withdrawn consent must be stopped immediately.

§108.209. Parent Rights in the IFSP Process.

The contractor must explain the contents of the IFSP to the parents and obtain informed written consent from the parent before providing any early childhood intervention services. The parent has the right to:

- (1) be present and participate in the development of the IFSP;
- (2) have decisions about early childhood intervention services made on the individualized needs of the child and family;
- (3) receive a full explanation of the IFSP;
- (4) consent to some, but not all, early childhood intervention services;
- (5) receive all IFSP services for which the parent gives consent;
- (6) request an administrative hearing or file a complaint if the parent does not agree with the other IFSP team members;
- (7) indicate disagreement in writing with a part of the IFSP, even though the parent consents to early childhood intervention services;
- (8) have the IFSP written in the parent's native [primary] language, as defined in §108.103 of this chapter (relating to Definitions), or mode of communication; and
- (9) receive a copy of the IFSP.

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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Department of Assistive and Rehabilitative Services
Earliest possible date of adoption: June 23, 2013
For further information, please call: (512) 424-4050



SUBCHAPTER C. STAFF QUALIFICATIONS

40 TAC §§108.309, 108.310, 108.313, 108.315, 108.317

The proposed amendments and new rules are authorized by the Texas Human Resources Code, Chapters 73 and 117; and the Individuals with Disabilities Education Act, as amended, 20 USC §1400 et seq., and its implementing regulations, 34 CFR Part 303, as amended. The amendments and new rules are proposed pursuant to HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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

§108.309. Minimum Requirements for All Direct Service Staff.

(a) The contractor must comply with DARS ECI requirements related to health regulations for all direct service staff. The contractor must comply with 34 CFR Part 85 and Texas Health and Safety Code, Chapter 81.

~~[(b) The contractor must complete a fingerprint-based criminal background check on any employee, volunteer, or other person who will be working under the auspices of the contractor before the person has direct contact with children or families.]~~

~~[(1) Any conviction of the following misdemeanors or felonies precludes a person from having direct contact with ECI children and families:]~~

~~[(A) Offenses Against the Person (Texas Penal Code, Title 5);]~~

~~[(B) Offenses Against the Family (Texas Penal Code, Title 6);]~~

~~[(C) Robbery (Texas Penal Code, Title 7, Chapter 29);]~~

~~[(D) Public Indecency (Texas Penal Code, Chapter 43);]~~

~~[(E) Stalking (Texas Penal Code, Title 9, §42.072);]~~

~~[(F) Criminal Solicitation of a Minor (Texas Penal Code, Title 4, §15.031);]~~

~~[(G) Failure to Stop or Report Aggravated Sexual Abuse of a Child (Texas Penal Code, Title 8, §38.17); or]~~

~~[(H) any like offenses of the law of another state or federal law.]~~

~~[(2) A conviction within the previous 10 years of the following misdemeanors or felonies precludes a person from having direct contact with ECI children and families:]~~

~~[(A) Violations of the Texas Controlled Substances Act (Texas Health and Safety Code, Chapter 481);]~~

~~[(B) Violations of the Civil Rights of Person in Custody; Improper Sexual Activity with Person in Custody (Texas Penal Code, §39.04);]~~

- [(C) Abuse of Corpse (Texas Penal Code, §42.08);]
- [(D) Cruelty to Livestock Animals (Texas Penal Code, §42.09);]
- [(E) Attack on Assistance Animal (Texas Penal Code, §42.091);]
- [(F) Cruelty to Nonlivestock Animals (Texas Penal Code, §42.092);]
- [(G) Dog Fighting (Texas Penal Code, §42.10);]
- [(H) Making a Firearm Accessible to a Child (Texas Penal Code, §46.13);]
- [(I) Intoxication and Alcoholic Beverage Offenses (Texas Penal Code, Chapter 49);]
- [(J) Purchase of Alcohol for a Minor; Furnishing Alcohol to a Minor (Texas Alcoholic Beverage Code, §106.06);]
- [(K) any other felony committed within the previous 10 years under the Texas Penal Code; or]
- [(L) any like offense of the law of another state or federal law.]

[(3) A person who has pending charges or who has received deferred adjudication covering an offense listed in this section is precluded from having direct contact with children and families if he or she has not completed the probation successfully or had the pending charges dismissed.]

(b) [(e)] The contractor must comply with DARS ECI requirements related to initial training requirements for direct service staff. Before working directly with children and families, all staff must:

- (1) complete orientation training as required by DARS ECI;
- (2) hold current certification in first-aid including emergency care of seizures and cardiopulmonary resuscitation for children and infants; and
- (3) complete universal precautions training.

(c) [(d)] The contractor must comply with DARS ECI requirements related to continuing education requirements for direct service staff. All staff providing early childhood intervention services to children and families must maintain current certification in first aid including emergency care of seizures and cardiopulmonary resuscitation for children and infants.

(d) [(e)] The contractor must verify that all newly employed staff:

- (1) are qualified in terms of education and experience for their assigned scopes of responsibilities;
- (2) are competent to perform the job-related activities before providing early childhood intervention services; and
- (3) complete orientation training as required by DARS ECI before providing early childhood intervention services.

(e) [(f)] The contractor must comply with DARS ECI requirements related to supervision of direct service staff.

(1) All staff members who work directly with children and families must receive supervision oversight including documented consultation, record review, and observation from a qualified supervisor. Supervisor qualifications are further described in this subchapter in §§108.313(c), 108.315(c), and 108.317(c) of this title (relating to Early Intervention Specialist (EIS), Service Coordinator and Staff Who Do

Not Hold a License or EIS Credential and Provide Early Childhood Intervention Services to Children and Families).

(A) Documented consultation includes evaluation and development of staff knowledge, skills, and abilities, and case-specific problem solving.

(B) Record review includes a review of documentation in child records to evaluate compliance with the requirements of this chapter, and quality, accuracy, and timeliness of documentation.

(C) Observation includes watching staff interactions with children and families to provide guidance and feedback.

(2) The contractor must verify that newly employed staff members receive documented supervision as required by DARS ECI.

(f) [(g)] The contractor must follow all training requirements defined by DARS ECI.

§108.310. Criminal Background Checks.

(a) The contractor must complete a fingerprint-based criminal background check on any employee, volunteer, or other person who will be working under the auspices of the contractor before the person has direct contact with children or families. The purpose of completing the criminal background check is to protect children and families and to comply with Medicaid and Texas Department Family and Protective Services (DFPS) Division for Child Care Licensing requirements.

(b) The contractor must ensure that all therapists providing Medicaid services for ECI children are correctly enrolled with the Texas Medicaid Program. This requirement includes disclosing all criminal convictions and arrests as required by 1 TAC §371.1005 (relating to Disclosure Requirements). The Texas Health and Human Services Commission (HHSC) Office of Inspector General may recommend denial of an enrollment or re-enrollment based on criminal history, in accordance with 1 TAC §371.1011 (relating to Recommendation Criteria).

(c) DFPS Division for Child Care Licensing maintains three charts of criminal history requirements for people who regularly enter licensed child care facilities.

(1) The three charts are published on the DFPS website at www.dfps.state.tx.us/Child_Care/.

(A) Licensed or Certified Child Care Operations: Criminal History Requirements;

(B) Foster or Adoptive Placements: Criminal History Requirements; and

(C) Registered Child Care Homes and Listed Family Homes: Criminal History Requirements.

(2) The contractor must review each employee's criminal background check to ensure that staff members who regularly enter regulated child care facilities or foster homes to provide early childhood intervention services do not have criminal convictions that would result in an absolute bar to entering them in compliance with the 40 TAC §745.651 (relating to What types of criminal convictions may affect a person's ability to be present at an operation?).

(d) If a criminal background check reveals criminal convictions that are not on the DFPS Child Care Licensing charts of criminal history requirements or would result in the individual being eligible for a DFPS Child Care Licensing risk assessment, the program director may conduct a risk assessment. The risk assessment process must include, at a minimum, consideration of:

- (1) the number of convictions;

- (2) the nature and seriousness of the crime;
- (3) the age of the individual at the time the crime was committed;
- (4) the relationship of the crime to the individual's fitness or capacity to serve in the role of an early childhood intervention professional;
- (5) the amount of time that has elapsed since the person's last conviction; and
- (6) any relevant information the individual provides or otherwise demonstrates.

§108.313. *Early Intervention Specialist (EIS).*

(a) The contractor must comply with DARS ECI requirements related to minimum qualifications for an EIS. An EIS must either:

- (1) be registered as an EIS before September 1, 2011; or
- (2) hold a bachelor's degree which includes a minimum of 18 hours of semester course credit relevant to early childhood intervention including three hours of semester course credit in early childhood development or early childhood special education.

(A) Forty clock hours of continuing education in early childhood development or early childhood special education completed within five years prior to employment with ECI may substitute for the three hour semester course credit requirement in early childhood development or early childhood special education.

(B) Coursework or previous training in early childhood development is required to ensure that an EIS understands the development of infants and toddlers because the provision of SST for which an EIS is solely responsible depends on significant knowledge of typical child development. Therefore, the content of the coursework or training must relate to the growth, development, and education of the young child and may include courses or training in:

- (i) child growth and development;
- (ii) child psychology or child and adolescent psychology;
- (iii) children with special needs; or
- (iv) typical language development.

~~[(a) The contractor must comply with DARS ECI requirements related to minimum qualification for an EIS. An EIS must either:]~~

~~[(1) hold a bachelor's degree which includes a minimum of 18 hours of semester course credit relevant to early childhood intervention including three hours of semester course credit in early childhood development or early childhood special education; or]~~

~~[(2) be registered as an EIS before September 1, 2011.]~~

(b) The contractor must comply with DARS ECI requirements related to continuing education for an EIS. An EIS must complete:

- (1) a minimum of ten contact hours of approved continuing education each year; and
- (2) an additional three contact hours of continuing education in ethics every two years.

(c) The contractor must comply with DARS ECI requirements related to supervision of an EIS.

(1) The contractor must provide an EIS documented supervision as defined in §108.309(f) of this title (relating to Minimum Requirements for All Direct Service Staff) as required by DARS ECI.

(2) An EIS supervisor must:

(A) have two years of experience providing ECI services, or two years of experience supervising staff who provide other early childhood intervention services to children and families; and

(B) be an active EIS or hold a bachelor's degree or graduate degree from an accredited university with a specialization in:

(i) child development, special education, psychology, social work, sociology, nursing, rehabilitation counseling, human development, or related field; or

(ii) an unrelated field and have at least 18 hours of semester course credit in child development.

(d) EIS Active Status and EIS Inactive Status.

(1) Only an EIS with active status is allowed to provide early childhood intervention services to children and families. An EIS goes on inactive status when the EIS fails to submit the required documentation by the designated deadline or when the EIS is no longer employed by a contractor. An EIS on inactive status may not perform activities requiring the EIS active status. EIS active status is considered reinstated after the information is entered into the EIS Registry and is approved by DARS ECI. An EIS may return to active status from inactive status by submitting 10 contact hours of continuing education for every year of inactive status. An EIS returning to active status must submit documentation of three contact hours of ethics training within the last two years.

(2) An EIS who has been on inactive status for longer than 24 months must complete the orientation training.

(e) The contractor must comply with DARS ECI requirements related to ethics for an EIS. An EIS who violates any of the standards of conduct in §108.319 of this title (relating to EIS Code of Ethics) is subject to the contractor's disciplinary procedures. Additionally, the contractor must complete an EIS Code of Ethics Incident Report and send a copy to DARS ECI.

§108.315. *Service Coordinator.*

(a) ECI case management may only be provided by an employee or subcontractor of an ECI contractor. The contractor must comply with DARS ECI requirements related to minimum qualifications for service coordinators.

(1) A service coordinator must meet one of the following criteria:

(A) be a licensed professional in a discipline relevant to early childhood intervention;

(B) be an EIS;

(C) be a Registered Nurse (with a diploma, an associate's, bachelor's or advanced degree) licensed by the Texas Board of Nursing; or

(D) hold a bachelor's degree or graduate degree from an accredited university with a specialization in:

(i) child development, special education, psychology, social work, sociology, nursing, rehabilitation counseling, or human development or a related field, or

(ii) an unrelated field with at least 18 hours of semester course credit in child development or human development.

(2) Before performing case management activities, a service coordinator must complete DARS ECI required case management training that includes, at a minimum, content which results in:

(A) knowledge and understanding of the needs of infants and toddlers with disabilities and their families;

(B) knowledge of Part C of the Individuals with Disabilities Education Act;

(C) understanding of the scope of early childhood intervention services available under the early childhood intervention program and the medical assistance program; and

(D) understanding of other state and community resources and supports necessary to coordinate care.

(3) A service coordinator must effectively communicate in the family's native [primary] language or use an interpreter or translator.

(b) A service coordinator who was employed as service coordinator by a contractor before March 1, 2012, and does not meet the requirements of subsection (a)(1) of this section may continue to serve as a service coordinator at the contractor's discretion.

(c) The contractor must comply with DARS ECI requirements related to continuing education for service coordinators. A service coordinator must complete:

(1) three contact hours of training in ethics every two years;

(2) an additional three contact hours of training specifically relevant to case management every year; and

(3) if the service coordinator does not hold a current license or credential that requires continuing professional education, an additional seven contact hours of approved continuing education.

(d) The contractor must comply with DARS ECI requirements related to supervision of service coordinators.

(1) A contractor's ECI program staff member who meets the following criteria is qualified to supervise a service coordinator:

(A) has completed all service coordinator training as required in subsection (a)(2) of this section;

(B) has two years of experience providing case management in an ECI program or another applicable community-based organization; and

(C) is an active EIS or holds a bachelor's degree or graduate degree from an accredited university with a specialization in:

(i) child development, special education, psychology, social work, sociology, nursing, rehabilitation counseling, human development or a related field, or

(ii) an unrelated field with at least 18 hours of semester course credit in child development or human development.

(2) The contractor must provide a service coordinator a minimum of three hours per quarter of documented supervision.

(e) Service Coordinator Active Status and Service Coordinator Inactive Status.

(1) A service coordinator may return to active status from inactive status by submitting 10 contact hours of continuing education for every year of inactive status.

(2) A service coordinator returning to active status must submit documentation of three contact hours of ethics training within the last two years.

(3) In order to provide case management, a service coordinator who has been on inactive status for longer than 24 months must complete the orientation training, including the Family Centered Case

Management module and other required initial training activities when returning to work for an ECI contractor.

(f) The contractor must comply with DARS ECI requirements related to ethics of service coordinators. Service coordinators must meet the established rules of conduct and ethics training required by their license or credential. A service coordinator who does not hold a license or credential must meet the rules of conduct and ethics established in §108.319 of this title (relating to EIS Code of Ethics).

§108.317. Staff Who Do Not Hold a License or EIS Credential and Provide Early Childhood Intervention Services to Children and Families.

(a) The contractor must comply with DARS ECI requirements related to minimum qualifications of direct service staff members who do not hold a license or EIS credential. A direct service staff member who does not hold a license or EIS credential must hold a high school diploma or certificate recognized by the state as an equivalent of a high school diploma[;] and:

(1) have completed two years of documented paid experience providing services to children and families; or

(2) provide behavioral intervention services according to a structured plan supervised by one of the following:

(A) Board Certified Behavior Analyst[;] or

(B) one of the following who is trained in Positive Behavior Supports or Applied Behavior Analysis:

(i) Licensed Psychologist [(LP)] licensed by the Texas State Board of Examiners of Psychologists[;]

(ii) Licensed Psychological Associate (LPA) licensed by the Texas State Board of Examiners of Psychologists[;]

(iii) Licensed Professional Counselor (LPC) licensed by the Texas State Board of Examiners of Professional Counselors[;]

(iv) Licensed Clinical Social Worker (LCSW) licensed by the Texas State Board of Social Work Examiners[;]

(v) Licensed Marriage and Family Therapist (LMFT) licensed by the Texas State Board of Examiners of Marriage and Family Therapists.

(b) The contractor must comply with DARS ECI requirements related to continuing education of direct service staff members who do not hold a license or EIS credential. A direct service staff member who does not hold a license or EIS credential must complete:

(1) a minimum of ten contact hours of approved continuing education each year; and

(2) an additional three contact hours of training in ethics every two years.

(c) The contractor must comply with DARS ECI requirements related to supervision of direct service staff members who do not hold a license or EIS credential.

(1) The contractor must provide a direct service staff member who does not hold a license or EIS credential documented supervision as defined in §108.309(f) of this title (relating to Minimum Requirements for All Direct Service Staff) as required by DARS ECI.

(2) An ECI staff member who has two years of experience providing early childhood intervention services is qualified to supervise a direct service staff member who does not hold a license or EIS credential.

(d) The contractor must comply with DARS ECI requirements related to ethics for direct service staff members who do not hold a license or EIS credential. A direct service staff member who does not hold a license or EIS credential must meet the rules of conduct and ethics established in §108.319 of this title (relating to EIS Code of Ethics).

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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Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

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For further information, please call: (512) 424-4050



SUBCHAPTER F. PUBLIC OUTREACH

40 TAC §§108.601, 108.603, 108.605, 108.607, 108.609, 108.611, 108.613, 108.615, 108.617

The proposed new rules are authorized by the Texas Human Resources Code, Chapters 73 and 117; and the Individuals with Disabilities Education Act, as amended, 20 USC §1400 et seq., and its implementing regulations, 34 CFR Part 303, as amended. The new rules are proposed pursuant to HHSC's statutory rule-making authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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

§108.601. Purpose.

The purpose of this subchapter is to establish requirements, including those required by IDEA Part C, that are intended to ensure that all families who have infants and toddlers who are potentially eligible for early childhood intervention services know about the ECI program and how to access its services.

§108.603. Legal Authority.

The following statutes and regulations authorize or require the rules in this subchapter:

- (1) Texas Human Resources Code, Chapter 73;
- (2) Texas Human Resources Code, Chapter 117;
- (3) the Individuals with Disabilities Education Act, Part C (20 USC §§1431-1444); and
- (4) implementing federal regulations 34 CFR Part 303.

§108.605. Definitions.

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

- (1) Central Directory--As described in 34 CFR §303.117.
- (2) Public Awareness--As described in 34 CFR §303.116 and §303.301.
- (3) Public Outreach--The combined efforts of child find, public awareness, and interagency coordination.

§108.607. Public Outreach.

(a) The contractor must plan and implement child find, public awareness and interagency coordination goals and strategies that comply with the Individuals with IDEA Part C.

(b) When DARS provides language to use in communicating with primary referral sources, parents of infants and toddlers, or the general public, the contractor must use the provided language.

§108.609. Child Find.

(a) The purpose of child find efforts is to establish working relationships and communicate effectively with primary referral sources in order to support and promote their referring children potentially eligible for ECI services.

(b) The contractor must have written procedures that establish systems to:

(1) inform primary referral sources of the requirement to refer children suspected of having a developmental delay or a medical diagnosis with a high probability of resulting in a developmental delay in a timely manner as established in 34 CFR §303.303;

(2) accept referrals effectively; and

(3) monitor referral dates and sources.

(c) The contractor must document that primary referral sources listed in 34 CFR §303.303(c) have been provided current information on:

(1) ECI eligibility criteria;

(2) the ECI array of services;

(3) how to explain ECI service delivery to families, including the family's role;

(4) how to make a referral to ECI;

(5) the importance of informing families when a referral is made; and

(6) the family cost share system of payments for early childhood intervention services.

(d) The contractor must document that any major DARS ECI policy change concerning the types of information described in subsection (c) of this section is communicated to primary referral sources.

§108.611. Public Awareness.

(a) The purpose of public awareness efforts is to increase recognition of ECI programs in the community so that families with children potentially eligible for early childhood intervention services will access those services.

(b) The contractor must document that families and the general public are provided current DARS ECI materials on:

(1) ECI service delivery, including the family's role;

(2) eligibility criteria;

(3) the ECI array of services;

(4) how to make a referral to ECI; and

(5) the family cost share system of payments for early childhood intervention services.

(c) The contractor's program staff must be able to explain to families and the public the information listed in subsection (b) of this section.

(d) The contractor must assist DARS ECI as requested in public awareness activities, including informing families and their community of the DARS ECI Central Directory.

(e) The contractor must establish and maintain ongoing relationships with public and private agencies that serve children and families in their community to:

(1) increase quality referrals for ECI services; and

(2) coordinate with community partners to increase access to resources and services for ECI children and families.

§108.613. Publications.

(a) The contractor must maintain a current inventory of ECI publications and public outreach materials provided by DARS ECI.

(b) Public outreach materials created by the contractor must comply with the ECI Graphics Manual.

§108.615. Interagency Coordination.

(a) The purpose of interagency coordination is to enhance the contractor's child find and public awareness efforts and to coordinate with community partners to increase access to resources and services for ECI children and families.

(b) The contractor must comply with all child find and public outreach requirements in all state-level DARS ECI memoranda of understanding (MOUs) with the Texas Education Agency (TEA), Head Start and Early Head Start, Texas Department of Family and Protective Services (DFPS), and any other state agency with which DARS ECI enters into a MOU.

(c) To facilitate families' effective transitions from ECI services to Part B services in the public schools, the contractor must coordinate with the local educational agency (LEA) representatives to achieve a shared understanding of:

(1) eligibility requirements for public school services, including for Part B services;

(2) the state-level MOUs with TEA; and

(3) if applicable, MOUs with the LEAs.

(d) To ensure that families eligible for Head Start and Early Head Start have access to those services as needed, the contractor must coordinate with the local Head Start and Early Head Start representative to achieve a shared understanding of:

(1) eligibility requirements for Head Start and Early Head Start placement;

(2) the state-level MOU with Head Start and Early Head Start;

(3) referral procedures; and

(4) if applicable, the local MOU with Head Start and Early Head Start.

(e) The contractor must document coordination of ECI services with local agencies, as required by 34 CFR §303.302 and other programs identified by DARS ECI.

(f) The contractor must maintain a current list of community resources for families that includes for each resource:

(1) services provided;

(2) contact information;

(3) referral procedures; and

(4) cost to families.

(g) The contractor must document the reasonable efforts to mitigate any systemic issues with achieving the requirements of this section.

§108.617. Public Outreach Contact, Planning, and Evaluation.

(a) The contractor must inform DARS ECI of the person to contact regarding public outreach efforts.

(b) The contractor must establish goals, strategies, and activities to meet the requirements of this subchapter. This strategic planning process must include the review and incorporation of any major DARS ECI policy change concerning the types of information described in §108.609(b) of this subchapter (relating to Child Find).

(c) The strategic planning process must be coordinated with other contractors that share counties and primary referral sources.

(d) The public outreach strategic planning process must include an evaluation of the success of the contractor's public outreach efforts with a focus on the:

(1) number of children referred to the ECI program;

(2) percentage of children referred that are determined eligible for the program;

(3) percentage of children determined eligible that enroll in the program;

(4) data in paragraphs (1), (2) and (3) of this subsection broken down by age, race, and ethnicity at referral; referral source; and eligibility type; and

(5) plans to address issues found in the evaluation of public outreach efforts.

(e) The contractor must be prepared to describe this strategic planning process and its outcomes to DARS ECI upon request.

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

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Sylvia F. Hardman

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Department of Assistive and Rehabilitative Services

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SUBCHAPTER G. REFERRAL, PRE-ENROLLMENT, AND DEVELOPMENTAL SCREENING

40 TAC §§108.701, 108.706, 108.707, 108.709

The proposed amendments and new rules are authorized by the Texas Human Resources Code, Chapters 73 and 117; and the Individuals with Disabilities Education Act, as amended, 20 USC §1400 et seq., and its implementing regulations, 34 CFR Part 303, as amended. The amendments and new rules are proposed pursuant to HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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

§108.701. Referral Requirements.

(a) The contractor must ~~[have written procedures establishing a system for]~~:

(1) ~~accept [accepting]~~ referrals for children less than 36 months of age;

(2) ~~document in the child's record [documenting] the referral date, [and] source, and reason for referral;~~ and

(3) ~~contact [contacting] the family in a timely manner after receiving the referral.~~

(b) The contractor must follow all requirements described in this chapter when a referral is received 45 days or more before the child's third birthday.

(c) In accordance with 34 CFR §303.209(b)(iii) and §108.1207(h) of this chapter (relating to Transition Planning), when a referral is received less than 45 days before the child's third birthday, the contractor is not required to conduct pre-enrollment procedures, an evaluation, an assessment, or an initial IFSP meeting. In accordance with 34 CFR §303.209, with written parental consent, if the toddler is potentially eligible for special education services:

(1) the contractor must notify the LEA; and

(2) DARS coordinates the notification to the SEA.

§108.706. Child Referred with an Out-of-State IFSP.

(a) When a child moves to Texas with a completed IFSP from another state, eligibility for Texas early childhood intervention services must be determined in accordance with Subchapter H of this chapter (relating to Eligibility, Evaluation, and Assessment).

(b) The interdisciplinary team considers existing evaluation data and medical diagnoses, as documented on the out-of-state IFSP, as appropriate.

(c) Early childhood intervention services in Texas must be planned in accordance with Subchapter J of this chapter (relating to Individualized Family Service Plan (IFSP)) and delivered in accordance with Subchapter K of this chapter (relating to Service Delivery).

§108.707. Pre-Enrollment Activities.

(a) Pre-enrollment begins at the point of referral, includes the following activities, and ends when the parent signs the IFSP or a final disposition is reached.

(1) The contractor must assign an initial service coordinator for the family and document the name of the service coordinator in the child's record.

(2) The contractor must provide the family the DARS ECI family rights publication and document in the child's record that the following were explained:

(A) the family's rights regarding eligibility determination and enrollment;

(B) the early childhood intervention process for determining eligibility and enrollment; and

(C) the types of early childhood intervention services that may be delivered to the child and the manner in which they may be provided.

(3) The contractor provides pre-IFSP service coordination as defined in 34 CFR §303.13(b)(11) and §303.34.

(4) The contractor must collect information on the child throughout the pre-enrollment process.

(5) The contractor must assist the child and family in gaining access to the evaluation and assessment process. The contractor:

(A) schedules the interdisciplinary initial ~~[comprehensive]~~ evaluation and assessment; and

(B) prepares the family for the evaluation and assessment process.

(6) The contractor must conduct the activities in this section in the parent's native language, as defined in §108.103 of this chapter (relating to Definitions), unless clearly not feasible.

(b) The contractor must explain the requirement to provide early childhood intervention services in the natural environment to the family before eligibility determination.

(c) The contractor must determine the need for and appoint a surrogate parent in accordance with 34 CFR §303.422 and §108.213 of this title (relating to Surrogate Parents).

(d) The contractor must comply with all requirements in Subchapter B of this chapter (relating to Procedural Safeguards and Due Process Procedures).

§108.709. Optional Developmental Screenings.

(a) Developmental screenings are only used to determine the need for further evaluation. The contractor must:

(1) use developmental screening tools that are approved by DARS ECI; and

(2) train providers administering the screening tool according to the parameters required by the selected tool.

(b) The parent has the right to decide whether to proceed to a comprehensive evaluation after a developmental screening or request a comprehensive evaluation instead of a developmental screening at any time.

(c) If the results of a child's [child passes all areas of the] developmental screening do not indicate a developmental concern, the contractor must:

(1) provide written documentation to the parent that further evaluation is not recommended;

(2) offer the parent a comprehensive evaluation; and

(3) conduct a comprehensive evaluation if requested by the parent.

(d) The contractor must coordinate with the Texas Department of Family and Protective Services (DFPS) to accept referrals for children under 36 months of age who are in foster care, involved in a substantiated case of child abuse or neglect, identified as being affected by illegal substance abuse, or withdrawal symptoms resulting from prenatal drug exposure, or suspected of having a disability or developmental delay.

(1) If the contractor receives a completed developmental screening from a foster child's physician indicating the child has a developmental delay, the contractor must offer a comprehensive evaluation to determine eligibility for early childhood intervention services.

(2) If the contractor receives a referral on a child who has not been placed in foster care, but who is involved in a substantiated case of child abuse or neglect, the contractor must offer a developmental screening to determine the need for a comprehensive evaluation or proceed to. ~~The contractor may use professional judgment to conduct~~ a comprehensive evaluation without a developmental screening.

(3) If the contractor receives a referral on a child who is identified as being affected by illegal substance abuse, or withdrawal symptoms resulting from prenatal drug exposure, the contractor must offer a developmental screening to determine the need for a comprehensive evaluation. The contractor may use professional judgment to proceed to comprehensive evaluation without first conducting a developmental screening.

(4) If the contractor receives a referral from DFPS due to suspected disability or developmental delay, the contractor follows their local procedures for accepting referrals, screening, and evaluating when the child is:

(A) not a foster child;

(B) not involved in a substantiated case of child abuse or neglect; and

(C) not identified as being affected by illegal substance abuse or withdrawal symptoms resulting from prenatal drug exposure.

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 May 13, 2013.

TRD-201301911

Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

Earliest possible date of adoption: June 23, 2013

For further information, please call: (512) 424-4050



SUBCHAPTER H. ELIGIBILITY

40 TAC §§108.801, 108.803 - 108.805, 108.807

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

The proposed repeals are authorized by the Texas Human Resources Code, Chapters 73 and 117; and the Individuals with Disabilities Education Act, as amended, 20 USC §1400 et seq., and its implementing regulations, 34 CFR Part 303, as amended. The repeals are proposed pursuant to HHSC's statutory rule-making authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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

§108.801. *Definitions.*

§108.803. *Eligibility.*

§108.804. *Eligibility Statement.*

§108.805. *Initial Eligibility Criteria.*

§108.807. *Continuing Eligibility Criteria.*

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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Sylvia F. Hardman

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Department of Assistive and Rehabilitative Services

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For further information, please call: (512) 424-4050



SUBCHAPTER H. ELIGIBILITY, EVALUATION, AND ASSESSMENT

40 TAC §§108.801, 108.803, 108.805, 108.807, 108.809, 108.811, 108.813, 108.815, 108.817, 108.819, 108.821, 108.823, 108.825, 108.827, 108.829, 108.831, 108.833

The proposed new rules are authorized by the Texas Human Resources Code, Chapters 73 and 117; and the Individuals with Disabilities Education Act, as amended, 20 USC §1400 et seq., and its implementing regulations, 34 CFR Part 303, as amended. The new rules are proposed pursuant to HHSC's statutory rule-making authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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

§108.801. *Purpose.*

The purpose of this subchapter is to establish requirements that, with parental consent:

(1) each child under the age of three who is referred for evaluation or early childhood intervention services and is suspected of having a developmental delay or disability receives a timely evaluation from an interdisciplinary team; and

(2) each child determined eligible for early childhood intervention services receives:

(A) an assessment of the unique strengths and needs of that child and the identification of services appropriate to meet those needs; and

(B) a family-directed assessment of the resources, priorities, and concerns of the family and the identification of the supports and services necessary to enhance the family's capacity to meet the developmental needs of the child.

§108.803. *Legal Authority.*

The following statutes and regulations authorize or require the rules in this subchapter:

(1) Texas Human Resources Code, Chapter 117;

(2) 34 CFR Part 303; and

(3) 20 USC §§1431 through 1443.

§108.805. *Definitions.*

The following words and terms, when used in this subchapter, will have the following meanings, unless the context clearly indicates otherwise. Adjusted Age--The chronological age of a child minus the number of weeks of prematurity.

§108.807. *Eligibility.*

(a) The contractor must determine that a child meets Texas eligibility requirements in order to provide early childhood intervention services to the child and family.

(b) Contractors shall apply the same eligibility criteria for all children residing in Texas. If a child is determined eligible in one area of Texas, the child remains eligible if the family moves to another part of the state until the child's annual evaluation is due.

(c) The contractor must establish a system of management oversight to ensure consistent eligibility determination.

(d) The contractor must comply with all requirements in Subchapter B of this chapter (relating to Procedural Safeguards and Due Process Procedures) when determining eligibility.

§108.809. Initial Eligibility Criteria.

A child must be under 36 months of age and meet initial eligibility criteria to receive early childhood intervention services. Initial eligibility is established by:

(1) documentation of a medically diagnosed condition that has a high probability of resulting in developmental delay;

(2) an auditory or visual impairment as defined by the Texas Education Agency rule at 19 TAC §89.1040 (relating to Eligibility Criteria); or

(3) a developmental delay based on an evaluation completed using a standardized tool designated by DARS ECI. Each developmental area must be evaluated as defined in 34 CFR §303.321. To be eligible to receive early childhood intervention services, the child must have:

(A) a documented delay of at least 25% in one or more of the following developmental areas:

(i) communication;

(ii) cognitive;

(iii) gross motor;

(iv) fine motor;

(v) social emotional; or

(vi) adaptive; or

(B) a documented delay of at least 33% if the child's only delay is in expressive language; or

(4) a qualitative determination of delay, as indicated by responses or patterns that are disordered or qualitatively different from what is expected for the child's age, and significantly interfere with the child's ability to function in the environment.

§108.811. Eligibility Determination Based on Medically Diagnosed Condition That Has a High Probability of Resulting in Developmental Delay.

(a) To determine eligibility for a child who has a qualifying medical diagnosis the interdisciplinary team must review medical documentation to determine initial eligibility.

(b) The DARS ECI assistant commissioner approves the list of qualifying medical conditions based on prevailing medical opinion. Copies of the list of medically qualifying diagnoses can be obtained from DARS.

(c) If a review of the child's records indicates that the child has a qualifying medical condition, the evaluation team must determine and document a need for early childhood intervention services.

§108.813. Assessment of Hearing and Auditory Status.

(a) As part of evaluation the interdisciplinary team must review the current hearing and auditory status for every child through an analysis of the evaluation protocol results to determine any need for further hearing assessment.

(b) The contractor must refer a child to a licensed audiologist if the child has been identified as having a need for further hearing assessment and the child has not had a hearing assessment within six months of the hearing needs identification. If necessary to access a licensed audiologist, the contractor may refer the child to their primary care physician. The referral must be made:

(1) within five working days; and

(2) with parental consent.

(c) If the contractor receives an audiological assessment that indicates the child has an auditory impairment, the contractor must refer the child within five business days:

(1) to an otologist, an otolaryngologist, or an otorhinolaryngologist for an otological examination. An otological examination may be completed by any licensed medical physician when an otologist is not available. The child's record must include documentation that an otologist, an otolaryngologist, or an otorhinolaryngologist was not available to complete the examination; and

(2) to the LEA to complete the communication evaluation and participate in the eligibility determination process as part of the interdisciplinary team. The contractor must also refer to the LEA any child who uses amplification.

§108.815. Assessment of Vision Status.

(a) As part of evaluation the interdisciplinary team must review the current vision status for every child through an analysis of the evaluation protocol results to determine the need for further vision assessment.

(b) The contractor must refer a child to an ophthalmologist or optometrist if the child has been identified as having a need for further vision assessment and the child has not had a vision assessment within nine months of the vision needs identification. If necessary to access an ophthalmologist or optometrist, the contractor may refer the child to their primary care physician. The referral must be made:

(1) within five working days; and

(2) with parental consent.

(c) If the contractor receives a medical eye examination report that indicates vision impairment, the contractor must refer the child to the LEA and to the local office of the DARS Division for Blind Services, with parental consent and within five days of receiving the report.

(d) The referral must be accompanied by a form containing elements required by the Texas Education Agency completed by an ophthalmologist or an optometrist, or a medical physician when an ophthalmologist or optometrist is not available.

§108.817. Eligibility Determination Based on Developmental Delay.

(a) The contractor must:

(1) comply with all requirements in 34 CFR §303.21(b) (relating to Procedures for Evaluation of the Child);

(2) maintain all test protocols and other documentation used to determine eligibility and continuing eligibility in the child's record;

(3) provide prior written notice to the parent when the child is determined to be ineligible for early childhood intervention services; and

(4) ensure that evaluations are conducted by qualified personnel.

(b) The parent and at least two professionals from different disciplines must conduct the evaluation to determine initial and continuing eligibility based on developmental delay as defined by §108.809(3) (relating to Initial Eligibility Criteria). Service coordination is not considered a discipline for evaluation. The evaluation procedures must include:

(1) administration of the standardized tool designated by DARS ECI;

(2) taking the child's history, including interviewing the parent;

(3) identifying the child's level of functioning in each of the developmental areas in 34 CFR §303.21(a)(1);

(4) gathering information from other sources such as family members, other caregivers, medical providers, social workers, and educators, if necessary, to understand the full scope of the child's unique strengths and needs;

(5) reviewing medical, educational, and other records; and

(6) in addition to 34 CFR §303.21(b), determining the most appropriate setting, circumstances, time of day, and participants for the evaluation in order to capture the most accurate picture of the child's ability to function in his or her natural environment.

(c) The contractor must consider other evaluations and assessments performed by outside entities when requested by the family.

(1) The contractor must determine whether outside evaluations and assessments:

(A) are consistent with DARS ECI policies;

(B) reflect the child's current status; and

(C) have implications for IFSP development.

(2) If the family does not allow full access to those records or to those entities or does not consent to or does not cooperate in evaluations or assessments to verify their findings, the contractor may discount or disregard the other evaluations and assessments performed by outside entities.

(d) Evaluation must be based on informed clinical opinion.

(e) If the results of the evaluation for developmental delay, using the standardized tool designated by DARS ECI in accordance with §108.809(3) of this subchapter, do not establish eligibility for the child and the child is 16 months or older, the evaluation team must complete the Modified Checklist for Autism in Toddlers as required by §108.833(c) of this subchapter (relating to Autism Screening).

§108.819. Adjustment for Children Born Prematurely.

In determining the extent of developmental delay, an adjustment for children born prematurely must be applied as follows:

(1) age is adjusted for children born before 37 weeks gestation and is based on a 40-week term;

(2) the developmental age must be measured against the adjusted age rather than chronological age until the child is 18 months old; and

(3) the age adjustment cannot exceed 16 weeks.

§108.821. Qualitative Determination of Delay.

(a) When the results of the evaluation, using the standardized tool designated by DARS ECI, do not accurately reflect the child's development or ability to function in the natural environment, the interdisciplinary team documents this in the child's record and proceeds to a determination of qualitative delay.

(b) The interdisciplinary team must use the supplemental protocol designated by DARS ECI to determine qualitative delay.

(c) The interdisciplinary team must conduct a determination of qualitative delay for referred children who do not pass the Modified Checklist for Autism in Toddlers screening and follow-up interview as required by §108.817(e) and §108.833(c) of this subchapter (relating to Eligibility Determination Based on Developmental Delay and Autism Screening).

§108.823. Continuing Eligibility Criteria.

