TEXAS REGISTER

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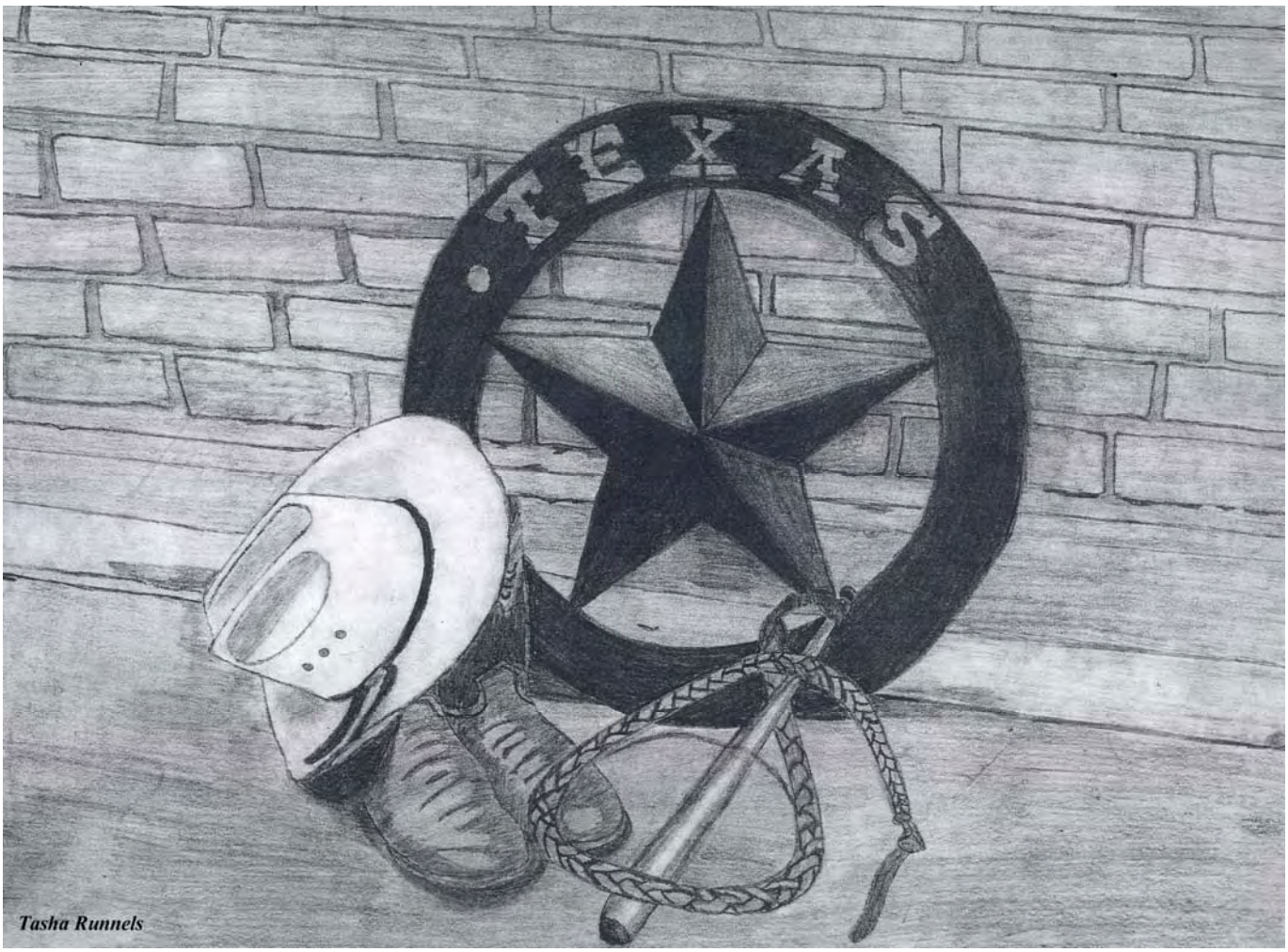

Tasha Runnels

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

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

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IN THIS ISSUE

ADOPTED RULES

Open Meetings

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

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

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

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

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

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.
http://www.oag.state.tx.us/opinopen/opengovt.shtml

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

Additional information about state government may be found here:
http://www.state.tx.us/

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

THE GOVERNOR

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

Appointments

Appointments for October 29, 2008

Appointed to the State Employee Charitable Campaign Advisory Committee for a term to expire January 1, 2010, Rose M. Gonzales of San Antonio (replacing Aaron Montemayor who no longer qualifies).

Appointed to the State Employee Charitable Campaign Advisory Committee for a term to expire January 1, 2010, Decobia S. Gray of Dallas (replacing Traci Wickett who no longer qualifies).

Appointments for October 30, 2008

Appointed to the Governing Board of the Texas School for the Blind and Visually Impaired for a term to expire January 31, 2011, Cynthia Finley of Lubbock (replacing Robert Peters of Tyler who resigned).

Appointed to the Governing Board of the Texas School for the Blind and Visually Impaired for a term to expire January 31, 2013, Bobby Druesedow, Jr. of Aledo (replacing Frankie Swift of Nacogdoches whose term expired).

Appointed to the Governing Board of the Texas School for the Blind and Visually Impaired for a term to expire January 31, 2013, Michael Garrett of Missouri City (replacing Jesus Bautista of El Paso whose term expired).

Appointed to the Pharmaceutical and Therapeutics Committee for a term to expire September 1, 2009, Daniel Hernandez of Harlingen (replacing David King of Kingwood whose term expired).

Appointed to the Pharmaceutical and Therapeutics Committee for a term to expire September 1, 2009, Dorinda Martin of Austin (replacing Julie Crozier of Dallas whose term expired).

Appointed to the Pharmaceutical and Therapeutics Committee for a term to expire September 1, 2009, Donna Burkett of Austin (Ms. Burkett is being reappointed).

Appointed to the Pharmaceutical and Therapeutics Committee for a term to expire September 1, 2009, J.C. Jackson of Seabrook (Mr. Jackson is being reappointed).

Appointed to the Pharmaceutical and Therapeutics Committee for a term to expire September 1, 2009, Anthony J. Busti of Salado (Dr. Busti is being reappointed).

Appointed to the Pharmaceutical and Therapeutics Committee for a term to expire September 1, 2009, Harris M. Hauser of Houston (Dr. Hauser is being reappointed).

Appointed to the Pharmaceutical and Therapeutics Committee for a term to expire September 1, 2009, Melbert C. Hillert, Jr. of Dallas (Dr. Hillert is being reappointed).

Appointed to the Pharmaceutical and Therapeutics Committee for a term to expire September 1, 2009, Guadalupe Zamora of Austin (Dr. Zamora is being reappointed).

Appointed to the Pharmaceutical and Therapeutics Committee for a term to expire September 1, 2009, Valerie Robinson of Lubbock (Dr. Robinson is being reappointed).

Appointed to the Pharmaceutical and Therapeutics Committee for a term to expire September 1, 2009, Mario R. Anzaldua of Mission (Dr. Anzaldua is being reappointed).

Appointed to the Pharmaceutical and Therapeutics Committee for a term to expire September 1, 2009, Richard C. Adams of Plano (Dr. Adams is being reappointed).

Rick Perry, Governor

TRD-200805787

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Appointments

Appointments October 31, 2008

Appointed to the Texas Racing Commission for a term to expire February 1, 2011, Gloria Hicks of Corpus Christi (replacing Rolando Pablos of San Antonio who resigned).

Appointed to the Texas Racing Commission for a term to expire February 1, 2013, Rolando Pablos of San Antonio (replacing Gloria Hicks of Corpus Christi). Mr. Pablos will serve as Presiding Officer of the commission.

Appointments November 3, 2008

Appointed to the Trinity River Authority Board of Directors for a term to expire March 15, 2009, Ronald Goldman of Fort Worth (replacing Hector Escamilla, Jr. of Carrollton whose term expired).

Appointed to the Trinity River Authority Board of Directors for a term to expire March 15, 2011, Karl Butler of Dallas (Mr. Butler is being reappointed).

Appointed to the Trinity River Authority Board of Directors for a term to expire March 15, 2011, Amanda Davis of Buffalo (replacing Jerry House of Leona whose term expired).

Appointed to the Trinity River Authority Board of Directors for a term to expire March 15, 2013, Amir Rupani of Dallas (new position due to SB 287).

Appointed to the Texas Medical Board District Three Review Committee for a term to expire January 15, 2012, David W. Miller of Abilene (Dr. Miller is being reappointed).

Appointed to the Texas Medical Board District Three Review Committee for a term to expire January 15, 2014, Betty Lou Angelo of Midland (Ms. Angelo is being reappointed).

Appointed to the Texas Medical Board District Two Review Committee for a term to expire January 15, 2014, Janet Tornelli-Mitchell of Dallas (Dr. Tornelli-Mitchell is being reappointed).

Appointed to the Texas Medical Board District One Review Committee for a term to expire January 15, 2010, Kathy C. Flanagan of Houston (replacing Kevin Smith of Houston whose term expired).

Appointed to the Texas Medical Board District One Review Committee for a term to expire January 15, 2012, Harry K. Wallfisch of Galveston (replacing Richard Strax of Houston whose term expired).

Appointed to the Texas Medical Board District One Review Committee for a term to expire January 15, 2012, Frank R. Wellborne of Houston (Dr. Wellborne is being reappointed).

Appointed to the Texas Medical Board District One Review Committee for a term to expire January 15, 2012, Sharon J. Barnes of Port Lavaca (Ms. Barnes is being reappointed).

Appointed to the Texas Medical Board District One Review Committee for a term to expire January 15, 2014, Wendy Prater Dear of Tomball (Ms. Dear is being reappointed).

Appointed to the Texas Medical Board District One Review Committee for a term to expire January 15, 2014, Charles M. Stiernberg of Bellaire (Dr. Stiernberg is being reappointed).

Rick Perry, Governor

TRD-200805813

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THE ATTORNEY GENERAL

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

An index to the full text of these documents is available from the Attorney General's Internet site http://www.oag.state.tx.us. Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

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

Request for Opinions

RQ-0749-GA

Requestor:

The Honorable G. A. Maffett, III

Wharton County Attorney

309 East Milam, Suite 500

Wharton, Texas 77488

Re: Authority of a commissioners court to remove fencing located within a county right-of-way (RQ-0749-GA)

Briefs requested by November 27, 2008

RQ-0750-GA

Requestor:

The Honorable Patrick M. Rose

Chair, Committee on Human Services

Texas House of Representatives

P.O. Box 2910

Austin, Texas 78768-2910

Re: Authority of a water company to paint fire hydrants black under particular circumstances (RQ-0750-GA)

Briefs requested by November 28, 2008

RQ-0751-GA

Requestor:

Mr. Robert Scott

Commissioner of Education

Texas Education Agency

1701 North Congress Avenue

Austin, Texas 78701-1494

Re: Authority of a school district to use a reverse auction conducted by a third party to purchase personal property valued at $10,000 or more (RQ-0751-GA)

Briefs requested by November 28, 2008

RQ-0752-GA

Requestor:

The Honorable Jeff Wentworth

Chair, Committee on Jurisprudence

Texas State Senate

Post Office Box 12068

Austin, Texas 78711

Re: Authority of a political subdivision to contract with a private entity for the collection of delinquent fines, fees, and court costs (RQ-0752-GA)

Briefs requested by December 1, 2008

RQ-0753-GA

Requestor:

The Honorable H. Michael Bartley

Delta County Attorney

Post Office Box 462

Cooper, Texas 75432

Re: Whether a sheriff may refuse to provide particular documents to a county treasurer (RQ-0753-GA)

Briefs requested by December 1, 2008

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

TRD-200805818
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: November 5, 2008

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Opinions

Opinion No. GA-0675

Mr. James A. Cox, Jr.

Chairman, Texas Lottery Commission

Post Office Box 16630

Austin, Texas 78761-6630

Re: Whether section 521.126 of the Transportation Code permits the Texas Lottery Commission to use electronically readable information encoded on the magnetic stripe of a driver's license to verify the age of persons using self-service terminals and vending machines to purchase lottery tickets (RQ-0705-GA)

S U M M A R Y

Because the use of electronically readable information on a driver's license to verify the age of a person attempting to purchase a lottery ticket serves a legitimate law enforcement or governmental purpose, the Texas Lottery Commission is not prohibited by section 521.126 of the Transportation Code from using self-service terminals and vending machines to accomplish that purpose.

Opinion No. GA-0676

The Honorable John J. Carona

Chair, Committee on Transportation and Homeland Security

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Amount of exemption from ad valorem taxation to which certain disabled veterans are entitled (RQ-0707-GA)

S U M M A R Y

Tax appraisal districts must use the schedule of disability ratings and corresponding maximum property tax exemption amounts for disabled veterans provided in article VIII, section 2(b) of the Texas Constitution instead of those set out in Tax Code section 11.22(a).

Opinion No. GA-0677

Dr. Michael D. McKinney, Chancellor

The Texas A&M University System

A&M System Building, Suite 2043

200 Technology Way

College Station, Texas 77845-3424

Re: Whether an individual who is both a retired state employee and an active state employee with a different state agency may receive two separate state contributions under the group benefits plans offered by the state (RQ-0712-GA)

S U M M A R Y

An individual who receives a state contribution as an annuitant under the group benefits plan created by chapter 1601 of the Insurance Code may not receive a state contribution as a current employee under chapter 1551 of the Insurance Code. On the other hand, that person may elect to receive his or her contribution either as an active employee or as an annuitant.

Opinion No. GA-0678

Mr. Robert Scott

Commissioner of Education

Texas Education Agency

1701 North Congress Avenue

Austin, Texas 78701-1494

Re: Whether Spring Branch Independent School District's pre-kindergarten programs run in collaboration with a Head Start agency are exempt from licensing requirements for child-care facilities (RQ-0709-GA)

S U M M A R Y

Whether the Spring Branch Independent School District or a Head Start agency, or both, "operates" a particular program for the purposes of section 745.119(1), title 40 of the Texas Administrative Code is a question of fact for the Department of Family and Protective Services to determine in the first instance.

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

TRD-200805819
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: November 5, 2008

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EMERGENCY RULES

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

TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 22. GRANT AND SCHOLARSHIP PROGRAMS

SUBCHAPTER K. PROVISIONS FOR SCHOLARSHIPS FOR STUDENTS GRADUATING IN THE TOP 10 PERCENT OF THEIR HIGH SCHOOL CLASS

19 TAC §§22.196 - 22.202

The Texas Higher Education Coordinating Board adopts, on an emergency basis, new §§22.196 - 22.202, concerning Provisions for Scholarships for Students Graduating in the Top 10 Percent of Their High School Class. The new sections are adopted on an emergency basis pursuant to §2001.034 of the Government Code, which allows a state agency to adopt an emergency rule if a requirement of state or federal law requires adoption of the rule on less than 30 days notice. These rules were also filed as proposed and appeared in the October 17, 2008 issue of the *Texas Register* (33 TexReg 8639). HB 1, General Appropriations Act of the 80th Texas Legislature, §55, (III-58), instructs the Coordinating Board to develop, in conjunction with the Governor's Office, a program to provide scholarships for undergraduate students who have graduated in the top 10 percent of their high school graduating class from an accredited Texas high school. The new sections establish definitions, identify the eligibility requirements for the scholarships, and set the award amounts and selection criteria for the program. Scholarships will be awarded for the 2009-2010 academic year. The Governor's Office and the Coordinating Board staff reached agreement on these proposed rules after extensive discussions. The legislation requires that the scholarship program be in place and the funds distributed by the end of fiscal year 2009. Also, the program affects current high school seniors who will submit applications for admission to institutions of higher education before the Texas Higher Education Coordinating Board meets again in January 2009. Therefore, emergency adoption at this time is essential to allow the staff to implement the program as soon as possible. The Coordinating Board intends to also adopt these rules on a non-emergency basis after the required posting in the *Texas Register*.

The new sections are adopted under the Texas Education Code, §61.027, which provides the Coordinating Board with general rule-making authority, and Article III of the General Appropriations Act of the 80th Texas Legislature.

§22.196. Authority and Purpose.

(a) Authority. Authority for this subchapter is provided in HB 1, General Appropriations Act of the 80th Texas Legislature, §55, (III-58).

(b) Purpose. The purpose of this program is to encourage outstanding high school graduates who graduate within the top 10 percent of their high school graduating classes to attend a public college or university in Texas.

§22.197. Definitions.

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

(1) Accredited High School--A high school that is accredited by the Texas Education Agency or recognized by the Texas Private School Accreditation Commission.

(2) Board--The Texas Higher Education Coordinating Board.

(3) Board Staff--The staff of the Texas Higher Education Coordinating Board.

(4) Cost of attendance--A Board Staff-approved estimate of the expenses incurred by a typical student in attending a particular college. It includes direct educational costs (tuition, fees, books, and supplies) as well as indirect costs (room and board, transportation, and personal expenses).

(5) Expected Family Contribution (EFC)--The amount of discretionary income that should be available to a student from his or her resources and that of his or her family, as determined following the federal methodology.

(6) Financial need--For this program, financial need is the cost of attendance less the expected family contribution less the Pell Grant eligibility amount. The cost of attendance and family contribution are to be determined in accordance with Board guidelines.

(7) Full-time enrollment--Enrollment of at least 12 semester credit hours.

(8) Institution of Higher Education--Any public technical institute, public junior college, public senior college or university, medical or dental unit or other agency of higher education as defined in Texas Education Code, §61.003(6).

(9) Pell Grant--Educational federal grant program sponsored by the U. S. Department of Education. Grants are awarded based on a "financial need" formula determined by the U. S. Congress using criteria submitted through the Free Application for Federal Student Aid (FAFSA).

(10) Program Officer--The individual named by each participating institution's chief executive officer to serve as agent for the Board. The Program Officer has primary responsibility for all ministerial acts required by the program, including maintenance of all records and preparation and submission of reports reflecting program transac-

tions. Unless otherwise indicated by the administration, the director of student financial aid shall serve as Program Officer.

(11) Recommended or Distinguished Achievement High School Program--The high school college preparatory curriculum required under Texas Education Code §28.025(a).

(12) Resident of Texas--A resident of the State of Texas as determined in accordance with Chapter 21, Subchapter B, of this title (relating to Determination of Resident Status and Waiver Programs for Certain Nonresident Persons). Nonresident students eligible to pay resident tuition rates are not included.

(13) Scholarship--An award of gift aid that does not have to be repaid by the student or earned through service or performance.

(14) Shortage fields--Workforce fields where there are a shortage of qualified workers as determined by the Commissioner of Higher Education.

§22.198. Relevant Institutions.

The provisions of these rules apply to persons attending any Texas institution of higher education.

§22.199. Eligible Students.

To qualify for an award through this subchapter, a student must:

(1) have graduated from an accredited high school in Texas while ranked in the top 10 percent of his or her graduating class (based on the student's ranking at the end of his or her seventh semester unless an institution of higher education uses a different semester in determining eligibility for admissions),

(2) have completed the Recommended or Distinguished Achievement High School Program in an accredited high school or its equivalent,

(3) complete the Free Application for Federal Student Aid (FAFSA),

(4) have unmet financial need when using the formula Cost of Attendance minus EFC minus Pell Grants,

(5) enroll in an institution of higher education in Texas the fall semester immediately following high school graduation,

(6) be a Texas resident, and

(7) be enrolled full-time.

§22.200. Award Amounts and Recipient Selection.

(a) Funding. The statewide aggregate of funds awarded may not exceed the amount appropriated for that purpose.

(b) Award Amount. Award amounts through this program may not exceed $2,000 unless the student is classified as a junior or senior at a public institution in Texas with a declared major in a shortage field and meets the satisfactory academic progress requirements outlined in §22.201 of this title (relating to Satisfactory Academic Progress), in which case the student may be eligible for a bonus of $2,000 to the extent funds are available for such. The total award amount for students with declared majors in shortage fields may not exceed $4,000.

(c) Recipient Selection. Each high school will submit applications from students who are determined to be ranked in the top 15 percent of their high school graduating class based on the students ranking at the end of his or her sixth semester. Award eligibility will be based on each student's ranking at the end of his or her seventh semester unless an institution of higher education uses a different semester's ranking in determining eligibility for admissions.

§22.201. Satisfactory Academic Progress.

(a) To the extent funds are available, students may receive continuation awards if they meet the satisfactory academic progress requirements outlined in this section.

(b) Unless qualifying for an exception in keeping with subsection (d) of this section, to qualify for an award in a subsequent year, each recipient of the Top 10 Percent Scholarship shall meet the following academic progress requirements as of the end of his or her most recent academic year:

(1) complete at least 75 percent of the hours attempted in his or her most recent twelve-month academic year, as determined by institutional policies,

(2) complete at least 30 semester credit hours in his or her most recent twelve-month academic year, and

(3) maintain an overall grade-point average of at least 3.25 on a four-point scale or its equivalent for all coursework completed at his or her current institution of higher education. A recipient who does not meet the academic progress requirements of his or her institution may not receive an award until the institution has determined that the student has raised his or her academic performance and program requirements have been met.

(c) For students with declared majors in shortage areas at the end of the sophomore and junior year, each recipient of the Top 10 Percent Scholarship shall meet the following academic progress requirements to qualify for a subsequent award to the extent funds are available for such:

(1) complete at least 75 percent of the hours attempted in his or her most recent twelve-month academic year, as determined by institutional policies,

(2) complete at least 30 semester credit hours in his or her most recent twelve-month academic year, and

(3) maintain an overall grade-point average of at least 3.0 on a four-point scale or its equivalent for all coursework completed at his or her current institution of higher education. A recipient who does not meet the academic progress requirements may not receive an award until the institution has determined that the student has raised his or her academic performance and program requirements have been met.

(d) A grant recipient who is below program grade-point average requirements as of the end of a spring or summer term may appeal his or her grade-point average calculation if he or she has taken courses previously at one or more different institutions. In the case of such an appeal, the current institution (if presented with transcripts from the previous institutions) shall calculate an overall grade-point average, counting all classes and grade points previously earned. If the resulting grade-point average exceeds the program's academic progress requirement, a student may receive an award in the following fall term.

(e) Unless granted a hardship postponement in accordance with subsection (f) of this section, a student's eligibility for a Top 10 Percent Scholarship ends four years from the start of the semester or term in which the student received his or her first disbursement of an initial Top 10 Percent award.

(f) In the event of a hardship or for other good cause, the program officer at an eligible institution may allow an otherwise eligible person to receive a Top 10 Percent Scholarship award while the student's grade-point average or completion rate or number of completed hours falls below the satisfactory academic progress requirements of subsection (a) or (b) of this section. Such conditions are not limited to, but include:

(1) a showing of a severe illness or other debilitating condition that may affect the student's academic performance,

(2) an indication that the student is responsible for the care of a sick, injured, or needy person and that the student's provision of care may affect his or her academic performance, or

(3) the requirement of fewer than twelve hours to complete one's degree plan.

(g) The program officer may grant an extension of the year limits found in subsection (c) of this section in the event of hardship. Documentation justifying the extension must be kept in the student's files and the institution must identify students granted extensions and the length of their extensions to the Board Staff so that it may appropriately monitor each student's period of eligibility.

(h) Each institution shall adopt a hardship policy under this section and have the policy available in writing in the financial aid office for public review upon request.

§22.202. Processing and Awarding Cycle.

(a) The Board Staff is responsible for publishing and disseminating general information and program rules for the program described in this subchapter.

(b) Institutions of higher education will be responsible for collecting information necessary to identify eligible students. All eligible students must be notified of their awards on their financial aid award letter/notification.

(c) Form of Award: Institutional Reimbursement. Institutions shall exempt recipients from the payment of tuition and fees (up to the amount of the scholarship) and then request reimbursement from the Board Staff.

(d) Requesting Reimbursements. To request reimbursement for student awards, institutions must complete and submit a Request for Reimbursement Form designed and distributed by the Board Staff.

(e) Disbursements by the Board Staff. The Board Staff will process institutional Requests for Reimbursement at least once a month and will subsequently have appropriate amounts transferred to institutions or the institutions' fiduciary agents by the State Comptroller's office.

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

Filed with the Office of the Secretary of State on October 30, 2008.

TRD-200805734
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective Date: October 30, 2008
Expiration Date: February 26, 2009
For further information, please call: (512) 427-6114

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PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 55. CHILD SUPPORT ENFORCEMENT

SUBCHAPTER D. FORMS FOR CHILD SUPPORT ENFORCEMENT

1 TAC §§55.115 - 55.119

The Office of the Attorney General, Child Support Division proposes amendments to 1 TAC §§55.115 - 55.119, regarding forms for child support enforcement. The proposed amendments to §§55.115 - 55.118 reflect the new name of the Income Withholding for Support, formerly known as the Order/Notice to Withhold Income for Child Support, and additional revisions as authorized by state and federal statutes. In addition, the amendment to §55.119 is to conform to the Notice of Lien authorized by the U.S. Department of Health and Human Services, Office of Child Support Enforcement.

Alicia G. Key, Deputy Attorney General for the Child Support Division, has determined that for the first five years the amended sections as proposed are in effect, there will be no significant fiscal implications for state or local government.

Ms. Key has also determined that for each year of the first five years the amended sections as proposed are in effect, the public benefit as a result of the amended sections will be compliance forms authorized by state and federal statutes.

Ms. Key has also determined that for the first five years the amended sections as proposed are in effect, there will be no significant fiscal implications for small businesses or individuals. In addition, there will be no local employment impact as a result of the amended sections as proposed.

Comments on this proposal should be submitted to Kathy Shafer, Deputy Director, Legal Counsel Division, Child Support Division, Office of the Attorney General, (physical address) 5500 East Oltorf, Austin, Texas 78741 or (mailing address) P.O. Box 12017, Mail Code 044, Austin, Texas 78711-2017.

The proposed amendments are authorized by Texas Family Code §157.313 and §158.106.

The proposed amendments affect Texas Family Code Chapters 157 and 158.

§55.115. Form for Employer's Motion for Hearing on Applicability of Writ or Order of Withholding.

The following form is to be used by an employer of the obligor to request judicial determination as to the applicability of a writ or court order of withholding under the Texas Family Code §158.205. "Employer" is broadly defined in the Texas Family Code §101.012, to include individuals, partnerships, worker's compensation insurance carriers, governmental entities and the United States, or any other entity that pays or owes earnings to an individual.
Figure: 1 TAC §55.115

§55.116. Notice of Administrative Writ of Withholding and the Income Withholding for Support [~~Order/Notice to Withhold Income for Child Support~~].

(a) (No change.)

(b) This form is issued by the Title IV-D agency or domestic relations office to initiate withholding for the enforcement of an existing order.
Figure: 1 TAC §55.116(b)

§55.117. Request for Issuance of Income Withholding for Support [~~Order~~].

This form is used to request issuance of the Income Withholding for Support [~~Order/Notice to Withhold Income for Child Support~~].
Figure: 1 TAC §55.117

§55.118. Income Withholding for Support [~~Order/Notice to Withhold Income for Child Support~~].

This form is federally mandated for use in IV-D and non IV-D cases. [~~and may be~~] It is used as a judicial [~~or administrative~~] withholding document, when issuing an original withholding order [~~document~~], amended withholding order [~~document~~], or to terminate withholding.
Figure: 1 TAC §55.118

§55.119. Forms for Child Support Lien Notice, for Release of Child Support Lien, and for Partial Release of Child Support Lien.

(a) The following form is to be filed with the county clerk of a county in which real or personal property of the obligor is believed to be located in accordance with the Texas Family Code, Chapter 157, Subchapter G. Notice of the lien may be given to any person known to be in possession of real or personal property of the obligor, and if such notice is given the property may not be paid over, released, sold, transferred, encumbered, or conveyed without incurring the penalties provided by the Texas Family Code, §157.324.
Figure: 1 TAC §55.119(a)

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

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

Filed with the Office of the Secretary of State on November 3, 2008.

TRD-200805779
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Earliest possible date of adoption: December 14, 2008
For more information regarding this publication, contact Cindy Hodges, Agency Liaison, at (512) 936-1841.

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TITLE 10. COMMUNITY DEVELOPMENT

PART 6. OFFICE OF RURAL COMMUNITY AFFAIRS

CHAPTER 255. TEXAS COMMUNITY DEVELOPMENT PROGRAM

SUBCHAPTER A. ALLOCATION OF PROGRAM FUNDS

10 TAC §255.7

The Office of Rural Community Affairs (OCRA) proposes amendments to §255.7, concerning the Texas Capital Fund. On April 3, 2008, the ORCA Board of Directors approved the first publication of this rule proposal for comment. The notice was published in the May 16, 2008, issue of the *Texas Register* (33 TexReg 3858) for a 30-day comment period. By the close of the comment period on June 16, 2008, substantive comments on many of the proposed changes had been received from 13 different parties. Because the Texas Department of Agriculture and ORCA agreed with some of the comments but could not incorporate them into the rules without another round of publication for comment, ORCA is withdrawing the proposal and proposing a revised rule for comment. The withdrawn rule appears elsewhere in this issue of the *Texas Register*. The comments received during the comment period ending June 16 have been reviewed and considered in this new proposal.

The proposed amendment to §255.7(c) will allow the Texas Department of Agriculture (TDA) to accept untimely applications in certain circumstances when the delay was caused by extenuating circumstance that were unforeseeable by the applicant. This proposed amendment will apply to the Texas Capital Fund grants, Main Street Program and Downtown Revitalization Program. The proposed amendment to §255.7(h) requires Main Street Program and Downtown Revitalization Program applicants to only submit one application to the TDA to be evaluated by both by the Texas Historical Commission (THC) and TDA. The proposed amendment to §255.7(i), affecting the scoring of Main Street Program applications, includes basing poverty information on the individual decennial Census data; broadening those agencies that will meet the criteria requiring a letter endorsing the project's effect on historical assets and preservation; lowering the threshold for the percentage of letters required from affected businesses; eliminating the requirement for an engineer to prepare a 5 year infrastructure report; diversifying point allocation for historic preservation activities by awarding points not only for having enacted an historic preservation ordinance, but also for having main street design guidelines and awarding points based on the percentage of businesses occupying the project area; eliminating the criteria based on nominations or activity with the Historic Preservation Commission. The proposed amendment to §255.7(l), affecting the scoring of Downtown Revitalization Program applications, includes reducing the total points attainable; eliminating the criteria based on unemployment statistics; basing poverty information on the individual decennial Census data; broadening those agencies that will meet the criteria requiring a letter endorsing the project's effect on historical assets and preservation; eliminating the criteria based on providing letters from 70% or more of the affected businesses; eliminating the criteria based on designation as a state or federal enterprise or defense zone; awarding points based on the percentage of businesses located in the project area.

Charles (Charlie) S. Stone, Executive Director, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section, as amended.

Mr. Stone also has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the section will be the equitable allocation of CDBG non-entitlement area funds to eligible units of general local government in Texas. There will be no effect on small or large businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Karl Young, Finance Programs Coordinator, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposed amendments in the *Texas Register*.

The amendments to §255.7 are proposed under the Texas Government Code §487.052, which provides the Office of Rural Community Affairs with the authority to adopt rules and administrative procedures to carry out the provisions of Chapter 487 of the Texas Government Code.

The Texas Government Code, Chapter 487, is affected by the proposal.

§255.7. Texas Capital Fund.

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

(c) Application Dates. The TCF (except for the main street program and the downtown revitalization program) is available up to four times during the year, on a competitive basis, to eligible applicants statewide. Applications for the main street program and the downtown revitalization program are accepted annually. Applications will not be accepted after 5:00 p.m. on the final day of submission, unless the applicant can demonstrate that the untimely submission was due to extenuating circumstances beyond the applicant's control. The application deadline dates are included in the program guidelines.

(d) - (g) (No change.)

(h) Application process for the main street program. The application and selection procedures consist of the following steps:

(1) Each applicant must submit one [~~two~~] complete application [~~applications~~] to TDA [~~Texas Historical Commission (THC)~~]. No changes to the application are allowed after the application deadline date, unless they are a result of TDA staff recommendations. Any change that occurs will only be considered through the amendment/modification process after the contract is signed.

(2) Upon receipt of the applications, staff from the Texas Historical Commission (THC) and TDA evaluate the [~~THC evaluates~~]

applications based on the scoring criteria and ranks them in descending order.

(3) - (8) (No change.)

(i) Scoring criteria for the main street program. There is a minimum 25-point threshold requirement. Applications will be reviewed for feasibility and placed in descending order based on the scoring criteria. There is a total of 100 points possible.

(1) In the event of a tie score, the following tie breaker criteria will be used.

(A) The tying applications are ranked from lowest to highest based on the applicant's most recently available individual decennial Census [annual county] poverty rate [as provided in Appendix A of the application]. Thus, preference is given to the applicant with the higher poverty rate.

(B) (No change.)

(2) Project Feasibility (maximum 50 [70] points). Measures the applicant's potential for a successful project. Each applicant must submit detailed and complete support documentation for each category. Compliance with the ten criteria for Main Street Recognition is required. First year Main Street Cities must receive prior approval from THC to apply and must submit the Main Street Criteria for Recognition Survey with the TCF application. The criteria include the following:

(A) Broad-based public support for the proposed project--(10 points). Show letters of support from the following:

(i) Score 5 points for providing a letter from the County Historic Preservation Commission, the local design review board, the Economic Development Corporation or Chamber of Commerce supporting the project and describing how the project enhances the community's historic assets and historic preservation goals. [one letter from the County Historical Commission (A letter of support from the County Historical Commission is required to receive any points in this category.)]

(ii) Score 5 [10] points for letters from 50% [75%] or more of the businesses and/or property owners impacted by the proposed project within the designated Main Street district [in the proposed Texas Capital Fund project area]. This specifically includes businesses within one (1) block of the proposed improvements.

(B) Infrastructure Project Plan--(10 points). [Show the city's plan for dealing with an infrastructure project. Develop a plan for access to local business during the infrastructure project. Provide public notification to support the project.]

(i) Score 5 points for providing the city's plan for dealing with an infrastructure project, including a detailed description of how access will be provided to affected businesses during project construction.

(ii) Score 5 points for providing a general description of future infrastructure projects in the Main Street area, over the next five years, and the potential impact to the area.

(C) Sidewalks and ADA Compliance Goals--(10 points). [Does the project address ADA accessibility issues? How will ADA issues be addressed in the project. If project does not address ADA compliance issues, is the Main Street District in compliance with Federal ADA standards. If the project does not address ADA compliance, no points will be awarded for this category. Partial points may be awarded depending upon the degree in which the project addresses ADA compliance issues.]

(i) 5 Points awarded if a minimum of 50% of the requested funds will be used for sidewalk and/or ADA compliance activities, and

(ii) 10 points awarded if a minimum of 70% of the requested funds will be used for sidewalk and ADA compliance activities.

(D) Historic Preservation Ethic and [Preservation] Impact[--Main Street's Role]--(10 points). Preservation is a major component of the THC's Main Street program. [Officially designated cities are eligible for the Texas Capital Fund grant based on their inclusion in the Texas Main Street program. Points will be awarded if the applicant has successfully addressed the criteria as follows: if the applicant successfully addressed the issue of enhancing historic assets and/or historic preservation goals, up to 5 points may be awarded. If the applicant has demonstrated that they have a current historic preservation ordinance, up to 3 points may be awarded based upon the content of the ordinance. Up to 2 points may be awarded for historic preservation-related programs or incentives. The THC mission is "To protect and preserve the state's historic and prehistoric resources for the use, education, enjoyment and economic benefit of present and future generations." Therefore, in the interest of accomplishing our mission, please answer the following:]

[(i) Describe how the proposed Texas Capital Fund project enhances your historic assets or historic preservation goals.]

(i) [(ii)] Award 5 points to applicants that [Does the city] have a current historic preservation ordinance.[?]

(ii) Award 5 points to applicants that have design guidelines for the Main Street program or project area.

[(iii) Does the city have any historic preservation related programs or incentives?]

[(iv) List any building demolitions within your Main Street project area during the past five years. If you had any building demolitions in the past five years, what was the age of the buildings that were demolished?]

(E) [State Enterprise Zone and] Economic Development Consideration--(5 [10] points) Five [Four points will be awarded if the city has a nominated or active Enterprise Zone project. Three] points will be awarded if the city has the economic development sales tax (4A, 4B or both). [Three points may be awarded for other viable economic development programs the city offers in order to further realize its full economic development potential. Please document any other economic development programs and strategies that your city is engaged in.]

[(F) Community Size--(10 points). Score 5 points if the population of the city is 12,000 or less; score additional 5 points if the population is less than 4,000, using 2000 census data. City population figures are net of the population held in adult or juvenile correctional institutions, as shown by the 2000 census data.]

(F) [(G)] Main Street Program Participation--(5 points). Points are awarded on the applicant's continuous participation in the Main Street program as follows: For every two years of continuous participation in the Main Street program, the applicant will be awarded 1 point. Points will only be awarded for every two consecutive years and will not be broken into half points for increments other than two-year increments. If a city leaves the Main Street program and then returns at a later date, "continuous participation" will be calculated from the date that they returned to the program. Applicants will receive the maximum amount of points if they have participated in the program for 10 continuous years.

[(H) Texas Capital Fund Grant Training--(5 points). Has a city representative attended a Texas Capital Fund Main Street Improvements grant training workshop? At least one training workshop is held prior to each application deadline. List the date attended and the location. If the city is retaining a paid consultant to prepare the application, a city representative will still be required to attend training in order to receive the points in the category.]

(3) Applicant (maximum 50 [30] points). There are six [three] applicant scoring categories each worth 5 to 20 [10] points.

(A) (No change.)

(B) Leverage/Match (maximum 10 points). A 10% cash match is required for the grant. Additional points will be given for additional matching funds as follows:[.] 10% additional match equals 5 points. 20% additional match equals 10 points. The additional match may be cash and/or in-kind.

(C) Main Street Standing (maximum 5 [10] points). If the Main Street program received national Recognition the prior year, 5 [10] points will be awarded.

(D) Community Size--(10 points). Award 5 points if the population of the city is 12,000 or less; score additional 5 points if the population is less than 4,000, using the most recent decennial census data. City population figures are net of the population held in adult or juvenile correctional institutions.

(E) Texas Capital Fund Grant Training--Score 5 points if a city official/employee has attended a TCF, Main Street Improvements and/or Downtown Revitalization application training workshop, within the previous two (2) years.

(F) Poverty Level (maximum 10 points). Award 5 points if the city's most recent decennial Census, individual poverty rate is equal to or greater than the state poverty rate or award 10 points if the city rate is 15% or more over the state rate.

(j) - (k) (No change.)

(l) Scoring criteria for the downtown revitalization program. There are a total of 90 [100] points.

(1) In the event of a tie score and insufficient funds to approve all applications, the following tie breaker criteria will be used.

(A) The tying applications are ranked from lowest to highest based on applicant's most recently available individual decennial Census [annual county] poverty rate[, as provided in Appendix A of the application]. Thus, preference is given to the applicant with the higher poverty rate.

(B) (No change.)

(2) Maximum 100 points.

[(A) Unemployment (maximum 10 points). Five points awarded if the applicant's quarterly county unemployment rate (the most recently available 3 months will be used) is higher than the state rate, indicating that the city is economically below the state average. Ten points awarded if the applicant's most recently available quarterly county unemployment rate is 1.5% over the state rate.]

(A) [(B)] Poverty (maximum 10 [15] points). Awarded if the applicant's most recently available decennial [annual county] poverty rate for individuals [(from the 2000 Census)] is higher than the annual state rate for individuals [(from the 2000 Census)], indicating that the community is economically below the state average. Applicants will score 5 points if their rate meets or exceeds the state average of 15.4% and[;] score 10 points if this figure exceeds 17.7%[; and score 15 points if this figure exceeds 19.25%].

(B) Economic Development Consideration--(5 points) awarded if the city has passed the economic development sales tax (4A, 4B or both).

[(C) Enterprise/Empowerment/Defense Zone (maximum 5 points). A project located in a state designated enterprise zone, federal enterprise community, federal empowerment zone, or defense zone receives these five points.]

(C) [(D)] Previous Contracts (Maximum 10 points). Award 5 points if the community has been awarded one contract in the current calendar year or preceding 2 calendar years. Award 10 points if the community has been awarded zero contracts in the current calendar year or the preceding 2 calendar years.

(D) [(E)] Community Population (maximum 10 points). Points are awarded to applying cities with populations of 5,050 or less, using 2000 census data. Score 5 points if the city is located in a county with a population of 35,000 or less; and score 5 additional points if the population of the city is less than 5,050. Community population figures are net of the population held in adult or juvenile correctional institutions, as shown by the 2000 census data.

(E) [(F)] Per Capita Income (maximum 10 points). Awarded to cities that have a per capita income below $19,617.

(F) [(G)] Leverage/Match (maximum 10 points). A 10% cash match is required for the grant. Additional points will be given for additional matching funds. 10% additional match equals 5 points. 20% additional match equals 10 points. The additional match can be cash and/or in-kind.

(G) Award 5 points to applicants if 50% or more of the structures within the project area are occupied by businesses.

(H) Minority Hiring (maximum 10 points). Measures applicant's hiring practices. Award 5 points if the city's minority employment rate is equal to or greater than the community minority percentages rate. Award 10 points if the city's minority employment rate is equal to or greater than 125% of the community minority percentage rate or in cities where the minority population is 80% or greater, the applicant must employ 95% minorities.

(I) Broad-based public support for the proposed project--(10 points). Show letters of support from the following: [Commercial Support (maximum 10 points). Award 5 points for letters from 50% or more of the businesses in the Downtown Revitalization area. Award 10 points for letters from 75% of the businesses in the Downtown Revitalization area.]

(i) Score 5 points for providing a letter from one of the following: the County Historic Preservation Commission, the local design review board, the Economic Development Corporation or Chamber of Commerce supporting the project and describing how the project enhances the community's historic assets and historic preservation goals.

(ii) Score 5 points for letters from 50% or more of the businesses and/or property owners impacted by the proposed project within the downtown business district. This specifically includes businesses within one (1) block of the proposed improvements.

(J) Sidewalks and ADA Compliance Goals--(10 points total). Five points awarded if a minimum of 50% of the requested funds will be used for sidewalk and/or ADA compliance activities; and 10 points [Points] awarded if a minimum of 70% of the requested funds will be used for sidewalk and/or ADA compliance activities.

(K) Poverty Level (maximum 10 points). Award 5 points if the city's most recent decennial Census, individual poverty

rate is equal to or greater than the state poverty rate or award 10 points if the city rate is 15% or more over the state rate.

(m) (No change.)

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

Filed with the Office of the Secretary of State on November 3, 2008.

TRD-200805785
Charles S. (Charlie) Stone
Executive Director
Office of Rural Community Affairs
Earliest possible date of adoption: December 14, 2008
For further information, please call: (512) 936-6734

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TITLE 13. CULTURAL RESOURCES

PART 3. TEXAS COMMISSION ON THE ARTS

CHAPTER 35. A GUIDE TO OPERATIONS, PROGRAMS AND SERVICES

13 TAC §35.1

The Texas Commission on the Arts (commission) proposes the amendment of §35.1 concerning a Guide to Operations.

The purpose of the proposed amendment is to be consistent with changes to programs and services of the commission and change the name of the Guide to Operations as outlined in the Guide to Programs and Services as amended October 2008.

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

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

Comments on the proposal may be submitted to Gaye Greever McElwain, Texas Commission on the Arts, P.O. Box 13406, Austin, Texas 78711-3406. Comments will be accepted through 5:00 p.m. on November 14, 2008.

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

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

§35.1. A Guide to Programs and Services [A ~~Guide to Operations~~].

The commission adopts by reference A Guide to Programs and Services (revised October 2008) [~~A Guide to Operations (revised October 2007)~~]. This document is published by and available from the Texas Commission on the Arts, P.O. Box 13406, Austin, Texas 78711. This document is also available online at www.arts.state.tx.us.

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

Filed with the Office of the Secretary of State on October 29, 2008.

TRD-200805711
Gary Gibbs, Ph.D.
Executive Director
Texas Commission on the Arts
Earliest possible date of adoption: December 14, 2008
For further information, please call: (512) 936-6562

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13 TAC §35.2

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

The Texas Commission on the Arts (commission) proposes to repeal §35.2, concerning a Guide to Operations, Programs and Services.

The purpose of the proposed repeal is to be consistent with changes to programs and services of the commission as outlined in the Guide to Programs and Services as amended October 2008 in §35.1.

Gary Gibbs, Executive Director, Texas Commission on the Arts, has determined that, for the first five-year period the repeal is in effect, the anticipated public benefit will be the repeal of obsolete material thereby clarifying correct information for Texas organizations and citizens. There will be no fiscal implications for state or local government as a result of enforcing the repeal as proposed.

Mr. Gibbs also has determined that, for each year of the first five years the proposed repeal is in effect, there is no anticipated economic cost to persons who are required to comply with the repeal as proposed. There will be no effect to small or micro businesses.

Comments on the proposed repeal may be submitted to Gaye Greever McElwain, Texas Commission on the Arts, P.O. Box 13406, Austin, Texas 78711-3406. Comments will be accepted through 5:00 p.m. on November 14, 2008.

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

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

§35.2. A Guide to Programs and Services.

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

Filed with the Office of the Secretary of State on October 29, 2008.

TRD-200805713
Gary Gibbs, Ph.D.
Executive Director
Texas Commission on the Arts
Earliest possible date of adoption: December 14, 2008
For further information, please call: (512) 936-6562

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TITLE 16. ECONOMIC REGULATION

PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 33. LICENSING
SUBCHAPTER A. APPLICATION PROCEDURES

16 TAC §33.13

The Texas Alcoholic Beverage Commission proposes new §33.13, relating to the processing of applications for beer licenses, wine and beer retailer's permits, and wine and beer retailer's off-premises permits. The rule would require applications for the above referenced licenses and permits to be presented to the commission for processing prior to filing of such applications with the county judge for hearing as commanded by §6.31 of the Alcoholic Beverage Code.

Lou Bright, General Counsel, has determined that for each of the first five years the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. He has also determined that for each of the first five years the rule is in effect there will be no fiscal implications on small or micro-businesses.

Mr. Bright has determined that for each of the first five years the rule is in effect the public will benefit from this rule by the achievement of more efficient and timely processing of applications for alcoholic beverage licenses and permits.

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

The new rule is proposed under the authority of §5.31 of the Alcoholic Beverage Code (Code), which provides the Texas Alcoholic Beverage Commission with the authority to prescribe and publish rules necessary to carry out the provisions of the Code.

Cross Reference: Section 5.31 and §6.31 of the Alcoholic Beverage Code will be affected by the proposed new rule.

§33.13. Application for Beer License.

(a) This rule relates to §61.31 of the Alcoholic Beverage Code.

(b) Prior to filing an application for license or permit to manufacture, distribute, store, or sell beer with a county judge as required by §61.31 of the Alcoholic Beverage Code, a completed application shall be presented to the commission.

(c) An application presented under subsection (b) of this section shall be processed by the commission in accordance with the practices, policies, and standards relating to the processing of applications for permits made under §11.31 of the Alcoholic Beverage Code. The administrator or his/her designee shall conduct such processing to determine initial compliance with all provisions of the Alcoholic Beverage Code and rules of the commission by the applicant or whether there is legal reason to deny the application as required by §61.33(b) of the Alcoholic Beverage Code.

(d) On completion of its processing, the administrator or his/her designee shall return the application and all related documents to the applicant. The applicant may then file the application with the county judge as mandated by §61.31(a) of the Alcoholic Beverage Code. The administrator or his/her designee shall present any grounds for denial of the application at the hearing conducted pursuant to §61.31(b) and §61.32 of the Alcoholic Beverage Code.

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

Filed with the Office of the Secretary of State on October 30, 2008.

TRD-200805735
Alan Steen
Administrator
Texas Alcoholic Beverage Commission
Earliest possible date of adoption: December 14, 2008
For further information, please call: (512) 206-3204

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PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 401. ADMINISTRATION OF STATE LOTTERY ACT
SUBCHAPTER B. LICENSING OF SALES AGENTS

16 TAC §401.153

The Texas Lottery Commission (Commission) proposes amendments to 16 TAC §401.153 (relating to Qualifications for License). The purpose of the amendments is to redefine the term "professional gambler" as used in the State Lottery Act, Texas Government Code, Chapter 466 and the rules of the Commission.

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

Michael Anger, Director of the Lottery Operations Division, has determined that for each year of the first five years the proposed amendments would be in effect, the public benefit anticipated from the adoption of the proposed amendments is providing li-

censees and others with a clear meaning of the term "professional gambler" as it relates to qualifications for licensing of sales agents.

The Commission requests comments on the proposed amendments from any interested person. Comments may be submitted to Sandra Joseph, Special Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at www.legal.input@lottery.state.tx.us. The Commission will hold a public hearing on this proposal at 2:00 p.m. on December 4, 2008, at 611 E. 6th Street, Austin, Texas 78701. Comments must be received within 60 days after publication of this proposal in order to be considered.

The amendments are proposed under Texas Government Code, §466.015, which provides the Commission with the authority to adopt rules governing the operation of the lottery. The amendments are also proposed under Texas Government Code, §467.102, which provides the Commission with the authority to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

Texas Government Code, Chapter 466, is affected by this proposal.

§401.153. Qualifications for License.

(a) (No change.)

(b) The director may grant or deny an application for a license under this subchapter based on any one or more factors listed in subsection (a) of this section. In addition, the director shall deny an application for a license under this subchapter upon a finding that the applicant:

(1) (No change.)

(2) is or has been a professional gambler. The term "professional gambler" means a person who:

(A) has three or more convictions for one or more of the offenses proscribed by Title 10, Chapter 47, Sections 47.02, 47.03, 47.04, and 47.05 of the Texas Penal Code or convictions for offenses in other jurisdictions, the principal elements of which are fundamentally those proscribed by the above referenced penal statutes. The convictions may be for one, or a combination of offenses, and may be from any one or a combination of jurisdictions; or

(B) has been convicted under the laws of any governing jurisdiction of being a professional gambler.

~~[(2) is or has been a professional gambler. A "professional gambler" is a person whose profession is, or whose major source of income derives from, playing games of chance for profit;]~~

(3) - (10) (No change.)

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

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

Filed with the Office of the Secretary of State on October 30, 2008.

TRD-200805746

Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Earliest possible date of adoption: December 14, 2008
For further information, please call: (512) 344-5012

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CHAPTER 402. CHARITABLE BINGO ADMINISTRATIVE RULES
SUBCHAPTER A. ADMINISTRATION

16 TAC §402.103

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

The Texas Lottery Commission (Commission) proposes the repeal of 16 TAC §402.103 (relating to Training Program). The repeal is proposed concurrently with proposed new 16 TAC §402.103 (relating to Training Program). The purpose of the proposed repeal and proposed new rule is to provide the opportunity for members of licensed authorized organizations to complete training required in Tex. Occ. Code §2001.107 by utilizing the internet.

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

Philip D. Sanderson, Director of the Charitable Bingo Operations Division, has determined that for each year of the first five years the proposed repeal will be in effect, the public benefit anticipated is greater convenience and flexibility for persons to complete the training required by Tex. Govt. Code §2006.001(2).

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

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

The proposed repeal implements Texas Occupations Code, Chapter 2001.

§402.103. Training Program.

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

Filed with the Office of the Secretary of State on October 30, 2008.

TRD-200805751
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Earliest possible date of adoption: December 14, 2008
For further information, please call: (512) 344-5012

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16 TAC §402.103

The Texas Lottery Commission (Commission) proposes new 16 TAC §402.103 (relating to Training Program). The purpose of the new rule is to provide the opportunity for members of licensed authorized organizations to complete training required in Tex. Occ. Code §2001.107 by utilizing the internet.

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

Philip D. Sanderson, Director of the Charitable Bingo Operations Division, has determined that for each year of the first five years the proposed new rule will be in effect, the public benefit anticipated is greater convenience and flexibility for persons to complete the training required by Tex. Occ. Code §2001.107.

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

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

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

§402.103. Training Program.

(a) Definitions.

(1) On-line training class--A training class developed by the Commission that is accessible on the Commission's website and may be taken at any time.

(2) On-site training class--A training class conducted by a Commission employee held at a specified date, time, and location.

(b) Training classes. The training program is offered in two formats. Individuals may choose an on-site or on-line training class.

(c) On-site training class.

(1) Notice of the specified date, time and location of scheduled on-site training classes will be posted on the Commission's website and published in the Bingo Bulletin.

(2) A person attending an on-site training class should pre-register by:

(A) completing an electronic submission form prescribed by the Commission located on the Commission's website; or

(B) telephoning the Commission's headquarters location and providing the information requested on the electronic submission form prescribed by the Commission.

(3) Each individual attending the training program must complete a confirmation of attendance on a form prescribed by the Commission.

(4) All reasonable and necessary expenses or costs of attendance by any member of the licensed authorized organization may be paid from the licensed authorized organization's bingo bank account. Expenses and costs are limited to travel, lodging, meals, and materials.

(5) In the event the Charitable Bingo Operations Division cancels the on-site training, reasonable effort will be made to notify persons who have pre-registered.

(d) On-line training class.

(1) Persons taking the on-line training class must:

(A) complete all training modules specified on the Commission's website; and

(B) complete a test answer sheet and receive a passing score of at least 70%.

(2) Persons not receiving a passing score on the test answer sheet may re-take the training class.

(e) The Charitable Bingo Operations Division will issue a Certificate of Completion that is valid for two years to persons who attend the entire on-site training class or satisfactorily complete the on-line training.

(f) Training Required.

(1) At all times, the bingo chairperson and any operator designated by a licensed authorized organization holding a regular license to conduct bingo must have a valid Certificate of Completion for the training program.

(2) The bingo chairperson and at least one other person designated as an operator under Occupations Code, §2001.102(b)(10) must have a valid Certificate of Completion prior to the date a regular license is issued or a license amendment to change the primary operator is approved.

(3) Other officers, directors or members from a licensed authorized organization may attend training.

(4) The Charitable Bingo Operations Division may limit the number of persons attending an on-site class for a licensed authorized organization in order to ensure persons from other licensed authorized organizations have the opportunity to attend training.

(g) Content of the training. The training program will cover, at a minimum, the following areas:

(1) General information about the Bingo Enabling Act and Charitable Bingo Administrative Rules;

(2) Conducting a bingo game;

(3) Record keeping requirements;

(4) Administration and operation of charitable bingo;

(5) Promotion of a bingo game;

(6) Bingo Advisory Committee; and

(7) General information about the license application process.