(a) The contractor must re-determine the child's eligibility for early childhood intervention services at least annually.

(b) Continuing eligibility based on a qualifying medical diagnosis must be determined one year after initial eligibility.

(1) If a review of the child's records confirms that a qualifying medical condition continues, the child remains eligible for comprehensive early childhood intervention services, and the interdisciplinary team must document the continued need for early childhood intervention services.

(2) The contractor must ensure that the child's record contains written documentation of any change in medical diagnosis.

(c) Continuing eligibility based on auditory or visual impairments as defined by the Texas Education Agency in 19 TAC §89.1040 (relating to Eligibility Criteria) is determined one year after initial eligibility.

(d) Continuing eligibility for developmental delay based on the standardized tool must be determined one year after initial eligibility.

(1) Eligibility is re-determined through an evaluation using the standardized tool designated by DARS ECI.

(2) The child must demonstrate a documented delay of at least 15% in one or more areas of development. If applicable use adjusted age as specified in §108.819 of this subchapter (relating to Adjustment for Children Born Prematurely).

(e) Continuing eligibility for a child whose initial eligibility was based on a qualitative determination of developmental delay must be determined after six months.

(1) Eligibility is re-determined through an evaluation using the standardized tool designated by DARS ECI.

(2) The child must demonstrate a documented delay of at least 15% in one or more areas of development. If applicable use adjusted age as specified in §108.819 of this subchapter.

(f) If the parent fails to consent or fails to cooperate in re-determination of eligibility, the child becomes ineligible. The contractor must send prior written notice of ineligibility and consequent discontinuation of all ECI services to the family at least 14 days before the contractor discharges the child from the program, unless the parent:

(1) immediately consents to and cooperates in all necessary evaluations and assessments; and

(2) consents to all or part of a new IFSP.

(g) The family has the right to oppose the actions described in subsection (f) of this section using their procedural safeguards including the rights to use local and state complaint processes, request mediation, or request an administrative hearing in accordance with §101.1107 of this title (relating to Administrative Hearings Concerning Individual Child Rights).

§108.825. Eligibility Statement.

(a) The interdisciplinary team must document eligibility decisions regarding a child on an eligibility statement containing the elements required by DARS ECI.

(b) The eligibility statement must document a medically qualifying diagnosis, a qualifying auditory or visual impairment, or the elements required by DARS ECI for a determination of developmental delay.

(c) The eligibility statement must be:

- (1) in the child's record; and
- (2) updated when eligibility changes or is re-determined.

§108.827. Needs Assessment.

(a) The interdisciplinary team, to include the service coordinator, must complete a comprehensive needs assessment initially and annually to:

- (1) determine and document the eligible child's need for early childhood intervention services;
- (2) identify the child's unique strengths and needs;
- (3) identify the family's resources, concerns, and priorities;
- (4) identify the appropriate early childhood intervention services; and
- (5) inform the development of the IFSP.

(b) The assessment of the child must include:

- (1) a review of the results of the child's evaluation;
- (2) personal observation of the child; and
- (3) the identification of the child's needs in each of the developmental areas listed in 34 CFR §303.21(a)(1).

(c) The contractor must offer to conduct a family-directed assessment and comply with all requirements in 34 CFR §303.321(c) (relating to Procedures for assessment of the child and family). A family-directed assessment must be conducted by the interdisciplinary team in order to identify the family's resources, priorities, and concerns and the supports and services necessary to enhance the family's capacity to meet the developmental needs of the child. The family-directed assessment must:

- (1) be voluntary on the part of each family member participating in the assessment;
- (2) be based on information obtained through the assessment and also through an interview with those family members participating in the assessment; and
- (3) include the family's description of its resources, priorities, and concerns related to enhancing the child's development.

(d) Providers must assess and document the child's progress and needs of the family on an ongoing basis.

§108.829. Review of Nutrition Status.

(a) The interdisciplinary team must complete a review of the child's nutrition status no later than 28 days after IFSP development through any of the following:

- (1) a review of the child's medical records;
- (2) a review of the child's nutrition evaluation;
- (3) a review of a doctor's physical examination for the child;
- (4) a review of a nurses' evaluation for the child;

(5) a thorough discussion of family routines; or

(6) completion of DARS ECI nutrition screening.

(b) The service coordinator must refer the child to a registered dietician if nutritional needs are identified.

§108.831. Assistive Technology.

The interdisciplinary team must address assistive technology needs as part of the comprehensive needs assessment. This may be accomplished by:

- (1) a review of assistive technology needs by qualified therapist as part of the evaluation; or
- (2) administration of a screening tool which includes a review of the child's functioning and needs for assistance in positioning, mobility, communication, and play.

§108.833. Autism Screening.

(a) Autism screening is not required if the child has been screened for autism by another entity or has been identified as having autism.

(b) The contractor does not diagnose autism.

(c) If the results of an evaluation for developmental delay, using the standardized tool designated by DARS ECI as required by §108.809(3) of this subchapter (relating to Initial Eligibility Criteria), do not establish eligibility for a referred child and the child is 16 months or older, the interdisciplinary team must:

- (1) explain to the family the importance of early screening for autism;
- (2) request and obtain written consent for the screening; and
- (3) complete the Modified Checklist for Autism in Toddlers (M-CHAT) if the child is not screened by the physician.

(A) If the child does not pass the M-CHAT screening, the evaluation team must complete the M-CHAT follow-up interview for children.

(B) If the child does not pass the M-CHAT follow-up interview, the evaluation team must evaluate the child using the supplemental protocol designated by DARS ECI to determine qualitative developmental delay.

(4) The contractor must make appropriate referrals if needs are identified. This could include:

(A) a referral to appropriate clinicians for a child who does not pass both the M-CHAT and the follow-up interview; and

(B) the provision of case management to assist the parent with having an autism screening done by the child's physician if they do not consent to a screening by the contractor.

(d) If an enrolled child is 16 months or older, the interdisciplinary team must determine if the child:

- (1) has a family history of autism;
- (2) has lost previously acquired speech or social skills; or
- (3) exhibits a language or cognitive delay or unusual communication patterns combined with a social, emotional or behavioral concern, including repetitive or stereotypical behaviors.

(e) If the interdisciplinary team identifies any of the issues in subsection (d) of this section, a member of the team must:

(1) explain to the family the importance of early screening for autism;

(2) request and obtain written consent for the screening;

(3) complete the Modified Checklist for Autism in Toddlers (M-CHAT) if the child is not screened by the physician or is unable to receive the screening from the physician in a timely manner; and

(4) complete the M-CHAT follow-up interview for a child who does not pass the M-CHAT screening.

(f) The contractor must make appropriate referrals if needs are identified. This could include:

(1) a referral to appropriate clinicians for a child who does not pass both the M-CHAT and the follow-up interview; and

(2) the provision of case management to assist the parent with having an autism screening done by the child's physician if they do not consent to a screening by the contractor.

(g) The use of the M-CHAT screening does not take the place of the appropriate evaluation of the child required under this subchapter.

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 May 13, 2013.

TRD-201301913

Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

Earliest possible date of adoption: June 23, 2013

For further information, please call: (512) 424-4050



SUBCHAPTER I. EVALUATION AND ASSESSMENT

40 TAC §§108.901, 108.903, 108.905, 108.907, 108.909, 108.911, 108.913, 108.915, 108.917

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

The proposed repeals are authorized by the Texas Human Resources Code, Chapters 73 and 117; and the Individuals with Disabilities Education Act, as amended, 20 USC §1400 et seq., and its implementing regulations, 34 CFR Part 303, as amended. The repeals are proposed pursuant to HHSC's statutory rule-making authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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

§108.901. *Definitions.*

§108.903. *Evaluations.*

§108.905. *Determination of Hearing and Auditory Status.*

§108.907. *Determination of Vision Status.*

§108.909. *Comprehensive Needs Assessment.*

§108.911. *Ongoing Assessment.*

§108.913. *Identifying Nutritional Needs.*

§108.915. *Identifying Assistive Technology Needs.*

§108.917. *Autism Screening.*

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 May 13, 2013.

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Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

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For further information, please call: (512) 424-4050



SUBCHAPTER J. INDIVIDUALIZED FAMILY SERVICE PLAN (IFSP)

40 TAC §§108.1001, 108.1003, 108.1007, 108.1009, 108.1013, 108.1015, 108.1016, 108.1019

The proposed amendments and new rules are authorized by the Texas Human Resources Code, Chapters 73 and 117; and the Individuals with Disabilities Education Act, as amended, 20 USC §1400 et seq., and its implementing regulations, 34 CFR Part 303, as amended. The amendments and new rules are proposed pursuant to HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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

§108.1001. *Definitions.*

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

(1) **Frequency**--The number of days or sessions that a service will be provided within a specified period of time.

(2) **Functional Ability**--A child's ability to carry out meaningful behaviors in the context of everyday living, through skills that integrate development across domains.

(3) **IFSP Outcomes**--Statements of the measurable results that the family wants to see for their child or themselves.

(4) **Intensity**--The length of time a service is provided during a session expressed as a specific amount of time instead of a range.

(5) **Method**--If the service is delivered in a group or on an individual basis.

(6) **Periodic Review**--As defined in 34 CFR §303.342(b), a review by the IFSP team, based on the assessment of the child, that results in approval of or modifications to the IFSP.

§108.1003. *IFSP.*

(a) The IFSP team must develop a written initial IFSP during a face-to-face meeting with the family in accordance with 20 USC §1436 and 34 CFR §303.340 through §303.346.

(b) The IFSP must be developed based on evaluation and assessment described in 34 CFR §303.321 and Subchapter H of this chapter (relating to Eligibility, Evaluation, and Assessment). The IFSP must address the developmental needs of the child and the case management needs of the family as identified in the comprehensive needs assessment, unless the family declines to address a specified need. [§§108.901, 108.903, 108.905, 108.907, 108.909, 108.911, 108.913, 108.915 and 108.917 of this title (relating to Evaluation and Assessment).]

(c) The contractor must deliver early childhood intervention services according to the IFSP.

(d) The IFSP team must complete [conduct] a periodic review of the IFSP at six-month intervals as required in 20 USC §1436 and 34 CFR §303.342.

(e) The IFSP team must conduct an annual meeting to evaluate the IFSP as required in 34 CFR §303.342, or more frequently if the parent requests.

(f) Documentation in the child's record must reflect compliance with all related state and federal requirements. [Changes to the IFSP are made by revising rather than by rewriting the entire IFSP. The documentation must reflect continuing or changed services throughout the child's enrollment.]

(g) The contractor must provide the parent with a copy of the IFSP, as required in §108.223(d) of this chapter (relating to Fees for Records) and maintain the original IFSP in the child's record.

(h) The contractor must comply with all requirements in Subchapter B of this chapter (relating to Procedural Safeguards and Due Process Procedures) during the IFSP process.

§108.1007. *Interim IFSP.*

(a) An interim IFSP can be developed before completing the evaluation and assessment in accordance with 34 CFR §303.345.

(b) The evaluation, comprehensive [Comprehensive evaluation.] needs assessment, and the IFSP must be completed within the time frames required in 34 CFR §303.310.

§108.1009. *Participants in Initial and Annual Meetings to Evaluate the IFSP.*

(a) The initial IFSP meeting and each annual meeting to evaluate the IFSP must be conducted by the IFSP team as defined in 34 CFR §303.343(a) (relating to IFSP Team meeting and periodic review).

(b) The initial IFSP meeting and the annual meeting to evaluate the IFSP must be conducted face-to-face with at a minimum, the parent and at least two professionals from different disciplines or professions.

(1) At least one of the two ECI professionals must be a service coordinator.

(2) At least one of the two ECI professional must be an LPHA.

(3) At least one ECI professional attending the meeting must have been involved in conducting the evaluation. This may be the service coordinator, the LPHA, or a third professional. If the LPHA attending the IFSP meeting is not an LPHA who conducted the evaluation, the contractor must document how the most recent observations and conclusions of the LPHA who conducted the evaluation were communicated to the LPHA attending the initial IFSP meeting and incorporated into the IFSP.

(4) Other team members may participate by other means acceptable to the team.

(5) The annual meeting to evaluate the IFSP may be conducted by means other than a face-to-face meeting if:

(A) approved by the parent; and

(B) the contractor has a plan approved by DARS for conducting annual meetings to evaluate the IFSP by means other than a face-to-face meeting when appropriate for the child and family and approved by the parent in which case the contractor must document how the most recent observations and conclusions of the LPHA conducting the re-evaluation were communicated and incorporated into the IFSP.

(6) Parents must be informed of their choice regarding how the annual meeting is conducted.

(c) With parental consent, the contractor must also invite to the initial IFSP meeting and annual meetings to evaluate the IFSP:

(1) Early Head Start and Migrant Head Start staff members, if the family is jointly served; and

(2) representatives from other agencies serving or providing case management to the child or family including STAR, STAR+PLUS, or STAR Health Medicaid managed care.

§108.1013. *Periodic Reviews.*

(a) Each periodic review must be conducted by individuals that meet the requirements in 34 CFR §303.343(b) (relating to IFSP Team meetings and periodic reviews.) and completed in compliance with 34 CFR §303.342(b) (relating to Procedures for IFSP development, review, and evaluation). The periodic review may be carried out by a meeting or by another means that is acceptable to the parents and other participants.

(b) Additionally, the child's record must contain documentation of all IFSP team members' participation in the periodic review. Participation in the periodic review may be accomplished by a team member attending the meeting, face-to-face or by telephone, or by providing input and information in advance of the meeting. If a team member participates by means other than a face-to-face meeting, he or she must provide their most recent observations and conclusions about the child to the service coordinator. He or she must document in the child's record how this information was communicated to the service coordinator. If the team member is an LPHA who is not providing ongoing services to the child, he or she must have assessed the child within the previous 30 days.

(c) A periodic review is required every 6 months at a minimum.

(d) Additional periodic reviews of the IFSP are conducted more frequently than six-month intervals if requested by the parent or other IFSP team members.

(e) The periodic review of the IFSP consists of the following actions, which must be documented in the child's record and provided to the parent:

(1) a review of the IFSP outcomes;

(2) a description of the child's current functional abilities and progress toward meeting each outcome;

(3) a review of the current needs of the child and family;

(4) the development of new outcomes or the modification of existing outcomes, as appropriate, which must be dated and attached to the IFSP; and

(5) the reasons for any modification to the plan or the rationale for not changing the plan.

(f) If the IFSP team adds transition steps and services as part of the periodic review, the team must follow the requirements in §108.1207(d) of this chapter (relating to Transition Planning).

(g) If the team determines that changes to the type, intensity, or frequency of services are required:

(1) the team completes a DARS required IFSP Services Page and provides a copy to the parent;

(2) the team must document the rationale for:

(A) a change in intensity or frequency of a service;

(B) the addition of a new service; or

(C) the discontinuation of a service; and

(3) the contractor must continue to provide all planned early childhood intervention services not affected by the change while the IFSP team develops the IFSP revision and gathers all required signatures.

(h) If services remain the same, the documentation must describe the rationale for making no changes and for recommending continued services.

(i) If new outcomes are developed, the documentation must be provided to the parent.

(j) A change of service coordinator does not require a periodic review.

§108.1015. Content of the IFSP.

(a) The IFSP team must develop a written IFSP containing all requirements in 20 USC §1436(d) and 34 CFR §303.344 (relating to Content of an IFSP). The IFSP must include the standardized [an] IFSP Services Pages [services page] and the required elements designated by DARS ECI, including: [-]

(1) a description of the child's present levels of development, including:

(A) information about the child's participation in the family's typical routines and activities;

(B) the child's strengths;

(C) the child's developmental needs; and

(D) the family's concerns and priorities.

(2) a description of the case management needs of the family;

(3) measurable outcomes that:

(A) address the child's and family's needs which were identified during pre-enrollment, evaluation, and assessment; and

(B) are intended to enhance the child's functional developmental skills and ability to participate in everyday family and community routines and activities;

(4) services to:

(A) address the outcomes in the IFSP;

(B) enhance the child's functional abilities, behaviors and routines; and

(C) strengthen the capacity of the family to meet the child's unique needs;

(5) the discipline of each provider for every service planned; and

(6) the name of the service coordinator.

(b) If the team determines that Specialized Skills Training (SST) is necessary, the team must ensure interdisciplinary monitoring of the SST and of child progress in accordance with §108.501 of this chapter (relating to Specialized Skills Training (Developmental Services)) by planning in the IFSP:

(1) regularly occurring service by the LPHA; or

(2) re-assessment by the LPHA at least every six months.

(c) ~~[(b)]~~ If the IFSP team determines co-visits are necessary, the IFSP team [to help the child reach outcomes on the IFSP, the contractor] must:

(1) list each service on the IFSP; and

(2) document in the IFSP [child's record] a justification of how the child and family, will receive [received] greater benefit from the services being provided at the same time.

(d) If providing services with the participation of the routine caregiver in the absence of the parent is necessary, the IFSP team must document in the IFSP a justification of how the child will benefit from delivering the specified services with the routine caregiver.

(e) ~~[(e)]~~ If the IFSP team determines group services are necessary [to help the child reach outcomes on the IFSP]:

(1) the group services must be planned in an IFSP that also contains individual IFSP services; and

(2) the planned group services must be documented in the child's IFSP.

(f) ~~[(d)]~~ If the IFSP team determines that an IFSP outcome cannot be achieved satisfactorily in a natural environment, the IFSP must contain a justification as to why an early childhood intervention service will be provided in a setting other than a natural environment, as determined appropriate by the parent and the rest of the IFSP team.

(g) ~~[(e)]~~ The contents of the IFSP must be fully explained to the parent.

(h) ~~[(f)]~~ The contractor must obtain the parent's signature [parent and other team members' signatures] on the IFSP services page. The parent's signature on the IFSP services page serves as written parental consent to provide the IFSP services. The written parental consent is valid for up to one year or until the IFSP team changes the type, intensity, or frequency of services. The contractor must not provide IFSP services without current written parental consent.

(i) The contractor must obtain, on the IFSP services page, the dated signatures of every member of the IFSP team as defined in §108.103(28) of this chapter (relating to Definitions).

(j) ~~[(g)]~~ The contractor must provide the parent a copy of the signed IFSP.

(k) Any time the contractor assigns a new service coordinator, the following must be documented and attached to the IFSP:

(1) the name of the new service coordinator;

(2) the date of the change; and

(3) the date the family was notified of the change and the method of notification.

§108.1016. Planning for Services to be Delivered with the Routine Caregiver.

If delivering services with the participation of the routine caregiver in the absence of the parent is necessary, the IFSP team must:

(1) document in the IFSP a justification of how the child will benefit from delivering the specified services with the routine caregiver as required in §108.1015(d) (relating to Content of the IFSP);

(2) document the names of the routine caregivers in the child's record;

(3) obtain written parental consent before releasing personally identifiable information to the routine caregiver; and

(4) obtain written authorization from the parent to provide early childhood intervention services with the routine caregiver.

§108.1019. *Annual Meeting to Evaluate the IFSP.*

(a) The annual meeting to evaluate the IFSP is done following determination of continuing eligibility. In addition to all requirements in 34 CFR §303.342 (relating to Procedures for IFSP development, review, and evaluation), the documentation of an Annual Meeting to Evaluate the IFSP must meet the requirements for Complete Review and include a documented team discussion of:

(1) a current description of the child including:

(A) reviews of the current evaluations and other information available from ongoing assessment of the child and family needs;

(B) health, vision, hearing, and nutritional status; and

(C) present level of development related to the three annual child outcome ratings found in §108.1301 of this chapter (relating to Purpose);

(2) progress toward achieving the IFSP outcomes; and

(3) any needed modification of the outcomes and early childhood intervention services.

(b) Services provided under an IFSP that has not been evaluated and is not based on a current evaluation and current assessment of needs are not fully approved ECI services.

(1) If the contractor is at fault, DARS may disallow and recoup expenditures.

(2) If the parent has not consented to or has not cooperated with the re-determination of eligibility, the contractor must follow the procedures in §108.803(d) of this title (relating to Eligibility).

(3) If the parent fails to consent or fails to cooperate in necessary re-evaluations or re-assessments, no developmental delay or needs may be legitimately determined. The contractor must send prior written notice that the child has no documented current delay or no documented current needs at least 14 days before the contractor discontinues services on the IFSP, unless the parent:

(A) immediately consents to and cooperates with all necessary evaluations and assessments; and

(B) consents to all or part of a new IFSP.

(c) The parent retains procedural safeguards including the rights to use local and state complaint processes, request mediation, or request an administrative hearing pursuant to §101.1107 of this title (relating to Administrative Hearings Concerning Individual Child Rights).

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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40 TAC §§108.1013, 108.1017, 108.1021

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

The proposed repeals are authorized by the Texas Human Resources Code, Chapters 73 and 117; and the Individuals with Disabilities Education Act, as amended, 20 USC §1400 et seq., and its implementing regulations, 34 CFR Part 303, as amended. The repeals are proposed pursuant to HHSC's statutory rule-making authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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

§108.1013. *Participants in Periodic Reviews.*

§108.1017. *Complete Periodic Review.*

§108.1021. *Partial Review of the IFSP.*

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 K. SERVICE DELIVERY

40 TAC §§108.1103, 108.1105, 108.1106, 108.1108, 108.1111

The proposed amendments and new rules are authorized by the Texas Human Resources Code, Chapters 73 and 117; and the Individuals with Disabilities Education Act, as amended, 20 USC §1400 et seq., and its implementing regulations, 34 CFR Part 303, as amended. The amendments and new rules are proposed pursuant to HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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

§108.1103. *Early Childhood Intervention Services Delivery.*

(a) Early childhood intervention services needed by the child must be initiated in a timely manner and delivered as planned in the IFSP. Only qualified staff members, as described in Subchapter C of

this chapter (relating to Staff Qualifications) are authorized to provide early childhood intervention services.

(b) The contractor must ensure that early childhood intervention services are appropriate, as determined by the IFSP team, and based on scientifically based research, to the extent practicable. In addition to the requirements in 34 CFR §303.13, all early childhood intervention services must be provided:

- (1) to address the development of the whole child within the framework of the family;
- (2) in the context of natural learning activities;
- (3) according to a plan and with a frequency that is individualized to the parent and child; and
- (4) in the presence of the parent or other routine caregiver, with an emphasis on enhancing the family's capacity to meet the developmental needs of the child.

(c) The contractor must provide a service coordinator and an interdisciplinary team for the child and family throughout the child's enrollment.

~~(d)~~ (e) The contractor must make reasonable efforts to provide flexible hours in programming in order to allow the parent or routine caregiver to participate.

~~(e)~~ (f) The contractor must comply with all requirements in Subchapter B of this chapter (relating to Procedural Safeguards and Due Process Procedures) when planning and delivering early childhood intervention services.

§108.1105. Capacity to Provide Early Childhood Intervention Services.

The contractor must have the capacity to provide all early childhood intervention services in 34 CFR §303.13 (relating to Early intervention services.) and additional early childhood intervention services described in this chapter. These services are:

- (1) Assistive Technology Device and Service--As defined in 34 CFR §303.13(b)(1).
- (2) Audiology Services--As defined in 34 CFR §303.13(b)(2), plus services provided by local educational agency personnel, including sign language and cued language services as defined in 34 CFR §303.13(b)(12).
- (3) Behavioral Intervention--Services delivered through a structured plan to strengthen developmental skills while specifically addressing severely challenging behaviors as determined by the IFSP team. The behavior plan is developed by the IFSP team (that includes the plan supervisor) to:
 - (A) identify goals;
 - (B) conduct a functional assessment to determine the motivation for the behavior;
 - (C) develop a hypothesis;
 - (D) design support plans; and
 - (E) implement, monitor, and evaluate outcomes.
- (4) Counseling--As family training, counseling, and home visits are defined in 34 CFR §303.13(b)(3). Counseling is provided when the nature and quality of the parent-child relationship interferes significantly with the ECI child's development. Counseling focuses on the parent-child relationship or other critical care-giving relationships and help the child meet developmental outcomes.

(5) Family Education and Training--As family training, counseling, and home visits are defined in 34 CFR §303.13(b)(3). Family education and training is provided when the family needs information about general parenting techniques and/or environmental concerns. Information provided follows a specific scope and sequence. Information may be based on general child care, developmental education, or other specific curriculum.

- (6) Health Services--As defined in 34 CFR §303.16.
- (7) Medical Services--As defined in 34 CFR §303.13(b)(5).
- (8) Nursing Services--As defined in 34 CFR §303.13(b)(6).
- (9) Nutrition Services--As defined in 34 CFR §303.13(b)(7).
- (10) Occupational Therapy--As defined in 34 CFR §303.13(b)(8).
- (11) Physical Therapy--As defined in 34 CFR §303.13(b)(9).
- (12) Psychological Services--As defined in 34 CFR §303.13(b)(10).
- (13) Re-assessment--A specific type of assessment (§108.901(1) and (4) of this title (relating to Definitions)) service, planned on the IFSP, in which a team member gathers and documents information regarding the child's functional progress on IFSP outcomes, and considers whether any modifications to the IFSP should be recommended.

(14) Service Coordination--As defined in 34 CFR §303.13(b)(11) and includes all requirements in 34 CFR §303.34 (relating to service coordination services (case management)).

(15) Social Work Services--As defined in 34 CFR §303.13(b)(13).

(16) Specialized Skills Training--As defined in Subchapter E of this chapter (relating to Specialized Skills Training) plus the provision of special instruction as defined in 34 CFR §303.13(b)(14).

(17) Speech-Language Pathology Services--As defined in 34 CFR §303.13(b)(15) and can include sign language and cued language services as defined in CFR §303.34(12).

(18) Targeted Case Management--As defined in Subchapter D of this chapter (relating to Case Management for Infants and Toddlers With Developmental Disabilities).

(19) Transportation and Related Costs--As defined in 34 CFR §303.13(b)(16).

(20) Vision Services--As defined in 34 CFR §303.13(b)(17) plus services provided by local educational agency personnel.

§108.1106. Routine Caregiver.

(a) When necessary to benefit the child, the IFSP team may provide early childhood intervention services with a routine caregiver in the absence of the parent. The team must:

(1) document in the IFSP a justification of how the child will benefit from delivering the specified services with the routine caregiver as required in §108.1015(d) of this chapter (relating to Content of the IFSP); and

(2) plan for services to be delivered with the routine caregiver as required in §108.1016 of this chapter (relating to Planning for Services to be Delivered with the Routine Caregiver).

(b) A member of the IFSP team must contact the parent face-to-face or by telephone at least once every month.

§108.1108. State Funded Respite Services.

(a) The Texas General Appropriations Act authorizes reimbursement to the enrolled child's family for respite services that are not directly related to IFSP outcomes.

(b) Respite services are defined as the care of an enrolled child by a relative or substitute caregiver on a short-term or intermittent basis to provide the child's parent with a break from caring for his or her child. Respite services do not include the routine care of a child for the purposes of allowing a parent to attend work or school.

(c) The contractor must develop and implement a process for administering the state funded reimbursement of respite services.

(1) The contractor may collaborate with other ECI contractors within their respective consortium to administer the funds.

(2) The contractor must identify existing respite resources in the community, including potential respite service providers and additional funding sources before authorizing state funded respite reimbursement.

(3) The contractor may provide reimbursement for up to 20 hours of respite per child per month, based on the individual needs of the family. The contractor may exceed the 20 hours respite limit only if:

(A) the family has more than one child enrolled in the ECI program; and

(B) the IFSP team determines that the children cannot be cared for by a single respite provider.

(4) If the parent and the service coordinator do not agree on the complexity of care, based on the needs of the child, and the ECI reimbursement rate, the program director decides the complexity of care and reimbursement rate.

(5) The contractor must have a process for prioritizing requests for state funded respite reimbursement. The process must include consideration of:

(A) how respite will benefit the family relationship; and

(B) past use of respite services.

(6) If state respite funds are not available at the time of a request, the contractor places the eligible family on a waiting list for respite funds.

(7) State respite funds cannot be used to pay:

(A) insurance co-payments, insurance deductibles, or insurance premiums;

(B) a parent to provide respite services to his or her own child;

(C) individuals who live in the same household as the child;

(D) individuals under 18 years of age; or

(E) costs for the care of siblings of the eligible child.

(d) The contractor must maintain auditable records of state funded respite reimbursement.

(e) The contractor must report the number of children whose families received state funded reimbursement of respite services for each month of the contract period as directed by DARS.

(f) The service coordinator must:

(1) assist the parent in identifying available family and community resources;

(2) assist the parent in determining the type (for example, individual setting, group setting, care in the child's home, or care out of the child's home) and frequency of respite needed;

(3) assist the parent in applying for available state funds for reimbursement of respite services, if needed;

(4) determine the complexity of care, based on the needs of the child;

(5) inform the parent of the following:

(A) state funds under this provision are limited;

(B) the state's annual hourly limits per child;

(C) the hourly co-pay based on family size and income;

(D) the state's level of reimbursement based upon the complexity of care, frequency, and hourly co-pay;

(E) the contractor's criteria for prioritizing requests for state funds for reimbursement of respite services and placement on the waiting list; and

(F) the process for requesting a review and decision by the program director if the parent and the service coordinator do not agree on the frequency and complexity of care, based on the needs of the child, and the ECI reimbursement rate.

(g) The service coordinator must explain to the parent their responsibility regarding state funded reimbursement for respite services. The parent is responsible for:

(1) selecting and supervising a respite provider;

(2) scheduling the respite care with the provider;

(3) paying the provider after the respite care is provided;

(4) submitting the completed respite voucher to the contractor within one month of the voucher's expiration date;

(5) assuming any liability for the selection and use of specific respite providers; and

(6) complying with any potential tax or IRS requirements related to the use of state funded respite reimbursement.

(h) The following events must occur in order:

(1) the contractor determines the number of hours and the level of care for each month, the number of months approved, the beginning and ending dates of the agreement, and the hourly co-pay required;

(2) the contractor completes all required information on the respite funding agreement;

(3) the parent, the service coordinator or other assigned staff member, and the program director (or designee), sign the completed respite funding agreement;

(4) the contractor gives the parent a respite voucher for each calendar month in which respite services are approved;

(5) the parent schedules respite with the respite provider;

(6) the respite provider signs the respite voucher after providing the respite care;

(7) the parent completes, signs, and returns the voucher to the contractor within one month of the voucher's expiration date; and

(8) the contractor reimburses the parent within 30 days of receipt of an accurately completed voucher.

§108.1111. Service Delivery Documentation Requirements.

Documentation of each service contact must include:

- (1) the name of the child;
- (2) the name of the ECI contractor and the name and the discipline of the service provider;
- (3) the date, start time, length of time, and place of service;
- (4) method (individual or group);
- (5) a description of the methods by which the provider engaged [contact including a summary of activities and] the family or routine caregiver in activities to meet the developmental needs of the child. This includes: [caregiver's participation]
 - (A) coaching and instructions to the family or caregiver;
 - (B) discussing how activities apply to child and family routines; and
 - (C) modeling intervention techniques within everyday learning opportunities;
- (6) the IFSP outcome that was the focus of the intervention;
- (7) the child's responses and progress related to the outcomes in the IFSP;
- (8) relevant new information about the child provided by the family or other routine caregiver; and
- (9) the service provider's signature.

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 L. TRANSITION

40 TAC §108.1211, §108.1217

The proposed amendments are authorized by the Texas Human Resources Code, Chapters 73 and 117; and the Individuals with Disabilities Education Act, as amended, 20 USC §1400 et seq., and its implementing regulations, 34 CFR Part 303, as amended. The amendments are proposed pursuant to HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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

§108.1211. LEA Notification of Potentially Eligible for Special Education Services.

(a) The contractor must notify the LEA if a child enrolled in early childhood intervention services is potentially eligible for preschool special education services. If the IFSP team determines the child is potentially eligible for special education services, the contractor must send the LEA for the area in which the child resides the LEA Notification of Potentially Eligible for Special Education Services, which contains the child's limited personally identifiable information as defined in §108.1203(7) of this title (relating to Definitions). DARS will coordinate the notification of children potentially eligible for special education services to the SEA, in compliance with 34 CFR §303.209(b).

(b) Parental consent is not required for the contractor to send LEA Notification of Potentially Eligible for Special Education Services, but the parent may opt out of LEA notification as described in §108.1213 of this title (relating to LEA Notification Opt Out). Informed written parental consent is required before sending information other than the child's limited personally identifiable information to the LEA.

(c) If the parent does not notify the contractor of their decision to opt out of the LEA Notification of Potentially Eligible for Special Education Services, the contractor must send the LEA for the area in which the child resides:

(1) the LEA Notification of Potentially Eligible for Special Education Services at least 90 days before the child's third birthday and document the date in the child's record; or

(2) a late LEA Notification of Potentially Eligible for Special Education Services for any child aged 33-36 months whom the IFSP team determines is potentially eligible for special education services. The contractor must comply with all reporting requirements in §108.1215 of this title (relating to Reporting Late LEA Notifications of Potentially Eligible for Special Education Services).

(d) To assist the LEA in determining eligibility, the contractor, with written parental consent, must send the LEA the most recent:

- (1) evaluations;
- (2) assessments; and
- (3) IFSPs.

§108.1217. LEA Transition Conference.

(a) The IFSP team determines whether a child is potentially eligible for special education services. The IFSP team's decision regarding potentially eligible for special education services is documented in the child's record.

(b) If the parent gives approval to convene the LEA Transition Conference, the contractor must:

(1) meet the requirements in 34 CFR §303.342(d) and (e) and §303.343(a), which requires:

(A) the face-to-face attendance of the parent and the service coordinator; and

(B) at least one other ECI profession who is a member of the IFSP team who may participate through other means as permitted in 34 CFR §303.343(a)(2);

(2) invite the LEA representative 14 days in advance; and

(3) conduct the LEA Transition Conference at least 90 days prior to the child's third birthday, and document the date of the conference in the child's record.

(c) The contractor must conduct the LEA Transition Conference, even if LEA representatives do not attend, and provide the parent information about preschool special education and related services, including a description of the:

- (1) eligibility definitions;
- (2) timelines;
- (3) process for consenting to an evaluation and eligibility determination; and
- (4) extended year services.

(d) The contractor is not required to conduct the LEA Transition Conference for children referred to the contractor's ECI program less than 90 days before the child's third birthday.

(e) The 14-day timeline for inviting the LEA may be changed by written local agreement. If the contractor becomes aware of a consistent pattern of the LEA representative not attending transition conferences, the contractor must make efforts to meet with the LEA to reach a cooperative agreement to maximize LEA participation.

(f) If the parent gives approval to have an LEA Transition Conference, but does not give written consent to release records to the LEA, then the contractor may only release limited personally identifiable information to the LEA. With informed written consent, other personally identifiable information may be released to the LEA.

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 M. CHILD AND FAMILY OUTCOMES

40 TAC §108.1301, §108.1303

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

The proposed repeals are authorized by the Texas Human Resources Code, Chapters 73 and 117; and the Individuals with Disabilities Education Act, as amended, 20 USC §1400 et seq., and its implementing regulations, 34 CFR Part 303, as amended. The repeals are proposed pursuant to HHSC's statutory rule-making authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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

§108.1301. *Child Outcomes.*
§108.1303. *Family Outcomes.*

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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40 TAC §§108.1301, 108.1303, 108.1307, 108.1309

The proposed new rules are authorized by the Texas Human Resources Code, Chapters 73 and 117; and the Individuals with Disabilities Education Act, as amended, 20 USC §1400 et seq., and its implementing regulations, 34 CFR Part 303, as amended. The new rules are proposed pursuant to HHSC's statutory rule-making authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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

§108.1301. Purpose.

The purpose of this subchapter is to establish how child and family outcomes are collected and reported to DARS ECI.

§108.1303. Legal Authority.

The following statutes and regulations authorize or require the rules in this subchapter:

- (1) Texas Human Resources Code, Chapter 73;
- (2) Texas Human Resources Code, Chapter 117;
- (3) the Individuals with Disabilities Education Act, Part C (20 USC §§1431-1444); and
- (4) implementing federal regulations 34 CFR Part 303.

§108.1307. Child Outcomes.

(a) The contractor must collect and report information on child outcomes as directed by DARS ECI and use that information to improve results for children and families.

(b) Child outcomes address three areas of child functioning necessary for each child to be an active and successful participant at home and in the community. These three outcomes are that children will:

- (1) have positive social relationships;
- (2) acquire and use knowledge and skills; and
- (3) take appropriate action to meet their own needs.

(c) An interdisciplinary team of at least two members must agree on the child outcome ratings for each enrolled child at entry, annual evaluation, and exit.

(1) Entry ratings must be completed:

(A) for every newly enrolled child who is 30 months of age or younger on the date of enrollment;

(B) within two weeks of the initial IFSP or the first Texas IFSP; and

(C) on each of the three child outcomes for each child.

(2) Annual ratings must include the progress item for each outcome and be completed:

IFSP:

(A) within two weeks of each annual evaluation and

(B) independently of the entry ratings; and

(C) on each of the three child outcomes for each child.

(3) Exit ratings must include the progress item for each outcome and be completed:

(A) for each child exiting the Texas ECI system who had an entry rating and was enrolled in services for at least six months; and

(B) within two weeks of the dismissal date.

(d) Documentation must:

(1) provide information that reflects the rating decisions of the interdisciplinary team;

(2) record ratings on either the child outcomes summary form or in another section of the child's record as identified by the contractor;

(3) include information related to the child's functional abilities across settings, situations, and people; and

(4) identify sources of information such as evaluation, observation, or parent report.

§108.1309. Family Outcomes.

Family outcomes and indicators of family capacity are measured using a family survey. The contractor is required to deliver the family survey as directed by DARS ECI to measure family outcomes and indicators.

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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For further information, please call: (512) 424-4050



SUBCHAPTER O. PUBLIC OUTREACH

40 TAC §§108.1501 - 108.1503, 108.1505, 108.1507, 108.1509, 108.1511, 108.1513, 108.1515

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

The proposed repeals are authorized by the Texas Human Resources Code, Chapters 73 and 117; and the Individuals with Disabilities Education Act, as amended, 20 USC §1400 et seq., and its implementing regulations, 34 CFR Part 303, as amended. The repeals are proposed pursuant to HHSC's statutory rule-making authority under Texas Government Code, Chapter 531,

§531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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

§108.1501. Public Outreach.

§108.1502. Definitions.

§108.1503. Child Find.

§108.1505. Public Awareness.

§108.1507. Publications.

§108.1509. Interagency Coordination with Texas Education Agency.