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

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Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
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For further information, please call: (512) 344-5012

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16 TAC §402.104

The Texas Lottery Commission (Commission) proposes new 16 TAC §402.104 (relating to Professional Gambler and Gambling Promoter). The purpose of the new rule is to define the terms "professional gambler" and "gambling promoter" as used in the Bingo Enabling Act, Texas Occupations Code, Chapter 2001.

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

Philip D. Sanderson, Director of the Charitable Bingo Operations Division, has determined that for each year of the first five years proposed new rule will be in effect, the public benefit anticipated is providing licensees and others with clear and concise meanings of the terms "professional gambler" and "gambling promoter" as related to the eligibility of a person for a manufacturer's or distributor's license.

The Commission requests comments on the proposed new rule from any interested person. Comments on the proposed rule may be submitted to Sandra Joseph, Special Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at www.legal.input@lottery.state.tx.us. The Commission will hold a public hearing on this proposal at 2:00 p.m. on Thursday, December 4, 2008, at 611 E. 6th Street, Austin, Texas 78701. Comments on the proposed new rule must be received within 60 days after publication in order to be considered.

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

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

§402.104. Professional Gambler and Gambling Promoter.

(a) The term "gambling promoter" means a person who has been convicted of an act:

(1) proscribed by Title 10, Chapter 47, §47.03 of the Texas Penal Code; or

(2) in any state or governing jurisdiction outside of the United States that is fundamentally equivalent to promotion of gambling as proscribed by Title 10, Chapter 47, §47.03 of the Texas Penal Code.

(b) The term "professional gambler" means a person who:

(1) has three or more convictions for one or more of the offenses proscribed by Title 10, Chapter 47, §§47.02, 47.03, 47.04, and 47.05 of the Texas Penal Code or convictions for offenses in other jurisdictions, the principal elements of which are fundamentally those proscribed by the above referenced penal statutes. The convictions may be for one, or a combination of offenses, and may be from any one or a combination of jurisdictions; or

(2) has been convicted under the laws of any governing jurisdiction of being a professional gambler.

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

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SUBCHAPTER D. LICENSING REQUIREMENTS

16 TAC §§402.406, 402.410, 402.422

The Texas Lottery Commission (Commission) proposes new 16 TAC §402.406 (relating to Bingo Chairperson), §402.410 (relating to Amendment of a License - General Provisions), and §402.422 (relating to Amendment to a Regular License to Conduct Charitable Bingo).

The purpose of new §402.406 is for licensed authorized organizations to designate a member of their organization who is an officer or director as described in the organization's by-laws who

will be responsible for overseeing the organization's bingo activities and reporting to the membership relating to those activities as the bingo chairperson.

The purpose of new §402.410 is to specify when an amendment to a license is needed and to set out the requirements that are applicable to all license amendments.

The purpose of new §402.422 is to specify when an amendment to a license to conduct bingo is needed and to set out the requirements that are applicable to the specific change being requested.

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

Philip D. Sanderson, Director of the Charitable Bingo Operations Division, has determined that for each year of the first five years proposed new §402.406 will be in effect, the public benefit expected from the adoption of the new rule is to provide clear and concise direction as to who will be responsible for overseeing the organization's bingo activities and reporting to the membership relating to those activities. Mr. Sanderson has also determined that for each year of the first five years proposed new §402.410 will be in effect, the public benefit expected from the adoption of the new rule is to provide interested parties general requirements and processes related to amending all licenses. Finally, Mr. Sanderson has determined that for each year of the first five years proposed new §402.422 will be in effect, the public benefit expected from the adoption of the new rule is to specify when an amendment to a license to conduct bingo is needed and to set out the requirements that are applicable to the specific change being requested.

The Commission requests comments on the proposed new rules from any interested person. Comments on the proposed rules may be submitted to Sandra Joseph, Special Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at www.legal.input@lottery.state.tx.us.

The Commission will hold a public hearing on these proposals at 10:00 a.m. on Thursday, December 4, 2008, at 611 E. 6th Street, Austin, Texas 78701. Comments must be received within 30 days after publication of these proposals in order to be considered.

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

The proposed new rules implement Texas Occupations Code, Chapter 2001.

§402.406. Bingo Chairperson.

A licensed authorized organization must have an active officer or member of the board of directors designated as the bingo chairperson at all times. The bingo chairperson is responsible for overseeing the organization's bingo activities and reporting to the membership relating to those activities.

§402.410. Amendment of a License - General Provisions.

(a) The Commission will not approve a license amendment application with an effective date that is not within the licensed authorized organization's or commercial lessor's current license period.

(b) A licensee may amend a license renewal application prior to its approval.

(c) The term "effective date", when used in this section, means the first day that the amended changes are to begin.

(d) A licensee may not begin activities under the amended license until the following have occurred:

(1) the effective date;

(2) licensee's receipt and display at the playing location of official written notification or the amended license authorizing the change;

(e) Upon request of the Commission, the licensee must submit proof that the individuals signing the amendment application are authorized to act on behalf of the licensed authorized organization or commercial lessor. An example of proof is organizational meeting minutes reflecting that the organization voted for the amendment or to authorize the individuals to act on the organization's behalf.

§402.422. Amendment to a Regular License to Conduct Charitable Bingo.

(a) A licensed authorized organization must file a form prescribed by the Commission and submit a $10 fee to amend its licensed:

(1) playing days;

(2) playing times;

(3) playing location;

(4) bingo chairperson;

(5) organization name; or

(6) primary business office.

(b) Playing days or playing times.

(1) An organization amending its playing day(s) or playing time(s) must specify on the form each playing occasion day and time that the organization intends to conduct bingo at the location.

(2) The playing day(s) or time(s) specified on the form may not:

(A) conflict with the playing day(s) or time(s) of any other application or license issued for that location;

(B) exceed the maximum number of bingo occasions per day allowed under Texas Occupations Code, §2001.419(c) and (d); or

(C) exceed three occasions during a calendar week or four hours per occasion.

(c) Playing location.

(1) An organization amending its playing location must submit:

(A) Its current bingo license unless the license is currently in administrative hold status or its renewal application is pending; and

(B) A copy of the meeting minutes recording that the organization voted to move the bingo playing location and indicating the exact playing location address and name of the location, if applicable;

(2) A licensee shall display a copy of its license at the current playing location if the license was surrendered upon application for an amendment.

(d) Organization name. An organization amending its organization name must submit a copy of the following:

(1) all amended organizing instruments reflecting the name change;

(2) written notice sent to the Internal Revenue Service updating the organization's record if the organization is required to maintain a 501(c) exemption;

(3) meeting minutes recording that the organization voted to change its name; and

(4) letter approving the name change from the parent organization, if applicable.

(e) Primary business office location.

(1) An organization may not relocate its primary business office to a different county solely for the purpose of relocating its bingo playing location. If the new location is not adjacent to the current county of its primary business office, the organization must have at least 20 percent of its members' residences located in the county to which the organization is moving.

(2) An organization changing its primary business office location must submit a copy of the following:

(A) meeting minutes recording that the licensed authorized organization voted to move its primary business office to the proposed location and the reason for the move;

(B) the licensed authorized organization's membership list showing names and county of residence with at least 20% of the members' residences located in the county to which the organization is moving; and

(C) letter approving the organization's primary business office relocation to another county from the parent organization, if applicable.

(f) Meeting minutes submitted in accordance with subsections (c)(2), (d)(3), and (e)(2)(A) of this section must be signed and certified as true and correct by an officer of the organization.

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

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Kimberly L. Kiplin
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SUBCHAPTER F. PAYMENT OF TAXES, PRIZE FEES AND BONDS

16 TAC §402.604

The Texas Lottery Commission (Commission) proposes new 16 TAC §402.604 (relating to Delinquent Purchaser). The purpose of the proposed new rule is to clearly set forth for licensees the process and timelines to follow related to late payments for bingo supplies and equipment. This rule provides clarification of Section 2001.218 of the Bingo Enabling Act, Chapter 2001, Texas Occupations Code.

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

Philip D. Sanderson, Director of the Charitable Bingo Operations Division, has determined that for each year of the first five years the proposed new rule will be in effect, the public benefit anticipated from the adoption of the new rule is to provide to licensees the specific process of notification and timelines to follow when a licensee is delinquent in their payment to a licensed seller.

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

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

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

§402.604. Delinquent Purchaser.

(a) A delinquent purchaser is a licensed authorized organization, unit, or distributor that has not provided full payment to a licensed distributor or manufacturer for equipment or supplies within 30 calendar days of the date of:

(1) actual delivery, or

(2) invoice for leased bingo equipment.

(b) If a unit that is set up under a unit accounting agreement with a unit manager becomes a delinquent purchaser, the unit manager will become a delinquent purchaser and all units managed by the unit manager will become delinquent purchasers until the liability is paid.

(c) Notification of Delinquency and Payment. A manufacturer or distributor must notify the Commission on a prescribed form of all

delinquent purchasers by the 37th calendar day after the actual delivery of equipment or supplies.

(d) A manufacturer or distributor must notify the Commission on a prescribed form of a payment received from a delinquent purchaser within seven calendar days after receipt of the payment.

(e) A manufacturer or distributor who has terminated its license should report all payments made by delinquent purchasers for the six months immediately following the license termination.

(f) Delinquent Purchaser List. The Commission will maintain a Delinquent Purchaser List on the Commission's website and provide a copy of the list upon written request.

(g) Before the sale of any equipment or supplies, a manufacturer or distributor must confirm whether the intended purchaser is on the Delinquent Purchaser List. Any licensee or unit on the Delinquent Purchaser List must provide immediate payment upon delivery of the equipment or supplies.

(h) The Commission will remove a delinquent purchaser from the Delinquent Purchaser List twenty calendar days after its license termination date if the manufacturer or distributor who is owed a liability is no longer licensed and does not have a pending application for a new license.

(i) A delinquent purchaser that is a licensed authorized organization or distributor will remain on the Delinquent Purchaser List for twenty calendar days past the date of its license termination unless the Commission receives notice that the delinquency has been paid or the organization or distributor has a pending application for a new license at that time.

(j) A delinquent purchaser unit that dissolves will remain on the Delinquent Purchaser List for twenty calendar days past the date of dissolution unless the Commission receives notice that the delinquency has been paid. Members of a unit that was a delinquent purchaser will remain on the Delinquent Purchaser List until the liability is paid.

(k) A manufacturer or distributor may request that the Commission add a delinquent purchaser to the Delinquent Purchaser List that has been removed because its license was terminated if the delinquent purchaser is re-licensed and the liability has not been paid.

(l) Unit Accounting. If a delinquent purchaser joins a unit, the unit will be placed on the Delinquent Purchaser List until the delinquent purchaser's liability is paid, the delinquent purchaser withdraws from the unit, or the unit dissolves.

(m) A licensed authorized organization that was a delinquent purchaser when joining a unit will remain a delinquent purchaser after leaving a unit unless the liability is paid.

(n) If a licensed authorized organization withdraws from a unit that is a delinquent purchaser, both the unit and the withdrawing organization will remain a delinquent purchaser until the liability is paid.

(o) If a unit that is a delinquent purchaser because of a liability the unit incurred dissolves, all unit members at the time of dissolution will remain delinquent purchasers until the liability 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.

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Kimberly L. Kiplin
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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 75. CURRICULUM

SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING DRIVER EDUCATION STANDARDS OF OPERATION FOR PUBLIC SCHOOLS, EDUCATION SERVICE CENTERS, AND COLLEGES OR UNIVERSITIES

19 TAC §§75.1001 - 75.1003, 75.1005

The Texas Education Agency proposes amendments to §§75.1001 - 75.1003 and 75.1005, concerning driver education. The sections address driver education standards of operation for public schools, education service centers, and colleges or universities. The proposed amendments would update statutory references and incorporate changes to driver education course requirements.

The Texas Education Code (TEC), §7.021 and §29.902, require the TEA to develop a program of organized instruction in driver education and traffic safety for public school students. Rules in 19 TAC Chapter 75, Curriculum, Subchapter AA, Commissioner's Rules Concerning Driver Education Standards of Operation for Public Schools, Education Service Centers, and Colleges or Universities, were adopted to be effective January 1, 2000, to implement statutory requirements for the program. Subchapter AA sets forth requirements for driver education, including rules relating to administration and supervision, driver education teachers and teaching assistants, and course requirements. In accordance with statute and rule, the TEA also developed and made available sample instructional modules in a model course curriculum entitled the *Texas Driver and Traffic Safety Education Master Curriculum Guide*, dated October 2000.

The TEA conducted its statutorily-required review of rules in 19 TAC Chapter 75 in 2007 and identified the need for changes in Subchapter AA to update statutory references, including changes to reflect the re-codification of driver and traffic safety laws from Texas Civil Statutes to the TEC, Chapter 1001. In addition, from July 2006 to February 2007, input for updates to the program of organized instruction was solicited from instructors, teachers, parents, advocates, school districts, education service centers, colleges and universities, and other state agencies, including the Texas Department of Public Safety. The updated program of organized instruction, which incorporates industry requests, is reflected in new instructional modules developed by the TEA entitled the *Program of Organized Instruction for Driver Education and Traffic Safety*, dated 2008.

The proposed amendments to 19 TAC Chapter 75, Subchapter AA, would update statutory references and incorporate changes to driver education course requirements, as follows.

Section 75.1001, Administration and Supervision, would be amended to delete references to specific sections within the Alcohol Beverage Code and the Health and Safety Code in subsection (b)(6).

Section 75.1002, Driver Education Teachers, would be amended to delete references to specific sections within the Alcohol Beverage Code and the Health and Safety Code in subsection (d)(1). A technical edit would also be made to correct word usage in subsection (d)(1).

Section 75.1003, Teaching Assistants, would be amended in subsections (a)(1)(C), (a)(2)(B), and (d) to reference the TEC, Chapter 1001, rather than the Texas Civil Statutes due to the re-codification. References to specific sections within the Alcohol Beverage Code and the Health and Safety Code would be deleted in subsection (g)(1). A technical edit would also be made to correct word usage in subsection (g)(1).

Section 75.1005, Course Requirements, would be amended to reflect the changes to the program of organized instruction and to ensure school district compliance with the revised standards. Specifically, subsection (c) would be revised to incorporate the driver education instructional objectives established by the commissioner, which meet the requirements in the TEC, §7.021 and §29.902, while incorporating industry requests. The instructional objectives would be established in rule and the specific module titles would be updated accordingly. As provided under current rule, sample modules may be obtained from the TEA.

Adam Jones, deputy commissioner for finance and administration, has determined that for the first five-year period the amendments are in effect there will be fiscal implications for state and local government as a result of enforcing or administering the amendments relating to the proposed changes to course requirements.

The total estimated cost to the state is $4,000 each year in fiscal years 2009 and 2010 and $2,000 each year in fiscal years 2011-2013. This estimated cost includes personnel costs of $3,000 in each year of fiscal years 2009 and 2010 and $1,000 in each year of fiscal years 2011-2013 as well as travel costs of $1,000 each year in fiscal years 2009-2013. The personnel costs involved are for the review and approval of public school driver education curriculum. The travel costs are for support of the program specialists who do the actual work of monitoring, auditing, and enforcing the rules.

The total estimated cost to each local school district providing the course is $2,000 in fiscal year 2009, $1,000 in fiscal year 2010, and $500 each year in fiscal years 2011-2013. This estimated cost would be to revise the driver education curriculum to comply with the revised standards in the *Program of Organized Instruction for Driver Education and Traffic Safety*. Approximately 350 school districts provide the driver education course.

Mr. Jones has determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the amendments will be updated standards for driver education instruction. The Driver Education and Traffic Safety Program provides novice drivers the foundation of knowledge, understanding, skills, and experiences necessary for the novice driver and parent, guardian, or adult mentor to launch and continue the lifelong learning process of legal and responsible reduced-risk driving practices in the highway transportation system. There is no anticipated economic cost to persons who are required to comply with the proposed amendments.

The TEA has determined that there may be adverse economic impact for small businesses and microbusinesses as a result of the proposal. The TEA estimates that between 101-500 small businesses and between 1-100 microbusinesses (businesses with fewer than 20 employees) would be impacted for expenses related to compliance costs. The estimated cost to each driver training school providing the course is $2,000 in fiscal year 2009, $1,000 in fiscal year 2010, and $500 each year in fiscal years 2011-2013. The estimated costs would be to revise driver education curriculum to comply with the revised standards in the *Program of Organized Instruction for Driver Education and Traffic Safety*. Approximately 294 driver training schools provide the driver education course. Microbusinesses would be no more adversely impacted than small businesses.

In accordance with Texas Government Code, §2006.002, the TEA assessed alternatives to the proposed rule action that would diminish the impact on small businesses and microbusinesses. The first alternative assessed was to not adopt the rule. This is not an option because establishment of standards is required by the TEC, §7.021 and §29.902. Another alternative considered was to exempt small businesses and microbusinesses from the rule. This is not an option because each student eligible to enroll in a driver education course must have the opportunity to receive equivalent instruction regardless of the driver education provider they choose. As all driver education providers are required to provide the driver education course standards as established in rule, the third alternative considered is the TEA development of sample instructional modules. Small businesses and microbusinesses may obtain the sample instructional modules from the TEA to diminish the impact on curriculum development. Therefore, the TEA has considered several alternative methods that would diminish the impact on small businesses and microbusinesses and that analysis resulted in one option, the third alternative, providing regulatory flexibility on this matter.

The public comment period on the proposal begins November 14, 2008, and ends December 15, 2008. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *rules@tea.state.tx.us* or faxed to (512) 463-0028. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register* on November 14, 2008.

The amendments are proposed under the TEC, §7.021 and §29.902, which authorize the TEA to develop a program of instruction in driver education and traffic safety for public school students.

The proposed amendments implement the TEC, §7.021 and §29.902.

§75.1001. Administration and Supervision.

(a) (No change.)

(b) The superintendent, ESC director, and college or university chief school official must:

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

(6) prohibit an instructor from giving instruction and prohibit a student from securing instruction in the classroom or in a motor vehicle if that instructor or student is using or exhibits any evidence

or effect of an alcoholic beverage, controlled substance, drug, abusable glue, aerosol paint, or other volatile chemical as those terms are defined in the Alcohol Beverage Code[~~, §1.04(1),~~] and the Health and Safety Code[~~, §§481.002, 484.002, and 485.001~~];

(7) - (10) (No change.)

(c) (No change.)

§75.1002. Driver Education Teachers.

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

(d) Driver education instructors and student instructors shall provide training in an ethical manner so as to promote respect for the purpose and objectives of a driver education program. A driver education instructor or student instructor shall not:

(1) make any sexual or obscene comments or gestures while performing the duties of an instructor or give instruction or allow a student to secure [~~from securing~~] instruction in the classroom or in a motor vehicle if that instructor or student is using or exhibits any evidence or effect of an alcoholic beverage, controlled substance, drug, abusable glue, aerosol paint, or other volatile chemical as those terms are defined in the Alcohol Beverage Code[~~, §1.04(1),~~] and the Health and Safety Code[~~, §§481.002, 484.002, and 485.001~~];

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

(e) (No change.)

§75.1003. Teaching Assistants.

(a) An individual may be employed as a teaching assistant in a driver education program under the direction of a supervising driver education teacher after completing one of the following programs.

(1) Teaching assistant (full). An individual may be approved as a teaching assistant (full) to conduct behind-the-wheel, observation, multicar range, and simulator training instruction to teens or adults; to assist certified teachers in the classroom phase of driver education provided the instructor is present and in the room; and to serve as a temporary substitute instructor in the classroom phase of driver education for no more than 25% of a driver education classroom program by successfully completing:

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

(C) nine semester hours of driver and traffic safety education instructor training as outlined in Texas Education Code, Chapter 1001 [~~Civil Statutes, Article 4413(29c), §15A(b)~~].

(2) Teaching assistant (in-car only). An individual may be approved as a teaching assistant (in-car only) to conduct only behind-the-wheel and observation training instruction to teens or adults by completing one of the following requirements:

(A) (No change.)

(B) six semester hours of driver and traffic safety education instructor training as outlined in Texas Education Code, Chapter 1001 [~~Civil Statutes, Article 4413(29c), §15A(b)~~].

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

(d) A teaching assistant may be trained by an approved university as described in subsection (a)(1)(B) of this section; or by a university, college, school district, or an education service center (ESC) as described in subsection (a)(1)(A) of this section. When the training is conducted by a college, school district, or an ESC, the program must be approved by TEA. A driver education school licensed under Texas Education Code, Chapter 1001 [~~Civil Statutes, Article 4413(29c)~~], may train teaching assistants as described in subsection (a)(1)(C) or subsection (a)(2)(B) of this section.

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

(g) All teaching assistants (full or in-car only) and student instructors shall provide training in an ethical manner so as to promote respect for the purpose and objectives of a driver education program. A teaching assistant or student instructor shall not:

(1) make any sexual or obscene comments or gestures while performing the duties of an instructor or give instruction or allow a student to secure [~~from securing~~] instruction in a motor vehicle if that instructor or student is using or exhibits any evidence or effect of an alcoholic beverage, controlled substance, drug, abusable glue, aerosol paint, or other volatile chemical as those terms are defined in the Alcohol Beverage Code[~~, §1.04(1),~~] and the Health and Safety Code[~~, §§481.002, 484.002, and 485.001~~];

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

(h) (No change.)

§75.1005. Course Requirements.

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

(c) Course content, minimum instruction requirements, and administrative guidelines for each phase of driver education classroom instruction, in-car training (behind-the-wheel and observation), simulation, and multicar range shall include the instructional objectives established by the commissioner of education , as specified in this subsection, and meet the requirements of this subchapter. Sample [~~Copies of the instructional objectives and the sample~~] instructional modules may be obtained from the Texas Education Agency (TEA). Schools may use sample instructional modules developed by the TEA or develop their own instructional modules based on the approved instructional objectives. The instructional objectives are organized into the modules outlined in this subsection [~~following topics~~] and include objectives for classroom and in-car training (behind-the-wheel and observation), simulation lessons, parental involvement activities, and evaluation techniques. In addition, the instructional objectives include information relating to litter prevention, anatomical gifts, and alcohol awareness and the effect of alcohol on the effective operation of a motor vehicle that must be provided to every student enrolled in a teenage driver education course. A student may apply to the Texas Department of Public Safety (DPS) for an instruction permit after completing six hours of instruction as specified in Module One if the student is taking the course in a concurrent program. The [~~A~~] teenage driver education program instructional objectives shall include:

(1) Module One: [~~Texas Driver Responsibilities - Knowing Texas~~] Traffic Laws. The student legally and responsibly performs reduced-risk driving practices in the Highway Transportation System (HTS) by: [~~A student may apply to the Texas Department of Public Safety (DPS) for an instruction permit after completing six hours of instruction as specified by this module;~~]

(A) accepting driving as a privilege with responsibilities, obligations, and potential consequences; and

(B) applying knowledge and understanding of Texas traffic laws, including traffic control devices and right-of-way laws.

(2) Module Two: Driver Preparation. The student legally and responsibly performs reduced-risk driving practices in the HTS by: [~~Preparing to Operate the Vehicle;~~]

(A) employing pre-drive tasks;

(B) using and requiring passengers to use occupant protection and restraint systems;

(C) using vehicle symbols and devices;

(D) employing starting tasks;

(E) performing vehicle operation and control tasks;

(F) employing post-drive tasks;

(G) using baseline and progress assessment tools to evaluate and improve behind-the-wheel skill level; and

(H) formulating a driving plan.

(3) Module Three: Vehicle Movements. The student legally and responsibly performs reduced-risk driving practices in the HTS by: [~~Basic Maneuvering Tasks - Low Risk Environment;~~]

(A) sustaining visual attention and communication;

(B) using reference points;

(C) managing vehicle balance: and

(D) executing vehicle maneuvers.

(4) Module Four: Driver Readiness. The student legally and responsibly performs reduced-risk driving practices in the HTS by: [~~Basic Maneuvering Tasks - Moderate Risk Environment;~~]

(A) employing legal and responsible driving practices; and

(B) limiting and managing fatigue and aggressive driving.

(5) Module Five: Risk Reduction. The student legally and responsibly performs reduced-risk driving practices in the HTS by: [~~Information Processing - Moderate Risk Environment;~~]

(A) predicting, analyzing, and minimizing risk factors; and

(B) employing a space management system.

(6) Module Six: Environmental Factors. The student legally and responsibly performs reduced-risk driving practices in the HTS by: [~~Information Processing - Multiple Lane Expressways;~~]

(A) identifying and analyzing driving environments; and

(B) minimizing environmental risk.

(7) Module Seven: Distractions. The student legally and responsibly performs reduced-risk driving practices in the HTS by limiting and managing distractions and multi-task performances. [~~Driver Performance - Personal Factors;~~]

(8) Module Eight: Alcohol and Other Drugs. The student legally and responsibly performs reduced-risk driving practices in the HTS by adopting zero-tolerance practices related to the use of alcohol and other drugs by applying knowledge and understanding of alcohol and other drug laws, regulations, penalties, and consequences to licensing, driving, and lifestyles. [~~Driver Responsibilities - Adverse Conditions;~~]

(9) Module Nine: Adverse Conditions. The student legally and responsibly performs reduced-risk driving practices in the HTS by managing adverse conditions resulting from weather, reduced-visibility, traction loss, and emergencies. [~~Texas Driver Responsibilities - Vehicle Functions; and~~]

(10) Module Ten: Vehicle Requirements. The student legally and responsibly performs reduced-risk driving practices in the HTS by: [~~Texas Driver Responsibilities - The Wise Consumer & Driver Assessment.~~]

(A) assessing and managing vehicle malfunctions;

(B) performing preventative maintenance; and

(C) planning trips.

(11) Module Eleven: Consumer Responsibilities. The student legally and responsibly performs reduced-risk driving practices in the HTS by attending to the vehicle requirements by making wise consumer decisions regarding vehicle use and ownership, vehicle insurance, environmental protection and litter prevention, and anatomical gifts.

(12) Module Twelve: Personal Responsibilities. The student legally and responsibly performs reduced-risk driving practices in the HTS by:

(A) using the knowledge, skills, and experiences of the Driver Education and Traffic Safety Program;

(B) obtaining and using a driver license; and

(C) continuing the lifelong learning process of reduced-risk driving practices.

(d) - (j) (No change.)

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

Filed with the Office of the Secretary of State on October 31, 2008.

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Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
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For further information, please call: (512) 475-1497

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CHAPTER 129. STUDENT ATTENDANCE
SUBCHAPTER AA. COMMISSIONER'S RULES

19 TAC §129.1025

The Texas Education Agency (TEA) proposes an amendment to §129.1025, concerning student attendance accounting. The section adopts by reference the annual student attendance accounting handbook. The handbook provides student attendance accounting rules for school districts and charter schools. The proposed amendment would adopt by reference the *2008-2009 Student Attendance Accounting Handbook Version 2*.

Legal counsel with the TEA has recommended that the procedures contained in each annual student attendance accounting handbook be adopted as part of the Texas Administrative Code. This decision was made in 2000 as a result of a court decision challenging state agency decision making via administrative letters and publications. Given the statewide application of the attendance accounting rules and the existence of sufficient statutory authority for the commissioner of education to adopt by reference the student attendance accounting handbook, staff proceeded with formal adoption of rules in this area. The intention is to annually update the rule to refer to the most recently published student attendance accounting handbook.

Each annual student attendance accounting handbook provides school districts and charter schools with the Foundation School Program (FSP) eligibility requirements of all students, prescribes the minimum requirements of all student attendance accounting systems, lists the documentation requirements for attendance audit purposes, specifies the minimum standards for systems that are entirely functional without the use of paper, and details the responsibilities of all district personnel involved in student attendance accounting. The TEA distributes FSP resources under the procedures specified in each current student attendance accounting handbook. The final version of the student attendance accounting handbook is published on the TEA website each June or July. A supplement, if necessary, is also published on the TEA website.

The proposed amendment to 19 TAC §129.1025 would adopt by reference the *2008-2009 Student Attendance Accounting Handbook Version 2*. Policy decisions related to dual credit programs and state funding that were made after publication of the first version of the student attendance accounting handbook for the 2008-2009 school year necessitated publication of a second version. Data from previous school years will continue to be subject to the student attendance accounting handbook as the handbook existed in those years.

Significant changes to the *2008-2009 Student Attendance Accounting Handbook Version 2* from the *2007-2008 Student Attendance Accounting Handbook* include revisions relating to the following sections.

Section 3

Information on new average daily attendance (ADA) eligibility codes 7 and 8 has been added.

A clarification of how student attendance affects student funding eligibility has been added.

Information has been added explaining that student records must be requested, sent, and received using the Texas Student Records Electronic Exchange system.

Information has been added explaining that the requirement that a student be counted absent if not present at the designated district attendance-taking time or if not with a responsible campus official at that time does not apply to students participating in certain alternative attendance programs, such as the Optional Flexible School Day Program.

A sentence has been added stating explicitly that if a student is not actually on campus at the time attendance is taken because the student is enrolled in and attending an off-campus dual credit course, then the student may be considered in attendance for FSP purposes.

A clarification has been made that the policy of allowing a student who had an excused absence to make up missed school work applies to all excused absences, not only absences to sound "Taps" at a military honors funeral held in Texas for a deceased veteran.

Information has been added clarifying in which situations a student who participates in early graduation ceremonies is eligible to generate ADA.

A subsection has been added explaining that the TEA does not provide state funding for summer school programs and that, in general, if a student is in membership for additional days beyond the 180 days that make up the state funding year, the excess attendance will not generate state funding.

Language has been added to state explicitly that a school district has flexibility in setting the ending date of its school calendar.

Sections 3 and 4

The requirement that a homebound student must be expected to be confined at home or hospital bedside for four consecutive weeks has been modified. The four weeks no longer need to be consecutive.

Sections 3 and 11

A clarification of the policies related to student participation in dual credit programs as that participation relates to state funding has been added. For the 2008-2009 school year, school districts may count the time that students spend in dual credit courses for state funding purposes even if students are required to pay tuition, fees, or textbook costs for these courses.

Section 4

Information on "least restrictive environment" requirements has been added.

Section 6

Information has been added explaining that, if a student's parent has denied bilingual/English as a second language (ESL) services and the only summer school program available is a bilingual/ESL program, then the student is not eligible to generate funding by participating in the program.

Charts have been added showing the criteria for transferring a limited English proficient (LEP) student out of the bilingual/ESL program and for transferring a LEP student who is receiving special education services out of the bilingual/ESL program.

Section 7

An explanation has been added that any student who is automatically eligible for the National School Lunch Program (NSLP) is eligible for free prekindergarten and that any student who is eligible for and participating in Head Start is automatically eligible for the NSLP.

An explanation has been added of the documentation required to show that a student is eligible for free prekindergarten based on the student's having ever been in the conservatorship of the Texas Department of Family and Protective Services (DFPS) (i.e., in foster care) following an adversary hearing. Also, a clarification has been made that students who have been adopted or returned to their parents after having been in DFPS conservatorship are eligible for free prekindergarten.

Section 10

Information has been added regarding the criteria under which a student may be placed in a juvenile justice alternative education program (JJAEP) and regarding students who have not been expelled but have been assigned to a JJAEP by a court. Also, a clarification has been added that a JJAEP is not eligible to receive FSP funding and does not report student attendance to the TEA. The school district in which a student is enrolled immediately preceding the student's placement in a JJAEP is responsible for determining the student's ADA eligibility code.

A subsection has been added on students from outside a district who are being served in detention or other facilities making short-term residential placements.

Section 11

A subsection has been added on how to report dual credit attendance in the Public Education Information Management System (PEIMS) when a higher education institution's calendar is shorter than the school district calendar.

The subsections on the Optional Flexible School Day Program and the High School Equivalency Program have been expanded. New subsections on the Optional Flexible Year Program, the Electronic Course Pilot, and the Texas Virtual School Network have been added.

The rule would place the specific procedures contained in the *2008-2009 Student Attendance Accounting Handbook Version 2* in the Texas Administrative Code. The TEA distributes FSP funds in accordance with the procedures specified in each annual student attendance accounting handbook. Data reporting requirements are addressed through the PEIMS. The proposed amendment does not require any additional locally maintained paperwork not already required.

Shirley Beaulieu, associate commissioner for finance/chief financial officer, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendment.

Ms. Beaulieu has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment would be the public notice of the existence of the current publications specifying attendance accounting procedures for school districts and charter schools. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

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

The public comment period on the proposal begins November 14, 2008, and ends December 15, 2008. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *rules@tea.state.tx.us* or faxed to (512) 463-0028. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register* on November 14, 2008.

The amendment is proposed under the TEC, §42.004, which authorizes the commissioner of education, in accordance with rules of the State Board of Education, to take such action and require such reports consistent with Texas Education Code, Chapter 42, as may be necessary to implement and administer the Foundation School Program.

The amendment implements the TEC, §42.004.

§129.1025. Adoption By Reference: Student Attendance Accounting Handbook.

(a) The standard procedures that school districts and charter schools must [~~shall~~] use to maintain records and make reports on student attendance and student participation in special programs for school year 2008-2009 [~~2007-2008~~] are described in the official Texas Education Agency (TEA) publication *2008-2009* [~~*2007-2008*~~] *Student Attendance Accounting Handbook Version 2*, which is adopted by this reference as the agency's official rule. A copy of the *2008-2009* [~~*2007-2008*~~] *Student Attendance Accounting Handbook Version 2* is available for examination during regular office hours, 8:00 a.m. to 5:00 p.m., except holidays, Saturdays, and Sundays, at the Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. In addition, the publication can be accessed from the TEA official website. The commissioner of education shall amend the *2008-2009* [~~*2007-2008*~~] *Student Attendance Accounting Handbook Version 2* and this subsection adopting it by reference, as needed.

(b) Data from previous school years will continue to be subject to the student attendance accounting handbook as the handbook existed in those years.

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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Texas Education Agency
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CHAPTER 176. DRIVER TRAINING SCHOOLS SUBCHAPTER CC. COMMISSIONER'S RULES ON MINIMUM STANDARDS FOR OPERATION OF TEXAS DRUG AND ALCOHOL DRIVING AWARENESS PROGRAMS

19 TAC §§176.1201 - 176.1206, 176.1209 - 176.1211

The Texas Education Agency proposes amendments to §§176.1201-176.1206, 176.1209, and 176.1210, and new 176.1211, concerning driver training schools. The sections establish minimum standards for operation of Texas drug and alcohol driving awareness programs. The proposed amendments and new rule would update program requirements and statutory references and reflect changes requested by industry members.

Vernon's Texas Civil Statutes (VTCS), Article 4413(29c), §4A, relating to drug and alcohol driving awareness programs (DADAPs), was added by the 76th Texas Legislature, 1999. Rules in 19 TAC Chapter 176, Driver Training Schools, Subchapter CC, Commissioner's Rules on Minimum Standards for Operation of Texas Drug and Alcohol Driving Awareness Programs, were adopted to be effective December 26, 1999, to implement statutory requirements for the program. Subchapter CC sets forth requirements relating to general provisions, definitions, school licensure and responsibilities, instructor licenses, programs of instruction, student enrollment forms, facilities and equipment, records, and application fees and other charges. The rules have not been amended since adoption.

VTCS, Article 4413(29c), §4A, was codified in the TEC as §1001.103 by the 78th Texas Legislature, 2003. The TEA conducted its statutorily-required review of rules in 19 TAC Chapter 176 in the fall of 2007 and identified the need for changes in

Subchapter CC to bring rules into alignment with the TEC, §1001.103, which specifies that a DADAP must be offered in the same manner as a driving safety course. Statutory authority citations and references within the rules must be updated to reflect the re-codification of driver and traffic safety laws to the TEC, Chapter 1001. In addition, informal stakeholder discussions were held during summer and winter of 2007 with current DADAP owners. Input was also solicited from all driver training industry members.

The following proposed revisions to 19 TAC Chapter 176, Subchapter CC, would update program requirements and statutory references and include changes requested by the driver training industry. The proposed revisions are allowed under the provisions of the TEC, §1001.053 and §1001.103.

Section 176.1201, General Provisions, would be amended to clarify the applicability of rules in 19 TAC Chapter 176, Subchapter BB, Commissioner's Rules on Minimum Standards for Operation of Licensed Texas Driving Safety Schools and Course Providers, to DADAPs.

Section 176.1202, Definitions, would be amended to revise, add, and delete definitions. The proposed amendment would clarify what is meant by course provider, pre-program and post-program exam, driver training, clock-hour, program validation question, personal validation question, drug and alcohol driving awareness program, and drug and alcohol driving awareness school. The proposed amendment would also add language to the definition of "Good Reputation" that is consistent with driving safety rules and define public and private schools for the purposes of Chapter 176, Subchapter CC.

Section 176.1203, Drug and Alcohol Driving Awareness School Licensure, would be amended to update references and terms. The proposed amendment would include clarification regarding the effective date of licenses.

Section 176.1204, Drug and Alcohol Driving Awareness School Responsibilities, would be amended to add new language to address provisions for course providers. The proposed amendment would clarify the responsibilities of the course provider and of the school that are consistent with the applicable driving safety rules. The section title would also be updated.

Section 176.1205, Drug and Alcohol Driving Awareness Program Instructor License, would be amended to incorporate updates to licensing requirements. The proposed amendment would eliminate the requirement that a DADAP instructor maintain training or work experience within 36 months. This requirement was a hold-over provision from when DWI instructors were licensed as DADAP instructors. In addition, the proposed amendment would specify that instructors who want to add another DADAP endorsement to a license shall submit evidence of two additional hours of training from the course provider of the drug and alcohol driving awareness program curriculum that the instructor will be licensed to teach. The proposed amendment would also include a provision to allow the commissioner to revoke the license of an instructor who exhibits certain inappropriate behaviors. The section title would also be updated.

Section 176.1206, Programs of Instruction, would be amended to incorporate updates to standards for DADAPs and instructor development programs. The proposed amendment would allow DADAP courses to be offered in languages other than English. The proposed amendment would also increase the number of students in a DADAP class from 36 to 50. This class size would be consistent with that approved for a driver safety course. In addition, the proposed amendment would include specific criteria for post-program exams. The section title would also be updated.

Section 176.1209, Records, would be amended to include reference to a course provider.

Section 176.1210, Application Fees and Other Charges, would be amended to include the application, processing, and licensing fees for alternative delivery methods (ADMs).

New §176.1211, Alternative Delivery Methods of Drug and Alcohol Driving Awareness Program Instruction, would be added to provide for ADMs for an approved DADAP course. This new section would allow the commissioner to approve the method of delivery and instruction of drug and alcohol awareness program instruction electronically or over the Internet. ADM course providers would submit an application to the TEA for review and approval. The proposed new rule would provide detailed criteria for an acceptable ADM program. The proposed criteria are consistent with the criteria already used for approval of ADMs of driving safety courses.

Program owners already track the issuance of certificates and the proposed amendments and new section add no new reporting requirements. Procedurally, the proposed new ADM rule for DADAPs is parallel to the existing ADM rule for driving safety. Industry members who choose to offer DADAPs via alternate delivery methods would be on a level playing field as in driving safety courses.

Adam Jones, deputy commissioner for finance and administration, has determined that for the first five-year period the amendments and new section are in effect there will be fiscal implications for state government as a result of enforcing or administering the amendments and new section relating to the proposed new rule on ADMs. There will be no fiscal implications for local government.

The total estimated cost to the state is $4,000 each year in fiscal years 2009 and 2010 and $2,000 each year in fiscal years 2011-2013. This estimated cost includes personnel costs of $3,000 in each year of fiscal years 2009 and 2010 and $1,000 in each year of fiscal years 2011-2013 and travel costs of $1,000 each year in fiscal years 2009-2013. The personnel costs involved are for the review, approval, and auditing of DADAP courses and ADMs for such courses. The travel costs are for support of the compliance specialists who do the actual work of monitoring, auditing, and enforcing the statute and rules. Also, the proposed rule actions would result in an estimated increase in revenue of $9,000 each year in fiscal years 2009 and 2010. Business entities that choose to pursue ADMs for approved DADAP courses will be required to pay a $9,000 application fee for such courses. The TEA estimates receiving two such applications over the next 24 months.

Mr. Jones has determined that for each year of the first five years the amendments and new section are in effect the public benefit anticipated as a result of enforcing the amendments and new section will be regulatory consistency to the DADAPs that are now taught in public and driver training schools. The proposed revisions, particularly the proposed new rule that authorizes ADMs, would make the program available through every computer in the state. Currently, DADAP classes are unavailable in many parts of the state, and the number of schools that offer the program are fewer even in metropolitan areas. There is no

anticipated economic cost to persons who are required to comply with the proposed amendments and new section.

The TEA has determined that there may be adverse economic impact for small businesses or microbusinesses as a result of the proposal. The TEA estimates that between 1-100 microbusinesses (businesses with fewer than 20 employees) could be impacted for expenses related to compliance costs. The estimated costs to the program owners and licensed schools are $20,000 in fiscal year 2009, $16,800 in fiscal year 2010, and $6,000 each year in fiscal years 2011-2013. The estimated costs are for application and approval costs that must be paid by program owners and licensed schools. In addition, there are annual costs associated with obtaining, assigning, tracking, and reporting certificates of program completion that will be borne by the program owners and licensed schools. The estimated costs for fiscal years 2009 and 2010 include the $9,000 application fee for an ADM plus ancillary costs involved in administration of such programs. Although the authority to assess and collect fees existed in the original and codified statutory language, the TEA had not previously proposed or collected such fees for ADMs for DADAP courses. Based on industry requests for closer regulation and the approval of ADMs for instruction, the TEA determined that it would be necessary to propose and collect fees for ADMs to ensure there would be no adverse fiscal impact on the state. The proposed fees would parallel those found in the driving safety industry, as required by language in the TEC, §1001.103, that reads, in part, "Except as provided by agency rule, a program must be offered in the same manner as a driving safety course." The TEA has determined that fees must be assessed to continue the mandate that the TEA division responsible for driver training be self-funded.

The TEA has also determined that there may be further economic impact for small businesses or microbusinesses as a result of the proposed rule action; however, there is not enough information available to determine whether there may be an increase in or loss of revenue because the concept of ADMs in DADAP courses is too new to make a determination. Some small and/or microbusinesses will experience losses or gains based on their business plan and follow through regardless of the proposed rule action. The cost of compliance is less of a factor than the execution of a viable business plan. Microbusinesses would be no more adversely impacted than small businesses.

In accordance with Texas Government Code, §2006.002, the TEA conducted a regulatory flexibility analysis, assessed alternatives to the proposed new ADM rule to diminish the impact on microbusinesses, and determined the following. The proposed changes are being made at the request of small businesses and microbusinesses. DADAP course providers will not be required to offer instruction through ADMs; therefore, the proposed rule action would not affect small businesses or microbusinesses that do not choose to pursue ADMs. The proposed rule actions will only affect businesses choosing to participate, and it is assumed that their costs will be covered by an income stream generated by the changes in the proposed rule actions. Businesses involved will be allowed to provide classes over the Internet or other technology reducing labor costs by the amount paid normally to an instructor. This change also benefits students who currently do not have access to a school locally. Additionally, the TEA has not proposed all of the same fees as those that exist in driving safety in order to have the least possible impact on small businesses and microbusinesses in Texas.

The public comment period on the proposal begins November 14, 2008, and ends December 15, 2008. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *rules@tea.state.tx.us* or faxed to (512) 463-0028. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register* on November 14, 2008.

The amendments and new section are proposed under the TEC, §1001.053, which authorizes the commissioner of education to adopt and enforce rules necessary to administer driver and traffic safety education and to adopt rules to ensure the integrity of approved driving safety courses and to enhance program quality. The TEC, §1001.103(b), authorizes the TEA to develop standards for a separate school certification and approve curricula for drug and alcohol driving awareness programs that include one or more courses. The statute also specifies that, except as provided by agency rule, a program must be offered in the same manner as a driving safety course. The TEC, §1001.103(e), provides that the commissioner may establish fees in connection with the drug and alcohol driving awareness programs that are reasonable and necessary to administer the agency's duties.

The proposed amendments and new section implement the TEC, §1001.053 and §1001.103.

§176.1201. General Provision.

All drug and alcohol driving awareness programs will be regulated in accordance with the rules adopted in this subchapter. Driving safety rules contained in Subchapter BB of this chapter (relating to Commissioner's Rules on Minimum Standards for Operation of Licensed Texas Driving Safety Schools and Course Providers) are not applicable except as set forth herein, as mandated by the Texas Education Code, §1001.103. [~~and the specific sections of the Texas Driver and Traffic Safety Act (Act) that provide authorization for these rules. Any portion of the Act that is not included by rule is considered excepted as mandated by Vernon's Texas Civil Statutes, Article 4413(29c), §4A(a), and will not apply to the drug and alcohol driving awareness programs.~~]

§176.1202. Definitions.

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

(1) Break--An interruption in a program of instruction occurring after the program introduction and before the post-program exam [~~program summation~~].

(2) Certificate of program completion--Serially numbered certificates that are printed, administered, and supplied by the course provider [~~program owner~~] that have been approved by the Texas Education Agency (TEA) as part of the drug and alcohol driving awareness program.

(3) Change of ownership of a school--A change in the control of the school. Any agreement to transfer the control of a school is considered to be a change of ownership. The control of a school is considered to have changed:

(A) in the case of ownership by an individual, when more than 50% of the school has been sold or transferred;

(B) in the case of ownership by a partnership or a corporation, when more than 50% of the school or of the owning partnership or corporation has been sold or transferred; or

(C) when the board of directors, officers, shareholders, or similar governing body has been changed to such an extent as to significantly alter the management and control of the school.

(4) Clock hour--50 minutes of instruction in a 60-minute period, unless the term "clock hour" is defined differently under another law or rule.

(5) Course provider--For the purposes of this subchapter, a course provider is an enterprise that:

(A) maintains a place of business or solicits business in Texas;

(B) is operated by an individual, association, partnership, or corporation; and

(C) has received an approval for a drug and alcohol driving awareness program from the commissioner of education or has been designated by a person who has received that approval to conduct business and represent the person in Texas.

(6) [~~(5)~~] Division--The division of TEA responsible for administering the provisions of the law, rules, regulations, and standards as contained in this chapter and licensing driver training programs.

(7) [~~(6)~~] Division director--The person designated by the commissioner of education to carry out the functions and regulations governing the drug and alcohol driving awareness schools and course providers [~~program owners~~] and designated as director of the division responsible for licensing driver training programs.

~~[(7) Drug and alcohol driving awareness program owner--An enterprise that has received an approval for a drug and alcohol driving awareness program.]~~

~~[(8) Drug and alcohol driving awareness school--An enterprise that maintains a place of business in this state for the education and training of persons in drug and alcohol driving awareness. A drug and alcohol driving awareness school may use multiple classroom locations to teach a drug and alcohol driving awareness program if each location is approved by the parent school and TEA and bears the same name and has the same ownership as the parent school.]~~

(8) Driver Training--For the purposes of this subchapter, driver training includes drug and alcohol driving awareness program training.

(9) Drug and alcohol driving awareness program--A course of instruction intended to prevent or deter misuse and abuse of controlled substances as that applies to the task of driving.

(10) Drug and alcohol driving awareness school--An enterprise that:

(A) maintains a place of business or solicits business in Texas; and

(B) is operated by an individual, association, partnership, or corporation that educates and trains persons using drug and alcohol driving awareness programs.

(11) [~~(9)~~] Good reputation--A person is considered to be of good reputation if:

(A) there are no felony convictions related to the operation of a school, and the person has been rehabilitated from any other felony convictions;

(B) there are no convictions involving crimes of moral turpitude;

(C) within the last ten years, the person has never been successfully sued for fraud or deceptive trade practice;

(D) the person does not own or operate a school or program currently in violation of the legal requirements involving fraud, deceptive trade practices, student safety, or quality of education; has never owned or operated a school or program with habitual violations; and has never owned or operated a school or program which closed with violations including, but not limited to, selling, trading, or transferring a certificate of program completion to any person or school not authorized to possess it;

(E) the person has not withheld material information from representatives of TEA or falsified instructional records or any documents required for approval or continued approval; [~~and~~]

(F) in the case of an instructor, there are no misdemeanor or felony convictions involving driving while intoxicated or minor in possession, consumption, or purchase of alcoholic beverages within the past seven years ; and [~~.~~]

(G) in the event that an instructor or applicant has received deferred adjudication of guilt from a court of competent jurisdiction, a determination about good reputation can be made upon review of evidence of the conduct underlying the basis of the deferred adjudication. When determining underlying conduct, the commissioner of education may consider the facts and circumstances surrounding the deferred adjudication.

(12) [~~(10)~~] Instructor trainer--A licensed drug and alcohol driving awareness program instructor who has been authorized to prepare instructors to give instruction in a specified curriculum.

(13) [~~(11)~~] Moral turpitude--Conduct that is inherently immoral or dishonest.

(14) [~~(12)~~] New program--A drug and alcohol driving awareness program is considered new when it has not been approved by TEA to be offered previously, or has been approved by TEA and offered and then discontinued, or has been inactive for 36 months or more, or the content or lessons of the program have been changed to a degree that a new application is requested and a complete review of the application and program presentation is necessary to determine compliance.

(15) Personal validation question--A question designed to establish the identity of the student by requiring an answer related to the student's personal information such as a driver's license number, address, date of birth, or student-solicited data such as personal preference, memory, or other similar information that is unique to the student.

(16) Post-program exam--An exam designed to measure the student's comprehension and knowledge of course material presented after the instruction is completed.

(17) Pre-program exam--An exam given during the program introduction using questions drawn from material to be covered in the course to determine the level of drug and alcohol knowledge possessed by the student prior to receiving instruction.

(18) Program validation question--A question designed to establish the student's participation in the program and comprehension of the program material by requiring the student to answer a question regarding a fact or concept taught in the program.

(19) Public or private school--For the purposes of this subchapter, a public or private school is an accredited public or non-public secondary school.

(20) [~~(13)~~] Self-assessment--A tool used by program participants to evaluate one's own risk for developing problems with alcohol and drugs.

§176.1203. Drug and Alcohol Driving Awareness School Licensure.

(a) Application for school. An application for a license for a drug and alcohol driving awareness school shall be made on forms supplied by the Texas Education Agency (TEA) and shall include:

(1) (No change.)

(2) verification from the course provider [~~program owner~~] that the school is authorized to provide the approved drug and alcohol driving awareness program.

(b) Approval. TEA shall approve the application of a drug and alcohol driving awareness school if TEA finds that the school owner and employees are of good reputation and the school does not owe a civil penalty under Texas Education Code, Chapter 1001 [~~Texas Civil Statutes, Article 4413(29c)~~].

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

(e) Effective date of the drug and alcohol driving awareness school license. The effective date of the school license shall be the date the license is issued. Licenses that are received at the drug and alcohol driving awareness school prior to the effective date are not valid until the effective date shown on the license. [~~Exceptions may be made if the applicant was in full compliance on the effective date of issue. The license will be effective for two years subsequent to the effective date.~~]

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

(h) Renewal of drug and alcohol driving awareness school license. A complete application for the renewal of a license for a drug and alcohol driving awareness school shall be submitted before the expiration of the license in accordance with Texas Education Code, Chapter 1001, [~~Vernon's Texas Civil Statutes, Article 4413(29c), §13(d)(4),~~] and shall include the following:

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

(i) Denial, revocation, or conditional license. For schools approved to offer only one drug and alcohol driving awareness program, the authority to operate a school shall cease if the program approval is revoked or if the course provider [~~program owner~~] removes all authorization to teach the program. The license of the school may continue for 60 calendar days to allow the school owner to obtain approval to provide a different program. At the end of the 60-day period, the school license will be revoked unless an approved program will be offered. The current school license shall not be renewed without an approved program. Denial, revocation, or conditioning of licenses shall be in accordance with Texas Education Code, Chapter 1001 [~~Vernon's Texas Civil Statutes, Article 4413(29c), §17~~].

(j) (No change.)

(k) School closure.

(1) The school owner shall notify TEA and the course provider [~~program owner~~] at least 15 business days before the anticipated school closure. The school owner shall provide written notice to TEA and the course provider [~~program owner~~] of the actual discontinuance of the operation within five working days after the cessation of classes. A school shall forward all records to the course provider [~~program owner~~] responsible for the records within five days.

(2) The course provider [~~program owner~~] shall provide TEA with written notice of a school closure within five working days after knowledge of cessation of classes.

(3) The division director may declare a school to be closed:

(A) as of the last day of attendance when written notification is received by TEA from the school or course provider [~~program owner~~] stating that the school will close;

(B) - (D) (No change.)

§176.1204. Drug and Alcohol Driving Awareness School and Course Provider Responsibilities.

(a) Course providers must be located, or maintain a registered agent, in the State of Texas. All instruction in a drug and alcohol driving awareness program shall be performed in locations approved by the Texas Education Agency (TEA) and by TEA-licensed instructors. [~~If a licensed instructor leaves the employment of any school, the school shall notify TEA in writing within five days, indicating the name and license numbers of the school and the instructor, the termination date, and a statement about the termination.~~]

(b) Each course provider [~~school owner~~] or employee shall:

(1) ensure that instruction of the program is provided in schools currently approved to offer the program, and in the manner in which the program was approved;

(2) ensure that the program is provided by persons who have a valid current instructor license with the proper endorsement issued by the division, except as provided in subsection (a) of this section;

(3) ensure that schools and instructors are provided with the most recent approved program materials and relevant data and information pertaining to the program within 60 days of approval. Instructor training may be required and shall be addressed in the approval notice;

(4) not falsify driver training records;

(5) develop and maintain a means to ensure the security and integrity of student information, especially financial and personal information, in transit and at rest;

(6) develop and maintain a means to ensure the privacy of student data, including personal and financial data, and make the corporate privacy policy available to all course students; and

(7) ensure that each certificate of program completion contains TEA complaint contact information.

[~~(1) ensure that instruction of the program is provided in locations currently approved to offer the program;~~]

[~~(2) provide instruction or allow instruction to be provided only in programs that are currently on the school's list of approved programs;~~]

[~~(3) ensure that persons who have a valid current instructor license provide the program;~~]

[~~(4) ensure that instructors are provided with the most recent approved program materials and relevant data and information pertaining to drug and alcohol driving awareness;~~]

[~~(5) ensure the program does not in any way promote Responsible Use, Harm Reduction, or Risk Reduction philosophies when being presented to minors;~~]

[~~(6) not falsify drug and alcohol driving awareness records;~~]

[~~(7) prohibit an instructor from giving instruction or prohibit a student from securing instruction in the classroom if that instructor or student is using or exhibits any evidence or effect of an alcoholic beverage, controlled substance, drug, abusable glue, aerosol paint, or other volatile chemical as those terms are defined in the Alcoholic Bev-~~

erage Code, §1.04(1); and the Health and Safety Code, §§481.002, 484.002, and 485.001; and]

[(8) complete, issue, or validate a certificate of program completion only for a person who has successfully completed the entire program.]