§108.1511. Interagency Coordination with Head Start and Early Head Start.

§108.1513. Interagency Coordination with the Texas Department of Family and Protective Services (DFPS).

§108.1515. Interagency Coordination with Local Agencies.

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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Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

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For further information, please call: (512) 424-4050



SUBCHAPTER P. CONTRACT REQUIREMENTS

40 TAC §§108.1601, 108.1603, 108.1605, 108.1607, 108.1609, 108.1611, 108.1613, 108.1615, 108.1617

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

The proposed repeals are authorized by the Texas Human Resources Code, Chapters 73 and 117; and the Individuals with Disabilities Education Act, as amended, 20 USC §1400 et seq., and its implementing regulations, 34 CFR Part 303, as amended. The repeals are proposed pursuant to HHSC's statutory rule-making authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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

§108.1601. Definitions.

§108.1603. Application and Program Requirements for Early Childhood Intervention Services.

§108.1605. Contract Award.

§108.1607. Contract.

§108.1609. Performance Management.

§108.1611. Remedial Contract Actions.

§108.1613. Financial Management and Recordkeeping Requirements.

§108.1615. *Data Collection and Reporting.*

§108.1617. *Local Reporting.*

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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Sylvia F. Hardman

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40 TAC §§108.1601, 108.1603, 108.1605, 108.1607, 108.1609, 108.1611, 108.1613, 108.1615, 108.1617, 108.1619, 108.1621, 108.1623, 108.1625

The proposed new rules are authorized by the Texas Human Resources Code, Chapters 73 and 117; and the Individuals with Disabilities Education Act, as amended, 20 USC §1400 et seq., and its implementing regulations, 34 CFR Part 303, as amended. The new rules are proposed pursuant to HHSC's statutory rule-making authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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

§108.1601. *Purpose.*

The purpose of this subchapter is to establish contract requirements for ECI service delivery.

§108.1603. *Legal Authority.*

The following statutes and regulations authorize or require the rules in this subchapter:

- (1) Texas Human Resources Code, Chapter 73;
- (2) Texas Human Resources Code, Chapter 117;
- (3) the Individuals with Disabilities Education Act, Part C (§§1431-1444); and
- (4) implementing federal regulations 34 CFR Part 303.

§108.1605. *Definitions.*

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

- (1) Applicant--A person or organization that applies for a DARS ECI contract through a no-competitive process, including contract renewal.
- (2) Application--An application for a DARS ECI contract through a non-competitive process, including contract renewal.
- (3) Competition--A process, using a solicitation instrument that allows the simultaneous and comparative evaluation of proposals or offers from two or more qualified respondents acting independently.
- (4) Contract--A written agreement between DARS ECI and a subrecipient to deliver all ECI system requirements within a designated region of Texas.

(5) Monitoring--Ongoing activities to ensure compliance with the contract, state and federal laws and regulations, and applicable DARS rules, policy and procedures, including subsequent amendments. Monitoring includes desk reviews of financial data, client records, and other pertinent information and comprehensive on-site visits, follow up on-site visits, and focused on-site visits.

(6) Office of Management and Budget (OMB) Circulars--Financial management policies issued by the Office of Management and Budget (OMB) in the Executive Office of the President and made applicable to Texas and its subgrantees and contractors by regulations of the U.S. Department of Education or other funding agencies (see, for example, 34 CFR Part 74). The circulars are found in Title 2 of the Code of Federal Regulations or in official White House publications.

(7) Proposal--As defined in §102.205 of this title (relating to Definitions), a binding offer submitted by a respondent in response to a request for proposals (RFP).

(8) Respondent--A person or entity that submits an oral, written, or electronic response to a solicitation instrument. A respondent may also be referenced as an "offeror" or "proposer."

(9) Solicitation--As defined in §102.205 of this title, a document requesting submittal of bids or proposals for goods or services in accordance with the advertised specifications. May also apply to grant arrangements.

(10) Subrecipient--As defined in 2 CFR Part 225, a non-federal agency that expends federal funds received from a pass-through entity to carry out objectives of the federal program or award.

(11) TKIDS--Texas Kids Intervention Data System (TKIDS). DARS' automated data system established by Texas Human Resources Code §73.0051(k) used to plan, manage, and maintain records of client services.

(12) UGMS--Uniform Grant Management Standards (UGMS) located at 34 TAC §§20.421-20.432 (relating to Uniform Grant Management Standards), adopted by the Governor's Office of Budget and Planning under the authority of Texas Government Code, Chapter 783.

(13) Uniform Grant and Contract Management Act (UGCMA)--Texas Government Code, Chapter 783.

§108.1607. *Application and Program Requirements for Early Childhood Intervention Services.*

(a) Funds for early childhood intervention services are available to public or private agencies that are current or potential providers of early childhood intervention services for eligible children.

(b) DARS may use a competitive procurement process to ensure that DARS obtains the best value in purchasing services.

(c) The application or proposal for early childhood intervention services must consist of the forms and related materials that the applicant must complete to apply to receive funding for providing early childhood intervention services.

(d) An application or proposal must be submitted in accordance with DARS' instructions.

(e) An application or proposal that is late or substantially incomplete may be accepted or returned to the applicant or respondent at the discretion of DARS.

§108.1609. *Contract Award.*

(a) Following the review process, DARS determines whether to award a contract based on approval of funding. DARS notifies each

applicant in writing of its decision. DARS communicates the general reasons for a denial in writing to the applicant.

(b) DARS notifies an applicant of an award according to the means described in the application package.

(c) A respondent who believes that DARS has violated any laws in awarding the contract may protest the contract award in accordance with §102.307 of this title (relating to Availability of Protest Procedures).

(d) Eligibility for continued funding is contingent upon the contractor's performance, compliance with state standards, implementation of program review findings, and availability of funds. The contractor must submit an application for continuation funding as required by DARS.

§108.1611. Contract.

(a) An approved applicant must enter into a contract with DARS before being allocated funds. A contract is not fully executed until it has been signed by DARS and the applicant.

(1) The contract must be signed by an official authorized to enter into such agreements on behalf of the contractor.

(2) The contract cannot be altered without authorized officials of both the contractor and DARS providing written approval before the effective date of the change. In emergency circumstances as determined by DARS in its sole discretion, the DARS ECI assistant commissioner may sign and offer a contract amendment to a contractor and may allow the contractor to accept by performance. DARS ECI may require a contractor's signature on the amendment before payment for the amended services.

(3) No payment or advance of funds is made until the contract is fully executed.

(4) By signing the contract the applicant agrees to all terms included in the contract and to adherence to state and federal laws and regulations, and applicable DARS rules, policy, and procedures, including subsequent amendments.

(5) The contract may be renewed if the contract provides for renewal, and the contractor meets the renewal criteria in DARS rules and the contract.

(b) The contract must:

(1) contain provisions requiring the contractor to comply with applicable requirements in this chapter, including

(A) state and federal laws and regulations, and applicable DARS policy and procedures, including subsequent amendments, and

(B) the fiscal requirements for administering, accounting, auditing, and recovering funds as authorized by the UGCMA, UGMS, the CFR, and OMB Circulars;

(2) state the contract number of children, when applicable;

(3) authorize DARS to adjust the contract amount as appropriate;

(4) authorize DARS to impose adverse actions for noncompliance with contract terms and conditions, state and federal laws and regulations, and applicable DARS rules, policy, and procedures, including subsequent amendments in accordance with the provisions of the Human Resources Code, §73.0051;

(5) incorporate all or part of the application as part of the contract;

(6) include clearly defined goals, outputs, and measurable outcomes that directly relate to program objectives; and

(7) contain other provisions required by DARS.

(c) Any modifications resulting from changes in state or federal laws and regulations or judicial interpretation of laws and regulations that occur during the contract period are automatically made part of the contract and go into effect on the effective date of the law, regulation, or judicial interpretation.

(d) DARS assigns the effective date of the contract.

(e) The contract must be concurrent with the state fiscal year, unless DARS approves the contract for a different period.

(f) The contract must identify the counties in which the contractor is authorized to perform early childhood intervention services. Contractors that share counties must jointly develop a service area agreement to serve those counties. This service area agreement must be approved by DARS.

(1) A request to change the designated service area must be:

(A) submitted to the DARS ECI assistant commissioner; and

(B) approved by the DARS ECI assistant commissioner before implementation.

(2) DARS will not incur additional expenses as a result of a request to change a service area when the provision of services is at the same level for the same number of children.

(g) The contract terms and conditions may be amended by mutual agreement between DARS and the contractor during the contract period.

(1) Except for reductions to the contract amount based on applicable contract provisions, the amendment must be in writing and signed by an authorized official of the contractor and the authorized DARS representatives. In emergency circumstances as determined by DARS in its sole discretion, the DARS ECI assistant commissioner may sign and offer a contract amendment to a contractor and may allow the contractor to accept by performance. The DARS ECI assistant commissioner may require a contractor's signature on the amendment before payment for the amended services. DARS does not pay for the performance of services or work not authorized by a properly executed contract amendment.

(2) DARS develops a written contract amendment when contract changes are determined necessary. A contract amendment may be necessary for reasons including:

(A) sanctions for the contractor's noncompliance or failure to meet program requirements;

(B) changes in federal or state law that make continued fulfillment of the contract, on the part of either party, unreasonable or impossible;

(C) changes to the assigned service area; or

(D) awards or adjustments for other reasons.

§108.1613. Performance Management.

(a) DARS monitors each contractor's performance throughout the contract period for:

(1) compliance with contract terms and conditions, including any amendments;

(2) compliance with state and federal laws and regulations, and applicable DARS rules, policies, and procedures, including subsequent amendments;

(3) other requested contractor reporting;

(4) identified areas of associated risk; and

(5) other issues that require special attention and monitoring as determined by DARS.

(b) The contractor must fully participate in the performance management process by:

(1) responding to requests by due dates established by DARS;

(2) implementing corrective actions or system changes when requested;

(3) participating in on-site reviews; and

(4) participating in technical assistance and training activities.

§108.1615. Remedial Contract Actions.

(a) DARS may impose remedial contract actions when the contractor fails to follow the terms of the contract or comply with state and federal laws and regulations, and applicable DARS rules, policies, and procedures, including subsequent amendments. In general, §103.507 of this title (relating to Adverse Actions) applies.

(b) The remedial actions that DARS may impose on the contractor for noncompliance with the contract are:

(1) adverse actions, which may be appealed; and

(2) non-adverse actions, which may not be appealed.

§108.1617. Transition of Contractors.

(a) Unless prohibited by law, a contractor must provide at least 90 days' notice before terminating or non-renewing a contract to provide adequate time for DARS to provide statewide coverage by securing a new contractor.

(b) During the transition to the new contractor, the existing contractor must:

(1) continue to provide services to families;

(2) continue to cooperate with DARS;

(3) continue to participate in Texas Health and Human Services Commission's Random Moment Time Study;

(4) continue to file Medicaid Administrative Claims as appropriate;

(5) continue to bill other funding sources; and

(6) assist with the transition of families and children, including the secure transfer of all client files, to the new contractor(s);

(c) Unless prevented by law, or unless as a result of an adverse action on the contract, DARS will provide at least 90-days' notice before nonrenewing a contract.

(d) In order to provide statewide coverage as required by IDEA Part C, DARS may employ an exception to a competitive procurement in the case of a contract termination for which a competitive procurement to replace the contractor is not practical to avoid a significant risk to services to children and families.

(e) DARS may employ an exception to a competitive procurement when a contractor's enrollment falls to a level that creates a financial risk to DARS.

§108.1619. Renewal.

A contractor must submit a request to renew its contract as required by DARS. DARS determines the renewal based on contract compliance, the reasonableness of the proposed budget, and willingness and readiness to meet any new program requirements. DARS informs contractors of the process for renewal.

§108.1621. Financial Management and Recordkeeping Requirements.

(a) The contractor must comply with the requirements of the contract, the provisions of §103.209 of this title (relating to General Requirements for Contracting), §103.307 of this title (relating to Record Requirements), and any program-specific policies related to financing, financial management, and recordkeeping requirements.

(b) The contractor must comply with the requirements of the UGCMA and UGMS, as well as applicable cost principles, audit requirements and administrative requirements in 2 CFR Parts 215, 220, 225, and 230; 34 CFR Part 80; and OMB Circulars A-102 and A-133.

(c) The contractor is required to establish third-party billing systems, determine client eligibility for all third-party reimbursement sources, and complete and submit reimbursement requests to corresponding third-party sources. Third parties include private insurance, TRICARE, Medicaid programs, and the Children's Health Insurance Program.

(d) IDEA Part C funding is the payor of last resort for early childhood intervention services, in accordance with 34 CFR §303.510. The contractor is responsible for coordinating funding sources for services required under IDEA Part C.

(e) The DARS contract, which includes the distribution of Part C funds, is the payor of last resort to the contractor, and the contractor must use the other funding for which clients are eligible before billing services to the DARS contract.

§108.1623. Data Collection and Reporting.

(a) The contractor must collect and report data as required by rules, the contract, and in accordance with applicable instruction manuals. Data must be submitted in the form, manner, and timeframe specified by DARS. Required data may include: client data, including personally identifiable information regarding children served or referred; services received by individual eligible children; family information, including family size and income; service-provider information, including information about the contractor's individual employees or subcontractors; agency and contractor revenue and expenditure information; and other information that might be determined necessary by DARS to perform the contractor's legally authorized functions, including documentation of early childhood intervention services planned and provided, billing and reimbursement functions, and other purposes.

(b) The contractor must report accurate client, service, and service provider information to DARS through TKIDS.

§108.1625. Local Reporting.

DARS reports annually to the public on the performance of each contractor using indicators specified in the State Performance Plan. These reports present the performance of each contractor in relation to state targets and statewide performance. DARS provides the local reporting data to the contractor. The contractor must review the data and report any discrepancies by the due date determined by DARS.

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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Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

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For further information, please call: (512) 424-4050

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 16. ECONOMIC REGULATION

PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 50. ALCOHOLIC BEVERAGE SELLER SERVER TRAINING

SUBCHAPTER E. SELLER SERVER CERTIFICATES

16 TAC §50.40

Proposed new §50.40, published in the November 9, 2012, issue of the *Texas Register* (37 TexReg 8908), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on May 10, 2013.
TRD-201301875



16 TAC §50.41

Proposed new §50.41, published in the November 9, 2012, issue of the *Texas Register* (37 TexReg 8910), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on May 10, 2013.
TRD-201301876



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 10. COMMUNITY DEVELOPMENT PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 5. COMMUNITY AFFAIRS PROGRAMS

SUBCHAPTER A. GENERAL PROVISIONS

10 TAC §§5.1, 5.2, 5.5, 5.8, 5.9, 5.14, 5.17, 5.21, 5.23

The Texas Department of Housing and Community Affairs (the "Department") adopts amendments to 10 TAC Chapter 5, Subchapter A, §§5.1, 5.2, 5.5, 5.8, 5.9, 5.14, 5.17, 5.21, and 5.23, concerning General Provisions, without changes to the proposed text as published in the March 8, 2013, issue of the *Texas Register* (38 TexReg 1472) and will not be republished.

REASONED JUSTIFICATION. The Department finds that language in the General Provisions of Community Affairs Programs rules lacked clarity and stated outdated income guidelines for Community Affairs programs. Accordingly, the amendments provide clarification and simplification of definitions, update timing of report submissions and subrecipient contract closeout, update income guidelines, and make clerical corrections.

The Department accepted public comments between March 8, 2013, and April 8, 2013. Comments regarding the proposed amendments were accepted in writing and by fax. No comments were received concerning the amended sections.

The Board approved the final order adopting the amendments on May 9, 2013.

STATUTORY AUTHORITY. The amendments are adopted pursuant to the authority of Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

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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Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

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For further information, please call: (512) 475-3916



SUBCHAPTER E. WEATHERIZATION ASSISTANCE PROGRAM GENERAL

10 TAC §§5.502, 5.503, 5.505 - 5.508, 5.521 - 5.525, 5.531, 5.532

The Texas Department of Housing and Community Affairs (the "Department") adopts amendments to 10 TAC Chapter 5, Subchapter E, §§5.502, 5.503, 5.505 - 5.508, 5.521 - 5.525, 5.531 and 5.532, concerning Weatherization Assistance Program General. The amendment to §5.507 is adopted with changes to the proposed text as published in the March 8, 2013, issue of the *Texas Register* (38 TexReg 1477). The amendments to §§5.502, 5.503, 5.505, 5.506, 5.508, 5.521 - 5.525, 5.531 and 5.532 are adopted without changes and will not be republished.

REASONED JUSTIFICATION. The Department finds that rules concerning the Weatherization Assistance Program General need clarification. Accordingly, the amendments clarify leveraging guidelines and procedures; make clerical corrections; update timing of report submissions and Subrecipient contract closeout; and update eligibility requirements related to client appeals, Energy Burden, and Energy consumption.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS

Comments were accepted from March 8, 2013, through April 8, 2013, with comments received from: Stella Rodriguez, Texas Association of Community Action Agencies, Inc. (TACAA).

§5.502. Purpose and Goals.

COMMENT SUMMARY: Commenter recommended that the Department remove the sentence "If Subrecipient leverages with any DOE weatherization funds, all DOE rules and requirements will apply," as it raises concerns, is not practical, and causes confusion.

STAFF RESPONSE: Staff disagreed with the commenter and did not recommend the removal of the sentence. If a Subrecipient leverages DOE weatherization funds in a unit, DOE rules and requirements must be followed. If a unit does not meet income eligibility guidelines of a grant, the Subrecipient may not use that grant's weatherization funds in the unit. If a weatherization measure is allowed by one grant and not another, the Subrecipient must charge that measure to the grant that allows the measure.

§5.505(a)(4). Subrecipient Requirements for Appeals Process for Applicants.

COMMENT SUMMARY: Commenter recommended that the Department add the sentence "If a client refuses the Subrecipient to digitally record the hearing, the client waives their right to an appeal." Commenter stated that a Subrecipient should not be penalized if a client refuses to allow a recording of the hearing.

STAFF RESPONSE: Staff will look into this, however, this amendment would require additional public comment; therefore, staff will address this suggestion in future rulemaking. Therefore, staff recommended no change at this time.

§5.505(a)(8). Subrecipient Requirements for Appeals Process for Applicants.

COMMENT SUMMARY: Commenter recommended that the Department consolidate rules that refer to the denial of services solely based on income eligibility within the Appeals Process for Applicants into Subchapter A, General Provisions.

STAFF RESPONSE: Staff agreed with Commenter that rules that apply to all Community Affairs Programs be referenced in Subchapter A. However, because the denial of services solely based on income eligibility only applies to Block Grant programs and the appeals process for applicants may differ between programs, Staff recommended leaving the referenced section in Subchapter E. Therefore, no change is recommended based on this comment.

§5.505(d). Subrecipient Requirements for Appeals Process for Applicants.

COMMENT SUMMARY: Commenter requested clarification of the Department's meaning of the word "Board" regarding the Administrative Law Judge's Proposal for Decision to the Board.

STAFF RESPONSE: This definition may be found under 10 TAC Chapter 1, Subchapter A, §1.7(8): Board--The Governing Board of the Texas Department of Housing and Community Affairs. Therefore, no change was recommended based on this comment.

§5.507(e). Subrecipient Requirements for Establishing Priority for Eligible Households and Client Eligibility Criteria.

COMMENT SUMMARY: Commenter noted inconsistencies in references to the Declaration of Income Statement (DIS) between Subchapter A, General Provisions; Subchapter D, Comprehensive Energy Assistance Program (CEAP); and Subchapter E, Weatherization Assistance Program (WAP) General.

STAFF RESPONSE: Staff agreed and recognized the inconsistencies noted by the Commenter. Staff recommended that rules for the DIS be consistent between Subchapter D, CEAP and Subchapter E, WAP General. Staff also added language to Subchapter E, WAP General to require notarization and limited use of the DIS. In addition, in future rulemaking of Subchapter E, WAP General, staff will propose for public comment the removal of "part-time, temporary, or self-employed" from §5.507(d).

The Board approved the final order adopting amendments on May 9, 2013.

STATUTORY AUTHORITY. The amendments are adopted pursuant to the authority of Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

§5.507. Subrecipient Requirements for Establishing Priority for Eligible Households and Client Eligibility Criteria.

(a) Subrecipients shall establish eligibility and priorities criteria to increase the energy efficiency of dwellings owned or occupied by low-income persons who are particularly vulnerable such as the Elderly, Persons with Disabilities, Families with Young Children, Households with High Energy Burden, and Households with High Energy Consumption.

(b) Subrecipients shall follow the Department rules and established state and federal guidelines for determining eligibility for Multi-

family Dwelling Units as referenced in §5.525 of this chapter (relating to Eligibility for Multifamily Dwelling Units).

(c) To determine income eligibility for program services, Subrecipients must base annualized eligibility determinations on Household income from thirty (30) days prior to the date of application for assistance. Subrecipients must document income from all sources for all Household members for the entire thirty (30) day period prior to the date of application and multiply by twelve (12) to annualize income. Income documentation must be collected from all income sources for all Household members eighteen (18) years and older for the entire thirty (30) day period.

(d) In the case of migrant, seasonal, part-time, temporary, or self-employed workers a longer period than thirty (30) days may be used for annualizing income. However, the same method must be used for all similarly situated workers.

(e) If proof of income is unobtainable, the applicant must complete and sign a Declaration of Income Statement (DIS). In order to use the DIS form, Subrecipients shall develop and implement a written policy and procedure on the use of the DIS form. The DIS form must be notarized. In developing the policy and procedure, Subrecipients shall limit the use of the DIS form to cases where there are serious extenuating circumstances that justify the use of the form. Such circumstances might include crisis situations such as applicants that are affected by natural disaster which prevents the applicant from obtaining income documentation, applicants that flee a home due to physical abuse, applicants who are unable to locate income documentation of a recently deceased spouse, or whose work is migratory or seasonal in nature. To ensure limited use, the Department will review the written policy and its use, as well as client-provided descriptions of the circumstances requiring use of the form, during on-site monitoring visits.

(f) Subrecipient shall determine applicant income in compliance with §5.19 of this chapter (relating to Client Income Guidelines).

(g) Social Security numbers are not required for applicants.

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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Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

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For further information, please call: (512) 475-3916



10 TAC §§5.504, 5.526, 5.527, 5.529, 5.530

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal of 10 TAC Chapter 5, Subchapter E, §§5.504, 5.526, 5.527, 5.529, and 5.530, concerning Weatherization Assistance Program General, without changes to the proposal as published in the March 8, 2013, issue of the *Texas Register* (38 TexReg 1481) and will not be republished.

REASONED JUSTIFICATION. The Department finds that the sections adopted for repeal are duplicated elsewhere in the Community Affairs Programs rules. Accordingly, the repeal removes sections that reference Subrecipient eligibility, energy audits and weatherization assessments.

The Department accepted public comments between March 8, 2013 and April 8, 2013. Comments regarding the repeal were accepted in writing and by fax. No comments were received concerning the repeal.

The Board approved the final order adopting the repeal on May 9, 2013.

STATUTORY AUTHORITY. The repeal is adopted pursuant to the authority of Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

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 F. WEATHERIZATION ASSISTANCE PROGRAM DEPARTMENT OF ENERGY

10 TAC §§5.602, 5.604 - 5.606

The Texas Department of Housing and Community Affairs (the "Department") adopts amendments to 10 TAC Chapter 5, Subchapter F, §§5.602 and §§5.604 - 5.606, concerning the Weatherization Assistance Program Department of Energy, without changes to the proposed text as published in the March 8, 2013, issue of the *Texas Register* (38 TexReg 1482) and will not be republished.

REASONED JUSTIFICATION. The Department finds that 10 TAC Chapter 5, Subchapter F contained duplicate rules that will be adopted under a separate Board action. Accordingly, the amendments remove reference to carryover funds, clarify health and safety measures, and make clerical corrections.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS.

Comments were accepted from March 8, 2013, through April 8, 2013, with comments received from: Stella Rodriguez, Texas Association of Community Action Agencies, Inc. (TACAA).

§5.602. WAP Policy Advisory Council (WAP PAC).

COMMENT SUMMARY: Commenter recommended that WAP PAC meetings be held in person, in a public setting, in accordance with Texas Government Code, Chapter 551, and that WAP PAC meetings be held at the conclusion of a public comment period.

STAFF RESPONSE: After a review of 10 CFR §440.17, it was determined that the WAP PAC, as an advisory committee that does not control or supervise public business or policy, is not subject to the Open Meetings Act. Although the WAP PAC meetings are not subject to the Open Meetings Act, Staff agreed with Commenter that WAP PAC meetings should be held at the con-

clusion of a public comment period and will continue this practice to ensure that PAC members may thoroughly review any and all public comment received. This amendment would require additional public comment; therefore, staff will address this suggestion in future rulemaking. Staff recommended no change at this time.

The Board approved the final order adopting amendments on May 9, 2013.

STATUTORY AUTHORITY. The amendments are adopted pursuant to the authority of Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

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 May 13, 2013.

TRD-201301933
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
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Proposal publication date: March 8, 2013
For further information, please call: (512) 475-3916



10 TAC §§5.610 - 5.613

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC Chapter 5, Subchapter F, §§5.610 - 5.613, concerning Weatherization Assistance Program Department of Energy, without changes to the proposed text as published in the March 8, 2013, issue of the *Texas Register* (38 TexReg 1483) and will not be republished.

REASONED JUSTIFICATION. The Department finds that 10 TAC Chapter 5, Subchapter F did not contain rules specific to the Department of Energy. Accordingly, the new rules add provisions for energy audits and assessments.

The Department accepted public comments between March 8, 2013, and April 8, 2013. Comments regarding the new sections were accepted in writing and by fax. No comments were received concerning the new sections.

The Board approved the final order adopting the new sections on May 9, 2013.

STATUTORY AUTHORITY. The new sections are adopted pursuant to the authority of Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

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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Timothy K. Irvine
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For further information, please call: (512) 475-3916

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**SUBCHAPTER G. WEATHERIZATION
ASSISTANCE PROGRAM LOW-INCOME
HOME ENERGY ASSISTANCE PROGRAM**

10 TAC §§5.701, §5.703

The Texas Department of Housing and Community Affairs (the "Department") adopts amendments to 10 TAC Chapter 5, Subchapter G, §5.701 and §5.703, concerning Weatherization Assistance Program Low-Income Home Energy Assistance Program, without changes to the proposed text as published in the March 8, 2013, issue of the *Texas Register* (38 TexReg 1484) and will not be republished.

REASONED JUSTIFICATION. The Department finds that rules specific to the Low-Income Home Energy Assistance Program need to be updated with current program year guidance. Accordingly, the amendments provide updated allowable expenditure per dwelling unit and outreach activities.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS.

Comments were accepted from March 8, 2013, through April 8, 2013, with comments received from: Stella Rodriguez, Texas Association of Community Action Agencies, Inc. (TACAA).

Chapter 5, Subchapter G - General Comment

COMMENT SUMMARY: Commenter requested clarification on the meaning of "earliest possible date of adoption" in the footer section of the *Texas Register* posting of proposed rule amendments.

STAFF RESPONSE: Staff explained that the Department has from thirty days to six months to adopt a rule. The "earliest possible date of adoption" listed in the *Texas Register* begins thirty days from the date the proposed rule was published in the *Texas Register*. The rule is not final until the Board approves the rule after the public comment period. The rule is not effective until twenty days from the date the rule is filed for adoption. No change is recommended based on this comment.

§5.701. Allowable Expenditure per Dwelling Unit.

COMMENT SUMMARY: Commenter stated that TACAA supports the increase in the allowable amount from \$4,000 to \$5,000 per dwelling unit.

STAFF RESPONSE: Staff thanked Commenter for their comment. No change was recommended.

The Board approved the final order adopting the amendments on May 9, 2013.

STATUTORY AUTHORITY. The amendments are adopted pursuant to the authority of Texas Government Code, §2306.053, which authorizes the Department to adopt rules; and more specifically, Texas Government Code, §2306.092, which authorizes the Department to promulgate rules regarding its Community Affairs programs.

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 May 13, 2013.

TRD-201301936

Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Effective date: June 2, 2013
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For further information, please call: (512) 475-3916

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10 TAC §§5.702, 5.704, 5.705

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal of 10 TAC Chapter 5, Subchapter G, §§5.702, 5.704, and 5.705, concerning Weatherization Assistance Program Low-Income Home Energy Assistance Program, without changes to the proposal as published in the March 8, 2013, issue of the *Texas Register* (38 TexReg 1485) and will not be republished.

REASONED JUSTIFICATION. The Department finds that the sections adopted for repeal contain weatherization measures that are not specific to the Low-Income Home Energy Assistance Program. Accordingly, the repeal removes references to Electric Base Load Measures, Energy Repairs, and Other Measures.

The Department accepted public comments between March 8, 2013, and April 8, 2013. Comments regarding the repeal were accepted in writing and by fax. No comments were received concerning the repeal.

The Board approved the final order adopting the repeal on May 9, 2013.

STATUTORY AUTHORITY. The repeal is adopted pursuant to the authority of Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

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 May 13, 2013.

TRD-201301935
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Effective date: June 2, 2013
Proposal publication date: March 8, 2013
For further information, please call: (512) 475-3916

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10 TAC §§5.702, 5.704, 5.705

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC Chapter 5, Subchapter G, §§5.702, 5.704, and 5.705, concerning Weatherization Assistance Program Low-Income Home Energy Assistance Program, without changes to the proposed text as published in the March 8, 2013, issue of the *Texas Register* (38 TexReg 1485) and will not be republished.

REASONED JUSTIFICATION. The Department finds that recent changes in the administration of the Weatherization Assistance Program Low-Income Home Energy Assistance Program need to be reflected in the rules. Accordingly, the new sections contain provisions regarding allowable activities, leveraging with Depart-

ment of Energy weatherization funds, and priority assessment of units to be weatherized.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS.

Comments were accepted from March 8, 2013, through April 8, 2013, with comments received from: Stella Rodriguez, Texas Association of Community Action Agencies, Inc.

§5.702. Allowable Activities.

COMMENT SUMMARY: Commenter recommended that the Department provide the priority list to the Subrecipients.

STAFF RESPONSE: The priority list is provided to the Subrecipients with their annual weatherization contract. Staff recommended no change based on this comment.

§5.704. Leveraging.

COMMENT SUMMARY: Commenter recommended that the Department remove the sentence "If Subrecipient leverages with any Department of Energy weatherization funds, all DOE rules and requirements will apply," as it raises concerns, is not practical, and causes confusion.

STAFF RESPONSE: Staff disagrees with the Commenter and does not recommend the removal of the sentence. If a Subrecipient leverages DOE weatherization funds in a unit, DOE rules and requirements must be followed. If a unit does not meet income eligibility guidelines of a grant, the Subrecipient may not use that grant's weatherization funds in the unit. If a weatherization measure is allowed by one grant and not another, the Subrecipient must charge that measure to the grant that allows the measure.

The Board approved the final order adopting the new sections on May 9, 2013.

STATUTORY AUTHORITY. The new sections are adopted pursuant to the authority of Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

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 May 13, 2013.

TRD-201301937

Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

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For further information, please call: (512) 475-3916



CHAPTER 10. UNIFORM MULTIFAMILY RULES

SUBCHAPTER H. INCOME AND RENT LIMITS

10 TAC §§10.1001 - 10.1003

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC Chapter 10, Subchapter H, §§10.1001 - 10.1003, concerning Income and Rent Limits, with-

out changes to the proposed text as published in the March 15, 2013, issue of the *Texas Register* (38 TexReg 1758) and will not be republished.

REASONED JUSTIFICATION. The purpose of the new sections is to codify the income and rent limits applicable to the multifamily programs administered by the Department. The sections define Multifamily Tax Subsidy Program Imputed Income Limit, prescribe the rent limits applicable to tax exempt bond properties, and amend existing Land Use Restriction Agreements in conformance with the rules.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS.

The Department accepted public comments between March 15, 2013, and April 15, 2013. Comments regarding the proposed new sections were accepted by mail, email, and facsimile. No comments were received concerning the new sections.

The Board approved the final order adopting the new sections on May 9, 2013.

STATUTORY AUTHORITY. The new sections are adopted pursuant to the authority of Texas Government Code, §2306.053, which authorizes the Department to adopt rules; and specifically, §2306.141, which authorizes the Department to adopt rules for the administration of its housing programs.

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 May 13, 2013.

TRD-201301941

Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

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For further information, please call: (512) 475-3916



CHAPTER 23. SINGLE FAMILY HOME PROGRAM

SUBCHAPTER B. AVAILABILITY OF FUNDS, APPLICATION REQUIREMENTS, REVIEW AND AWARD PROCEDURES, GENERAL ADMINISTRATIVE REQUIREMENTS, AND RESALE AND RECAPTURE OF FUNDS

10 TAC §23.26

The Texas Department of Housing and Community Affairs (the "Department") adopts amendments to 10 TAC Chapter 23, Subchapter B, §23.26, concerning Reservation System Participant (RSP) Agreements, with changes to the proposed text as published in the March 8, 2013, issue of the *Texas Register* (38 TexReg 1486).

REASONED JUSTIFICATION. The Department finds a need to clarify income targeting requirements to define extremely low-income families as families that are either at or below 30% area median family income (AMFI) for the county in which they reside

or have an income that is lower than the statewide extremely low-income limit as defined by the U.S. Department of Housing and Urban Development (HUD).

The Department accepted public comments between March 8, 2013, and April 8, 2013. Comments regarding the amended section were accepted in writing and by fax. No comments were received concerning the amended section.

The Board approved the final order adopting the amendments on May 9, 2013.

STATUTORY AUTHORITY. The amended section is adopted pursuant to the authority of Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

§23.26. Reservation System Participant (RSP) Agreements.

(a) Terms of agreement. RSP agreements will have a twenty-four (24) month term for all Activities. Execution of an RSP agreement does not guarantee the availability of funds under a reservation system.

(b) Limits on Number of Reservations. The number of Homeowner Rehabilitation, Homebuyer Assistance or Single Family Development reservations for an RSP is limited to five (5) per county within the RSP's Service Area at any given time. The number of Tenant-Based Rental Assistance reservations for an RSP is limited to thirty (30) at any given time.

(c) Extremely Low-Income Households. Except for Households served with disaster relief, homebuyer assistance, or single family development funds, each RSP will be required to serve at least one extremely low-income Household out of every four Households submitted and approved for assistance. For purposes of this subsection, extremely low-income is defined as families that are either at or below 30% area median family income (AMFI) for the county in which they reside or have an income that is lower than the statewide extremely low-income limit as defined by the U.S. Department of Housing and Urban Development (HUD).

(d) Match. The requirements of this subsection are waived until December 31, 2013. Any Projects submitted to the Department under a Reservation Agreement prior to December 31, 2013, will not be required to provide Match as outlined in this section, except for Match that is proposed to meet Application threshold criteria. An RSP must meet the tiered Match requirements per Activity for at least every fourth Household submitted and approved for assistance. For example, if Match is not provided for the first three Households assisted by an RSP, the Match provided to the fourth Household must meet the Match requirement for all four Households.

(e) Completion of Construction. For Projects involving construction, an RSP must complete construction and submit all requests for disbursement within nine (9) months from the Commitment of Funds for the Project.

(f) Extensions. The Executive Director or his/her designee may approve one three (3) month time extension to the Commitment of Funds to allow for the completion of construction and submission of requests for disbursement.

(g) An RSP must remain in good standing with the Department, the state of Texas, and HUD. If an RSP is not in good standing, participation in the reservation system will be suspended and may result in termination of the RSP agreement.

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 May 13, 2013.

TRD-201301938

Timothy K. Irvine
Executive Director

Texas Department of Housing and Community Affairs

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For further information, please call: (512) 475-3916



SUBCHAPTER C. HOMEOWNER REHABILITATION ASSISTANCE PROGRAM

10 TAC §23.31, §23.32

The Texas Department of Housing and Community Affairs (the "Department") adopts amendments to 10 TAC Chapter 23, Subchapter C, §23.31, concerning Homeowner Rehabilitation Assistance (HRA) Program Requirements, and §23.32, concerning Homeowner Rehabilitation Assistance (HRA) Administrative Requirements, without changes to the proposed text as published in the March 8, 2013, issue of the *Texas Register* (38 TexReg 1487) and will not be republished.

REASONED JUSTIFICATION. The Department finds a need to clarify instances where the Department will approve new construction activities and to clarify administrative requirements related to Grant Agreements. Accordingly, the amended sections provide guidance to administrators regarding situations where new construction assistance can be approved and the forms of assistance that can be provided.

The Department accepted public comments between March 8, 2013, and April 8, 2013. Comments regarding the amended section were accepted in writing and by fax. No comments were received concerning the amended sections.

The Board approved the final order adopting the amendments on May 9, 2013.

STATUTORY AUTHORITY. The amended sections are adopted pursuant to the authority of Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

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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Timothy K. Irvine
Executive Director

Texas Department of Housing and Community Affairs

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For further information, please call: (512) 475-3916



SUBCHAPTER D. HOMEBUYER ASSISTANCE PROGRAM

10 TAC §23.41

The Texas Department of Housing and Community Affairs (the "Department") adopts amendments to 10 TAC Chapter 23, Subchapter D, §23.41, concerning Homebuyer Assistance (HBA)

Program Requirements, with changes to the proposed text as published in the March 8, 2013, issue of the *Texas Register* (38 TexReg 1490).

REASONED JUSTIFICATION: The Department finds a need to amend this section to address situations where the need for downpayment and closing costs exists, but the amount of need is less than the amount that can be provided based on the Department's front end and back end ration requirements and the applicant is otherwise eligible to receive assistance under the program.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS: Comments were accepted in writing and by email from March 8, 2013, to April 8, 2013, with comments received from Easter Seals.

§23.41(d)(2). Front End Ratios.

COMMENT SUMMARY: Commenter recommended changing the proposed amount of \$2,500 to at least \$7,500. The proposed amount would only cover about one-third of the average amount of downpayment and closing costs needs of households participating in the Commenter's current downpayment assistance program.

STAFF RESPONSE: Staff agreed with Commenter and recommended increasing the amount from \$2,500 to \$6,000 to more closely align the assistance amount to the Department's other comparable, statewide program.

The Board approved the final order adopting the amendments on May 9, 2013.

STATUTORY AUTHORITY: The amendment is adopted pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

§23.41. *Homebuyer Assistance (HBA) Program Requirements.*

(a) Eligible activities are limited to the acquisition or acquisition and Rehabilitation for accessibility modifications of single family housing units.

(b) The Household must complete a homebuyer counseling program/class.

(c) First lien purchase loans must comply with the requirements described in paragraphs (1) - (7) of this subsection:

(1) No adjustable rate mortgage loans or temporary interest rate buy-down loans are allowed;

(2) No first lien mortgage loans with a total loan to value equal to or greater than 100 percent are allowed;

(3) No Subprime Mortgage Loans are allowed;

(4) For Nonconforming Mortgage Loans, the debt to income ratio (back-end ratio) may not exceed 45 percent;

(5) Fees charged by third party mortgage lenders are limited to the greater of 2 percent of the mortgage loan amount or \$3,500, including but not limited to origination, application, and/or underwriting fees. Fees associated with the origination of Single Family Mortgage Revenue Bond and Mortgage Credit Certificate programs will not be included in the limit. Fees paid to parties other than the first lien lender and reflected on the HUD-1 will not be included in the limit. Fees collected by the first lien lender at closing to be paid to other parties by the first lien lender that are supported by an invoice and reflected on the HUD-1 will not be included in the limit;

(6) No identity of interest relationship between the lender and the Household is allowed; and

(7) If an identity of interest exists between the Household and the seller, the Department may require additional documentation that evidences that the sales price is equal to or less than the appraised value of the property as documented by a Third-Party appraisal ordered by the first lien lender. If an identity of interest exists between the builder and Contract Administrator (CA) or Reservation System Participant (RSP), the CA or RSP must provide documentation that evidences that the sales price does not provide for a profit of more than 15 percent of the total hard construction costs and does not exceed the current appraised value as documented by a Third-Party appraisal ordered by the first lien lender.

(d) Direct Project Costs, exclusive of Match funds, are limited to:

(1) acquisition and closing costs: the lesser of \$20,000 or the amount necessary as determined by an affordability analysis that evidences the total estimated housing payment (including principal, interest, property taxes, insurance, and any other homebuyer assistance) is no less than 20 percent of the Household's gross monthly income based on a thirty (30) year amortization schedule. If the estimated housing payment will be less than 20 percent, the Department shall reduce the amount of downpayment assistance to the homebuyer such that the total estimated housing payment is no less than 20 percent of the homebuyer's gross income; or

(2) closing costs and downpayment: the lesser of \$6,000 or the total estimated settlement charges shown on the good faith estimate that are paid by the buyer at closing which are not paid by the buyer's contribution. Households assisted under this paragraph who, at the time of application, have assets which may be liquidated without a federal income tax penalty and which exceed three months of estimated principal, interest, property tax, and property insurance payments for the unit to be purchased as shown in the truth-in-lending statement must contribute the excess funds to the total estimated settlement charges as shown on the good faith estimate; and

(3) rehabilitation for accessibility modifications: \$20,000; and

(4) the amount necessary to acquire the home and make accessibility modifications.

(5) No funds shall be disbursed to the assisted Household at closing. The HOME assistance shall be reduced in the amount necessary to prevent the Household's direct receipt of funds if the HUD-1 settlement statement shows funds to be provided to the buyer at closing.

(6) Total assistance to the Household must be in an amount of no less than \$1,000. Households who are not eligible for at least \$1,000 in total homebuyer assistance are ineligible for assistance under this subchapter.

(e) Project soft costs are limited to:

(1) acquisition and closing costs: no more than \$1,500 per housing unit; and

(2) rehabilitation for accessibility modifications: \$5,000 per housing unit.

(f) Funds for Administrative costs are limited to no more than 4 percent of the Direct Project Costs, exclusive of Match funds.

(g) The assistance to an eligible Household shall be in the form of a loan in the amount of the Direct Project Costs, excluding Match funds. The loan will be at zero percent interest and include deferral

of payment and annual pro-rata forgiveness with a term based on the federal affordability requirements as defined in 24 CFR §92.254.

(h) Any forgiveness of the Loan occurs upon the anniversary date of the Household's continuous occupancy as its Principal Residence and continues on an annual pro-rata basis until maturity of the Loan.

(i) To ensure affordability, the Department will impose the recapture provisions established in this chapter.

(j) Housing units that will be rehabilitated with HOME funds must meet or exceed the Texas Minimum Construction Standard (TMCS), as applicable and all applicable codes and standards. In addition, housing that is Rehabilitated under this chapter must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances in accordance with the HOME Final Rule. Housing units that are provided assistance for acquisition only must meet all applicable state and local housing quality standards and code requirements. In the absence of such standards and requirements, the housing units must meet the Housing Quality Standards (HQS) in 24 CFR §982.401.

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-201301940

Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

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For further information, please call: (512) 475-3916



TITLE 16. ECONOMIC REGULATION

PART 8. TEXAS RACING COMMISSION

CHAPTER 307. PROCEEDINGS BEFORE THE COMMISSION

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §307.8

The Texas Racing Commission adopts new 16 TAC §307.8, relating to Negotiated Rulemaking and Alternative Dispute Resolution. The rule is adopted without changes to the proposed text as published in the March 8, 2013, issue of the *Texas Register* (38 TexReg 1492) and will not be republished.

The new rule encourages the use of both negotiated rulemaking and alternative dispute resolution where practical and appropriate.

The Commission received no comments in response to publication of the rule proposal.

The new rule is adopted under Texas Revised Civil Statutes Annotated, Article 179e, §2.25, which requires the Commission to implement a policy to encourage the use of negotiated rulemaking and alternative dispute resolution.

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 May 10, 2013.

TRD-201301877

Mark Fenner

General Counsel

Texas Racing Commission

Effective date: May 30, 2013

Proposal publication date: March 8, 2013

For further information, please call: (512) 833-6699



CHAPTER 309. RACETRACK LICENSES AND OPERATIONS

SUBCHAPTER A. RACETRACK LICENSES

DIVISION 2. ACTIVE AND INACTIVE

RACETRACK LICENSES

16 TAC §309.53

The Texas Racing Commission adopts new 16 TAC §309.53. The section relates to the Commission's five-year review of the ownership and management of active racetrack licenses under §6.06(k) of the Texas Racing Act. The rule is adopted with changes to the proposed text as published in the March 8, 2013, issue of the *Texas Register* (38 TexReg 1493).

The new rule establishes the criteria used in scheduling the review of each racetrack license as well as the materials that will be used in preparing an executive secretary's report for the Commission's consideration. As part of the review, the rule also requires a background check on each person owning an interest of at least five percent of the association and for each officer, director, or management committee member who is not currently licensed as an association officer or director. The rule also requires each association undergoing the review to provide an initial review fee of \$5,000 to cover the Commission's costs and provides for a reconciliation of costs upon completion of the review.

The Commission received one comment in response to publication of the rule. The commenter questioned whether the Commission has the statutory authority to adjust the schedule of ownership and management reviews so that the interval between reviews is shorter or longer than five years. In response, the Commission agreed to modify the rule to remove the two questioned provisions.

The new rule is adopted under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which authorizes the Commission to adopt rules to administer the Act, and §6.06(k), which requires the Commission to review the ownership and management of active licenses every five years.

§309.53. *Ownership and Management Review of Active Racetrack Licenses.*

(a) Scheduling of review.

(1) Except as otherwise provided in this subsection, an association holding a racetrack license designated as "Active-Operating" or "Active-Other" shall be subject to an ownership and management review in calendar year 2013.

(2) An association that undergoes or has undergone an ownership and management review in connection with a change of controlling interest during 2008 or any subsequent year shall be subject to review under this section in the year beginning five years after the Commission approved the change in controlling interest.

(3) An association which receives its original license during or after calendar 2013 shall be subject to review under this section in the year beginning five years after its date of original licensure.

(b) Submission requirements. Not later than June 30 of the year in which an association is subject to review, the association shall submit to the Commission:

(1) copies of its current management, concession, and totalisator contracts;

(2) a copy of its current security plan;

(3) for each person owning an interest of at least five percent of the association and for each officer, director, or management committee member who is not currently licensed as an Association Officer or Director by the Commission:

(A) a completed background information form and written authorization for the Commission and the Department of Public Safety to conduct any investigation deemed necessary; and

(B) a set of fingerprints on a form prescribed by the Department of Public Safety, or if the person already has a set of fingerprints classified and on file with the Department of Public Safety, authorization to resubmit those fingerprints to the Federal Bureau of Investigation and the Department of Public Safety for investigation;

(4) a review fee of \$5,000, to be held by the Commission in the state treasury in a suspense account until the review is complete or transferred to the Texas Racing Commission Fund as costs are incurred; and

(5) any other information required by the Commission.

(c) Commission review.

(1) The executive secretary shall prepare a report for the Commission's review summarizing:

(A) the information provided by the association under this section or under §309.152 of this title (relating to Records);

(B) the Commission's inspection reports from the prior five years;

(C) the results of any inspections or investigations conducted by the Commission as part of the review; and

(D) any other information relevant to the ownership or management of the association.

(2) The executive secretary will separately provide to the Commission the results of any background investigations conducted by the Department of Public Safety.

(3) At the conclusion of each review, the Commission:

(A) may take any action authorized under the Act or the Rules; and

(B) shall schedule the next ownership and management review of the association's license.

(d) Reconciliation of costs. Upon completion of the review, the Commission shall determine its total cost of processing the review, including its administrative costs and any investigative costs that are reimbursable to the Department of Public Safety.

(1) If the actual cost to the Commission of processing the review exceeds the amount of the review fee paid by the association, the Commission shall bill the association for any additional amount, to be paid not later than 30 days after receipt of a bill from the Commission.

(2) If the actual cost to the Commission of processing the review is less than the amount of the review fee paid by the association, the Commission shall refund the excess not later than 30 business days after the Commission's decision on the review becomes final.

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 May 10, 2013.

TRD-201301878

Mark Fenner

General Counsel

Texas Racing Commission

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For further information, please call: (512) 833-6699



SUBCHAPTER D. GREYHOUND RACETRACKS

DIVISION 2. OPERATIONS

16 TAC §309.359

The Texas Racing Commission adopts an amendment to 16 TAC §309.359. The section relates to the prohibition of live lures in the training of greyhounds. The amendment is adopted without changes to the proposed text as published in the March 8, 2013, issue of the *Texas Register* (38 TexReg 1494) and will not be republished.

The amendment prohibits the use of live or dead animals or fowl for training or racing purposes on association grounds. The rule creates an exception that allows the use of commercially available hides or pelts.

The Commission received no comments in response to publication of the proposal.

The amendment is adopted under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which authorizes the Commission to adopt rules to administer the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Mark Fenner

General Counsel

Texas Racing Commission

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For further information, please call: (512) 833-6699



CHAPTER 311. OTHER LICENSES

The Texas Racing Commission adopts amendments to 16 TAC §§311.6, 311.102, and 311.104; and new §311.217. These sections relate to: the denial, suspension, and revocation of occupational licenses; the qualifications and duties of greyhound owners; the qualifications and duties of trainers; and prohibited methods of training greyhounds. The amendments to §311.102 and §311.104 are adopted with changes to the proposed text as published in the March 8, 2013, issue of the *Texas Register* (38 TexReg 1495). The amendment to §311.6 and new §311.217 are adopted without changes to the proposed text as published and will not be republished. The changes to §311.102 and §311.104 are to correct minor typographical errors in the proposed text.

The amendment to §311.6 clarifies that activities or practices that are detrimental to the best interest of racing animals are also a detrimental practice for the purpose of denying, suspending, or revoking an occupational license.

The amendments to §311.102 and §311.104 provide that a greyhound owner or trainer may not enter a greyhound into a race if the owner or trainer knows, or reasonably should know, that the greyhound was trained using a live or dead animal or fowl as a lure, whether in this state or out of this state. The prohibition does apply to the use of a commercially available lure that is made from cured animal hides or pelts.

New §311.217 provides that a person may not use a live or dead animal or fowl to train a greyhound, or send a greyhound to a facility, whether located in this state or out of this state, for the purpose of being trained using a live or dead animal or fowl. The rule also defines such activities and practices as a detrimental practice. The rule does not prevent the use of a commercially available lure that is made from cured animal hides or pelts.

The Commission received no comments in response to publication of the proposal.

SUBCHAPTER A. LICENSING PROVISIONS

DIVISION 1. OCCUPATIONAL LICENSES

16 TAC §311.6

The amendment is adopted under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which authorizes the Commission to adopt rules to administer the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Mark Fenner

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SUBCHAPTER B. SPECIFIC LICENSES

16 TAC §311.102, §311.104

The amendments are adopted under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which authorizes the Commission to adopt rules to administer the Act.

§311.102. Greyhound Owners.

(a) General Provisions.

(1) Except as otherwise provided by this subsection, the owner of a greyhound, as listed on the animal's registration paper, must obtain an owner's license from the Commission. A person may not be licensed as an owner if the person is not the owner of record of a properly registered greyhound that the person intends to race in Texas. The owner must be licensed one hour prior to the post time of the first race of the day in which the owner intends to race the animal.

(2) If the owner is not an individual, each individual who is a director, officer, or partner of the owner or who has an ownership interest in the greyhound of 5.0% or more must be licensed by the Commission.

(3) If the owner is not an individual, the owner must provide to the Commission:

(A) a sworn statement by the chief executive officer of the owner or by one of the partners of the owner that the officer or partner represents the owner and is responsible for the greyhound;

(B) a statement that the owner is authorized by law to do business in Texas; and

(C) a list of the names and addresses of all individuals having an ownership interest in the greyhound.

(4) If the owner is not an individual, the ownership entity must:

(A) designate a representative; or

(B) file an authorized agent form with the Commission and pay the prescribed fee.

(5) If the registered owner of a greyhound is a minor, a financial responsibility form approved by the executive secretary must be signed by the parent or guardian of the owner assuming financial responsibility for the debts incurred for the training and racing of the greyhound.

(b) Change of Ownership.

(1) If the owner of an interest in a greyhound housed on an association's grounds transfers that interest to another person, both parties to the transaction shall give written notice of the transfer to the racing judges officiating for that association. Notice under this section must be submitted to the appropriate officials not later than 24 hours after the agreement to transfer the interest is made.

(2) A licensee of the Commission may not transfer an ownership interest in a greyhound to avoid disqualification of the greyhound.

(c) Emergency License.

(1) If an owner is unable to complete an application for an owner's license because of absence or illness, the licensed trainer desiring to enter a greyhound in a race may apply for an emergency owner's license on behalf of the absent owner.

(2) The trainer applying for an emergency owner's license on behalf of an absent owner must submit a written statement with the license application specifying the reasons the owner is unable to complete the application.

(3) The trainer applying for an emergency owner's license must submit at least the following information: the owner's full name, home or business address, telephone number, and social security number. At the time of application, the appropriate licensing fee must be

paid to the Commission. Failure to provide all of the foregoing information is grounds for denial of an emergency owner's license.

(4) If an owner submits an incomplete application for an owner's license, the application will remain in pending status until:

(A) the owner submits any additional information required to process the application;

(B) the application expires in accordance with the term of the applied-for license; or

(C) a greyhound is entered in the owner's name or in the name of a multiple owner of which the owner is a member, in which case the pending license will be presumed to be a request for an emergency license.

(5) A license issued under this section expires on the 21st day after the date the emergency owner's license is issued. An owner may obtain only one emergency license per year. An emergency license cannot be issued if the owner failed to complete the prior licensing process.

(d) Restrictions on Racing. An owner may not enter a greyhound or cause a greyhound to be entered in a race at a racetrack if:

(1) the owner knows or can reasonably be expected to know that the greyhound was trained using a live or dead animal or fowl as a lure in this state or out of this state. This paragraph does not apply to the use of a training lure that is made from cured animal hides or pelts and is commercially available to the public;

(2) the owner or trainer is employed by the racetrack association in a management or supervisory position that is capable of affecting the conduct of races or pari-mutuel wagering at the racetrack; or

(3) the owner or trainer is involved in any way with the sale or publication of tip sheets on association grounds.

§311.104. Trainers.

(a) Licensing.

(1) Except as otherwise provided by this subsection, a trainer must obtain a trainer's license before the trainer may enter a horse or greyhound in a race. A trainer may enter a horse or greyhound in a stakes race without first obtaining a license, but must obtain a license before the horse or greyhound may start in the stakes race. Except as otherwise provided by this section, to be licensed by the Commission as a trainer, a person must:

(A) be at least 18 years old;

(B) submit a minimum of two written statements from licensed trainers, veterinarians, owners, or kennel owners, attesting to the applicant's character and qualifications;

(C) interview with the board of stewards or judges;

(D) satisfactorily complete a written examination prescribed by the Commission; and

(E) satisfactorily complete a practical examination prescribed by the Commission and administered by the stewards or racing judges or designee of the stewards or racing judges.

(2) Examinations.

(A) A \$50 non-refundable testing fee is assessed for administering the written and practical examinations. The fee is due and payable at the time the written examination is scheduled. If the applicant fails the written or practical examination, the applicant will be allowed to retake it once without an additional fee. The applicant must

pay a \$50 non-refundable testing fee to schedule an examination after each retest. A minimum of 48 hours advance notice is required to reschedule an examination appointment without loss of the testing fee. An applicant who fails to timely reschedule an examination appointment must pay a new testing fee to reschedule the appointment. A steward or judge may waive the additional fee if, in the opinion of the steward or judge, the applicant shows good cause for the failure to timely reschedule an examination appointment.

(B) The standard for passing the written examination must be printed on the examination. An applicant who fails the written examination may not take the written examination again before the 90th day after the applicant failed the written examination. An applicant who fails the written examination for a second or any subsequent time may not reschedule the written examination for 180 calendar days after the last failure and the applicant must pay an additional \$50 non-refundable testing fee. After successful completion of the written exam an applicant has 365 calendar days to successfully complete the practical exam.

(C) An applicant who fails the practical examination may not reschedule the practical examination again before the 180th day after the applicant failed the practical examination. An applicant who fails the practical examination for a second time may not reschedule another practical examination for 365 calendar days after the day the applicant failed the second practical examination and the applicant must pay an additional \$50 non-refundable testing fee.

(D) The Commission may waive the requirement of a written and/or practical examination for a person who has a current license issued by another pari-mutuel racing jurisdiction. If a person for whom the examination requirement was waived demonstrates an inability to adequately perform the duties of a trainer, through excessive injuries, rulings, or other behavior, the stewards or racing judges may require the person to take the written and/or practical examination. If such a person fails the examination, the stewards or racing judges shall suspend the person's license for 90 days with reinstatement contingent upon passing the written and/or practical examination.

(3) A trainer must use the trainer's legal name to be licensed as a trainer. A trainer who is also an owner may use a stable name or kennel name in the capacity of owner.

(4) To be licensed as an assistant trainer, a person must qualify in all respects for a trainer's license and be in the employ of a licensed trainer. An assistant trainer's license carries all the privileges and responsibilities of a trainer's license.

(b) Absolute Insurer.

(1) A trainer shall ensure the health and safety of each horse or greyhound that is in the care and custody of the trainer.

(2) A trainer shall ensure that a horse or greyhound that runs a race while in the care and custody of the trainer or kennel owner is free from all prohibited drugs, chemicals, or other substances.

(3) A trainer who allows a horse or greyhound to be brought to the paddock or lockout kennel warrants that the horse or greyhound:

(A) is qualified for the race;

(B) is ready to run;

(C) is in a physical condition to exert its best efforts; and

(D) is entered with the intent to win.

(c) Health Reports.

(1) A trainer shall immediately notify the Commission veterinarian or designee of unusual symptoms in a horse or greyhound that is in the trainer's care and custody.

(2) Not later than one hour after finding a dead horse or greyhound on association grounds, a trainer shall notify the stewards or racing judges and the Commission veterinarian, or their designee, of the death. In the absence of regulatory personnel, the trainer shall notify security personnel on the association grounds.

(d) Owner Suspended. A trainer may not retain a horse or greyhound in the trainer's care and custody if the Commission has suspended or revoked the license of the owner of the horse or greyhound.

(e) An individual who is licensed to work for a trainer is not permitted in the stable or kennel area on association grounds unless the licensee is employed by and doing work for a trainer on the association grounds. An individual in the stable or kennel area on association grounds who is not in the employ of and doing work for a trainer may be ejected from the stable or kennel area on the association grounds.

(f) Restrictions on Racing. A trainer may not enter a race animal or cause a race animal to be entered in a race at a racetrack if:

(1) the trainer knows or can reasonably be expected to know that the greyhound was trained using a live or dead animal or fowl as a lure in this state or out of this state. This paragraph does not apply to the use of a training lure that is made from cured animal hides or pelts and is commercially available to the public;

(2) the owner or trainer is employed by the racetrack association in a management or supervisory position that is capable of affecting the conduct of races or pari-mutuel wagering at the racetrack; or

(3) the owner or trainer is involved in any way with the sale or publication of tip sheets on association grounds.

(g) Trainer Employees.

(1) A trainer may not employ an individual who is less than 16 years of age to work for the trainer on an association's grounds.

(2) A trainer may not employ a jockey to prevent the jockey from riding in a race.

(h) Trainer Absent. If a trainer must be absent because of illness or any other cause, the trainer shall appoint another licensed trainer to fulfill his or her duties, and promptly report the appointment to the stewards or racing judges for approval. The absent trainer and substitute trainer have joint responsibility for the condition of the race animals normally trained by the absent trainer.

(i) Suspended, Revoked or Ineligible Horse Trainers.

(1) A person may not assume the responsibilities of a horse trainer who is ineligible to be issued a license or whose license is suspended or revoked if the person is related to the trainer within the first degree of consanguinity or affinity.

(2) A person who assumes the care, custody, or control of the horses of a suspended, revoked or ineligible horse trainer may not:

(A) receive any compensation regarding those horses from the suspended, revoked or ineligible trainer;

(B) pay any compensation regarding those horses to the suspended, revoked or ineligible trainer;

(C) solicit or accept a loan of anything of value from the suspended, revoked or ineligible trainer; or

(D) use the farm or individual name of the suspended, revoked or ineligible trainer when billing customers.

(3) A person who assumes the care, custody, or control of the horses of a suspended, revoked or ineligible trainer is directly responsible for all financial matters relating to the care, custody, or control of the horses.

(4) On request by the Commission, a suspended, revoked or ineligible trainer or a person who assumes the care, custody, or control of the horses of a suspended, revoked or ineligible trainer shall permit the Commission to examine all financial or business records to ensure compliance with this section.

(j) Reporting to Clocker. When taking a horse onto a racetrack to work, a horse trainer or an assistant of the trainer shall report the horse's name and the distance to be worked to the morning clocker or an assistant clocker or shall instruct the jockey or exercise rider to transmit the information to the clocker or assistant clocker.

(k) Other Responsibilities. A trainer is responsible for:

(1) the condition and contents of stalls/kennels, tack rooms, feed rooms, and other areas which have been assigned by the association;

(2) maintaining the assigned stable/kennel area in a clean, neat and sanitary condition at all times;

(3) ensuring that fire prevention rules are strictly observed in the assigned stable/kennel area;

(4) training all animals owned wholly or in part by the trainer that are participating at the race meeting;

(5) ensuring that, at the time of arrival at a licensed racetrack, each animal in the trainer's care is accompanied by a valid health certificate/certificate of veterinary inspection;

(6) using the services of those veterinarians licensed by the Commission to attend animals that are on association grounds;

(7) promptly notifying the official veterinarian of any reportable disease and any unusual incidence of a communicable illness in any animal in the trainer's charge;

(8) immediately reporting to the stewards/judges and the official veterinarian if the trainer knows, or has cause to believe, that an animal in the trainer's custody, care or control has received any prohibited drugs or medication;

(9) maintaining a knowledge of the medication record and status of all animals in the trainer's care;

(10) ensuring the fitness of an animal to perform creditably at the distance entered;

(11) ensuring that the trainer's horse is properly shod, banded and equipped; and

(12) reporting the correct sex of the horses in his/her care to the Commission veterinarian and the horse identifier.

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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Mark Fenner
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Texas Racing Commission
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For further information, please call: (512) 833-6699



SUBCHAPTER C. RESPONSIBILITIES OF INDIVIDUALS

16 TAC §311.217

The new rule is adopted under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which authorizes the Commission to adopt rules to administer the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 315. OFFICIALS AND RULES FOR GREYHOUND RACING

SUBCHAPTER B. ENTRIES AND PRE-RACE PROCEDURES

16 TAC §315.112

The Texas Racing Commission adopts new 16 TAC §315.112, relating to the eligibility of greyhounds to participate in racing. The rule is adopted with changes to the proposed text as published in the March 8, 2013, issue of the *Texas Register* (38 TexReg 1496). The rule is adopted with changes to correct a misspelling in the section title.

The new rule permits a board of racing judges to ban a greyhound for life from being kenneled or participating in racing on association grounds if it finds that the greyhound has been trained at any facility that has engaged in any detrimental practice related to the training of greyhounds using a live or dead animal or fowl.

The Commission received no comments in response to publication of the rule proposal.

The new rule is adopted under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which authorizes the Commission to adopt rules to administer the Act.

§315.112. *Ineligibility Due to Improper Greyhound Training.*

(a) The board of racing judges may ban a greyhound for life from being kenneled or participating in racing on association grounds if it finds that the greyhound has been trained at any facility that has en-

gaged in any detrimental practice related to the training of greyhounds using a live or dead animal or fowl.

(b) This section does not apply to the use of a training lure that is made from cured animal hides or pelts and is commercially available to the public.

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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PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 401. ADMINISTRATION OF STATE LOTTERY ACT

SUBCHAPTER D. LOTTERY GAME RULES

16 TAC §401.307

The Texas Lottery Commission (Commission) adopts amendments to 16 TAC §401.307, concerning "Pick 3" On-Line Game Rule. The amendments are adopted without changes to the proposed text as published in the March 8, 2013, issue of the *Texas Register* (38 TexReg 1497).

The purpose of the amendments is to increase the frequency of drawings from two (2) per day to four (4) per day, increase the number of consecutive drawing plays that a player may purchase from twelve (12) to twenty-four (24), delete obsolete language, and correct a spelling error. The executive director shall determine the date on which drawing frequency will increase pursuant to this rule amendment, but that date shall be no later than October 13, 2013.

A public comment hearing was held on Wednesday, March 20, 2013 at 10:00 a.m., at 611 E. 6th Street, Austin, Texas 78701. No members of the public were present at the hearing. The Commission received one written comment from an individual during the public comment period. The individual who submitted the comment expressed his opposition to the amendment increasing the frequency of drawings from two (2) per day to four (4) per day. The individual stated that increasing the frequency of drawings per day will result in a decrease in the amount of revenue collected by the state. Instead of increasing the frequency of drawings per day, the individual suggested that drawings be held on Sundays. The Commission declines to alter the amendments as requested because the Commission's financial analysis illustrates that increasing the frequency of drawings per day will result in an increase in revenue for the Foundation School Fund. For example, when the Commission increased the frequency of drawings per day for the "Pick 3" game in 2001, a sales increase was realized. This sales increase resulted in increased revenue to the State of Texas.

The amendments are adopted under §466.015 of the Texas Government Code, which authorizes the Commission to adopt rules governing the operation of the lottery, and under §467.102 of the Texas Government Code, which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

This adoption implements Chapter 466 of the Texas Government Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Bob Biard

General Counsel

Texas Lottery Commission

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



16 TAC §401.316

The Texas Lottery Commission (Commission) adopts amendments to 16 TAC §401.316, concerning "Daily 4" On-Line Game Rule. The amendments are adopted without changes to the proposed text as published in the March 8, 2013, issue of the *Texas Register* (38 TexReg 1498).

The purpose of the amendments is to increase the frequency of drawings from two (2) per day to four (4) per day and to increase the number of consecutive drawing plays that a player may purchase from twelve (12) to twenty-four (24). The executive director shall determine the date on which drawing frequency will increase pursuant to this rule amendment, but that date shall be no later than October 13, 2013.

A public comment hearing was held on Wednesday, March 20, 2013 at 10:00 a.m., at 611 E. 6th Street, Austin, Texas 78701. No members of the public were present at the hearing. The Commission received one written comment from an individual during the public comment period. The individual who submitted the comment expressed his opposition to the amendment increasing the frequency of drawings from two (2) per day to four (4) per day. The individual stated that increasing the frequency of drawings per day will result in a decrease in the amount of revenue collected by the state. Instead of increasing the frequency of drawings per day, the individual suggested that drawings be held on Sundays. The Commission declines to alter the amendments as requested because the Commission's financial analysis illustrates that increasing the frequency of drawings per day will result in an increase in revenue for the Foundation School Fund. For example, when the Commission increased the frequency of drawings per day for the "Pick 3" game in 2001, a sales increase was realized. This sales increase resulted in increased revenue to the State of Texas.

The amendments are adopted under §466.015 of the Texas Government Code, which authorizes the Commission to adopt rules governing the operation of the lottery, and under §467.102 of the Texas Government Code, which authorizes the Commission to

adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

This adoption implements Chapter 466 of the Texas Government Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Bob Biard

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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 9. PROGRAM DEVELOPMENT IN PUBLIC TWO-YEAR COLLEGES

SUBCHAPTER D. TRANSFERABLE ACADEMIC COURSES

19 TAC §9.74

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §9.74, concerning unique need courses, without changes to the proposed text as published in the January 25, 2013, issue of the *Texas Register* (38 TexReg 350).

The amendments will reduce the amount of time spent by community college personnel and Board staff in submitting, reviewing, and approving upper-division courses that are used in applied baccalaureate degrees. The amendments would streamline the applied baccalaureate course approval process found in Chapter 9, Subchapter D, and make those approvals good for as long as the requesting college has the related applied baccalaureate degree on its approved program inventory.

There were no comments received concerning the proposed amendments.

The amendments are adopted under Texas Education Code, Chapter 61, Subchapter C, §61.051(g), which provides the Coordinating Board with the authority to provide for the free transferability of lower division course credit among institutions of higher education.

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-201301800

Bill Franz
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Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6114



CHAPTER 17. RESOURCE PLANNING SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §17.3

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §17.3, concerning resource planning definitions, without changes to the proposed text as published in the February 8, 2013, issue of the *Texas Register* (38 TexReg 570).

Specifically, this amendment will make necessary changes to existing definitions in order to define planned projects when considering project applications.

The following comments were received concerning the amendments:

Comment 1: The University of North Texas System expressed concern regarding the impact on the expedited process and suggested a response that would exclude projects that fall within expedited process provision from the requirement to be considered a planned project and felt there was a conflict with the statutory definition in Texas Education Code (TEC) §61.0573(a) concerning expedited projects. Additionally, they expressed a concern the proposed requirement for a project to be in the top ten projects and to fall within ten percent of scope and cost identified in the Capital Expenditure Plan (MP1) was an "onerous" requirement.

Staff Response: Staff does not concur that the proposed changes conflict with statutory definition in the TEC §61.0573(a). This proposed revision further expands this definition as it pertains to the reasonable expectation that significant planning has been done prior to the approval of a project by any permissible method or to reasonably consider the project as actually part of a coherent capital expenditure plan. The clear prioritization of the capital expenditure plan is not an "onerous" requirement and it is a common practice to identify all needs and then prioritize, and it is reasonably expected this already occurs. A project not within the top ten projects is not denied, it simply has a higher burden to show why the priority changed for this project. Similarly, a project that exceeds the planned costs by more than ten percent is not denied, the institution rightfully has a higher burden to demonstrate why they are deviating from their own plan. No changes were made as a result of these comments.

Comment 2: The University of Texas at Austin stated the proposed requirement of a project to be within the parameters of a planned project (i.e., within ten percent of the cost and scope and in the top ten priority projects) does not allow for elevating a project into the top ten projects and does not recognize the potential for changes that may alter the planned costs or scope by more than ten percent.

Staff Response: Changes to the rules do not exclude a project that may fail to meet the definition of planned project. Projects of this type would be subject to delegation of approval as specified in changes to §17.12 if they otherwise meet the standards.

The timeline for this approval is fairly rapid (3-5 days) which should not create adverse administrative burden. No changes were made as a result of these comments.

The amendments are adopted under Texas Education Code §61.0572.

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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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6114



SUBCHAPTER B. BOARD APPROVAL

19 TAC §17.12

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §17.12, concerning delegation of approval authority, without changes to the proposed text as published in the February 8, 2013, issue of the *Texas Register* (38 TexReg 571).

Specifically, this amendment will make necessary changes to existing delegation authority to facilitate changes to project standards.

There were no comments received regarding the proposed amendments.

The amendments are adopted under Texas Education Code §61.0572 and §61.058.

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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Bill Franz
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SUBCHAPTER C. RULES APPLYING TO ALL PROJECTS

19 TAC §17.20

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §17.20, concerning criteria for approval of projects, with changes to the proposed text as published in the February 8, 2013, issue of the *Texas Register* (38 TexReg 572).

Specifically, this creates a standard that mandates all projects be planned to a reasonable level of detail well in advance of application for approval. To be considered a planned project, the project must be prioritized in the top ten projects as submitted in the annual Capital Expenditure Plan and the scope and cost of the submitted project must be within ten percent of the amounts specified in the Capital Expenditure Plan. In the event a project does not meet the planned project criteria, the institution will be required to submit additional information to the appropriate approval level for consideration.

The following comments were received concerning the amendments.

Comment 1: The University of Texas at Austin and the University of North Texas System both assert the change will have an adverse impact on real property acquisitions. Real estate may come on to the market and opportunities arise that require the institution to act quickly.

Staff response: Staff understands the requirement for a real property acquisition to be planned may seem to be troublesome to the purchase process. Staff does not believe ambiguity exists within the proposed rule; however, the dynamic nature of the real estate market requires greater agility and the rule has been changed to exclude real property acquisition from the planned project provision. Changes were made as a result of these comments.

Comment 2: The University of Texas at Austin raised the concern that the requirement to have the project listed in the top ten projects greatly decreases their agility in performing "fast track" projects. Another concern along the same lines is the removal of the language that allows for the institution to present the project as an opportunity or emergency that could not be foreseen.

Staff Response: Staff agrees there are those types of projects that require great agility in response and current delegation of authority rules address these circumstances. The rule has been modified to ensure unforeseen opportunities exist and it is the Coordinating Board's responsibility to review the institutional certification prior to administering the provisions of Texas Education Code (TEC) §61.0573. Therefore, these projects (considering all other standards were met) could be approved at a delegated level. In the last study we conducted, the average time to process a project subject to Commissioner or Assistant Commissioner level approval was three days. Staff believes this provides ample institutional agility to meet the acute conditions that would necessitate fast tracking. Changes were made as a result of these comments.

The amendments are adopted under Texas Education Code §61.0572 and §61.058.

§17.20. Criteria for Approval of Projects.

Projects considered for approval shall meet the following criteria:

(1) The project shall meet all applicable Board standards as described in §§17.30 - 17.51 of this title (relating to Rules Applying to New Construction and Addition Projects, Repair and Renovation Projects, and Real Property Acquisition Projects).

(2) If the project financing involves private gift or grant funds, these funds are either in-hand or the governing board shall commit an alternative source of funds, or if the private gift or grant funds are not received, the governing board agrees to forego the project.

(3) If the project causes an increase in student fees, such increases are executed in accordance with the applicable laws concerning approval by the student body.

(4) If the project involves construction of a dormitory, bookstore, food service facility, or other facility for which privatization may be a viable alternative, the governing board shall have considered the feasibility of privatization of both construction and operation of the facility.

(5) If applicable, the project complies with the minimum flood plain management standards established by the Texas Commission on Environmental Quality (TCEQ) and the Federal Emergency Management Agency (FEMA).

(6) If the project includes the acquisition of real property, the governing board shall have given appropriate consideration to the effect of the acquisition on residential neighborhoods.

(7) If the project includes the acquisition of real property, the acquisition shall be included in the institution's long-range campus master plan or the institution shall certify that the project represents an opportunity or emergency that could not be foreseen.

(8) All projects, with the exception of real property acquisitions, shall be planned projects as defined in §17.3 of this title (relating to Definitions) included in the institution's most recently submitted Facilities Development Plan (MP1 report) or the institution shall certify that the project represents an opportunity or emergency that could not be foreseen.

(9) If applicable, the project complies with Texas Government Code, §§469.001 - 469.105, concerning the elimination of restrictive barriers.

(10) The project shall comply with Life Safety Standards adopted by the State Fire Marshal.

(11) The institution verifies that the project complies with Texas Government Code, §447.004, regarding energy efficiency and shall provide a Certificate of Compliance to the State Energy Conservation Office prior to occupancy. If the project involves energy savings or conservation, the governing board shall have considered the feasibility of an Energy Savings Performance Contract as a viable alternative.

(12) The institution shall verify that it will comply with Texas Government Code, §§2161.252 - 2161.253, concerning Historically Underutilized Business Subcontracting Plans.

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 May 6, 2013.

TRD-201301803

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Effective date: May 26, 2013

Proposal publication date: February 8, 2013

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



TITLE 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 101. DENTAL LICENSURE

22 TAC §§101.1 - 101.7, 101.9

The State Board of Dental Examiners (Board) adopts amendments to §§101.1 - 101.7 and 101.9, concerning dental licensure without changes to the proposed text as published in the March 15, 2013, issue of the *Texas Register* (38 TexReg 1762) and will not be republished.

The amendments are adopted to reconcile language inconsistencies in Chapters 101 and 103 and to clarify licensure procedures to increase efficiency in the licensing process.

Texas Dental Association commented in favor of the proposed amendments, contending that the rules clarify the Board's considerations when reviewing an application for dental licensure and reconcile inconsistent language throughout the chapter. The Board agrees.

The amendments are adopted under Texas Occupations Code §254.001(a) which provides authority for the Board to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

No other statutes, articles, or codes are 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 May 9, 2013.

TRD-201301858

Glenn Parker

Executive Director

State Board of Dental Examiners

Effective date: May 29, 2013

Proposal publication date: March 15, 2013

For further information, please call: (512) 475-0989



CHAPTER 103. DENTAL HYGIENE LICENSURE

22 TAC §§103.1 - 103.8

The State Board of Dental Examiners (Board) adopts amendments to §§103.1 - 103.8, concerning dental hygiene licensure. Section 103.1 and §§103.3 - 103.8 are adopted without changes to the proposed text as published in the March 15, 2013, issue of the *Texas Register* (38 TexReg 1768) and will not be republished. Section 103.2 is adopted with changes and will be republished.

The amendments are adopted to reconcile language inconsistencies in Chapters 101 and 103 and to clarify licensure procedures to increase efficiency in the licensing process.

Texas Dental Association commented in favor of the proposed amendments, contending that the rules clarify the Board's considerations when reviewing an application for dental hygiene licensure and reconcile inconsistent language throughout the chapter. The Board agrees.