(c) Each drug and alcohol driving awareness school owner-operator or employee shall:

(1) ensure that each individual permitted to give instruction at the school or any classroom location has a valid current instructor license with the proper endorsement issued by the division, except as provided in subsection (a) of this section;

(2) prohibit an instructor from giving instruction or prohibit a student from receiving instruction if that instructor or student is using or exhibits any evidence or effect of an alcoholic beverage, controlled substance, drug, abusable glue, aerosol paint, or other volatile chemical as those terms are defined in the Alcoholic Beverage Code and the Health and Safety Code;

(3) provide instruction or allow instruction to be provided only in courses that are currently on the school's list of approved courses;

(4) complete, issue, or validate a certificate of program completion only for a person who has successfully completed the entire course;

(5) not falsify driver training records;

(6) evaluate instructor performance in accordance with the course provider plan;

(7) develop and maintain a means to ensure the security and integrity of student information, especially financial and personal information, in transit and at rest; and

(8) develop and maintain a means to ensure the privacy of student data, including personal and financial data, and make the corporate privacy policy available to all course students.

(d) [(c)] For the purposes of [Texas Civil Statutes, Article 4413(29c), and] this subchapter [chapter], each person employed by or associated with any drug and alcohol driving awareness school shall be deemed an agent of the school, and the school may share the responsibility for all acts performed by the person which are within the scope of the employment and which occur during the course of the employment.

§176.1205. Drug and Alcohol Driving Awareness Program Instructor License.

(a) Application for licensing as a drug and alcohol driving awareness program instructor shall be made on forms supplied by the Texas Education Agency (TEA). A person is qualified to apply for a drug and alcohol driving awareness program instructor license who:

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

(b) A person applying for an original instructor [instructor's] license shall submit to TEA the following:

(1) (No change.)

(2) processing and instructor licensing [renewal] fees;

(3) evidence of completion of instructor training and a statement signed by the course provider [program owner] recommending the applicant for licensing. Original documentation shall be provided upon the request of the division director. Instructor training shall consist of 24 hours of training covering techniques of instruction and in-depth familiarization with material contained in the drug and alcohol driving awareness program curriculum in which the individual is being trained; and[:]

[(A) 24 hours of training covering techniques of instruction and in-depth familiarization with material contained in the drug and alcohol driving awareness curriculum in which the individual is being trained. If the training was obtained more than 36 months prior to the date of the application for licensing, the instructor must have taught the program for which the training prepared them within the previous 36 months; or]

[(B) 24 hours of training covering techniques of instruction of material contained in the drug and alcohol driving awareness curriculum. If the training was obtained more than 36 months prior to the date of the application for licensing, the instructor must have taught the program for which the training prepared them within the previous 36 months. In addition, the instructor must obtain two additional hours of training from the program owner of the drug and alcohol driving awareness curriculum that the instructor will be licensed to teach; and]

(4) (No change.)

(c) The responsibilities of a drug and alcohol driving awareness program instructor include instructing a TEA-approved drug and alcohol driving awareness program specific to the curriculum in which the individual is trained.

(d) A drug and alcohol driving awareness program instructor license shall be valid for two years.

(e) A renewal application for drug and alcohol driving awareness program instructor license must be prepared using the following procedures.

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

(f) (No change.)

(g) Drug and alcohol driving awareness program instructors who want to add a program endorsement to a license shall submit the following:

(1) written documentation showing all applicable educational requirements have been met to justify endorsement changes; [and]

(2) the instructor renewal fee; and[.]

(3) evidence of two additional hours of training from the course provider of the drug and alcohol driving awareness program curriculum that the instructor will be licensed to teach.

(h) - (i) (No change.)

(j) All instructors shall notify the division director, school owner, and course provider [program owner] in writing of any criminal complaint identified in subsection (n) of this section filed against the instructor within five working days of commencement of the criminal proceedings. The division director may require a file-marked copy of the petition or complaint that has been filed with the court.

(k) All instructors shall provide training in an ethical manner so as to promote respect for the purposes and objectives of driver training [as identified in Texas Civil Statutes, Article 4413(29c), §2]. Further, the instructor must not in any way promote Responsible Use, Harm Reduction, or Risk Reduction philosophies when providing instruction to minors.

(l) An instructor shall not make any sexual or obscene comments, advances, or gestures while performing the duties of an instructor.

(m) An instructor shall not falsify driver training [~~drug and alcohol driving awareness~~] records.

(n) The commissioner of education may suspend, revoke, or deny a license to any drug and alcohol driving awareness program instructor under any of the following circumstances.

(1) The applicant or licensee has been convicted of any felony, or an offense involving moral turpitude, or an offense of involuntary or intoxication manslaughter, or criminally negligent homicide committed as a result of the person's operation of a motor vehicle, or an offense involving driving while intoxicated or driving under the influence of drugs, or an offense involving tampering with a governmental record.

(A) These particular crimes relate to the licensing of instructors because such persons, as licensees of TEA, are required to be of good moral character and to deal honestly with courts and members of the public. Drug and alcohol driving awareness program instruction involves accurate record keeping and reporting for insurance documentation and other purposes. In determining the present fitness of a person who has been convicted of a crime and whether a criminal conviction directly relates to an occupation, TEA shall consider those factors stated in Texas Occupations Code, Chapter 53 [~~Civil Statutes, Article 6252-13c and Article 6252-13d~~].

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

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

(4) The applicant or licensee fails to comply with the rules and regulations of TEA regarding the instruction of drivers in this state or fails to comply with any section of Texas Education Code, Chapter 1001 [~~Texas Civil Statutes, Article 4413(29c)~~].

(5) The instructor fails to follow procedures as prescribed in this subchapter [~~chapter~~].

(6) - (7) (No change.)

(8) The instructor uses any language, humor, gestures, advances, or innuendo that a reasonable person would consider inappropriate.

§176.1206. Drug and Alcohol Driving Awareness Programs of Instruction.

(a) This section contains requirements for drug and alcohol driving awareness programs and instructor development programs. For each program, the following curriculum documents and materials are required to be submitted as part of the application for approval. All program content shall be delivered under the direct observation of a licensed instructor. Programs of instruction shall not be approved which contain language that a reasonable person would consider inappropriate. Any changes and updates to a program shall be submitted and approved prior to being offered.

(1) Drug and alcohol driving awareness programs.

(A) (No change.)

(B) Drug and alcohol driving awareness program content guides. A program content guide is a description of the content of the program and the techniques of instruction that will be used to present the program. For programs offered in languages other than English, the course provider shall provide, along with the documentation specified in clauses (i)-(ix) of this subparagraph, a copy of the student verification of course completion document and/or enrollment contract, student instructional materials, and post-program exam in the proposed language accompanied by a statement from a translator with current credentials from the American Translators Association or the National Association of Judicial Interpreters and Translators that the materials are the same in both English and the other language. In lieu of the credentials specified in this subparagraph, a translator's credentials shall be presented to the Texas Education Agency (TEA) for approval with the final determination based solely on TEA's interpretation. To be approved, each course provider [~~program owner~~] shall submit as part of the application a program content guide that includes the following:

(i) a statement of the program's drug and alcohol driving awareness program goal and philosophy. The program must not in any way promote Responsible Use, Harm Reduction, or Risk Reduction philosophies when being presented to minors;

(ii) (No change.)

(iii) a statement of policies and administrative provisions related to student progress, attendance, makeup, and conduct. The following policies and administrative provisions shall be used by each school that offers the program and include the following requirements:[~~;~~]

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

(iv) - (ix) (No change.)

(C) Program and time management. Approved drug and alcohol driving awareness programs shall be presented in compliance with the following guidelines.

(i) - (iii) (No change.)

(iv) Programs conducted in a single day shall allow a minimum of 30 minutes for lunch[~~, which is exclusive of the total program length of 360 minutes~~].

(v) (No change.)

(vi) The order of topics shall be approved by the TEA [~~Texas Education Agency (TEA)~~] as part of the program approval, and for each student, the program shall be taught in the order identified in the approved application.

(vii) - (viii) (No change.)

(ix) No more than 50 [~~36~~] students per class are permitted in drug and alcohol driving awareness programs, unless the class size is limited by a restriction under another law or rule. In a traditional classroom setting, there must be sufficient seating for the number of students arranged so that all students are able to view, hear, and comprehend all instruction aids.

(x) (No change.)

(D) Minimum program content. A drug and alcohol driving awareness program shall include, as a minimum, materials adequate to address the following topics and instructional objectives and the program as a whole.

(i) (No change.)

(ii) Program introduction, pre-program exam [~~test~~], and background. The objective is to present an overview of the program and to demonstrate the nature of the problem as it relates to the use of alcohol or other drugs.

(iii) - (viii) (No change.)

(E) Instructor training guides. An instructor training guide contains a description of the plan, training techniques, and curriculum to be used to train instructors to present the concepts of the approved drug and alcohol driving awareness program described in the applicant's drug and alcohol driving awareness program guide. Each course provider [~~program owner~~] shall submit as part of the application an instructor training guide [~~that is bound or hole-punched and placed~~

~~in a binder and that has a cover and a table of contents~~]. The guide shall include a table of contents and the following:

(i) (No change.)

(ii) a description of the plan to be followed in training instructors. The plan shall include, as a minimum, provisions for the following:

(I) - (II) (No change.)

(III) training the trainee about administrative procedures and course provider [~~program owner~~] policies;

(IV) - (VI) (No change.)

(iii) (No change.)

(F) Exams [~~Examinations~~]. Each course provider [~~program owner~~] shall submit for approval, as part of the application, pre- and post-program exams designed to measure the knowledge of students at the completion of the drug and alcohol driving awareness program. The post-program exam for each drug and alcohol driving awareness program must contain at least 20 questions. A minimum of 2 questions shall be drawn from the required units set forth in subparagraph (D)(iii)-(vii) of this paragraph. The post-program final exam questions shall be of such difficulty that the answer may not easily be determined without completing the actual instruction. Instructors shall not assist students in answering the post-program exam questions, but may facilitate alternative testing. Instructors may not certify or give students credit for the drug and alcohol driving awareness program unless they score 70% or more on the post-program exam. The program content guide shall identify alternative testing techniques to be used for students with reading, hearing, or learning disabilities and policies for retesting students who score less than 70% on the post-program exam. The course provider may choose not to provide alternative testing techniques; however, students shall be advised whether the course provides alternative testing prior to enrollment in the course. Exam questions may be short answer, multiple choice, essay, or a combination of these forms.

~~[(G) Student program evaluation. Each student instructed in a drug and alcohol driving awareness program shall be given an opportunity to evaluate the program and the instructor on an official evaluation form. A master copy of the evaluation form will be provided to TEA.]~~

(2) Instructor development programs.

(A) Drug and alcohol driving awareness program instructors shall successfully complete 24 clock hours (50 minutes of instruction in a 60-minute period) in the approved instructor development program for the drug and alcohol driving awareness program to be taught, under the supervision of a licensed drug and alcohol driving awareness instructor who is designated by the course provider [~~program owner~~]. Supervision is considered to have occurred when the licensed instructor is present and personally provides the 24 clock hours of training for drug and alcohol driving awareness instructors, excluding clock hours approved by TEA that may be presented by a guest speaker or using films and other media that pertain directly to the concepts being taught.

(B) Instruction records shall be maintained by the course provider [~~program owner~~] and licensed instructor for each instructor trainee and shall be available for inspection by authorized division representatives at any time during the training period and/or for license investigation purposes. The instruction record shall include the trainee's name, address, driver's license number, and other pertinent data; the name and instructor license number of the person conducting the training; and the dates of instruction, lesson time, and subject taught during each instruction period. Each record shall also include unit, pre- and post-program exam grades or other means of indicating the trainee's aptitude and development. Upon satisfactory completion of the training program, the instructor trainer conducting the training will certify a copy of the instruction record for attachment to the trainee's application for licensing.

(C) The course provider [~~program owner~~] shall sign all student instruction records submitted for the TEA-approved instructor development program. Original documents shall be submitted.

(D) (No change.)

(b) Schools applying for approval of additional drug and alcohol driving awareness programs after the original approval has been granted shall submit the documents designated by the division director with the appropriate fee. Programs shall be approved before soliciting students, advertising, or conducting classes. An approval for an additional program shall not be granted if the school's compliance is in question at the time of application.

(c) If an approved program is discontinued, the division director shall be notified within five [~~3~~] working days of discontinuance. Any program discontinued shall be removed from the list of approved programs.

(d) If, upon review and consideration of an original, renewal, or amended application for drug and alcohol driving awareness program approval, the commissioner of education determines that the applicant does not meet the legal requirements, the commissioner shall notify the applicant, setting forth the reasons for denial in writing.

(e) The commissioner of education may revoke approval of any drug and alcohol driving awareness program given to a course provider [~~program owner~~] or school under any of the following circumstances.

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

(3) The school and/or course provider [~~program owner~~] has been found to be in violation of Texas Education Code, Chapter 1001 [~~Texas Civil Statutes, Article 4413(29c)~~], and/or this subchapter [~~chapter~~].

(4) The program has been found to be ineffective in carrying out the purpose of Texas Education Code, Chapter 1001 [~~the Texas Driver and Traffic Safety Education Act~~].

§176.1209. Records.

(a) A drug and alcohol driving awareness school or course provider [~~program owner~~] shall furnish upon request any data pertaining to student enrollments and attendance, as well as records and necessary data required for licensure, and to show compliance with the legal requirements for inspection by authorized representatives of the Texas Education Agency. There may be announced or unannounced compliance surveys at drug and alcohol awareness schools.

(b) (No change.)

§176.1210. Application Fees and Other Charges.

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

(c) License, application, and registration fees shall be collected by the commissioner of education and deposited with the state treasurer according to the following schedule.

(1) The fee for a drug and alcohol driving awareness program approval is $9,000.

(2) The fee for a drug and alcohol driving awareness program alternative delivery method approval is $9,000.

(3) [~~(2)~~] The initial fee for a drug and alcohol driving awareness school is $150.

(4) [~~(3)~~] The fee for a change of address of a drug and alcohol driving awareness school is $50.

(5) [~~(4)~~] The fee for a change of name of a drug and alcohol driving awareness school or name of owner is $50.

(6) [~~(5)~~] The application fee for each additional program for a drug and alcohol driving awareness school is $25.

(7) [~~(6)~~] A processing fee of $50 and a licensing fee of $25 shall accompany each application for an original drug and alcohol driving awareness program instructor [~~instructor's~~] license.

(8) [~~(7)~~] The instructor renewal fee is $25.

(9) [~~(8)~~] The late instructor renewal fee is $25.

(10) [~~(9)~~] The duplicate drug and alcohol driving awareness program instructor license fee is $8.

(11) [~~(10)~~] The fee for an investigation at a drug and alcohol driving awareness school to resolve a complaint is $1,000.

(12) [~~(11)~~] The drug and alcohol driving awareness school late renewal fee is $100.

§176.1211. Alternative Delivery Methods of Drug and Alcohol Driving Awareness Program Instruction.

(a) Approval process. The commissioner of education may approve an alternative delivery method (ADM) that delivers an approved drug and alcohol driving awareness program and meets the following requirements.

(1) Standards for approval. The commissioner of education may approve an ADM for an approved drug and alcohol driving awareness program and waive any rules to accomplish this approval if the ADM delivers an approved program in a manner that is at least as secure as a traditional classroom. ADMs that meet the requirements outlined in subsections (b)-(h) of this section shall receive ADM approval.

(2) Application. The course provider shall submit a completed ADM application along with the appropriate fee. The application for ADM approval shall be treated the same as an application for the approval of a new program, and the ADM must deliver the course provider's approved curriculum as delineated in the program content guide required by §176.1206(a)(1)(B) of this title (relating to Drug and Alcohol Driving Awareness Programs of Instruction).

(3) Incomplete applications. An application that is incomplete may be returned to the applicant along with the application fee.

(4) School license required. A person or entity offering a drug and alcohol driving awareness program to Texas students by an ADM must hold a drug and alcohol driving awareness school license.

(5) Course provider endorsement required. The drug and alcohol driving awareness school must have an endorsement from a licensed course provider.

(6) Course provider responsibility. The day-to-day operations of an ADM are the responsibility of the course provider that owns the curriculum. A course provider may offer an ADM through a school that is not owned and operated by the course provider only with approval of the division director. By accepting such approval, the course provider that offers the curriculum through a licensed drug and alcohol and driving awareness school also accepts responsibility for all compliance issues that arise as a result of the operation of the ADM.

(b) Program content. The ADM must deliver the same topics and program content as the approved course.

(1) Course topics. The time requirements for each unit and the program as a whole described in §176.1206(a)(1)(B)(v), (C), and (D) of this title shall be met.

(2) Topic sequence. The ADM sequencing may be different from the approved traditional program as long as the sequencing does not detract from educational value of the program. The ADM owner shall provide a key showing the topic sequence of the traditional program and where the corresponding information appears in the ADM.

(3) Editing. The material presented in the ADM shall be edited for grammar, punctuation, and spelling and be of such quality that it does not detract from the subject matter.

(4) Irrelevant material. Advertisement of goods and services shall not appear during the actual instructional times of the program. Distracting material that is not related to the topic being presented shall not appear during the actual instructional times of the program.

(5) Minimum content. The ADM shall present sufficient content so that it would take a student 300 minutes to complete the program. In order to demonstrate that the ADM contains sufficient content, the ADM shall use the following methods.

(A) Word count. For written material that is read by the student, the course provider shall count the total number of words in the written sections of the program. This word count shall be divided by 180, the average number of words that a typical student reads per minute. The result is the time associated with the written material for the sections.

(B) Multimedia presentations. For multimedia presentation, the course provider shall calculate the total amount of time it takes for all multimedia presentations to play.

(C) Charts and graphs. The ADM may assign one minute for each chart or graph.

(D) Exams. The course provider may allocate up to 45 seconds for questions presented over the Internet and 30 seconds for questions presented by telephone.

(E) Total time calculation. If the sum of the time associated with the written program material, the total amount of time for all multimedia presentations, and the time associated with all charts and graphs equals or exceeds 300 minutes, the ADM has demonstrated the required amount of content.

(F) Alternate time calculation method. In lieu of the time calculation method, the ADM may submit alternate methodology to demonstrate that the ADM meets the 300-minute requirement.

(6) Student breaks. A program that demonstrates that it contains 300 minutes of instructional content shall mandate that students take 60 minutes of break time or provide additional educational content for a total of 360 minutes.

(c) Personal validation. The ADM shall maintain a system to validate the identity of the person taking the program. The personal validation system shall incorporate the following requirements.

(1) Personal validation questions. The ADM shall ask a minimum of 10 personal validation questions throughout the program.

(2) Data sources. The personal validation questions shall be drawn equally from at least two different databases. Alternatively,

the data may be drawn from student-solicited question/answer pairs obtained during enrollment.

(3) Time to respond. The student must correctly answer the personal validation question within 45 seconds for questions presented over the Internet and 30 seconds for questions presented by telephone.

(4) Placement of questions. At least one personal validation question shall appear in each major unit or section, not including the post-program exam.

(5) Exclusion from the course. The ADM shall exclude the student from the program after the student has incorrectly answered more than 20 percent of the personal validation questions.

(6) Correction of answer. The school may correct an answer to a personal validation question for a student who inadvertently missed a personal validation question drawn from a third-party database. In such a case, the student record shall include a record of both answers and an explanation of the reasons that the school corrected the answer. A school or course provider shall not correct or change an answer for a student who enrolls in an ADM that uses student-solicited question/answer pairs for personal validation.

(7) Student affidavits. A student enrolled in a program that uses third-party database validation questions and for whom third-party database information is available from fewer than two databases (for example, a student with an out-of-state driver's license) may be issued a certificate of program completion upon presentation to the course provider of a notarized copy of the student's driver's license or equivalent type of photo identification and a statement from the student certifying that the individual attended and successfully completed the six-hour drug and alcohol driving awareness program for which the certificate is being issued and for which there exists a corresponding student record.

(8) Alternative methods. Upon approval by the Texas Education Agency (TEA), the ADM may use alternate methods that are at least as secure as the personal validation question method.

(d) Program validation. The ADM shall incorporate a program content validation process that verifies student participation and comprehension of program material, including the following.

(1) Timers. The ADM shall include built-in timers to ensure that 300 minutes of instruction have been attended and completed by the student.

(2) Testing the student's participation in multimedia presentations. The ADM shall ask at least one program validation question following each multimedia clip of more than 60 seconds.

(A) Test bank. For each multimedia presentation that exceeds 60 seconds, the ADM shall have a test bank of at least four questions.

(B) Question difficulty. The question shall be short answer, multiple choice, essay, or a combination of these forms. The question shall be difficult enough that the answer may not be easily determined without having viewed the actual multimedia clip.

(C) Failure criteria. If the student fails to answer the question correctly, the ADM shall either require the student view the multimedia clip again or the ADM shall fail the student from the program. If the ADM requires the student to view the multimedia clip again, the ADM shall present a different question from its test bank for that multimedia clip. The ADM may not repeat a question until it has asked all the questions from its test bank.

(D) Answer identification. The ADM shall not identify the correct answer to the multimedia question.

(3) Mastery of program content. The ADM shall test the student's mastery of the program content by asking at least two questions from each of the five substantive topics listed in §176.1206(a)(1)(D)(iii)-(vii) of this title.

(A) Test bank. The test bank for program content mastery questions shall include at least two questions from each of the five substantive topics identified in §176.1206(a)(1)(D)(iii)-(vii) of this title. For each question in a substantive topic, the test bank shall contain four alternative questions covering the same topic, for a total of at least 100 questions.

(B) Placement of questions. The mastery of program content questions shall be asked at the end of the program (post-program exam).

(C) Question difficulty. Program content mastery questions shall be short answer, multiple choice, essay, or a combination of these forms, and of such difficulty that the answer may not be easily determined without having participated in the actual instruction.

(D) Retest. If the student misses more than 30 percent of the questions asked on the post-program exam, the ADM shall retest the student in the same manner as the failed exam, using different questions from its test bank. The student is not required to repeat the failed program, but may be allowed to do so prior to retaking the exam. If the student fails the post-program exam three times, the student shall fail the program.

(e) Student records. The ADM shall provide for the creation and maintenance of the records documenting student enrollment, the verification of the student's identity, and the testing of the student's mastery of the program material. Each entry that verifies enrollment, identifies the question asked or the response given, documents retesting and/or revalidation, and documents any changes to the student's record shall include the date and time of the activity reported. The school and/or course provider shall also ensure that the student record is readily, securely, and reliably available for inspection by TEA or a TEA-authorized representative. The student records shall contain the following information:

(1) the student's name and driver's license number;

(2) a record of which personal validation questions were asked and the student's responses;

(3) a record of which multimedia participation questions were asked and the student's responses;

(4) the name or identity number of the staff member entering comments, retesting, or revalidating the student;

(5) if any answer to a question is changed by the school or course provider for a student who inadvertently missed a third-party database question, the school or course provider shall maintain both answers and a reasonable explanation for the change. A school or course provider shall not correct or change an answer for a student who enrolls in an ADM that uses student-solicited question/answer pairs for personal validation;

(6) a record of the program content mastery questions asked and the answers given; and

(7) a record of the time the student spent in each unit of the ADM and the total instructional time the student spent in the program.

(f) Additional requirements for Internet programs. Programs delivered via the Internet shall also comply with the following requirements.

(1) Re-entry into the program. An ADM may allow the student re-entry into the program by username and password authentication or other means that are as secure as username and password authentication.

(2) Navigation. The student shall be able to logically navigate through the program. The student shall be allowed to freely browse previously completed material.

(3) Audio-visual standards. The video and audio shall be clear and, when applicable, the video and audio shall be synchronized.

(4) Video transcripts. If the ADM presents transcripts of a video presentation, the transcript shall be delivered concurrently with the video stream so that the transcript cannot be displayed if the video does not display on the student's computer.

(5) Domain names. Each school offering an ADM must offer that ADM from a single domain. The ADM may accept students that are redirected to the ADM's domain, as long as the student is redirected to a web page that clearly identifies the course provider and school offering the ADM before the student begins the registration process, supplies any information, or pays for the course. Subdomains of the ADM's single domain may also accept students as long as the subdomain is registered to and hosted by the ADM and clearly identifies the official course provider, school name, and TEA registration number.

(6) ADM identification. All ADMs presented over the Internet shall display the school name and school number assigned by TEA as well as the course provider name and course provider number assigned by TEA on the homepage and the registration page of the entity to which the student pays any monies, provides any personal information, and in which the student enrolls.

(g) Additional requirements for video programs.

(1) Delivery of the material. For ADMs delivered by the use of videotape, digital video disc (DVD), film, or similar media, the equipment and program materials may only be made available through a process that is approved by TEA.

(2) Video requirement. In order to meet the video requirement of §176.1206(a)(1)(B)(v) of this title, the video course shall include between 60 and 150 minutes of video that is relevant to the required topics such as video produced by other entities for training purposes, including public safety announcements and B roll footage. The remainder of the 300 minutes of required instruction shall be video material that is relevant to one of the five substantive required topics and produced by the ADM owner, course owner, or course provider specifically for the ADM.

(A) A video ADM shall ask, at a minimum, at least one program validation question for each multimedia clip of more than 60 seconds at the end of each major segment (chapter) of the ADM.

(B) A video ADM shall devise and submit for approval a method for ensuring that a student correctly answers questions concerning the multimedia clips of more than 60 seconds presented during the ADM.

(h) Standards for ADMs using new technology. For ADMs delivered using technologies that have not been previously reviewed and approved by TEA, TEA may apply similar standards as appropriate and may also require additional standards. These standards shall be designed to ensure that the program can be taught by the alternative method and that the alternative method includes testing and security measures that are at least as secure as the methods available in the traditional classroom setting.

(i) Modifications to the ADM. Except as provided by paragraph (1) of this subsection, a change to a previously approved ADM shall not be made without the prior approval of TEA. The licensed course provider for the approved program on which the ADM is based shall ensure that any modification to the ADM is implemented by all schools endorsed to offer the ADM.

(1) A course provider may submit to the TEA a request for immediate implementation of a proposed change that is insignificant or that protects the interest of the consumer such that immediate implementation is warranted. The request shall include:

(A) a complete description of the proposed change;

(B) the reason for the change;

(C) the reason the requestor believes the proposed change is insignificant or protects the interest of the consumer such that immediate implementation is warranted; and

(D) an explanation of how the change will maintain the program or ADM in compliance with state law and the rules specified in this chapter.

(2) The TEA may request additional information regarding a proposed change from the course provider making a request under paragraph (1) of this subsection.

(3) The TEA will respond to any request made under paragraph (1) of this subsection within five working days of receipt.

(A) If the TEA determines that the proposed change is insignificant or protects the interest of the consumer such that immediate implementation is warranted, the requestor may immediately implement the change. The licensed course provider for the approved program on which the ADM is based shall ensure that the change is implemented by all schools endorsed to offer the ADM.

(B) If the TEA determines that the proposed change is neither insignificant nor protects the interest of the consumer such that immediate implementation is warranted, the TEA shall notify the requestor of that determination and the change may not be made unless the TEA approves the change following a complete review.

(4) A determination by the TEA to allow immediate implementation under paragraph (1) of this subsection does not constitute final approval by the TEA of the change. The TEA reserves the right to conduct further review after the change is implemented and to grant or deny final approval based on whether the change complies with state law and rules specified in this chapter.

(5) If, following further review, a change in an ADM that has been immediately implemented pursuant to paragraph (1) of this subsection is determined not to be in compliance with state law and rules specified in this chapter, the TEA:

(A) shall notify the course provider affected by the change of:

(i) the specific provisions of state law or rules with which the ADM change is not in compliance; and

(ii) a reasonable date by which the ADM must be brought into compliance;

(B) shall require the course provider to notify any school endorsed by the course provider of the finding;

(C) shall not, for the period between the implementation of the change and the date specified under subparagraph (A)(ii) of this paragraph:

(i) seek any penalty relating to the non-compliance;

(ii) take any action to revoke or deny renewal of a license of a school or course provider based on the change; or

(iii) withdraw approval of a program or ADM based on the change; and

(D) is not required to specify the method or manner by which the course provider alters the ADM to come into compliance with state law and the rules in this chapter.

(6) If the TEA allows immediate implementation pursuant to paragraph (1) of this subsection and later determines that the description of the change or the request was misleading, materially inaccurate, not substantially complete, or not made in good faith, paragraph (5)(C) of this subsection does not apply.

(7) A course provider who immediately implements a change pursuant to paragraph (1) of this subsection and fails to bring the ADM into compliance prior to the date allowed under paragraph (5)(A)(ii) of this subsection may be determined to be in violation of state law or the rules in this chapter after that date.

(8) A course provider that immediately implements a change under paragraph (1) of this subsection assumes the risk of final approval being denied and of being required to come into compliance with state law and the rules in this chapter prior to the date allowed under paragraph (5)(A)(ii) of this subsection, including bearing the cost of reversing the change or otherwise modifying the ADM to come into compliance with state law and the rules in this chapter.

(j) Termination of the school's operation. Upon termination, a school shall deliver any missing student data to TEA within five days of termination.

(k) Renewal of ADM approval. The ADM approval must be renewed every two years. The renewal document due date shall be March 1, 2012, and every two years thereafter.

(1) For approval, the course provider shall:

(A) update all the statistical data and references to law with the latest available data; and

(B) submit a statement of assurance saying that the ADM has been updated to reflect the latest applicable laws and statistics.

(2) Failure to make necessary changes or to submit a statement of assurance documenting those changes shall be cause for revocation of the ADM approval.

(3) The commissioner may alter the due date of the renewal documents by giving the approved ADM six months' notice. The commissioner may alter the due date in order to ensure that the ADM is updated six months after the effective date of new state laws passed by the Texas Legislature.

(l) Access to instructor. With the exception of circumstances beyond the control of the school, the student shall have adequate access (on the average, within two minutes) to both a licensed instructor and telephonic technical assistance (help desk) throughout the program such that the flow of instructional information is not delayed.

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

Filed with the Office of the Secretary of State on October 31, 2008.

TRD-200805772

Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Earliest possible date of adoption: December 14, 2008
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 11. TEXAS BOARD OF NURSING

CHAPTER 211. GENERAL PROVISIONS

22 TAC §211.6

The Texas Board of Nursing (BON) proposes an amendment to 22 TAC §211.6, pertaining to Committees of the Board. The proposed amendment adds language to the foregoing rule reflecting the establishment of the Eligibility and Disciplinary Advisory Committee (EDAC), formerly known as the Eligibility and Disciplinary Committee Task Force. When the Task Force was created, its purpose was to develop recommendations for the Board concerning matters of licensure, eligibility, and discipline. The designation of "Task Force" has served to describe the committee as potentially limited in duration. This committee has proved a very valuable asset in obtaining stakeholder input regarding matters of eligibility and discipline and has served to educate stakeholders as to the unique value of the Board in the protection of public health and welfare through its decisions regarding eligibility and discipline. The Task Force has been re-designated as a standing "Advisory Committee," which is to be utilized to give analysis and advise the Board regarding regulatory matters, with continuing duration.

Katherine Thomas, Executive Director, has determined that for the first five-year period the proposed amendment is in effect there will be no additional fiscal implications for state or local government as a result of implementing the proposed amendment.

Ms. Thomas has also determined that for each year of the first five years the proposed amendment is in effect, the public benefit will be that the amendment will provide greater efficiency in the administration of the agency's functions. There will not be any foreseeable effect on small businesses. There are no anticipated costs to affected individuals as a result of the implementation of the proposed amendment.

Written comments on the proposal may be submitted to James W. Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to dusty.johnston@bon.state.tx.us, or faxed to (512) 305-8101.

The amendment is proposed pursuant to the authority of Texas Occupations Code §301.151 which authorizes the Texas Board of Nursing to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act.

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

§211.6. Committees of the Board.

(a) - (e) (No change.)

(f) Advisory Committees. The president may appoint, with the authorization of the board, advisory committees for the performance of such activities as may be appropriate or required by law.

(1) The board has established the following committees that advise the board on a continuous basis or as charged by the Board:

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

(D) the Eligibility and Disciplinary Advisory Committee (EDAC) gives analysis and advises the Board regarding regulatory matters. The EDAC is comprised of representatives from the following:

(i) Texas Association of Vocational Nurse Educators (TAVNE);

(ii) Licensed Vocational Nurses Association of Texas (LVNAT);

(iii) Texas League of Vocational Nurses (TLVN);

(iv) Texas Organization of Associate Degree Nursing (TOADN);

(v) Texas Organization of Baccalaureate and Graduate Nurse Educators (TOBGNE);

(vi) Texas Nurses Association (TNA);

(vii) Texas Organization of Nurse Executives (TONE);

(viii) Coalition for Nurses in Advanced Practice; and

(ix) other members approved by the Board.

(2) - (12) (No change.)

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

Filed with the Office of the Secretary of State on November 3, 2008.

TRD-200805788
James W. Johnston
General Counsel
Texas Board of Nursing
Earliest possible date of adoption: December 14, 2008
For further information, please call: (512) 305-6811

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CHAPTER 217. LICENSURE, PEER ASSISTANCE AND PRACTICE

22 TAC §217.16

The Texas Board of Nursing (BON) proposes amendments to 22 TAC §217.16 relating to Minor Incidents. The proposed amendments will provide clarification and consistency in the Board's current "minor incident" rule with the board's nursing peer review rules located at 22 TAC §217.19 and §217.20, relating to Incident-Based and Safe Harbor Nursing Peer Review respectively. This proposed rule regarding minor incidents will help with the implementation of the previously adopted nursing peer review rules that became effective May 11, 2008, as published in the October 10, 2008, issue of the *Texas Register* (33 TexReg 8512). These rules were revised in response to Senate Bill 993 and House Bill 2426 (80th Regular Texas Legislative Session, 2007).

The minor incident rule was last amended in May of 2006 and has been in existence since 1994. As is stated in current rule language, the board does not believe the protection of the public is enhanced by the reporting of every minor incident that may be a violation of the Texas Nursing Practice Act. The intent of the Minor Incident rule is to provide guidance to nurses, nursing peer review committees, nursing supervisors and others who may have a duty to report in determining whether a nurse has engaged in conduct that indicates the nurse's continued practice would pose a risk of harm to patients or others that cannot be remediated or that is otherwise required to be reported to the board.

The proposed rule also adds guidance for implementing amended §301.410(b) of the Nursing Practice Act which now requires a report to the board when a person believes a nurse has committed a practice violation in conjunction with the belief that the nurse may concurrently be impaired by chemical dependency or any condition that results in the nurse experiencing a diminished mental capacity.

The proposed rule seeks to implement additional changes recommended by the BON's Nursing Practice Advisory Committee (NPAC) which were adopted by the Board to clarify language regarding conduct that requires a report to the board and conduct that typically does not require a report to the board. Given that nurses are frequently in attendance when a patient expires, the proposed language also provides guidance to peer review committees when they are asked to evaluated nursing actions associated with a death or serious injury. The rule is designed to ensure that the peer review documents the committee's rationale in coming to this determination when death or serious injury to a patient is present.

Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposal is in effect, there will be no additional fiscal implications for state or local government as a result of implementing the proposed amendments. There will be no effect on small or micro businesses or foreseeable anticipated costs to affected individuals as a result of the implementation of the proposed rule changes.

Ms. Thomas has also determined that for each year of the first five years the proposal is in effect, the public benefit will be that the BON will more effectively fulfill its mission.

Written comments on the proposed amendments may be submitted to Katherine Thomas, Executive Director, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, TX 78701; by e-mail to katherine.thomas@bon.state.tx.us; or by facsimile to (512) 305-8101.

The amendment is proposed pursuant to the authority of Texas Occupations Code §301.151 which authorizes the Board of Nursing to adopt, enforce, repeal, and amend rules consistent with its legislative authority under the Nursing Practice Act.

The proposed rule implicates Texas Occupations Code §301.401 and §301.410(b).

§217.16. Reporting of Minor Incidents.

(a) Purpose. The Board believes protection of the public is not enhanced by the reporting of every minor incident that may be a violation of the Texas Nursing Practice Act or a board rule. This is particularly true when there are mechanisms in place in the nurse's practice setting to identify nursing errors, detect patterns of practice, and take corrective action to remediate deficits in a nurse's judgment, knowledge, training, or skill. This rule is intended to provide guid-

ance to nurses, nursing peer review committees and others in determining whether a nurse has engaged in conduct that indicates the nurse's continued practice would pose a risk of harm to patients or others and should [~~clarify what constitutes a minor incident and when a minor incident need not~~] be reported to the board.

(b) Definition [~~and Scope~~]. A "minor incident" as defined under Nursing Practice Act §301.401(2) means [~~is defined by Texas Occupations code §301.419(a) as~~"] conduct by a nurse that may be a violation of the Nursing Practice Act or a Board rule but does not indicate the Nurse's continued [~~that does not indicate that the continuing~~] practice [~~of nursing by an affected nurse~~] poses a risk of harm to a patient [~~the client~~] or another [~~other~~] person.[~~"~~]

(c) Factors to be Considered in Evaluating if Conduct Must Be Reported to the Board.

(1) A nurse involved in a minor incident need not be reported to the Board unless the conduct indicates the nurse:

(A) ignored a substantial risk that exposed a patient or other person to significant physical, emotional or financial harm or the potential for such harm;

(B) lacked a conscientious approach to or accountability for his/her practice;

(C) lacked the knowledge and competencies to make appropriate clinical judgments and such knowledge and competencies cannot be easily remediated; or

(D) indicates the nurse has engaged in a pattern of multiple minor incidents that demonstrate the nurse's continued practice would pose a risk of harm to patients or others.

(2) Evaluation of Multiple Incidents.

(A) Evaluation of Conduct. In evaluating whether multiple incidents constitute grounds for reporting it is the responsibility of the nurse manager or supervisor or peer review committee to determine if the minor incidents indicate a pattern of practice that demonstrates the nurse's continued practice poses a risk and should be reported.

(B) Evaluation of Multiple Incidents. In practice settings with nursing peer review, the nurse must be reported to peer review if a nurse commits five minor incidents within a 12-month period. In practice settings with no nursing peer review, the nurse who commits five minor incidents within a 12 month period must be reported to the Board.

(C) Nurse Manager and Nurse Supervisor Responsibilities. Regardless of the time frame or number of minor incidents, if a nurse manager or supervisor believes the minor incidents indicate a pattern of practice that poses a risk of harm that cannot be remediated, the nurse should be reported to the Board or Peer Review Committee.

(3) Other factors that may be considered in determining whether a minor incident should be reported to the Board are:

(A) the significance of the nurse's conduct in the particular practice setting; and

(B) the presence of contributing or mitigating circumstances, including systems issues or factors beyond the nurse's control, in relation to the nurse's conduct.

(d) Conduct Required to be Reported.

(1) A nurse must be reported to the board or to a nursing peer review committee for the following conduct:

(A) An error that contributed to a patient's death or serious harm.

(B) Criminal Conduct defined in Texas Occupations Code §301.4535.

(C) A serious violation of the board's Unprofessional Conduct rule §217.12 of this title (relating to Unprofessional Conduct) involving intentional or unethical conduct including but not limited to fraud, theft, patient abuse or patient exploitation.

(D) A practice-related violation involving impairment or suspected impairment by reason of chemical dependency, intemperate use, misuse or abuse of drugs or alcohol, mental illness, or diminished mental capacity required to be reported in accordance with §301.410(b) of the Nursing Practice Act and §217.19(g) of this title (relating to Incident Based Nursing Peer Review and Whistle Blower Protections).

(2) If a nursing peer review committee determines that a nurse engaged in the conduct listed in subsection (c)(1)(A) - (D) of this section the committee must report the nurse to the board. For errors involving the death or serious injury of a patient, if a nursing peer review committee makes a determination that a nurse has not engaged in conduct subject to reporting to the board, the committee must maintain documentation of the rationale for their belief that the nurse's conduct failed to meet each of the factors in paragraph (1)(A) - (D) of this subsection.

[~~(c) Exclusions. The following conduct shall not be deemed a minor incident under any circumstance:~~]

[~~(1) An error that contributed to a patient's death or serious harm.~~]

[~~(2) Criminal Conduct defined in Texas Occupations Code §301.4535.~~]

[~~(3) A serious violation of the board's Unprofessional Conduct Rule (22 TAC §217.12) involving intentional or unethical conduct such as fraud, theft, patient abuse or patient exploitation.~~]

[~~(d) Criteria for Determining if Minor Incident is Board-Reportable.~~]

[~~(1) A nurse involved in a minor incident need not be reported to the Board unless the conduct:~~]

[~~(A) creates a significant risk of physical, emotional or financial harm to the client;~~]

[~~(B) indicates the nurse lacks a conscientious approach to or accountability for his/her practice;~~]

[~~(C) indicates the nurse lacks the knowledge and competencies to make appropriate clinical judgments and such knowledge and competencies cannot be easily remediated; or~~]

[~~(D) indicates a pattern of multiple minor incidents demonstrating that the nurse's continued practice would pose a risk of harm to clients or others.~~]

[~~(2) Evaluation of Multiple Incidents.~~]

[~~(A) Evaluation of Conduct. In evaluating whether multiple incidents constitute grounds for reporting it is the responsibility of the nurse manager or supervisor or peer review committee to determine if the minor incidents indicate a pattern of practice that demonstrates the nurse's continued practice poses a risk and should be reported.~~]

[~~(B) Evaluation of Multiple Incidents. In practice settings with nursing peer review, the nurse shall be reported to peer review if a nurse commits five minor incidents within a 12-month period. In practice settings with no nursing peer review, the nurse who com-~~

mits five minor incidents within a 12 month period shall be reported to the Board.]

[(C) Nurse Manager and Nurse Supervisor Responsibilities. Regardless of the time frame or number of minor incidents, if a nurse manager or supervisor believes the minor incidents indicate a pattern of practice that poses a risk of harm, the nurse should be reported to the Board or Peer Review Committee.]

(e) Conduct Normally Not Required to Be Reported to the Board [Special Considerations in Evaluating Incidents].

(1) An incident should be evaluated [In evaluating whether a nurse's conduct constitutes a minor incident or should be reported] to determine if [the Board, the following should be considered]:

(A) [(1)] the [If an] incident is primarily the result of factors beyond the nurse's control and addressing those factors is more likely to prevent the incident from reoccurring; or [, a presumption should exist that the incident is a non-reportable minor incident.]

(B) [(2)] the incident was [Multiple factors may contribute to medication errors. For the purposes of this rule,] a medication error caused primarily by factors beyond the nurse's control rather than [should be evaluated to determine whether the error resulted from] failure of the nurse to exercise proper clinical judgment [or if there were other extraneous factors that were the primary cause of the error]. Board Position Statement 15.17 Texas Board of Nursing/Board of Pharmacy Joint Position Statement/Medication Error provides guidelines for evaluating medication errors found at http://www.bon.state.tx.us/practice/position.html#15.17.

(2) If either of the conditions listed in paragraph (1) of this subsection are present, a presumption should exist that the nurse's conduct does not indicate the nurse's continued practice poses a risk of harm to a patient or another person and does not need to be reported to the board.

(f) Documentation of Minor Incidents. A minor incident should be documented as follows:

(1) A report must [shall] be prepared and maintained for a minimum of 12 months that contains a complete description of the incident, patient record number, witnesses, nurse involved and the action taken to correct or remedy the problem.

(2) If a medication error is attributable or assigned to the nurse as a minor incident, the record of that incident should indicate why the error is being attributed or assigned to the nurse.

(g) Nursing Peer Review Committee.

(1) If a report is made to the peer review committee, the committee must investigate and conduct incident-based nursing peer review in compliance with Nursing Peer Review Law in Texas Occupations Code §303 and §217.19 of this title.

(2) Review of a nurse's conduct or practice may be accomplished by either an informal work group of the nursing peer review committee as provided under §217.19(e) of this title or the full nursing peer review committee prior to a report being made to the board.

(3) [(1)] A nursing peer review committee receiving a report involving a minor incident or incidents must [shall] review the incident(s) and other conduct of the nurse during the previous 12 months to determine if the nurse's continuing to practice poses a risk of harm to patients [clients] or other persons and whether remediation would be reasonably expected to adequately mitigate such risk if it exists. The committee must [shall] consider the special considerations set out in subsection (c) [(d)] of this section.

[(2) Regardless of the number of incidents, the facility may choose to initiate an informal review process utilizing a workgroup of the nursing peer review committee Peer review of minor incidents under this Rule may be conducted by a special workgroup of the nursing peer review committee. The workgroup may conduct its review using an informal process as long as the nurse has opportunity to meet with the workgroup and provided the nurse is given an opportunity to be peer reviewed in accordance with §217.19 of this title (relating to Incident-Based Nursing Peer Review) prior to any report being made to the Board.]

(4) [(3)] The nursing [If the] peer review committee [determines either that the nurse's continuing to practice does not pose a risk of harm to clients or other persons or that remediation could reasonable be expected to adequately mitigate any such risk, the committee] need not report the nurse to the Board if the peer review committee determines that either:

(A) the nurse's continuing to practice does not pose a risk of harm to patients or other persons; or

(B) [provided any] remediation could reasonably be expected to adequately mitigate any such risk and the nurse [is] successfully completes the remediation [completed].

(5) If a nurse terminates employment while undergoing remediation activities as directed by a peer review committee under paragraph (3) of this subsection, the peer review committee may either:

(A) report the nurse to the BON;

(B) report to the peer review committee of the new employer, if known, with the nurses written consent;

(C) re-evaluate the nurse's current conduct to determine if the nurse did complete sufficient remediation and is deemed safe to practice.

(h) A Right to Report. Nurses and other persons are encouraged not to report minor incidents to the Board unless required to do so by this rule, but nothing in this rule is intended to prevent reporting of a potential violation directly to the Board or to a nursing peer review committee.

(i) Mis-classifying to Avoid Reporting. [Bad Faith Determination.] Intentionally mis-classifying an incident [in bad faith] to avoid reporting may result in violation of the mandatory reporting statute.

(j) Chief Nursing Officer or Nurse Administrator [Officer's] Responsibility. The Chief Nursing Officer, Nurse Administrator or registered nurse by any title who is responsible for nursing services [chief nursing officer] shall be responsible for taking reasonable steps to assure that minor incidents are handled in compliance with this rule and any other applicable law.

(k) Nurses Reported to the Board. If a nurse is reported to the board, the board shall review the nurse's conduct to determine if it indicates the nurse's continued practice poses a risk of harm to a patient or another person. If it does not the board may elect not to proceed with filing formal charges.

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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James W. Johnston
General Counsel
Texas Board of Nursing
Earliest possible date of adoption: December 14, 2008
For further information, please call: (512) 305-6811

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PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 534. GENERAL ADMINISTRATION

22 TAC §534.2

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §534.2 concerning Processing Fees for Dishonored Checks.

The amendments to §534.2 change the title to the section and amend the rule to clarify that the processing fee for dishonored payments does not only apply to dishonored checks but to any other types of dishonored payments such as a charge back to a credit card.

Loretta R. DeHay, General Counsel, has determined that for the first five-year period the sections 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 no anticipated impact on small businesses, micro-businesses or local or state employment as a result of implementing the sections.

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 consistency with how the agency treats dishonored payments of all kinds whether they are dishonored checks or credit card charge backs. The only anticipated economic cost is a minimal one to persons who, without previous authorization from the commission, attempt to prevent a credit card company from paying for a service provided by the commission.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments to the rule are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to insure compliance with the provisions of the Act.

The statutes affected by this proposal are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the proposed amendments.

§534.2. Processing Fees for Dishonored Payments [~~Checks~~].

(a) If a payment [~~check drawn~~] to the commission is dishonored by a payor, the commission shall charge a fee of $25 to the drawer or endorser for processing the dishonored payment [~~check~~]. The commission shall notify the drawer or endorser of the fee by sending a request for payment of the dishonored check and the processing fee by certified mail to the last known business address of the person as shown in the records of the commission. If the commission has sent a request for payment in accordance with the provisions of this section, the failure of the drawer or endorser to pay the processing fee within 15 days after the commission has mailed the request is a violation of this section.

(b) Collection of the fee imposed under this section does not preclude the commission from proceeding under Texas Occupations Code, §1101.652(a)(4) [~~Civil Statutes, Article 6573a, §15(a)(4)~~], against a licensee who has within a reasonable time failed to make good a payment [~~check~~] issued to the commission.

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

Filed with the Office of the Secretary of State on October 28, 2008.

TRD-200805687
Loretta R. DeHay
Assistant Administrator and General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: December 14, 2008
For further information, please call: (512) 465-3900

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CHAPTER 535. GENERAL PROVISIONS
SUBCHAPTER E. REQUIREMENTS FOR LICENSURE

22 TAC §535.51

The Texas Real Estate Commission (TREC) proposes amendments to §535.51 concerning General Requirements and proposes to adopt by reference ten revised application forms. The amendments are proposed to adopt by reference the ten revised forms to clarify and, when possible, simplify certain licensure requirements for applicants and renewing licensees. All ten forms revise the language of the question regarding the criminal background of the applicant, designated manager, or designated officer to clarify that deferred adjudication must be disclosed to the Commission. Form BLC-6, Application for a Real Estate Broker License by a Corporation, is also updated to reflect current terminology regarding corporate records as amended by the Texas Business Organizations Code. Form BLR-9, Application for Late Renewal of a Real Estate Broker License, is also updated to simplify the fee structure by eliminating a separate category of fees for expired licensees who are applying for late renewal after the license expired under a previous fee structure. Form BLRC-6, Application for Late Renewal of Real Estate Broker License by a Corporation, is also updated both to incorporate the corporate terminology changes of form BLC-6 and to eliminate the separate category of fees as in form BLR-9. Form SLR-10, Application for Late Renewal of Real Estate Salesperson License, is also updated to eliminate the separate category of fees as in form BLR-9. Form BLLLC-6, Application for Real Estate Broker License by a Limited Liability Company, is also updated to reflect current terminology regarding records of limited liability companies as amended by the Texas Business Organizations Code. Form BLRLLC-6, Application for Late Renewal of a Real Estate Broker License by a Limited Liability Company, is also updated both to incorporate the limited liability company terminology changes of form BLLLC-6 and to eliminate the separate category of fees as in form BLR-9.

Devon V. Bijansky, Assistant General Counsel, 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 amendments. There is no anticipated economic cost to persons who are required to comply with the proposed rules. There is no anticipated impact on small businesses, micro-businesses, or local or state employment as a result of implementing the sections.

Ms. Bijansky 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 greater clarity for applicants and renewing licensees regarding the fees, required documentation, and questions relating to honesty, integrity, and trustworthiness.

Comments on the proposed amendment may be submitted to Devon V. Bijansky, Assistant General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendment is proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to ensure compliance with the provisions of the Act.

The statutes affected by this proposal are Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed amendment.

§535.51. General Requirements.

(a) - (d) (No change.)

(e) The commission adopts by reference the following forms approved by the commission which are published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188:

(1) Application for a Real Estate Broker License, TREC Form BL-9 [~~8~~];

(2) Application for a Real Estate Broker License by a Corporation, TREC Form BLC-6 [~~5~~];

(3) [~~Effective September 1, 2007,~~] Application for Late Renewal of A Real Estate Broker License, TREC Form BLR-9 [~~8~~];

(4) [~~Effective September 1, 2007,~~] Application for Late Renewal of Real Estate Broker License by a Corporation, TREC Form BLRC-6 [~~5~~];

(5) [~~Effective November 1, 2007,~~] Application for Real Estate Salesperson License, TREC Form SL-12 [~~11~~];

(6) [~~Effective September 1, 2007,~~] Application for Late Renewal of Real Estate Salesperson License, TREC Form SLR-10 [~~9~~];

(7) Application for Moral Character Determination, TREC Form MCD-6 [~~5~~];

(8) Application for Real Estate Broker License by a Limited Liability Company, TREC Form BLLLC-6 [~~5~~];

(9) [~~Effective November 1, 2007,~~] Application of Currently Licensed Real Estate Broker for Salesperson License, TREC Form BSL-7 [~~6~~]; and

(10) [~~Effective September 1, 2007,~~] Application for Late Renewal of a Real Estate Broker License by a Limited Liability Company, TREC Form BLRLLC-6 [~~5~~].

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

Filed with the Office of the Secretary of State on October 28, 2008.

TRD-200805688
Loretta R. DeHay
Assistant Administrator and General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: December 14, 2008
For further information, please call: (512) 465-3900

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22 TAC §535.52

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §535.52 concerning Individuals.

The proposed amendments to §535.52 clarify the conduct that the commission believes tends to demonstrate that an applicant for a license or registration with the commission does not meet the requisite honesty, trustworthiness, and integrity required by Texas Occupations Code Chapters 1101 and 1102.

Loretta R. DeHay, General Counsel, has determined that for the first five-year period the sections 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 no anticipated impact on small businesses, micro-businesses or local or state employment as a result of implementing the sections.

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 consistent application of statutory requirements for application for a license or registration filed with the commission. There is no anticipated economic cost to persons who are required to comply with the proposed amendments.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments to the rule are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to insure compliance with the provisions of the Act.

The statutes affected by this proposal are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the proposed amendments.

§535.52. Individuals.

(a) The commission may deny a license to [~~disapprove~~] an [~~application if the~~] applicant who fails to satisfy the commission as to the honesty, trustworthiness, or integrity of the applicant under Texas Occupations Code, §§1101.354, 1102.107, 1102.108, and 1102.109; and §535.400 of this title.

(b) Conduct that tends to demonstrate that an applicant does not possess the requisite honesty, trustworthiness or integrity includes, but is not limited to:

(1) a plea of guilty or nolo contendere to or a conviction of any offense listed in §541.1 of this title (relating to Criminal Offense Guidelines);

(2) failing to successfully or satisfactorily complete any term or condition of parole, supervised release, probation, or community supervision;

(3) providing false or misleading information to the commission;

(4) disciplinary action taken against, or the surrender of, any other professional or occupational license or registration, in this or any other state;

(5) engaging in activities for which a license or registration is required without having the legal authorization to do so, in this or any other state;

(6) violating any provision of Texas Occupations Code, Chapter 1101 or 1102;

(7) violating any provision of Chapters 531, 533, 535 or 537 of this title;

(8) failing to pay a judgment (including any court-ordered costs, fees, penalties, or damages), that is not otherwise discharged in bankruptcy.

(c) [~~(b)~~] Texas residents who enter [~~the~~] military service and resume their Texas residence immediately upon separation from the military are not considered to have lost their Texas residence unless they have affirmatively established legal residence elsewhere.

(d) [~~(c)~~] The fact that an individual has had disabilities of minority removed does not affect the requirement that an applicant be 18 years of age to be eligible for a license.

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

Filed with the Office of the Secretary of State on October 28, 2008.

TRD-200805689
Loretta R. DeHay
Assistant Administrator and General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: December 14, 2008
For further information, please call: (512) 465-3900

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SUBCHAPTER T. EASEMENT OR RIGHT-OF-WAY AGENTS

22 TAC §535.400

The Texas Real Estate Commission (TREC) proposes amendments to §535.400 concerning Registration of Easement or Right-of-Way Agents and proposes to adopt by reference two revised application forms. The amendments are proposed to adopt by reference the revised forms to clarify certain licensure requirements for applicants. Both forms revise the language of the question regarding the criminal background of the applicant, designated manager, or designated officer to clarify that deferred adjudication must be disclosed to the Commission. Form ERW 2-3, Application For Easement Or Right-of-Way Agent Registration For A Business, is also updated to reflect current terminology regarding corporate records as amended by the Texas Business Organizations Code.

Devon V. Bijansky, Assistant General Counsel, 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 amendments. There is no anticipated economic cost to persons who are required to comply with the proposed new rules. There is no anticipated impact on small businesses, micro-businesses, or local or state employment as a result of implementing the sections.

Ms. Bijansky 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 greater clarity for applicants regarding required fees and supporting documentation.

Comments on the proposed amendment may be submitted to Devon V. Bijansky, Assistant General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendment is proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees and certificate holders in keeping with the purpose and intent of the Act to ensure compliance with the provisions of the Act.

The statutes affected by this proposal are Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed amendment.

§535.400. Registration of Easement or Right-of-Way Agents.

(a) The Texas Real Estate Commission adopts by reference the following forms approved by the Texas Real Estate Commission in 2000. These forms are published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

(1) ERW 1-3 [~~2~~], Application For Easement Or Right-of-Way Agent Registration For An Individual; and

(2) ERW 2-3 [~~2~~], Application For Easement Or Right-of-Way Agent Registration For A Business.

(b) An individual desiring to be registered by the commission as an easement or right-of-way agent must file form ERW 1-3 [~~2~~] with the commission. If the applicant is a business, the applicant must file form ERW 2-3 [~~2~~]. All applicants must submit the applicable fees set forth in The Real Estate License Act, Texas Occupations Code, Chapter 1101, (the Act). The commission will not accept an application which has been submitted without the correct filing fees or which has been submitted in pencil. A person also may apply for registration by accessing the commission's Internet web site, entering the required information on the application form and paying the appropriate fee in accordance with the instructions provided at the site by the commission. If the person is an individual, the person must provide the commission with the person's photograph and signature prior to issuance of a registration certificate. The person may provide the photograph and signature prior to the submission of an electronic application. If the applicant does not complete the application process as required by this subsection, the commission shall terminate the application.

(c) - (f) (No change.)

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

Filed with the Office of the Secretary of State on October 28, 2008.

TRD-200805691
Devon V. Bijansky
Assistant General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: December 14, 2008
For further information, please call: (512) 465-3900

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CHAPTER 537. PROFESSIONAL AGREEMENTS AND STANDARD CONTRACTS

22 TAC §537.51, §537.52

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC Chapter 537 by adding new §537.51 concerning Standard Contract Form TREC No. 44-0 and new §537.52 concerning Standard Contract Form TREC No. 45-0.

New 22 TAC §537.51 proposes to adopt by reference a new TREC addendum for reservation of oil, gas, and other minerals. The proposed addendum would be used in situations where a seller in a real estate transaction wishes to reserve all or an identified percentage interest in the mineral estate owned by the seller, as defined in the addendum.

New 22 TAC §537.52 proposes to adopt by reference a new TREC short sale addendum. The proposed addendum would be used in transactions where the seller requires the consent of the lienholder to sell the property and the lienholder agrees to accept the seller's net proceeds in full satisfaction of seller's liability under the mortgage loan.

Texas real estate licensees are generally required to use forms promulgated by TREC when negotiating contacts for the sale of real property. These forms are drafted by the Texas Real Estate Broker-Lawyer Committee, an advisory body consisting of six attorneys appointed by the President of the State Bar of Texas, six brokers appointed by TREC, and a public member appointed by the governor.

Loretta R. DeHay, General Counsel, has determined that for the first five-year period the sections 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 no anticipated impact on small businesses, micro-businesses or local or state employment as a result of implementing the sections.

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 the availability of current standard contract forms. There is no anticipated economic cost to persons who are required to comply with the proposed sections other than the costs of obtaining copies of the forms, which would be available at no charge through the TREC web site.

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 draft-contracts@trec.state.tx.us.

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 Chapter 1101; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of Chapter 1101 and ensure compliance with Chapter 1101.

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

§537.51. Standard Contract Form TREC No. 44-0.
The Texas Real Estate Commission adopts by reference standard contract form TREC No. 44-0 approved by the Texas Real Estate Commission in 2008 for use as an addendum to be added to promulgated forms of contacts for the reservation of oil, gas, and other minerals. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.state.tx.us.

§537.52. Standard Contract Form TREC No. 45-0.
The Texas Real Estate Commission adopts by reference standard contract form TREC No. 45-0 approved by the Texas Real Estate Commission in 2008 for use as an addendum to be added to promulgated forms of contracts in the short sale of property. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.state.tx.us.

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

Filed with the Office of the Secretary of State on October 28, 2008.

TRD-200805692
Loretta R. DeHay
Assistant Administrator and General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: December 14, 2008
For further information, please call: (512) 465-3900

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CHAPTER 541. RULES RELATING TO THE PROVISIONS OF TEXAS OCCUPATIONS CODE, CHAPTER 53

22 TAC §541.1

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §541.1 concerning Criminal Offense Guidelines.

The proposed amendments to §541.1 clarify the types of criminal offenses that the commission believes relate to the duties and responsibilities of a real estate broker, salesperson, easement or right-of-way agent, professional inspector, real estate inspector, or apprentice inspector in that the offenses tend to demonstrate the person's inability to represent the interest of another with honesty, trustworthiness and integrity required by Texas Occupations Code, Chapters 1101 and 1102.

Loretta R. DeHay, General Counsel, has determined that for the first five-year period the sections 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 no anticipated impact on small businesses, micro-businesses or local or state employment as a result of implementing the sections.

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 consistent application of criminal offense guidelines. There is no anticipated

economic cost to persons who are required to comply with the proposed amendments.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments to the rule are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to insure compliance with the provisions of the Act.

The statutes affected by this proposal are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the proposed amendments.

§541.1. Criminal Offense Guidelines.

(a) For the purposes of Texas Occupations Code, Chapter 53, §§1101.354, 1102.107, 1102.108, 1102.109, and §535.400(f) of this title, the Texas Real Estate Commission considers that the following [~~felonies or misdemeanors to be~~] criminal offenses [~~which may be~~] directly relate [~~related~~] to the duties and responsibilities of a [~~the occupation of~~] real estate broker, real estate salesperson, easement or right-of-way agent, professional inspector, real estate inspector or apprentice inspector for the reason that the commission of the [~~following criminal~~] offenses tends to demonstrate the person's inability to represent the interest of another with honesty, trustworthiness and integrity:

(1) offenses involving fraud or misrepresentation;

(2) offenses involving forgery, falsification of records, or perjury;

(3) offenses involving the taking of bribes, kickbacks, or other illegal compensation;

(4) [~~(2)~~] offenses against real or personal property belonging to another, if committed knowingly or intentionally;

(5) offenses against the person;

(6) [~~(3)~~] offenses against public administration;

(7) [~~(4)~~] offenses involving the sale or other disposition of real or personal property belonging to another without authorization of law;

(8) [~~(5)~~] offenses involving moral turpitude;

(9) offenses in violation of Chapter 21, Texas Penal Code (sexual offenses);

(10) offenses for which the person has been required to register as a sex offender under Chapter 62, Texas Code of Criminal Procedure;

(11) [~~(6)~~] offenses of attempting or conspiring to commit any of the foregoing offenses;[~~.~~]

(12) offenses involving aiding and abetting the commission of an offense listed in this section;

(13) multiple violations of any criminal statute; and

(14) any other offense that the commission determines is directly related to an occupation regulated by the commission using the factors described in subsection (b) of this section.

(b) In determining whether a criminal offense listed in subsection (a) of this section or any other criminal offense is directly related to an occupation regulated by the commission, the commission shall consider and make appropriate findings of fact in a contested case upon the following factors:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the purposes for requiring a license to engage in the occupation;

(3) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and

(4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensed occupation.

(c) In addition to the factors [~~that may be considered~~] under subsection (b) of this section, the commission, in determining a person's [~~the~~] present fitness for a license [~~of a person who has been convicted of a crime~~], shall consider the following evidence:

(1) the extent and nature of the person's past criminal activity;

(2) the age of the person at the time of the commission of the offense [~~crime~~];

(3) the amount of time that has elapsed since the person's last criminal activity;

(4) the conduct and work activity of the person prior to and following the criminal activity;

(5) the person's compliance with the court-ordered terms and conditions while on parole, supervised release, probation, or community supervision;

(6) the person's repeated offenses over a period of time which tend to demonstrate a lack of respect for, disregard for, or apparent inability to comply with, the law;

(7) the time remaining, if any, on the person's term of parole, supervised release, probation, or community supervision;

(8) [~~(5)~~] evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release; and

(9) [~~(6)~~] other evidence of the person's present fitness, including letters of recommendation from: prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person; the sheriff and chief of police in the community where the person resides; and any other persons in contact with the [~~convicted~~] person.

(d) It shall be the responsibility of the applicant to provide to the commission:

(1) the recommendations of prosecution, law enforcement, and correctional authorities;

(2) signed letters of character reference from persons in the applicant's business or professional community which confirm that the writer knows about the applicant's prior criminal conduct;

(3) proof in such form as may be required by the commission that he or she has maintained a record of steady employment;

(4) proof that the applicant has supported his or her dependents, if any;

(5) proof that the applicant has maintained a record of good conduct;

(6) proof that the applicant has paid all outstanding court costs, supervision fees, fines, and restitution as may have been ordered in all criminal cases; and

(7) if the applicant submits a letter of character reference from a prospective sponsor, the letter must confirm that the writer knows about the applicant's prior criminal conduct.

~~[(d) It shall be the responsibility of the applicant to the extent possible to secure and provide to the commission the recommendations of the prosecution, law enforcement, and correctional authorities; the applicant shall also furnish proof in such form as may be required by the commission that he or she has maintained a record of steady employment and has supported his or her dependents and has otherwise maintained a record of good conduct and has paid all outstanding court costs, supervision fees, fines, and restitution as may have been ordered in all criminal cases in which he or she has been convicted.]~~

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

Filed with the Office of the Secretary of State on October 28, 2008.

TRD-200805693
Loretta R. DeHay
Assistant Administrator and General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: December 14, 2008
For further information, please call: (512) 465-3900

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 9. PROPERTY TAX ADMINISTRATION

SUBCHAPTER A. PRACTICE AND PROCEDURE

34 TAC §9.109

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

The Comptroller of Public Accounts proposes the repeal of §9.109, concerning procedures for protesting preliminary findings of taxable value. The section will be replaced by a proposed new subchapter that breaks the current, lengthy rule into shorter, more manageable rules and sets out the items that must be included in a protest petition that adequately "specifies the grounds for objection" as required by Government Code, §430.303. The proposed new rules would require the comptroller to refer protests that cannot be resolved without a hearing to the State Office of Administrative Hearings (SOAH). In addition to defining terms and addressing when a protest must by filed, the proposed new rules address the scheduling order issued by a SOAH Administrative Law Judge (ALJ), the exchange of evidence by the parties after referral to SOAH, the conduct of the hearing by SOAH ALJ's, the ALJ's decision, the exceptions process, and the issuance of a final decision.

John Heleman, Chief Revenue Estimator, has determined that repeal of the rule will not result in any fiscal implications to the state or to units of local government.

Mr. Heleman also has determined the repeal would benefit the public by facilitating the replacement of an outdated rule with a subchapter detailing and clarifying the procedures required to protest preliminary findings of the taxable value of property. The proposed repeal would have no fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the repeal.

Comments on the proposed rules may be submitted to Buddy Breivogel, Manager, Property Tax Division, P.O. Box 13528, Austin, Texas 78711-3528.

The repeal is proposed under Government Code, §403.303(c), which requires that the comptroller adopt rules governing protests of preliminary findings.

The proposed repeal affects Government Code, §403.303.

§9.109. Procedures for Protesting Preliminary Findings of Taxable Value.

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

Filed with the Office of the Secretary of State on November 3, 2008.

TRD-200805782
Ashley Harden
Chief Deputy General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: December 14, 2008
For further information, please call: (512) 475-0387

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SUBCHAPTER L. PROCEDURES FOR PROTESTING PRELIMINARY FINDINGS OF TOTAL TAXABLE VALUE

34 TAC §§9.4301 - 9.4313

The Comptroller of Public Accounts proposes new §§9.4301 - 9.4313, concerning procedures for protesting preliminary findings of taxable value. The proposed new rules will replace §9.109, which sets out the current procedures for protesting the preliminary findings of taxable value. The proposed new rule(s) were developed, in part, because the comptroller will refer hearings on protests of the preliminary findings to the State Office of Administrative Hearings (SOAH), beginning in 2008. The current rule did not provide for such a referral. New procedures were required to conform comptroller procedures with SOAH procedures and processes and ensure a smooth, efficient referral and a fair hearing. The proposed rule clarifies the language and evidence that must be included in a petition to sufficiently state the grounds for objection to preliminary findings. The current rule is difficult for the public to use because it is lengthy and covers several different, but related, topics. The proposed new rules break the longer rule down into shorter rules that each address a specific topic. The proposed new

rules govern the entire protest process. Among the matters that are addressed are; how and when to file a petition, extensions of time, what constitutes good cause for submitting evidence after the deadline, the burden of proof, how and when a protest will be referred to SOAH for hearing, the notice of hearing, issuance of a scheduling order, the exchange of evidence after referral to SOAH, the administrative law judge's powers and duties, how the hearing will be conducted, evidentiary rules, notice of the administrative law judge's proposed decision, exceptions to the proposed decision, and when the decisions become final.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rules will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be in detailing and clarifying the procedures required to protest preliminary findings of the taxable value of property. The proposed amendment would have no fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposed rules may be submitted to Buddy Breivogel, Manager, Property Tax Division, P.O. Box 13528, Austin, Texas 78711-3528.

The new rules are proposed under Government Code, §403.303, which requires the comptroller to adopt procedural rules governing the conduct of the protest hearing.

The proposed new rules implement Government Code, §403.303, which concerns protests of the comptroller's preliminary certification of school district total taxable property value.

§9.4301. Definitions.

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

(1) Agent--The individual that the petitioner is required to designate in the petition to perform the following activities on behalf of the petitioner:

(A) receive and act on all notices, orders, decisions, exceptions, replies to exceptions, and any other communications regarding the petitioner's protest;

(B) resolve any matter raised in petitioner's petition;

(C) argue and present evidence timely submitted with the petition at petitioner's protest hearing, unless agent designates in writing another individual to argue and present timely submitted evidence; and

(D) any other action required of petitioner.

(2) ALJ--An Administrative Law Judge employed by the State Office of Administrative Hearings.

(3) Appraisal district measures--The comptroller's measures of the degree of uniformity and median level of appraisal of an appraisal district made under Tax Code, §5.10.

(4) Decision--

(A) Proposed decision--A finding made by the ALJ concerning a protest of preliminary findings of taxable value, subject to filing of exceptions by any party.

(B) Final decision--An official finding adopted by the deputy comptroller.

(5) District--A school district. District does not include an appraisal district.

(6) Good cause--Appropriate justification other than a claim that the periods provided by these rules are too short.

(7) Person--Any individual, partnership, corporation, association, governmental subdivision, or public or private organization.

(8) Petition--The document and supporting evidence filed by petitioner indicating disagreement with the comptroller's preliminary findings or appraisal district measures

(9) Petitioner--A school superintendent, chief appraiser or eligible property owner who submits a petition seeking redetermination of the comptroller's preliminary findings or appraisal district measures. Unless the context clearly indicates otherwise, in this subchapter, the term "petitioner" includes petitioner's agent.

(10) Preliminary findings--The comptroller's findings of district property value delivered to a district and certified to the commissioner of education under Government Code, §403.302(f) or (g).

(11) Protest--A disagreement by a district, property owner, or appraisal district with the comptroller's preliminary findings or appraisal district measures initiated by timely filing the petition required by §9.4307 of this title (relating to Filing a Protest).

(12) Ratio study--A study designed to evaluate appraisal performance through a comparison of appraised values made for tax purposes with independent estimates of market value based either on sales prices or independent appraisals.

(13) SOAH--The State Office of Administrative Hearings.

§9.4302. Intent, Scope, and Construction of Subchapter H.

(a) Intent and scope of Subchapter H. This subchapter is intended to provide a petitioner with an informal, clear process for resolving a disagreement with the Comptroller of Public Account's preliminary findings of property value, certified to the commissioner of education pursuant to Government Code, §403.302(f) and (g), and the measures of degree of uniformity and the median level of appraisal made as required by Tax Code, §5.10. This section governs all aspects of a preliminary findings or appraisal district measures protest.

(b) Construction of protest rule. Rules concerning protests of the preliminary findings of property value certified to the commissioner of education pursuant to Government Code, §403.302(f) or (g) and the measures of degree of uniformity and the median level of appraisals made pursuant to Tax Code, §5.10, will be reasonably construed in the rule's total context and in a manner that provides the parties with a reasonably informal protest process and hearing, and a fair decision for every protest.

(c) Unless otherwise provided, this subchapter shall be construed as provided by Code Construction Act, Government Code, Chapter 311.

§9.4303. General Provisions.

(a) In computing a period of time, the period begins on the day after the act or event in question and ends on the last day of the time period. If the last day of the time period is a Saturday, Sunday, or state or federal legal holiday, the period of time runs until the end of the first day that is neither a Saturday, Sunday, or state or federal legal holiday.

(b) A property owner may contact the Property Tax Division manager for information concerning the districts or appraisal districts

that have filed a petition as required by this section. A district or appraisal district may contact the Property Tax Division manager for information concerning property owners that have filed a petition as required by this section.

§9.4304. Changes in Preliminary Certification.

(a) At any time before the date on which final changes in the preliminary findings are certified to the commissioner of education, the comptroller may certify to the commissioner of education amended preliminary findings.

(b) An amended preliminary finding is a change made by the comptroller to the district's preliminary findings that is certified to the commissioner of education and delivered to the district after the date on which preliminary findings for the district were originally certified and before the date on which final certification of changes in preliminary findings are certified.

(c) If the comptroller certifies amended preliminary findings that increase the district's total taxable value, the affected district, appraisal district, and property owners have a right to protest the findings in the manner required by this subchapter. The district's, appraisal district's, and property owner's time to protest begins to run on the date the amended preliminary findings are certified.

(d) An error in the comptroller's preliminary findings that was caused by an error in a district's annual report of property value or by a change in a district's certified tax roll may be corrected by timely filing a petition and otherwise complying with the requirements of this subchapter.

§9.4305. Extensions of Time.

(a) Before a hearing is referred to State Office of Administrative Hearings (SOAH), the Property Tax Division manager may, on the Property Tax Division's own motion, grant an extension of time for the limited purpose of correcting technical errors or omissions in a timely filed protest petition. Petitioner's failure to submit grounds for objection or all documentary evidence necessary to support the factual and legal contentions made in the petition is not a technical error or omission.

(b) At any time before a hearing is referred to SOAH, a petitioner may request an extension of time for any deadline by submitting a request for extension to the Property Tax Division manager.

(c) No more than one extension during an appeals period may be granted for each petitioner.

(d) An extension of time shall be requested in writing and submitted to the Property Tax Division manager at least five days in advance of the original deadline for which the extension is requested. If requested in writing by the petitioner and for good cause shown, the Property Tax Division manager may waive the requirement that the request for the extension be made five days in advance of the deadline.

(e) An extension may not extend the deadline for more than ten days.

(f) An extension may be granted by the Property Tax Division manager only for good cause shown, and if the reason for the extension is not the petitioner's neglect, indifference, or lack of diligence. Good cause does not include a claim that the time periods established in this rule are too short to meet the deadline.

§9.4306. Who May Protest.

(a) A district may protest the preliminary findings of its taxable value.

(b) A district may protest the preliminary findings of taxable value of an audit within the district.

(c) An owner of property included in a sample used by the comptroller to determine the taxable value of a category of property in a district may protest the comptroller's preliminary findings of value if the total ad valorem tax liability on the owner's properties included in the category sample for the district is $100,000 or more.

(d) An appraisal district may protest the comptroller's measures, made under Tax Code, §5.10, of the level and uniformity of property appraisals within the district.

(e) A protest filed by a property owner or an appraisal district will not be considered for any purposes to be a protest filed by a district.

(f) A petition must be signed by:

(1) the superintendent of the district, if it is a petition filed by a school district; or

(2) the property owner or the property owner's agent, if it is a petition filed by a property owner; or

(3) the chief appraiser of the appraisal district, if it is a petition filed by an appraisal district.

§9.4307. Filing a Protest.

(a) A petition for a protest of the preliminary findings of taxable value or measures of degree of uniformity or median level of appraisal must be filed within 40 days after the date the comptroller certifies preliminary findings of district taxable value to the commissioner of education.

(b) A petition for a protest of the preliminary findings of taxable value of an audit must be filed within 40 days of the date the district received the preliminary findings of taxable value.

(c) Except as provided by §9.4309(b)(5) or (f) of this title (relating to Scheduling a Protest Hearing), no additional evidence may be submitted after the deadline for filing a petition under subsection (a) or (b) of this section.

(d) All petitions and other documents related to a protest of the comptroller's preliminary findings or appraisal district measures shall be filed with the Comptroller of Public Accounts, Property Tax Division manager. No document or petition is filed until actually received. However, any petition including supporting evidence is timely filed if it is sent to the Property Tax Division manager by:

(1) first-class United States mail in a properly addressed and stamped envelope or wrapper, and the envelope or wrapper exhibits a legible postmark affixed by the United States Postal Service showing that the petition including supporting evidence was mailed on or before the last day for filing; or

(2) an express mail corporation in a properly addressed envelope or wrapper, and the envelope or wrapper exhibits a legible date showing that the petition including supporting evidence was delivered to the express mail corporation for delivery on or before the last day for filing; or

(3) fax received on or before the last day for filing if the petition including supporting evidence, is under ten pages in content, the original is mailed within three days of the fax and all procedures for submitting a protest have been followed; or

(4) electronic transmission, if petitioner obtains written permission from the Property Tax Division manager before the petition, evidence or both, are filed, or the Property Tax Division manager has approved the file format and form of transmission before the protest is filed. The manager may indicate the approval of specific types of electronic transmissions and file types, if any, by publishing specifications for electronic submission in the division's publication

entitled *How to Protest*, which accompanies each school district's preliminary findings.

(e) A petition shall show the petitioner's name and address, designate the petitioner's agent, and list for each category of property the grounds for objection to the preliminary findings for that category. Petitioner shall state the grounds for objection in the manner required by subsection (f) of this section. A petition that does not clearly specify, in the manner provided by subsection (f) of this section, the specific changes that petitioner alleges would improve the accuracy of the taxable finding or appraisal district measures does not adequately specify the grounds for objection as required by Government Code, §403.303(a) and will be rejected by the Property Tax Division manager without further review. The petition shall include the following information:

(1) the petitioner's grounds for objection, stated with the specificity and in the manner required by subsection (f) of this section;

(2) all documentary evidence, placed in order by category and item number, necessary to support the factual and legal contentions made in the petition; and

(3) the total taxable value petitioner claims is correct.

(f) The comptroller has been provided sufficient grounds for objection if the petitioner's protest lists, by property category, each change that the petitioner alleges would improve the accuracy of the taxable value finding or appraisal district measures, and provides the reason that each change will make the findings more accurate. An allegation that an item included the sample for a category of property should be adjusted, deleted from the sample, or treated differently than other items in the sample provides sufficient notice of the grounds for objection if the petitioner: identifies the sample item that petitioner alleges should be adjusted, deleted or treated differently; states for each item a specific reason or reasons why the item should be treated as requested by petitioner, and provides documentation or other evidence that supports the substance of each allegation. Without supporting documentation or other evidence to support the allegation, an allegation that a sample item is flawed and should be adjusted, deleted, or treated differently than the other items in the sample does not provide sufficient notice to the comptroller of the grounds for the petitioner's objection. The following are examples of sufficient grounds for objection:

(1) Sale A should be deleted. It is not an arms-length transaction because the buyer and seller are closely related. Included with the petition is a copy of a deed filed with the county clerk that indicates that the seller is related to the buyer and a statement from the buyer that she is the seller's daughter.

(2) Sale B should be deleted. It is not an arms-length transaction because it was made under duress. The sale is a "1031 exchange," which is a sale of real property in which either the buyers or sellers obtained or attempted to obtain the federal income tax benefit authorized by 26 U.S. C. §1031. The buyer did not start to search for an appropriate property until the month before the deadline for making the exchange. The buyer was under duress because she had to meet the deadline, so she paid more than market value for the property. Included with the petition is the buyer's signed statements that she bought the property when she did to avoid paying capital gains taxes and paid a higher price that she would have if she had not needed to buy the property quickly.

(3) Sale C should be adjusted because it sold with personal property. The sale price for the real property was actually $190,000 because the buyers purchased the seller's commercial kitchen appliances and fitness equipment that included a commercial quality treadmill and recumbent bicycle. The personal property is listed and valued in an attachment to the deed. Included with the petition is the deed and the attachment verifying the personal property included in the sale and its value at the time of sale.

(4) Sale D should be deleted because it is an estate sale and the sellers were forced to sell the property without regard to market value because the estate's debts had to be paid. Attached with the protest is a deed that shows it to be an estate sale and a statement from the seller than the estate's debts forced the seller to sell the property to the first willing buyer less than a month after the owner's death.

(g) A district shall deliver notice of its protest to each appraisal district that appraises property for the district. An appraisal district shall deliver notice of its protest to each district that participates in the appraisal district. A property owner shall deliver notice of its protest to each school district and appraisal district in which the property under protest is located. The district's, appraisal district's, and property owner's petition shall contain a certification that a copy of the petition was delivered as required by this subsection.

(h) The petition must contain a statement by the person signing the petition that, to the best of the person's knowledge, the evidence contained in the petition is true and correct.

§9.4308. Prehearing Matters.

(a) After reviewing a protest, the Property Tax Division will send petitioner's agent a recommendation and a form on which the petitioner may indicate agreement or disagreement with the Property Tax Division's recommendation, and request an informal settlement conference, non-binding mediation with a mediator designated by the comptroller, or a hearing before a State Office of Administrative Hearings (SOAH) Administrative Law Judge (ALJ).

(b) If the petitioner requests an informal settlement conference or mediation, the Property Tax Division will schedule a time for the informal settlement conference or mediation. The Property Tax Division will then notify the petitioner of the date, time, and place of the settlement conference or mediation.

(c) If a petitioner and the Property Tax Division are unable to resolve all of the issues raised in a petitioner's protest through an informal settlement conference, the petitioner will be given the opportunity to request mediation or a hearing before a SOAH ALJ.

(d) If a petitioner requests mediation, both parties to the mediation will appear before a mediator selected by the comptroller, who will listen to the evidence and argument presented by the parties. Any agreements reached as a result of the mediation must be documented in writing signed by all affected parties. If the parties are unable to resolve all issues raised in the petition through mediation, either party may request a hearing.

(e) Each party shall bear its own costs for participating in the mediation. If a non-comptroller employee is designated as a mediator, costs of the mediator's time and expenses shall be borne equally by all the parties.

§9.4309. Scheduling a Protest Hearing.

(a) Referral of a protest to State Office of Administrative Hearings (SOAH) may be made only by the Property Tax Division. The referral is initiated by filing with SOAH a request for setting of hearing that requests that the hearing be conducted on a date certain. At the time the referral is initiated, the Property Tax Division shall also provide to SOAH:

(1) a copy of the petition;

(2) notice of any related hearings that should be consolidated; and

(3) an accurate service list.

(b) Following receipt of the request for assignment of Administrative Law Judge (ALJ) form, SOAH shall assign the case a docket number, assign an ALJ, and issue a scheduling order for the case that:

(1) notifies all parties in writing of the ALJ assigned to the case;

(2) schedules a hearing on the protest to be held not later than 45 days after the date of the referral;

(3) requires the Property Tax Division, no later than 20 days before the date of the hearing, to file with the ALJ and provide petitioner with a copy of:

(A) all documentary evidence that the Property Tax Division intends to offer in response to the evidence petitioner filed with the petition;

(B) a witness list, and

(C) a summary of the testimony that each witness will provide at the hearing;

(4) requires the petitioner, no later than 10 days before the date of the hearing, to file with the ALJ and provide the Property Tax Division with a copy of:

(A) all documentary evidence that the petitioner intends to offer in response to the documentary evidence filed by the Property Tax Division,

(B) a witness list, and

(C) a summary of the testimony that each witness will provide at the hearing;

(5) provides that no party may offer evidence at the hearing that was not provided as required by the scheduling order unless the party shows good cause why the evidence was not provided in accordance with the scheduling order.

(c) Hearings shall be held at a location designated by SOAH.

(d) Following receipt of the scheduling order, the comptroller shall deliver notice of the date, time, and place fixed for a hearing to each petitioner. The notice must be delivered not later than ten days before the date of the hearing.

(e) Not less than five days before a scheduled protest hearing, the Property Tax Division or a petitioner may request a preliminary conference with the SOAH ALJ to clarify the issues for the hearing or resolve the protest. If the request is made, a conference call shall be scheduled during business hours at a time mutually agreeable to the ALJ, the Property Tax Division, and the petitioner. Admissions, proposals, or offers made in the compromise of disputed issues in a preliminary conference may not be admitted in a hearing.

(f) At a preliminary conference or at any other time before a scheduled hearing, either party may request that the ALJ issue an amended scheduling order. Any amended scheduling order shall provide that no party may offer evidence at the hearing that was not provided as required by the amended scheduling order unless the party shows good cause why the evidence was not provided in accordance with the amended scheduling order.

§9.4310. Administrative Law Judges Powers.

(a) The Administrative Law Judge (ALJ) shall conduct a protest hearing in a manner insuring fairness, the reliability of evidence, and the timely completion of the hearing. The ALJ shall have the authority necessary to receive and consider all evidence and propose decisions. The ALJ's authority includes, but is not limited to, the following:

(1) establish the comptroller's jurisdiction concerning the protest, including whether a timely protest has been filed or whether an extension of time should be granted;

(2) set hearing dates;

(3) rule on motions and the admissibility of evidence;

(4) designate parties and establish the order of presentation of evidence, except that the Property Tax Division, which is the party with the burden of proof, shall always have the right to present its evidence and argument on any issue prior to the parties protesting that issue;

(5) consolidate related protests;

(6) conduct a single hearing that provides for:

(A) participation by the affected district(s), appraisal district, and any property owner that has filed a valid and timely petition, if the hearing concerns preliminary findings of taxable value or the degree of uniformity and median level of appraisal; or

(B) participation by the affected district(s) and the commissioner of education, if the hearing concerns the preliminary findings of an audit of a district's taxable property value.

(7) conduct hearings in an orderly manner and expel from any proceeding any individuals who, after an appropriate warning, fail to comport themselves in a manner befitting the proceeding and continue with the proceeding, hear evidence, and render a decision on the protest;

(8) administer oaths to all persons presenting testimony;

(9) examine witnesses and comment on the evidence;

(10) insure that evidence, argument, and testimony are introduced and presented expeditiously;

(11) refuse to hear arguments that are repetitious, not confined to matters raised in the petition, not related to the evidence or that constitute mere personal criticism;

(12) accept and note any petitioner's waiver of any right granted by this rule;

(13) limit each hearing to two hours for presentation of evidence and argument or extend the two-hour time limit in the interest of a full and fair hearing; and

(14) exercise any other powers necessary or convenient to carry out the ALJ's responsibilities and to insure timely certification of changes in preliminary findings to the commissioner of education.

(b) The ALJ may take official notice of any matter that trial judges may judicially notice. Petitioners in a protest in which official notice is taken shall have an opportunity to contest the matter.

(c) The ALJ may entertain motions for dismissal at any time for any of the following reasons:

(1) failure to prosecute;

(2) unnecessary duplication of proceedings or res judicata;

(3) withdrawal of protest;

(4) moot questions or obsolete petition;

(5) failure to certify that notice of protest was filed as required by §9.4307 of this title (relating to Filing a Protest), or failure to actually file notice as required by §9.4307 of this title;

(6) an appraisal district's protest would result in an increase to a school district's preliminary findings of total taxable value; or

(7) the comptroller has certified amended preliminary findings as allowed by §9.4307 of this title.

(d) The ALJ may grant a request to postpone a protest hearing if good cause is shown and doing so would not prevent timely certification of changes in the preliminary findings to the commissioner of education. A request to postpone must be in writing, show good cause for the postponement, and be delivered five days before the date the protest hearing is scheduled to begin. Good cause does not include a claim that the time periods established in this rule are too short to meet the deadline. If requested in writing by the petitioner and for good cause shown, the ALJ may waive the requirement that the request for postponement be made five days in advance of the deadline.

(e) The ALJ shall determine the admissibility of the evidence. Any party may object to the admission of evidence and the objection will be ruled on and noted on the record. The ALJ may exclude irrelevant, immaterial, or unduly repetitious evidence. The ALJ may receive any part of the evidence in writing.

(f) The ALJ in a protest may not communicate outside a protest hearing, directly or indirectly, with any agency, person, petitioner or petitioner's agent regarding any issue of fact or law relating to the protest unless all parties in the protest have notice and opportunity to participate.

§9.4311. Conduct of Hearing.

(a) The Administrative Law Judge (ALJ) shall convene a hearing for a protest.

(b) All protests heard by the ALJ shall be recorded. A petitioner will be provided a copy of the recording after a written request and payment of a cost-based fee. A petitioner may at any time make arrangements for and bear the cost of having a hearing recorded and transcribed by a court reporter, provided the Property Tax Division and the ALJ timely receive a copy of the transcript.

(c) All proceedings are open to the public and are held in Austin, unless the ALJ designates another place for the hearing. The ALJ may close a hearing, on the ALJ's own motion or on the motion of any party, if confidential information may be disclosed during the hearing.

(d) Hearings shall be conducted in accordance with this section. The Texas Administrative Procedures Act does not apply.

(e) In a protest of the comptroller's preliminary findings, the comptroller has the burden of proving by a preponderance of the evidence that the comptroller used appraisal, statistical compilation, and analysis techniques, generally accepted as an appropriate method for the conduct of a ratio study by organizations setting recognized standards for the conduct of a ratio study, to reach a correct value for a district included in the property value study.

(f) Each petitioner may present oral or written argument on any matter raised by the petition. Argument shall be confined to the evidence and to arguments of other parties. Admissions, proposals, or offers made in the compromise of disputed issues in a preliminary conference may not be admitted in a hearing.

(g) Unless the ALJ permits multiple representatives to be heard in a protest hearing, no more than one representative for each party or aligned group of parties shall be heard in the hearing on any petition. An agent may designate, and the ALJ may approve, a reasonable number of individuals to present argument and timely submitted evidence. Nothing in this subsection limits the presentation of evidence through witness testimony.

(h) The ALJ shall establish the order of proceeding (except as noted in subsection (d) of this section), and is responsible for closing the record.

(i) An attorney who appears in a protest hearing must comply with §3.08 of the Texas Disciplinary Rules of Professional Conduct.

§9.4312. Proposed Decision, Exceptions.

(a) The Administrative Law Judge (ALJ) shall prepare a proposed decision that includes a statement of the reasons for the proposed decision.

(b) The ALJ shall serve the proposed decision on the deputy comptroller, the petitioner, and the Property Tax Division manager by facsimile machine, if available, by electronic mail, or by using an overnight mail delivery service.

(c) A party adversely affected by the proposed decision may, within ten days after the date the proposed decision is sent by facsimile machine, electronic mail, or delivered to an overnight delivery service, file exceptions by delivering the original documents to the ALJ.

(d) Replies to exceptions shall be filed in the same manner within 20 days after the proposal for decision is sent by facsimile machine, electronic mail, or delivered to an overnight delivery service.

(e) A copy of each exception and reply shall be served promptly on all other parties to the protest. Certification of service indicating that the exceptions were served on all other parties to the protest shall be furnished to the ALJ. On the motion of a party or on the motion of the ALJ, the ALJ may withhold consideration of a party's written exceptions if the party fails to:

(1) provide the copies required by this subsection to all other parties to the protest; or

(2) provide the ALJ with the certification of service required by this subsection.

(f) The ALJ may, on the ALJ's own motion or for good cause shown, extend or shorten the time in which to file exceptions or replies.

(g) The parties shall direct motions for extension of time in which to file exceptions or replies, or both, to the ALJ. A party's motion for extension of time shall be filed no later than five days before the applicable deadline for submission of exceptions or replies and shall demonstrate either:

(1) good cause for the requested extension; or

(2) agreement of all other parties to the extension.

(h) The ALJ shall review all exceptions and replies and notify the referring agency, within 15 days of the deadline for filing a reply to the exceptions, whether the ALJ recommends changes to the proposed decision.

§9.4313. Final Decision.

(a) A proposed decision is final, in either its original or amended form, on the date signed by the deputy comptroller.

(b) A final decision ordering changes to preliminary findings made as a result of a school district's protest will change the preliminary findings for the appraisal district in which the school district is located.

(c) A final decision ordering changes to preliminary findings made as a result of an appraisal district's protest will change the preliminary findings for the school districts participating in the appraisal district.

(d) A final decision ordering changes to preliminary values made as a result of a property owner's or district's protest will change the measures for an appraisal district.

(e) A final decision ordering changes to preliminary findings made as a result of a property owner's protest will change the preliminary findings for the school district where the property which is the subject of the protest is located. A property owner's preliminary value may be changed by a protest brought by a school district or appraisal district.

(f) The comptroller shall deliver written notice of the final decision to each protesting petitioner.

(g) Certification of changes to preliminary findings. Unless the comptroller determines that circumstances require otherwise, the comptroller shall certify to the commissioner of education all changes to the preliminary findings on or before August 15 of the year following the year of the study.

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

Filed with the Office of the Secretary of State on November 3, 2008.

TRD-200805781
Ashley Harden
Chief Deputy General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: December 14, 2008
For further information, please call: (512) 475-0387

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 421. STANDARDS FOR CERTIFICATION

37 TAC §421.5

The Texas Commission on Fire Protection (the Commission) proposes an amendment to §421.5, concerning Definitions. The purpose of this proposed amendment is to allow the Commission to accept college courses from an institution that has been accredited by a nationally recognized accrediting agency as approved by the U.S. Secretary of Education.

Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal impact on state or local governments.

Mr. Soteriou has also determined that for each year of the first five years the proposed amendment is in effect, there will be a public benefit anticipated as a result of enforcing the amendments in that other college courses approved by a nationally accredited agency will be accepted for higher levels of certification. There are no additional costs of compliance for small or large businesses or individuals that are required to comply with these proposed amendments.

Comments regarding these proposed amendments may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mailed to info@tcfp.state.tx.us. Comments will be reviewed and discussed at a future Commission meeting.

This amendment is proposed under Texas Government Code, §419.028, which allows the Commission to authorize training programs and instructors.

Cross reference to statute: Texas Government Code, §419.030.

§421.5. Definitions.

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

(1) - (10) (No change.)

(11) College credits--Credits earned for studies satisfactorily completed at an [~~a regionally accredited~~] institution of higher education accredited by an agency recognized by the U.S. Secretary of Education and including National Fire Academy (NFA) open learning program colleges, or courses recommended for college credit by the American Council on Education (ACE) or delivered through the National Emergency Training Center (both EMI and NFA) programs. A course of study satisfactorily completed and identified on an official transcript from a college or in the ACE National Guide that is primarily related to Fire Service, Emergency Medicine, Emergency Management, or Public Administration is defined as applicable for Fire Science college credit, and is acceptable for higher levels of certification.

(12) - (43) (No change.)

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

Filed with the Office of the Secretary of State on October 30, 2008.

TRD-200805737
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Earliest possible date of adoption: December 14, 2008
For further information, please call: (512) 936-3838

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CHAPTER 435. FIRE FIGHTER SAFETY

37 TAC §435.1

The Texas Commission on Fire Protection (the Commission) proposes amendments to §435.1, concerning Protective Clothing. The purpose of these proposed amendments is to offer a method which enables the fire service to prolong the in-service life of protective clothing that must be retired at 10 years from the date of manufacture as required by the National Fire Protection Association Standard 1851 - 2008 Edition ("Standard 1851"). The revised edition of the standard went into effect on June 24, 2007

and, pursuant to §419.040 Texas Government Code, ultimately must be placed in effect for the fire service in Texas. The Commission is also proposing to remove the reference to the product identified as BREATHE-TEX®, manufactured by Aldan Engineered Coated Fabrics, used as a moisture barrier in some protective clothing. The company had identified the product as defective and the Commission mandated the BREATHE-TEX® vapor barrier not be used in Texas. Aldan Engineering Coated Fabrics ceased manufacturing BREATHE-TEX® in 1992 and subsequently went out of business.

Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that if implemented immediately in accordance with its terms, Standard 1851 could cause immediate, significant, and burdensome costs on local governments. The intent of these amendments to §435.1 is to allow fire departments to continue using protective clothing for two years beyond the ten-year mandated retirement age as long as the protective clothing passes the advanced inspections found in Standard 1851. There are no cost implications for state government. Under the proposed amendments to §435.1, local government may incur costs to replace any protective clothing older than ten years that does not meet the inspection provisions set forth in the Standard 1851. Fire departments that own protective clothing older than 10 years could incur costs up to $1,500 per person to replace the protective clothing. There are approximately 26,000 sets of protective clothing in service in the approximately 500 regulated fire departments in Texas. Under the proposed amendment, the department will have to continue to perform an advanced inspection on protective clothing that is up to 12 years old. Protective clothing that fails the advanced inspection may have components replaced or repaired that would allow the garment to pass the inspection and the department may continue using the protective clothing for up to 12 years. Repair cost is estimated to be half the amount to replace existing ten-year-old protective clothing, which is far less than the cost of immediate compliance. The Commission proposes to limit this exception to two years. The Commission feels this time period would give all departments time to make the necessary budget adjustments that would allow them to be in full compliance with the conditions set forth in the NFPA 1851 Standard.

Mr. Soteriou has also determined that the public benefit anticipated as a result of enforcing these amendments would be to ensure the safety of fire fighters wearing the protective clothing when they are involved in fire suppression efforts. There are no additional costs of compliance for small or large businesses or individuals as they are not required to comply with these proposed amendments. Volunteer fire departments are not affected by this amendment.

Comments regarding these proposed amendments may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mailed to info@tcfp.state.tx.us. Comments will be reviewed and discussed at a future Commission meeting.

This amendment is proposed under Texas Government Code, §419.008, which provides the Commission with the authority to propose rules for the administration of its powers and duties.

Cross reference to statute: Texas Government Code, Chapter 419.043.

§435.1. Protective Clothing.

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

~~[(c) It has been demonstrated that the product identified as BREATHE-TEX®, manufactured by Aldan Engineered Coated Fabrics, used as a moisture barrier in some protective clothing, may fail unpredictably and allow moisture to pass through the barrier. This product is the subject of recalls by some manufacturers. Pursuant to the Government Code, §419.040 (b), the commission has determined that continued use of protective clothing having the moisture barrier identified above constitutes an undue risk to the wearer. Therefore, all regulated fire departments shall as of January 1, 2002, remove from service all protective clothing containing Breathe-Tex® moisture barriers.]~~

(c) ~~[(d)]~~ Protective clothing in use or contracted for prior to January 1, 2002, shall be exempted from the record keeping requirements contained in Section 2.3, Records, of NFPA 1851.

(d) In accordance with §419.043, Texas Government Code and subsection (b) of this section as set out hereinabove and consistent with past practice with respect to the implementation of NFPA standards when immediate implementation of a standard as written is impractical for Texas, the modifications contained in Sections 10.1.2, 10.1.3, and 10.1.3.1 of the 2008 Edition of NFPA 1851 (effective June 24, 2007) shall be implemented as follows:

(1) with respect to Section 10.1.2, structural fire fighting ensembles and ensemble elements shall be retired in accordance with Section 10.2.1 of the 2008 Edition of NFPA 1851, no more than 12 years from the date the ensembles or ensemble elements were manufactured, or no more than 10 years from the date the ensemble or ensemble elements were first put into service;

(2) with respect to Section 10.1.3, proximity fire fighting ensembles and ensemble elements shall be retired in accordance with Section 10.2.1 of the 2008 Edition of NFPA 1851, no more than 12 years from the date the ensembles or ensemble elements were manufactured, or no more than ten years from the date the ensemble or ensemble elements were first put into service; and

(3) with respect to Section 10.1.3.1, the radiant reflective outer shells shall be retired in accordance with Section 10.2.1 of the 2008 Edition of NFPA 1851, no more than 7 years from the date the outer shells are manufactured or no more than 5 years from the date the outer shells were first put into service.

(e) Subsections (d) and (e) of this section will expire March 1, 2011.

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

Filed with the Office of the Secretary of State on October 30, 2008.

TRD-200805736
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Earliest possible date of adoption: December 14, 2008
For further information, please call: (512) 936-3838

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 5. FINANCE
SUBCHAPTER E. PASS-THROUGH FARES AND TOLLS

The Texas Department of Transportation (department) proposes amendments to §5.53, repeal of §§5.54 - 5.59 and new §§5.54 - 5.60, concerning pass-through fares and tolls.

EXPLANATION OF PROPOSED AMENDMENTS

Transportation Code, §222.104(b) authorizes the department to enter into an agreement with a public or private entity that provides for the payment of pass-through tolls to the public or private entity as reimbursement for the design, development, financing, construction, maintenance, or operation of a toll or non-toll facility on the state highway system by the public or private entity.

Transportation Code, §222.104(c) authorizes the department to enter into an agreement with a private entity that provides for the payment of pass-through tolls to the department as reimbursement for the department's design, development, financing, construction, maintenance, or operation of a toll or non-toll facility on the state highway system that is financed by the department.

Transportation Code, §91.075(b) authorizes the department to enter into an agreement with a public or private entity that provides for the payment of pass-through fares to the public or private entity as reimbursement for the acquisition, design, development, financing, construction, relocation, maintenance, or operation of a passenger railway facility or a freight railway facility by the entity. Title 43, Texas Administrative Code, Chapter 5, Subchapter E, prescribes the policies and procedures governing the department's implementation of these statutory provisions.

Amendments to §5.53(a), Proposal requirements, clarify the information, and require additional information, that is to be provided in a proposal for a project under a pass-through agreement. Amendments to paragraph (1) add the requirement that the proposal include the geographic area affected by the project. Amendments to paragraph (3) provide examples of anticipated benefits that must be included in the proposal. Amendments to paragraph (4) require that the proposal contain documentation that evidences local public support or opposition for the project. Amendments to paragraph (9) clarify that the proposal must include financial information sufficient to show the proposer's financial strength to develop and complete the project. Amendments to paragraph (10) require that the reimbursement period for proposed pass-through payments be provided. Amendments to paragraph (11) clarify that project funding sources and amounts are required for each project cost category.

New §5.53(a)(12) requires the proposal to list the financial assistance requested from the department in addition to funding under the pass-through agreement. Existing paragraphs (12) - (14) are renumbered as paragraphs (13) - (15) without change, and new paragraphs (16) and (17) are added. New §5.53(a)(16) requires a statement of whether the project is intended to be a part of a hurricane evacuation route. New §5.53(a)(17) requires a statement indicating whether the project has application to military base realignment or closure.

Each of the revised or new information requirements is added to §5.53(a) to provide the information necessary for the Texas Transportation Commission (commission) to adequately evaluate the proposals under the new criteria established in new §5.55.

New §5.54, Participation in the Program, is added to allow the commission the option of limiting the period of time during which submission of proposals will be received and limiting the total costs of all projects that will be reimbursed during a specific period, based on the commission's determination of the availability of program funds. The commission may also impose conditions that limit participation to either public or private entities, limit eligible projects to either highway or railway projects, or limit the type of project costs that will be reimbursed. To impose such limitations, the department must publish a notice describing the deadline for submitting proposals, the estimated total amount of funds available for the period described in the notice, and any limitations on public or private participation, eligibility of highway or railway projects, or on the type of project costs that will be reimbursed. After the deadline expires, the department will evaluate all of the proposals and present an analysis of each to the commission. The limitation option is being used to give all interested entities an equal opportunity to participate in the program and take advantage of the limited program funds.

Current §5.54, Commission Approval to Negotiate, is repealed and added as new §5.55 with the changes described by this paragraph to expand the considerations that the department will use in reviewing proposals. New §5.55(1) requires the consideration of the proposer's proposed financial contribution and its relationship to total project costs, and deletes the criterion dealing with the general financial benefits to the state. The proposing entities are encouraged to contribute significant amounts of their own resources to the project. A higher contribution demonstrates the importance of the project to the region and maximizes the use and leveraging of state funds. The deleted general financial benefits to the state concept is being replaced with other specific criteria in this section that better illustrate the benefits to the state. New paragraph (2) requires the consideration of the geographic area affected by the project. The proposing entities are encouraged to select potential projects that affect broad geographic areas. Projects that contribute to the statewide transportation system would be considered more beneficial than regional projects which, in turn, would be considered more beneficial than projects serving only a local geographic area. New §5.55(6) requires the consideration of the potential safety benefit that may be derived from the project. The proposing entity is encouraged to consider specific projects which have the greatest potential to enhance the safety of the transportation system as evidenced by the crash rate of the existing transportation segment under consideration compared to statewide averages for similar transportation segments. New §5.55(9) requires the consideration of the extent to which the project will close gaps in the state transportation system. New §5.55(11) adds consideration of the entity's proposed period for department reimbursement. The proposing entities should consider the longest reimbursement period feasible to maximize the use and leveraging of state funds. New §5.55(12) adds consideration of the economic development potential in the area. The proposing entities should consider the effect of the proposed project on economic development and explain the relationship of the project to that specific commission goal. New §5.55(13) adds consideration of the financial strength of the proposing entity and replaces paragraph (10) of the current section. The proposing entities should provide sufficient information to give an indication of their financial ability to bring the project to a timely completion date. New

§5.55(14) adds consideration of whether the project is part of a hurricane evacuation route. The proposing entities are encouraged to give any explanation of the relationship of the project, if applicable, to any hurricane evacuation route that would assist in facilitating traffic movement in the event of these weather related events. New §5.55(15) adds consideration of whether the project has application to a military base realignment or closure. The proposing entities are encouraged to give an explanation of the relationship of the project, if applicable, to any military base realignment or closure with respect to the contribution that the project will make, in the case of realignment, to national defense and base transportation efficiency or, in the case of closure, to future economic development in the area of the base closure. New §5.55(16) adds consideration of the experience of the entity in developing similar transportation projects and replaces paragraphs (7) and (8) of the current section. The proposing entities should describe or list their experience with similar transportation projects with respect to timely project completion in the context of federal and state laws and regulations. New §5.55(17) adds consideration of the relationship of the project to stated commission goals. The proposing entities should describe the relationship of the project to the commission goals of reducing congestion, improving safety, enhancing and expanding economic opportunity, improving air quality, and increasing the value of transportation assets. Current §5.54(2) - (6) is reenacted as new §5.55(3) - (5), (7), and (8) without change.

Current §5.55, Proposals from Private Entities, is repealed and added as new §5.56 with the changes to adjust the cross references within the section to conform to the renumbering of the sections. Also, the reference in current §5.55(c) to the relative weight given to criteria in the department's evaluation of private entities' proposals is removed to provide the department with greater flexibility in considering criteria under changing cash flow scenarios and to be consistent with the approach adopted for evaluation of all proposals under new §5.54(d).

Current §5.56, Final Approval, is repealed and added as new §5.57. New §5.57(b)(2) adds a requirement that a pass-through agreement must include identification of the one or more categories of project costs paid by the proposer for which the department will make a reimbursement under the program. This requirement makes the agreement correspond to any limitations imposed on department reimbursement as set out in the particular notice described in new §5.54. All other provisions of repealed §5.56 are reenacted as new §5.57.

Current §5.57, Calculation of Pass-Through Fares and Tolls, is repealed and added as new §5.58 with no additional changes.

Current §5.58, Project Development by Public or Private Entity, is repealed and added as new §5.59 with minor cross referencing changes in new §5.59(c)(7) and (9) to conform to the renumbering of the sections. New §5.59(f) adds a requirement that a public or private entity that intends to sell bonds and use pass-through tolls or fares as evidence of financial capability to repay the bonds, must provide the department with an opportunity to review and comment on the bond offering documents prior to sale of the bonds. The department would have a minimum of five business days to review and have the right to approve provisions in the offering documents that describe the pass-through agreement, the department's obligations under agreement, the interrelationship of the department, commission, and state highway fund, and the department's obligation to provide updated information on the state highway fund. This requirement is necessary to give the department an opportunity prior to sale of the bonds to correct any mistakes in the offering documents that relate to the pass-through toll agreement and the department's obligations and to make sure that the department can comply with the future disclosure requirements. Otherwise, no additional changes are made from current §5.58 to new §5.59.

Current §5.59, Operation, is reenacted in its entirety as new §5.60.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five years the amendments, repeals and new section as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments.

Mark A. Marek, Director, Design Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the sections.

PUBLIC BENEFIT AND COST

Mr. Marek has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing or administering the amendments, repeals, and new sections will be a more flexible pass-through toll program designed to maximize the benefit to the state transportation system while equalizing opportunities among proposers in their competition for limited funds. There are no anticipated economic costs for persons required to comply with the sections as proposed. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §5.53, repeal of §§5.54 - 5.59 and new §§5.54 - 5.60, concerning pass-through fares and tolls may be submitted to Mark A. Marek, Director, Design Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on December 15, 2008.

43 TAC §§5.54 - 5.59

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

STATUTORY AUTHORITY

The repeals are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §91.075(d), which provides the commission with the authority to adopt rules for a pass-through fare program and Transportation Code, §222.104(g), which provides the commission with the authority to adopt rules for a pass-through toll program.

CROSS REFERENCE TO STATUTE

Transportation Code, §91.075 and §222.104.

§5.54. Commission Approval to Negotiate.

§5.55. Proposals from Private Entities.

§5.56. Final Approval.

§5.57. Calculation of Pass-Through Fares and Tolls.