The Board discussed an amendment to §103.2(c)(2) changing the required hours from 80 to 150. The Board voted and passed

this amendment in a public hearing prior to the publishing the proposed rule on March 15, 2013.

The amendments are adopted under Texas Occupations Code §254.001(a) which provides authority for the Board to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

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

§103.2. Licensure by Examination.

(a) In addition to the general qualifications for licensure contained in §103.1 of this chapter (relating to General Qualifications for Licensure), an applicant for dental hygienist licensure by examination must present proof that the applicant has taken and passed the appropriate clinical examination administered by a regional examining board designated by the Board.

(b) Designated regional examining boards.

(1) The following regional examining boards have been designated as acceptable by the Board as of the effective dates shown:

(A) Western Regional Examining Board, January 1, 1994;

(B) Central Regional Dental Testing Service, January 1, 2002;

(C) Northeast Regional Board, January 1, 2005;

(D) Southern Regional Testing Agency, January 1, 2005; and

(E) Council of Interstate Testing Agencies (CITA), January 1, 2009.

(2) Examination results will be accepted for five years from the date of the examination.

(c) Remediation.

(1) If an applicant for Texas dental hygienist licensure fails three dental hygiene clinical examination attempts, the applicant must complete 40 hours of clinical remediation through a CODA-accredited dental hygiene program before approval will be issued to take another clinical examination.

(2) If an applicant fails four or more dental hygiene clinical examination attempts, the applicant must complete 150 hours of clinical remediation through a CODA-accredited dental hygiene program before approval will be issued to take another clinical examination.

(3) All programs of clinical remediation require prior approval by the Board. Applicants will be responsible for locating, identifying and obtaining approval from the Board prior to registration for any program.

(4) Re-examination must be accomplished within 18 months following the date the Board approves a remediation program for the applicant.

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 May 9, 2013.

TRD-201301862

Glenn Parker
Executive Director
State Board of Dental Examiners
Effective date: May 29, 2013
Proposal publication date: March 15, 2013
For further information, please call: (512) 475-0989

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CHAPTER 108. PROFESSIONAL CONDUCT
SUBCHAPTER A. PROFESSIONAL
RESPONSIBILITY

22 TAC §108.8

The State Board of Dental Examiners (Board) adopts an amendment to §108.8, concerning records of the dentist without changes to the proposed text as published in the December 28, 2012, issue of the *Texas Register* (37 TexReg 10073) and will not be republished.

The amendment is adopted to include an oral pathology examination as part of a dental record.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Occupations Code §254.001(a), which provides authority for the Board to adopt rules necessary to perform its duties and ensure compliance with state law relating to the practice of dentistry to protect the public health and safety.

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

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 May 9, 2013.

TRD-201301857
Glenn Parker
Executive Director
State Board of Dental Examiners
Effective date: May 29, 2013
Proposal publication date: December 28, 2012
For further information, please call: (512) 475-0989

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PART 14. TEXAS OPTOMETRY BOARD
CHAPTER 273. GENERAL RULES

22 TAC §273.5

The Texas Optometry Board adopts amendments to §273.5, concerning Clinical Instruction and Practice - Limited License for Clinical Faculty, without change to the proposed text published in the March 1, 2013, issue of the *Texas Register* (38 TexReg 1331).

The amendments clarify the limitations on the participation of optometry students in clinical training. With the opening of a new optometry school in Texas, the agency has determined that this is the appropriate time to set guidelines for students and faculty

of optometry schools as to time, place and supervision required for clinical instruction and practice.

No comments were received.

The amendment is adopted under the Texas Optometry Act, Texas Occupations Code, §351.151 and §351.260. No other sections are affected by the amendments.

The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession. The agency interprets §351.260 as defining parameters of clinical training.

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 May 6, 2013.

TRD-201301796
Chris Kloeris
Executive Director
Texas Optometry Board
Effective date: May 26, 2013
Proposal publication date: March 1, 2013
For further information, please call: (512) 305-8502

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PART 23. TEXAS REAL ESTATE
COMMISSION

CHAPTER 535. GENERAL PROVISIONS
SUBCHAPTER G. MANDATORY
CONTINUING EDUCATION

22 TAC §535.75

The Texas Real Estate Commission adopts an amendment to §535.75, concerning Education Standards Advisory Committee, without changes to the proposed text as published in the March 1, 2013, issue of the *Texas Register* (38 TexReg 1332) and will not be republished.

The amendment changes the expiration date for the term of appointments and expands the term officers serve to two years.

The reasoned justification for the rule is effective leadership and committee continuity.

No comments were submitted on the rule as proposed.

The amendment is adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

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

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 May 10, 2013.

TRD-201301887
Loretta R. DeHay
General Counsel
Texas Real Estate Commission
Effective date: May 30, 2013
Proposal publication date: March 1, 2013
For further information, please call: (512) 936-3092

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**SUBCHAPTER N. SUSPENSION AND
REVOCAION OF LICENSURE**

22 TAC §535.144

The Texas Real Estate Commission adopts amendments to §535.144, concerning When Acquiring or Disposing of Own Property or Property of Spouse, Parent or Child, without changes to the proposed text as published in the March 1, 2013, issue of the *Texas Register* (38 TexReg 1332) and will not be republished.

The amendments to §535.144 streamline the rule for clarity and provide a definition of "license holder" for purposes of the section to include the license holder's spouse, which is in the existing rule; a business entity in which the licensee is more than a 10% owner, which is in the existing rule; and a trust of which the licensee is the trustee or of which the licensee or the licensee's spouse, parent or child is a beneficiary. The trust provisions clarify that the commission has jurisdiction under §1101.652(a)(3) of the Act over transactions in which licensees act on behalf of trusts in which they or family members have an interest. Family trusts, which are the types of trusts most often encountered in residential transactions, are typically used to hold title or ownership to real estate and other assets as an alternative to probate.

The reasoned justification for the rule is clarification of the agency's jurisdiction over licensees engaging in real estate transactions on behalf of a buying or selling entity in which the licensee has an ownership or beneficial interest.

No comments were submitted on the rule as proposed.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 10, 2013.

TRD-201301888
Loretta R. DeHay
General Counsel
Texas Real Estate Commission
Effective date: May 30, 2013
Proposal publication date: March 1, 2013
For further information, please call: (512) 936-3092

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**SUBCHAPTER R. REAL ESTATE
INSPECTORS**

22 TAC §535.206

The Texas Real Estate Commission (TREC) adopts amendments to §535.206, concerning the Texas Real Estate Inspector Committee, without changes to the proposed text as published in the March 1, 2013, issue of the *Texas Register* (38 TexReg 1333) and will not be republished.

The amendments reduce the term served by public members of the committee from six years to two years. There are no term limits in the rule; therefore, members could serve for additional terms if reappointed by the Commission. The rule was recommended by the Texas Real Estate Inspector Committee, an advisory committee of six professional inspectors and three public members appointed by TREC (Committee).

The reasoned justification for the rule is increased ability to attract and retain public members on the Committee.

No comments were submitted on the rule as proposed.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce all rules necessary to administer Chapter 1102.

The statutes affected by this adoption are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 13, 2013.

TRD-201301942
Kerri Lewis
Deputy General Counsel
Texas Real Estate Commission
Effective date: June 2, 2013
Proposal publication date: March 1, 2013
For further information, please call: (512) 936-3092

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22 TAC §535.223

The Texas Real Estate Commission adopts amendments to §535.223, concerning Standard Inspection Report Form, with non-substantive changes to the proposed text as published in the March 1, 2013, issue of the *Texas Register* (38 TexReg 1334) and with one non-substantive change to the new Property Inspection Form (REI 7-3) adopted by reference in the rule. The differences between the rule as published and as adopted are the deletion of the word "and" in the first sentence, changing "they are" to "it is" in paragraph (3)(B) and deleting "s" from the word "forms" in the last sentence of paragraph (6)(F). The difference between the REI 7-3 as published and as adopted was that the reference to carbon monoxide alarms in the section on Texas Real Estate Consumer Notice Concerning Hazards or Deficiencies was made a separate bullet point for malfunctioning of that alarm. This change was made in response to a comment received to make REI 7-3 consistent with the

inspector standards of practice as re-proposed under separate rule (Standards). The adoption takes effect January 1, 2014.

The amendments were previously proposed and published in the November 23, 2012, issue of the *Texas Register* (37 TexReg 9278) but were withdrawn on February 12, 2013, for re-proposal. The amendments are adopted to track revisions to the Standards. The amendments also clarify how the form is to be used by an inspector and in what ways an inspector is authorized to modify the form. The amendments provide an additional exemption for inspectors conducting inspections on single component systems, which are defined by the rule. The amendments adopt by reference a new Property Inspection Form (REI 7-3) and remove the requirements for the two current forms, REI 7A1 and REI 7-2.

The amendments have been recommended by the Texas Real Estate Inspector Committee, an advisory committee of six professional inspectors and three public members appointed by TREC, to correspond to proposed revisions to the Standards that are also adopted and explained in this issue of the *Texas Register*.

The revisions to the rule and to Form REI 7-3 as adopted do not change the nature or scope so much that the rule or form could be deemed a different rule or form. The rule and form as adopted do not affect individuals other than those contemplated by the form as proposed. The rule and form as adopted do not impose more onerous requirements than the proposed rule and form.

The reasoned justification for the rule will be increased clarity for inspectors and consumers alike regarding the use of a standard inspection report form that tracks the newly adopted revised Standards.

Comments on the amendments or Form REI 7-3 adopted by reference in the amendments were received from two licensed inspectors.

One commenter thought that the Texas Real Estate Consumer Notice concerning Hazards or Deficiencies (form OP-I) should remain as a stand-alone form and not be incorporated into Form REI 7-3. Another commenter approved the addition of this notice in Form REI 7-3. The Texas Real Estate Inspector Committee reviewed these comments and recommended that the notice remain in Form REI 7-3 to ensure that consumers receive the notice from inspectors but that the optional OP-I form also remain available for use by inspectors who want to give it for special emphasis or for use by other real estate licensees. The Commission agrees.

One commenter thought that there was a discrepancy with the definition of general deficiency and specificity regarding the location of GFCI devices in the Standards and Form REI 7-3, stating they were more clearly defined in Form REI 7-3. The commenter also thought that there was discrepancy between the Standards and Form REI 7-3 with the form stating inspectors will report the lack of that device while the Standards do not require the inspector to report the lack of that device, only to report to report a defect with an existing device. The Commission agrees that the carbon monoxide alarm item in Form REI 7-3 could be read to require reporting the lack of such an alarm and clarified the form to indicate that only the malfunctioning of the alarm is a deficiency in order to be consistent with the Standards.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission

to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to ensure compliance with the provisions of the Act.

The statutes affected by this adoption are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the amendments.

§535.223. *Standard Inspection Report Form.*

The Texas Real Estate Commission adopts by reference Property Inspection Report Form REI 7-3, approved by the Commission for use in reporting inspections results. This document is published by and available from the Texas Real Estate Commission website: www.trec.texas.gov, or by writing to the Commission at Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

(1) Except as provided by this section, inspections performed for a prospective buyer or prospective seller of substantially complete one-to-four family residential property shall be reported on Form REI 7-3 adopted by the Commission ("the standard form").

(2) Inspectors may reproduce the standard form by computer or from printed copies obtained from the Commission. Except as specifically permitted by this section, the inspector shall reproduce the text of the standard form verbatim and the spacing, borders and placement of text on the page must appear to be identical to that in the printed version of the standard form.

(3) An inspector may make the following changes to the standard form:

(A) delete the line for name and license number, of the sponsoring inspector, if the inspection was performed solely by a professional inspector;

(B) change the typeface; provided that it is no smaller than a 10 point font;

(C) change the color of the typeface and checkboxes;

(D) use legal sized (8-1/2" by 14") paper;

(E) add a cover page to the report form;

(F) add footers to each page of the report except the first page and may add headers to each page of the report;

(G) place the property identification and page number at either the top or bottom of the page;

(H) add subheadings under items, provided that the numbering of the standard items remains consistent with the standard form;

(I) list other items in the corresponding appropriate section of the report form and additional captions, letters, and check boxes for those items;

(J) delete inapplicable subsections of Section VI., Optional Systems, and re-letter any remaining subsections;

(K) delete Subsection L., Other, of Section I., Structural Systems; Subsection E., Other of Section IV, Plumbing Supply, Distribution Systems and Fixtures and Subsection I., Other of Section V., Appliances;

(L) allocate such space in the "Additional Information Provided by the Inspector" section and in each of the spaces provided for comments for each inspected item as the inspector deems necessary, attach additional pages of comments to the report, or both; and

(M) attach additional pages to the form if:

(i) it is necessary to report the inspection of a component, or system not contained in the standard form; or

(ii) the space provided on the form is inadequate for a complete reporting of the inspection.

(4) The inspector shall renumber the pages of the form to correspond with any changes made necessary due to adjusting the space for comments or adding additional items and shall number all pages of the report, including any addenda.

(5) The inspector shall indicate, by checking the appropriate boxes on the form, whether each item was inspected, not inspected, not present, or deficient and explain the findings in the corresponding section in the body of the report form.

(6) This section does not apply to the following:

(A) re-inspections of a property performed for the same client;

(B) inspections performed for or required by a lender or governmental agency;

(C) inspections for which federal or state law requires use of a different report;

(D) quality control construction inspections of new homes performed for builders, including phased construction inspections, inspections performed solely to determine compliance with building codes, warranty or underwriting requirements, or inspections required by a municipality and the builder or other entity requires use of a different report, and the first page of the report contains a notice either in bold or underlined reading substantially similar to the following: "This report was prepared for a builder or other entity in accordance with the builder's requirements. The report is not intended as a substitute for an inspection of the property by an inspector of the buyer's choice. Standard inspections performed by a Texas Real Estate Commission licensee and reported on Texas Real Estate Commission promulgated report forms may contain additional information a buyer should consider in making a decision to purchase." If a report form required for use by the builder or builder's employee does not contain the notice, the inspector may attach the notice to the first page of the report at the time the report is prepared by the inspector;

(E) an inspection of a building or addition that is not substantially complete; or

(F) inspections of a single system or component as outlined in clause (ii) of this subparagraph, provided that the first page of the report contains a notice either in bold or underlined reading substantially similar to the following: "This report was prepared for a buyer or seller in accordance with the client's requirements. The report addresses a single system or component and is not intended as a substitute for a complete standard inspection of the property. Standard inspections performed by a Texas Real Estate Commission licensee and reported on a Texas Real Estate Commission promulgated report form may contain additional information a buyer should consider in making a decision to purchase."

(i) If the client requires the use of a report form that does not contain the notice, the inspector may attach the notice to the first page of the report at the time the report is prepared by the inspector.

(ii) An inspection is considered to be of a single system or component if the inspection only addresses one of the following or a portion thereof:

(I) foundation;

(II) framing/structure, as outlined in §535.213(e)(2) of this title (relating to Approval of Courses in Real Estate Inspection);

(III) building enclosure;

(IV) roof system;

(V) plumbing system;

(VI) electrical system;

(VII) HVAC system;

(VIII) a single appliance; or

(IX) a single optional system as stated in the Standards of Practice.

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 May 13, 2013.

TRD-201301943

Kerri Lewis

Deputy General Counsel

Texas Real Estate Commission

Effective date: January 1, 2014

Proposal publication date: March 1, 2013

For further information, please call: (512) 936-3092



22 TAC §§535.227 - 535.233

The Texas Real Estate Commission (TREC) adopts the repeal of §§535.227 - 535.233, concerning inspector standards of practice, without changes to the proposal as published in the March 1, 2013, issue of the *Texas Register* (38 TexReg 1335) and will not be republished. The adoption takes effect January 1, 2014.

The repeal is adopted because the subjects addressed in these sections will be covered in new §§535.227 - 535.233, which TREC is simultaneously adopting as part of the Real Estate Inspector Committee comprehensive review and recommendations regarding inspector standards of practice. The Texas Real Estate Inspector Committee is an advisory committee of six professional inspectors and three public members appointed by TREC.

The reasoned justification for the repeal is increased clarity for inspectors and consumers alike, as well as standards that more accurately reflect current technology, codes, and practices that form the basis of many of the standards of practice that will be adopted to replace these existing rules.

No comments were received on the repeal.

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 repeal are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the repeal.

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 May 13, 2013.

TRD-201301944

Kerri Lewis

Deputy General Counsel

Texas Real Estate Commission

Effective date: January 1, 2014

Proposal publication date: March 1, 2013

For further information, please call: (512) 936-3092



22 TAC §§535.227 - 535.233

The Texas Real Estate Commission (TREC) adopts new §§535.227 - 535.233, concerning Standards of Practice, without changes to the proposed text as published in the March 1, 2013, issue of the *Texas Register* (38 TexReg 1336) and will not be republished. The adoption takes effect January 1, 2014.

The new rules are adopted to update and clarify the current Standards and Practice (Standards) for real estate inspectors. The new rules were previously proposed and published in the November 23, 2012, issue of the *Texas Register* (37 TexReg 9281) but were withdrawn on February 12, 2013. The new rules were re-proposed following revisions made pursuant to comments received after the previous publication. The new rules make several non-substantive changes to the Standards by making them easier to read and providing a clearer understanding of what an inspector is and is not required to inspect and report. In addition, the rules make several substantive changes to the Standards to encourage a more performance-based approach to real estate inspections. The new rules are adopted following a comprehensive review of the Standards by the Texas Real Estate Inspector Committee, an advisory committee of six professional inspectors and three public members appointed by TREC. Both the substantive and non-substantive revisions were recommended by the Committee.

The substantive changes to the Standards are as follows:

New §535.227(a) expands the current definition of "Accessible" to clarify that an item is not accessible if the inspector has to climb over obstacles to gain access to it; adds a definition for "Component;" expands the current definition of "Inspect;" and clarifies that an inspector is required to report deficiencies "as specified by these standards of practice;" expands the definition of "Performance;" adds a definition for "Substantially completed;" and adds a definition for "Technically exhaustive." Subsection (b)(3) clarifies the intent and limitations of the Standards; specifies that an inspector is not required to: inspect sub-surface drainage systems; determine compatibility, product lawsuits, listing, testing or protocol authority; determine the presence, absence or risk of "Chinese drywall;" determine the cause or source of a condition; verify sizing efficiency or adequacy of a gutter or downspout system; or light a pilot light.

New §535.228(a) amends current rule language relating to crawl space ventilation and drainage to focus on the performance of the item. It also removes and consolidates redundant exemplars found in the current Standards. Subsection (b) amends current rule language relating to grading and draining around the foundation to focus on the performance of the item. Subsection (c)

removes the specific requirement that an inspector report as deficient a roof covering that is not appropriate for the slope of the roof. It also specifies that an inspector is not required to exhaustively examine all fasteners and adhesions. Subsection (d) amends current rule language relating to attic space ventilation to focus on the performance of the item. In addition to those items currently required to be inspected relating to exterior walls and windows, subsection (f) requires an inspector to report deficiencies in weather-stripping, gaskets or other air barrier materials. It also specifies that an inspector is not required to provide an exhaustive list of locations of deficiencies and water penetrations. Subsection (j) removes the requirement that an inspector report deficiencies in visible footings, piers, posts, pilings, joists, decking, water proofing at interfaces, flashing, surfaces coverings, and attachment points of porches, decks, balconies and carports.

New §535.229(a) consolidates several redundant ground and bonding items. It also removes the requirement that inspectors report as deficient the absence of arc-fault circuit interrupters. Subsection (b) requires an inspector to inspect installed carbon monoxide alarms. The new rule updates the ground-fault circuit interruption language and moves the doorbell language from its current location under "appliances" to §535.229(b). It also removes and consolidates redundant exemplars found in the current Standards for switches and receptacles and clarifies that an inspector is not required to remove the covers of junction, fixture, receptacle or switch boxes unless specifically required to do so by the Standards.

New §535.230(a) clarifies the intent of the Standards regarding heating equipment, including expanding the current rule language relating to inadequate access and clearances, gas shut off valves, and gas appliance connectors, to provide more specificity. The new rules require an inspector to report deficiencies in the performance of a heat pump in electrical units. Subsection (b) clarifies the intent of the Standards regarding cooling equipment and other evaporative coolers, including expanding the current rule language relating to inadequate access and clearances to provide more specificity. Subsection (c) removes the requirement to report winterized units that are drained and shut down and consolidates several exemplars found in the current Standards. Subsection (d) removes several items found in the current Standards, deemed to be unrealistic for an inspector to inspect. Subsection (e) clarifies at what outdoor temperature an inspector is required to operate a heat pump and specifies that an inspector is not required to verify the tonnage match of indoor coils and outside coils or condensing units.

New §535.231 amends current rule language relating to static water pressure, fixtures and faucets not connected to appliances and fixture drains to focus on the performance of the item. The rule also removes and consolidates several exemplars found in the current Standards. Subsection (b) clarifies the intent of the Standards regarding water heaters, including expanding the current rule language relating to inadequate access and clearances, gas shut off valves, and gas appliance connectors, to provide more specificity. The rule also removes and consolidates several exemplars found in the current Standards. Subsection (c) clarifies the intent of the Standards regarding hydro-massage therapy equipment, including expanding the current rule language relating to inadequate access and the performance and condition of components.

New §535.232 amends current rule language relating to several appliances to focus on the performance of the item. The rule

changes the titles of several subsections of current §535.232 to bring them in line with industry terminology. The rule also removes and consolidates several exemplars related to various appliances found in the current Standards. Specifically, the rule adds several new requirements for ranges, cooktops, and ovens, including requiring the inspector to report as deficient combustible material within a certain area of cooktop burners, certain limitations regarding gas shutoff valves or connectors, and deficiencies in mounting and performance. The rule removes the requirement that an inspector inspect trash compactors, adds a requirement under "Garage door operators" that inspector report as deficient installed photoelectric sensors located more than six inches above the garage floor, and moves door bells requirements to new §535.229(b).

New §535.233 removes the Outdoor Cooking Equipment section, Gas Supply section, Other Built-In Appliance section and Whole House Vacuum System section. Paragraph (1) changes the titles of several paragraphs of §535.233 to bring them in line with industry terminology. The new rule clarifies the intent of the Standards regarding landscape irrigation (sprinkler) systems, including requiring an inspector to report as deficient: inoperative zone valves, the absence of shut-off valves between the water meter and backflow device, and deficiencies in the performance of the water emission devices, such as sprayer heads, rotary sprinkler heads, bubblers or drip lines. The new rule specifies that an inspector must report static water pressure and is not required to inspect sizing and effectiveness of backflow prevention devices. Paragraph (2) requires an inspector to report as deficient the presence of a single blockable main drain (potential entrapment hazard), the absence of ground-fault circuit interrupter protection devices and deficiencies in lighting fixtures. The rule specifies that an inspector is not required to disassemble filters or determine the effectiveness of entrapment covers. Paragraph (3) requires an inspector to report as deficient the absence of ground-fault circuit interrupter protection devices in grade-level portions of unfinished accessory buildings used for storage or work areas, boathouses, and boat hoists. Paragraph (5) requires an inspector to report on the location of the distribution field in a private septic system.

The reasoned justification for the new rules is increased clarity for inspectors and consumers alike, as well as standards that more accurately reflect current technology, codes, and practices that form the basis of many of the Standards.

Four licensed inspectors sent comments on the proposed new rules.

One commenter objected to any changes in the Standards believing the Standards were being changed to ASHI standards which he felt were below the current Standards. The Commission respectfully disagrees with this commenter that the new rules are based on ASHI and cite the reasoned justification set out above as the need for the change to the existing Standards.

One commenter did not like the use of the word "performance" in conjunction with the Standards or the report stating that it would allow many items that are not functioning to some degree to not receive comments in the report. The Commission respectfully disagrees with this comment. Although the definition of "performance" was clarified in the new rules, the definition has been a part of the Standards for a long time. A performance-based approach to real estate inspections is what was contemplated by the legislature in Chapter 1102 and is in line with national industry standards.

Another commenter suggested in the areas of the Standards dealing with foundation crawl space, grade and drainage and roof structures and attic that the phrase "appears to be performing" would better serve the Texas consumer than simply reporting whether the item was "performing" or not. The Texas Real Estate Inspector Committee reviewed this comment and determined that the additional phrase was not helpful, adding no value to the information the inspector needs to provide.

This same commenter wanted "motor bonding" to be specifically included in the section on hydro-massage therapy equipment. The Texas Real Estate Inspector Committee reviewed this comment and determined that "motor bonding" was covered in the Standards under electrical systems and to repeat it here would be unnecessarily redundant. The commenter also wanted the new rules to require inspectors to report the absence of carbon monoxide detectors as a deficiency. The Texas Real Estate Inspector Committee reviewed this comment and determined that the Standards requirement that the inspector note a deficiency if there is a defect with an existing carbon monoxide detection device, but not note the absence of such a device, was sufficient since carbon monoxide detection devices are not required to be in all homes.

Three commenters made suggested changes to insert specific technical requirements in the new rules regarding smoke detector devices, water heaters, dryer exhaust systems, and electrical systems (specifically referring to the National Electric Code standards). The Commission respectfully declines to make these changes. All of these technical change comments were reviewed by the Texas Real Estate Inspector Committee and they determined that these comments were trying to impose building, electrical or plumbing code or manufacturer's installment requirements into the Standards. Under Texas Occupations Code, §1102.001(9), a real estate inspection is defined as an "opinion as to the condition of the improvements to real property, including structural items, electrical items, mechanical systems, plumbing systems, or equipment." Additionally, a real estate inspector is not required by Chapter 1102 to be code-certified for any system. These provisions are evidence that the legislature did not intend for the real estate inspection for home buyers and sellers to be code-based and therefore the Commission declines to make revisions based on those comments.

One commenter was concerned that the new rules would require an inspector to test Arc Fault breakers (AFCI) when the house was occupied. Another commenter wanted inspectors to report the lack of AFCIs. The Texas Real Estate Inspector Committee intentionally removed the necessity to report on the lack of AFCIs, but noted that under the new rules, if AFCIs are present, inspectors have to check their performance unless the house is occupied, in which case, they do not.

One commenter agreed with the removal of the requirement to test the pressure relief valve but felt that other matters related to the pressure relief valve such as absence of or deficiencies in the temperature and pressure relief valve should not have been deleted. The Texas Real Estate Inspector Committee reviewed this comment and determined that the Standard related to this area was clear and did not need to be expanded. The commenter also was concerned that the new rules no longer required inspectors to check for gas leaks on furnaces. The Texas Real Estate Inspector Committee reviewed this comment and determined that the Standards do still require an inspector to check for gas leaks on furnaces. Finally, this commenter

requested a revision to the Standard regarding water heaters (which was not changed from the prior version of the Standards) stating that it was outdated and not applicable to most modern water heaters and tankless heaters which cannot be opened to inspect flame elements. The Texas Real Estate Inspector Committee reviewed this comment and determined that the Standard needed to remain to deal with older water heaters still found in homes. They also stated that the Standards already do not require an inspector to open or inspect a water heater flame where removing the cover would void a manufacturer's warranty or was not constructed to be removed.

The new rules 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 these new rules are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the new rules.

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 May 13, 2013.

TRD-201301945

Kerri Lewis

Deputy General Counsel

Texas Real Estate Commission

Effective date: January 1, 2014

Proposal publication date: March 1, 2013

For further information, please call: (512) 936-3092



PART 39. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS

CHAPTER 851. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS LICENSING AND ENFORCEMENT RULES

The Texas Board of Professional Geoscientists (Board) adopts amendments to 22 TAC §851.30 and §851.152, concerning the licensure and regulation of Professional Geoscientists, without changes to the proposed text as published in the March 8, 2013, issue of the *Texas Register* (38 TexReg 1657).

The adopted amendments to §851.30 clarify the requirement that a Professional Geoscientist who performs or supervises the geoscientific work for a Geoscience Firm is required be an employee of the firm. The adopted amendments to §851.152 clarify the language that registration is required for business entities that offer or are engaged in the non-exempt public practice of geoscience in Texas.

Public comments were received from four individuals regarding §851.30. Two individuals commented in favor of the amendment; two individuals were opposed. One individual who opposed the amendment thought it was a bad idea because it appeared that the rule would be inviting firms to disregard the re-

quirement of having a Professional Geoscientist in responsible charge until they are caught. The Board disagrees with this comment because the rule specifically requires that a firm that offers or performs non-exempt geoscience work for the public is required to have a Professional Geoscientist on staff. The other individual who opposed the change stated that the proposed change would allow firms to use inexperienced and unqualified geoscience individuals to prepare documents, maps and studies that would be presented to the public as competent work, and that it would remove the purpose of the license. The Board disagrees with this comment because the rules specify that a registered firm is required to have a Professional Geoscientist on staff to be in responsible charge of non-exempt geoscience work for the public.

Five public comments were received regarding §851.152. Two individuals commented in favor of the proposed amendment; three individuals were opposed. One individual thought the change was a bad idea because the commenter understood the amendment to lessen the restrictions on Geoscience Firm Registration. The Board disagrees with the comment because the amendment clarifies the rule and strengthens the regulation regarding Firm Compliance. The second individual was opposed to the removal of the 30-day requirement to comply with TBPG written notice regarding the requirement to be registered as a Geoscience Firm in Texas because the commenter felt it would allow the prohibited activity indefinitely. The Board disagrees with this comment because the amendment strengthens the regulation by allowing the Board to take appropriate action immediately against firms that are not in compliance. A third individual objected to the changes, and requested to retain the 30-day provision, and that the Board establish an alternative means of resolving firm registration administrative issues prior to invoking the full enforcement process. The Board disagrees with this individual's comments. The proposed amendment clarifies the rule. Regarding the removal of the 30-day period for firms to comply and become registered, that time frame was applicable only to firms that had not previously been registered. Additionally, the third individual pointed out that in some cases a firm might choose not to be registered as a Geoscience Firm, and hire registered Geoscience Firms to perform geoscience services that may be needed. The Geoscience Firm in that instance would take responsible charge for such work. The Board believes the rule as amended does not apply to a firm that chooses not to be registered and which does not provide non-exempt geoscience services for the public.

SUBCHAPTER B. P.G. LICENSING, FIRM REGISTRATION, AND GIT CERTIFICATION

22 TAC §851.30

The adopted amendments are authorized by the Texas Occupations Code §1002.151 which provides that the Board shall adopt and enforce rules consistent with the Texas Geoscience Practice Act (the Act); Texas Occupations Code §1002.154 which provides that Board shall enforce the Act; and Texas Occupation Code §1002.351 which provides that the Board may adopt rules relating to the public practice of geoscience by a firm or corporation.

The statute affected by the amendments is Texas Occupations Code, Chapter 1002.

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 May 8, 2013.

TRD-201301836

Charles Horton

Executive Director

Texas Board of Professional Geoscientists

Effective date: June 1, 2013

Proposal publication date: March 8, 2013

For further information, please call: (512) 936-4405



SUBCHAPTER D. COMPLIANCE AND ENFORCEMENT

22 TAC §851.152

The adopted amendments are authorized by the Texas Occupations Code §1002.151 which provides that the Board shall adopt and enforce rules consistent with the Texas Geoscience Practice Act (the Act); Texas Occupations Code §1002.154 which provides that Board shall enforce the Act; and Texas Occupation Code §1002.351 which provides that the Board may adopt rules relating to the public practice of geoscience by a firm or corporation.

The statute affected by this amendment is Texas Occupations Code, Chapter 1002.

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-201301837

Charles Horton

Executive Director

Texas Board of Professional Geoscientists

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For further information, please call: (512) 936-4405



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 85. HEALTH AUTHORITIES

SUBCHAPTER A. LOCAL PUBLIC HEALTH

25 TAC §85.2

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts new §85.2, concerning the Public Health Funding and Policy Committee, without changes to the proposed text as published in the November 23, 2012, issue of the *Texas Register* (37 TexReg 9297) and, therefore, the section will not be republished.

BACKGROUND AND PURPOSE

The 82nd Texas Legislature, Regular Session, 2011, passed Senate Bill 969, which amended the Health and Safety Code

by adding new Chapter 117. Chapter 117 establishes the Public Health Funding and Policy Committee (committee) within the department. The chapter requires the committee to define the core public health services a local health entity should provide in a county or municipality; evaluate public health in the state and identify initiatives for areas that need improvement; identify all funding sources available for use by local health entities to perform core public health functions; and establish public health policy priorities for the state. At least annually, the committee is to make recommendations to the department regarding the use and allocation of funds available exclusively to local health entities to perform core public health functions; ways to improve the overall public health of citizens in the state; methods for transitioning from a contractual relationship to a cooperative-agreement relationship between the department and the local health entities; and methods for fostering a continuous collaborative relationship between the department and the local health entities.

The committee is governed by the Government Code, Chapter 2110, concerning state agency advisory committees. Government Code, §2110.005, requires the Executive Commissioner, by rule, to state the purpose and tasks of the committee and to describe the manner in which the committee shall report to the department. The Executive Commissioner adopts new §85.2 to comply with those requirements and to provide other operational standards for the committee.

SECTION-BY-SECTION SUMMARY

New §85.2 stipulates the basis for the committee's creation, applicable law, purpose, tasks, abolition of the committee under the Texas Sunset Act, composition, terms of office, officers, meetings, attendance, staff, procedures, subcommittees, statements by members, reports, and reimbursement for expenses.

COMMENTS

The department, on behalf of the commission, did not receive any comments regarding the proposed rule during the comment period.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rule, as adopted, has been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

STATUTORY AUTHORITY

The new rule is authorized by Health and Safety Code, Chapter 117, which directs the establishment of the Public Health Funding and Policy Committee; Government Code, §2110.005, which requires a state agency to develop tasks and methods of reporting for advisory committees that report to that agency; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

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 May 10, 2013.

TRD-201301884

Lisa Hernandez
General Counsel
Department of State Health Services
Effective date: May 30, 2013
Proposal publication date: November 23, 2012
For further information, please call: (512) 776-6972



PART 4. ANATOMICAL BOARD OF THE STATE OF TEXAS

CHAPTER 477. DISTRIBUTION OF BODIES

25 TAC §477.7

The Anatomical Board of the State of Texas (Board) adopts an amendment to §477.7, concerning the rules and procedures of the final disposition of the body and disposition of remains, without changes to the proposed text as published in the November 9, 2012, issue of the *Texas Register* (37 TexReg 8921). The rule will not be republished.

The Board's adopted amendment to §477.7 is to state that a blank SAB form is available for inspection at the Office of the Secretary of State.

No comments were received regarding adoption of the amendment.

The adopted amendment to §477.7 is authorized by the Board's general rulemaking power under Health and Safety Code §691.022(b).

The adopted amendment affects the Texas Administrative Code, Title 25, Chapter 477.

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 May 7, 2013.

TRD-201301808
Len Cleary, Ph.D.
Secretary/Treasurer
Anatomical Board of the State of Texas
Effective date: May 27, 2013
Proposal publication date: November 9, 2012
For further information, please call: (713) 500-5631



CHAPTER 479. FACILITIES: STANDARDS AND INSPECTIONS

25 TAC §479.4

The Anatomical Board of the State of Texas (Board) adopts an amendment to §479.4, concerning the rules and procedures of the final disposition of the body and disposition of remains, with changes to the proposed text as published in the November 9, 2012, issue of the *Texas Register* (37 TexReg 8922).

The Board's adopted amendment to §479.4 is to allow the use of alkaline hydrolysis, a new procedure for disposing of remains.

No comments were received regarding adoption of the amendment.

The adopted amendment to §479.4 is authorized by the Board's general rulemaking power under Health and Safety Code §691.022(b).

The adopted amendment affects the Texas Administrative Code, Title 25, Chapter 479.

§479.4. *Final Disposition of the Body and Disposition of the Remains.*

(a) Final disposition of the body. Final disposition of the body occurs upon completion of the donation or bequest by acceptance of the body by the board-member institution.

(b) Manner of Disposition of Remains. Intact remains shall be disposed of only by cremation or alkaline hydrolysis. The residual remains of these processes shall be disposed of in a manner appropriate to the disposal of human remains or returned to family members. An institution is obligated to return residual remains to family if, at the time of the donation or bequest:

(1) the request is made in writing; and

(2) the institution agrees to this arrangement in writing. In no event may residual remains be disposed in or as general institutional wastes.

(c) Cremation. Cremation shall occur at a professional crematorium or at the board-member institution in its own crematory.

(d) Alkaline hydrolysis at a board-member institution. An institution may operate its own alkaline hydrolysis facility. The facility shall be under the direct control of the Department of Anatomy or the institution's department to which the anatomical program is attached and may be used for no purpose other than the disposition of human remains.

(e) Return of Residual Remains. If residual remains are to be returned to family members, the chamber must be completely cleaned before subsequent use, and the body must not be commingled.

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 May 7, 2013.

TRD-201301807
Len Cleary, Ph.D.
Secretary/Treasurer
Anatomical Board of the State of Texas
Effective date: May 27, 2013
Proposal publication date: November 9, 2012
For further information, please call: (713) 500-5631



TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION SUBCHAPTER B. NATURAL GAS

34 TAC §§3.11, 3.12, 3.14, 3.16

The Comptroller of Public Accounts adopts the repeal of §3.11, concerning Penalty and Interest, §3.12, concerning Purchaser and/or Processor Reporting Requirements, §3.14, concerning

Exemption of Certain Interest Owners from Gas Occupation Taxes, and §3.16, concerning Reports, Payments, and Due Dates, without changes to the proposal as published in the November 30, 2012, issue of the *Texas Register* (37 TexReg 9487). The sections will be immediately re-adopted under §§3.25, 3.26, 3.27 and 3.28 respectively. These repeals and re-adoptions will make available additional section numbers for Chapter 3, Subchapter A.

No comments were received regarding adoption of the repeals.

The repeals are adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The repeals implement Tax Code, Chapter 201.

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 May 13, 2013.

TRD-201301925

Ashley Harden

General Counsel

Comptroller of Public Accounts

Effective date: June 2, 2013

Proposal publication date: November 30, 2012

For further information, please call: (512) 475-0387



34 TAC §§3.25 - 3.28

The Comptroller of Public Accounts adopts new §3.25, concerning Penalty and Interest, §3.26, concerning Purchaser and/or Processor Reporting Requirements, §3.27, concerning Exemption of Certain Interest Owners from Gas Occupation Taxes, and §3.28, concerning Reports, Payments, and Due Dates, without changes to the proposed text as published in the November 30, 2012, issue of the *Texas Register* (37 TexReg 9488). The new sections take the place of repealed §§3.11, 3.12, 3.14 and 3.16 respectively. These repeals and new sections are being adopted to make available additional section numbers for Chapter 3, Subchapter A. Only non-substantive changes have been made to the new §3.28 for general readability and to reflect the new section numbers referenced.