§5.58. Project Development by Public or Private Entity.

§5.59. Operation.

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

Filed with the Office of the Secretary of State on October 31, 2008.

TRD-200805753
Bob Jackson
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: December 14, 2008
For further information, please call: (512) 463-8683

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43 TAC §§5.53 - 5.60

STATUTORY AUTHORITY

The amendments and new sections are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §91.075(d), which provides the commission with the authority to adopt rules for a pass-through fare program and Transportation Code, §222.104(g), which provides the commission with the authority to adopt rules for a pass-through toll program.

CROSS REFERENCE TO STATUTE

Transportation Code, §91.075 and §222.104.

§5.53. Proposal.

(a) Proposal requirements. A public or private entity may submit in writing to the department a proposal for a project or a series of projects to be developed under a pass-through agreement. The proposal must include:

(1) a description of the project, including the project limits, connections with other transportation facilities, [~~and~~] any services to be provided, and the geographic area affected;

(2) an application, on a form provided by the department, that includes all scope and estimate documentation forms and related attachments and any other materials and information required by the application;

(3) a statement of the benefits anticipated to result from completion of the project, including the economic development potential in the area, reduced congestion on the state highway system, enhanced safety, and improved air quality in the region;

(4) a description of and documentation evidencing the local public support for the project and any local public opposition;

(5) a proposed project development and implementation schedule, including an estimated date when the project will be open to traffic;

(6) a description of the entity's experience in developing highway projects, if the proposer is a public entity and if the proposal is for the development of a highway project by that entity;

(7) a description of the entity's experience in developing railway projects, if the proposer is a public entity and if the proposal is for the development of a railway project by that entity;

(8) complete information concerning the experience, expertise, technical competence, and qualifications of the proposer and of each member of the proposer's management team and of other key employees or consultants, including the name, address, and professional designation of each member of the proposer's management team and of other key employees or consultants, and the capability of the proposer to develop the proposed projects, if the proposer is a private entity and if the proposal is for the development of a project by that entity;

(9) financial [~~complete~~] information sufficient to show the financial strength and capability of the proposer to develop and complete the project, or to make all projected future payments[~~,~~] if the proposal is for the development of a project by the department;

(10) the total amount and period of reimbursement requested and proposed pass-through payment schedule;

(11) the project funding sources and amounts proposed for each of the project cost categories including design, development, financing, construction, maintenance, and operation [~~by fiscal year~~] ;

(12) the type of funding and other kinds of department contributions and participation requested for the project, other than reimbursement from the pass-through toll program;

(13) [~~(12)~~] for a highway project, a statement indicating whether the proposer intends for the project to be tolled and, if the proposer intends for a tolled project to be first opened to traffic as a non-tolled highway, the approximate date on which the highway will begin to be tolled;

(14) [~~(13)~~] a statement indicating whether the proposer intends to enter into a comprehensive development agreement, if the proposer is a private entity and if the proposal is for the development of a project by that entity; [~~and~~]

(15) [~~(14)~~] a statement indicating whether the entity has or intends to designate a contiguous geographic area in the jurisdiction of the entity as a transportation reinvestment zone under Transportation Code, Chapter 222, Subchapter E, if the proposer is a public entity;[~~.~~]

(16) a statement indicating whether the project is intended to function as part of a hurricane evacuation route; and

(17) a statement indicating whether the project has application to a military base realignment or closure.

(b) Public release of proposal. If requested, and unless prohibited by law, the department will release to the public a proposal submitted under this section.

(c) Certain contracting requirements. The private entity and the department may agree to develop a project under a comprehensive development agreement if authorized by other law. For a highway project that is developed by the proposer, notwithstanding any other provision of this subchapter, Chapter 27, Subchapter A, of this title (relating to Comprehensive Development Agreements), applies to the solicitation, advertisement, negotiation, and execution of a comprehensive development agreement. For a railway project that is developed by the proposer, notwithstanding any other provision of this subchapter, Chapter 7, Subchapter B, of this title (relating to Contracts) applies to the solicitation, advertisement negotiation, and execution of a comprehensive development agreement.

§5.54. Participation in the Program.

(a) If the commission determines that funds available for use in the pass-through toll program are limited, or other circumstances exist that may impair the ability of entities to equally participate in the program, the commission may periodically limit the periods of time during which the department will accept proposals for projects to be developed and, for each specific period, prescribe conditions for submission and the costs that may be reimbursed under a pass-through agreement.

(b) Upon the commission's designation of a specific period for acceptance of proposals and determination of the applicable conditions, the department will publish a notice in the *Texas Register* soliciting proposals for projects to be developed under a pass-through agreement under this subchapter. The notice will specify:

(1) the deadline for submitting proposals under the notice;

(2) the estimated amount of funds available in the pass-through toll program that can be allocated to proposals submitted under the notice;

(3) whether submissions will be accepted from only public entities or from both public and private entities;

(4) whether submissions will be accepted for only highway projects, only railway projects, or for both highway and railway projects;

(5) the categories of project costs, as described by §5.53(a)(11) of this subchapter, that will be considered as eligible for reimbursement; and

(6) any other condition deemed appropriate by the commission.

(c) A proposal submitted in response to a notice must contain the information required by §5.53 of this subchapter.

(d) The department will evaluate the submitted proposals using the items of consideration set forth in §5.55 of this subchapter and present its analyses to the commission.

§5.55. Commission Approval to Negotiate.

The commission may authorize the executive director to negotiate the financial terms of a potential pass-through agreement under this subchapter or, if the proposer is a private entity, authorize the department to solicit competitive proposals under §5.56 of this subchapter, after considering:

(1) the proposer's proposed financial contribution to the project from sources other than the department, in relation to total project cost;

(2) the geographic area affected;

(3) local public support for the project;

(4) for a highway project, whether the project is included in the department's Unified Transportation Program;

(5) the extent to which the project will relieve congestion on the state highway system;

(6) the potential safety benefit that may be derived from the project;

(7) potential benefits to regional air quality that may be derived from the project;

(8) the compatibility of the proposed project with existing and planned transportation facilities;

(9) the extent to which the project will close gaps in the state transportation system;

(10) whether the entity has or intends to designate a contiguous geographic area in the jurisdiction of the entity as a transportation reinvestment zone under Transportation Code, Chapter 222, Subchapter E, if the proposer is a public entity;

(11) the proposer's proposed amount and period for department reimbursement and proposed pass-through payment schedule;

(12) the economic development potential in the area;

(13) the financial strength of the proposer;

(14) whether the project is part of a hurricane evacuation route;

(15) whether the project has application to a military base realignment or closure;

(16) the experience of the proposer in developing similar transportation projects; and

(17) the relationship of the proposed project to stated commission goals.

§5.56. Proposals from Private Entities.

(a) If the commission approves the further evaluation of a proposal of a private entity under §5.55 of this subchapter, the department will publish notice of that decision and provide an opportunity for the submission of competing proposals.

(b) The department will publish a notice in the *Texas Register* and in one or more newspapers of general circulation. The notice will state that the department has received a proposal under this subchapter, that it intends to evaluate the proposal, that it may negotiate a pass-through agreement with the proposer based on the proposal, and that it will accept for simultaneous consideration any competing proposals that the department receives in accordance with this subchapter within 45 days of the initial publication of the notice in the *Texas Register*, or such additional time as authorized by the commission. In determining whether to authorize additional time for submission of competing proposals, the commission will consider the complexity of the proposal.

(c) The notice will summarize the proposed project and identify its proposed location. The notice will also specify the general criteria that will be used to evaluate all proposals. Specific evaluation criteria will be set forth in the request for proposals. The criteria will include:

(1) the factors listed in §5.55 of this subchapter, to the extent applicable;

(2) the proposer's qualifications, technical competence, and financial capability;

(3) an analysis of the proposer's project implementation schedule; and

(4) any other factor deemed appropriate by the department.

(d) A proposal submitted in response to a notice must contain the information required by §5.53 of this subchapter.

(e) The original proposer may submit a revised proposal in response to a notice.

(f) Upon expiration of the 45-day period, or such additional time as authorized by the commission, the department will evaluate the proposal of the original proposer and any properly submitted competing proposals, utilizing the evaluation criteria set forth in the request for proposals.

(g) The department will rank all proposals after the evaluation described in subsection (f) of this section, and may select the private entity whose proposal provides the best value to the department. The executive director will direct the department's attempt to negotiate a pass-through agreement with that proposer.

(h) If an agreement satisfactory to the executive director cannot be negotiated with the proposer, the department will formally end negotiations with that proposer. The department may reject all propos-

als or proceed to the next most highly ranked proposal and attempt to negotiate an agreement with that party.

§5.57. Final Approval.

(a) Authorization to negotiate final agreement. The executive director will submit to the commission a summary of the final financial terms of a proposed pass-through agreement. The final financial terms may consist of specific payment terms and schedules or may consist of a range of acceptable parameters. The commission may authorize the executive director to negotiate and execute a final agreement only if it finds that:

(1) the project serves the public interest and not merely a private interest;

(2) the proposed pass-through agreement is in the best interest of the state;

(3) the project is compatible with existing and planned transportation facilities; and

(4) the project furthers state, regional, and local transportation plans, programs, policies, and goals.

(b) Contents of pass-through agreement. Before any work is done for which reimbursement will be requested through a pass-through toll or fare, the department and the public or private entity shall execute a pass-through agreement containing, at a minimum, the following:

(1) identification of the scope and nature of the work to be performed;

(2) identification of the one or more categories of project costs, as described by §5.53(a)(11) of this subchapter, that the department will reimburse;

(3) all financial terms, as applicable, including the levels of pass-through tolls or fares, maximum and minimum periodic payments, and maximum and minimum total payments;

(4) allocation of responsibility for all significant work to be performed, including environmental documentation, right of way acquisition, utility adjustments, engineering, construction, and maintenance;

(5) provision for the collection and use of toll or other revenues, if applicable;

(6) all provisions required by state or federal law;

(7) a map showing the location of the project;

(8) a proposed project schedule;

(9) an estimated budget;

(10) deadlines for key stages of project development;

(11) procedures and timelines for the submission of materials and for approvals;

(12) for a local government, a copy of the resolution or ordinance authorizing execution of the agreement;

(13) provisions for termination of the agreement; and

(14) if applicable, a copy of the order, resolution, or ordinance designating a contiguous geographic area in the jurisdiction of a public entity as a transportation reinvestment zone under Transportation Code, Chapter 222, Subchapter E.

§5.58. Calculation of Pass-Through Fares and Tolls.

(a) Pass-through fares.

(1) Amount to be reimbursed.

(A) General. The commission shall establish the level of pass-through fares or shall establish parameters within which the department may negotiate the level of pass-through fares. In establishing the level of pass-through fares or parameters within which the department may negotiate the level of pass-through fares, the commission shall consider whether:

(i) the project's estimated benefits to mobility warrant a pass-through fare at a level that is more or less than the department's estimate of project costs;

(ii) the project will result in a significant economic gain or loss to the entity responsible for its development;

(iii) the public or private entity proposes to share in the cost of the project; and

(iv) the state or the public or private entity will benefit, and to what extent, if the project is built sooner than would be the case in the absence of a pass-through agreement.

(B) Limits on pass-through fare levels.

(i) The commission will not approve payment by the department of a level of pass-through fares that exceeds the department's estimate, except as permitted by this subparagraph. The commission may approve the department's payment of a level of pass-through fares that exceeds the department's current estimate, but only by the difference between the department's current estimate and the department's estimate for the time when the project would likely have been completed in the absence of a pass-through agreement.

(ii) In determining the level of pass-through fares, the commission will not consider any financing cost incurred by the public or private entity.

(2) Payment schedule and method.

(A) Payment schedule. The schedule of pass-through fare payments will be calculated based on the department's traffic projections for the railway and a number and frequency of payments to be negotiated between the department and the public or private entity. The payment schedule may include a maximum and a minimum periodic amount to be paid annually or in total.

(B) Variable payments. The pass-through fare may vary on any basis that reasonably reflects the value of improvements, the nature of the railway traffic, or benefits to the highway system, including:

(i) number, type, and class of passengers;

(ii) type of freight;

(iii) tonnage of freight;

(iv) number or type of cars;

(v) mileage traveled; or

(vi) characteristics of track.

(3) Allocation of risk.

(A) Cost overruns and underruns. Unless otherwise authorized by the commission and incorporated in a pass-through agreement by the department, the department's liability under a pass-through agreement shall be neither increased nor decreased by cost overruns or underruns. Pass-through fare payments by the department shall not be increased if there is a cost overrun or decreased if there is a cost underrun unless an adjustment is specifically authorized by the commission and incorporated in a pass-through agreement by the department.

(B) Traffic volume. If traffic volume exceeds or falls below expectations, the pass-through fare will not be adjusted. Payments shall not exceed the maximum annual amount specified in the pass-through agreement and shall not be below the minimum annual amount specified in the pass-through agreement. The pass-through agreement shall provide that if required, payments shall continue until the total of all payments equals the total pass-through fare amount specified by the commission in approving the pass-through fare.

(b) Pass-through tolls.

(1) Level of pass-through tolls.

(A) General. The commission shall establish the level of pass-through tolls or shall establish parameters within which the department may negotiate the level of pass-through tolls. In establishing the level of pass-through tolls or parameters within which the department may negotiate the level of pass-through tolls, the commission shall consider whether:

(i) the project's estimated benefits to mobility warrant a pass-through toll at a level that is more or less than the department's estimate of project costs;

(ii) the project will result in a significant economic gain or loss to the entity responsible for its development;

(iii) the public or private entity proposes to share in the cost of the project; and

(iv) the state or the public or private entity will benefit, and to what extent, if the project is built sooner than would be the case in the absence of a pass-through agreement.

(B) Limits on pass-through toll levels.

(i) The commission will not approve payment by the department of a level of pass-through tolls that exceeds the department's estimate, except as permitted by this subparagraph. The commission may approve the department's payment of a level of pass-through tolls that exceeds the department's current estimate, but only by the difference between the department's current estimate and the department's estimate for the time when the project would likely have been completed in the absence of a pass-through agreement.

(ii) In determining the level of pass-through tolls, the commission will not consider any financing cost incurred by the public or private entity.

(2) Payment schedule and method.

(A) Payment schedule. The schedule of pass-through toll payments will be calculated based on the department's traffic projections for the highway and a number and frequency of payments to be negotiated between the department and the public or private entity. The payment schedule may include a maximum and a minimum annual amount to be paid periodically or in total.

(B) Variable payments. The pass-through toll may vary on any basis that reasonably reflects the value of improvements, the nature of the highway, or benefits to other aspects of the highway system, including:

(i) the number of vehicles using the highway;

(ii) the number of vehicle-miles traveled on the highway;

(iii) the condition of the highway; and

(iv) whether the highway is tolled.

(3) Allocation of risk.

(A) Cost overruns and underruns. Unless otherwise authorized by the commission and incorporated in a pass-through agreement by the department, the department's liability under a pass-through agreement shall be neither increased nor decreased by cost overruns or underruns.

(i) Projects developed by the public or private entity. If the project is being developed by the public or private entity, the pass-through toll payments by the department shall not be increased if there is a cost overrun or decreased if there is a cost underrun unless an adjustment is specifically authorized by the commission and incorporated in a pass-through agreement by the department.

(ii) Projects developed by the department. If the project is being developed by the department, the pass-through agreement shall provide that the pass-through toll or the maximum amount payable, or both, shall be adjusted to reflect the department's actual costs unless the commission specifically directs that the department shall bear the risk of cost overruns or underruns.

(B) Traffic volume. If traffic volume exceeds or falls below expectations, the pass-through toll will not be adjusted. Payments shall not exceed the maximum annual amount specified in the pass-through agreement and shall not be below the minimum annual amount specified in the pass-through agreement. The pass-through agreement shall provide that if required, payments shall continue until the total of all payments equals the total pass-through toll amount specified by the commission in approving the pass-through toll.

§5.59. Project Development by Public or Private Entity.

(a) Social and environmental impact.

(1) General. A public or private entity that is responsible for the construction of a project shall conduct the environmental review and public involvement for the project in the manner prescribed by Chapter 2, Subchapter A of this title (relating to Environmental Review and Public Involvement for Transportation Projects). The department may choose to conduct the environmental review and public involvement.

(2) Department approval. The department must approve each environmental review under this section before construction of the project begins.

(b) Right of way and utilities.

(1) Responsibility. This subsection applies when the public or private entity is responsible for the acquisition of right of way or the adjustment of utilities.

(2) Right of way procedures.

(A) Manual requirements. The acquisition of right of way performed by or on behalf of the public or private entity shall comply with the latest version of each of the department's manuals.

(B) Alternative procedures. A public or private entity may request written approval to use a different accepted procedure for a particular item or phase of work. The use of an alternative procedure is subject to the approval of the Federal Highway Administration. The executive director may approve the use of an alternative procedure if the alternative procedure is determined to be sufficient to discharge the department's state and federal responsibilities in acquiring real property.

(3) Utility adjustments. The adjustment, removal, or relocation of utility facilities performed by or on behalf of the public or private entity shall comply with applicable federal and state laws and regulations.

(c) Design and construction.

(1) Responsibility. This subsection applies when the public or private entity is responsible for the design, construction, and, operation, as applicable, of each project it undertakes. This responsibility includes ensuring that all EPIC are addressed in project design and carried out during project construction and operation.

(2) Design criteria.

(A) State criteria. All designs developed by or on behalf of the public or private entity shall comply with the latest version of the department's manuals.

(i) Highway projects. Each highway project shall, at a minimum, comply with the:

(I) Roadway Design Manual;

(II) Pavement Design Manual;

(III) Hydraulic Design Manual;

(IV) Texas Manual on Uniform Traffic Control Devices;

(V) Bridge Design Manual;

(VI) Texas Accessibility Standards;

(VII) 16 TAC Chapter 68 relating to Elimination of Architectural Barriers; and

(VIII) Americans with Disabilities Act Accessibility Guidelines.

(ii) Railway projects. Each railway project shall comply, at a minimum, with the current version of the American Railway Engineering and Maintenance of Right of Way Association standards.

(B) Alternative criteria. A public or private entity may request approval to use different accepted criteria for a particular item of work. Alternative criteria may include the latest version of the AASHTO Policy on Geometric Design of Highways and Streets, the AASHTO Pavement Design Guide, and the AASHTO Bridge Design Specifications. The use of alternative criteria is subject to the approval of the Federal Highway Administration or the Federal Railroad Administration for those projects involving federal funds. The executive director may approve the use of alternative criteria if the alternative criteria are determined to be sufficient to protect the safety of the traveling public and protect the integrity of the transportation system.

(C) Exceptions to design criteria. A public or private entity may request approval to deviate from the state or alternative criteria for a particular design element on a case-by-case basis. The request for approval shall state the criteria for which an exception is being requested and must include a comprehensive description of the circumstances and engineering analysis supporting the request. The executive director may approve an exception after determining that the particular criteria could not reasonably be met due to physical, environmental, or other relevant factors and that the proposed design is a prudent engineering solution.

(3) Access to a highway project.

(A) Access management. Access to a highway shall be in compliance with the department's access management policy.

(B) Interstate access. For proposed highway projects that will change the access control line to an interstate highway, the public or private entity shall submit to the department all data necessary for the department to request Federal Highway Administration approval.

(4) Preliminary design submission and approval. When design is approximately 30% complete or as otherwise provided in a pass-through agreement, the public or private entity shall send the following preliminary design information to the department for review and approval in accordance with the procedures and timeline established in the project development agreement described in subsection (d) of this section:

(A) for a highway project, a completed Design Summary Report form as contained in the department's Project Development Process Manual;

(B) a design schematic depicting plan, profile, and superelevation information for each roadway or a design schematic depicting plan, profile, and superelevation based on top of railway for each railway line;

(C) typical sections showing existing and proposed horizontal dimensions, cross slopes, location of profile grade line, pavement layer thickness and composition, earthen slopes, and right of way lines for each roadway or subballast and ballast layer thickness and composition for each railway line;

(D) bridge, retaining wall, and sound wall layouts;

(E) hydraulic studies and drainage area maps showing the drainage of waterways entering the project and local project drainage;

(F) an explanation of the anticipated handling of existing traffic during construction;

(G) when structures meeting the definition of a bridge as defined by the National Bridge Inspection Standards are proposed, an indication of structural capacity in terms of design loading;

(H) an explanation of how the U.S. Army Corps of Engineers permit requirements, including associated certification requirements of the Texas Commission on Environmental Quality, will be satisfied if the project involves discharges into waters of the United States; and

(I) for a highway project, the location and text of proposed mainlane guide signs shown on a schematic that includes lane lines or arrows indicating the number of lanes.

(5) Highway construction specifications.

(A) All plans, specifications, and estimates developed by or on behalf of the public or private entity for a highway project shall conform to the latest version of the department's Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges, and shall conform to department-required special specifications and special provisions.

(B) The executive director may approve the use of an alternative specification if the proposed alternative specification is determined to be sufficient to ensure the quality and durability of the finished product for the intended use and the safety of the traveling public.

(6) Railway construction specifications.

(A) All plans, specifications, and estimates developed by or for the public or private entity for a railway project shall conform to all construction and material specifications established in the American Railway Engineering and Maintenance of Right of Way Association standards.

(B) The executive director may approve the use of an alternative specification if the proposed alternative specification is determined to be sufficient to ensure the quality and durability of the fin-

ished product for the intended use and the safety of the public and the railway system.

(7) Submission and approval of final design plans and contract administration procedures. When final plans are complete, the public or private entity shall send the following information to the department for review and approval in accordance with the procedures and timelines established in the contract described in §5.57(b) of this subchapter:

(A) seven copies of the final set of plans, specifications, and engineer's estimate (PS&E) that have been signed and sealed by the responsible engineer;

(B) revisions to the preliminary design submission previously approved by the department in a format that is summarized or highlighted for the department;

(C) a proposal for awarding the construction contract in compliance with applicable state and federal requirements;

(D) contract administration procedures for the construction contract with criteria that comply with the applicable national or state administration criteria and manuals; and

(E) the location and description of all EPIC addressed in construction.

(8) Construction inspection and oversight.

(A) Unless the department agrees in writing to assume responsibility for some or all of the following items, the public or private entity is responsible for:

(i) overseeing all construction operations, including the oversight and follow through with all EPIC;

(ii) assessing contract revisions for potential environmental impacts; and

(iii) obtaining any necessary EPIC required for contract revisions.

(B) The department may inspect the construction of the project at times and in a manner it deems necessary to ensure compliance with this section.

(9) Contract revisions. All revisions to any construction contract entered into under a pass-through agreement under this subchapter shall comply with the latest version of the applicable national or state administration criteria and manuals, and must be submitted to the department for its records. Any revision that affects prior environmental approvals or significantly revises project scope or the geometric design must be submitted to the department for approval prior to beginning the revised construction work. Procedures governing the department's approval, including time limits for department review, shall be included in the agreement described in §5.57(b) of this subchapter.

(10) As-built plans. Within six months after final completion of the construction project, the public or private entity shall file with the department a set of the as-built plans incorporating any contract revisions. These plans shall be signed, sealed, and dated by a professional engineer licensed in Texas certifying that the project was constructed in accordance with the plans and specifications.

(11) Document and information exchange. The public or private entity agrees to deliver to the department all materials used in the development of the project including aerial photography, computer files, surveying information, engineering reports, environmental documentation, general notes, specifications, contract provision requirements, and all information necessary for the department to update legacy data systems.

(12) State and federal law. The public or private entity shall comply with all federal and state laws and regulations applicable to the project and the state highway system, and shall provide or obtain all applicable permits, plans, and other documentation required by a federal or state entity.

(d) Contracts. All contracts for the development, construction, or operation of a project shall be awarded in compliance with applicable law.

(e) Federal law. If any federal funds are used in the development or construction of a project under this subchapter, or if the department intends to fund pass-through toll payments with federal funds, the development and construction of the project shall be accomplished in compliance with all applicable federal requirements.

(f) Bond financing.

(1) Department review. If any public or private entity responsible for financing a portion of a project to be developed under a pass-through agreement intends to sell bonds and use pass-through toll or fare payments from the department as evidence of financial capability to repay the bonds, the entity shall provide the department an opportunity to review and comment on bond offering documents prior to sale of the bonds.

(2) Pass-through agreement. The pass-through agreement must provide that:

(A) the department will have at least five business days after the date on which it receives all of the bond offering documents to review those documents; and

(B) the public or private entity must obtain department pre-approval of any provision in the bond offering documents that describes the pass-through agreement, the department's obligations under the agreement, the interrelationship of the department, commission, and state highway fund, and the department's obligation to provide bond investors with updated information on the status of the state highway fund.

(3) Business day. For purposes of this subsection, "business day" excludes Saturday, Sunday, a federal holiday, the Friday after Thanksgiving, and December 24 and 26.

§5.60. Operation.

(a) Agreement. A pass-through agreement may provide for a public or private entity to operate a highway or a railway.

(b) Responsibility. To the extent provided in the agreement, a public or private entity shall perform or cause to be performed all work required to operate the highway or railway. This work includes all maintenance and repair required to ensure that the highway or railway functions as intended and meets the performance standards established for maintenance under subsection (c) of this section.

(c) Maintenance of highways. In performing work under this section on a highway, the public or private entity shall meet or exceed the most current "Texas Maintenance Assessment Program" minimum rating requirements for non-interstate state highways as established by the commission in its implementation of Government Accounting Standards Board Statement No. 34. If the highway will be tolled, the public or private entity shall meet or exceed the minimum rating requirements for interstate highways.

(d) Maintenance of railways. In performing work under this section on a railway, the public or private entity shall meet all standards for safety and maintenance established by the Federal Railroad Administration and the National Transportation Safety Board, including all standards published in 49 CFR Subtitle B, Chapters II and VIII.

(e) Alternative standards. A public or private entity may request approval to use alternative maintenance standards. The executive director may approve the use of alternative maintenance standards if the director determines that the alternative standards are sufficient to protect the safety of the public and to protect the integrity of the transportation system.

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

Filed with the Office of the Secretary of State on October 31, 2008.

TRD-200805754
Bob Jackson
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: December 14, 2008
For further information, please call: (512) 463-8683

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 10. COMMUNITY DEVELOPMENT

PART 6. OFFICE OF RURAL COMMUNITY AFFAIRS

CHAPTER 255. TEXAS COMMUNITY DEVELOPMENT PROGRAM

SUBCHAPTER A. ALLOCATION OF PROGRAM FUNDS

10 TAC §255.7

The Office of Rural Community Affairs withdraws the proposed amendments to §255.7 which appeared in the May 16, 2008, issue of the *Texas Register* (33 TexReg 3858).

Filed with the Office of the Secretary of State on November 3, 2008.

TRD-200805784
Charles S. (Charlie) Stone
Executive Director
Office of Rural Community Affairs
Effective date: November 3, 2008
For further information, please call: (512) 936-6734

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TITLE 22. EXAMINING BOARDS

PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 537. PROFESSIONAL AGREEMENTS AND STANDARD CONTRACTS

22 TAC §537.51

The Texas Real Estate Commission withdraws proposed new §537.51 which appeared in the September 5, 2008, issue of the *Texas Register* (33 TexReg 7416).

Filed with the Office of the Secretary of State on October 28, 2008.

TRD-200805676
Loretta R. DeHay
Assistant Administrator and General Counsel
Texas Real Estate Commission
Effective date: October 28, 2008
For further information, please call: (512) 465-3900

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 16. ECONOMIC REGULATION

PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 401. ADMINISTRATION OF STATE LOTTERY ACT

SUBCHAPTER E. RETAILER RULES

16 TAC §401.362

The Texas Lottery Commission (Commission) adopts amendments to 16 TAC §401.362 (relating to Retailer's Financial Responsibility for Lottery Tickets Received and Subsequently Damaged or Rendered Unsaleable, for Winning Lottery Tickets Paid and for Lottery-Related Property), with changes to the proposed text as published in the August 15, 2008, issue of the *Texas Register* (33 TexReg 6494). The only change is not substantive in nature and simply pluralizes the word "operation" in subsection (a)(4)(A)(iv).

The purpose of the amendments is to clarify what charges, if any, would be assessed against a retailer for tickets that are damaged or destroyed.

A public comment hearing was held with regard to the proposed amendments on September 4, 2008. No members of the public were present at the hearing. The Commission received no written comments during the public comment period.

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

Texas Government Code, Chapter 466, is affected by this adoption.

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

(a) Responsibility for Lottery Tickets Received.

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

(2) A retailer may return full and complete packs of unactivated tickets in original condition and receive an accounting indicating that the packs have been removed from the retailer's inventory. Nothing in this subsection waives the requirements of §401.361 of this title (relating to Required Sales of Lottery Tickets).

(3) A retailer must report damage to or destruction of tickets to the commission's lottery operations division through the retailer hotline as soon as reasonably practicable under the circumstances, but no later than three (3) weeks from the occurrence or event. A ticket is considered "damaged" or "destroyed" if rendered unsaleable through circumstances or events not the fault of the retailer.

(4) Under the circumstances set out in this paragraph, the director may credit a retailer for activated tickets that are damaged or destroyed.

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

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

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

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

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

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

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

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

being subsequently presented as a winning ticket shall pay to the commission the full amount of each subsequent prize that is paid on such ticket.

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

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 30, 2008.

TRD-200805747
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Effective date: November 19, 2008
Proposal publication date: August 15, 2008
For further information, please call: (512) 344-5012

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CHAPTER 402. CHARITABLE BINGO ADMINISTRATIVE RULES

SUBCHAPTER B. CONDUCT OF BINGO

16 TAC §402.200

The Texas Lottery Commission (Commission) adopts amendments to 16 TAC §402.200, relating to General Restrictions on the Conduct of Bingo, with changes to the proposed text as published in the August 15, 2008, issue of the *Texas Register* (33 TexReg 6496).

The purpose of the amendments is to set out the requirements for organizations to follow in order to ensure the fair conduct of a bingo game.

A public comment hearing was held on September 9, 2008. Representatives from Fort Worth Bookkeeping, Inc., the Bingo Interest Group, Amvets 52, and one other individual commented at the hearing regarding the proposed amendments. One individual, representing over 700 charitable organizations and several licensed distributors, manufacturers and commercial lessors, submitted written comments during the public comment period.

Comment: The phrase "and/or should be changed to either "and" or "or" for clarity.

Agency Response: The Commission agrees and has made the appropriate changes.

Comment: At subsection (c)(1), "No licensee or worker of a licensed authorized organization" should be changed to "no person."

Agency Response: The Commission agrees and has made the change.

Comment: Regarding subsection (c)(2) - (5), maintenance of a log is redundant and burdensome. It is general practice across the state to inspect the bingo balls or to ask a customer to come up and inspect the bingo balls anyway. The log may also be lost, something could get mixed up or mistakes may be made.

Agency Response: The Commission disagrees. Organizations should maintain a log as part of their internal controls. If it is the general practice to inspect the bingo balls, then this requirement will not impose an additional burden on the organization.

Comment: It is not clear whether subsection (c)(5) requires a form, and, if so, how long must the form be maintained.

Agency Response: The Commission agrees and has added language to clarify that a form is required. The Commission has developed a form which is available on our website. 16 TAC §402.500 addresses general requirements for maintenance of records.

Comment: Regarding subsection (c)(5), a commenter suggests changing the language to read: "The organization must maintain a log of each inspection of bingo balls, bingo consoles and flashboards and the log must be signed by the registered worker conducting the inspection."

Agency Response: The Commission agrees and has changed the language.

Comment: The procedures required in subsection (c)(6) cannot address every known or possible malfunction.

Agency Response: The Commission agrees. The intent is to initially address the more common problems and develop written procedures as additional problems occur.

Comment: With regard to subsection (c)(6)(B), the customers would be the first to let the callers know about improper bingo ball calls or placements.

Agency Response: The Commission agrees. However, subsection (c)(6)(B) is asking that organizations develop written procedures on how they will address improper ball calls or placements in a standardized manner.

Comment: Subsection (e) does not account for a situation in which a game may run long.

Agency Response: The Commission agrees and has added the following to subsection (e): If a circumstance occurs that would cause a regular bingo game to continue past the time indicated on the license, the licensed authorized organization may complete the regular bingo game.

Comment: Subsection (f) is unclear and is not necessary.

Agency Response: The Commission disagrees. The intent of this subsection is to require those organizations that hold an event before all event tickets have been sold to have a policy and procedure in place.

Comment: Subsection (h) is in conflict with what actually occurs during a bingo occasion. We suggest deleting this entire provision. We would like for that not to be a limitation on charities being able to receive donated prizes.

Agency Response: The Commission disagrees. A person may donate items to a licensed authorized organization for free give away to attending bingo participants as long as the prize does not exceed a value of $250 in accordance with §2001.420(c) of the Bingo Enabling Act. Because bingo prize expenses, other than authorized cash prizes, must be paid from an organization's

bingo account that may not contain funds other than bingo gross receipts, a person may not donate funds or items to help pay for bingo prizes. A person may donate cash or items for use by a licensed authorized organization as door prizes subject to the $250 limitation in accordance with §2001.420(c) of the Act. (See Bingo Advisory Opinion 2008-1004-0002).

Comment: Add "or unit" to subsection (i)(1).

Agency Response: The Commission disagrees with adding unit but has revised the language to indicate that only one copy of each needs to be maintained at the playing location.

Comment: Regarding subsection (i)(3)(A), some organizations have long names and this provision would require a poster board. I do not understand why the bingo license will not suffice, since it has to be posted in a conspicuous place.

Agency Response: The Commission agrees and has removed "licensed authorized organization and" from subsection (i)(3).

Comment: The commenter is in favor of subsection (i)(4) with the understanding that subsection (i)(5) prevails.

Agency Response: The Commission agrees.

Comment: With regard to subsection (i)(4), a lot of times the licensed authorized organization does not know how many games it will get in that session. It is a run on the fly. It might get in ten games or 30 games.

Agency Response: The Commission disagrees. Organizations should make available to all patrons the items listed in subsection (i)(4). Subsection (i)(5) gives the organization an opportunity to make changes to that information if necessary.

Comment: A commenter suggests changing "operator" to "caller" in subsection (i)(5).

Agency Response: The agency agrees that it might be appropriate for the caller to announce changes and has added "or caller" in subsection (i)(5).

Comment: Does subsection (l)(1)(A) allow for video observation? If not, will existing locations be "grandfathered"?

Agency Response: Subsection (l)(1)(A) does not allow for video observation. However, the Commission has added subsection (l)(2) to provide that a licensee with an existing playing location on the effective date of this rule will have 12 months from the effective date to come into compliance with subsection (l)(1)(A).

Comment: It is not clear whether subsection (l)(2) allows for substitute callers.

Agency Response: The Commission disagrees. A substitute caller would be the caller once they begin calling balls.

Comment: Regarding subsection (l)(4)(D), the caller does not know what level of card has bingo'd and would not be able to announce the amount of the prizes paid. Not even the counter is going to know what those bingos were. So if it was a Level 1, 2, and 3, they would have to wait until the next game started before even knowing that, and the caller still would not know.

Agency Response: The Commission agrees and has removed the language "and the total amount of money or prizes awarded" from subsection (l)(4)(D).

Comment: Regarding subsection (l)(6), a commenter suggests adding language that tailors it to information that would affect the outcome of the game, such as "Mrs. Smith needs B-9 to win." If it is information that the caller is required to announce or is required to be made available to the players, there is no evil in having that information be communicated electronically to the caller.

Agency Response: The Commission agrees and has added to subsection (l)(1)(F) "any information that could affect the outcome of the bingo game" and removed "except for emergency situations."

Comment: Subsection (n) does not account for the fact that the caller will not know each licensed authorized organization's written procedures addressing disputes.

Agency Response: The Commission disagrees. There is no requirement that the caller know each licensed authorized organization's procedures.

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

§402.200. General Restrictions on the Conduct of Bingo.

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

(b) Advertising. Any advertising or promotion of a bingo occasion shall identify the licensed authorized organization(s) by name.

(c) Inspection and use of equipment.

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

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

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

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

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

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

(A) bingo equipment malfunctions; and

(B) improper bingo ball calls or placements.

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

(1) owned by a licensed authorized organization;

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

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

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

(e) All bingo games must be conducted and prizes awarded on the days and within the times specified on the license to conduct bingo. If a circumstance occurs that would cause a regular bingo game to continue past the time indicated on the license, the licensed authorized organization may complete the regular bingo game.

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

(g) Merchandise prizes. Any merchandise or other non-cash prize awarded as a bingo prize shall be valued at its current retail price. Prize fees must be collected on merchandise and non-cash prizes.

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

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

(1) A licensed authorized organization shall obtain, maintain, keep current, and make available for review during their bingo occasion to any person upon request a copy of the Bingo Enabling Act and the Charitable Bingo Administrative Rules.

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

(A) how the game will be played; and

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

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

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

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

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

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

(A) the games to be played;

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

(C) the patterns needed to win;

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

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

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

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

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

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

(k) Bingo worker requirements.

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

(2) A bingo worker shall not:

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

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

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

(l) Caller requirements.

(1) The caller shall:

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

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

(ii) gain the attention of the caller when the players bingo;

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

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

(D) announce:

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

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

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

(iv) the number of winners for the game.

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

(F) not use cell phones, personal digital assistants (PDAs), computers, or other personal electronic devices to communicate any information that could affect the outcome of the bingo game with anyone during the bingo occasion.

(2) A licensee with an existing playing location on the effective date of this rule will have 12 months from the effective date to come into compliance with paragraph (1)(A) of this subsection.

(m) Verification.

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

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

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

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

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

(B) Availability of this additional verification, done as a request from players, shall be made known either verbally prior to the bingo occasion, printed on the playing schedule, or included with the bingo house rules.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 30, 2008.

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Kimberly L. Kiplin
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Texas Lottery Commission
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For further information, please call: (512) 344-5012

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16 TAC §402.205

The Texas Lottery Commission (Commission) adopts new 16 TAC §402.205, relating to Unit Agreements, with changes to the proposed text as published in the August 15, 2008, issue of the *Texas Register* (33 TexReg 6498).

The purpose of the new rule is to clarify what is required in a unit accounting agreement or a trust agreement forming a unit and how to notify the Commission of any changes to those agreements.

A public comment hearing was held on September 9, 2008. Representatives from Fort Worth Bookkeeping, Inc., the Bingo Interest Group, and one other individual commented at the hearing regarding the proposed new section. No written comments were received during the public comment period.

Comment: Regarding subsection (d), why limit the number of ways partners may share proceeds amongst themselves? Also, what does the phrase "or based on set percentage" mean? It does not say a percentage of what. If you mean that to be very general to give them lots of latitude, then that is fine, and that is better. But, a given entity at a given time might have better business than another one or might have a different need than another one. So I think we are straight-jacketing people a little bit in not being able to make agreements amongst themselves without filing amendments all the time. This could be written to say that the basis for sharing the proceeds has to be stated in the agreement or somewhere else. I propose that you state in the rule that there must be an established method of sharing of proceeds in the agreement and the Commission must be informed of any change in that.

Agency Response: The Commission agrees. The Commission has removed proposed subsection (d) and relettered accordingly.

Comment: The language "or compensated by" in subsection (e)(2) is contrary to the statute, Texas Government Code §2001.438(c)(2). The statute prohibits a designated agent from being employed by a commercial lessor while acting as a designated agent. But there is nothing in the statute that prohibits a person from acting as a designated agent for an accounting unit and also being compensated for certain activities by a commercial lessor, as long as that person is not an employee of the lessor.

Agency Response: The Commission agrees. The Commission has deleted "compensated or" from relettered subsection (d)(2).

Comment: Subsection (g) is too long and confusing. Suggest doing a "See Spot Run" version and see if the regulatory community has a hard time understanding and complying with it.

Agency Response: The Commission agrees. The Commission has revised the language in relettered subsection (f) and changed the deadline for notifying the Commission from fifteen business days to twenty-five calendar days.

Comment: The first sentence in subsection (k) is overly restrictive. There is nothing wrong with an organization signing a unit agreement before it receives a license to conduct bingo if that is what the parties decide. If the parties do so decide, there is nothing in the agreement that can bind the Commission to issue a license or allow the organization(s) to conduct bingo until the license(s) to conduct bingo is/are issued. I am not sure what the purpose of the limiting language "but only after the license has been issued" is; I suggest this language be stricken.

Agency Response: The Commission agrees and has substituted language that clarifies that organizations may not act as a unit until all member organizations are licensed.

Comment: The language at subsection (m) in unclear. The organizations or the units only have one bingo checking account, which is their unit account. And the way I read this subsection, I am really confused and others may be too.

Agency Response: The Commission agrees. Relettered subsection (l) has been simplified by deleting the last sentence, which is unnecessary because its provisions are contained in the Bingo Enabling Act.

Comment: It is not clear whether there is a required form to be used to comply with subsection (n).

Agency Response: The Commission disagrees. Relettered subsection (m) does not require a form to be used.

Comment: Regarding subsection (o), it is not clear what is required if there is a new organization and they have no inventory.

Agency Response: The Commission agrees. Relettered subsection (n) has been clarified to indicate that it applies when an organization has inventory.

Comment: It is not clear whether there is a required form.

Agency Response: The Commission disagrees. Relettered subsection (n) does not require a form to be used.

Comment: Suggest changing "ten business days" to "15 business days."

Agency Response: The Commission agrees that the time should be lengthened and has changed "ten business days" to "twenty-five calendar days."

Comment: In subsections (q), (s), and (v), suggest making the deadlines 25 business days.

Agency Response: The Commission agrees that the time should be lengthened and has changed the time period to "twenty-five calendar days" in relettered subsections (p), (r), and (s).

Comment: What "evil" is prevented by the inclusion of subsection (t)? If a unit is--I do not know why we would involuntarily dissolve a unit. I do not see anything in the statute that requires an involuntary dissolution of a unit.

Agency Response: The Commission agrees and has removed proposed subsection (t) and relettered accordingly.

Comment: Subsection (u) puts the Commission in the position of enforcing the terms of a unit agreement, and the unit agreement is being a trust agreement between the charities that enter into it is enforceable as to each one of those folks. So, I think if there are some terms of the unit agreement you want them to abide by, then until it is submitted or dissolved, you might want to specify those. Suggest specifying certain parts of the agreement, such as distribution among parties.

Agency Response: The Commission agrees and has removed proposed subsection (u) and relettered accordingly.

In subsection (h), "fifteen work days" has been changed to "twenty-five calendar days" to simplify calculation of time periods.

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

§402.205. Unit Agreements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) A unit with a unit agreement specifying that a member withdrawing from the unit is entitled to a share of the inventory or payment for the member's share of the inventory must notify the Commission of the method of distribution within twenty-five calendar days of the distribution to the withdrawing member. The notification must contain the amount of payment or the complete list of inventory transferred.

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

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

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

(j) Organizations may not act as a unit until all member organizations are licensed.

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

(l) A unit agreement must indicate the length of time allowed for the distribution of funds, records, and inventory and allocation of authorized expenses and liabilities on dissolution or withdrawal of one or more members of the unit.

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

(n) An organization joining a unit and possessing inventory must provide to the Commission a complete list of the inventory it has transferred to the unit within twenty-five calendar days of joining the unit. It is the responsibility of the organization to ensure that the Commission timely receives the inventory list.

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

(p) Any amendment to any of the contents of a unit agreement requires the unit to submit a form prescribed by the Commission and a copy of the executed amendment to the unit agreement within twenty-five calendar days of the effective date of the change.

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

(1) name of the unit;

(2) effective date of the change;

(3) specific section of the unit agreement being changed;

(4) new terms of the agreement which are in compliance with the Act and the Rules;

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

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

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

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER D. LICENSING REQUIREMENTS

16 TAC §402.400

The Texas Lottery Commission (Commission) adopts amendments to 16 TAC §402.400 (relating to General Licensing Provisions), with changes to the proposed text as published in the August 15, 2008, issue of the *Texas Register* (33 TexReg 6500).

The purpose of the amendments is to clearly set forth for organizations certain requirements and timelines for the application process.

A public comment hearing was held on September 9, 2008. Representatives from Fort Worth Bookkeeping, Inc., the Bingo Interest Group, Amvets 52, and one other individual commented at the hearing regarding the proposed new rule. One individual, representing over 700 charitable organizations and several licensed distributors, manufacturers and commercial lessors, submitted written comments during the public comment period.

Comment: "Bingo chairman" or "bingo chairperson" should be added to paragraph (j)(2).

Agency Response: The agency agrees and has substituted "bingo chairperson" for "primary operator and an officer of the organization."

Comment: Subsection (k) should include distributors, manufacturers, and associations.

Agency Response: The Commission agrees and has not adopted the proposed change to subsection (k).

Comment: With regard to (m)(5) dealing with postmarked dates, if a licensee tenders its renewal application to the US Postal Service for delivery, the licensee cannot assure the postmark date will be clearly legible. If the postmark date is smudged or otherwise illegible due to no fault of the licensee, this fact should not be held against the licensee.

Agency Response: The Commission agrees and has added language to paragraph (m)(5) to address instances when the postmark date is illegible or missing.

Language has been added or changed in subsections (d), (e), and (o) to consistently specify that time periods refer to calendar days rather than business days and to provide an equivalent number of calendar days to the business days proposed.

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

§402.400. General Licensing Provisions.

(a) Any person who wants to engage in a bingo related activity shall apply to the Commission for a license. The application must be

on a form prescribed by the Commission and all required information must be legible, correct and complete. An application is incomplete if the following information is not provided:

(1) All information requested on the application form and applicable schedules;

(2) All supplemental information requested during the pre-licensing investigation period;

(3) The applicable license fee;

(4) The required bond or other security, if applicable; and

(5) Authorized signatures as required by the Commission.

(b) Information submitted by an applicant in the form of an applicable schedule shall be considered to be part of the application. Supplemental information should be submitted on a form prescribed by the Commission and all information required must be correct and complete.

(c) Information submitted by an applicant in a format other than an applicable schedule must be legible and must include the following:

(1) the name and address of the organization as it appears on the application;

(2) the Texas taxpayer identification number; or, if sole owner, the individual's social security number;

(3) a statement identifying the information submitted;

(4) the signature, printed name and telephone number of the person authorized to submit the information; and

(5) all supplemental information requested during the pre-licensing investigation period.

(d) Within 21 calendar days after the Commission has received an original application, the Commission will review the application and notify the applicant if additional information is required.

(e) If an application is incomplete, the Commission will notify the applicant. The applicant must provide the requested information within 21 calendar days of such notification. Failure to provide the requested information within the 21 calendar day time line may result in the denial of the license application.

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

(1) review of the Bingo Enabling Act;

(2) review of the Charitable Bingo Administrative Rules;

(3) licensee responsibilities;

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

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

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

(g) The Commission may deny an application based on information obtained that indicates non-compliance with the provisions of the Bingo Enabling Act and/or the Charitable Bingo Administrative Rules in connection with a pre-licensing interview and/or location inspection.

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

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

(j) Voluntary surrender of a license.

(1) A licensee may surrender its license for cancellation provided it has completed and submitted to the Commission the prescribed form.

(2) If surrendering a license to conduct bingo, the prescribed form must be signed by the bingo chairperson.

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

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

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

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

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

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

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

(k) Administrative Hold. A licensee may place its license in administrative hold.

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

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

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

(4) Notwithstanding placement of the license in administrative hold, the licensee must file all reports, returns and remittances required by law. The licensee must also file a timely and complete application for renewal of the license each time the license is ripe for renewal.

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

(m) Timely Renewal of License.

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

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

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

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

(5) Notwithstanding any other provision in the Charitable Bingo Administrative Rules, to be considered timely, the renewal application must be filed with the Commission no later than the license expiration date. To be timely filed, the application's postmarked date must clearly show a date that is no later than the license expiration date. An application bearing no legible postmark, postal meter date, or date of delivery to the common carrier shall be considered to have been sent seven calendar days before receipt by the Agency, or on the date of the document, if the document date is less than seven days earlier than date of receipt. In computing the period of time for filing renewal applications, the last day of the period so computed is to be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday.

(n) Representation; personal receipt of documents. For purposes of this subsection, an individual shall be recognized by the Commission as an applicant or licensee's authorized representative only if the applicant or licensee has filed with the Commission a form prescribed by the Commission identifying the individuals currently listed as directors, officers, or operators, or if they are identified on the completed form "Schedule E Authorization of Representation." A person is not an authorized representative of the applicant or licensee unless specifically named on a form prescribed by the Commission as part of the application, or in the "Schedule E Authorization of Representation" that is on file with the Commission. Only those persons specifically named on a form prescribed by the Commission or in the "Schedule E Authorization of Representation" as an authorized representative shall be recognized by the Commission concerning any matter relating to the licensing process or license. Only the applicant or licensee or its authorized representative may receive from the Commission documents relating to the application or license without being required to submit a request under the Public Information Act.

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

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

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

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

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

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

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

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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16 TAC §402.442

The Texas Lottery Commission (Commission) adopts new 16 TAC §402.442 (relating to Amendment to a Commercial Lessor License), with changes to the proposed text as published in the August 15, 2008, issue of the *Texas Register* (33 TexReg 6502).

The purpose of the new rule is to clarify what is required of a licensed commercial lessor in order to amend information contained in its application on file with the Commission.

A public comment hearing was held on September 9, 2008. A representative from the Bingo Interest Group commented at the hearing regarding the proposed new rule.

Comment: Subsection (b)(4)(B) appears to say that if a corporation or an L.L.C. wants to amend its license to change its organization name, it has to provide a signed copy of the meeting minutes when the organization voted to change its name. If this is intended to be licensed authorized organizations changing their name and the Commission is shepherding their interest, that is fine. But, if a private corporation is a commercial lessor and wants to change its name, there is no reason why the meeting minutes need to be filed. I see no reason for this subsection.

Agency Response: The Commission agrees and has limited the language to commercial lessors who are licensed to conduct bingo or an association of licensed authorized organizations that jointly own or lease premises.

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

§402.442. Amendment to a Commercial Lessor License.

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

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

(1) completed application form prescribed by the Commission;

(2) $10 amendment application fee;

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

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

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

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

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

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

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

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

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

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

(3) written statement of the change.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 30, 2008.

TRD-200805741
Kimberly L. Kiplin
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Texas Lottery Commission
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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 1. AGENCY ADMINISTRATION
SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §1.16

The Texas Higher Education Coordinating Board adopts amendments to §1.16, concerning contracts for materials and services with changes to the proposed text as published in the August 22, 2008, issue of the *Texas Register* (33 TexReg 6686). Specifically, these amendments will provide that the Chief Operating Officer, as well as the Commissioner, may approve contracts for materials and services of up to one hundred thousand dollars in value; and that the Commissioner or Chief Operating Officer may approve contract cost increases of up to ten percent for contracts previously approved by either the Board or the Agency Operations Committee without resubmitting the contracts for approval. Staff made one additional change to the proposed section as published in the *Texas Register* by replacing the word "and" with "or" for further clarification.

No comments were received regarding the amendments.

The amendments are adopted under the State Employees Training Act, Texas Government Code, §§656.041 - 6565.105, which governs the eligibility of employees for participation in the program and the operation of the program.

§1.16. Contracts for Materials and Services

(a) The Board shall approve all requests for the purchase of materials or services if the cost for those materials or services is ex-

pected to exceed $750,000.00. After a vendor is selected, the Chair and Vice Chair of the Board shall provide final approval of the contract with the selected vendor.

(b) The Agency Operations Committee shall approve all requests for the purchase of materials or services if the cost for those materials or services is greater than $100,000.00 but less than or equal to $750,000.00. After a vendor is selected, the Chair and Vice Chair of the Board shall provide final approval of the contract with the selected vendor.

(c) The Commissioner or the Deputy Commissioner for Business and Finance/Chief Operating Officer shall approve all contracts for the purchase of materials or services if the contract amount is less than or equal to $100,000.00. The Commissioner may delegate his approval authority to a deputy, associate, or assistant commissioner if:

(1) The contract amount is less than or equal to $5,000; or

(2) The Commissioner and the Deputy Commissioner for Business and Finance/Chief Operating Officer will be away from the agency and unavailable to approve contracts for more than one business day.

(d) The Commissioner shall provide a report to the Agency Operations Committee, at least quarterly, describing all contracts for the purchase of materials or services.

(e) The Chair and Vice Chair of the Board shall have the authority to approve emergency purchase requests and contracts for materials or services over $100,000 that must be entered into in order to prevent a hazard to life, health, safety, welfare, property or to avoid undue additional cost to the state. Emergency purchase requests and contracts shall be exempt from subsections (a) and (b) of this section.

(f) In the event that the agency is required by statute to enter into a contract for the purchase of materials or services with a value of over $100,000, including the awarding of grants, approval of such a request or contract by the Board or the Agency Operations Committee pursuant to subsection (a) or (b) of this section, as appropriate, shall not be required when such an award involves no discretion by the Board or agency staff. The Commissioner shall approve such contracts and report them to the Board at the next quarterly Board meeting following the approval.

(g) In the event that a contract for a given amount has been approved by either the Board or the Agency Operations Committee, as applicable, and circumstances alter such that the expenditure necessary under the contract increases by not more than ten per cent, the Commissioner or the Deputy Commissioner for Business and Finance/Chief Operating Officer may approve such an increase. Should the increase in expenditure exceed ten per cent, the contract must be resubmitted for approval by the Board or Agency Operations Committee, as appropriate.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 29, 2008.

TRD-200805724

Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: November 18, 2008
Proposal publication date: August 22, 2008
For further information, please call: (512) 427-6114

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SUBCHAPTER E. EMPLOYEE SCHOLARSHIPS

19 TAC §§1.116 - 1.120

The Texas Higher Education Coordinating Board adopts the repeal of §§1.116 - 1.120, concerning Employee Scholarships without changes to the proposed text as published in the August 29, 2008, issue of the *Texas Register* (33 TexReg 7125). Specifically, the repeal will make administration of the program more efficient. An agency policy will replace the rules.

No comments were received regarding the repeal.

The repeal is adopted under the State Employees Training Act, Texas Government Code, §§656.041 - 656.105, which governs the eligibility of employees for participation in the program and the operation of the program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Bill Franz
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CHAPTER 5. RULES APPLYING TO PUBLIC UNIVERSITIES, HEALTH-RELATED INSTITUTIONS, AND/OR SELECTED PUBLIC COLLEGES OF HIGHER EDUCATION IN TEXAS

SUBCHAPTER F. MATH, SCIENCE, AND TECHNOLOGY TEACHER PREPARATION ACADEMIES

19 TAC §5.114, §5.115

The Texas Higher Education Coordinating Board adopts amendments to §5.114 and §5.115, concerning Mathematics, Science, and Technology Teacher Preparation Academies, without changes to the proposed text as published in the August 22, 2008, issue of the *Texas Register* (33 TexReg 6688). Specifically, these amendments will clarify the role of the Board in

selection of the Academies based on specific policies outlined in §1.16, concerning contracts for materials and services.

No comments were received regarding the amendments.

These amendments are adopted under the Texas Education Code, §21.462, which gives the Coordinating Board the authority to adopt rules to establish mathematics, science, and technology teacher preparation academies at institutions of higher education that have a State Board for Educator Certification approved teacher preparation program or are affiliated with a program approved by the Board.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Bill Franz
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Texas Higher Education Coordinating Board
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CHAPTER 7. DEGREE GRANTING COLLEGES AND UNIVERSITIES OTHER THAN TEXAS PUBLIC INSTITUTIONS
SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §7.3

The Texas Higher Education Coordinating Board adopts an amendment to §7.3 concerning Definitions without changes to the proposed text as published in the August 15, 2008, issue of the *Texas Register* (33 TexReg 6503).

Specifically, the amendment to §7.3 is needed to more accurately define the Classification of Instructional Programs (CIP) Code. The current definition may theoretically harm students by limiting the educational level attainable to the associate degree level only. Although the likelihood of this occurrence is small, it is important that we err on the side of caution and eliminate the possibility. This change clarifies that the CIP Code may reflect any and all educational and/or workforce degree-level programs.

The following comments were received regarding the amendment:

Comment: The Institute for Creation Research (ICR) recommended deleting the word "approved" from paragraph (17) of this section and replacing it with another term such as "NCES-defined" or "CIP-coded." ICR stated the following: The word approved is a loaded term, providing ambiguity that could (and likely would) be misleadingly misconstrued or improperly interpreted as identifying a degree program as regulatory approved - in the sense of jurisdictional control of the education process. Such a notion (or intimation) clashes with the context and purpose of the U.S. Department of Education's program for the National Center for Education Statistics (NCES). As its name suggests, the NCES is a statistical research activity of the U.S. Department of Education for acquiring, analyzing, and publishing education information.

Response: The comment by ICR refers to language in Chapter 7 rules that has already been adopted by the Board, rather than to the proposed change to the rules available for public comment. The ICR comment appears to suggest that the CIP code assigned to a degree program implies approval. The CIP is a program identification system developed by the U.S. Department of Education for institutions across the country to use to identify and classify similar degree programs. The approval of degree programs is a state responsibility. Consequently, the use of the CIP classification system does not constitute approval. Staff disagrees with the suggested change.

Comment: The Institute for Creation Research (ICR) recommended replacing the term associate with academic or postsecondary or the phrase higher education. ICR stated the following: If the THECB's underlying intent is to merely expand beyond the "associate" level (without trying to emphasize any extra regulatory power to approve versus disapprove what private colleges teach), it seems that the word associate could be replaced by the word "academic" or "postsecondary" or the phrase higher education.

Response: The comment by ICR addresses the proposed change to the rules available for public comment. Staff determined, however, that the suggested change can be accomplished just as effectively by deleting the word "associate" rather than changing it.

The amendment is adopted under the Texas Education Code, Chapter 61, Subchapter G, and Texas Education Code Chapter 132, which provides the Coordinating Board with the authority to regulate the awarding or offering of degrees, credit toward degrees, and the use of certain terms.

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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CHAPTER 17. RESOURCE PLANNING
SUBCHAPTER B. BOARD APPROVAL

19 TAC §17.12

The Texas Higher Education Coordinating Board adopts amendments to §17.12, concerning delegation of approval authority, without changes to the proposed text as published in the August 22, 2008, issue of the *Texas Register* (33 TexReg 6689).

Specifically, the amendments to §17.12(b) and (e) will add the Commissioner and the Deputy Commissioner for Academic Planning and Policy to the approval authority for projects.

No comments were received regarding the amendments.

The amendments are adopted under the Texas Education Code, §61.9624.

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-200805728
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Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6114

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SUBCHAPTER C. RULES APPLYING TO ALL PROJECTS

19 TAC §17.21

The Texas Higher Education Coordinating Board adopts amendments to §17.21, concerning application procedures, without changes to the proposed text as published in the August 22, 2008, issue of the *Texas Register* (33 TexReg 6689).

Specifically, the amendments to §17.21(b) will add the Commissioner and the Deputy Commissioner for Academic Planning and Policy to the approval authority for projects.

No comments were received regarding the amendments.

The amendments are adopted under the Texas Education Code, §61.9624.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

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CHAPTER 21. STUDENT SERVICES

SUBCHAPTER II. EDUCATIONAL AIDE EXEMPTION PROGRAM

19 TAC §21.1088

The Texas Higher Education Coordinating Board adopts an amendment to §21.1088, concerning the Educational Aide Exemption Program, without changes to the proposed text as published in the August 22, 2008, issue of the *Texas Register* (33 TexReg 6690). Specifically, the deletion of §21.1088(c) eliminates redundancy with §21.1088(a).

No comments were received regarding the amendment.

The amendment is adopted under the Texas Education Code, §54.214(e), which provides the Coordinating Board with the authority to adopt rules to implement this section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

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CHAPTER 22. GRANT AND SCHOLARSHIP PROGRAMS

SUBCHAPTER B. PROVISIONS FOR THE TUITION EQUALIZATION GRANT PROGRAM

19 TAC §22.23

The Texas Higher Education Coordinating Board adopts amendments to §22.23, concerning Provisions for the Tuition Equalization Grant Program, without changes to the proposed text as published in the August 22, 2008, issue of the *Texas Register* (33 TexReg 6690). Specifically, the amendment to §22.23 concerning Institutions clarifies that institutions must submit their annual audit reports by April 15 following the end of the relevant fiscal year. In the past, some institutions performed their audits on a biennial basis, but this is no longer true.

No comments were received regarding the amendments.

The amendments are adopted under the Texas Education Code, §61.229, which provides the Coordinating Board with the authority to adopt rules to implement the program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 29, 2008.

TRD-200805731
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6114

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19 TAC §22.24

The Texas Higher Education Coordinating Board adopts amendments to §22.24, concerning Provisions for the Tuition Equalization Grant Program, without changes to the proposed text as published in the September 5, 2008, issue of the *Texas Register* (33 TexReg 7396). Specifically, the amendment to §22.24(5), Eligible Student, clarifies that the only graduate students who may qualify for a Tuition Equalization Grant are those who are pursuing their first master's or first doctoral degree.

No comments were received regarding the amendments.

The amendments are adopted under the Texas Education Code, §61.229, which provides the Coordinating Board with the authority to adopt rules to implement the program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200805732
Bill Franz
General Counsel
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Proposal publication date: September 5, 2008
For further information, please call: (512) 427-6114

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SUBCHAPTER S. PROFESSIONAL NURSING SHORTAGE REDUCTION PROGRAM

19 TAC §22.507, §22.508

The Texas Higher Education Coordinating Board adopts amendments to §22.507 and §22.508, concerning the Professional Nursing Shortage Reduction Program, without changes to the proposed text as published in the August 22, 2008, issue of the *Texas Register* (33 TexReg 6691). Specifically, these amendments will provide rules regarding the disbursement of funds for the Professional Nursing Shortage Reduction Program.

No comments were received regarding the amendments.

The amendments are adopted under the Texas Education Code, §61.9624.

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
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Effective date: November 18, 2008
Proposal publication date: August 22, 2008
For further information, please call: (512) 427-6114

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PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS

SUBCHAPTER AA. COMMISSIONER'S RULES ON SCHOOL FINANCE

19 TAC §61.1017

The Texas Education Agency (TEA) adopts the repeal of §61.1017, concerning the Optional Flexible Year Program (OFYP). The repeal is adopted without changes to the proposed text as published in the September 12, 2008, issue of the *Texas Register* (33 TexReg 7658) and will not be republished. The section addresses provisions for approval and operation of a flexible year program. The adopted rule action repeals the OFYP rule so it can be organized with other rules concerning student attendance in 19 TAC Chapter 129, Student Attendance.

Texas Education Code (TEC), §29.0821, authorizes the commissioner of education to adopt rules for the administration of flexible year programs provided by school districts and open-enrollment charter schools for students who did not or are likely not to perform successfully on state assessment instruments or who would not otherwise be promoted to the next grade level. Through 19 TAC §61.1017, adopted to be effective October 18, 2005, the commissioner exercised rulemaking authority, specifying in rule general provisions, student eligibility, program criteria, approval process, and funding for an OFYP.

The adopted rule action repeals 19 TAC §61.1017, Optional Flexible Year Program. New 19 TAC Chapter 129, Student Attendance, Subchapter AA, Commissioner's Rules, §129.1029, Optional Flexible Year Program, is being adopted in a separate rule action in this issue. The adopted repeal and new rule organize the provisions for an OFYP in the same chapter as other rules concerning student attendance.

The TEA determined that the repeal will have no adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The public comment period on the proposal began September 12, 2008, and ended October 13, 2008. No public comments were received.

The repeal is adopted under the TEC, §29.0821, which authorizes the commissioner of education to adopt rules for the administration of the Optional Flexible Year Program.

The adopted repeal implements the TEC, §29.0821.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 31, 2008.

TRD-200805767
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Texas Education Agency
Effective date: November 20, 2008
Proposal publication date: September 12, 2008
For further information, please call: (512) 475-1497

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CHAPTER 129. STUDENT ATTENDANCE
SUBCHAPTER AA. COMMISSIONER'S RULES

19 TAC §129.1029

The Texas Education Agency (TEA) adopts new §129.1029, concerning the Optional Flexible Year Program (OFYP). The new section is adopted without changes to the proposed text as published in the September 12, 2008, issue of the *Texas Register* (33 TexReg 7662) and will not be republished. The adopted new section addresses the provisions for approval and operation of a flexible year program that were codified in 19 TAC §61.1017, Optional Flexible Year Program. The adopted new section organizes the provisions for an OFYP with other rules concerning student attendance and includes a change to remove the requirement related to when OFYP applications must be submitted to the TEA.

Texas Education Code (TEC), §29.0821, authorizes the commissioner of education to adopt rules for the administration of flexible year programs provided by school districts and open-enrollment charter schools for students who did not or are likely not to perform successfully on state assessment instruments or who would not otherwise be promoted to the next grade level. Through 19 TAC Chapter 61, School Districts, Subchapter AA, Commissioner's Rules on School Finance, §61.1017, Optional Flexible Year Program, adopted to be effective October 18, 2005, the commissioner exercised rulemaking authority, specifying in rule general provisions, student eligibility, program criteria, approval process, and funding for an OFYP.

In a separate rule action in this issue, the TEA is adopting the repeal of 19 TAC §61.1017 so the provisions for an OFYP can be organized in 19 TAC Chapter 129 with other rules concerning student attendance. Adopted new 19 TAC §129.1029, Optional Flexible Year Program, is substantively similar to §61.1017 except that it removes the requirement that applications for the OFYP be submitted 90 days before the first day of the proposed instructional calendar in which the school district is requesting to implement the program.

The TEA determined that the new section will have no adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The public comment period on the proposal began September 12, 2008, and ended October 13, 2008. No public comments were received.

The new section is adopted under the TEC, §29.0821, which authorizes the commissioner of education to adopt rules for the administration of the Optional Flexible Year Program.

The adopted new section implements the TEC, §29.0821.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 31, 2008.

TRD-200805768

Cristina De La Fuente-Valadez
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Effective date: November 20, 2008
Proposal publication date: September 12, 2008
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CHAPTER 153. SCHOOL DISTRICT PERSONNEL
SUBCHAPTER DD. CRIMINAL HISTORY RECORD INFORMATION REVIEW

19 TAC §153.1101, §153.1117

The Texas Education Agency (TEA) adopts an amendment to §153.1101 and new §153.1117, concerning criminal history record information review. The amendment and new section are adopted with changes from the proposed text as published in the May 23, 2008, issue of the *Texas Register* (33 TexReg 4072). Section 153.1101 establishes definitions for applicable words and terms. The adopted amendment and new section help implement the requirements of the Texas Education Code (TEC), §22.0834, as added by Senate Bill 9, 80th Texas Legislature, 2007, which requires the criminal history record information review of certain contract employees of a school district, open-enrollment charter school, and shared services arrangement.

TEC, §22.0834, authorizes the commissioner of education to adopt rules as necessary to implement the criminal history record information review of certain contract employees. The statute requires entities that contract with public schools to obtain criminal history record information for their employees who have continuing contract duties and direct contact with students, but it does not define those terms. In addition, the statute does not address other issues related to what types of contracts and contractors are covered by its requirements.

Due to the uncertainty as to the application and interpretation of the TEC, §22.0834, a stakeholder meeting was held by TEA staff on February 25, 2008, to discuss the possibility of adopting commissioner's rules to help implement this section. Interested individuals and representatives of associations of construction contractors and subcontractors, school boards, school administrators, school personnel administrators, sports officials, educators, the University Interscholastic League, and other extracurricular organizations appeared and presented comments regarding the potential effects of failing to address the uncertainty regarding the implementation of the TEC, §22.0834. The stakeholders also recommended possible rule language. Although the suggestions for rule proposals differed in some respects, the consensus of the meeting was that a commissioner's rule to help implement the TEC, §22.0834, was needed.

The amendment to 19 TAC §157.1101, Definitions, adds definitions for "continuing duties related to contracted services," "date of employment," "date of securing services," "direct contact with students," and "service contractor." The amendment also states more specifically the criteria for determining which employees and contractors are covered.

New 19 TAC §157.1117, School Contractor Employees, describes in more detail the obligations and responsibilities of

school contractors and school entities to obtain the required criminal history record information.

Several revisions were made to the rule action since published as proposed in response to public comments and to incorporate technical corrections. The following changes were made at adoption.

In 19 TAC §153.1101, the definition of "covered contract employee" in paragraph (3) was revised in subparagraph (D) to clarify employment of students. The definition of "date of employment" in paragraph (5) was modified to add subparagraph (C) to further clarify the definition for employees and independent contractors of subcontractors. The definition of "date of securing services" in paragraph (6) was revised to clarify contractor and subcontractor responsibilities. A technical correction was also made in paragraph (6) to clarify the statutory reference.

The definition of "direct contact with students" in paragraph (7) was revised to use the term "substantial opportunity" throughout the definition. Paragraph (7) was also revised to refer to more than one student and to delete the word "individualized" from the last sentence of the definition to clarify that direct contact does not necessarily involve one-on-one interaction with a student. A technical correction was made in paragraph (7) to use the phrase "which might include" rather than "such as." The definition of "service contractor" in paragraph (10) was revised to provide that when conducting an investigation, law enforcement and Department of Family and Protective Services investigators are not service contractors.

In 19 TAC §153.1117, subsection (b)(2), relating to district responsibilities, was revised to clarify that in emergencies a school entity employee may accompany more than one covered contract employee. Subsection (c), relating to contractor responsibilities, was revised in paragraph (1) to clarify that school contractors are responsible for obtaining the required criminal history record information on the covered contract employees of subcontractors on school contracts. Paragraph (4) was revised to clarify that, at the school entity's request, contractors shall furnish the school entity the information necessary for the school entity to obtain criminal history record information on all covered contract employees working on the contract. Paragraph (5) was revised to further clarify school contractor responsibilities.

The rule action will not have any TEA reporting requirements, as the TEA will not receive or review the required criminal history record information. The TEC, §22.0834, already requires school districts and school contractors to obtain this information and requires the Texas Department of Public Safety to report that which is national criminal history record information through a clearinghouse. The rule action will not add any additional procedural or reporting requirements and will, in fact, reduce those requirements by clarifying which school contractors are not subject to a criminal history record information review.

The rule action will not add any additional locally maintained paperwork requirements and should actually decrease procedural and reporting requirements as previously described.

The TEA determined that the amendment and new section will have no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The public comment period began May 23, 2008, and ended June 22, 2008. In addition, a timely request for public hearing was filed with the commissioner of education. As provided by the Administrative Procedure Act, a public hearing was held on June 27, 2008, in Austin, Texas, to receive public comment on the proposed amendment to 19 TAC Chapter 153, School District Personnel, Subchapter DD, Criminal History Record Information Review, §153.1101, Definitions, and new 19 TAC §153.1117, School Contractor Employees. Following is a summary of the public comments received during the comment period, including those received at the public hearing, and corresponding agency responses.

Comment. Representatives of the athletic departments of San Antonio Independent School District (ISD) and North East ISD commented that sports officials and other individuals contracted to work at athletic events should be excluded from the criminal history record information review requirement imposed by the Texas Education Code (TEC), §22.0834. The representatives stated that many athletic events could not take place without these individuals and some may not be able to afford the costs associated with the review. The representatives also commented that these individuals do not have any interaction with students that is not supervised by certified district employees.

Agency Response. The agency agrees. The TEC, §22.0834, is not intended to require criminal history record information review of contract employees who do not have unsupervised interaction with students. The amendment to 19 TAC §153.1101 includes new paragraph (7) which provides that officiating a supervised sports contest does not, by itself, constitute direct contact with students and so does not require a TEC, §22.0834, criminal history record information review. To the extent that other sports event contract employees do not have opportunity for unsupervised contact with students, they will also not be subject to a TEC, §22.0834, criminal history record information review.

Comment. The Texas Association of School Boards commented that the exclusion of students from the definition of covered contract employee should be clarified to cover all students enrolled in a school.

Agency Response. The agency agrees. Language in 19 TAC §153.1101(3)(D) has been revised at adoption accordingly.

Comment. The Texas Association of Sports Officials commented in agreement with the definition of direct contact in proposed 19 TAC §153.1101(7) that excludes activities, such as officiating a sports contest, that do not provide substantial opportunity for unsupervised interaction with students.

Agency Response. The agency agrees. The TEC, §22.0834, was not intended to cover the act of officiating an interscholastic sports contest, to the extent it does not provide an opportunity for unsupervised interaction with students.

Comment. The Associated General Contractors (AGC) Texas Building Branch commented that the definition of "direct contact" in proposed 19 TAC §153.1101(7) should use the term "substantial opportunity" throughout this definition.

Agency Response. The agency agrees. Language in 19 TAC §153.1101(7) has been revised at adoption accordingly.

Comment. The AGC Texas Building Branch commented that the 19 TAC §153.1101(7) definition should emphasize that "direct contact" consists of one-on-one interaction, and should exclude "passing by a student in a public location."

Agency Response. The agency disagrees and finds no basis in the legislative history for the proposition that the TEC, §22.0834,

was intended to cover only one-on-one interaction between contract employees and students, or that "passing by a student in a public location," such as a school hallway, does not provide "substantial opportunity" for direct contact between contract employees and students. In order to avoid confusion, 19 TAC §153.1101(7) was revised at adoption to refer to more than one student and to delete the word "individualized" from the last sentence of the definition to clarify that direct contact does not necessarily involve one-on-one interaction with a student.

Comment. The Texas Department of Family and Protective Services (DFPS) commented that law enforcement and DFPS investigators, when conducting an investigation or intervention regarding an alleged crime or act of child abuse on a school campus, should not be considered a school service contractor.

Agency Response. The agency agrees. Language in 19 TAC §153.1101(10) has been revised at adoption to exclude law enforcement and DFPS investigators, when conducting an investigation or intervention regarding an alleged crime or act of child abuse on a school campus, from the definition of a school service contractor.

Comment. The AGC Texas Building Branch commented that 19 TAC §153.1117(b)(2) should clarify that in an emergency, a school employee may accompany more than one contract worker.

Agency Response. The agency agrees. Language in 19 TAC §153.1117(b)(2) has been revised at adoption accordingly.

Comment. The AGC Texas Building Branch commented that general contractors may not be legally entitled to obtain criminal histories of subcontractor employees, and that they should be entitled to rely on the certification of subcontractors that the subcontractors have obtained the required information for the subcontractors' covered contract employees. The AGC Texas Building Branch suggested changes and additional language for 19 TAC §153.1117(c)(1), (5), and (6) to address their concerns.

Agency Response. The agency disagrees. The Texas Department of Public Safety (DPS) has determined that the TEC, §22.0834, both requires and authorizes only school contractors to obtain the required criminal history record information on all covered contract employees, including independent contractors and subcontractor employees. The specific changes and additional language suggested by the commenter were not incorporated. However, language in 19 TAC §153.1101(6) and 19 TAC §153.1117(c)(1) and (5) has been revised to clarify contractor and subcontractor responsibilities.

Comment. The Texas Construction Association (TCA) presented its interpretation that the TEC, §22.0834, does not require subcontractors to obtain criminal history record information on their employees because they do not contract with a school entity.

Agency Response. The agency disagrees and asserts that the legislative intent of the TEC, §22.0834, is to protect students by requiring that criminal history record information be obtained on all contract employees who have direct contact with students. In enacting a statute, it is presumed that the legislature intended that the statute be effective and that public interest be favored over private interest (Texas Government Code, §311.021). If the TEC, §22.0834, were interpreted as the TCA proposes, it would render the statute ineffective in protecting schoolchildren and would favor private interest over public interest. A high percentage of workers on school construction contracts are not employees of the general contractor, but of its subcontractors. If subcontractor employees were not covered by the TEC, §22.0834, most of the contract employees with direct contact with students would not be required to have any kind of criminal history background check. The TCA interpretation would encourage general contractors to outsource even more of the work on school construction contracts, with the result that most of the contract employees working in schools would not be subject to this review, thus allowing a large population of individuals access to schoolchildren on school property without the safety net of a national criminal history review.

There is no indication of legislative intent to limit the phrases "offered employment" and "employee" in the TEC, §22.0834(a), to their more narrow meanings when they are used in an income tax or vicarious liability context, rather than the more general sense of one who does work for another. Neither is there any language excluding or distinguishing contract employees who are paid by a subcontractor rather than the entity that contracts directly with a school.

In addition, the language of the TEC, §22.0834(c), requiring the submission of identity information necessary to obtain national criminal history record information states that information must be submitted before or immediately after employing or *securing the services of* [*emphasis added*] a person to whom the TEC, §22.0834(a), applies. This is further evidence that the legislature did not intend to limit this statute to persons who receive a paycheck directly from a school general contractor but rather to have the criminal history requirement cover all persons who are used by the contractor to perform the contracted services. The interpretation urged by the TCA would thwart the intent of the legislature that criminal history record information be obtained on all persons who are not employees of schools, but who come on campus to perform contract services and who have direct contact with students.

The agency has consulted with representatives of other entities directly involved in the implementation of the TEC, §22.0834, including the Texas DPS, and they agree that this statutory interpretation is consistent both with the express language of the TEC, §22.0834, and with the intent of the legislature in adopting it.

To clarify contractor and subcontractor responsibilities, language in 19 TAC §153.1101(5) and (6) and 19 TAC §153.1117(c)(1) and (5) has been revised at adoption.

Comment. The TCA commented that the agency did not comply with the requirement of a fiscal impact statement regarding the costs that will be incurred by state and local governments as a result of the proposed rules. The TCA contended that the agency statement that "there will be no fiscal implications for state and local governments as a result of enforcing or administering" the proposed rules is incorrect because the proposed rules will result in increased costs that will be passed on to state and local governments.

Agency Response. The agency disagrees. The fiscal impact statement for the proposed rules correctly states that the rules will not result in any increased costs to state and local governments. The proposed rules do not result in any additional costs beyond those that were imposed by the TEC, §22.0834; they merely clarify the legislative mandate that criminal history record information be obtained for all school contract employees who have direct contact with students.

Comment. The Texas DPS commented that, because of statutory confidentiality requirements, contractors and subcontractors cannot release to schools criminal histories not reported through the DPS Criminal History Clearinghouse, even though schools are entitled to obtain those criminal histories themselves.

Agency Response. The agency agrees. Language in 19 TAC §153.1117(c)(4) has been revised at adoption accordingly.

The amendment and new section are adopted under the Texas Education Code, §22.0834, as added by Senate Bill 9, 80th Texas Legislature, 2007, which authorizes the commissioner to adopt rules as necessary to implement criminal history record information review of certain contract employees.

The amendment and new section implement the Texas Education Code, §22.0834.

§153.1101. Definitions.

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

(1) Clearinghouse--The criminal history clearinghouse established by the Texas Department of Public Safety (DPS) pursuant to the Texas Government Code, §411.0845.

(2) Continuing duties related to contracted services--Work duties that are performed pursuant to a contract to provide services to a school entity on a regular, repeated basis rather than infrequently or one-time only.

(3) Covered contract employee--An individual who:

(A) is employed or offered employment by a service contractor or a subcontractor of a service contractor, is an individual independent contractor of the school entity, or is an individual subcontractor of a service contractor;

(B) has or will have continuing duties related to the contracted services;

(C) has or will have direct contact with students; and

(D) is not a student of (or enrolled in) the school entity for which the services are performed.

(4) Criminal history record information--In accordance with the Texas Government Code, §411.082(2), information collected about a person by the DPS, a law enforcement or a criminal justice agency, or a private entity governed by the Fair Credit Reporting Act (15 U.S.C. Section 1681 et seq.) that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.

(5) Date of employment--For purposes of the Texas Education Code (TEC), §22.0834, the date of employment by an entity that contracts with a school entity shall be deemed to be:

(A) with respect to an individual independent contractor, the date of the contract or agreement to provide services to the school entity;

(B) with respect to a covered contract employee of a service contractor, the date the employee began providing services to the contractor for compensation; and

(C) with respect to an employee or independent contractor of a subcontractor of a service contractor, the later of the date the service contractor secures the services of the subcontractor and the date the subcontractor secures the services of the employee or independent contractor.

(6) Date of securing services--For purposes of the TEC, §22.0834, the date of securing the services of a covered contract employee or a subcontractor by an entity that contracts with a school entity shall be deemed to be the date the employee or subcontractor accepts an offer from the service contractor for a specific job position or for the performance of a specific project that is to begin on a date that is certain or reasonably ascertainable.

(7) Direct contact with students--The contact that results from activities that provide substantial opportunity for verbal or physical interaction with students that is not supervised by a certified educator or other professional district employee. Contact with students that results from services that do not provide substantial opportunity for unsupervised interaction with a student or students, such as addressing an assembly, officiating a sports contest, or judging an extracurricular event, is not, by itself, direct contact with students. However, direct contact with students does result from any activity that provides substantial opportunity for unsupervised contact with students, which might include, without limitation, the provision of coaching, tutoring, or other services to students.

(8) National criminal history record information--In accordance with the TEC, §22.081, criminal history record information obtained from both the DPS and the Federal Bureau of Investigation based on fingerprint identification information.

(9) School entity--A Texas school district, an open-enrollment charter school, or a shared services arrangement.

(10) Service contractor--An entity, including a government entity and an individual independent contractor, that contracts or agrees with a school entity by written agreement or verbal understanding to provide services through individuals who receive compensation. However, when conducting an investigation or intervention regarding an alleged crime or act of child abuse on a school campus, a law enforcement agency or the Department of Family and Protective Services is not a service contractor, and the investigator or intervener is not a covered contract employee.

(11) Substitute teacher--A teacher who is on call or on a list of approved substitutes to replace a regular teacher and has no regular or guaranteed hours. A substitute teacher may be certified or noncertified.

§153.1117. School Contractor Employees.

(a) Purpose. Pursuant to the Texas Education Code (TEC), §22.0834, this section implements the criminal history record information review of certain school entity contract employees required by the TEC, §22.0834.

(b) District responsibilities.

(1) Required contractor criminal histories. A school entity shall ensure that each of its service contractors certify that the service contractor has obtained all criminal history record information for covered contract employees, as required by the TEC, §22.0834.

(2) Emergencies. In an emergency, a school entity may allow a covered contract employee or employees to enter school entity property, without the required criminal history record information review, if the covered contract employee is or employees are accompanied by a school entity employee. A school entity may adopt rules regarding an emergency situation.

(3) Standards for criminal history review. A school entity may not allow a covered contract employee to serve at the school entity if the school entity obtains information through a criminal history record information review that the covered contract employee has a disqualifying conviction under the TEC, §22.085. However, if it chooses,

a school entity may adopt a stricter standard related to criminal history record information than that of the TEC, §22.085.

(4) Required reports. Pursuant to §249.14(d)(1) of this title (relating to Complaint, Required Reporting, and Investigation; Investigative Notice; Filing of Petition), if a school entity obtains information that a covered contract employee who holds a certificate issued by the State Board for Educator Certification (SBEC) has a reported criminal history, the superintendent, the superintendent's designee, or the director of the school entity shall notify the SBEC of that criminal history within seven calendar days of the date that information is obtained.

(c) Contractor responsibilities.

(1) Contract employee criminal history requirement. A service contractor shall obtain all criminal history record information that is required by the TEC, §22.0834, for all its covered contract employees and the covered contract employees of its subcontractors. If a service contractor determines that a person is not a covered contract employee, the service contractor shall make reasonable efforts to ensure that the conditions or precautions that result in such a determination continue to exist throughout the time that the contracted services are provided.

(2) National criminal history record information. As required by the TEC, §22.0834, before or immediately after employing or securing the services of a covered contract employee on or after January 1, 2008, who is not an applicant for or holder of a certificate under the TEC, Chapter 21, Subchapter B, a service contractor shall send or ensure that a covered contract employee sends to the Texas Department of Public Safety (DPS) the information, which may include fingerprints and photographs, that is necessary for the DPS to obtain the covered contract employee's national criminal history record information. The DPS shall report the national criminal history record information through the Clearinghouse, as provided by the Texas Government Code, §411.0845.

(3) Criminal history record information. As required by the TEC, §22.0834, a service contractor shall obtain from the DPS, any law enforcement or criminal justice agency, or a private entity that is a consumer reporting agency governed by the Fair Credit Reporting Act all criminal history record information that relates to a covered contract employee who is employed before January 1, 2008, or who is an applicant for or holder of a certificate under the TEC, Chapter 21, Subchapter B, and who is not subject to a national criminal history record information review.

(4) School entity request for information on covered contract employees. A service contractor shall provide a school entity, at its request, the information necessary for the school entity to obtain criminal history record information for all covered contract employees.

(5) Service contractor certification. A service contractor shall certify to the school entity that it has obtained the criminal history record information required by the TEC, §22.0834, for all covered contract employees providing the contracted services. The service contractor shall also certify that it will take reasonable steps to ensure that the conditions or precautions that have resulted in a determination that any person is not a covered contract employee continue to exist throughout the time that the contracted services are provided.

(6) Employees with disqualifying convictions. A service contractor shall not permit a covered contract employee to provide services at a school entity if the employee has a disqualifying conviction under the TEC, §22.085.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 31, 2008.

TRD-200805769
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Effective date: November 20, 2008
Proposal publication date: May 23, 2008
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 11. TEXAS BOARD OF NURSING

CHAPTER 221. ADVANCED PRACTICE NURSES

The Texas Board of Nursing (Board) adopts amendments to §221.4 and §221.6 and the repeal of §221.5, concerning Advanced Practice Nurses, without changes to the proposed text as published in the August 8, 2008, issue of the *Texas Register* (33 TexReg 6305) and will not be republished.

The proposed amendments and repeal are necessary for the purpose of aligning 22 TAC Chapter 221 with Chapter 305 of the Nursing Practice Act (the Advanced Practice Registered Nurse (APRN) Compact) and national standards.

At its October 2007 meeting, the Board charged the Advanced Practice Nursing Advisory Committee (APNAC) with reviewing Rule 221 and discussing issues related to recognition of advanced practice nurses in preparation for implementation of the APRN Compact. As part of its discussion, the Board directed the APNAC to examine two specific issues. First, the issue of whether Texas should begin referring to nurses in advanced practice as APRNs rather than as APNs (advanced practice nurses). APRN is the term utilized in the compact language, and the term clearly identifies the licensee as both an advanced practice nurse and a registered nurse. It was the consensus of the APNAC to recommend that the Board begin using APRN in order to be consistent with Chapter 305 of the Nursing Practice Act.

The other issue the Board directed the APNAC to discuss is whether it would be in the best interest of the public to refer to authorization to practice as licensure rather than continuing to refer to advanced practice approval as an authorization that is linked to registered nurse (RN) licensure. The process used to review and approve applicants as advanced practice nurses is a licensure process, even though it is not presently called a license. Calling the approval a license will not change the advanced practice nurse's scope of practice in any way. The APRN's scope of practice will remain as set forth in current laws and regulations.

The Board utilizes a licensure process because it believes advanced practice nursing has evolved as a result of the complexity of services provided and the level of knowledge, skills, and competence required by individuals who provide such care. The services provided by APRNs exceed the scope of practice of

RNs. Therefore, the potential for harm to the public is significantly greater for APRNs than for RNs, and a higher level of accountability is necessary. The Board's approval process ensures public protection through activities that include but are not limited to a detailed review of the individual's advanced practice nursing educational preparation related to the specialty for which he/she is seeking approval, verification of current RN licensure, and verification of appropriate national certification in the role and specialty that is congruent with the advanced practice nursing education. At least 50% of boards that are members of the National Council of State Boards of Nursing (NCSBN) already refer to their approval process for nurse anesthetists, nurse midwives and nurse practitioners as licensure. Nearly 40% also license clinical nurse specialists (NCSBN Member Board Profiles, data last updated January 22, 2008).

Typically, licensure is considered the preferred method of regulation when the regulated activities are complex, requiring specialized knowledge, skills, and decision-making. Licensure in any profession is required when the potential for greater risk of harm to the public exists and the professional must be held to the highest level of accountability. Another key element of licensure is a unique and identifiable scope of practice. APRNs are engaged in activities that may include functions such as making medical diagnoses and ordering appropriate pharmacologic and non-pharmacologic care in collaboration with a delegating physician. The knowledge, skills and abilities required to provide advanced practice nursing care significantly exceed those acquired through entry-level nursing education programs that prepare individuals as RNs. Likewise, their scope of practice goes well beyond that of the RN and cannot be performed without completing an advanced practice nursing educational program. Therefore, the Board has established the minimum qualifications necessary for safe and competent practice, and applications for licensure are reviewed to determine that all qualifications have been met.

Calling the approval a license is not intended to replace RN licensure; rather, it will assist the public by providing greater clarity in identifying those RNs who are eligible to practice as APRNs in this state. The public is familiar with the concept of licensure for LVNs and RNs, and this change would reinforce to the public that APRNs complete formal education beyond the RN level and must meet certain criteria to practice at the advanced practice level. The APNAC recommends that the Board consider using the term licensure to describe the advanced practice recognition process.

One of the biggest changes recommended by the APNAC is to eliminate provisional authorization to practice for new graduates. The public, employers, and legislators have relayed to staff that the concept of provisional authorization is confusing. Eliminating this level will help to eliminate the confusion associated with it. Additionally, all certifying examinations are available via computer testing methods, allowing applicants to test quickly after graduation. Based on data from the NCSBN, graduates who delay taking VN or RN licensure examinations after graduation are less likely to be successful. It is reasonable to consider that this same concept is applicable to APRNs and certification examinations. In order to allow adequate time for test results to be received, the APNAC also recommends changing the interim approval period to 120 days from the current 90.

The following comments were received:

Summary of Comment 1: The Board failed to clarify in its preamble that advanced practice registered nurses make medical diagnoses under the delegated authority of a physician rather than independently. This could mislead advanced practice registered nurses.

Response to Comment 1: The Board disagrees with the comment that the preamble is misleading. It does not dispute that physician delegation is required when advanced practice nurses provide medical aspects of patient care, and this is provided for in current law. Requirements for physician delegation are clearly stated in Rule 221.13(d). It was not the intent of the preamble to address how the legal authority to provide medical aspects of care is derived. The term medical diagnosis was not intended to be part of the rule and was not included in the rule. Advanced practice nurses are required to know and comply with the laws and regulations that govern their practice, including those requirements for physician delegation when providing medical aspects of patient care, and there is no intent to change the requirements provided for in state law.

Summary of Comment 2: The Board's proposal to call the advanced practice approval process "licensure" exceeds its statutory authority.

Response to Comment 2: The Board disagrees with the comment that the Board is without lawful authority to call approval for advance practice a license. Advance practice approval is Board recognition that the individual has met the minimum requirements necessary to hold themselves out as an advance practice nurse and to practice advance nursing. A person approved for advanced practice is entitled to due process before such recognition is taken away. Using the term licensure or license in the context of rule 221 does not change any substantive aspect of the Board's approval process for advance practice other than to simplify the terminology and provide a logical numbering system to the approval.

22 TAC §221.4, §221.6

The amendments are adopted pursuant to the authority of Texas Occupations Code §301.151 which authorizes the Texas Board of Nursing to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 3, 2008.

TRD-200805790
James W. Johnston
General Counsel
Texas Board of Nursing
Effective date: November 23, 2008
Proposal publication date: August 8, 2008
For further information, please call: (512) 305-6811

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22 TAC §221.5

The repeal is adopted pursuant to the authority of Texas Occupations Code §301.151 which authorizes the Texas Board of Nursing to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice 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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PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 535. GENERAL PROVISIONS

SUBCHAPTER F. EDUCATION, EXPERIENCE, EDUCATIONAL PROGRAMS, TIME PERIODS AND TYPE OF LICENSE

22 TAC §535.64

The Texas Real Estate Commission (TREC) adopts amendments to §535.64 concerning Accreditation of Schools and Approval of Courses and Instructors without changes to the published text as proposed in the September 5, 2008, issue of the *Texas Register* (33 TexReg 7400) and will not be republished.

The amendments to §535.64 address the requirements of Texas Occupations Code §1101.301 and §1101.304 regarding the collection of exam passage rate data on graduates of TREC-accredited real estate schools. The amendments clarify that the last course taken for purposes of the data to be collected is the last core course taken from a TREC-accredited provider with 2 years of the date the person filed an education evaluation with the commission. Courses taken at schools that are not accredited by TREC, such as colleges and universities, will be not be collected or counted. The amendments also clarify that each type of licensing exam that a graduate takes for the first time will have a school affiliation unless the last core course taken by the applicant was taken at a school that was not TREC-accredited, or the course was taken more than 2 years before the date the graduate submitted an education evaluation to the commission.

The reasoned justification for the amendments to the rule is to implement statutory requirements to track exam passage rate on graduates of TREC-accredited real estate schools.

No comments were received on the amendments as proposed.

The amendments to the rule 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 insure 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 adopted 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 October 28, 2008.

TRD-200805694
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Texas Real Estate Commission
Effective date: November 17, 2008
Proposal publication date: September 5, 2008
For further information, please call: (512) 465-3900

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SUBCHAPTER J. FEES

22 TAC §535.101

The Texas Real Estate Commission (TREC) adopts an amendment to §535.101, regarding Fees without changes to the proposed text as published in the September 5, 2008, issue of the *Texas Register* (33 TexReg 7401) and will not be republished.

The amendment increases the examination fee for salesperson and broker applicants from $59 to $61. The reasoned justification for the rule is to charge the examination fee to reflect the cost under the new contract for examination administration services contract effective September 1, 2008. This fee reflects the amount the examination vendor charges directly to applicants and does not affect the amount of revenue collected by the agency.

No comments were received on the amendment 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 Chapter 1101; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of Chapter 1101 and ensure compliance with Chapter 1101.

The statute affected by this adoption is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the adopted 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 October 28, 2008.

TRD-200805695
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SUBCHAPTER R. REAL ESTATE INSPECTORS

22 TAC §535.210

The Texas Real Estate Commission (TREC) adopts an amendment to §535.210 regarding Fees without changes to the proposed text as published in the September 5, 2008, issue of the *Texas Register* (33 TexReg 7401) and will not be republished.

The amendment increases the examination fee for home inspector applicants from $59 to $61. The reasoned justification for the rule is to charge the examination fee to reflect the cost under the new contract for examination administration services contract effective September 1, 2008. This fee reflects the amount the examination vendor charges directly to applicants and does not affect the amount of revenue collected by the agency.

No comments were received on the amendment 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 Chapter 1101; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of Chapter 1101 and ensure compliance with Chapter 1101 and Chapter 1102.

The statutes affected by this adoption are Texas Occupations Code, Chapter 1101 and Chapter 1102. No other statute, code or article is affected by the adopted 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.

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Effective date: November 17, 2008
Proposal publication date: September 5, 2008
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22 TAC §535.222

The Texas Real Estate Commission (TREC) adopts new rule §535.222 concerning inspection reports without changes to the proposed text as published in the September 5, 2008, issue of the *Texas Register* (33 TexReg 7402), which will not be republished. The rule clarifies the inspection reporting requirements as recommended by the Texas Real Estate Inspector Committee, an advisory committee of six professional inspectors and three public members appointed by TREC. The rule clarifies that all inspections performed pursuant to an inspector license issued by TREC must be reported in writing and establishes general requirements regarding information contained in the report and delivery to the client. The rule will be effective February 1, 2009.

The reasoned justification for this rule is increased clarity for inspectors and consumers alike regarding the requirements of a written inspection report.

No comments were received regarding the new rule as proposed.

The new section 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.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 3, 2008.

TRD-200805773
Devon V. Bijansky
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Effective date: February 1, 2009
Proposal publication date: September 5, 2008
For further information, please call: (512) 465-3900

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22 TAC §535.223

The Texas Real Estate Commission (TREC) adopts the repeal of §535.223 concerning standard inspection report forms as published in the September 5, 2008, issue of the *Texas Register* (33 TexReg 7403). The repeal is necessary because the subjects addressed in this section will be covered in new §535.222 and §535.223 TREC is simultaneously adopting as part of the Real Estate Inspector Committee's comprehensive review and recommendations regarding inspector standards of practice and reporting requirements. The new §535.222 and §535.223, otherwise explained in this issue of the *Texas Register*, adopt by reference a revised standard inspection report form, clarify that a written inspection report is required for all inspections performed pursuant to an inspector license issued by TREC, and clarify when the standard form is required and how it may be modified by licensees. The repeal will be effective February 1, 2009.

The reasoned justification for the repeal as adopted is clarification for inspectors and consumers alike regarding the use of the standard inspection report form.

No comments were received regarding the repeal as proposed. The Commission received comments regarding new §535.223 as proposed; those comments are addressed in this issue of the *Texas Register* in conjunction with the adoption of the new section.

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.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Effective date: February 1, 2009
Proposal publication date: September 5, 2008
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22 TAC §535.223

The Texas Real Estate Commission (TREC) adopts new §535.223 concerning standard inspection report forms without changes to the proposed text as published in the September 5, 2008, issue of the *Texas Register* (33 TexReg 7403), which will not be republished. The new rule, effective February 1, 2009, adopts by reference a revised standard inspection report form and clarifies when the form is required and how it may be modified by licensees. TREC has a statutory duty to adopt standard inspection report forms and to adopt rules requiring licensed inspectors to use the report forms under Senate Bill Number 1100, 75th Legislature (1997).

The new §535.223 has 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 inspector standards of practice that are otherwise explained in this issue of the *Texas Register*.

The reasoned justification for the new §535.223 is increased clarity for inspectors and consumers alike regarding the use of the standard inspection report form and an improved form that corresponds with improvements to the standards of practice (22 TAC §§535.227 - 535.233).

The TREC received eleven comments during the notice and comment period regarding adoption of the new rule.

Comment: Six commenters suggested adding an exception to the standard form requirement for relocation inspections so that inspections performed for relocation companies could be reported on a different form, such as an industry form, with appropriate language notifying the public that the inspection was not performed in accordance with the TREC standards of practice.

Response: The Commission respectfully disagrees with the comment because such an exception existed in §535.223 until August 2006 and was repealed because the required notice was rarely, if ever, used. While the matter may be discussed further in the future, the Commission does not deem it appropriate to allow the exception at this time.

Comment: One commenter suggested adding a separate category to the standard form for driveways and sidewalks.

Response: The Commission respectfully disagrees with the comment because deficiencies in these components are generally either related to structural performance/water retention and should be reported in the appropriate structural section, or cosmetic. Cosmetic defects are not required to be reported but may be reported in the optional section of the form.

Comment: One commenter expressed general dissatisfaction with the proposed inspection report form but did not indicate any specific issues other than implying a preference for the current form (REI 7A-0) because he purchased reporting software for that form.

Response: The Commission respectfully disagrees with the comment because the new form incorporates substantial improvements over the old form, and the cost of new reporting software is minimal.

Comment: One commenter raised a number of questions about use of the report form and made several stylistic suggestions, including moving the "Comments" heading below the section headings for consistency throughout the report; removing the coliform notice from the water well section due to concerns that it is confusing; and deleting the serial of "Oxford" comma from lists of three or more items on the report.

Response: The Commission respectfully disagrees with the comments, as the "Comments" heading is consistently below the section heading when there are other subheadings and to the right of the heading (to save space on the form) when there are not; the Commission is unaware of the same coliform notice leading to confusion in the past; and while it is acceptable to use or omit the serial comma, most authorities on American English recommend its use.

Comment: One commenter suggested adding the following notice to the informational text on the front of the standard report form: "At virtually every inspection, there are items that are not able to be inspected or operated due to accessibility, inspector safety occupant needs or health, temperatures, and other weather conditions. The inspector is not required to re-visit the property to inspect the item or items."

Response: The Commission respectfully disagrees because the informational text on the standard report form already addresses the limitations of the inspection.

Comment: One commenter suggested changing the term "Deficiency" to "Deficient" in the heading on the report form to conform with the requirements throughout the Standards of Practice that issues be reported as "Deficient."

Response: The Commission respectfully disagrees because, while either term would be appropriate, consumers reviewing their inspection reports will likely think in terms of "deficiencies," rather than "deficient systems" or "deficient components," and the definitions section of 22 TAC §535.227 explains the relationship between the terms "deficient" and "deficiency."

The new section 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.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 3, 2008.

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Proposal publication date: September 5, 2008
For further information, please call: (512) 465-3900

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22 TAC §§535.227 - 535.231

The Texas Real Estate Commission (TREC) adopts the repeal of §§535.227 - 535.231, concerning inspector standards of practice, as proposed in the September 5, 2008, issue of the *Texas Register* (33 TexReg 7404). The subjects addressed in these sections will be covered in new §§535.227 - 535.233 TREC is simultaneously adopting as part of the Real Estate Inspector Committee's comprehensive review and recommendations regarding inspector standards of practice. The new rules, otherwise explained in this issue of the *Texas Register*, divide the standards of practice for inspectors into seven sections (two additional sections) and contain a number of substantive changes recommended by the Texas Real Estate Inspector Committee, an advisory committee of six professional inspectors and three public members appointed by TREC. This repeal will be effective February 1, 2009.

As the new sections will comprehensively address the subjects of the repealed rules, repeal of the existing rules is necessary to avoid confusion and repetition.

The reasoned justification for the repeal of these rules and the adoption of the new rules is revision of professional standards for home inspections to be clearer and to reflect new technologies and building practices.

No comments were received regarding the repeal as proposed. Several comments were received regarding the new rules. These comments are addressed in conjunction with the adoption of the new §§535.227 - 535.233.

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.

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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22 TAC §§535.227 - 535.233

The Texas Real Estate Commission (TREC) adopts new rules §§535.227 - 535.233 concerning inspector standards of practice. Sections 535.228, 535.229, and 535.231 are adopted with changes to the text as published in the September 5, 2008, issue of the *Texas Register* (33 TexReg 7405), as follows: "and surface" was added after "underground" in §535.228(d)(3) in order to make clear that this provision is consistent with §535.227(b)(3)(I); "devices...including improper location" was added to §535.229(c)(3)(G) in order to clarify that all types of electrical devices are included in this provision and that improper location is a deficiency; and the numbering of §535.231(c) is changed because the proposed draft erroneously included two paragraph (3)s. The revisions to the rules as adopted do not change the nature or scope so much that they could be deemed different rules. The rules as adopted do not affect individuals other than those contemplated by the rules as proposed. The rules as adopted do not impose more onerous requirements than the proposed versions and do not materially alter the issues raised in the proposed rules. Changes in the adopted rules respond to public comments or otherwise reflect non-substantive variations from the proposed rules to clarify their intent and improve readability. Sections 535.227, 535.230, 535.232, and 535.233 are adopted without changes.

The new rules are adopted as a result of the Real Estate Inspector Committee's comprehensive review and recommendation regarding inspector standards of practice. The rules divide the standards of practice for inspectors into seven sections by providing two additional sections and contain a number of substantive changes recommended by the Texas Real Estate Inspector Committee, an advisory committee of six professional inspectors and three public members appointed by TREC. In order to allow a transition period for inspectors to implement any changes to their processes that may be necessary, these rules will become effective February 1, 2009.

Generally, the new sections rearrange the current standards of practice, listing the systems, components, and items in a home which the inspector must include in an inspection unless the inspector's client agrees to limit the scope of the inspection.

New §535.227 addresses general provisions which include definitions, the scope, and the departure provisions of an inspection. New §535.228 addresses minimum inspection requirements for structural systems. New §535.229 addresses minimum inspection requirements for electrical systems. New §535.230 addresses minimum inspection requirements for heating, ventilation, and air conditioning systems. New §535.231 addresses minimum inspection requirements for plumbing systems. New §535.232 addresses minimum inspection requirements for appliances. New §535.233 addresses minimum inspection requirements for optional systems.

The reasoned justification for the new sections is increased clarity for inspectors and consumers alike regarding what a home inspector is and is not required to inspect, as well as standards that more accurately reflect current technology, codes, and practices that form the basis of many of the standards.

The Commission received five comments during the notice and comment period regarding the proposed §§535.227 - 535.233.

Comment: One commenter generally supported the proposed rules but suggested adding the word "visible" to "gas lines" in §535.233(7)(a) to make clear that inspectors are not required to inspect gas lines that are not visible.

Response: The Commission respectfully disagrees with this comment, as the general limitations in §535.227(b)(3)(A)(iv), which apply to §§535.227 - 535.233, already make clear that inspectors are not required to inspect anything that is buried, hidden, latent, or concealed.

Comment: One commenter suggested changing "built-in appliances" to "in-place appliances" to include appliances such as washing machines and refrigerators.

Response: The Commission respectfully disagrees with this comment, as these items are not permanently attached to the real property and often are not conveyed with the property. Moreover, if a client wishes to have them inspected, these rules do not prohibit the inspector from including them in the inspection.

Comment: One commenter outlined several differences between the existing standards and the proposed new rules but did not express an opinion about these differences except for stating that the requirement to inspect lighting fixtures had been deleted and should be returned to the rules.

Response: The Commission respectfully disagrees with this comment, as the language of "lighting fixtures" was changed to "fixtures" in order to incorporate ceiling fans and other types of fixtures but still includes light fixtures.

Comment: One commenter raised several questions about how to interpret the proposed new rules but did not express an opinion about these issues except for suggesting that the trash compactor section be changed to an optional item.

Response: The Commission respectfully disagrees with this comment, finding that enough homes have built-in trash compactors to warrant requiring them to be inspected when present.

Comment: One commenter raised several questions and suggested a multitude of stylistic and substantive changes to the rules, including (1) incorporating the boilerplate introductory text on the proposed standard inspection report form into §535.227(b)(1); (2) adding or expanding lists of examples in many parts of the standards of practice; (3) adding "surface" to "underground drainage systems" in §535.228(d)(3); (4) changing the specific references to doors with certain fireproof characteristics to "approved rated fire door" in §535.228(k)(2)(B); (5) combining of provisions for efficiency of space; (6) specifying that the requirement to report deficiencies in the installation and termination of the plumbing vent system applies only to waste vents; and (7) requiring reporting as deficient the lack of a hot water shut-off valve under certain circumstances.

Response: The Commission respectfully disagrees with items (1), (2), and (4) - (7) above, as follows: (1) this text is largely informational for the public and does not belong on the Administrative Code; (2) additional lists of examples would only serve to confuse the reader or give the impression that they are exhaustive lists when they are not; (4) lower-quality doors may be approved and fire rated for different purposes, but this provision addresses only doors meeting the criteria to be approved for residential exterior applications; (5) the provisions that the commenter recommends combining must be kept separate for clarity and comprehension; (6) the requirement regarding deficiencies in the plumbing vent system applies to waste vents as well as other type of vents; and (7) a shut-off valve on a hot water supply line could cause excess pressure to build up in the line and cause the pipe to burst. The Commission agrees with item (3) above and has added "surface" to §535.228(d)(3) so that this limitation applies to both surface and underground drainage.

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.

§535.228. Standards of Practice: Minimum Inspection Requirements for Structural Systems.

(a) Foundations. The inspector shall:

(1) inspect slab surfaces, foundation framing components, subflooring, and related structural components;

(2) report:

(A) the type of foundation(s); and

(B) the vantage point from which the crawl space was inspected; and

(3) generally report present and visible indications used to render the opinion of adverse performance, such as:

(A) open or offset concrete cracks;

(B) binding, out-of-square, non-latching, warped, or twisted doors or frames;

(C) framing or frieze board separations;

(D) out-of-square wall openings or separations at wall openings or between the cladding and window/door frames;

(E) sloping floors, countertops, cabinet doors, or window/door casings;

(F) wall, floor, or ceiling cracks;

(G) rotating, buckling, cracking, or deflecting masonry cladding;

(H) separation of walls from ceilings or floors; and

(I) soil erosion, subsidence or shrinkage adjacent to the foundation and differential movement of abutting flatwork such as walkways, driveways, and patios;

(4) report as Deficient:

(A) exposed or damaged reinforcement;

(B) a crawl space that does not appear to be adequately ventilated;

(C) crawl space drainage that does not appear to be adequate;

(D) deteriorated materials;

(E) damaged beams, joists, bridging, blocking, piers, posts, pilings, or subfloor;

(F) non-supporting piers, posts, pilings, columns, beams, sills, or joists; and

(G) damaged retaining walls related to foundation performance; and

(5) render a written opinion as to the performance of the foundation.

(b) Specific limitations for foundations. The inspector is not required to:

(1) enter a crawlspace or any area where headroom is less than 18 inches or the access opening is less than 24 inches wide and 18 inches high;

(2) provide an exhaustive list of indicators of possible adverse performance; or

(3) inspect retaining walls not related to foundation performance.

(c) Grading and drainage. The inspector shall report as Deficient:

(1) improper or inadequate grading around the foundation (including flatwork);

(2) erosion;

(3) water ponding; and

(4) deficiencies in installed gutter and downspout systems.

(d) Specific limitations for grading and drainage. The inspector is not required to:

(1) inspect flatwork or detention/retention ponds (except as related to slope and drainage);

(2) determine area hydrology or the presence of underground water; or

(3) determine the efficiency or operation of underground or surface drainage systems.