No comments were received regarding adoption of the new sections.

These new sections are adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The new sections implement Tax Code, Chapter 201.

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 May 13, 2013.

TRD-201301926

Ashley Harden

General Counsel

Comptroller of Public Accounts

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For further information, please call: (512) 475-0387



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 2. DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES

CHAPTER 101. ADMINISTRATIVE RULES AND PROCEDURES

SUBCHAPTER E. APPEALS AND HEARING PROCEDURES

The Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of Assistive and Rehabilitative Services (DARS), adopts the amendment to §101.943, concerning Motion for Reconsideration, and adopts the repeal of §101.1109, concerning Motion for Reconsideration. The amendment and repeal are adopted without changes to the proposed text as published in the March 22, 2013, issue of the *Texas Register* (38 TexReg 1954) and will not be republished.

The purpose of the adopted repeal and amendment is to comply with guidance received by DARS from the U.S. Department of Education, Office of Special Education and Rehabilitative Services (OSERS), Office of Special Education Programs (OSEP), concerning the Individuals with Disabilities Education Act (IDEA), Part C, State Application and Assurances. Adopted §101.943, as amended, includes language that excludes the ability of parties to file a motion for reconsideration under Division 3, Early Childhood Intervention (ECI); and adopted repeal of §101.1109 removes a motion for reconsideration as an option under Division 3, ECI. The time limit associated with the appeals process and complaint procedures is federally mandated and it is not sufficient for a motion for reconsideration to take place. Furthermore, a motion for reconsideration is not a federal requirement. Adopting the amendment and repeal will provide clarity in the rules on this matter.

DARS received no comments regarding the amendment or repeal of these rule sections.

DIVISION 1. GENERAL RULES

40 TAC §101.943

The amendment is adopted under the authority of the Texas Human Resources Code, Chapters 73 and 117; and the IDEA, as amended, 20 USC §1400 et seq. and its implementing regulations, 34 CFR Part 303, as amended. In addition, the amendment and repeal are in accordance with HHSC's statutory rule-making authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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 May 8, 2013.

TRD-201301847

Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

Effective date: June 1, 2013

Proposal publication date: March 22, 2013

For further information, please call: (512) 424-4050



DIVISION 3. DIVISION FOR EARLY CHILDHOOD INTERVENTION SERVICES

40 TAC §101.1109

The repeal is adopted under the authority of the Texas Human Resources Code, Chapters 73 and 117; and the IDEA, as amended, 20 USC §1400 et seq. and its implementing regulations, 34 CFR Part 303, as amended. In addition, the amendment and repeal are in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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-201301848

Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

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Proposal publication date: March 22, 2013

For further information, please call: (512) 424-4050



CHAPTER 108. DIVISION FOR EARLY CHILDHOOD INTERVENTION SERVICES

The Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of Assistive and Rehabilitative Services (DARS), adopts the amendment to Subchapter A, General Rules, §108.101, concerning Purpose; and Subchapter B, Procedural Safeguards and Due Process Procedures, §108.217, concerning Procedures for Investigation and Resolution of Complaints and §108.218, concerning Mediation. The amendments are adopted without changes to the proposed text as published in the March 22, 2013, issue of the *Texas Register* (38 TexReg 1967) and will not be republished.

The purpose of adopting the amendments is to comply with guidance received by DARS from the U.S. Department of Education, Office of Special Education and Rehabilitative Services (OSERS), Office of Special Education Programs (OSEP), con-

cerning the Individuals with Disabilities Education Act (IDEA), Part C, State Application and Assurances.

DARS adopts amended §108.101 (relating to Purpose) to include language requiring that new policies or revisions to existing policies be adopted in compliance with 34 CFR §303.208, Public Participation Policies and Procedures, and Texas Government Code, Chapter 2001, Administrative Procedure; amended §108.217 (relating to Procedures for Investigation and Resolution of Complaints) to update an internal citation; and amended §108.218 (relating to Mediation) to add the qualifier "if possible" to the requirement that a request for mediation must show that it has been sent to all other parties or that attempts to do so have been made.

DARS received no comments regarding these amendments.

SUBCHAPTER A. GENERAL RULES

40 TAC §108.101

The amendment is authorized by the Texas Human Resources Code, Chapters 73 and 117; and the IDEA, as amended, 20 USC §1400 et seq. and its implementing regulations, 34 CFR Part 303, as amended. Furthermore, these amendments are adopted pursuant to HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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 May 8, 2013.

TRD-201301849

Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

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Proposal publication date: March 22, 2013

For further information, please call: (512) 424-4050



SUBCHAPTER B. PROCEDURAL SAFEGUARDS AND DUE PROCESS PROCEDURES

40 TAC §108.217, §108.218

The amendments are authorized by the Texas Human Resources Code, Chapters 73 and 117; and the IDEA, as amended, 20 USC §1400 et seq. and its implementing regulations, 34 CFR Part 303, as amended. Furthermore, these amendments are adopted pursuant to HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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-201301850

Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

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Proposal publication date: March 22, 2013

For further information, please call: (512) 424-4050



PART 15. TEXAS VETERANS COMMISSION

CHAPTER 452. ADMINISTRATION GENERAL PROVISIONS

40 TAC §452.2

The Texas Veterans Commission (commission) adopts the amendment to 40 TAC §452.2, relating to Advisory Committees, without changes to the proposed text as published in the March 1, 2013, issue of the *Texas Register* (38 TexReg 1349). The text of the rule will not be republished.

The adopted amendment is a revision that allows the advisory committees to select a presiding officer from among the committee members.

No comments were received regarding the proposed amendment.

The amendment is adopted under Texas Government Code §434.010, granting the commission the authority to establish rules that it considers necessary for the effective administration of the agency, and Texas Government Code, Chapter 2110, regarding State Agency Advisory Committees.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 10, 2013.

TRD-201301899

H. Karen Fastenau

General Counsel

Texas Veterans Commission

Effective date: May 30, 2013

Proposal publication date: March 1, 2013

For further information, please call: (512) 463-6564



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

Department of Assistive and Rehabilitative Services

Title 40, Part 2

In accordance with Texas Government Code §2001.039, the Department of Assistive and Rehabilitative Services (DARS) proposes to review and consider for readoption, revision, or repeal all sections of the following subchapters in Texas Administrative Code, Title 40, Part 2, Chapter 108, concerning Division for Early Childhood Intervention Services:

Subchapter H, Eligibility

Subchapter I, Evaluation and Assessment

Subchapter M, Child and Family Outcomes

Subchapter O, Public Outreach

Subchapter P, Contract Requirements

DARS will consider whether the reasons for initially adopting these rules continue to exist and whether these rules should be repealed, readopted, or readopted with amendments.

Elsewhere in this issue of the *Texas Register*, DARS contemporaneously proposes revisions in 40 TAC Chapter 108.

Comments on the proposed review may be submitted to: Department of Assistive and Rehabilitative Services, Rules Coordinator, 4800 North Lamar Boulevard, Suite 340, Austin, Texas 78756 or electronically to DARS.Rules@dars.state.tx.us.

TRD-201301924

Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

Filed: May 13, 2013



State Board of Dental Examiners

Title 22, Part 5

The State Board of Dental Examiners (the "Board") files this notice of intent to review 22 TAC Chapter 103, concerning Dental Hygiene Licensure, in accordance with the Texas Government Code §2001.039.

As required by §2001.039 of the Texas Government Code, the Board will accept comments and make a final assessment regarding whether the reason for adopting these rules continues to exist.

Comments on the rule review may be submitted to Sarah Carnes-Lemp, Assistant General Counsel, 333 Guadalupe, Suite 3-800, Austin, Texas 78732, fax (512) 463-7452, sarah@tsbde.texas.gov no later than 30 days from the date that the proposed rule review is published in the *Texas Register*.

TRD-201301854

Glenn Parker

Executive Director

State Board of Dental Examiners

Filed: May 9, 2013



The State Board of Dental Examiners (the "Board") files this notice of intent to review 22 TAC Chapter 115, concerning Extension of Duties of Auxiliary Personnel - Dental Hygiene, in accordance with the Texas Government Code §2001.039.

As required by §2001.039 of the Texas Government Code, the Board will accept comments and make a final assessment regarding whether the reason for adopting these rules continues to exist.

Comments on the rule review may be submitted to Sarah Carnes-Lemp, Assistant General Counsel, 333 Guadalupe, Suite 3-800, Austin, Texas 78732, fax (512) 463-7452, sarah@tsbde.texas.gov no later than 30 days from the date that the proposed rule review is published in the *Texas Register*.

TRD-201301861

Glenn Parker

Executive Director

State Board of Dental Examiners

Filed: May 9, 2013



State Board for Educator Certification

Title 19, Part 7

The State Board for Educator Certification (SBEC) proposes the review of Texas Administrative Code (TAC), Title 19, Chapter 239, concerning Student Services Certificates, pursuant to the Texas Government Code, §2001.039. The rules being reviewed by the SBEC in 19 TAC Chapter 239 are organized under the following subchapters: Subchapter A, School Counselor Certificate; Subchapter B, School Librarian Certificate; Subchapter C, Educational Diagnostician Certificate; Subchapter D, Reading Specialist Certificate; and Subchapter E, Master Teacher Certificate.

As required by the Texas Government Code, §2001.039, the SBEC will accept comments as to whether the reasons for adopting 19 TAC Chap-

ter 239, Subchapters A-E, continue to exist. The comment period begins May 24, 2013, and ends following receipt of public comments on the rule review of 19 TAC Chapter 239 at the next regularly scheduled SBEC meeting to be held on August 2, 2013.

Comments or questions regarding this rule review may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 475-1497. Comments may also be submitted electronically to sbecrules@tea.state.tx.us or faxed to (512) 463-5337. Comments should be identified as "SBEC Rule Review."

TRD-201301968
Cristina De La Fuente-Valadez
Director, Rulemaking, Texas Education Agency
State Board for Educator Certification
Filed: May 15, 2013



The State Board for Educator Certification (SBEC) proposes the review of Texas Administrative Code (TAC), Title 19, Chapter 244, Certificate of Completion of Training for Appraisers, pursuant to the Texas Government Code, §2001.039.

As required by the Texas Government Code, §2001.039, the SBEC will accept comments as to whether the reasons for adopting 19 TAC Chapter 244 continue to exist. The comment period begins May 24, 2013, and ends following receipt of public comments on the rule review of 19 TAC Chapter 244 at the next regularly scheduled SBEC meeting to be held on August 2, 2013.

Comments or questions regarding this rule review may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 475-1497. Comments may also be submitted electronically to sbecrules@tea.state.tx.us or faxed to (512) 463-5337. Comments should be identified as "SBEC Rule Review."

TRD-201301969
Cristina De La Fuente-Valadez
Director, Rulemaking, Texas Education Agency
State Board for Educator Certification
Filed: May 15, 2013



The State Board for Educator Certification (SBEC) proposes the review of Texas Administrative Code (TAC), Title 19, Chapter 245, Certification of Educators from Other Countries, pursuant to the Texas Government Code, §2001.039.

As required by the Texas Government Code, §2001.039, the SBEC will accept comments as to whether the reasons for adopting 19 TAC Chapter 245 continue to exist. The comment period begins May 24, 2013, and ends following receipt of public comments on the rule review of 19 TAC Chapter 245 at the next regularly scheduled SBEC meeting to be held on August 2, 2013.

Comments or questions regarding this rule review may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 475-1497. Comments may also be submitted electronically to sbecrules@tea.state.tx.us or faxed to (512) 463-5337. Comments should be identified as "SBEC Rule Review."

TRD-201301970

Cristina De La Fuente-Valadez
Director, Rulemaking, Texas Education Agency
State Board for Educator Certification
Filed: May 15, 2013



Texas Department of Insurance, Division of Workers' Compensation

Title 28, Part 2

In accordance with Texas Government Code §2001.039, the Texas Department of Insurance, Division of Workers' Compensation (Division) will review and consider for readoption, revision, or repeal all sections of the following chapter of Title 28, Part 2 of the Texas Administrative Code:

Chapter 114. Self-Insurance.

§114.1. Purpose.

§114.2. Definitions.

§114.3. Application Form and Financial Information Requirements.

§114.4. Security Deposit Requirements.

§114.5. Excess Insurance Requirements.

§114.6. Safety Program Requirements.

§114.7. Certification Process.

§114.8. Refusal To Certify an Employer.

§114.9. Required Safety Program Inspections.

§114.10. Claims Contractor Requirements.

§114.11. Audit Program.

§114.12. Required Reporting.

§114.13. Required Notices to the Director.

§114.14. Impaired Employer.

§114.15. Revocation or Suspension of Certificate of Authority To Self-Insure.

The Division will consider whether the reasons for initially adopting these rules continue to exist and whether these rules should be repealed, readopted, or readopted with amendments. Any repeals or necessary amendments identified during the review of these rules will be proposed and published in the *Texas Register* in accordance with the Administrative Procedure Act, Texas Government Code, Chapter 2001.

To be considered, written comments relating to whether these rules should be repealed, readopted, or readopted with amendments must be submitted by 5:00 p.m. CST June 24, 2013. Comments may be submitted by email at RuleReviewComments@tdi.texas.gov or by mailing or delivering your comments to Maria Jimenez, Office of Workers' Compensation Counsel, MS-4D, Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645.

Comments should clearly specify the particular section of the rule to which they apply. Comments should include proposed alternative language as appropriate. General comments should be designated as such.

TRD-201301947

Dirk Johnson
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: May 13, 2013



TABLES & GRAPHICS

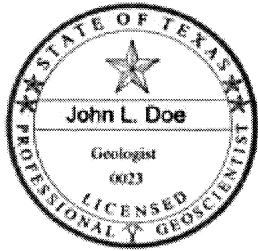
Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

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: 22 TAC §851.156(g)(2)(A)

John L. Doe

Figure: 22 TAC §851.156(g)(2)(B)



John L. Doe

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: Specialty Crop Retail Promotion Grant

Introduction. The Texas Department of Agriculture (TDA) is accepting applications for the Specialty Crop Retail Promotion Reimbursement Grant (Program) designed to create a concentrated and coordinated effort of retailers across the state to promote Texas produce, tree nuts, floriculture, and/or horticulture. Funds are available from the United States Department of Agriculture (USDA) through a grant to TDA through the Specialty Crop Block Grant Program (SCBGP) to support a retailer promotion initiative.

Program Authority. The SCBGP is authorized by the Food, Conservation, and Energy Act of 2008 (Farm Bill), which amended the Specialty Crops Competitiveness Act of 2004 (7 U.S.C. 1621 note) and authorized the USDA to provide grants to States for each of the fiscal years 2008 - 2012 to enhance the competitiveness of specialty crops.

Eligibility. Texas retailers that purchase Texas grown produce, tree nuts, floriculture, and/or horticulture from **multiple producers** and sell directly to consumers may apply for funds to enhance promotional activities of these Texas specialty crops.

Submission. Applications are on TDA's GOTEXAN website, www.gotexan.org, under the "For Members Tab". Eligible applicants will be considered for funding contingent upon the availability of funds. Completed applications will be reviewed on a first-come, first-served basis. Applications will be accepted by the Texas Department of Agriculture until the close of business (5:30 p.m. CST) on June, 30, 2013, **or until all funds are awarded, whichever is first.**

Program Contact. Contact the Marketing and International Trade Division office at (512) 463-7472 with questions regarding this program.

TRD-201301958

Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Filed: May 14, 2013



Request for Applications: Texas Wine Retail Promotion Reimbursement Grant

The Texas Department of Agriculture (TDA) announces the availability of funds from the Texas Wine Marketing Assistance Program (TWMAP) to support a Texas wine retail promotion reimbursement program. The program is designed to assist retailers and wineries across the state by encouraging the sale and purchase of Texas wines in retail stores.

Eligibility. GO TEXAN member retailers and GO TEXAN member wineries that sell Texas wines directly to consumers may apply for funds to enhance their promotional activities. Funds for wine promotional activities will be awarded in amounts not exceeding \$500 per retail store location, with a maximum of \$5,000 per applying corporate/parent organization.

Grant funds may be used for one or more of the following activities:

- (1) In-store GO TEXAN wine demonstrations, tastings, classes, or lectures performed by a GO TEXAN retailer's employees;
- (2) In-store GO TEXAN wine demonstrations, tastings, classes, or lectures performed by a licensed third-party promotional company hired by the GO TEXAN retailer;
- (3) In-store GO TEXAN wine demonstrations, tastings, classes, or lectures performed by a GO TEXAN partner winery showcasing their own wines;
- (4) Design and printing of in-store marketing materials promoting GO TEXAN wines and wineries;
- (5) Advertising and promotional items (ads, flyers, bags, media advertisements, etc.) that encourage sales of GO TEXAN wines.

Applicant must incorporate the GO TEXAN certification mark on all promotional materials or display the GO TEXAN certification mark prominently at any demonstrations. Use of the GO TEXAN certification mark on promotional materials or items must be submitted for approval to TDA at least seven working days before release.

Program Requirements. Applicants must comply with all guidelines and requirements in the application guide and any agreement which may be awarded as a result thereof, including complying with TDA reporting requirements.

Grantees will be required to submit sales volume and value information for the period immediately prior to the funded activities and for the period 30 days after the activities. The scope of the information and format of the report shall be prescribed by TDA. Reporting must be made monthly. For grantees with multiple locations, reports must be submitted for each activity held at each location.

Selected applicants are fully responsible for the administrative and financial control and management of the award. Failure to comply with the requirements may result in disqualification of the application, termination of the award, or denial of reimbursement by TDA.

Submitting an Application and Deadline. Application and guidance documents are available on TDA's GO TEXAN website, www.gotexan.org, under the "For Members" tab or upon request from TDA. Please contact the Marketing and International Trade Division office at (512) 463-7170 with questions regarding this program.

Completed applications will be reviewed on a first-come, first-served basis. Applications will be accepted by the Texas Department of Agriculture until the close of business (5:00 p.m. CST) on **July 31, 2013, or until all funds are awarded.**

Applications may be submitted to:

Physical Address: Marketing and International Trade Division, Trade and Business Development, Texas Department of Agriculture, 1700 North Congress Avenue, Austin, Texas 78701.

Mailing Address: Marketing and International Trade Division, Trade and Business Development, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, Fax: (888) 223-8638.

Email: Grants@TexasAgriculture.gov.

Assistance and Questions. For questions regarding submission of the proposal and TDA documentation requirements, please contact Marketing and International Trade Division office at (512) 463-7170 or by email at Grants@TexasAgriculture.gov.

Texas Public Information Act. Once submitted, all applications shall be deemed to be the property of the TDA and are subject to the Texas Public Information Act, Texas Government Code, Chapter 552.

TRD-201301957

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Filed: May 14, 2013



Comptroller of Public Accounts

Certification of the Average Taxable Price of Gas and Oil - April 2013

The Comptroller of Public Accounts, administering agency for the collection of the Crude Oil Production Tax, has determined as required by Tax Code, §202.058, that the average taxable price of crude oil for reporting period April 2013 is \$71.58 per barrel for the three-month period beginning on January 1, 2013, and ending March 31, 2013. Therefore, pursuant to Tax Code, §202.058, crude oil produced during the month of April 2013 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 as required by Tax Code, §201.059, that the average taxable price of gas for reporting period April 2013 is \$2.78 per mcf for the three-month period beginning on January 1, 2013, and ending March 31, 2013. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of April 2013 from a qualified low-producing well is eligible for 50% 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 April 2013 is \$92.07 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 April 2013 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 April 2013 is \$4.16 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 April 2013 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-201301865

Ashley Harden

General Counsel

Comptroller of Public Accounts

Filed: May 10, 2013



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 05/13/13 - 05/19/13 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 05/13/13 - 05/19/13 is 18% for Commercial over \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 06/01/13 - 06/30/13 is 5.00% for Consumer/Agricultural/Commercial credit through \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 06/01/13 - 06/30/13 is 5.00% for Commercial over \$250,000.

¹ Credit for personal, family or household use.

² Credit for business, commercial, investment or other similar purpose.

TRD-201301949

Leslie Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: May 14, 2013



Employees Retirement System of Texas

Contract Award Announcement

This contract award notice is being filed by the Employees Retirement System of Texas (ERS) in relation to a contract for consulting services to define requirements and identify options to achieve optimization of ERS' hosted ACD/IVR contact center solution.

The contract was awarded to Strategic Contact, Inc., 9510 SW 151st Avenue, Beaverton, Oregon 97007.

The cost of the contract is \$24,985. The contract was executed on April 29, 2013 and will be performed over a five-week period.

TRD-201301927

Paula A. Jones

General Counsel and Chief Compliance Officer

Employees Retirement System of Texas

Filed: May 13, 2013



Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency 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. TWC, §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. TWC, §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 June 24, 2013. TWC, §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 June 24, 2013. 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, TWC, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: A-2-Z Curb Decor LLC; DOCKET NUMBER: 2010-1091-LII-E; IDENTIFIER: RN105953459; LOCATION: Perrin, Jack County; TYPE OF FACILITY: landscaping service; RULE VIOLATED: 30 TAC §30.5(b) and §344.30(a)(2) and (d), and TWC, §37.003, by failing to refrain from advertising or representing oneself to the public as a holder of a license or registration, unless they employ an individual who holds a current license; PENALTY: \$500; ENFORCEMENT COORDINATOR: Jessica Schildwachter, (512) 239-2617; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(2) COMPANY: Asif Khania dba Mini Mart; DOCKET NUMBER: 2013-0206-PST-E; IDENTIFIER: RN101433043; LOCATION: Linden, Cass County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: \$3,416; ENFORCEMENT COORDINATOR: Margarita Dennis, (512) 239-2578; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(3) COMPANY: Aslam Ali dba Handi Stop 37; DOCKET NUMBER: 2012-2577-PST-E; IDENTIFIER: RN102405313; LOCATION: Tomball, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued underground storage tank (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 a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the UST; PENALTY: \$8,896; ENFORCEMENT COORDINATOR: JR Cao, (512) 239-2543; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(4) COMPANY: BITTU & SANJEEVAN, INCORPORATED dba Super Fast Food; DOCKET NUMBER: 2012-2722-PST-E; IDENTIFIER: RN104914197; LOCATION: Gonzales, Gonzales County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$3,750; ENFORCEMENT COORDINATOR: Jason Fraley, (512) 239-2552; REGIONAL

OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(5) COMPANY: City of Hubbard; DOCKET NUMBER: 2013-0325-MWD-E; IDENTIFIER: RN101918480; LOCATION: Hubbard, Hill County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010534001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits; PENALTY: \$3,750; ENFORCEMENT COORDINATOR: Nick Nevid, (512) 239-2612; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(6) COMPANY: City of Maud; DOCKET NUMBER: 2013-0625-MWD-E; IDENTIFIER: RN103138202; LOCATION: Maud, Bowie County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0014025001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: \$1,687; ENFORCEMENT COORDINATOR: Remington Burklund, (512) 239-2611; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(7) COMPANY: CKP BROTHERS, INCORPORATED dba CKP Texaco; DOCKET NUMBER: 2013-0332-PST-E; IDENTIFIER: RN101727691; LOCATION: Pearland, Brazoria County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: \$2,567; ENFORCEMENT COORDINATOR: Jason Fraley, (512) 239-2552; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(8) COMPANY: COLUMBIA PLAZA MEDICAL CENTER OF FORT WORTH SUBSIDIARY, L.P. dba Plaza Medical Center of Fort Worth; DOCKET NUMBER: 2012-2646-PST-E; IDENTIFIER: RN101567964; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: medical facility with an emergency generator; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(b), by failing to provide release detection for the suction piping associated with the underground storage tank system; PENALTY: \$3,893; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (713) 767-3500.

(9) COMPANY: ConocoPhillips Company; DOCKET NUMBER: 2011-1891-AIR-E; IDENTIFIER: RN102495884; LOCATION: Borger, Hutchinson County; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §§101.20(3), 116.715(a), and 122.143(4), Texas Health and Safety Code, §382.085(b), Flexible Permit Numbers 9868A and PSDTX102M7, Special Conditions Number 1, and Federal Operating Permit Number O1440, Special Terms and Conditions Number 23, by failing to prevent unauthorized emissions; PENALTY: \$19,250; ENFORCEMENT COORDINATOR: Kimberly Morales, (713) 422-8938; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(10) COMPANY: CROCKETT ENTERPRISES, INCORPORATED dba Easy Shop; DOCKET NUMBER: 2012-2491-PST-E; IDENTIFIER: RN101893097; LOCATION: Crockett, Houston County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed

35 days between each monitoring) and by failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: \$3,881; ENFORCEMENT COORDINATOR: Mike Pace, (817) 588-5933; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(11) COMPANY: EBELING WATER SUPPLY CORPORATION; DOCKET NUMBER: 2013-0138-PWS-E; IDENTIFIER: RN101239846; LOCATION: Plainview, Hale County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.44(h)(1)(A) and (B) and (4) and §290.46(j), by failing to implement an adequate backflow prevention and protection program; and 30 TAC §290.51(a)(6) and TWC, §5.702, by failing to pay all annual Public Health Service fees and associated late fees for TCEQ Financial Administration Account Number 90950064 for Fiscal Year 2013; PENALTY: \$187; ENFORCEMENT COORDINATOR: Jim Fisher, (512) 239-2537; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7092.

(12) COMPANY: Enterprise Products Operating LLC; DOCKET NUMBER: 2012-2454-AIR-E; IDENTIFIER: RN100210665; LOCATION: La Porte, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §116.115(c), Air Permit Number 20289, Special Conditions (SC) Number 1 and Texas Health and Safety Code (THSC), §382.085(b), by failing to prevent unauthorized emissions; and 30 TAC §115.722(c)(1) and §116.115(c), Air Permit Number 20289, SC Number 1 and THSC, §382.085(b), by failing to prevent unauthorized emissions and by failing to limit Highly Reactive Volatile Organic Compound emissions to 1,200 pounds per one hour block period; PENALTY: \$50,000; Supplemental Environmental Project (SEP) offset amount of \$12,500 applied to Barbers Hill Independent School District (BHISD) - Barbers Hill Vehicle and Equipment Program and SEP offset amount of \$12,500 applied to BHISD - Barbers Hill Energy Efficiency Program; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3629; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(13) COMPANY: Fine Management Services, LLC dba Oaks Food Store; DOCKET NUMBER: 2012-2191-PST-E; IDENTIFIER: RN102251238; LOCATION: Cypress, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank system; PENALTY: \$2,813; ENFORCEMENT COORDINATOR: Nick Nevid, (512) 239-2612; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(14) COMPANY: Haldor Topsoe, Incorporated; DOCKET NUMBER: 2012-2621-AIR-E; IDENTIFIER: RN101211498; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: catalyst manufacturing plant; RULE VIOLATED: 30 TAC §122.145(2)(A), Federal Operating Permit Number O1217, General Terms and Conditions, and Texas Health and Safety Code (THSC), §382.085(b), by failing to report all instances of deviations; 30 TAC §101.201(b) and THSC, §382.085(b), by failing to maintain complete final records for non-reportable emissions events; 30 TAC §101.201(e) and THSC, §382.085(b), by failing to submit an initial notification for an excess opacity event that occurred on February 10, 2012 within 24 hours after discovery of the opacity event; and 30 TAC §101.201(a) and THSC, §382.085(b), by failing to submit an initial notification for an emissions event that occurred on May 12, 2012 within 24 hours after discovery of the emissions event; PENALTY: \$10,901; ENFORCEMENT COORDINATOR: Kimberly Morales, (713) 422-8938; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(15) COMPANY: HJTV, Incorporated dba Lakeside Travel Plaza; DOCKET NUMBER: 2012-0471-PST-E; IDENTIFIER: RN105560619; LOCATION: Iowa Park, Wichita County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vi), by failing to obtain an underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form; 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 UST; and 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the UST for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide proper release detection for the pressurized piping associated with the UST; PENALTY: \$12,488; ENFORCEMENT COORDINATOR: Rebecca Johnson, (361) 825-3423; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(16) COMPANY: INVISTA S.a r.l.; DOCKET NUMBER: 2012-2392-AIR-E; IDENTIFIER: RN104244942; LOCATION: La Porte, Harris County; TYPE OF FACILITY: copolymer production plant; RULE VIOLATED: 30 TAC §116.116(a) and Texas Health and Safety Code (THSC), §382.085(b), by failing to comply with representations in the permit application for New Source Review (NSR) Permit Number 28315; 30 TAC §116.115(c) and §116.116(a), THSC, §382.085(b), and NSR Permit Number 2925, Special Conditions Number 1, by failing to comply with representations in the permit application for NSR Permit Number 2925 and by failing to comply with the permitted hourly emissions rate; and 30 TAC §116.116(a) and THSC, §382.085(b), by failing to comply with representations in the permit application for NSR Permit Number 2925; PENALTY: \$39,485; Supplemental Environmental Project offset amount of \$15,794 applied to Harris County - Ambient and Meteorological Air Monitoring; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(17) COMPANY: Jourdanton Independent School District; DOCKET NUMBER: 2013-0131-PST-E; IDENTIFIER: RN101738417; LOCATION: Jourdanton, Atascosa County; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tank for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$3,375; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(18) COMPANY: KBE, Incorporated dba Texas Auto Outlet; DOCKET NUMBER: 2013-0376-AIR-E; IDENTIFIER: RN106582992; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: retail sales outlet for pre-owned motor vehicles; RULE VIOLATED: 30 TAC §114.20(c)(1) and Texas Health and Safety Code, §382.085(b), by failing to equip a motor vehicle with either the control systems or devices that were originally a part of the motor vehicle or motor vehicle engine, or an alternate control system; PENALTY: \$563; ENFORCEMENT COORDINATOR: Katie Hargrove, (512) 239-2569; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(19) COMPANY: KENMARK HOMES, LP; DOCKET NUMBER: 2013-0277-WQ-E; IDENTIFIER: RN106270572; LOCATION: Parker County; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge

storm water associated with construction activities; PENALTY: \$2,750; ENFORCEMENT COORDINATOR: Heather Brister, (254) 761-3034; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(20) COMPANY: Manchaca Food, Incorporated; DOCKET NUMBER: 2013-0058-EAQ-E; IDENTIFIER: RN106538614; LOCATION: San Marcos, Hays County; TYPE OF FACILITY: construction site for a new convenience store with a gas station; RULE VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval of an Edwards Aquifer Underground Storage Tank Facility Plan prior to beginning a regulated activity over the Edwards Aquifer Transition Zone; PENALTY: \$1,875; ENFORCEMENT COORDINATOR: Nick Nevid, (512) 239-2612; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, (512) 339-2929.

(21) COMPANY: MURPHY OIL USA, INCORPORATED dba Murphy USA 6779; DOCKET NUMBER: 2013-0159-PST-E; IDENTIFIER: RN102232741; LOCATION: Kemah, Galveston County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and Texas Health and Safety Code, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months; PENALTY: \$6,161; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(22) COMPANY: OVERSEAS ENTERPRISES USA, INCORPORATED dba Gateway Travel Plaza; DOCKET NUMBER: 2012-2297-PST-E; IDENTIFIER: RN101743730; LOCATION: Vidor, Orange County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); 30 TAC §334.10(b)(1)(B), by failing to maintain UST records and making them immediately available for inspection upon request by agency personnel; and TWC, §5.702, by failing to pay an outstanding administrative penalty for TCEQ Financial Account Number 23705387; PENALTY: \$7,000; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(23) COMPANY: Pro Star Roll-off Dumpsters LLC; DOCKET NUMBER: 2012-2287-MSW-E; IDENTIFIER: RN105909063; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: recycling; RULE VIOLATED: 30 TAC §330.7(a), by failing to obtain a permit or registration as a municipal solid waste facility; PENALTY: \$3,000; ENFORCEMENT COORDINATOR: Mike Pace, (817) 588-5933; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(24) COMPANY: RIVER CITY READY MIX, INCORPORATED; DOCKET NUMBER: 2012-2174-MLM-E; IDENTIFIER: RN105833735; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: concrete manufacturing business; RULE VIOLATED: 30 TAC §330.954(a) and (e), by failing to obtain a development permit prior to altering or disturbing a closed municipal solid waste (MSW) landfill; 30 TAC §330.463(a)(1), by failing to correct a lack of vegetative growth, ponding of water, and erosion of cover material at the closed landfill; 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge storm water associated with industrial activities under the Texas Pollution Discharge Elimination System Multi-Sector General Permit Number TXR050000; 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of MSW; and TWC, §26.121(a)(2), by failing to prevent unauthorized discharges into or adjacent to any water in

the state; PENALTY: \$20,000; ENFORCEMENT COORDINATOR: Andrea Park, (713) 422-8970; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(25) COMPANY: RSSB, INCORPORATED dba Baytown Market; DOCKET NUMBER: 2012-2611-PST-E; IDENTIFIER: RN101433316; LOCATION: Baytown, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: \$2,566; ENFORCEMENT COORDINATOR: Jason Fraley, (512) 239-2552; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(26) COMPANY: S.L.C. WATER SUPPLY CORPORATION; DOCKET NUMBER: 2013-0356-PWS-E; IDENTIFIER: RN101265908; LOCATION: Limestone County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(5) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.060 milligrams per liter for haloacetic acids, based on the running annual average; PENALTY: \$258; ENFORCEMENT COORDINATOR: Katy Schumann, (512) 239-2602; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(27) COMPANY: SAYKOT ENTERPRISES, INCORPORATED dba South Hills Fina; DOCKET NUMBER: 2013-0073-PST-E; IDENTIFIER: RN102644911; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.10(b), by failing to maintain UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: \$6,000; ENFORCEMENT COORDINATOR: Andrea Park, (713) 422-8970; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(28) COMPANY: UNIQUE LEASING, INCORPORATED dba Reynolds Nationwide; DOCKET NUMBER: 2012-2307-PST-E; IDENTIFIER: RN100799980; LOCATION: Stephenville, Erath County; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tank (UST) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.10(b), by failing to maintain UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: \$4,500; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(29) COMPANY: Valero Refining-Texas, L.P.; DOCKET NUMBER: 2012-2692-AIR-E; IDENTIFIER: RN100219310; LOCATION: Houston, Harris County; TYPE OF FACILITY: crude oil processing and refining plant; RULE VIOLATED: 30 TAC §122.143(4) and §122.146(2), Texas Health and Safety Code, §382.085(b), and Federal Operating Permit Number O-1381, General Terms and Conditions, by failing to submit the permit compliance certification no later than 30 days after the end of the certification period; PENALTY: \$7,500; Supplemental Environmental Project offset amount of \$3,000 applied to Houston - Galveston Area Emission Reduction Credit Organization's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL

OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-201301948

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: May 14, 2013



Enforcement Orders

An agreed order was entered regarding Ms. Molly's LLC, Docket No. 2012-0915-PWS-E on April 25, 2013 assessing \$256 in administrative penalties with \$51 deferred.

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 Legend Natural Gas III, LP, Docket No. 2012-1305-AIR-E on April 25, 2013 assessing \$3,450 in administrative penalties with \$690 deferred.

Information concerning any aspect of this order may be obtained by contacting Amancio R. Gutierrez, Enforcement Coordinator at (512) 239-3921, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Stockdale, Docket No. 2012-1357-MWD-E on April 25, 2013 assessing \$7,012 in administrative penalties with \$1,402 deferred.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Green, 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 Wes Moses dba Texan Portable Toilets, Docket No. 2012-1409-SLG-E on April 25, 2013 assessing \$6,375 in administrative penalties with \$1,275 deferred.

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 Eric Pipher, Docket No. 2012-1451-EAQ-E on April 25, 2013 assessing \$1,875 in administrative penalties with \$375 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 HOLIDAY HILLS COUNTRY CLUB, INC., Docket No. 2012-1459-WR-E on April 25, 2013 assessing \$750 in administrative penalties with \$150 deferred.

Information concerning any aspect of this order may be obtained by contacting Jennifer Graves, Enforcement Coordinator at (956) 430-6023, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MKSN INVESTMENTS, LLC dba New Happy Food Mart, Docket No. 2012-1744-PST-E on April 25, 2013 assessing \$3,125 in administrative penalties with \$625 deferred.

Information concerning any aspect of this order may be obtained by contacting Had Darling, Enforcement Coordinator at (512) 239-2570, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Wimberley Independent School District, Docket No. 2012-1794-EAQ-E on April 25, 2013 assessing \$7,500 in administrative penalties with \$1,500 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 MACIVE LLC dba Winfield Travel Center, Docket No. 2012-1895-PST-E on April 25, 2013 assessing \$2,568 in administrative penalties with \$513 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 City of Fritch, Docket No. 2012-1905-PWS-E on April 25, 2013 assessing \$226 in administrative penalties with \$45 deferred.

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 Kutob LLC dba Pine Tree Food Mart, Docket No. 2012-1940-PST-E on April 25, 2013 assessing \$6,610 in administrative penalties with \$1,322 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, 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 DAFFODIL FOOD, INC. dba The Right Choice, Docket No. 2012-2002-PST-E on April 25, 2013 assessing \$2,383 in administrative penalties with \$476 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 PERCY PIERCE TRADING CORPORATION dba Percy's Food Mart, Docket No. 2012-2032-PST-E on April 25, 2013 assessing \$5,750 in administrative penalties with \$1,150 deferred.

Information concerning any aspect of this order may be obtained by contacting Sarah Davis, Enforcement Coordinator at (512) 239-1653, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TEMPLE GROCERY INC, Docket No. 2012-2056-PST-E on April 25, 2013 assessing \$3,879 in administrative penalties with \$775 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 MUNISH ENTERPRISES, INC. dba Pitt Stop, Docket No. 2012-2059-PST-E on April 25, 2013 assessing \$3,150 in administrative penalties with \$630 deferred.

Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Conroe Independent School District, Docket No. 2012-2081-PST-E on April 25, 2013 assessing \$2,813 in administrative penalties with \$562 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, 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 City of Wharton, Docket No. 2012-2084-PST-E on April 25, 2013 assessing \$3,375 in administrative penalties with \$675 deferred.

Information concerning any aspect of this order may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2616, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Punjton, Inc. dba Lucky Stop, Docket No. 2012-2112-PST-E on April 25, 2013 assessing \$2,813 in administrative penalties with \$562 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 CLEAN EARTH SOLUTIONS, INC., Docket No. 2012-2162-MSW-E on April 25, 2013 assessing \$5,000 in administrative penalties with \$1,000 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 Poppy's Country Market, LLC, Docket No. 2012-2186-PST-E on April 25, 2013 assessing \$3,375 in administrative penalties with \$675 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 BlueLinx Corporation, Docket No. 2012-2219-PST-E on April 25, 2013 assessing \$3,516 in administrative penalties with \$703 deferred.

Information concerning any aspect of this order may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2616, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Plano Independent School District, Docket No. 2012-2226-PST-E on April 25, 2013 assessing \$3,000 in administrative penalties with \$600 deferred.

Information concerning any aspect of this order may be obtained by contacting Sarah Davis, Enforcement Coordinator at (512) 239-1653, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Rafiq Ebrahim dba KSM Discount Market, Docket No. 2012-2229-PST-E on April 25, 2013 assessing \$2,813 in administrative penalties with \$562 deferred.

Information concerning any aspect of this order may be obtained by contacting Christopher Bost, 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 Cameron Independent School District, Docket No. 2012-2232-PST-E on April 25, 2013 assessing \$3,375 in administrative penalties with \$675 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, 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 Darrell Earnest and Pat Earnest dba Hiway Grocery, Docket No. 2012-2250-PST-E on April 25, 2013 assessing \$3,750 in administrative penalties with \$750 deferred.

Information concerning any aspect of this order may be obtained by contacting Jill Russell, Enforcement Coordinator at (512) 239-4564, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding AR-RAZZAQ INVESTMENTS INC dba Discount Mart 4, Docket No. 2012-2257-PST-E on April 25, 2013 assessing \$3,877 in administrative penalties with \$775 deferred.

Information concerning any aspect of this order may be obtained by contacting Sarah Davis, Enforcement Coordinator at (512) 239-1653, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Vu Tran dba K & M Food Mart, Docket No. 2012-2267-PST-E on April 25, 2013 assessing \$5,947 in administrative penalties with \$1,189 deferred.

Information concerning any aspect of this order may be obtained by contacting Nick Nevid, Enforcement Coordinator at (512) 239-2612, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Anahuac, Docket No. 2012-2274-PWS-E on April 25, 2013 assessing \$630 in administrative penalties with \$126 deferred.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, 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 Calhoun's Country Store, Incorporated, Docket No. 2012-2284-PST-E on April 25, 2013 assessing \$2,567 in administrative penalties with \$513 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 Quadratulla Habibulla dba Chevron Food Mart, Docket No. 2012-2300-PST-E on April 25, 2013 assessing \$2,943 in administrative penalties with \$588 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, 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 Shuaib Ullah dba 1st Stop, Docket No. 2012-2326-PST-E on April 25, 2013 assessing \$4,125 in administrative penalties with \$825 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, 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 VRST Corporation dba Lucky Mart 2, Docket No. 2012-2330-PST-E on April 25, 2013 assessing \$3,375 in administrative penalties with \$675 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 Parkway Utility District, Docket No. 2012-2333-WQ-E on April 25, 2013 assessing \$3,250 in administrative penalties with \$650 deferred.

Information concerning any aspect of this order may be obtained by contacting Steve Villatoro, Enforcement Coordinator at (512) 239-4930, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding J & J MANAGEMENT, INC. dba Town Market 1, Docket No. 2012-2397-PST-E on April 25, 2013 assessing \$2,568 in administrative penalties with \$513 deferred.

Information concerning any aspect of this order may be obtained by contacting Christopher Bost, 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 M-N-J GROCERY CORP., Docket No. 2012-2430-PST-E on April 25, 2013 assessing \$3,880 in administrative penalties with \$776 deferred.

Information concerning any aspect of this order may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2616, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding The Tex-Mex Rodriguez LLC dba Happy Corner, Docket No. 2012-2468-PST-E on April 25, 2013 assessing \$5,200 in administrative penalties with \$1,040 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Boyett, Enforcement Coordinator at (512) 239-2503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding INEOS Polymers Inc., Docket No. 2012-2480-AIR-E on April 25, 2013 assessing \$970 in administrative penalties with \$194 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 TCS #1 MANAGEMENT COMPANY, L.L.C. dba Texas Country Store 1, Docket No. 2012-2488-PST-E on April 25, 2013 assessing \$4,600 in administrative penalties with \$920 deferred.

Information concerning any aspect of this order may be obtained by contacting Had Darling, Enforcement Coordinator at (512) 239-2570, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Rio Grande Valley Sugar Growers, Inc., Docket No. 2012-2517-AIR-E on April 25, 2013 assessing \$7,150 in administrative penalties with \$1,430 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, 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 Aqua Utilities, Inc., Docket No. 2012-2519-PWS-E on April 25, 2013 assessing \$645 in administrative penalties with \$129 deferred.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, 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 Rocky Luetge dba P & M Quick Stop, Docket No. 2012-2534-PST-E on April 25, 2013 assessing \$2,942 in administrative penalties with \$588 deferred.

Information concerning any aspect of this order may be obtained by contacting Jessica Schildwachter, Enforcement Coordinator at (512) 239-2617, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Heritage Food Store Corporation, Docket No. 2012-2569-PST-E on April 25, 2013 assessing \$3,375 in administrative penalties with \$675 deferred.

Information concerning any aspect of this order may be obtained by contacting Amancio R. Gutierrez, Enforcement Coordinator at (512) 239-3921, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Verizon Business Network Services Inc., Docket No. 2012-2583-PST-E on April 25, 2013 assessing \$3,000 in administrative penalties with \$600 deferred.

Information concerning any aspect of this order may be obtained by contacting Brianna Carlson, Enforcement Coordinator at (956) 430-6021, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Postive Feed, Ltd., Docket No. 2012-2604-IWD-E on April 25, 2013 assessing \$800 in administrative penalties with \$160 deferred.

Information concerning any aspect of this order may be obtained by contacting Christopher Bost, 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 City of Lacy Lakeview, Docket No. 2012-2652-PWS-E on April 25, 2013 assessing \$686 in administrative penalties with \$137 deferred.

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 Angel Brothers Enterprises, LTD., Docket No. 2012-2674-PST-E on April 25, 2013 assessing \$3,880 in administrative penalties with \$776 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, 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 Buc-ee's, Ltd., Docket No. 2012-2723-PST-E on April 25, 2013 assessing \$5,625 in administrative penalties with \$1,125 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, 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 City of Gainesville, Docket No. 2013-0045-WR-E on April 25, 2013 assessing \$2,250 in administrative penalties with \$450 deferred.

Information concerning any aspect of this order may be obtained by contacting Jeremy Escobar, Enforcement Coordinator at (361) 825-3422, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of De Kalb, Docket No. 2013-0047-PWS-E on April 25, 2013 assessing \$549 in administrative penalties with \$109 deferred.

Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, 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 TEXAS INDUSTRIAL BOX MAINTENANCE, INC., Docket No. 2013-0112-IWD-E on April 25, 2013 assessing \$1,625 in administrative penalties with \$325 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.

A field citation was entered regarding CHS/COMMUNITY HEALTH SYSTEMS, INC. dba Cleveland Regional Medical Center, Docket No. 2013-0261-PST-E on April 25, 2013 assessing \$875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (817) 588-5892, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding BURKI TRADING, INC. dba Star Stop 6, Docket No. 2013-0262-PST-E on April 25, 2013 assessing \$2,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (817) 588-5892, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Toyo Ink America LLC, Docket No. 2013-0278-WQ-E on April 25, 2013 assessing \$875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Barnett Contracting Inc, Docket No. 2013-0279-WQ-E on April 25, 2013 assessing \$875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201301966

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: May 15, 2013



Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ, agency, 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. TWC, §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. TWC, §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 **June 24, 2013**. TWC, §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 June 24, 2013**. 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, TWC, §7.075 provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: Dowd & Sons Automobile Salvage Company, Inc.; DOCKET NUMBER: 2012-1116-PST-E; TCEQ ID NUMBER: RN101531887; LOCATION: 419 7th Street, Corsicana, Navarro County; TYPE OF FACILITY: automobile salvage and wrecking yard; RULES VIOLATED: 30 TAC §334.55(a)(6) and (e)(1), by failing to obtain qualified, licensed personnel to conduct a site assessment and submit a copy of the site assessment to the TCEQ within 30 days after the December 18, 2009, effective date of TCEQ AO Docket Number 2007-1881-MLM-E; and TWC, §7.061 and TCEQ AO Docket Number 2007-1881-MLM-E, Ordering Provision Number 1, by failing to pay the outstanding administrative penalty for Account Number 23605575; PENALTY: \$120,000; the Financial Assurance Section of the commission's Financial Administration Division determined that respondent is unable to pay all or part of the administrative penalty. Therefore, \$116,400 is deferred contingent upon respondent's timely and satisfactory compliance with all the terms of the AO; STAFF ATTORNEY: Kari Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Texas Department of Public Safety; DOCKET NUMBER: 2012-1786-PST-E; TCEQ ID NUMBER: RN101045656; LOCATION: 1302 Mac Davis Lane, Lubbock, Lubbock County; TYPE OF FACILITY: underground storage tank (UST) system and

fleet refueling facility; RULES VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(b), by failing to provide proper release detection for the product piping associated with the UST system; PENALTY: \$3,375; STAFF ATTORNEY: Elizabeth Lieberknecht, Litigation Division, MC 175, (512) 239-0620; REGIONAL OFFICE: Lubbock Regional Office, 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(3) COMPANY: HiTech Salvage & Demolition, LLC; DOCKET NUMBER: 2012-2043-MSW-E; TCEQ ID NUMBER: RN106167885; LOCATION: 3885 Highway 327, Silsbee, Hardin County; TYPE OF FACILITY: unimproved lot that involves the management and/or the disposal of municipal solid waste; RULES VIOLATED: 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of municipal solid waste; PENALTY: \$1,312; STAFF ATTORNEY: Mike Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(4) COMPANY: HTD ENTERPRISES INC. dba Z Smokers Choice; DOCKET NUMBER: 2012-1814-PST-E; TCEQ ID NUMBER: RN100928522; LOCATION: 25540 Aldine Westfield Road, Spring, Harris County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the UST system; and 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: \$5,100; STAFF ATTORNEY: Jennifer Cook, Litigation Division, MC 175, (512) 239-1873; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(5) COMPANY: Jaspal Singh Grewal; DOCKET NUMBER: 2011-1298-PST-E; TCEQ ID NUMBER: RN101556728; LOCATION: 220 Farm-to-Market Road 1417, Sherman, Grayson County; TYPE OF FACILITY: underground storage tank (UST) system and truck stop; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (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; 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; 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the UST system; and 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), and failing to provide release detection for the piping associated with the UST system by failing to conduct the annual piping tightness test; PENALTY: \$15,634; STAFF ATTORNEY: Jennifer Cook, Litigation Division, MC 175, (512) 239-1873; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: Kevin Jang dba Auto Village Motor Cars; DOCKET NUMBER: 2012-1735-AIR-E; TCEQ ID NUMBER: RN101960953; LOCATION: 9700 Westpark Drive, Houston, Harris County; TYPE OF FACILITY: used automobile dealership; RULES VIOLATED: 30 TAC §114.20(c)(3) and Texas Health and Safety Code (THSC), §382.085(b), by failing to have a notice of the prohibitions and

requirements displayed at a commercial motor vehicle sales facility in a conspicuous and prominent location; and 30 TAC §114.20(c)(1) and THSC, §382.085(b), by failing to equip a motor vehicle with either the emissions control systems or devices that were originally a part of the motor vehicle or motor vehicle engine, or an alternate emissions control system; PENALTY: \$1,688; STAFF ATTORNEY: Jeffrey Huhn, Litigation Division, MC R-13, (403) 403-4023; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(7) COMPANY: MK Petroleum, LLC d/b/a Briar Forest Shell; DOCKET NUMBER: 2012-1997-PST-E; TCEQ ID NUMBER: RN102252517; LOCATION: 1585 Highway 6 South, Houston, Harris County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: \$3,750; STAFF ATTORNEY: Phillip M. Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(8) COMPANY: Moises Enrique Martinez d/b/a Moy's Custom Paint & Body Shop; DOCKET NUMBER: 2012-2016-AIR-E; TCEQ ID NUMBER: RN106200603; LOCATION: 802 Avenue H, Rosenberg, Fort Bend County; TYPE OF FACILITY: auto body paint and body shop; RULES VIOLATED: Texas Health and Safety Code, §382.0518(a) and §382.085(b) and 30 TAC §116.110(a), by failing to obtain permit authorization for a source of air emissions prior to the commencement of operations of a facility which emits air contaminants; PENALTY: \$1,250; STAFF ATTORNEY: Elizabeth Lieberknecht, Litigation Division, MC 175, (512) 239-0620; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(9) COMPANY: Old Tymer Enterprises, Inc. dba The Olde Tymer; DOCKET NUMBER: 2013-0216-PWS-E; TCEQ ID NUMBER: RN102404399; LOCATION: 28295 Interstate 10 West, Boerne, Bexar County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.41(c)(1)(A), by failing to locate the public water supply well at least 150 feet away from an underground petroleum storage tank; 30 TAC §290.42(m) and §290.43(e), by failing to provide an intruder-resistance fence to protect the pressure tank and hypochlorination system; 30 TAC §290.46(f), by failing to maintain records of water works operation and maintenance activities; 30 TAC §290.46(m)(4), by failing to maintain the pressure maintenance facilities in a watertight condition; and 30 TAC §290.110(c)(4)(A), by failing to monitor the disinfectant residual in the distribution system at least once every seven day; PENALTY: \$2,176; STAFF ATTORNEY: Jennifer Cook, Litigation Division, MC 175, (512) 239-1873; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(10) COMPANY: RASHMEE, INC. d/b/a MACS; DOCKET NUMBER: 2012-0914-PST-E; TCEQ ID NUMBER: RN101563450; LOCATION: 2610 Walnut Hill Lane, Dallas, Dallas County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide proper corrosion protection for the UST system; TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide proper release detection for the pressurized piping associated with the UST system; and 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for

inspection upon request by agency personnel; PENALTY: \$10,030; the Financial Assurance Section of the commission's Financial Administration Division has determined that respondent is unable to pay all or part of the penalty and qualifies for a deferral of \$8,830, penalty is deferred contingent upon respondent's timely and satisfactory compliance with all the terms of the AO; STAFF ATTORNEY: Phillip M. Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: RASSO'S LYTLE CORPORATION DBA Lytle Quick Stop; DOCKET NUMBER: 2012-2306-PST-E; TCEQ ID NUMBER: RN102278314; LOCATION: 15058 Main Street, Lytle, Atascosa County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(a) and (c)(1) and 30 TAC §334.50(b)(1)(A) and (2), by failing to monitor the UST for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), and failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: \$3,883; STAFF ATTORNEY: Tammy Mitchell, Litigation Division, MC 175, (512) 239-0736; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(12) COMPANY: SUBA BUSINESS LLC DBA Speedo Gas Food Store; DOCKET NUMBER: 2012-2341-PST-E; TCEQ ID NUMBER: RN102327079; LOCATION: 16350 Stuebner Airline Road, Spring, Harris County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the UST for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$3,563; STAFF ATTORNEY: Tammy Mitchell, Litigation Division, MC 175, (512) 239-0736; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(13) COMPANY: TEEN MANIA MINISTRIES, INC.; DOCKET NUMBER: 2012-1970-MWD-E; TCEQ ID NUMBER: RN102361649; LOCATION: approximately 1,150 feet West and 1,300 feet North of the intersection of Farm-to-Market Road 1253 and State Highway 16, Smith County; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: 30 TAC §305.125(1) and (17), §319.7(d), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0013790001, Monitoring and Reporting Requirements Number 1, by failing to timely submit monitoring results at the intervals specified in TPDES Permit Number WQ0013790001; PENALTY: \$1,020; STAFF ATTORNEY: Joel Cordero, Litigation Division, MC 175, (512) 239-0672; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(14) COMPANY: Thomas Osborn Hammond d/b/a Loco Coyote Grille; DOCKET NUMBER: 2012-0777-PWS-E; TCEQ ID NUMBER: RN105161194; LOCATION: 1795 County Road 1004, Walnut Springs, Somervell County; TYPE OF FACILITY: public water system; RULES VIOLATED: Texas Health and Safety Code (THSC), §341.033(d) and 30 TAC §290.109(c)(2)(A)(i), (f)(5) and (7), §290.122(c)(1)(B), (2)(B) and (f), and TCEQ AO Docket Number 2009-1348-PWS-E, Ordering Provision Number 2.a., by failing to collect routine distribution water samples for coliform analysis for the months of May 2011 - December 2011, and failing to provide public notice of the failure to sample for the months of May 2011 - September 2011; 30 TAC §290.106(e), by failing to provide the results of annual nitrate monitoring to the executive director for

2010; 30 TAC §290.121(a) and (b), and TCEQ AO Docket Number 2009-1348-PWS-E, Ordering Provision Number 2.d.i., by failing to develop and maintain an up-to-date chemical and microbiological monitoring plan for the facility; 30 TAC §290.46(f) and TCEQ AO Docket Number 2009-1348-PWS-E, Ordering Provision Number 2.d.ii., by failing to maintain a record of water works operation and maintenance activities; 30 TAC §290.45(m)(1)(B) and TCEQ AO Docket Number 2009-1348-PWS-E, Ordering Provision Number 2.b.i., by failing to conduct an annual inspection of the facility's pressure tank; 30 TAC §290.42(e)(3) and TCEQ AO Docket Number 2009-1348-PWS-E, Ordering Provision Number 2.b.ii., by failing to provide disinfection equipment so that continuous and effective disinfection can be secured under all conditions; 30 TAC §290.110(d)(1) and TCEQ AO Docket Number 2009-1348-PWS-E, Ordering Provision Number 2.b.iii., by failing to measure the free chlorine residual to a minimum accuracy of plus or minus 0.1 milligrams per liter using amperometric titration, N,N-diethyl-p-phenylenediamine (DPD) Ferrous titration or DPD colorimetric; 30 TAC §290.41(c)(3)(A) and TCEQ AO Docket Number 2009-1348-PWS-E, Ordering Provision Number 2.h.ii., by failing to submit well completion data; 30 TAC §290.41(c)(3)(J) and TCEQ AO Docket Number 2009-1348-PWS-E, Ordering Provision Number 2.f.i., by failing to provide the well with 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) and TCEQ AO Docket Number 2009-1348-PWS-E, Ordering Provision Number 2.f.ii., 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) and TCEQ AO Docket Number 2009-1348-PWS-E, Ordering Provision Number 2.f.iii., by failing to provide a suitable sampling cock on the discharge pipe of the well; and 30 TAC §290.41(c)(3)(N) and TCEQ AO Docket Number 2009-1348-PWS-E, Ordering Provision Number 2.f.iv., by failing to provide a flow-measuring device for the well to measure production yields and provide for the accumulation of water production data; PENALTY: \$25,051; 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.

TRD-201301950

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: May 14, 2013



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; 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 **June 24, 2013**. 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 June 24, 2013**. 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: Greenwood Ventures, Inc.; DOCKET NUMBER: 2013-0281-PWS-E; TCEQ ID NUMBER: RN102689213; LOCATION: 10706 Farm-to-Market Road 307, Midland, Midland County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.106(e), by failing to provide the results of quarterly sampling for selenium to the executive director; 30 TAC §290.106(e) and §290.113(e), by failing to provide the results of triennial sampling for minerals and Stage 1 disinfectant byproducts to the executive director; 30 TAC §290.107(e), by failing to provide the results of sexennial sampling for volatile organic chemicals to the executive director; 30 TAC §290.122(a)(2), by failing to provide public notification regarding the failure to comply with the maximum contaminant level of nitrate; 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1 of each year and failing to submit to the TCEQ by July 1 of each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility and that the information in the CCR is correct and consistent with compliance monitoring data; 30 TAC §290.109(c)(3)(A)(ii), by failing to collect a set of repeat distribution coliform samples within 24 hours of being notified of a total coliform-positive sample result on a routine sample; and 30 TAC §290.51(a)(6) and TWC, §5.702, by failing to pay all annual Public Health Service fees and associated late fees; PENALTY: \$2,734; STAFF ATTORNEY: Jennifer Cook, Litigation Division, MC 175, (512) 239-1873; REGIONAL OFFICE: Midland Regional Office, 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5406, (432) 570-1359.

(2) COMPANY: Javier Rodriguez d/b/a XXX Auto Sales; DOCKET NUMBER: 2012-0673-AIR-E; TCEQ ID NUMBER: RN106223415; LOCATION: 217 North Louisiana Avenue, Laredo, Webb County; TYPE OF FACILITY: surface coating facility; RULES VIOLATED: Texas Health and Safety Code, §382.0518(a) and §382.085(b) and 30 TAC §116.110(a), by failing to obtain authorization prior to conducting surface coating operations at the plant; PENALTY: \$1,050; STAFF ATTORNEY: Anna Treadwell, Litigation Division, MC 175, (512) 239-0974; REGIONAL OFFICE: Laredo Regional Office, 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(3) COMPANY: Lored Paint & Body, Inc.; DOCKET NUMBER: 2011-1017-AIR-E; TCEQ ID NUMBER: RN106145246; LOCATION: 31445 Interstate Highway 10 West, Suite 200, Boerne, Kendall

County; TYPE OF FACILITY: auto body refinishing facility; RULES VIOLATED: Texas Health and Safety Code, §382.0518(a) and §382.085(b) and 30 TAC §116.110(a), by failing to obtain authorization prior to construction and operation of an auto body refinishing facility; PENALTY: \$1,000; STAFF ATTORNEY: Anna Treadwell, Litigation Division, MC 175, (512) 239-0974; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(4) COMPANY: Mike Watson and Robbie Watson, DBA Mike & Robbie Watson Dairy; DOCKET NUMBER: 2012-0635-AGR-E; TCEQ ID NUMBER: RN106209513; LOCATION: 159 Private Road 1121, Decatur, Wise County; TYPE OF FACILITY: animal feeding operation; RULES VIOLATED: 30 TAC §321.38(g)(3) and §321.47(d)(5), by failing to prepare site-specific documentation that shows that no significant hydrologic connection exists between the contained wastewater and water in the state, or that the retention control structure has a liner designed and certified by a licensed Texas professional engineer; and 30 TAC §321.47(i), by failing to maintain the required records for a minimum of five years; PENALTY: \$2,100; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: Norman Barnett d/b/a Sand Bar Estates; DOCKET NUMBER: 2012-1397-UTL-E; TCEQ ID NUMBER: RN101215382; LOCATION: 1516 Grace Lane, Highlands, Harris County; TYPE OF FACILITY: for compensation, equipment or facilities for the transmission, storage, distribution, sale, or provision of potable water to the public or for the resale of potable water to the public for any use; RULES VIOLATED: TWC, §13.1395(b)(2) and 30 TAC §291.162(a) and (j), by failing to submit to the executive director for approval by the required deadline, an adoptable emergency preparation plan that demonstrates the facility's ability to provide emergency operations; and TWC, §5.702 and 30 TAC §290.51(a)(6), by failing to pay all annual Public Health Service fees and associated late fees for TCEQ Financial Administration Account Number 91010204 for fiscal years 1996 - 2005, and 2008 - 2012; PENALTY: \$1,575; STAFF ATTORNEY: Kari Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(6) COMPANY: Pat Byrd; DOCKET NUMBER: 2012-0528-AIR-E; TCEQ ID NUMBER: RN106183791; LOCATION: 715 West Zavala Street, Crystal City, Zavala County; TYPE OF FACILITY: surface coating plant; RULES VIOLATED: Texas Health and Safety Code, §382.0518(a) and §382.085(b) and 30 TAC §116.110(a), by failing to obtain authorization prior to conducting surface coating operations at the plant; PENALTY: \$3,150; STAFF ATTORNEY: Anna Treadwell, Litigation Division, MC 175, (512) 239-0974; REGIONAL OFFICE: Laredo Regional Office, 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611

(7) COMPANY: TIMBERLANE WATER SYSTEM, INC.; DOCKET NUMBER: 2012-2123-PWS-E; TCEQ ID NUMBER: RN101182624; LOCATION: at the end of Farm-to-Market Road 2928, Hemphill, Sabine County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit routine Disinfectant Level Quarterly Operating Reports to the executive director each quarter by the tenth day of the month following the end of the quarter; 30 TAC §290.113(e), by failing to provide results of the quarterly disinfectant by-product (DBP) monitoring to the executive director; 30 TAC §290.109(c)(4)(B) and §290.122(c)(2)(A), by failing to collect at least one raw groundwater source *E. coli* sample from the one active source within 24 hours of being notified of a distribution total coliform-positive result, and failing to provide public

notice of the failure; 30 TAC §290.106(e), by failing to provide the results of annual nitrate/nitrite monitoring to the executive director; 30 TAC §290.109(c)(3)(A)(ii) and §290.122(c)(2)(A), by failing to collect a set of repeat distribution coliform samples within 24 hours of being notified of a total coliform-positive result of a routine distribution coliform sample and failing to provide public notice of the failure; 30 TAC §290.107(e), by failing to provide the results of synthetic organic contaminant monitoring to the executive director; and 30 TAC §290.113(e), by failing to provide the results of quarterly DBP monitoring to the executive director; PENALTY: \$1,140; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

TRD-201301951

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: May 14, 2013



Notice of Opportunity to Comment on Shutdown/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 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 overflow 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 overflow 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 **June 24, 2013**. The commission will consider any written comments received and the commission may withdraw or withhold approval of an 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 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 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 June 24, 2013**. 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: ANA, INC. d/b/a Polk Shell; DOCKET NUMBER: 2011-0187-PST-E; TCEQ ID NUMBER: RN102717014; LOCATION: 4910 Polk Street, Houston, Harris County; TYPE OF FACILITY: UST system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$5,100; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: AZM ENTERPRISES INC., ZMA ENTERPRISES INC., and Amir D. Mohammad; DOCKET NUMBER: 2012-1789-PST-E; TCEQ ID NUMBER: RN101431393; LOCATION: 4823 Blanco Road, San Antonio, Bexar County; TYPE OF FACILITY: UST system and 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 addition within 30 days from the date of the occurrence of the change or addition, or within 30 days from the date on which the owner or operator first became aware of the change or addition; 30 TAC §334.8(c)(5)(A), by failing to ensure that a valid current TCEQ delivery certificate was immediately available, posted, and visible at the facility; 30 TAC §334.49(c)(2)(C) and (4) and TWC, §26.3475(d), by failing to inspect the impressed current cathodic protection system at least once every 60 days to ensure the rectifier and other components are operating properly, and failing to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years; 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking with tank number 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 regulated UST according to the UST registration and self-certification form; 30 TAC §334.50(b)(1)(A), (2), (2)(A)(i)(III), (d)(1)(B)(ii) and (iii)(I), and TWC, §26.3475(a) and (c)(1), by failing to monitor the USTs for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring); by failing to provide proper release detection for the piping associated with the USTs (the annual pressurized piping test was not conducted); by failing to test the line leak detectors at least once per year for performance and operational reliability; by failing to conduct reconciliation of inventory control records 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 by failing to record inventory volume measurement for the regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day; and 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: \$12,832; STAFF ATTORNEY: Jennifer Cook, Litigation Division, MC 175, (512) 239-1873; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(3) COMPANY: BIG SCORE INVESTORS, LLC d/b/a Renner Shell; DOCKET NUMBER: 2012-2467-PST-E; TCEQ ID NUMBER: RN102239035; LOCATION: 699 West Renner Road, Richardson, Collin County; TYPE OF FACILITY: UST system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the UST for releases at a frequency of at least once every month (not to

exceed 35 days between each monitoring); and 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: \$16,312; STAFF ATTORNEY: Phillip M. Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: Ikoankar LLC d/b/a One Stop; DOCKET NUMBER: 2012-2092-PST-E; TCEQ ID NUMBER: RN100737493; LOCATION: 5300 Boat Club Road, Fort Worth, Tarrant County; TYPE OF FACILITY: UST system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide corrosion protection for the UST system; TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: \$12,687; STAFF ATTORNEY: Becky Combs, Litigation Division, MC 175, (512) 239-6939; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: Maaz M. Moonis; DOCKET NUMBER: 2012-2332-PST-E; TCEQ ID NUMBER: RN101894285; LOCATION: 2400 North Washington Avenue, Livingston, Polk County; TYPE OF FACILITY: UST system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide corrosion protection for the UST system; TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: \$8,750; STAFF ATTORNEY: Becky Combs, Litigation Division, MC 175, (512) 239-6939; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(6) COMPANY: MD BEER AND WINE, L.L.C.; DOCKET NUMBER: 2012-2305-PST-E; TCEQ ID NUMBER: RN104275243; LOCATION: 6362 State Highway 31, Kilgore, Smith County; TYPE OF FACILITY: UST system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the UST for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.10(b)(1)(B), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: \$5,000; STAFF ATTORNEY: Becky Combs, Litigation Division, MC 175, (512) 239-6939; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(7) COMPANY: Ted Castillo d/b/a C & T Quick Stop; DOCKET NUMBER: 2012-1240-PST-E; TCEQ ID NUMBER: RN104708342; LOCATION: 801 State Highway 100, Port Isabel, Cameron County; TYPE OF FACILITY: UST system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide proper corrosion protection for the UST system; and 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: \$5,000; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: Harlingen Regional Office,

1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(8) COMPANY: TriStar Convenience Stores, Inc. DBA Handi Stop 55; DOCKET NUMBER: 2012-1909-PST-E; TCEQ ID NUMBER: RN102446481; LOCATION: 9091 South Gessner Road, Houston, Harris County; TYPE OF FACILITY: UST system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide proper corrosion protection for the UST system at the facility; PENALTY: \$7,500; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-201301952

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: May 14, 2013



Notice of Water Quality Applications

The following notices were issued on May 3, 2013 through May 10, 2013.

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

MOTIVA ENTERPRISES LLC, which operates Port Arthur Terminal, a marine terminal facility, has applied for a major amendment to Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0000415000 to authorize the removal of treated stormwater associated with industrial activity, flow limitations, and associated effluent limitations and monitoring requirements for biochemical oxygen demand, 5-day, and total suspended solids at Outfall 004. The current permit authorizes the discharge of stormwater associated with industrial activity, steam condensate, fire water, and uncontaminated wash water on an intermittent and flow variable basis via Outfalls 002 and 005, and the discharge of treated stormwater associated with industrial activity, steam condensate, fire water, and uncontaminated wash water at a daily average flow not to exceed 1,800,000 gallons per day via Outfall 004. The facility is located at 3901 Texaco Island Road, between the Sabine-Neches Canal and the East and West Basins of Taylor Bayou, Port Arthur, Jefferson County, Texas 77641. The TCEQ Executive Director has reviewed this action for consistency with the Texas Coastal Management Program (CMP) goals and policies in accordance with the regulations of the General Land Office, and has determined that the action is consistent with the applicable CMP goals and policies.

PORT ARTHUR ENERGY STEAM LP, which operates Port Arthur Steam Energy, a steam electric cogeneration facility, has applied for a renewal of TPDES Permit No. WQ0004725000, which authorizes the discharge of boiler blowdown from a heat recovery steam generator (HRSG), demineralized reject, and stormwater at a daily average flow not to exceed 950,000 gallons per day via Outfall 001. The facility is located on Coke Dock Road near West 7th Street, in the City of Port Arthur, Jefferson County, Texas 77640.

CITY OF SOUR LAKE has applied for a renewal of TPDES Permit No. WQ0010703001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 600,000 gallons per day. The facility is located approximately 1/2 mile southwest of the City of Sour Lake and approximately 3/4 mile west of State Highway 326 in Hardin County, Texas 77659.

CITY OF GRAFORD has applied for a renewal of TPDES Permit No. WQ0010722001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 111,000 gallons per day. The facility is located at approximately 1,500 feet northwest of the intersection of Farm-to-Market Road 4 and State Highway Spur 397, approximately 1,300 feet west of Farm-to-Market Road 4 in Palo Pinto County, Texas 76449.

TRINITY BAY CONSERVATION DISTRICT has applied for a renewal of TPDES Permit No. WQ0010851001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,980,000 gallons per day. The facility is located at 760 East Buccaneer Drive, approximately 1.2 miles southeast of the intersection of State Highway 124 and Farm-to-Market Road 1406, approximately 0.7 mile east of State Highway 124 on Buccaneer Drive, in the City of Winnie, Chambers County, Texas 77665.

BROCK INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TCEQ Permit No. WQ0013798002, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 20,000 gallons per day via surface irrigation on 10 acres of non-public access pastureland. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located at 410 Eagle Spirit Lane, approximately 6,000 feet southeast of the intersection of Farm-to-Market Road 1189 and Grindstone Road, in the Community of Brock, Parker County, Texas 76087.

ALI MOHAMMAD SOLHJOU has applied for a renewal of TPDES Permit No. WQ0014277001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 15,000 gallons per day. The facility is located at 716 Gulf Bank Road, approximately 1.25 miles west of Hardy Toll Road and approximately 1,300 feet south of the intersection of Gulf Bank Road and the Aldine Oaks Mobile Home Community entrance in Harris County, Texas 77037.

LAKE MUNICIPAL UTILITY DISTRICT has applied for a renewal of TPDES Permit No. WQ0014598001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 188,000 gallons per day. The facility is located at 1501 1/2 East Freeway, Baytown, approximately 4,300 feet west of Thompson Road fronting on the north access road of Interstate Highway 10 in Harris County, Texas 77521.

SOUTH CENTRAL WATER COMPANY has applied for a renewal of TPDES Permit No. WQ0014924001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 320,000 gallons per day. The facility will be located approximately 0.5 mile east-northeast of the intersection of Interstate Highway 45 and Cypress Creek in Harris County, Texas 77373.

SOUTH CENTRAL WATER COMPANY has applied for a renewal of TPDES Permit No. WQ0014924001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 320,000 gallons per day. The facility will be located approximately 0.5 mile east-northeast of the intersection of Interstate Highway 45 and Cypress Creek in Harris County, Texas 77373.

DH JB PARTNERSHIP LTD has applied for a new permit, proposed TCEQ Permit No. WQ0014975001, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 75,000 gal-

lons per day via public access subsurface drip irrigation system with a minimum area of 750,000 square feet. The facility was previously permitted under Permit No. WQ0014733001, which expired March 1, 2010. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site will be located approximately 0.7 mile north of Farm-to-Market Road 1863 and 0.5 mile east of U.S. Highway 281 in Comal County, Texas 78163.

FREE STATE SEWER SERVICE AND WATER SUPPLY CORPORATION has applied for a new permit, proposed TPDES Permit No. WQ0015068001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The facility will be located on Van Zandt County Road 4501, approximately 1.1 miles north of the intersection of State Highway 64 and Van Zandt County Road 4501 in Van Zandt County, Texas 75754.

TONDA JOLANE HELMS has applied for a new permit, proposed TPDES Permit No. WQ0015074001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 7,500 gallons per day. The facility was previously permitted under TPDES Permit No. WQ0013712001, which expired in 2005. The facility is located at 15222 State Highway 64 West, in the city of Tyler, Smith County, Texas 75704.

CALPINE BOSQUE ENERGY CENTER LLC which operates Bosque County Power Plant, a combined cycle electricity generation facility, has applied for the renewal of and a minor amendment to TPDES Permit No. WQ0004167000 to authorize: (a) the removal of Outfall 301, (b) the routing of the discharge authorized at Outfall 301 to Outfall 201, (c) the renaming of Outfall 401 as Outfall 301, (d) the discharge of multi-media filter backwash water and reverse osmosis reject water via Outfall 201, and (e) continuous chlorination followed by dechlorination in cooling towers. The existing permit authorizes the discharge of cooling tower blowdown, evaporative cooling system blowdown, previously monitored effluents (PME), and stormwater at a daily average flow not to exceed 5.48 million gallons per day via Outfall 001; low volume waste sources and metal cleaning wastes on an intermittent and flow variable basis via Outfall 101; and low volume waste sources on an intermittent and flow variable basis via Outfalls 201, 301, and 401. The facility is located at 557 Bosque County Road 3610, in the city of Clifton, Bosque County, Texas 76634.

TRD-201301964

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: May 15, 2013



Notice of Water Rights Applications

Notice issued May 9, 2013 through May 10, 2013.

APPLICATION NO. 18-3829A; Canyon Regional Water Authority, 860 Lakeside Pass, New Braunfels, Texas 78130, seeks to amend its portion of Certificate No. 18-3829 to add two new diversion points on Lake Dunlap on the Guadalupe River, Guadalupe River Basin, approximately four miles downstream in Guadalupe County, and add municipal use in Comal and Guadalupe Counties. More information on the application and how to participate in the permitting process is given below.

The application and a portion of the fees were received on December 10, 2010. Additional information and fees were received on January 4, March 11, May 9, May 12, and June 29, 2011. The application

was declared administratively complete and filed with the Office of the Chief Clerk on July 25, 2011.

The Executive Director has completed the technical review of the application and prepared a draft amendment. The draft amendment, if granted, would include special conditions including, but not limited to, contacting the South Texas Watermaster prior to diversion. The application, technical memoranda, and Executive Director's draft amendment are available for viewing and copying at the Office of the Chief Clerk, 12100 Park 35 Circle, Building F, Austin, Texas 78753.

Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

APPLICATION NO. 12907; The Dow Chemical Company, 2301 N. Brazosport Blvd, Freeport, TX 77541-3257, seeks a temporary water use permit, for a period of three years, to construct and maintain a salt water barrier and impound from time to time, not to exceed 31.14 acre-feet of water on the Brazos River, Brazos River Basin in Brazoria County, Texas.

The application and partial fees were received on August 30, 2012. Additional information and fees were received on November 13 and December 5, 2012, and January 31, February 20, and March 6, 2013. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on January 10, 2013.

The Executive Director completed the technical review of the application and prepared a draft permit. The draft permit, if granted, would include special conditions including, but not limited to, expiration after three years. The application, technical memoranda, and Executive Director's draft permit are available for viewing and copying at the Office of the Chief Clerk, 12100 Park 35 Circle, Building F, Austin, Texas 78753.

Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below, by May 28, 2013.

INFORMATION SECTION

To view the complete issued notice, go to our web site at www.tceq.texas.gov/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

A public meeting is intended for the taking of public comment and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or an official representative for a group or association), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing"; and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Public Education Program at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.texas.gov. Si desea información en español, puede llamar al 1-800-687-4040.