(e) Roof covering materials. The inspector shall:

(1) inspect the roof covering materials from the surface of the roof;

(2) report:

(A) type of roof covering(s);

(B) vantage point from where the roof was inspected

(C) any levels or surfaces that were not accessed;

(D) evidence of previous repairs to roof covering materials, flashing details, skylights, and other roof penetrations; and

(E) evidence of water penetration; and

(3) report as Deficient:

(A) a roof covering that is not appropriate for the slope of the roof;

(B) deficiencies in:

(i) fastening of roof covering material, as determined by a random sampling;

(ii) roof covering materials;

(iii) flashing details;

(iv) skylights; and

(v) other roof penetrations.

(f) Specific limitations for roof covering. The inspector is not required to:

(1) determine the remaining life expectancy of the roof covering;

(2) inspect the roof from the roof level if, in the inspector's reasonable judgment, the inspector cannot safely reach or stay on the roof or significant damage to the roof covering materials may result from walking on the roof;

(3) determine the number of layers of roof covering material;

(4) identify latent hail damage; or

(5) provide an exhaustive list of locations of water penetrations or previous repairs.

(g) Roof structure and attic. The inspector shall:

(1) report:

(A) the vantage point from which the attic space was inspected;

(B) the presence of and approximate average depth of attic insulation and thickness of vertical insulation, when visible; and

(C) evidence of water penetration; and

(2) report as Deficient:

(A) attic space that does not appear to be adequately ventilated;

(B) deficiencies in installed framing members and decking;

(C) deflections or depressions in the roof surface as related to the adverse performance of the framing and the roof deck;

(D) missing insulation;

(E) deficiencies in attic access ladder and access opening; and

(F) deficiencies in attic ventilators.

(h) Specific limitations for roof structure and attic. The inspector is not required to:

(1) enter attics or unfinished spaces where openings are less than 22 inches by 30 inches or headroom is less than 30 inches;

(2) operate powered ventilators; or

(3) provide an exhaustive list of locations of water penetrations.

(i) Interior walls, ceilings, floors, and doors. The inspector shall:

(1) report evidence of water penetration; and

(2) report as Deficient:

(A) doors and hardware that do not operate properly;

(B) deficiencies related to structural performance or water penetration; and

(C) lack of fire separation between the garage and the residence and its attic space.

(j) Specific limitation for interior walls, doors, ceilings, and floors. The inspector is not required to:

(1) report cosmetic damage or the condition of floor, wall, or ceiling coverings; paints, stains, or other surface coatings; cabinets; or countertops, or

(2) provide an exhaustive list of locations of water penetrations.

(k) Exterior walls, doors, and windows. The inspector shall:

(1) report evidence of water penetration; and

(2) report as Deficient:

(A) the lack of functional emergency escape and rescue openings in all sleeping rooms;

(B) the lack of a solid wood door not less than 1-3/8 inches in thickness, a solid or honeycomb core steel door not less than 1-3/8 inches thick, or a 20-minute fire-rated door between the residence and an attached garage;

(C) missing or damaged screens;

(D) deficiencies related to structural performance or water penetration; and

(E) deficiencies in:

(i) claddings;

(ii) water resistant materials and coatings;

(iii) flashing details and terminations;

(iv) the condition and operation of exterior doors, garage doors, and hardware; and

(v) window operation and components.

(l) Specific limitations for exterior walls, doors, and windows. The inspector is not required to:

(1) report the condition or presence of awnings, shutters, security devices, or systems;

(2) determine the cosmetic condition of paints, stains, or other surface coatings; or

(3) operate a lock if the key is not available.

(m) Exterior and interior glazing. The inspector shall:

(1) inspect the window and door glazing; and

(2) report as Deficient:

(A) insulated windows that are obviously fogged or display other evidence of broken seals;

(B) deficiencies in glazing, weather stripping, and glazing compound in windows and exterior doors; and

(C) the absence of safety glass in hazardous locations.

(n) Specific limitation for exterior and interior glazing. The inspector is not required to:

(1) exhaustively observe insulated windows for evidence of broken seals;

(2) exhaustively observe glazing for identifying labels; or

(3) identify specific locations of damage.

(o) Interior and exterior stairways. The inspector shall report as Deficient:

(1) spacing between intermediate balusters, spindles, or rails for steps, stairways, guards, and railings that permit passage of an object greater than 4 inches in diameter, except that on the open side of the staircase treads, spheres less than 4-3/8 inches in diameter may pass through the guard rail balusters or spindles; and

(2) deficiencies in steps, stairways, landings, guardrails, and handrails.

(p) Specific limitation for stairways. The inspector is not required to exhaustively measure every stairway component.

(q) Fireplace and chimney. The inspector shall report as Deficient:

(1) built-up creosote in visible areas of the firebox and flue;

(2) the presence of combustible materials in near proximity to the firebox opening;

(3) the absence of fireblocking at the attic penetration of the chimney flue, where accessible;

(4) an inoperative circulating fan; and

(5) deficiencies in the:

(A) damper;

(B) lintel, hearth, hearth extension, and firebox;

(C) gas log lighter valve and location;

(D) combustion air vents; and

(E) chimney structure, termination, coping, crown, caps, and spark arrestor.

(r) Specific limitations for fireplace and chimney. The inspector is not required to:

(1) verify the integrity of the flue;

(2) perform a chimney smoke test; or

(3) determine the adequacy of the draft.

(s) Porches, Balconies, Decks, and Carports. The inspector shall:

(1) inspect balconies, attached carports, and attached porches and abutting porches, decks, and balconies that are used for ingress and egress; and

(2) report as Deficient:

(A) on decks 30 inches or higher above the adjacent grade, spacings between intermediate balusters, spindles, or rails that permit passage of an object greater than four inches in diameter;

(B) deficiencies in visible footings, piers, posts, pilings, beams, joists, decking, water proofing at interfaces, flashing, surface coverings, and attachment points of porches, decks, balconies, and carports; and

(C) deficiencies in, or absence of required, guardrails and handrails.

(t) Specific limitation for porches, balconies, decks, and carports. The inspector is not required to:

(1) exhaustively measure the porch, balcony, deck, or attached carport components; or

(2) enter any area where headroom is less than 18 inches or the access opening is less than 24 inches wide and 18 inches high.

§535.229. Standards of Practice: Minimum Inspection Requirements for Electrical Systems.

(a) Service entrance and panels. The inspector shall report as Deficient:

(1) a drop, weatherhead, or mast that is not securely fastened to the structure;

(2) the lack of a grounding electrode system;

(3) the lack of a grounding electrode conductor;

(4) the lack of a secure connection to the grounding electrode system;

(5) deficiencies in the insulation of the service entrance conductors, drip loop, separation of conductors at weatherheads, and clearances;

(6) electrical cabinets, gutters, meter cans, and panel boards that:

(A) are not secured to the structure;

(B) are not appropriate for their location;

(C) have deficiencies in clearances and accessibility;

(D) are missing knockouts; or

(E) are not bonded and grounded;

(7) cabinets, disconnects, cutout boxes, and panel boards that do not have dead fronts secured in place with proper fasteners;

(8) conductors not protected from the edges of electrical cabinets, gutters, or cutout boxes;

(9) trip ties not installed on 240 volt circuits;

(10) deficiencies in the type and condition of the wiring in the cutout boxes, cabinets, or gutters;

(11) deficiencies in the compatibility of overcurrent devices and conductors;

(12) deficiencies in the overcurrent device and circuit for labeled and listed 240 volt appliances;

(13) a panel that is installed in a hazardous location, such as a clothes closet, a bathroom, where there are corrosive or easily ignitable materials, or where the panel is exposed to physical damage;

(14) the absence of appropriate connections, such as copper/aluminum-approved devices;

(15) the absence of anti-oxidants on aluminum conductor terminations;

(16) the lack of a main disconnecting means;

(17) the lack of arc-fault circuit interrupting devices serving family rooms, dining rooms, living rooms, parlors, libraries, dens, bedrooms, sunrooms, recreations rooms, closets, hallways, or similar rooms or areas; and

(18) failure of operation of installed arc-fault circuit interrupter devices.

(b) Specific limitations for service entrance and panels. The inspector is not required to:

(1) determine present or future sufficiency of service capacity amperage, voltage, or the capacity of the electrical system;

(2) test arc-fault circuit interrupter devices when the property is occupied or damage to personal property may result, in the inspector's reasonable judgment;

(3) report the lack of arc-fault circuit interrupter protection when the circuits are in conduit;

(4) conduct voltage drop calculations;

(5) determine the accuracy of overcurrent device labeling;

(6) remove covers where hazardous as judged by the inspector;

(7) verify the effectiveness of overcurrent devices; or

(8) operate overcurrent devices.

(c) Branch circuits, connected devices, and fixtures. The inspector shall:

(1) report the type of branch circuit conductors;

(2) manually test the accessible smoke alarms by use of the manufacturer's approved test or by the use of canned smoke; and

(3) report as Deficient:

(A) the lack of ground-fault circuit interrupter protection in all:

(i) bathroom receptacles;

(ii) garage receptacles;

(iii) outdoor receptacles;

(iv) crawl space receptacles;

(v) unfinished basement receptacles;

(vi) kitchen countertop receptacles; and

(vii) laundry, utility, and wet bar sink receptacles located within 6 feet of the outside edge of a laundry, utility, or wet bar sink; and

(B) the failure of operation of ground-fault circuit interrupter protection devices;

(C) receptacles that:

(i) are damaged;

(ii) are inoperative;

(iii) have incorrect polarity;

(iv) are not grounded, if applicable;

(v) display evidence of arcing or excessive heat;

(vi) are not securely mounted; or

(vii) have missing or damaged covers;

(D) switches that:

(i) are damaged;

(ii) are inoperative;

(iii) display evidence of arcing or excessive heat;

(iv) are not securely mounted; or

(v) have missing or damaged covers;

(E) deficiencies in or absences of conduit, where applicable;

(F) appliances and metal pipes that are not bonded or grounded;

(G) deficiencies in wiring, wiring terminations, junctions, junction boxes, devices, and fixtures, including improper location;

(H) the lack of equipment disconnects;

(I) the absence of appropriate connections, such as copper/aluminum approved devices, if branch circuit aluminum conductors are discovered in the main or sub-panel based on a random sampling of accessible receptacles and switches;

(J) improper use of extension cords;

(K) deficiencies in smoke alarms that are not connected to a central alarm system; and

(L) the lack of smoke alarms:

(i) in each sleeping room;

(ii) outside each separate sleeping area in the immediate vicinity of the sleeping rooms; and

(iii) on each additional story of the dwelling, including basements but excluding crawl spaces and uninhabitable attics (in dwellings with split levels and without an intervening door between the levels, a smoke alarm installed on the upper level and the adjacent lower level shall suffice provided that the lower level is less than one full story below the upper level).

(d) Specific limitations for branch circuits, connected devices, and fixtures. The inspector is not required to:

(1) inspect low voltage wiring;

(2) disassemble mechanical appliances;

(3) verify the effectiveness of smoke alarms;

(4) verify interconnectivity of smoke alarms

(5) activate smoke alarms that are being actively monitored or require the use of codes; or

(6) verify that smoke alarms are suitable for the hearing-impaired.

§535.231. Standards of Practice: Minimum Inspection Requirements for Plumbing Systems.

(a) Plumbing systems. The inspector shall:

(1) report:

(A) static water pressure;

(B) location of water meter; and

(C) location of main water supply valve; and

(2) report as Deficient:

(A) the presence of active leaks;

(B) the lack of fixture shut-off valves;

(C) the lack of dielectric unions, when applicable;

(D) the lack of back-flow devices, anti-siphon devices, or air gaps at the flow end of fixtures;

(E) water pressure below 40 psi or above 80 psi static;

(F) the lack of a pressure reducing valve when the water pressure exceeds 80 PSI;

(G) the lack of an expansion tank at the water heater(s) when a pressure reducing valve is in place at the water supply line/system; and

(H) deficiencies in:

(i) water supply pipes and waste pipes;

(ii) the installation and termination of the vent system;

(iii) the operation of fixtures and faucets not connected to an appliance;

(iv) water supply, as determined by viewing functional flow in two fixtures operated simultaneously;

(v) functional drainage at fixtures;

(vi) orientation of hot and cold faucets;

(vii) installed mechanical drain stops;

(viii) installation, condition, and operation of commodes;

(ix) fixtures, showers, tubs, and enclosures; and

(x) the condition of the gas distribution system.

(b) Specific limitations for plumbing systems. The inspector is not required to:

(1) operate any main, branch, or shut-off valves;

(2) operate or inspect sump pumps or waste ejector pumps;

(3) inspect:

(A) any system that has been winterized, shut down or otherwise secured;

(B) circulating pumps, free-standing appliances, solar water heating systems, water-conditioning equipment, filter systems, water mains, private water supply systems, water wells, pressure tanks, sprinkler systems, swimming pools, or fire sprinkler systems;

(C) the inaccessible gas supply system for leaks;

(D) for sewer clean-outs; or

(E) for the presence or operation of private sewage disposal systems;

(4) determine:

(A) quality, potability, or volume of the water supply; or

(B) effectiveness of backflow or anti-siphon devices; or

(5) verify the functionality of clothes washing drains or floor drains.

(c) Water heaters. The inspector shall:

(1) report the energy source;

(2) report the capacity of the unit(s);

(3) report as Deficient:

(A) inoperative unit(s);

(B) leaking or corroded fittings or tank(s);

(C) broken or missing parts or controls;

(D) the lack of a cold water shut-off valve;

(E) if applicable, the lack of a pan and drain system and the improper termination of the pan drain line;

(F) an unsafe location;

(G) burners, burner ignition devices or heating elements, switches, or thermostats that are not a minimum of 18 inches above the lowest garage floor elevation, unless the unit is listed for garage floor installation;

(H) inappropriate location;

(I) inadequate access and clearances;

(J) the lack of protection from physical damage;

(K) a temperature and pressure relief valve that:

(i) does not operate manually;

(ii) leaks;

(iii) is damaged;

(iv) cannot be tested due to obstructions;

(v) is corroded; or

(vi) is improperly located; and

(L) temperature and pressure relief valve discharge piping that:

(i) lacks gravity drainage;

(ii) is improperly sized;

(iii) has inadequate material; or

(iv) lacks proper termination;

(4) in electric units, report as Deficient deficiencies in:

(A) operation of heating elements; and

(B) condition of conductors; and

(5) in gas units, report as Deficient:

(A) gas leaks;

(B) lack of burner shield(s);

(C) flame impingement, uplifting flame, improper flame color, or excessive scale build-up;

(D) the lack of a gas shut-off valve; and

(E) deficiencies in:

(i) combustion and dilution air;

(ii) gas shut-off valve(s) and location(s);

(iii) gas connector materials and connections; and

(iv) vent pipe, draft hood, draft, proximity to combustibles, and vent termination point and clearances.

(d) Specific limitations for water heaters. The inspector is not required to:

(1) verify the effectiveness of the temperature and pressure relief valve, discharge piping, or pan drain pipes;

(2) operate the temperature and pressure relief valve if the operation of the valve may, in the inspector's reasonable judgment, cause damage to persons or property; or

(3) determine the efficiency or adequacy of the unit.

(e) Hydro-massage therapy equipment. The inspector shall report as Deficient:

(1) inoperative unit(s) and controls;

(2) the presence of active leaks;

(3) inaccessible pump(s) or motor(s);

(4) the lack or failure of required ground-fault circuit interrupter protection; and

(5) deficiencies in the ports, valves, grates, and covers.

(f) Specific limitation for hydro-massage therapy equipment. The inspector is not required to determine the adequacy of self-draining features of circulation systems.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 3, 2008.

TRD-200805777
Devon V. Bijansky
Assistant General Counsel
Texas Real Estate Commission
Effective date: February 1, 2009
Proposal publication date: September 5, 2008
For further information, please call: (512) 465-3900

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CHAPTER 537. PROFESSIONAL AGREEMENTS AND STANDARD CONTRACTS

22 TAC §§537.21 - 537.23, 537.26, 537.27, 537.33, 537.35, 537.40, 537.46, 537.48

The Texas Real Estate Commission (TREC) adopts amendments to §§537.21 - 537.23, 537.26, 537.27, 537.33, 537.35, 537.40, 537.46, and 537.48 to correct the agency web address from www.state.tx.us to www.trec.state.tx.us. The amendments are adopted without changes to the proposed text as published in the September 5, 2008, issue of the *Texas Register* (33 TexReg 7416) and will not be republished.

Elsewhere in this issue of the *Texas Register,* the Texas Real Estate Commission contemporaneously withdraws and re-proposes new §537.51, concerning Standard Contract Form TREC No. 44-0 regarding an addendum for reservation of oil, gas, and other minerals. The new rule was previously published in the September 5, 2008, issue of the *Texas Register.* The commission is re-proposing the form based on a number of comments that were received and considered during the notice and comment period regarding the withdrawn form.

No comments were received on the amendments as proposed.

The reasoned justification for the amendments to the rules is to maintain consistency by correcting typographical errors regarding references to the commission's website in its rules.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapter 1101; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of Chapter 1101 and ensure compliance with Chapter 1101.

The statute affected by this adoption is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the adopted 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 October 28, 2008.

TRD-200805697

Loretta R. DeHay
Assistant Administrator and General Counsel
Texas Real Estate Commission
Effective date: November 17, 2008
Proposal publication date: September 5, 2008
For further information, please call: (512) 465-3900

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PART 29. TEXAS BOARD OF PROFESSIONAL LAND SURVEYING

CHAPTER 661. GENERAL RULES OF PROCEDURES AND PRACTICES
SUBCHAPTER D. APPLICATIONS, EXAMINATIONS, AND LICENSING

22 TAC §661.55

The Texas Board of Professional Land Surveying (TBPLS) adopts an amendment to §661.55, concerning Surveying Firms Registration. The amendment is adopted without changes to the proposed text as published in the September 5, 2008, issue of the *Texas Register* (33 TexReg 7418) and will not be republished.

The amendment will define "full-time employee" as used in the Professional Land Surveying Practices Act and other rules.

No comments were received regarding adoption of this amendment.

The amendment is adopted pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 28, 2008.

TRD-200805684
Sandy Smith
Executive Director
Texas Board of Professional Land Surveying
Effective date: November 17, 2008
Proposal publication date: September 5, 2008
For further information, please call: (512) 239-5263

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CHAPTER 663. STANDARDS OF RESPONSIBILITY AND RULES OF CONDUCT
SUBCHAPTER A. GENERAL PRACTICE STANDARDS

22 TAC §663.10

The Texas Board of Professional Land Surveying (TBPLS) adopts an amendment to §663.10, concerning disciplinary rules. The amendment is adopted without changes to the proposed text as published in the September 5, 2008, issue of the *Texas Register* (33 TexReg 7418) and will not be republished.

The amendment will clarify that a land surveyor in violation of this rule may only be guilty of one of the behaviors noted.

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 28, 2008.

TRD-200805685
Sandy Smith
Executive Director
Texas Board of Professional Land Surveying
Effective date: November 17, 2008
Proposal publication date: September 5, 2008
For further information, please call: (512) 239-5263

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SUBCHAPTER B. PROFESSIONAL AND TECHNICAL STANDARDS

22 TAC §663.17

The Texas Board of Professional Land Surveying (TBPLS) adopts an amendment to §663.17, concerning Monumentation. The amendment is adopted without changes to the proposed text as published in the September 5, 2008, issue of the *Texas Register* (33 TexReg 7419) and will not be republished.

The amendment will remove language that is redundant, all monumentation set must comply with subsection (b) of this section.

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 28, 2008.

TRD-200805686
Sandy Smith
Executive Director
Texas Board of Professional Land Surveying
Effective date: November 17, 2008
Proposal publication date: September 5, 2008
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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 140. HEALTH PROFESSIONS REGULATION

SUBCHAPTER J. MEDICAL RADIOLOGIC TECHNOLOGISTS

25 TAC §§140.501 - 140.522

The Executive Commissioner of the Health and Human Services Commission (commission) on behalf of the Department of State Health Services (department) adopts new §§140.501 - 140.522 concerning the regulation and certification of medical radiologic technologists. New §§140.509, 140.514, 140.516 and 140.522 are adopted with changes to the proposed text as published in the May 23, 2008, issue of the *Texas Register* (33 TexReg 4080). Sections 140.501 - 140.508, 140.510 - 140.513, 140.515, and 140.517 - 140.521 are adopted without changes and, therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 143.1 - 143.20 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed; however, the rules are repealed and adopted in 25 Texas Administrative Code (TAC), Chapter 140, Health Professions Regulation.

The new rules are necessary to consolidate existing Professional Licensing and Certification Unit program rules in 25 TAC Chapter 140, Health Professions Regulation. The new rules in 25 TAC §§140.501 - 140.522 transfer and update existing language. Many sections were transferred with no modification. New language is added in some sections in order to clarify the rules for medical radiologic technologists, health care practitioners and professionals, and consumers. Additionally, the rules require continuing education for non-certified technicians.

SECTION-BY-SECTION SUMMARY

New §140.501 sets out purpose and scope of the rules. New §140.502 defines terms used in the subchapter and adds a new definition of mobile stationary x-ray equipment to clarify that such equipment is not portable x-ray equipment. New §140.503 covers the membership and operations of the Medical Radiologic Technologists Advisory Committee. New §140.504 sets out the fees required for application, registration, upgrade, renewal, and issuance of a duplicate certificate. New §140.505 covers exemptions from certification as a medical radiologic technologist, including the definition of a student. New §140.506 describes the procedures and criteria for approval or disapproval of an application by the department. New §140.507 explains the types of certificates and temporary permits and applicant eligibility for certification. New §140.508 sets out the procedures for examination eligibility for medical radiologic technologists. New §140.509 provides standards for the approval of curricula and instructors. New §140.510 provides timelines for the processing of renewal and late renewal applications, and sets out the requirements for inactive status and certificate renewal for voluntary charity care and military status certificate holders. New §140.511 sets out continuing education requirements and requires non-certified technicians to complete 6 hours of continuing education hours, which may be obtained through self-directed study, in order to renew the non-certified technician registration.

New §140.512 covers procedures for changes of name and address. New §140.513 sets out procedures for certifying or permitting persons with criminal backgrounds. New §140.514 sets out violations and prohibited actions, procedures concerning complaints, and disciplinary actions the department may take against a person when violations have occurred. New §140.515 establishes rules relating to advertising and competitive bidding by a medical radiologic technologist. New §140.516 sets out dangerous and hazardous radiologic procedures and the restrictions on who may perform those procedures. The section clarifies that positron emission tomography is included within nuclear medicine studies. New §140.517 contains provisions regarding registered nurses and physician assistants who perform radiologic procedures. The provisions of this section are not new requirements and are also contained within §140.516; however, the new §140.517 is adopted for clarity and ease of use. New §140.518 provides guidelines for mandatory training programs for non-certified technicians. New §140.519 establishes procedures for the registry of non-certified technicians. New §140.520 establishes procedures regarding hardship exemptions, including clarification of documentation required when an applicant is unable to attract or retain a certificate holder. New §140.521 sets out training requirements for persons who perform bone densitometry training and who are not licensed, certified, or registered. New §140.522 sets outs requirements for alternate training.

COMMENTS

The department, on behalf of the commission, has reviewed and prepared responses to the comments received regarding the proposed rules during the comment period, which the commission has reviewed and accepts. The commenters were an individual (who is a medical radiologic technologist), associations, and/or groups, including the following: Texas Higher Education Coordinating Board and American Society of Radiologic Technologists. The commenters were not against the rules in their entirety; however, the commenters suggested recommendations for change as discussed in the summary of comments. The individual commenter expressed support for the proposed rules.

Comment: Concerning §140.509(a), regarding standards for approval of curricula and instructors, one commenter stated the wording "must be accredited" is incorrect as currently worded and asked for the language to be updated.

Response: The commission agrees and has changed the wording to reflect that programs "must be accredited by accrediting organizations recognized by the United States Department of Education" to clarify accreditation and recognition by the United States Department of Education.

Comment: Concerning §140.514(c)(32) regarding defining "engaging in unprofessional conduct" to mean, in part, "knowingly allowing a student enrolled in an education program to perform a radiologic procedure without direct supervision" in relation to the definition in §140.502(11) of "direct supervision" to mean a practitioner must be physically present and immediately available, the commenter is concerned a medical radiologic technol-

ogist could be held responsible for unprofessional conduct in the event a medical doctor failed to supervise a student.

Response: The commission agrees and has changed the wording in §140.514(c)(32) to read: "knowingly allowing a student enrolled in an education program to perform a radiologic procedure without direct supervision; it is a defense to this violation if the person warns the student that the student may be violating program rules and reports the alleged misconduct to appropriate supervisory personnel in the education program or to the department."

Comment: Concerning §140.517, one commenter is not in favor of the new section regarding registered nurses and physicians assistants performing radiologic procedures. The commenter is concerned the registered nurses and physician assistants lack the necessary education and training to administer medical imaging procedures in a safe manner to patients.

Response: The commission disagrees. The new §140.517 is created so consumers and licensees can find the information regarding scope of practice and training needed for a registered nurse and a physician assistant to perform radiologic procedures. The language in §140.517 was taken from the previous rule with additional training requirements. No change was made as a result of the comment.

Comment: Concerning §140.522, one commenter is not in favor of the additional training in the administration of radio-pharmaceutical and radiation safety training for registered nurses and physician assistants. The commenter is concerned the registered nurses and physician assistants lack the necessary education and training to administer medical imaging procedures in a safe manner to patients.

Response: The commission disagrees. The authority of registered nurses and physician assistants to administer radio-pharmaceuticals is unchanged from prior rules. The addition of the 16 hours of alternative training in radio-pharmaceuticals and radiation safety for registered nurses and physician assistants regarding the performance of administration of radio-pharmaceuticals listed in §140.516(b)(2), Dangerous and Hazardous Procedures, enhances public protection. No change was made as a result of the comment.

Comment: Concerning §140.519, one commenter proposes that non-certified technicians should have the same continuing education requirements as medical radiologic technologists.

Response: The commission disagrees. The non-certified technician cannot perform all radiologic procedures due to the training level the non-certified technician receives. A non-certified technician cannot perform dangerous and hazardous procedures as listed in §140.516, therefore it would be a hardship on a non-certified technician to require the same training as for medical radiologic technologists. The medical radiologic technologists requirement of 24 hours continuing education is excessive for non-certified technicians who are only required to complete 62 hours of training to become a non-certified technician. No change was made as a result of the comment.

Department staff on behalf of the commission provided comments and the commission has reviewed and agrees to the following changes concerning minor editorial revisions.

In §140.514(c)(32), the word "or" was deleted, and in §140.514(i)(3)(A)(viii), the word "be" was deleted for clarity. Punctuation was corrected in §140.514(c)(33), §140.514(c)(34), and §140.522(d)(1)(B). The word "provide" was changed to "provided" in §140.516(b), and an extra section symbol was deleted in §140.516(g).

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

STATUTORY AUTHORITY

The new sections are authorized by Occupations Code, §604.052 and §604.053, which authorizes the adoption of rules regarding medical radiologic technologists; 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. Review of the rules implements Government Code, §2001.039.

§140.509. Standards for the Approval of Curricula and Instructors.

(a) General certificate programs. All curricula and programs to train individuals to perform radiologic procedures must be accredited by accrediting organizations recognized by the United States Department of Education including but not limited to the Joint Review Committee on Education in Nuclear Medicine Technology (JRCNMT) or the Joint Review Committee on Education in Radiologic Technology (JRCERT).

(b) Limited certificate programs. All curricula and programs to train individuals to perform limited radiologic procedures must:

(1) be accredited by the JRCERT to offer a limited curriculum in radiologic technology;

(2) be accredited by the Joint Review Committee on Education in Cardiovascular Technology (JRCCVT) to offer a curriculum in invasive cardiovascular technology;

(3) be accredited by JRCERT under subsection (b) of this section; or

(4) be approved by the department and be offered within the geographic limits of the State of Texas. Subsections (c) - (g) of this section apply only to department-approved programs.

(c) Application procedures for limited certificate programs which are not accredited by JRCERT or JRCCVT. An application shall be submitted to the department at least ten weeks prior to the starting date of the program to be offered by a sponsoring institution. Official application forms are available from the department and must be completed and signed by the program director of the sponsoring institution's program. Program directors shall be responsible for the curriculum, the organization of classes, the maintenance and availability of facilities and records, and all other policies and procedures related to the program or course of study.

(1) All official application forms must be notarized and shall be accompanied by the application fee in accordance with §140.504 of this title (relating to Fees).

(2) An original and one copy of the entire application and supporting documentation must be submitted in three-ring binders with all pages clearly legible and consecutively numbered. Each application binder must contain a table of contents and must be divided with tabs identified to correspond with the items listed in this section. If any item is inapplicable, a page shall be included behind the tab for that item with a statement explaining the inapplicability.

(3) Narrative materials must be typed, double-spaced, and clearly legible. All signatures on the official forms and supporting documentation must be originals. Photocopied signatures will not be accepted.

(4) Notices will be mailed to applicants informing the applicant of the completeness or within 60 days of receipt of the application in the department. Applications which are received incomplete may cause postponement of the program starting date. The time of receipt of the last item necessary to complete the application to the date of issuance of written notice approving or denying the application is 120 days. In the event these time periods are exceeded, the applicant has the right to request reimbursement of fees, as set out in §140.506(e)(2) and (3) of this title (relating to Application Requirements and Procedures for Examination and Certification).

(5) If the application is revised or supplemented during the review process, the applicant shall submit an original and four copies of a transmittal letter plus an original and three copies of the revision or supplement. If a page is to be revised, the complete new page must be submitted with the changed item/information clearly marked on five copies.

(6) The application shall include:

(A) the anticipated dates of the program or course of study;

(B) the daily hours of the program or course of study;

(C) the location, mailing address, phone and facsimile numbers of the program;

(D) a list of instructors approved by the department, in accordance with subsection (f) of this section, and any other persons responsible for the conduct of the program including management and administrative personnel. The list must indicate what courses each will teach or instruct or the area(s) of responsibility for the non-instructional staff;

(E) a list of clinical facilities, written agreements on forms prescribed by the department from clinical facilities signed by the program director and the chief executive officer(s) of each facility, and clinical schedules, including the following items identified for each clinical site utilized. A clinical facility which is not listed on the application may not be utilized for a student's clinical practicum until the department has accepted the additional clinical facility in accordance with paragraph (10) of this subsection. The items are:

(i) the number and types (name brands and model numbers) of radiologic equipment to be utilized in the limited curriculum;

(ii) a copy of the current registration(s) for the radiologic equipment from the department's Radiation Control Program;

(iii) the number and location(s) of examination rooms available;

(iv) whether or not the clinical facility is accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) or certified to participate in the federal Medicare program, and if required, is licensed by the appropriate statutory authority. For example, if the facility is an ambulatory surgical center, licensure by the department is required;

(v) an acknowledgement that students may only perform radiologic procedures under supervision of a practitioner, a limited medical radiologic technologist (LMRT) employed at the clinical facility or medical radiologic technologist (MRT) employed at the clinical facility;

(vi) copies of the current identification cards issued by the department to the LMRTs or MRTs who will supervise the students at all times while performing radiologic procedures;

(vii) an acknowledgment that the students in a limited curriculum program in the categories of skull, chest, spine, abdomen, extremities, chiropractic or podiatric shall not perform procedures utilizing contrast media, mammography, fluoroscopy, tomography, nuclear medicine studies, radiation therapy or other procedures beyond the scope of the limited curriculum; and

(viii) an acknowledgment that the students in a limited curriculum program in the cardiovascular category shall not perform mammography, tomography, nuclear medicine studies, radiation therapy or other procedures beyond the scope of the limited curriculum. Such students may only perform radiologic procedures of the cardiovascular system which involve the use of contrast media and fluoroscopic equipment.

(F) clearly defined and written policies regarding admissions, costs, refunds, attendance, disciplinary actions, dismissals, re-entrance, and graduation which are provided to all prospective students prior to registration and by which the program director shall administer the program. The admission requirements shall include the minimum eligibility requirements for certification in accordance with §140.507(c)(1) - (2) of this title (relating to Types of Certification and Applicant Eligibility);

(G) the name of the program director who is an approved instructor in accordance with subsection (f) of this section, and who has not less than three years of education or teaching experience in the appropriate field or practice;

(H) a letter of acknowledgement and a photocopy of the current Texas license from a practitioner in the appropriate field of practice who is knowledgeable in radiation safety and protection and who shall be known as the designated medical director. The practitioner shall work in consultation with the program director in developing goals and objectives and in implementing and assuring the quality of the program;

(I) a letter or other documentation from the Texas Workforce Commission, Proprietary Schools Section indicating that the proposed training program has complied with or has been granted exempt status under the Texas Proprietary School Act, Texas Education Code, Chapter 32, and 19 Texas Administrative Code, Chapter 175, or verification of accreditation by the Texas Higher Education Coordinating Board; and

(J) the correct number of students to be enrolled in each cycle of the program, and if more than one cycle will be conducted concurrently, the maximum number of students to be enrolled at any one time.

(7) All applications must identify the type of curriculum according to the limited categories in accordance with §140.507(e) of this title. Each application must be accompanied by an outline of the curriculum and course content which clearly indicates that students must complete a structured curriculum in proper sequence according to subsection (d) of this section. If the curriculum differs from that set out in subsection (d) of this section, a typed comparison in table format clearly indicating how the curriculum differs from the required curriculum, including the number of hours for each topic or unit of instruction, shall be included.

(8) In making application to the department, the program director shall agree in writing to:

(A) provide a ratio of not more than three students to one full-time certified medical radiologic technologist engaged in the supervision of the students in the clinical environment;

(B) provide on-site instruction and direction by a practitioner for students when performing radiologic procedures on human beings;

(C) prohibit students from being assigned to any situation where they would be required to apply radiation to a human being while not under the on-site instruction or direction of a practitioner;

(D) prohibit intentional exposure to human beings from any source of radiation except for medically prescribed diagnostic purposes;

(E) provide appropriate facilities, sufficient volume of procedures, and a variety of diagnostic radiologic procedures to properly conduct the course. Facilities, agencies, or organizations utilized in the program shall be accredited or certified and licensed by the appropriate agencies. Equipment and radioactive materials utilized in the program shall be used only in facilities registered or licensed by the department's Radiation Control Program;

(F) keep an accurate record of each student's attendance and participation, evaluation instruments and grades, clinical experience including radiation exposure history, and subjects completed for not less than five years from the last date of the student's attendance. Such records shall be made available to examining boards, regulatory agencies, and other appropriate organizations, if requested;

(G) issue to each student, upon successful completion of the program, a written statement in the form of a diploma or certificate of completion, which shall include the program's name, the student's name, the date the program began, the date of completion, the categories of instruction, and the signatures of the program director or independent sponsor and medical director/program advisor;

(H) site inspections by departmental representatives to determine compliance and conformity with the provision of this section will be at the discretion of the department;

(I) understand and recognize that the graduates' success rate on the prescribed examination will be monitored by the department and utilized as a criteria for rescinding approval. In addition to this criteria, the department may rescind approval in accordance with §140.514 of this title (relating to Disciplinary Actions); and

(J) comply with the Texas Regulations for the Control of Radiation, including but not limited to, personnel monitoring devices for each student upon the commencement of the clinical instruction and clinical experience.

(9) A site visit may be necessary to grant approval of the program. If a site visit is required, a site visit fee must be paid in accordance with §140.504 of this title.

(10) Following program approval, a written request(s) for amendment(s) shall be submitted to and approved by the department in advance of taking the anticipated action. The request to add or drop an instructor, clinical site, category of instruction, program director or other change, shall be accompanied by the limited curriculum program amendment application and fee in accordance with §140.504 of this title.

(d) Curricula requirements. Each student must complete a curriculum which meets or exceeds the following requirements:

(1) at least 132 clock hours of basic theory or classroom instruction in the categories of skull, chest, extremities, spine, and chiropractic, and not less than 66 clock hours of basic theory instruction for podiatric is required. The required clock hours of basic theory/classroom instruction need not be repeated if two or more categories of curriculum are completed simultaneously or to add a category to a temporary limited or limited certificate. Pediatric instruction shall be included in the hours of training. The following subject areas and minimum number of hours (in parentheses) must be included in all programs and must be instructor directed. The recommended clock hours for each shall be:

(A) radiation protection for the patient, self, and others--40;

(B) radiographic equipment including safety standards, operation, and maintenance--15;

(C) image production and evaluation--35;

(D) applied human anatomy and radiologic procedures--20;

(E) patient care and management essential to radiologic procedures and recognition of emergency patient conditions and initiation of first aid--10;

(F) medical terminology--6; and

(G) medical ethics and law--6; and

(2) a clinical practicum for each category of limited curriculum including pediatrics is required. The practicum must include clinical instruction and clinical experience under the instruction or direction of a practitioner and an MRT or LMRT in accordance with the following chart.

Figure: 25 TAC §140.509(d)(2)

(A) The clinical instruction must be concurrent with the classroom instruction, as set out in paragraph (1) of this subsection.

(B) The clinical experience must commence immediately following the clinical instruction and be completed within 180 calendar days of the starting date of the clinical experience. Variances from this must be approved in advance by the department and must demonstrate good cause. A request for a variance must be submitted in writing to the administrator. For the purposes of this section, a normal pregnancy or medical disability shall constitute good cause.

(C) For the skull category, the 100 hours of clinical experience must include a minimum of 4 independently performed procedures to include the skull (posterior/anterior, anterior/posterior, lateral and occipital), paranasal sinuses, facial bones, and the mandible. At least one procedure must be the mandible. The mandible procedure may be completed by simulation with 90% accuracy. Only one student shall receive credit for any one radiologic procedure performed.

(D) The program director shall be responsible for supervising and directing the evaluation of the students' clinical experience and shall certify in writing that the student has or has not successfully completed the required clinical instruction and clinical experience. Such written documentation must be provided to each student within 14 working days of completion of the clinical experience. Students who successfully complete the required clinical experience may be required to submit such documentation to the department if applying for a temporary limited certificate with an expected graduation statement, as set out in §140.506(b)(2)(B)(iii) of this title. Persons who participate in the evaluation of students' clinical experience must be an MRT or LMRT and have a minimum of two years of practical work experience performing radiologic procedures. For cardiovascular, persons who makes the final evaluation of students' clinical experience must be an MRT or LMRT and have a minimum of two years of practical work experience performing cardiovascular procedures.

(e) Limited certificate educational program approval.

(1) Provided the requirements are met, the sponsoring institution shall receive a letter from the department indicating approval of the educational program in accordance with §113.1 of this title (relating to Processing Permits for Special Health Services Professionals).

(2) A program shall be denied approval if the application is incomplete or not submitted as set out in this section. The applicant shall be notified in accordance with §113.1 of this title.

(3) If approval is proposed to be denied, the applicant shall be notified in writing of the proposed denial and shall be given an opportunity to request a formal hearing within 10 days of the applicant's receipt of the written notice from the department. The formal hearing shall be conducted according to the department's formal hearing procedures in Chapter 1 of this title. If no hearing is requested, the right to a hearing is waived and the proposed action shall be taken.

(f) Instructor approval for limited certificate programs.

(1) All persons who plan to or who will provide instruction and training in the limited certificate courses of study or programs shall:

(A) submit a completed application form prescribed by the department;

(B) submit the prescribed application fee in accordance with §140.504 of this title; and

(C) document the appropriate instructor qualifications in accordance with subsection (g) of this section.

(2) Guest lecturers who are not full or part-time employees of the sponsoring institution are not required to apply for instructor approval.

(3) Within 21 days of receipt of the application in the department, a notice will be mailed informing the applicant of the completeness or deficiency of the application. The time of receipt of the last item necessary to complete the application to the date of issuance of a written notice approving or denying the application is 42 working days. In the event these time periods are exceeded, the applicant has the right to request reimbursement of fees paid as set out in §140.506(e)(2) and (3) of this title.

(4) An applicant who is not approved by the department shall be given an opportunity to request a formal hearing within ten days of the applicant's receipt of the written notice from the department. The formal hearing shall be conducted according to the department's formal hearing procedures. If no hearing is requested, the right to a hearing is waived and the proposed action shall be taken.

(g) Instructor qualifications for limited certificate programs.

(1) An instructor(s) shall have education and not less than 6 months classroom or clinical experience teaching the subjects assigned, shall meet the standards required by a sponsoring institution, if any, and shall meet at least one or more of the following qualifications:

(A) be a currently certified MRT who is also currently credentialed as a radiographer by the American Registry of Radiologic Technologists (ARRT);

(B) be a currently certified LMRT (excluding a temporary certificate) whose limited certificate category(ies) matches the category(ies) of instruction and training;

(C) be a practitioner who is in good standing with all appropriate regulatory agencies including, but not limited to, the department, the Texas Board of Chiropractic Examiners, Texas Medical Board, or Texas State Board of Podiatric Medical Examiners, the Texas Health and Human Services Commission, and the United States Department of Health and Human Services; or

(D) be a currently licensed medical physicist.

(2) A limited medical radiologic technologist may not teach, train, or provide clinical instruction in a program or course of study different from the technologist's current level of certification. An LMRT who holds a limited certificate in spine radiography may not teach, train, or provide clinical instruction in a limited course of study for chest radiography.

(h) Application procedures for limited certificate programs accredited by JRCERT or JRCCVT.

(1) Application shall be made by the program director on official forms available from the department.

(2) The application must be notarized and shall be accompanied by the following items:

(A) the limited curriculum application fee, in accordance with §140.504 of this title;

(B) a copy of the current accreditation issued to the program by the JRCERT or JRCCVT;

(C) a description in narrative and/or table format clearly indicating that the applicable content of the limited certificate program curriculum be equal to the general certificate curriculum; and

(D) an agreement to allow the department to conduct an administrative audit of the program to determine compliance with this section.

§140.514. Disciplinary Actions.

(a) The department is authorized to take the following disciplinary actions for the violation of any provisions of the Medical Radiologic Technologist Certification Act (Act) or this chapter:

(1) suspension, revocation, or nonrenewal of a certificate;

(2) rescission of curriculum, training program, or instructor approval;

(3) denial of an application for certification or approval;

(4) assessment of a civil penalty in an amount not to exceed $1,000 for each separate violation of the Act;

(5) issuance of a reprimand; or

(6) placement of the offender's certificate on probation and requiring compliance with a requirement of the department, including submitting to medical or psychological treatment, meeting additional educational requirements, passing an examination, or working under the supervision of an MRT or other practitioner.

(b) The department may take disciplinary action against a person subject to the Act for:

(1) obtaining or attempting to obtain a certificate issued under the Act by bribery or fraud;

(2) making or filing a false report or record made in the person's capacity as an MRT;

(3) intentionally or negligently failing to file a report or record required by law;

(4) intentionally obstructing or inducing another to intentionally obstruct the filing of a report or record required by law;

(5) engaging in unprofessional conduct, including the violation of the standards of practice of radiologic technology established by the department;

(6) developing an incapacity that prevents the practice of radiologic technology with reasonable skill, competence, and safety to the public as the result of:

(A) an illness;

(B) drug or alcohol dependency; or

(C) another physical or mental condition or illness;

(7) failing to report to the department the violation of the Act or any allegations of sexual misconduct by another person;

(8) employing, for the purpose of applying ionizing radiation to a person, a person who is not certified under or in compliance with the Act;

(9) violating a provision of the Act or this chapter, an order of the department previously entered in a disciplinary proceeding, or an order to comply with a subpoena issued by the department;

(10) having a certificate revoked, suspended, or otherwise subjected to adverse action or being denied a certificate by another certification authority in another state, territory, or country; or

(11) being convicted of or pleading nolo contendere to a crime directly related to the practice of radiologic technology.

(c) Engaging in unprofessional conduct means the following:

(1) making any misleading, deceptive, or false representations in connection with service rendered;

(2) engaging in conduct that is prohibited by state, federal, or local law, including those laws prohibiting the use, possession, or distribution of drugs or alcohol;

(3) performing a radiologic procedure on a patient or client which has not been authorized by a practitioner;

(4) aiding or abetting a person in violating the Act or rules adopted under the Act;

(5) any practice or omission that fails to conform to accepted principles and standards of the medical radiologic technology profession;

(6) performing a radiologic procedure which results in mental or physical injury to a patient or which creates an unreasonable risk that the patient may be mentally or physically harmed;

(7) misappropriating medications, supplies, equipment, or personal items of the patient, client or employer;

(8) performing or attempting to perform radiologic procedures in which the person is not trained by experience or education or in which the procedure is performed without appropriate supervision;

(9) performing or attempting to perform any medical procedure which relates to or is necessary for the performance of a radiologic procedure and for which the person is not trained by experience or education or when the procedure is performed without appropriate supervision;

(10) performing a radiologic procedure which is not within the scope of an LMRT's certificate, as set out in §140.507(e) of this title (relating to Types of Certificates and Applicant Eligibility);

(11) performing a radiologic procedure which is not within the scope of an NCT's registration, as set out in §140.518(a) of this title (related to Mandatory Training Programs for Non-Certified Technicians);

(12) disclosing confidential information concerning a patient or client except where required or allowed by law;

(13) failing to adequately supervise a person in the performance of radiologic procedures;

(14) providing false or misleading information on an application for employment to perform radiologic procedures;

(15) providing information which is false, misleading, or deceptive regarding the status of certification; registration with the American Registry of Radiologic Technologists, Cardiovascular Credentialing International, or Nuclear Medicine Technology Certification Board; or licensure by another country, state, territory, or the District of Columbia;

(16) discriminating on the basis of race, creed, gender, sexual orientation, religion, national origin, age, physical handicaps or economic status in the performance of radiologic procedures;

(17) impersonating or acting as a proxy for an examination candidate for any examination required for certification;

(18) acting as a proxy for an MRT, LMRT, or NCT at any continuing education required under §140.511 of this title (relating to Continuing Education Requirements);

(19) obtaining, attempting to obtain, or assisting another to obtain certification or placement on the registry by bribery or fraud;

(20) making abusive, harassing or seductive remarks to a patient, client or co-worker in the workplace or engaging in sexual contact with a patient or client in the workplace;

(21) misleadingly, deceptively or falsely offering to provide education or training relating to radiologic technology;

(22) failing to complete the continuing education requirements for renewal as set out in §140.511 of this title;

(23) failing to document the continuing education requirements for renewal as required by the department;

(24) failing to cooperate with the department by not furnishing required documents or responding to a request for information or a subpoena issued by the department or the department's authorized representative;

(25) interfering with an investigation or disciplinary proceeding by willful misrepresentation of facts to the department or its authorized representative or by use of threats or harassment against any person;

(26) failing to follow appropriate safety standards or the Texas Regulations for the Control of Radiation in the operation of diagnostic or therapeutic radiologic equipment or the use of radioactive materials;

(27) failing to adhere to universal precautions or infection control standards as required by the Health and Safety Code, Chapter 85, Subchapter I;

(28) defaulting on a guaranteed student loan, as provided in the Education Code, §57.491;

(29) assaulting any person in connection with the practice of radiologic technology or in the workplace;

(30) intentionally or knowingly offering to pay or agreeing to accept any remuneration directly or indirectly, overtly or covertly, in cash or in kind, to or from any person, firm, association of persons,

partnership, or corporation for securing or soliciting patients or patronage to or from a person licensed, certified or registered by a state health care regulatory agency. The provisions of the Health and Safety Code, §161.091, concerning the prohibition of illegal remuneration apply to MRTs and LMRTs;

(31) using or permitting or allowing the use of the person's name, certificate, or professional credentials in a way that the person knows, or with the exercise of reasonable diligence should know:

(A) violates the Act, this chapter or department rule relating to the performance of radiologic procedures; or

(B) is fraudulent, deceitful or misleading;

(32) knowingly allowing a student enrolled in an education program to perform a radiologic procedure without direct supervision; it is a defense to this violation if the person warns the student that the student may be violating program rules and reports the alleged misconduct to appropriate supervisory personnel in the education program or to the department;

(33) knowingly concealing information relating to enforcement of the Act or this chapter;

(34) failing reasonably to protect the certificate from fraudulent or unlawful use;

(35) engaging in sexual conduct in the workplace. A MRT, LMRT, NCT or a temporary certificate holder shall not engage in sexual conduct with a client, patient, co-worker, employee, staff member, contract employee, MRT, LMRT, NCT or temporary certificate holder on the premises of any job establishment. For the purposes of this section, sexual conduct includes:

(A) any touching of any part of the genitalia or anus except as necessary for the performance of a radiologic procedure as defined in §140.502 of this title (relating to Definitions);

(B) any touching of the breasts of a female except as necessary for the performance of a radiologic procedure as defined in §140.502 of this title;

(C) any offer or agreement to engage in any activity described in this subsection;

(D) sexual contact in the work place without the consent of both persons;

(E) deviate sexual intercourse, sexual contact, sexual intercourse, indecent exposure, sexual assault, prostitution, and promotion of prostitution as described in the Texas Penal Code, Chapters 21, 22, and 43, or any offer or agreement to engage in any such activities;

(F) any behavior, gestures, or expressions which may reasonably be interpreted as inappropriately seductive or sexual; or

(G) inappropriate sexual comments, including making sexual comments about a person's body.

(d) A person subject to disciplinary action under subsection (b)(6) of this section shall, at reasonable intervals, be afforded an opportunity to demonstrate that the person is able to resume the practice of radiologic technology.

(e) An instructor engages in unprofessional conduct if the instructor violates any of the provisions of subsection (b) or (c) of this section or if the instructor:

(1) is an MRT or LMRT who fails to renew the certificate;

(2) is a practitioner who fails to renew his or her license or who has the license suspended, revoked, or otherwise restricted by the appropriate regulatory agency;

(3) discriminates in decisions regarding student recruitment, selection of applicants, student training or instruction on the basis of race, creed, gender, religion, national origin, age, physical handicaps, sexual orientation, or economic status;

(4) abandons an approved course of study or a training program with currently enrolled students;

(5) knowingly provides false or misleading information on the application for instructor approval or on any student's application for certification; or

(6) fails to provide instruction on universal precautions as required by the Health and Safety Code, §85.203.

(f) An education program engages in unprofessional conduct if the program, including its employees or agents, violates any of the provisions of subsection (b) or (c) of this section or if the program:

(1) makes any misleading, deceptive, or false representations in connection with offering or obtaining approval of an education program;

(2) fails to follow appropriate safety standards or the TRCR in the operation of diagnostic or therapeutic radiologic equipment or the use of radioactive materials;

(3) discriminates in decisions regarding student recruitment, selection of applicants, student training or instruction on the basis of race, creed, gender, sexual orientation, age, physical handicaps, economic status, religion or national origin;

(4) aids or abets a person in violating the Act or rules adopted under the Act;

(5) abandons an approved education program with currently enrolled students; or

(6) fails to provide instruction on universal precautions as required by the Health and Safety Code, Section 85, Subchapter I.

(g) The department may take disciplinary action against a student for intentionally practicing radiologic technology without direct supervision.

(h) In determining the appropriate action to be imposed in each case, the department shall take into consideration the following factors:

(1) the severity of the offense;

(2) the danger to the public;

(3) the number of repetitions of offenses;

(4) the length of time since the date of the violation;

(5) the number and type of previous disciplinary cases filed against the person or program;

(6) the length of time the person has performed radiologic procedures;

(7) the length of time the instructor or education program has been approved;

(8) the actual damage, physical or otherwise, to the patient or student, if applicable;

(9) the deterrent effect of the penalty imposed;

(10) the effect of the penalty upon the livelihood of the person or program;

(11) any efforts for rehabilitation; and

(12) any other mitigating or aggravating circumstances.

(i) Formal hearing requirements:

(1) Notice requirements.

(A) Notice of the hearing shall be given according to the notice requirements of the Administrative Procedure Act (APA).

(B) If a party fails to appear or be represented at a hearing after receiving notice, the Administrative Law Judge examiner may proceed with the hearing or take whatever action is fair and appropriate under the circumstances.

(C) All parties shall timely notify the Administrative Law Judge of any changes in their mailing addresses.

(2) Parties to the hearing.

(A) The parties to the hearing shall be the applicant or licensee and the complaints subcommittee or executive director, as appropriate.

(B) A party may appear personally or be represented by counsel or both.

(3) Prehearing conferences.

(A) In a contested case, the Administrative Law Judge, on his own motion or the motion of a party, may direct the parties to appear at a specified time and place for a conference prior to the hearing for the purpose of:

(i) the formulation and simplification of issues;

(ii) the necessity or desirability of amending the pleading;

(iii) the possibility of making admissions or stipulations;

(iv) the procedure at the hearing;

(v) specifying the number of witnesses;

(vi) the mutual exchange of prepared testimony and exhibits;

(vii) the designation of parties; and

(viii) other matters which may expedite the hearing.

(B) The Administrative Law Judge shall have the minutes of the conference recorded in an appropriate manner and shall issue whatever orders are necessary covering said matters or issues.

(C) Any action taken at the prehearing conference may be reduced to writing, signed by the parties, are made a part of the record.

(4) Assessing the cost of a court reporter and the record of the hearing.

(A) In the event a court reporter is utilized in the making of the record of the proceedings, the department shall bear the cost of the per diem or other appearance fee for such reporter.

(B) The department may prepare, or order the preparation of, a transcript (statement of facts) of the hearing upon the written request of any party. The department may pay the cost of the transcript or assess the cost to one or more parties.

(C) In the event a final decision of the department is appealed to the district court wherein the department is required to transmit to the reviewing court a copy of the record of the hearing proceeding, or any part thereof, the department may be require the appealing party to pay all or part of the cost of preparations of the original or a certified copy of the record of the department proceedings that is required to be transmitted to the reviewing court.

(5) Disposition of case. Unless precluded by law, informal disposition may be made of any contested case by agreed settlement order or default order.

(6) Agreements in writing. No stipulation or agreement between the parties with regard to any matter involved in any proceeding shall be enforced unless it shall have been reduced to writing and signed by the parties or their authorized representatives, dictated into the record during the course of a hearing, or incorporated in an order bearing their written approval. This rule does not limit a party's ability to waive, modify, or stipulate away any right or privilege afforded by these sections.

(7) Final orders or decisions.

(A) The final order or decision will be rendered by the department. The department is not required to adopt the recommendation of the Administrative Law Judge and may take action as it deems appropriate and lawful.

(B) All final orders or decisions shall be in writing and shall set forth the findings of fact and conclusions required by law.

(C) All final orders shall be signed by the commissioner; however, interim orders may be issued by the Administrative Law Judge.

(D) A copy of all final orders and decisions shall be timely provided to all parties as required by law.

(8) Motion for rehearing. A motion for rehearing shall be governed by the APA, Texas Government Code, §2001.146, and shall be addressed to the department and filed with the administrator.

(9) Appeals. Subchapter G, Texas Government Code, all appeals from final department orders or decisions shall be governed by the APA and communications regarding any appeal shall be to the administrator.

(j) The following applies after disciplinary action has been taken.