TRD-201301965

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: May 15, 2013

◆ ◆ ◆ General Land Office

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 *Federal Register* pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project during the period of April 25, through May 6, 2013. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the Texas General Land Office web site. The notice was published on the web site on May 15, 2013. The public comment period for this project will close at 5:00 p.m. on June 14, 2013.

FEDERAL AGENCY ACTIONS:

Applicant: Mr. John Craig Lang; Location: The project site is located in tidally influenced wetlands adjacent to East Galveston Bay and the Gulf Intracoastal Waterway (GIWW), at 1290 Crystal Beach Road, in Crystal Beach, Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Flake, Texas. Latitude: 29.46567 North; Longitude 94.64664 West. Project Description: The applicant is seeking after-the-fact authorization for the filling of approximately 1.2 acres of estuarine wetlands. Additionally, the applicant proposes to fill approximately 0.4 acre of wetlands to complete the creation of additional roadside property and excavate approximately 31,400 square feet of non-tidal lake to a depth of 5 feet at mean low water. The applicant seeks authorization to mechanically dredge through the existing wetlands separating the lake from the GIWW, to create a 30-foot-wide opening to the GIWW and a tidal basin. An additional 0.1 acre of tidal wetlands will be displaced by the proposed dredging. The dredged material will be used as fill on adjacent property, including completing the aforementioned wetland fill. The applicant also plans on constructing an L-head fishing pier within the basin. The walkway will be 5-foot-wide, with a 10-foot by 20-foot L-head. The jurisdiction has been made by an approved jurisdictional determination during the initial compliance review of the unauthorized work. A tolling agreement for the project was finalized on August 8, 2012.

CMP Project No.: 13-1142-F1

Type of Application: U.S.A.C.E. permit application #SWG-2012-00381 is being evaluated under §10 of the Rivers and Harbors Act of 1899 and §404 of the Clean Water Act (CWA).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451 - 1464), as amended, interested parties are invited to submit comments on whether a proposed action or activity is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Land Commissioner for review.

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection, may be obtained from Ms. Sheri Land, Director, P.O. Box 12873, Austin, Texas 78711-2873 or via email at federal.consistency@glo.texas.gov. Comments should be sent to Ms. Land at the above address or by email.

TRD-201301977

Larry L. Laine

Chief Clerk/Deputy Land Commissioner

General Land Office

Filed: May 15, 2013



Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 *Federal Register* pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of May 6 through May 13, 2013. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the Texas General Land Office web site. The notice was published on the web site on May 15, 2013. The public comment period for this project will close at 5:00 p.m. on June 14, 2013.

FEDERAL AGENCY ACTIVITIES:

Federal Agency: Bureau of Ocean Energy Management; Draft Environmental Impact Statement (DEIS) - Eastern Planning Area Lease Sales 225 and 226: This Draft EIS addresses two proposed Gulf of Mexico Outer Continental Shelf (OCS) oil and gas lease sales: Eastern Planning Area (EPA) Lease Sales 225 and 226, as scheduled in the *Proposed Final Outer Continental Shelf Oil & Gas Leasing Program: 2012-2017*. This EIS for proposed EPA Lease Sales 225 and 226 uses information contained in three previous EISs. This EIS tiers from the *Outer Continental Shelf Oil and Gas Leasing Program: 2012-2017, Final Programmatic Environmental Impact Statement* and, due to the close proximity of the proposed EPA lease sale area to the Central Planning Area, incorporates by reference all of the relevant material in the EISs that were prepared for the nearby or adjacent Western and Central Planning Areas.

This Draft EIS updates the analyses in the *Gulf of Mexico OCS Oil and Gas Lease Sale 224: Eastern Planning Area, Final Supplemental Environmental Impact Statement*. It also analyzes the potential impacts of an EPA proposed action on sensitive coastal environments, offshore marine resources, and socioeconomic resources both onshore and offshore. It is important to note that this EIS was prepared using the best

information that was publicly available at the time the document was prepared.

The proposed actions are considered to be major Federal actions requiring an EIS. This document provides the following information in accordance with the National Environmental Policy Act (NEPA) and its implementing regulations, and it will be used in making decisions on the proposals. This document includes the purpose and background of an EPA proposed action, identification of the alternatives, description of the affected environment, and an analysis of the potential environmental impacts of an EPA proposed action, alternatives, and associated activities, including proposed mitigating measures and their potential effects. Potential contributions to cumulative impacts resulting from activities associated with an EPA proposed action are also analyzed. Hypothetical scenarios were developed on the levels of activities, accidental events (such as oil spills), and potential impacts that might result if an EPA proposed action is adopted. Activities and disturbances associated with an EPA proposed action on biological, physical, and socioeconomic resources are considered in the analyses. At the completion of the NEPA process, a decision will be made only for proposed EPA Lease Sale 225. An additional NEPA review will be conducted for proposed EPA Lease Sale 226 to address any new information relevant to that proposed action. Further information can be found in the DEIS available at: <http://www.boem.gov/Environmental-Stewardship/EnvironmentalAssessment/NEPA/nepaprocess.aspx>.

CMP Project No.: 13-1158-F2

FEDERAL AGENCY ACTIONS:

Applicant: Tarpon Shores Marina; Location: The project is located adjacent to the Channel to Aransas Pass, at 2200 State Highway (SH) 361, in Port Aransas, Nueces County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Port Aransas, Texas. Latitude: 27.874254 North; Longitude 97.092096 West. Project Description: The applicant is seeking an after-the-fact authorization to retain a portion (0.59 acre) of unauthorized fill material placed by the previous owner and authorization for additional fill to accommodate a proposed cottage development. The remaining areas of unauthorized fill (1.16 acre) would be restored and enhanced from its previous condition. The restoration involves construction of circulation channels to provide tidally influenced low marsh and high marsh habitat. In addition to retaining fill and restoring the site, the applicant proposes to construct nine (9) cottages adjacent to the Aransas Pass Tributary Channel shoreline and southeast of the existing Tarpon Shores Marina. The cottages will be constructed on 9 platted lots with habitat currently characterized as un-vegetated sand flats, and high marsh with adjacent low marsh. Cottage construction would include the addition of 9 concrete-based, pier and beam cottages, each with a building area ranging from 3,230 to 3,518 square feet. The proposed new impacts total 0.43 acres for all 9 lots. Each cottage lot will be accessed through Nueces County right-of-way (ROW) from the Old Nueces County Road.

The site is comprised of unvegetated sand flats, and low and high marsh wetlands. The following impacts have been calculated: the area the applicant proposes to leave in place is 0.59 acres. The additional cottage development area, not included in the prior violation area, involves placement of approximately 2,500 cubic yards of sand in 0.43 acres including 0.21 acres of unvegetated sand flats, and 0.22 acres of high marsh permanent impacts. Therefore the total proposed impact is 1.02 acres. The applicant proposes to mitigate for impacts in areas where avoidance was not possible by creating and/or enhancing the habitat in four areas on the property by restoration and creation of low and high marsh in the remaining areas of unauthorized fill (1.16 acres).

CMP Project No.: 13-1139-F1

Type of Application: U.S.A.C.E. permit application #SWG-2006-00026 is being evaluated under §10 of the Rivers and Harbors Act of 1899 and §404 of the Clean Water Act (CWA)

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451 - 1464), as amended, interested parties are invited to submit comments on whether a proposed action or activity is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Land Commissioner for review.

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection may be obtained from Ms. Sheri Land, Director, P.O. Box 12873, Austin, Texas 78711-2873 or via email at federal.consistency@glo.texas.gov. Comments should be sent to Ms. Land at the above address or by email.

TRD-201301978

Larry L. Laine

Chief Clerk/Deputy Land Commissioner

General Land Office

Filed: May 15, 2013



Texas Health and Human Services Commission

Public Notice

The Texas Health and Human Services Commission announces its intent to submit an amendment to the Texas State Plan for Medical Assistance under Title XIX of the Social Security Act. The proposed amendment is effective June 1, 2013.

The purpose of this amendment is to add Anesthesiologist Assistants to the fee schedules in the current state plan by adding fees for existing services. After performing the review, the Texas Health and Human Services Commission has determined that amendments to the fee schedule are appropriate.

Accordingly, the amendments will modify the fee schedules in the Texas Medicaid State Plan as a result of Medicaid fee adjustments for:

Anesthesiologist Assistants

The proposed amendment is estimated to result in an additional annual expenditures of \$98,358 for federal fiscal year (FFY) 2013, consisting of \$58,326 in federal funds and \$40,032 in state general revenue. For FFY 2014, the estimated annual expenditure is \$310,476 consisting of \$182,218 in federal funds and \$128,258 in state general revenue. For FFY 2015, the estimated annual expenditure is \$325,224 consisting of \$189,150 in federal funds and \$136,074 in state general revenue.

To obtain copies of the proposed amendment or to submit written comments, interested parties may contact Dan Huggins, Director of Rate Analysis for Acute Care Services, by mail at the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, H-400, Austin, Texas 78708-5200; by telephone at (512) 707-6071; by facsimile at (512) 730-7475; or by e-mail at dan.huggins@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-201301929

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Filed: May 13, 2013



Department of State Health Services

Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Austin	Minco Technology Labs, L.L.C.	L06549	Austin	00	04/29/13
Bonham	Fannin County Hospital Authority dba Red River Regional Hospital	L06548	Bonham	00	04/29/13
Temple	Wilsonart, L.L.C.	L06547	Temple	00	04/19/13
Throughout TX	Circle Z Pressure Pumping, L.L.C.	L06551	Tatum	00	05/01/13
Wharton	GCMC of Wharton County Texas, L.L.C. dba Gulf Coast Medical Center	L06546	Wharton	00	04/16/13

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Alice	Christus Spohn Health System Corporation dba Christus Spohn Hospital Alice	L02390	Alice	46	04/17/13
Amarillo	Texas Oncology Center, P.A. dba Texas Oncology Cancer Center-Amarillo	L06149	Amarillo	05	04/16/13
Andrews	Waste Control Specialists, L.L.C.	L06153	Andrews	05	04/24/13
Arlington	Heartplace, P.A.	L06336	Arlington	03	04/26/13
Austin	PPD Development, L.L.C. dba PPD Development	L04348	Austin	21	04/26/13
Bay City	Bay City Cardiology Clinic	L05975	Bay City	05	04/17/13
Benbrook	Weatherford International, L.L.C.	L00747	Benbrook	90	04/30/13
College Station	TDI Brooks International, Inc.	L06139	College Station	05	04/19/13
Corpus Christi	Christus Health System dba Christus Spohn Hospital Corpus Christi Memorial	L00265	Corpus Christi	98	04/19/13
Cypress	Cypress Cardiology, P.A.	L04353	Cypress	27	04/19/13
Dallas	Medical City Dallas Hospital dba Medical City	L01976	Dallas	196	04/24/13
Dallas	Dallas Cardiology Associates, P.A. dba Heartplace-Charlton Methodist	L05541	Dallas	10	04/19/13
Dallas	The Heartbeat Clinic	L06204	Dallas	02	04/16/13
DFW Airport	Composite Technology, Inc.	L06418	DFW Airport	02	04/16/13
Fort Worth	University of North Texas Health Science Center Fort Worth	L02518	Fort Worth	43	04/19/13
Fort Worth	Naresh H. Patel, M.D., P.A. dba Texas Cardiology Clinic	L05520	Fort Worth	09	04/19/13
Fort Worth	Heartplace, P.A.	L05883	Fort Worth	10	04/29/13
Gainesville	Gainesville Hospital District dba North Texas Medical Center	L02585	Gainesville	33	04/19/13
Grapevine	Baylor Medical Center at Grapevine	L03320	Grapevine	32	04/16/13
Houston	St. Luke's Episcopal Health System Corporation dba St. Luke's Episcopal Health System and Texas Heart Institute	L00581	Houston	99	05/01/13
Houston	Ben Taub General Hospital Nuclear Medicine	L01303	Houston	78	04/19/13
Houston	The University of Texas Health Science Center at Houston	L02774	Houston	66	04/18/13
Houston	Cardiologists of Houston, P.A. dba Cardiology Associates	L05500	Houston	10	04/19/13
Houston	Cardinal Health	L05536	Houston	40	04/24/13
Houston	University General Hospital, L.P.	L06018	Houston	11	04/22/13

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amendment #	Date of Action
Houston	Methodist Health Centers dba Methodist West Houston Hospital	L06358	Houston	04	04/26/13
Humble	Memorial Hermann Health System dba Memorial Hermann Northeast Hospital	L02412	Humble	91	04/17/13
Laredo	Laredo Cardiovascular Consultants dba Laredo Cardiovascular Consultants, P.A.	L04687	Laredo	19	02/22/13
Lewisville	Columbia Medical Center Of Lewisville Subsidiary, L.P. dba Medical Center of Lewisville	L02739	Lewisville	64	05/01/13
Longview	Texas Oncology, P.A. dba East Texas Pet Imaging	L05489	Longview	23	04/19/13
Lufkin	Piney Woods Healthcare System dba Woodland Heights Medical Center	L01842	Lufkin	58	04/18/13
Mcallen	Valley Heart Consultants	L05330	Mcallen	14	04/19/13
Midland	Isotech Laboratories, Inc.	L04283	Houston	27	04/24/13
Pampa	Prime Healthcare Services-Pampa, L.L.C. dba Pampa Regional Medical Center	L06510	Pampa	02	04/16/13
San Antonio	Worldwide Clinical Trials Early Phase Services, L.L.C.	L05723	San Antonio	09	04/19/13
Sugar Land	Methodist Sugar Land Hospital	L05788	Sugar Land	37	04/16/13
Sugar Land	Methodist Sugar Land Hospital	L05788	Sugar Land	38	04/29/13
Temple	Wilsonart, L.L.C.	L06547	Temple	00	04/19/13
Throughout TX	Desert NDT, L.L.C. dba Midwest Inspection Services	L06462	Abilene	10	04/17/13
Throughout TX	GSS Laboratories and Specialty	L05994	Aledo	02	04/19/13
Throughout TX	Hunter Well Science, Inc.	L06413	Arlington	02	04/19/13
Throughout TX	Texas Department of Transportation Construction Division Materials and Pavements Section	L00197	Austin	165	04/18/13
Throughout TX	Weatherford International, L.L.C.	L04286	Benbrook	95	05/01/13
Throughout TX	Brazos Valley Inspection Services, Inc.	L02859	Bryan	74	04/18/13
Throughout TX	Rock Engineering and Testing Laboratory, Inc.	L05168	Corpus Christi	13	04/18/13
Throughout TX	Rone Engineering Services, Ltd.	L02356	Dallas	40	04/23/13
Throughout TX	Pavetex Engineering and Testing, Inc.	L05533	Dripping Springs	17	04/18/13
Throughout TX	Precision NDT, L.L.C.	L06399	Henderson	05	05/01/13
Throughout TX	All-Terra Engineering, Inc.	L06215	Houston	03	04/23/13
Throughout TX	Spitzer Industries, Inc.	L06483	Houston	03	04/19/13
Throughout TX	Century Asphalt, Ltd.	L06539	Houston	02	04/17/13
Throughout TX	Marco inspection Services, L.L.C.	L06072	Kilgore	46	04/29/13
Throughout TX	Industrial Nuclear Company	L04508	La Porte	10	04/23/13
Throughout TX	RWLS, L.L.C. dba Renegade Services	L06307	Levelland	15	04/24/13
Throughout TX	Tracerco A Business Unit of Johnson Matthey, Inc.	L03096	Pasadena	81	05/01/13

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Austin	The Austin Diagnostic Clinic Association	L05646	Austin	14	04/23/13
Baytown	Exxonmobil Refining and Supply Company	L01134	Baytown	69	05/01/13
Beaumont	Advanced Cardiovascular Specialists, L.L.P.	L05512	Beaumont	18	04/22/13
El Paso	BRK Brands, Inc.	L03725	El Paso	16	04/18/13
Throughout TX	Technical Industries, Inc.	L05705	Houston	04	04/24/13

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Baytown	Jacinto Medical Corporation dba Jacinto MRI and Diagnostic Center	L04808	Baytown	18	04/22/13
Bonham	Attentus Bonham, L.P. dba Red River Regional Hospital	L03331	Bonham	42	04/26/13
Bridgeport	West 380 Family Care Facility dba North Texas Community Hospital	L06456	Bridgepoint	02	04/22/13
Lubbock	Bayer Crop Science	L05811	Lubbock	06	04/16/13
Wharton	Signature Gulf Coast Hospital, L.P. dba Gulf Coast Medical Center	L01388	Wharton	46	04/16/13

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of 25 Texas Administrative Code (TAC) Chapter 289 regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, Radiation Material Licensing - Mail Code 2835, P.O. Box 149347, Austin, Texas 78714-9347. For information call (512) 834-6688.

TRD-201301979
 Lisa Hernandez
 General Counsel
 Department of State Health Services
 Filed: May 15, 2013

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Texas Department of Housing and Community Affairs

Notice of Public Hearing on the Amended FFY 2013 Low-Income Home Energy Assistance Program (LIHEAP) State Plan and the FFY 2014 LIHEAP State Plan

For the 2013 Federal Fiscal Year (FFY), the Texas Department of Housing and Community Affairs (the "Department") submitted the Texas FFY 2013 Low-Income Home Energy Assistance Program (LIHEAP) Plan to the U.S. Department of Health and Human Services, on August 30, 2012. During FFY 2013, the Department has determined that the Texas FFY 2013 LIHEAP Plan requires amendments to income eligibility and leveraging activities. The Department solicits public input on the Amended FFY 2013 LIHEAP State Plan.

For the 2014 FFY, the Department anticipates receiving federal funds to continue the operation of programs that assist very low-income Texans with home energy. In the process of deciding how LIHEAP funds, the Department solicits public input on the details of the FFY 2014 LIHEAP State Plan.

As part of the public information, consultation, and public hearing requirements for LIHEAP, the Community Affairs Division of the Department has posted the amended and proposed plans on the Department's website and will conduct a public hearing. LIHEAP provides funding for the Comprehensive Energy Assistance Program (CEAP) and the Weatherization Assistance Program (WAP).

The public hearing has been scheduled as follows:

Wednesday, June 12, 2013, 1:00 p.m.

Texas Department of Housing and Community Affairs

221 East 11th Street, Room 116

Austin, Texas 78701

A representative from the Department will receive comments from stakeholders and the general public regarding the amended and proposed plans for LIHEAP. A copy of the Amended FFY 2013 LIHEAP Plan and the Draft FFY 2014 LIHEAP Plan may be obtained after May 9, 2013, through TDHCA's website, <http://www.tdhca.state.tx.us/community-affairs/ceap/index.htm> or by contacting the Texas Department of Housing and Community Affairs, Community Affairs Division, P.O. Box 13941, Austin, Texas 78711-3941 or by phone at (512) 475-1435.

The public comment period will be open from May 16, 2013, to June 14, 2013. Anyone may submit comments on the amended and draft plans in written form or oral testimony at the public hearing. The Department must receive written comments no later than 5:00 p.m., Friday, June 14, 2013. Comments concerning the amended and draft plans may be submitted via email to cate.taylor@tdhca.state.tx.us or by fax (512) 475-3935 or by mail to the Texas Department of Housing and Community Affairs, Community Affairs Division, Attention: Cate Taylor, at TDHCA, P.O. Box 13941, Austin, Texas 78711-3941. Any questions regarding the public hearing process or any of the programs referenced above may be directed to TDHCA, Community Affairs Division.

Individuals who require auxiliary aids or services for this meeting should contact Ms. Gina Esteves, ADA responsible employee, at (512) 475-3943 or Relay Texas at 1-800-735-2989 at least three (3) days before the meeting so that appropriate arrangements can be made.

Non-English speaking individuals who require interpreters for this meeting should contact Jorge Reyes by phone at (512) 475-4577 or by email at jorge.reyes@tdhca.state.tx.us at least three (3) days before the meeting so that appropriate arrangements can be made.

Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 o enviarle un correo electrónico a jorge.reyes@tdhca.state.tx.us por lo menos tres días antes de la junta para hacer los preparativos apropiados.

TRD-201301967
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Filed: May 15, 2013



Texas Department of Insurance

Company Licensing

Application to change the name of EMPLOYEES LIFE COMPANY (MUTUAL) to ELCO MUTUAL LIFE AND ANNUITY, a foreign life, accident and/or health company. The home office is in Lake Bluff, Illinois.

Application to do business in the State of Texas by EVERENCE ASSOCIATION, INC., a foreign life, accident and/or health company. The home office is in Goshen, Indiana.

Application to change the name of HSBC INSURANCE COMPANY OF DELAWARE to PAVONIA INSURANCE COMPANY OF DELAWARE, a fire and/or casualty company. The home office is in Newcastle, Delaware.

Application to change the name of HOUSEHOLD LIFE INSURANCE COMPANY to PAVONIA LIFE INSURANCE COMPANY OF MICHIGAN, a life, accident and/or health company. The home office is in Detroit, Michigan.

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, MC 305-2C, Austin, Texas 78701.

TRD-201301853
Sara Waitt
General Counsel
Texas Department of Insurance
Filed: May 9, 2013



Company Licensing

Application to do business in the State of Texas by GLOBAL LIBERTY INSURANCE COMPANY OF NEW YORK, a foreign fire and/or casualty company. The home office is in Melville, New York.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, MC 305-2C, Austin, Texas 78701.

TRD-201301971
Sara Waitt
General Counsel
Texas Department of Insurance
Filed: May 15, 2013



Company Licensing

Application to do business in the State of Texas by CRESTBROOK INSURANCE COMPANY, a foreign fire and casualty company. The home office is in Columbus, Ohio.

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, MC 305-2C, Austin, Texas 78701.

TRD-201301972
Sara Waitt
General Counsel
Texas Department of Insurance
Filed: May 15, 2013



Texas Lottery Commission

Instant Game Number 1522 "Sizzlin' Cash"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1522 is "SIZZLIN' CASH". The play style is "beat score".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1522 shall be \$2.00 per Ticket.

1.2 Definitions in Instant Game No. 1522.

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, FLAME SYMBOL, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$200, \$1,000 and \$20,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1522 - 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	TRFV
FLAME SYMBOL	WIN
\$2.00	TWOS
\$4.00	FOUR\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$50.00	FIFTY
\$200	TWO HUND
\$1,000	ONE THOU
\$20,000	20 THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$2.00, \$4.00, \$5.00, \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$50.00 or \$200.

H. High-Tier Prize - A prize of \$1,000 or \$20,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1522), 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: 1522-000001-001.

K. Pack - A Pack of "SIZZLIN' CASH" Instant Game Tickets contains 125 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One Ticket will be folded over to expose a front and back of one Ticket on each Pack. Please note the books will be in an A, B, C and D configuration.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "SIZZLIN' CASH" Instant Game No. 1522 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 "SIZZLIN' CASH" Instant Game is determined once the latex on the Ticket is scratched off to expose 24 (twenty-four) Play Symbols. If a player's YOUR NUMBER Play Symbol beats THEIR NUMBER Play Symbol in the same GAME, the player wins the prize for that GAME. If a player reveals a "FLAME" Play Symbol in any GAME, the player wins the prize for that GAME instantly. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. Exactly 24 (twenty-four) 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 24 (twenty-four) 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 24 (twenty-four) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 24 (twenty-four) 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. Players can win up to eight (8) times on a Ticket in accordance with the approved prize structure.

B. Adjacent Non-Winning Tickets within a Pack will not have identical symbol patterns. Two (2) Tickets have identical symbol patterns if they have the same symbols in the same positions.

C. The "YOUR NUMBER" Play Symbol will never match the "THEIR NUMBER" Play Symbol in the same GAME across.

D. There will be no duplicate GAMES in any order on a Ticket.

E. For all GAMES the difference between the "YOUR NUMBER" Play Symbol and the "THEIR NUMBER" Play Symbol will never be greater than ten (10).

F. The "1" Play Symbol will never appear as "YOUR NUMBER" Play Symbol.

G. The "35" Play Symbol will never appear as "THEIR NUMBER" Play Symbol.

H. Non-winning Prize Symbols will never appear more than two (2) times.

I. Non-winning Prize Symbols will never be the same as the winning Prize Symbol(s).

J. The top Prize Symbol will appear on every Ticket unless otherwise restricted.

K. No prize amount in a non-winning spot will correspond with the "YOUR NUMBER" Play Symbol (i.e., 5 and \$5).

2.3 Procedure for Claiming Prizes.

A. To claim a "SIZZLIN' CASH" Instant Game prize of \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00 or \$200, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$50.00 or \$200 Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "SIZZLIN' CASH" Instant Game prize of \$1,000 or \$20,000, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "SIZZLIN' CASH" 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 Texas Lottery is not responsible for Tickets lost in the mail. 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:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Texas Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family 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 under \$600 from the "SIZZLIN' CASH" 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 \$600 or more from the "SIZZLIN' CASH" 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 rights to a prize that is 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. 1522. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1522 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$2	480,000	12.50
\$4	576,000	10.42
\$5	144,000	41.67
\$10	72,000	83.33
\$20	48,000	125.00
\$50	28,825	208.15
\$200	2,500	2,400.00
\$1,000	75	80,000.00
\$20,000	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 4.44. 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. 1522 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 will be made in accordance with the Instant Game closing procedures and the Instant Game Rules. See 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. 1522, 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-201301956
 Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: May 14, 2013

◆ ◆ ◆
Public Utility Commission of Texas

Notice of Application for a Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on May 9, 2013, for a service provider certificate of operating authority (SPCOA) pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of CoreXchange, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 41485.

Applicant intends to provide data-only, facilities-based and resale telecommunications services.

Applicant intends to provide telecommunications services within the entire state of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477 no later than May 31, 2013. 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 41485.

TRD-201301954
 Adriana A. Gonzales
 Rules Coordinator
 Public Utility Commission of Texas
 Filed: May 14, 2013

Notice of Application for Retail Electric Provider Certification

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on May 10, 2013, for retail electric provider (REP) certification, pursuant to §39.352 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of Galt Power Texas, LLC for Retail Electric Provider Certification Pursuant to P.U.C Substantive Rule §25.107, Docket Number 41486.

Applicant's requested service area by geography includes the entire State of Texas.

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477 no later than June 24, 2013. 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 41486.

TRD-201301960
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 14, 2013



Notice of Application for Retail Electric Provider Certification

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on May 13, 2013, for retail electric provider (REP) certification, pursuant to §39.352 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of Pro Power Providers, LLC for Retail Electric Provider Certification, Pursuant to Substantive Rule §25.107, Docket Number 41489.

Applicant's requested service area by geography includes the entire State of Texas.

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477 no later than June 27, 2013. 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 41489.

TRD-201301973
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 15, 2013



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 an application filed with the Public Utility Commission of Texas (commission) on May 7, 2013 to implement a minor rate change pursuant to P.U.C. Substantive Rule §26.171.

Tariff Control Title and Number: Notice of Cameron Telephone Company for Approval of a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171, Tariff Control Number 41466.

The Application: On May 7, 2013, Cameron Telephone Company (Cameron) filed an application with the commission for revisions to its local exchange service tariffs. Cameron proposed an effective date of June 1, 2013. The estimated revenue increase to be recognized by Cameron is \$12,937.92 in gross annual intrastate revenues. The Applicant has 513 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by May 31, 2013, 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 May 31, 2013. 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 41466.

TRD-201301889
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 10, 2013



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 an application filed with the Public Utility Commission of Texas (commission) on May 7, 2013 to implement a minor rate change pursuant to P.U.C. Substantive Rule §26.171.

Tariff Control Title and Number: Notice of Valley Telephone Company for Approval of a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171, Tariff Control Number 41467.

The Application: On May 7, 2013, Valley Telephone Company (Valley) filed an application with the commission for revisions to its local exchange service tariffs. Valley proposed an effective date of May 20, 2013. The estimated revenue increase to be recognized by Valley is \$96,257 in gross annual intrastate revenues. The Applicant has 5,439 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by May 31, 2013, 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 May 31, 2013. 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 41467.

TRD-201301890

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 10, 2013



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 an application filed with the Public Utility Commission of Texas (commission) on May 7, 2013 to implement a minor rate change pursuant to P.U.C. Substantive Rule §26.171.

Tariff Control Title and Number: Notice of Industry Telephone Company for Approval of a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171, Tariff Control Number 41468.

The Application: On May 7, 2013, Industry Telephone Company (Industry) filed an application with the commission for revisions to its local exchange service tariffs. Industry proposed an effective date of June 1, 2013. The estimated revenue increase to be recognized by Industry is \$64,196 in gross annual intrastate revenues. The Applicant has 2,136 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by May 31, 2013, 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 May 31, 2013. 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 41468.

TRD-201301891
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 10, 2013



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 an application filed with the Public Utility Commission of Texas (commission) on May 7, 2013 to implement a minor rate change pursuant to P.U.C. Substantive Rule §26.171.

Tariff Control Title and Number: Notice of Eastex Telephone Cooperative, Inc. for Approval of a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171, Tariff Control Number 41469.

The Application: On May 7, 2013, Eastex Telephone Cooperative, Inc. (Eastex) filed an application with the commission for revisions to its local exchange service tariffs. Eastex proposed an effective date of June 1, 2013. The estimated revenue increase to be recognized by Eastex is \$555,585 in gross annual intrastate revenues. The Applicant has 20,291 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this ap-

plication applies by May 31, 2013, 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 May 31, 2013. 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 41469.

TRD-201301892
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 10, 2013



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 an application filed with the Public Utility Commission of Texas (commission) on May 7, 2013 to implement a minor rate change pursuant to P.U.C. Substantive Rule §26.171.

Tariff Control Title and Number: Notice of Tatum Telephone Company for Approval of a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171, Tariff Control Number 41470.

The Application: On May 7, 2013, Tatum Telephone Company (Tatum) filed an application with the commission for revisions to its local exchange service tariffs. Tatum proposed an effective date of June 1, 2013. The estimated revenue increase to be recognized by Tatum is \$24,504 in gross annual intrastate revenues. The Applicant has 807 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by May 31, 2013, 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 May 31, 2013. 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 41470.

TRD-201301893
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 10, 2013



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 an application filed with the Public Utility Commission of Texas (commission) on May 7, 2013 to implement a minor rate change Pursuant to P.U.C. Substantive Rule §26.171.

Tariff Control Title and Number: Notice of Etex Telephone Cooperative, Inc. for Approval of a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171, Tariff Control Number 41471.

The Application: On May 7, 2013, Etex Telephone Cooperative, Inc. (Etex) filed an application with the commission for revisions to its local exchange service tariffs. Etex proposed an effective date of June 1, 2013. The estimated revenue increase to be recognized by Etex is \$88,708 in gross annual intrastate revenues. The Applicant has 11,610 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by May 31, 2013, 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 May 31, 2013. 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 41471.

TRD-201301894
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 10, 2013



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 an application filed with the Public Utility Commission of Texas (commission) on May 7, 2013 to implement a minor rate change pursuant to P.U.C. Substantive Rule §26.171.

Tariff Control Title and Number: Notice of Coleman County Telephone Cooperative, Inc. for Approval of a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171, Tariff Control Number 41472.

The Application: On May 7, 2013, Coleman County Telephone Cooperative, Inc. (Coleman County) filed an application with the commission for revisions to its local exchange service tariffs. Coleman County proposed an effective date of May 20, 2013. The estimated revenue increase to be recognized by Coleman County is \$51,184 in gross annual intrastate revenues. The Applicant has 1,725 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by May 31, 2013, 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 May 31, 2013. 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-im-

paired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Tariff Control Number 41472.

TRD-201301895
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 10, 2013



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 an application filed with the Public Utility Commission of Texas (commission) on May 7, 2013 to implement a minor rate change pursuant to P.U.C. Substantive Rule §26.171.

Tariff Control Title and Number: Notice of Big Ben Telephone Company for Approval of a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171, Tariff Control Number 41475.

The Application: On May 7, 2013, Big Ben Telephone Company (Big Ben) filed an application with the commission for revisions to its local exchange service tariffs. Big Ben proposed an effective date of May 20, 2013. The estimated revenue increase to be recognized by Big Ben is \$277,154 in gross annual intrastate revenues. The Applicant has 4,977 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by June 5, 2013, 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 June 5, 2013. 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 41475.

TRD-201301896
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 10, 2013



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 an application filed with the Public Utility Commission of Texas (commission) on May 8, 2013 to implement a minor rate change pursuant to P.U.C. Substantive Rule §26.171.

Tariff Control Title and Number: Notice of Wes-Tex Telephone Cooperative, Inc. for Approval of a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171, Tariff Control Number 41479.

The Application: On May 8, 2013, Wes-Tex Telephone Cooperative, Inc. (Wes-Tex) filed an application with the commission for revisions to its local exchange service tariffs. Wes-Tex proposed an effective date of June 1, 2013. The estimated revenue increase to be recognized by Wes-Tex is \$65,984 in gross annual intrastate revenues. The Applicant

has 2,088 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by May 31, 2013, 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 May 31, 2013. 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 41479.

TRD-201301897
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 10, 2013



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 an application filed with the Public Utility Commission of Texas (commission) on May 8, 2013 to implement a minor rate change pursuant to P.U.C. Substantive Rule §26.171.

Tariff Control Title and Number: Notice of Community Telephone Company for Approval of a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171, Tariff Control Number 41480.

The Application: On May 8, 2013, Community Telephone Company (Community) filed an application with the commission for revisions to its local exchange service tariffs. Community proposed an effective date of June 1, 2013. The estimated revenue increase to be recognized by Community is \$1,112 in gross annual intrastate revenues. The Applicant has 1,405 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by May 31, 2013, 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 May 31, 2013. 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 41480.

TRD-201301898
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 10, 2013



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 an application filed with the Public Utility Commission of Texas (commission) on May 9, 2013, to implement a minor rate change pursuant to P.U.C. Substantive Rule §26.171.

Tariff Control Title and Number: Notice of Central Texas Telephone Cooperative, Inc. for Approval of a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171, Tariff Control Number 41482.

The Application: On May 9, 2013, Central Texas Telephone Cooperative, Inc. (Central Texas) filed an application with the commission for revisions to its local exchange service tariffs. Central Texas proposed an effective date of June 1, 2013. The estimated revenue increase to be recognized by Central Texas is \$199,721.16 in gross annual intrastate revenues. The applicant has 5,964 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, 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 as soon possible since a deadline to intervene will be established. 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 41482.

TRD-201301953
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 14, 2013



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 an application filed with the Public Utility Commission of Texas (commission) on May 9, 2013, to implement a minor rate change pursuant to P.U.C. Substantive Rule §26.171.

Tariff Control Title and Number: Notice of Brazoria Telephone Company, Inc. for Approval of a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171, Tariff Control Number 41484.

The Application: On May 9, 2013, Brazoria Telephone Company, Inc. (Brazoria) filed an application with the commission for revisions to its local exchange service tariffs. Brazoria proposed an effective date of May 20, 2013. The estimated revenue increase to be recognized by Brazoria is \$574 in gross annual intrastate revenues. The applicant has 4,493 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 May 31, 2013, 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 May 31, 2013. 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 41484.

TRD-201301959
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 14, 2013



Notice of Petition for Restoration of Universal Service Funding

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on May 13, 2013, for restoration of Universal Service Funding pursuant to Public Utility Regulatory Act, §56.025 and P.U.C. Substantive Rule §26.406.

Docket Style and Number: Application of Dell Telephone Cooperative, Inc. to Recover Funds From the Texas Universal Service Fund Pursuant to PURA §56.025 and P.U.C. Substantive Rule §26.406. Docket Number 41487.

The Application: Dell Telephone Cooperative, Inc. (Dell) seeks recovery of funds from the Texas Universal Service Fund (TUSF) due to Federal Communications Commission (FCC) actions resulting in a reduction in the Federal Universal Service Fund (FUSF) revenues available to Dell. The petition requests that the commission allow recovery of funds from the TUSF in the amount of \$561,629 for 2012 and \$1,431,444 for 2013 to replace FUSF revenue reductions.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. A deadline for intervention in this proceeding will be established. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) (800) 735-2989. All comments should reference Docket Number 41487.

TRD-201301961
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 14, 2013



San Antonio-Bexar County Metropolitan Planning Organization

Request for Proposals - Traffic Signal Retiming Study VI

The San Antonio-Bexar County Metropolitan Planning Organization (MPO) is seeking proposals from qualified firms to conduct the Traffic Signal Re-timing Study VI.

A copy of the Request for Proposals (RFP) may be requested by downloading the RFP and attachments from the MPO's website at www.sametropplan.org or calling Stephanie Velasquez, Regional Transportation Planner at (210) 227-8651.

Anyone wishing to submit a proposal must do so by 12:00 p.m. (CT), Monday, June 24, 2013 at the MPO office to:

Isidro "Sid" Martinez
Director
San Antonio-Bexar County MPO
825 South St. Mary's
San Antonio, Texas 78205

Funding for this study, in the amount of \$270,000, is contingent upon the availability of Federal Transportation Planning Funds.

TRD-201301864
Jeanne Geiger
Deputy Director
San Antonio-Bexar County Metropolitan Planning Organization
Filed: May 9, 2013



Texas Water Development Board

Applications for May 2013

Pursuant to Texas Water Code §6.195, the Texas Water Development Board provides notice of the following applications:

Project ID #62545, a request from the City of Brady, P.O. Box 351, Brady, Texas 76825, received August 31, 2012, for financial assistance in the amount of \$700,000 consisting of a loan in the amount of \$350,000 and loan forgiveness in the amount of \$350,000 from the Drinking Water State Revolving Fund Disadvantaged Community Program to finance planning costs of water system improvements.

Project ID #62554, a request from the City of Dell, P.O. Box 125, Dell City, Texas 79837-0125, received August 30, 2012, for financial assistance in the amount of \$244,450 in loan forgiveness from the Drinking Water State Revolving Fund to finance planning and design costs relating to water system improvements.

Project ID #62524, a request from the City of Wortham, P.O. Box 186, Wortham, Texas 76693-0186, received May 21, 2012, for financial assistance in the amount of \$1,815,295 consisting of a loan in the amount of \$280,000 and loan forgiveness in the amount of \$1,535,295 from the Drinking Water State Revolving Fund - Disadvantaged Community Program to finance water system improvements, utilizing the pre-design commitment option.

Project ID #21731, a request from the Harris County Municipal Utility District No. 50, 12900 Crosby-Lynchburg Road, Crosby, Texas 77532, received January 18, 2013, for a loan in the amount of \$1,350,000 from the Texas Water Development Fund to provide water and wastewater system improvements, utilizing the pre-design funding option.

TRD-201301885
Kenneth Petersen
General Counsel
Texas Water Development Board
Filed: May 10, 2013



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)