(1) The department may not reinstate a certificate to a holder or cause a certificate to be issued to an applicant previously denied a certificate unless the department is satisfied that the holder or applicant has complied with requirements set by the department and is capable of engaging in the practice of radiologic technology. The person is responsible for securing and providing to the department such evidence, as may be required by the department. The administrator or the department shall investigate prior to making a determination.

(2) During the time of suspension, the former certificate holder shall return the certificate and identification card(s) to the department.

(3) If a suspension overlaps a certificate renewal period, the former certificate holder shall comply with the normal renewal procedures in this chapter; however, the department may not renew the certificate until the administrator or the department determines that the reasons for suspension have been removed and that the person is capable of engaging in the practice of radiologic technology.

(4) If the commissioner of health revokes or does not renew the certificate, the former certificate holder may reapply in order to obtain a new certificate by complying with the requirements and procedures at the time of reapplication. The department may not issue a

new certificate until the administrator or the department determines that the reasons for revocation or nonrenewal have been removed and that the person is capable of engaging in the practice of radiologic technology. An investigation may be required.

(5) If the commissioner rescinds the approval of an instructor or program, the formerly approved instructor or program may reapply for approval by complying with the requirements and procedures at the time of reapplication. Approval will not be issued until the administrator or the department determines that the reasons for revocation have been removed. An investigation may be required.

(k) Pursuant to the Act, §601.351, the department is authorized to assess an administrative penalty against a person who violates the Act or this chapter.

§140.516. Dangerous or Hazardous Procedures.

(a) General. This section identifies radiologic procedures which are dangerous or hazardous and may only be performed by a practitioner, medical radiologic technologist (MRT) or limited medical radiologic technologist (LMRT). There are specific procedures identified in §140.517 of this title (relating to Registered Nurses and Physician Assistants Performing Radiologic Procedures) which may be performed by a registered nurse (RN) or a physician assistant trained under §140.518 of this title (relating to Mandatory Training Programs for Non-Certified Technicians) or §140.522 of this title (relating to Alternative Training Programs). A person trained under §140.518 or §140.522 of this title is not an MRT, LMRT or otherwise certified under the Act and shall not perform a dangerous or hazardous procedure identified in this section unless expressly permitted by this section or by §140.517 of this title.

(b) Dangerous procedures. Except as otherwise provided in this chapter, the list of dangerous procedures which may only be performed by a practitioner or MRT are:

(1) nuclear medicine studies to include positron emission tomography (PET);

(2) administration of radio-pharmaceuticals; administration does not include preparation or dispensing except as regulated under the authority of the Texas State Board of Pharmacy;

(3) radiation therapy, including simulation, brachytherapy and all external radiation therapy beams including Grenz rays:

(4) computed tomography (CT) or any variation thereof;

(5) interventional radiographic procedures, including angiography, unless performed by an LMRT with a certificate issued in the cardiovascular category;

(6) fluoroscopy unless performed by an LMRT with a certificate issued in the cardiovascular category; and

(7) cineradiography (including digital acquisition techniques), unless performed by an LMRT with a certificate issued in the cardiovascular category.

(c) Hazardous procedures. Unless otherwise noted, the list of hazardous procedures which may only be performed by a practitioner or MRT are:

(1) conventional tomography;

(2) skull radiography, excluding anterior-posterior/posterior-anterior (AP/PA), lateral, Townes, Caldwell, and Waters views;

(3) portable x-ray equipment;

(4) spine radiography, excluding AP/PA, lateral and lateral flexion/extension views;

(5) spine radiography;

(6) shoulder girdle radiographs, excluding AP and lateral shoulder views, AP clavicle and AP scapula;

(7) pelvic girdle radiographs, excluding AP or PA views;

(8) sternum radiographs; and

(9) radiographic procedures which utilize contrast media;

(10) pediatric radiography, excluding extremities, unless performed by an LMRT with the appropriate category. Pediatric studies must be performed with radioprotection so that proper collimation and shielding is utilized during all exposures sequences during pediatric studies. If an emergency condition exists which threatens serious bodily injury, protracted loss of use of a bodily function or death of a pediatric patient unless the procedure is performed without delay, or if other extenuating circumstances deemed by the practitioner exist, a pediatric radiographic procedure is also excluded. The emergency condition or extenuating circumstance must be documented by the ordering practitioner in the patient's clinical record and the record must document that a regularly scheduled MRT, LMRT, RN or physician assistant is not reasonably available to perform the procedure.

(d) Performance of a hazardous procedure by an LMRT. An LMRT may perform a radiologic procedure listed in subsection (c) of this section only if the procedure is within the scope of the LMRT's certification, as described in §140.507(f) of this title (relating to Types of Certificates and Applicant Eligibility).

(e) Performance of a dangerous or hazardous procedure by a practitioner. This section does not authorize a practitioner to perform a radiologic procedure which is outside the scope of the practitioner's license.

(f) Dental radiography. This section does not apply to a radiologic procedure involving a dental x-ray machine, including panarex or other equipment designed and manufactured only for use in dental radiography.

(g) Mammography. In accordance with the Health and Safety Code, §401.421 et seq, mammography is a radiologic procedure which may only be performed by an MRT who meets the qualifications set out in 25 TAC Chapter 289 of the Radiation Control Program rules relating to mammography. Mammography shall not be performed by an LMRT, an NCT, or any other person.

(h) Student performance of dangerous or hazardous procedures. The procedures identified in this section are not considered dangerous and hazardous for purposes of §601.056(a) of the Act if the person performing the procedures is a student enrolled in a program which meets the minimum standards adopted under §601.056 of the Act and if the person is performing radiologic procedures in an academic or clinical setting as part of the program. Therefore, such students may perform these procedures in such settings. Students may not perform procedures in an employment setting.

§140.522. Alternate Training Requirements.

(a) General. This section sets out the minimum standards for registered nurses (RNs), physician assistants, podiatric medical assistants (PMAs) and x-ray equipment operators in a physician's office.

(b) Instructor direction required. All hours of the training program completed for the purposes of this section must be live and interactive and directed by an instructor approved by the department. Distance learning activities and audiovisual teleconferencing may be utilized, provided these include two-way, interactive communications which are broadcast or transmitted at the actual time of occurrence. Appropriate on-site supervision of persons participating in the distance

learning activities or teleconferencing shall be provided by the approved training program. No credit will be given for training completed by self-directed study or correspondence. The provisions of this subsection shall not apply to the out of classroom training requirements for podiatric medical assistants and x-ray equipment operators in a physician's offices.

(1) Before an RN or physician assistant performs a radiologic procedure, the RN or physician assistant must complete the hours stated in subsection (d) of this section, or the hours stated in §140.518 of this title (relating Mandatory Training Programs for Non-Certified Technicians).

(2) Before a PMA performs a radiologic procedure, the PMA must complete the hours stated in subsection (e) of this section, or the hours stated in §140.518(d) of this title concerning podiatric radiologic procedures.

(3) Individuals who complete training approved under this section may not use that training toward the educational requirements for a general or limited certificate as set out in §140.507 of this title (relating to Types of Certificates and Applicant Eligibility).

(c) Approved instructors.

(1) For purposes of this section, an individual is approved by the department to teach in a training program if the individual meets the requirements of §140.509(g)(1) - (2) of this title (relating to Standards for the Approval of Curricula and Instructors). The application for the training program must demonstrate that the instructors meet the qualifications. No application for individual instructor approval is required.

(2) An LMRT may not teach, train, or provide clinical instruction in a portion of a training program which is different from the LMRT's level of certification. An LMRT holding a limited certificate in the chest and extremities categories may not participate in the portion of a training program relating to radiologic procedures of the spine. The LMRT may participate in the portions of the training program which are of a general nature and those specific to the specific categories on the limited certificate.

(d) Training requirements for registered nurses and physician assistants. A training program preparing RNs and physician assistants to perform radiologic procedures shall be designed to build on the health care knowledge base and skills acquired through completion of an educational program that qualifies the person for licensure as an RN or physician assistant. The training shall consist of:

(1) a minimum of 30 hours of coursework that are fundamental to diagnostic radiologic procedures covering all of the following items:

(A) radiation safety and protection for the patient, self, and others--10 hours;

(B) radio-pharmaceutical administration--radiation safety--16 hours;

(C) radiologic equipment--10 hours;

(D) image production and evaluation--10 hours; and

(2) one or more of the following units of instruction in radiologic procedures:

(A) chest and abdomen (non-pediatric)--8 hours;

(B) spine (non-pediatric)--10 hours;

(C) skull (non-pediatric)--8 hours;

(D) extremities (including pediatric)--8 hours; and

(3) if the RN or physician assistant will perform pediatric radiologic procedures other than extremities, a minimum of 2 classroom hours for each of the areas identified in paragraph (2)(A) - (C) of this subsection.

(e) Training requirements for podiatric medical assistants PMAs.

(1) In order to successfully complete a program, a PMA must complete the following training:

(A) radiation safety and protection for the patient, self, and others--5 classroom hours and 5 out of classroom hours;

(B) radiographic equipment used in podiatric medicine, including safety standards, operation, and maintenance--1 classroom hour and 2 out of classroom hours;

(C) podiatric radiologic procedures, imaging production and evaluation--1 classroom hour and 4 out of classroom hours; and

(D) methods of patient care and management essential to radiologic procedures, excluding CPR, BCLS, ACLS and similar subjects--1 classroom hour and 1 out of classroom hour.

(2) Successful completion of PMA training allows the PMA to perform radiologic procedures only under the instruction or direction of a podiatrist.

(3) The out of classroom training hours require successful completion of learning objectives approved by the department as verified by the supervising podiatrist.

(f) Application procedures for training programs. The department shall use the same process as described in §140.518(e), (f), (g), (h) and (i) of this title.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 31, 2008.

TRD-200805762
Lisa Hernandez
General Counsel
Department of State Health Services
Effective date: November 20, 2008
Proposal publication date: May 23, 2008
For further information, please call: (512) 458-7111 x6972

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CHAPTER 143. MEDICAL RADIOLOGIC TECHNOLOGISTS

25 TAC §§143.1 - 143.20

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts the repeal of §§143.1 - 143.20 concerning the regulation and certification of medical radiologic technologists. The sections are adopted without changes to the proposed text as published in the May 23, 2008, issue of the *Texas Register* (33 TexReg 4108) and, therefore, will not be republished.

BACKGROUND AND PURPOSE

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 143.1 - 143.20 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed; however, the rules are repealed and adopted in 25 Texas Administrative Code (TAC), Chapter 140, Health Professions Regulation.

The repeals are necessary to consolidate existing Professional Licensing and Certification Unit program rules in 25 TAC Chapter 140, Health Professions Regulation. The new rules in 25 TAC §§140.501 - 140.522, transfer and update existing language. Many sections were transferred with no modification. New language is added in some sections in order to clarify the rules for medical radiologic technologists, health care practitioners and professionals, and consumers. Additionally, the rules require continuing education for non-certified technicians.

SECTION-BY-SECTION SUMMARY

The repeal of §§143.1 - 143.20 is necessary to combine the Professional Licensing and Certification Unit rules in one chapter, 25 TAC Chapter 140, Health Professions Regulation.

COMMENTS

The department, on behalf of the commission, did not receive any comments regarding the proposed rules during the comment period.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

STATUTORY AUTHORITY

The repeals are authorized by Occupations Code, §604.052 and §604.053, which authorizes the adoption of rules regarding medical radiologic technologists; 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. Review of the rules implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 31, 2008.

TRD-200805761
Lisa Hernandez
General Counsel
Department of State Health Services
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For further information, please call: (512) 458-7111 x6972

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 19. AGENTS' LICENSING
SUBCHAPTER B. MEDICARE ADVANTAGE PLANS, MEDICARE ADVANTAGE PRESCRIPTION DRUG PLANS, AND MEDICARE PART D PLANS

28 TAC §§19.101 - 19.103

The Commissioner of Insurance adopts new §§19.101 - 19.103, concerning the marketing of certain Medicare plans. These plans include Medicare Advantage Plans, Medicare Advantage Prescription Drug Plans, and Medicare Part D Plans. The new sections are adopted with non-substantive changes to §19.102 of the proposed text published in the September 12, 2008, issue of the *Texas Register* (33 TexReg 7693). Section 19.101 and §19.103 are adopted without changes.

REASONED JUSTIFICATION. The new sections are necessary to establish qualifying license types for persons marketing Medicare Advantage Plans, Medicare Advantage Prescription Drug Plans, and Prescription Drug Plans (Medicare plans) under federal marketing guidelines. The new sections are also necessary to establish a requirement for reporting persons in violation of the licensing requirements for the marketing of Medicare plans. The federal marketing guidelines are specified in (i) "Medicare Marketing Guidelines for: Medicare Advantage Plans (MAs), Medicare Advantage Prescription Drug Plans (MA-PDs), Prescription Drug Plans (PDPs) and 1876 Cost Plans" (CMS marketing guidelines), second revision, July 25, 2006, and (ii) "Guidance for regulations in CMS 4131-F and CMS 4138-IFC" (Guidance), September 15, 2008. The CMS marketing guidelines and Guidance are published by the Centers for Medicare and Medicaid Services (CMS) and are available at cms.hhs.gov/PrescriptionDrugCovContra/Downloads/FinalMarketingGuidelines.pdf and cms.hhs.gov/HealthPlansGenInfo/Downloads/MIPPA_Imp_memo091208Final.pdf, respectively. Additionally, on July 15, 2008, Congress adopted the Medicare Improvements for Patients and Providers Act of 2008, Public Law 110 - 275 (MIPPA). Among other matters, MIPPA §103(d) requires Medicare Advantage organizations to use state-licensed insurance agents to sell Medicare plans and to comply with state laws regulating agent appointment and termination reporting requirements. The Commissioner adopted on an emergency basis §§19.101 - 19.104, effective November 9, 2007, and published in the November 23, 2007, issue of the *Texas Register* (32 TexReg 8389) (Emergency Rule). Those sections expired by operation of law on May 6, 2008, and are replaced by this adoption.

This adoption uses the term market rather than sell with respect to licensed agents because marketing is used in the CMS marketing guidelines and fully encompasses the concept of soliciting, which is a primary function of an agent under the Insurance Code §4001.051(b). Additionally, the term temporary license refers to a license issued under §§4001.152 - 4001.154 of the Insurance Code. The term permanent license refers to a license issued to a person satisfying the qualifications required for Texas resident insurance agents licensed under the Insurance Code §4001.105 and §4001.106, and nonresident insurance agents

licensed under the Insurance Code §§4056.052, 4056.053, and 4056.054.

This adoption is necessary to maintain effective regulation of the insurance industry and to safeguard senior citizens and other individuals eligible to purchase Medicare plans (Medicare beneficiaries) in this state. The CMS marketing guidelines and MIPPA §103(d)(1), which amends §1851(h) of the Social Security Act (42 U.S.C. 1395w-21(h)), require that Medicare Advantage organizations only use agents who have been licensed under state law to sell Medicare plans.

To the extent that federal law and CMS marketing guidelines require that a Medicare Advantage organization utilize a state-licensed agent to market or sell a Medicare plan, this adoption designates only two types of licensees that are authorized to market Medicare plans: (i) a current permanent general life, accident, and health insurance agent's license; and (ii) a current permanent general property and casualty insurance agent's license if the agent is acting for a property and casualty insurer engaged in selling Medicare plans. A licensed agent not holding one of these two licenses is not authorized to market a Medicare plan unless otherwise authorized by federal law or the CMS marketing guidelines.

The effective regulation of insurance agents and the safeguarding of Texas senior citizens and Medicare beneficiaries provided by this adoption are necessary for the following reasons:

(i) The Department has continued to receive reports that Medicare beneficiaries are being fraudulently and dishonestly deceived by licensed insurance agents into enrolling in Medicare plans that are unsuitable for those Medicare beneficiaries.

(ii) Prior to the adoption of the Emergency Rule in November 2007, the Department received reports that temporary agents in particular were engaging in fraudulent and dishonest marketing activities.

(iii) The upcoming enrollment period, as well as future enrollment periods, for Medicare plans presents an opportunity for untrained, unqualified, and unscrupulous individuals that would not otherwise be able to qualify for a permanent agent license to obtain a temporary license to market Medicare plans.

(iv) It is necessary to address in a comprehensive manner the problems of fraud and abuse that have been reported to the Department.

The Department has continued to receive reports that Medicare beneficiaries of this state are being fraudulently and dishonestly deceived by agents into enrolling in Medicare plans that are unsuitable for those Medicare beneficiaries. They are unsuitable due to either the existence of other insurance or existing medical treatment concerns. Enrollment in an unsuitable plan often places Medicare beneficiaries at severe medical risk when they are no longer able to obtain continuing medical care from their existing physicians and care facilities. It also places them at financial risk when the costs of the replacement plans exceed those of their existing insurance and other suitable available coverage. Even if care is available, the fact that it is only available from an unfamiliar and/or limited source may result in Medicare beneficiaries, to their detriment, not seeking or receiving the care to which they are entitled under the Medicare program. It may also result in their possible irreversible physical decline or death.

Prior to the adoption of the Emergency Rule in November 2007, the Department received reports that temporary agents in particular were engaging in fraudulent and dishonest marketing activities. Under adopted §19.102(c), temporary agents are no longer authorized to market Medicare plans. The following outlines the licensing procedures and requirements for temporary agents. Pursuant to §§4001.152 - 4001.154 of the Insurance Code, temporary agents are issued a license immediately upon receipt of the license application by the Department. Even without receiving a license, temporary agents may begin acting as an agent eight days after the application is delivered or mailed to the Department. Temporary agents (i) are appointed by insurers, health maintenance organizations, or other insurance agents; (ii) are not required to pass the Department's qualifying licensing examination demonstrating knowledge of the products they will be selling; and (iii) are not required to have completed the Department's criminal history background check. The Department uses fingerprint-based criminal history background checks through the Texas Department of Public Safety (DPS) and the Federal Bureau of Investigation (FBI). Electronic submissions are available to individuals through the Department's examination vendor. However, electronic submissions are not required. These checks take approximately one business week to complete if the fingerprint record is submitted electronically and a month or more to complete if the fingerprint record is submitted using paper cards. The time necessary to complete a criminal history background check leaves open a potential period for a temporary agent to begin marketing Medicare plans before the background check can be completed. Pursuant to the Insurance Code §4001.155, a temporary license is valid for 90 days after issuance. Pursuant to §4001.156 of the Insurance Code, a temporary license may not be issued to or renewed by the same individual more than once in a consecutive six-month period. Consequently, individuals with temporary licenses have been able to market Medicare plans for an entire open enrollment period without meeting all of the requisites for insurance agents who are permanently licensed pursuant to §§4001.105, 4001.106, 4056.052, 4056.053, or 4056.054 of the Insurance Code.

The 2007 Medicare plan enrollment period that was addressed by the Emergency Rule has expired. However, the upcoming enrollment period runs from November 15, 2008 through December 31, 2008. Also, there will be enrollment periods in future years, and individuals will continue to qualify for Medicare plans throughout each future year. Without this adoption, the brief recurring annual open enrollment period will present an opportunity for individuals that would not otherwise be able to qualify for a permanent agent license to obtain access to a significant portion of this market with a temporary license. Also, without this adoption, the open enrollment periods will allow the opportunity for untrained, unqualified, or unscrupulous insurance agents to take advantage of tens or hundreds of individuals who themselves are under substantial time pressure to make complex and important healthcare choices. The open enrollment period is unlike normal marketing environments in which insurance agents must locate and solicit potential consumers and where those consumers have more time to consider and make informed decisions on such important health coverage matters. The number of Medicare beneficiaries seeking coverage at other times throughout the year is fewer than during the open enrollment period. This, however, does not negate the potential harm that can be inflicted by untrained, unqualified, or unscrupulous insurance agents on these individuals seeking to enroll in Medicare plans. These Medicare beneficiaries are also vulnerable to potential fraudulent and dishonest marketing activities.

This adoption is necessary to address, in a comprehensive manner, the problems demonstrated by reports of fraud and abuse resulting from untrained, unqualified, and unscrupulous temporary insurance agents actively marketing Medicare plans to unsuspecting Medicare beneficiaries. The purpose of the adopted sections is to provide appropriate and necessary preventative measures to protect senior citizens and other Medicare beneficiaries in this state. The adopted sections enhance the Department's ability to regulate insurance insurers, heath maintenance organizations, and permanent agents engaged in the marketing of Medicare plans. The adopted sections prohibit temporary agents from marketing Medicare plans. Additionally, the adopted sections require insurers, health maintenance organizations, and agents to report violations of the licensing requirements to the Department. Each of these adopted sections will work in conjunction with the Department's enforcement authority to help prevent the harm that untrained, unqualified, and unscrupulous temporary agents may inflict upon senior citizens and other Medicare beneficiaries in this state by providing an additional means to address the problem.

The Department has determined that this adoption will not significantly diminish the available number of insurance agents that are authorized to market Medicare plans. As of July 24, 2008, 168,849 individuals held current permanent general life, accident, and health insurance agent licenses, while only 625 individuals held temporary general life, accident, and health insurance agent licenses. Further, between January 1, 2008, and July 24, 2008, the Department issued a total of 1,566 temporary general life, accident, and health insurance agent licenses at the request of 46 sponsors. From this group, 813 licensing examinations were taken (applicants may take the examination more than once). Of the 813, only 359 licensing examinations (approximately 23 percent) were passed. While a small percentage of temporary agents do succeed in demonstrating their qualifications, there remains a large number of potentially untrained, unqualified, and unscrupulous insurance agents with temporary licenses. Without this adoption, these agents could take advantage of tens or hundreds of Medicare beneficiaries who rely on these insurance agents to provide them with appropriate health coverage.

Adopted §19.102(a) and (b) are necessary to limit the marketing of Medicare plans in this state to insurance agents holding current permanent general life, accident, and health insurance agent licenses and current permanent general property and casualty insurance agent licenses if the agent is acting for a property and casualty insurer authorized to write Medicare plans in this state. This limitation is based on the Commissioner's authority under the Insurance Code §4051.051(a)(3) and §4054.051(9) to determine which classification of licensed insurance agent is authorized to write any kind of insurance other than that described in §4051.051(a)(1) and (2) and §4054.051(1) - (8) for the protection of the insurance consumers of this state. Federal law and CMS marketing guidelines clearly recognize that Medicare plans are federal benefits and contemplate that state law may define a particular license type as being suitable to sell Medicare plans. The CMS marketing guidelines provide: "It is of paramount importance to CMS that a beneficiary enrolls in a plan that the beneficiary chooses based on the beneficiary's needs." (CMS marketing guidelines, page 129.) Further, CMS marketing guidelines provide: "An organization must utilize only a state licensed, certified, or registered individual to perform marketing, if a state has such a marketing requirement." (CMS marketing guidelines, page 130.) Based on the Commissioner's authority under the Insurance Code §4051.051(a)(3) and §4054.051(9) and for the protection of the insurance consumers of this state, this adoption continues the Commissioner's earlier determination limiting the marketing of Medicare plans in this state to certain insurance agents. These agents must hold current permanent general life, accident, and health insurance agent licenses and current permanent general property and casualty insurance agent licenses when the agent is acting for a property and casualty insurer engaged in selling Medicare plans. This adoption does not extend the authority to market Medicare plans to personal lines property and casualty insurance agents acting in compliance with the Insurance Code §4051.402(b).

Adopted §19.102(d) is necessary to prohibit insurers, health maintenance organizations, or insurance agents from allowing agents that do not hold the required licenses specified in §19.102(a) and (b) to assist in the enrollment of individuals in Medicare plans unless that activity is specifically authorized for Medicare plans under the CMS marketing guidelines to be performed by unlicensed persons.

Adopted §19.102 does not limit the authority of insurers, health maintenance organizations, or agents, including temporary agents, to market or sell insurance products authorized under the Insurance Code. Additionally, it does not limit the authority of insurers, health maintenance organizations, or agents to appoint agents, including temporary agents, to market or sell insurance products authorized under the Insurance Code.

Adopted §19.103 is necessary to require an insurer, health maintenance organization, or an agent to report in writing any violation of the prohibitions in adopted §19.102 within four calendar days of discovering the violation. The reporting must be to the Enforcement Division of the Department.

The Emergency Rule included a requirement in §19.104 that Medicare Advantage organizations and their subcontractors comply with certain existing Insurance Code agent appointment and termination provisions based on CMS marketing guidelines. While these provisions would remain effective under the CMS marketing guidelines, Congress subsequently adopted MIPPA on July 15, 2008. MIPPA §103(d) amends the Social Security Act (42 U.S.C. 1395w-21(h)) to require that Medicare Advantage organizations must comply with appointment and termination reporting provisions under state law. Thus, the requirement contained in Emergency Rule §19.104 is no longer necessary and not a part of this adoption. Under MIPPA, Medicare Advantage organizations are required to comply with agent appointment and termination reporting provisions in the Insurance Code §§4001.201 - 4001.206.

The Department has determined that non-substantive changes are necessary to the proposed text as published. However, none of these changes materially alter issues raised in the proposal, introduce new subject matter, or affect persons other than those previously on notice. The Department has determined that a non-substantive change is necessary in §19.102(d)(1)(A) as adopted for consistency with the language of adopted §19.102(a). Adopted §19.102(d)(1)(A) reads "a current permanent general life, accident, and health insurance agent license. . ." This language is in lieu of the proposed language reading "a permanent general life, accident, and health insurance agent license. . ." The Department has additionally determined that non-substantive changes are necessary in §19.102(d)(1)(B) as adopted to correct typographical and grammatical errors and to provide consistency with the language of adopted §19.102(b). Adopted §19.102(d)(1)(B) reads "a current permanent general

property and casualty insurance agent's license, if the agent is acting for a property and casualty insurer engaged in selling Medicare plans." This language is in lieu of the proposed language reading "a general property and casualty insurance agent licenses who are acting. . . ." Additional non-substantive typographical and grammatical corrections have been made to the proposed section as published.

HOW THE SECTIONS WILL FUNCTION. Adopted §19.101 defines terms used in the adopted subchapter.

Adopted §19.102(a) authorizes persons holding a current permanent general life, accident, and health insurance license under the Insurance Code §4054.051 to act as marketing representatives to market Medicare plans pursuant to federal law, regulations, and CMS marketing guidelines. Adopted §19.102(b) authorizes persons holding a current permanent general property and casualty insurance agent license under the Insurance Code §4051.053 to act as marketing representatives to market Medicare plans pursuant to federal law, regulations, and CMS marketing guidelines to the extent that the Medicare plans are offered by a property and casualty insurer authorized to sell those products in this state. Adopted §19.102(c) provides that no agent holding any other license type is authorized to market Medicare plans, including individuals holding a temporary general life, accident, and health insurance agent license or a temporary property and casualty insurance agent license. Adopted §19.102(d) prohibits an insurer, health maintenance organization, or insurance agent from assisting or participating in enrolling any individual in a Medicare plan contract that has been marketed by an agent that does not hold a permanent general life, accident, and health insurance agent license, by an agent who is acting on behalf of a property and casualty insurer engaged in selling Medicare plans that does not hold a general property and casualty insurance agent license, or by unlicensed persons, unless that activity is specifically authorized under federal law and CMS Marketing guidelines to be performed by unlicensed persons. Adopted §19.103 requires an insurer, health maintenance organization, or insurance agent to report to the Department in writing any violation of adopted §19.102 within four days of discovering the violation.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Comment: One commenter expresses appreciation to the Department for drafting rules designed to protect thousands of seniors from fraudulent and dishonest marketing activities. The commenter states support for the adoption of the proposed rules as published.

Agency Response: The Department appreciates the supportive comment.

NAMES OF THOSE COMMENTING FOR AND AGAINST THE PROPOSAL.

For: Office of Public Insurance Counsel

Against: None

STATUTORY AUTHORITY. The new sections are adopted under the Insurance Code §§4001.003, 4001.005, 4001.105, 4001.106, 4001.152 - 4001.156, 4051.051, 4051.053, 4054.051, 4056.052 - 4056.054, and 36.001. Section 4001.003(8) defines the term person for use in the Insurance Code Title 13, which concerns insurance agent licensing. Section 4001.005 authorizes the Commissioner to adopt rules necessary to implement the Insurance Code Title 13 and to meet the minimum requirements of federal law, including regulations. Section 4001.105 enumerates the requirements that must be met in order for the Department to issue an insurance agent license to an individual. Section 4001.106 enumerates the requirements that must be met in order for the Department to issue an insurance agent license to a corporation or partnership. Section 4001.152 states that an applicant is not required to pass a written examination to obtain a temporary agent license. Section 4001.153 enumerates the requirements that must be met in order for the Department to issue a temporary insurance agent license to an applicant. Section 4001.154 provides authority for an applicant to begin to act as a temporary insurance agent if a temporary license is not received from the Department before the eighth day after the date the application, nonrefundable fee, and certificate are delivered or mailed to the Department and the appropriate agent, insurer, or health maintenance organization has not been notified that the application is denied. Section 4001.155 provides that a temporary insurance agent license is valid for a period of 90 days after the date of issuance. Section 4001.156 provides that a temporary insurance agent license may not be issued to or renewed by the same person more than once in a consecutive six-month period and that a temporary insurance agent license may not be issued to a person who does not intend to apply for a license to sell insurance or memberships to the general public. Section 4051.051(a)(3) mandates that a person hold a general property and casualty license if the person acts as an insurance agent who writes any other kind of insurance than that described in §4051.051(a)(1) and (2) as required by the Commissioner for the protection of the insurance consumers of this state. Section 4051.053 authorizes a person holding a general property and casualty insurance agent license to write health and accident insurance for a property and casualty insurer authorized to sell those insurance products in this state. Section 4054.051(9) mandates that a person hold a general life, accident, and health insurance license if the person acts as an insurance agent who writes any other kind of insurance than that described in §4054.051(1) - (9) as required by the Commissioner for the protection of the insurance consumers of this state. Section 4056.052 enumerates the requirements that must be met in order for the Department to issue a nonresident insurance agent license to an applicant who holds an insurance agent license in another state. Section 4056.053 enumerates the requirements that must be met in order for the Department to issue a nonresident insurance agent license to an applicant who does not hold an insurance agent license in another state. Section 4056.054 enumerates the requirements that must be met in order for the Department to issue a nonresident insurance agent license to a corporation or partnership. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of the state.

§19.102. Agent Authority to Market Medicare Advantage Plans, Medicare Advantage Prescription Drug Plans, and Medicare Prescription Drug Plans.

(a) Persons holding a current permanent general life, accident, and health insurance license under the Insurance Code §4054.051 are authorized to act as marketing representatives to market Medicare plans pursuant to federal law, regulations and CMS marketing guidelines.

(b) In accord with the Insurance Code §4051.053, persons holding a current permanent general property and casualty insurance agent license under the Insurance Code §4051.051 are qualified to act as marketing representatives to market Medicare plans pursuant to federal law, regulations and CMS marketing guidelines, only to the

extent that the Medicare plans are offered by a property and casualty insurer authorized to sell those products in this state.

(c) Unless qualifying under subsection (a) or (b) of this section, department licensees, including individuals holding a temporary general life, accident and health insurance agent license or a temporary general property and casualty insurance agent license, are not qualified to act and are prohibited from acting as marketing representatives to market Medicare plans.

(d) Except for activities that are specifically authorized under federal law and CMS marketing guidelines to be performed by unlicensed persons, an insurer, health maintenance organization, or insurance agent is prohibited from assisting or participating in enrolling any individual in a Medicare plan contract marketed by an:

(1) agent that does not hold either:

(A) a current permanent general life, accident, and health insurance agent license; or

(B) a current permanent general property and casualty insurance agent's license, if the agent is acting for a property and casualty insurer engaged in selling Medicare plans; or

(2) unlicensed person.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 3, 2008.

TRD-200805783
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: November 23, 2008
Proposal publication date: September 12, 2008
For further information, please call: (512) 463-6327

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 58. OYSTERS AND SHRIMP
SUBCHAPTER B. STATEWIDE SHRIMP FISHERY PROCLAMATION

31 TAC §58.160

The Texas Parks and Wildlife Department (the department) adopts an amendment to §58.160, concerning Taking or Attempting to Take Shrimp (Shrimping)--General Rules, with changes to the proposed text as published in the July 18, 2008, issue of the *Texas Register* (33 TexReg 5691).

The change to §58.160(e)(2)(A) and (B) corrects inaccurate references to §58.164 and §58.165, makes punctuation changes, and is nonsubstantive.

The amendment updates the reference to federal regulations governing the dimensions and specifications of approved Bycatch Reduction Devices (BRDs) to accommodate recent changes to the federal rules.

Bycatch reduction devices (BRDs) reduce the mortality of nontarget aquatic organisms that occurs during shrimping, especially among juvenile finfish and invertebrate populations. The use of BRDs reduces shrimp-trawl bycatch fishing mortality for recreationally important species such as red snapper, flounder, Atlantic croaker, sand seatrout, and blue crab and allows the escapement of other organisms, which enhances the overall viability of the ecosystem and has the potential to increase populations of finfish and invertebrates impacted by trawling.

The state rules requiring shrimp trawls to be equipped with BRDs have been in effect since 2000 and specify that only those BRDs classified by the National Marine Fisheries Service (NMFS) as "approved devices" are lawful for use in waters under state jurisdiction. From time to time NMFS engages in federal rulemaking to designate new or modified BRD types as "approved devices." In a final rule published in the *Federal Register* on February 13, 2008, NMFS added three new BRD types to the list of BRDs approved for use in the federal waters of the Gulf of Mexico (73 FR 8219). The federal rules took effect March 14, 2008.

The amendment to §58.160 allows the newly approved BRDs to be used in state as well as federal waters. By creating regulatory consistency between state and federal rules, the department intends to enable shrimp vessels that fish in both federal and state waters to continue to do so without having to switch BRDs. The rule as adopted permits an increased variety of BRDs that could be lawfully used by shrimp vessels, giving fishermen more options in terms of what type of BRD to use. The rule also provides for greater economic efficiency in the fishery and eliminates potential confusion that could result from differential regulations enforced by state and federal authorities.

As required by Parks and Wildlife Code, §77.077, the department finds that the use of BRDs demonstrably reduces bycatch of fish species by shrimp trawls and that the approval of additional types of BRDs neither jeopardizes bycatch species nor causes hardship for shrimpers.

As required by Parks and Wildlife Code, §77.075(e), the commission finds that the rule as adopted is consistent with the policies and rules relating to shrimping contained in the current Shrimp Fishery Report.

As required by Parks and Wildlife Code, §77.077(b), in determining the need for the rule as adopted, the commission considered: measures to prevent overfishing while achieving, on a continuing basis, the optimum yield for the fishery; measures based on the best scientific information available; measures to manage shrimp throughout their range; measures, where practicable, that will promote efficiency in utilizing shrimp resources, except that economic allocation may not be the sole purpose of the measures; measures, where practicable, that will minimize cost and avoid unnecessary duplication in their administration; and measures which will enhance enforcement.

The commission has approved and adopted a shrimp management plan and economic analysis as required by Parks and Wildlife Code, §77.007(f) and finds that the rule as adopted is consistent with the shrimp management plan.

The department received no comments opposed to adoption of the proposed rule.

The department received seven comments supporting adoption of the proposed rule.

The amendment is adopted under Parks and Wildlife Code, §77.007, which authorizes the commission to regulate the catching, possession, purchase, and sale of shrimp, including the times, places, conditions, and means and manner of catching shrimp.

§58.160. Taking or Attempting to Take Shrimp (Shrimping)--General Rules.

(a) It is unlawful to:

(1) take or attempt to take shrimp within the boundaries of any natural or man-made pass leading from the inside waters to the outside waters (Gulf of Mexico) of the state;

(2) use a trawl at a time when shrimping is prohibited;

(3) possess a trawl of any type or mesh size in an area where the trawl or mesh size are prohibited. Such trawls may be possessed on vessels in port or in a marked channel going directly to or from an area where the use of the trawl is permitted; or

(4) head shrimp aboard a boat in inside water or dump or deposit shrimp heads in the inside water.

(b) A commercial shrimp boat license must be prominently displayed as to be clearly visible from both sides of the boat.

(c) All commercial shrimp boats are required to exhibit the vessel's documentation or registration number on the port and starboard sides of the deckhouse or hull and on an appropriate weather deck. The number in block numerals in contrasting color to the background must be at least 18 inches in height on vessels over 65 feet and ten inches in height for all other vessels and be permanently attached.

(d) Gear Measurements: Except as otherwise provided in this section, all gear measurements are made as follows:

(1) Otter trawls (main net and try net)--Total net width is measured along an uninterrupted corkline from leading tip of door to leading tip of door including any and all add-on devices or attachments to the corkline.

(2) Beam Trawls (main net and try net)--measured along the beam of a beam trawl in its fully extended position.

(3) Doors--measured along the door centerline from the leading tip to the trailing edge of the door, excluding any add-on devices of any type.

(4) Mesh sizes--measured between the two most widely separated knots in any consecutive series of five stretched meshes after the trawl has been used, and applies to the trawl, bag and bag liner. Mesh size requirements do not apply to net material used in any approved excluder device.

(5) Functional tailbag length--that portion of the cod end forward of the tail rope tie off rings toward the mouth of the trawl.

(6) TED Length: if the webbing immediately surrounding a hard TED has a mesh size smaller than that allowed for the trawl for that area or season, such webbing may not be greater than 60 total stretched meshes in length, not including the escape flap.

(e) Bycatch Reduction Device (BRD) requirements.

(1) Except as otherwise provided in this section, all shrimp boats must have an approved BRD installed in each trawl that is rigged for fishing. A trawl is rigged for fishing if it is in the water, or if it is shackled, tied, or otherwise connected to any trawl door or board, or to any tow rope, cable, pole or extension, either on board or attached in any manner to the shrimp boat.

(2) Exemptions from the BRD requirement--A shrimp boat is exempt from the BRD requirements of paragraph (1) of this subsection if it:

(A) is fishing under the provisions of a commercial bait shrimp license as established in §58.164 of this title (relating to Shrimping Inside Waters--Commercial Bait Shrimping); or

(B) is fishing under the provisions of a individual bait-shrimp trawl tag as established in §58.165 of this title (relating to Noncommercial (Recreational) Shrimping).

(C) Shrimp boats may substitute tow-time restrictions for the BRD requirement of this subsection when the Assistant Administrator of the National Marine Fisheries Service (NMFS) has determined, under 50 CFR §223.206(d)(3)(ii), that special environmental conditions in a particular area make trawling with TED-equipped nets impracticable. Compliance with tow-time restrictions in place of the BRD requirement shall be subject to the limitations established by NMFS in its notice under 50 CFR §23.206(d)(3)(iv), including time period, locations, and any other conditions or restrictions that NMFS establishes.

(3) A single try net that is 21 feet in total width or less is exempt from the BRD requirement.

(4) Approved BRDs:

(A) In outside waters: Any BRD that meets the dimensions and specifications of an approved device as described in 50 Code Federal Regulations (CFR) Part 622 §622.41 on February 13, 2008.

(B) In inside waters:

(i) Any BRD (other than an extended funnel devices similar to "Jones/Davis" and "large mesh" devices) that meets the dimensions and specifications of an approved device as described in 50 Code Federal Regulations (CFR) Part 622 §622.41 on February 13, 2008; or

(ii) An extended funnel device similar to "Jones/Davis", "large mesh" constructed and installed as follows:

(I) Extension Material. The small-mesh sections used on both sides of the large-mesh escape section are constructed of No. 18 nylon webbing with a mesh size of 6-7/8 inches over 5 stretched meshes. The front section is 120 meshes around by 6-1/2 meshes deep. The back section is 120 meshes around by 23 meshes deep.

(II) Large-Mesh Escape Section. The large-mesh escape section is constructed of webbing with a mesh size of 40-50 inches over 5 stretched meshes. This section is cut on the bar to form a section that is 15 inches by 75 inches in circumference. The leading edge is attached to the 6-1/2-mesh extension section and the rear edge is attached to the 23-mesh extension section.

(III) Funnel. The funnel is constructed of with a mesh size of 6-7/8 inches over 5 stretched meshes, No. 18 depth-stretched and heat-set polyethylene webbing. The circumference of the leading edge is 120 meshes and the back edge is 78 meshes. The short side of the funnel is 30 to 32 inches long and the opposite side of the funnel extends an additional 20 to 22 inches. The circumference of the leading edge of the funnel is attached to the forward small-mesh section three meshes forward of the large-mesh escape section and is evenly sewn, mesh for mesh, to the small-mesh section. The after edge of the funnel is attached to the after small-mesh section at its top and bottom eight meshes back from the large-mesh escape panel. Seven meshes of the top and seven meshes of the bottom of the funnel are attached to eight meshes at the top and bottom of the small-mesh section, such eight meshes being located immediately adjacent to the top and bottom

centers of the small-mesh section on the side of the funnel's extended side. The extended side of the funnel is sewn at its top and bottom to the top and bottom of the small-mesh section, extending at an angle toward the top and bottom centers of the small-mesh section.

(IV) Semi-Rigid Hoop. A 24-inch diameter hoop constructed of plastic-coated trawl cable, swaged together with a 3/8-inch micropress sleeve, is installed five meshes behind the trailing edge of the large mesh section. The extension webbing must be laced to the ring around the entire circumference and must be equally distributed on the hoop, that is, 30 meshes must be evenly attached to each quadrant.

(V) Installation. The extended funnel BRD is attached 8 inches behind the posterior edge of the TED. If it is attached behind a soft TED, a second semi-rigid hoop, as prescribed in subclause (IV) of this clause, must be installed in the front section of the BRD extension webbing at the leading edge of the funnel. The cod end of the trawl net is attached to the trailing edge of the BRD.

(iii) Expanded Mesh. The expanded mesh BRD is constructed and installed exactly the same as the standard size extended funnel BRD, except that one side of the funnel is not extended to form a lead panel.

(f) Turtle Excluder Device (TED) requirements.

(1) Except as otherwise provided in this section, all shrimp boats fishing in Texas outside waters must have an approved TED installed in each trawl that is rigged for fishing. A trawl is rigged for fishing if it is in the water, or if it is shackled, tied, or otherwise connected to any trawl door or board, or to any tow rope, cable, pole or extension, either on board or attached in any manner to the shrimp boat.

(2) Exemptions from the TED requirement. A shrimp boat is exempt from the TED requirements if it:

(A) has on board no power or mechanical-advantage trawl retrieval system (i.e., any device used to haul any part of the trawl aboard); or

(B) has only a pusher-head trawl, skimmer trawl, or wing net rigged for fishing.

(C) Shrimp boats may substitute tow-time restrictions for the TED requirement of this subsection when the Assistant Administrator of NMFS has determined, under 50 CFR §223.206(d)(3)(ii), that special environmental conditions in a particular area make trawling with TED-equipped nets impracticable. Compliance with tow-time restrictions in place of the TED requirement shall be subject to the limitations established by NMFS in its notice under 50 CFR §223.206(d)(3)(iv), including time period, locations, and any other conditions or restrictions that NMFS establishes.

(3) Exempted gear or activities. The following fishing gear or activities are exempted from the TED requirements:

(A) A single test net (try net) that is 21 feet in total width or less, if it is either pulled immediately in front of another trawl or is not connected to another trawl in any way, if no more than one test net is used at a time, and if it is not towed as a primary trawl;

(B) A beam or roller trawl, if the frame is outfitted with rigid vertical bars, and if none of the spaces between the bars, or between the bars and the frame, exceeds 4 inches.

(g) Other aquatic life taken incidental to legal shrimping operations.

(1) Licensed Commercial Shrimp Boats.

(A) Other aquatic life taken incidental to legal shrimping operations may not be retained except as provided in these rules.

(B) On board a licensed commercial shrimp boat a catch of finfish or other aquatic life, in any combination, may be retained in an amount not to exceed 50% by weight of the total trawl catch of shrimp by weight.

(i) Within the provision provided in subparagraph (B) of this paragraph, species regulated by bag and size limits by proclamation of the Parks and Wildlife Commission may not be retained in numbers in excess of the recreational daily bag limit established for those species, and may not be retained in protected length limits established for those species.

(ii) From May 1 through September 30 of each year, in addition to the provision of subparagraph (B) of this paragraph:

(I) up to 1,500 live non-game fish, not regulated by bag or size limits, may be retained on board a licensed commercial bait-shrimp boat for bait purposes only; and

(II) up to 3,600 (300 dozen) Atlantic cutlassfish (Trichiurus lepturus) (also known as ribbonfish) may be retained on board a licensed commercial bait-shrimp boat for bait purposes only.

(2) Non-commercial shrimping. A person using an individual bait shrimp trawl for non-commercial purposes may retain for bait purposes only up to 200 non-game fish, not regulated by bag or size limits.

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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Ann Bright
General Counsel
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CHAPTER 65. WILDLIFE

SUBCHAPTER O. COMMERCIAL NONGAME PERMITS

31 TAC §§65.325, 65.327, 65.331

The Texas Parks and Wildlife Department adopts amendments to §§65.325, 65.327, and 65.331, concerning Commercial Nongame Permits, without changes to the proposed text as published in the July 11, 2008, issue of the *Texas Register* (33 TexReg 5499).

In April of 2007, the Texas Parks and Wildlife Commission adopted a comprehensive revision of the department's rules governing the possession and sale of nongame wildlife, including the creation of a "prohibited list" of nongame species that cannot be possessed or used for commercial purposes. The rules took effect October 21, 2007.

The primary goal of the rules was to protect wild populations of nongame species on the prohibited list from commercial collection; however, the rules do allow a person to possess not more

than six specimens of any species on the prohibited list, provided the specimens are not used for a commercial purpose.

The rules also acknowledged that the creation of the prohibited list would have the consequence of making it unlawful to possess certain species of nongame wildlife that had been lawfully possessed prior to the effective date of the rules. Therefore, the rules required those persons in recreational possession (personal use, as opposed to commercial use) of more than six specimens of species on the prohibited list to report those collections to the department by November 1, 2008. The department's intent in establishing this "grandfather" provision was to provide a window of time for the development of additional rules to address the possession, captive breeding and sale of species on the prohibited list.

The department does not wish to criminalize the possession of specimens on the prohibited list by persons who lawfully possessed those specimens prior to the effective date of the rules, provided the specimens are not used in a commercial activity. The department also does not see any reason to prohibit the commercial use of captive-bred specimens of species on the prohibited list, provided the breeding stock was lawfully acquired (i.e., acquired from a lawful out-of-state source). The amendments to §§65.325, 65.327, and 65.331 are intended, collectively, to accomplish that goal.

The amendment to §65.325, concerning Applicability, eliminates former subsection (c)(1), which established a deadline for commercial dealers to divest themselves of species on the prohibited list. The deadline has passed, making the provision superfluous.

The amendment to §65.325 also alters the provisions of subsection (c)(2)(A) to extend the 'grandfather' provision for specimens held in recreational collections in numbers exceeding the possession limit established in §65.331(e) (the "prohibited list"). The amendment is necessary to provide for continued lawful possession of nongame species that were lawfully possessed prior to October 21, 2007, while affording additional time for the persons possessing the specimens to contact the department and report the collections. Since the current rules became effective on October 21, 2008, there has been a small number of persons who have complied with the reporting requirements for recreational collections affected by the subchapter. The department has no method to reliably estimate how many persons in the state may be in recreational possession of more than six specimens of any given species on the prohibited list. Anecdotal information and communications with persons knowledgeable with the pet trade suggest that there may be as many as 1,000 people with recreational collections consisting to some degree of species on the prohibited list. The department therefore has determined that it is necessary to extend the 'grandfather' clause in order to conduct more extensive outreach and awareness activities. Accordingly, the department has extended the 'grandfather' clause for an additional two years.

The amendment to §65.325 also clarifies that the exception of rabbits from the applicability of the subchapter affects only the genus *Sylvilagus,* which consists of species commonly referred to as cottontails. The department is concerned that confusion could occur, because the black-tailed jackrabbit (which is subject to the rules), despite its common name, is a member of the genus *Lepus* and thus is a hare, not a rabbit.

The amendment to §65.327, concerning Permit Required, alters subsection (b)(1) to clarify that the provisions of the rule apply to the export of nongame wildlife as well as to the import of nongame wildlife, and that the rules apply to the import or export of nongame wildlife for any purpose, including sale or resale. Current subsection (b)(1)(D)(iii) requires persons to report and keep records of each instance in which nongame wildlife is shipped out of state, which by definition constitutes export, although that term is not used. However, there are provisions in subparagraph (D) that obviously are applicable to importation but not exportation. By creating a separate subparagraph (E) to isolate the current provisions that apply specifically to export, the department intends to make the rules easier to navigate and understand. Similarly, current subsection (b)(1)(D) authorizes permit holders to import nongame wildlife into Texas "for sale or resale." The department does not intend for this provision to be interpreted as restricting the applicability of the rules to "sale" and "resale" of nongame wildlife, but intends for the rules to apply to any instance in which nongame wildlife is imported to or exported from the state.

The amendment to §65.327 also adds new subsection (b)(1)(F) to explicitly authorize the holder of a nongame dealer permit to breed and sell all species of nongame wildlife, provided the brood stock is lawfully acquired and the person is in compliance with the documentation requirements of the subchapter.

The amendment to §65.327 also alters subsection (b)(2)(B) to allow the holder of a nongame dealer permit to purchase and sell all species of nongame wildlife, provided the person complies with the documentation requirements of the subchapter as they relate to species on the prohibited list.

The amendment to §65.331, concerning Commercial Activity, alters subsection (e) to allow for the commercial use of species listed in subsection (e), provided the specimens are lawfully obtained and the person is in compliance with all applicable reporting and recordkeeping requirements of the subchapter. The amendment also removes the cornsnake, the house mouse, and the rough-footed mud turtle from the list of species that are prohibited from use in commercial activity. The cornsnake is not native to Texas. The house mouse is not wildlife and should not have been included on the list. The rough-footed mud turtle should not have been on the list because it is protected from take under the provisions of Chapter 65, Subchapter G, which regulates Endangered and Threatened species.

The department has determined that the rules as adopted will not result in direct adverse economic impacts on small businesses or micro-businesses, but may have a beneficial effect by allowing for the importation, propagation, and sale of species that are currently unlawful to possess for commercial purposes. The department cannot determine the number of entities affected by the rules that may qualify as small or micro-businesses; however, the rules will not add new reporting or recordkeeping requirements; require any new professional expertise, capital costs, or costs for modification of existing processes or procedures; lead to loss of sales or profits; change market competition; or increase taxes or fees. Since the department has determined that the rules will not result in direct adverse economic impact on small businesses and micro-businesses, the department therefore did not consider alternatives to reduce the direct adverse economic impact of the rules on small businesses and micro-businesses.

The purpose of the amendments is to create an opportunity for persons to engage in the breeding and sale of all species of nongame wildlife without weakening protections for wild populations, and to maintain accurate lists of indigenous wildlife in rules governing indigenous wildlife.

In view of the information currently available to the department, there is no reasonable alternative to the rules that will achieve the objective of the rules, be as effective, and be less burdensome to small businesses or micro-businesses.

The department received 16 comments opposing adoption of the proposed amendments. Fourteen commenters stated a rationale or explanation for opposing adoption of the proposed amendment. Those comments, accompanied by the agency's response, are as follows.

One commenter opposed adoption and stated that many species of nongame wildlife on the "prohibited" list are actually very common. The department disagrees with the comment and responds that with respect to the "prohibited" list, the intent of the rulemaking is to remove species that are not nongame species as that term is statutorily defined and therefore should not have been included on the list in the first place. No changes were made as a result of the comment.

One commenter opposed adoption and stated that none of the language is needed. The department disagrees with the comment and responds that the changes as adopted are necessary and the justification for the changes is clearly explained in the reasoned justification for the rules. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the regulations are not strict enough with respect to human consumption of reptiles. The department disagrees with the comment and responds that the rules do not address issues of food safety because the commission does not have the statutory authority to regulate food safety. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the "grandfather" provision for reporting personal collections of nongame wildlife in excess of possession limits should not be extended. The department disagrees with the comment and responds that persons who possess nongame wildlife that was lawfully obtained or possessed should be able to keep their collections, provided they do not engage in commercial activities utilizing that wildlife. No changes were made as a result of the comment.

One commenter opposed adoption of the rules and stated that the rules were too ambiguous, that captive breeding should be legal, that reptile harvest should be controlled by bag limits, that recreational possession should be treated differently than commercial possession. The commenter provided no specific examples of ambiguity within the rules, but the department disagrees that the rules are ambiguous. The department agrees with the rest of the commenter's points and responds that although this rulemaking does not address those topics, the rules currently in effect allow captive breeding, control harvest through possession limits, and treat recreational possession differently than commercial possession. No changes were made as a result of the comment.

One commenter opposed adoption of the rules and stated that by listing the Eastern Box turtle, the rules affect many subspecies that are not native to Texas, such as the Terrapene carolina, Terrapene carolina major, and Terrapene Carolina bauri. The commenter stated that collectors should be allowed to keep their collections. The department agrees with the commenter and responds that subspecies that are not native to Texas are not subject to the rules and that it is lawful to retain personal, noncommercial collections provided the person contacts the department as provided in the rules. No changes were made as a result of the comment.

One commenter opposed adoption of the rules and stated that an exception should be made for subspecies of garter snakes that are not native to Texas. The department disagrees with the comment and responds that subspecies not native to Texas are not subject to the rules. No changes were made as a result of the comment.

One commenter opposed adoption of the rules and stated that the rules should specifically address subspecies not native to Texas. The department disagrees with the comment and responds that subspecies not native to Texas are not subject to the rules. No changes were made as a result of the comment.

One commenter opposed adoption of the rules and stated that the rules should allow for the take of nongame wildlife on public lands for purposes of captive breeding and sale of progeny because most citizens have no other access to wildlife and because hobbyists can assist in the preservation of rare and threatened species. The department disagrees and responds that public lands make up less than 2% of the state's land mass, which means that commercial collection for most species is allowed over 98% of the state's area. The department also responds that the rules as adopted allow for captive breeding of any species provided the broodstock was lawfully obtained. The department believes that public lands should not be the source of broodstock for commercial activities. No changes were made as a result of the comment.

One commenter opposed adoption of the rules and stated that there should be an additional permit addressing threatened and endangered species to allow people to work with academic and professional managers on rescue, relocation, rehabbing, captive breeding, and repatriation issues. The department disagrees with the comment and responds that those activities, when performed by academics or professionals, are governed by Parks and Wildlife Code, Chapter 43, Subchapter C, which authorizes the issuance of permits for scientific, educational, and rehabilitation purposes. These types of permits allow the permittee to be assisted by other persons. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules should include lists of threatened and endangered species as well, so that the rules truly address all species of nongame. The department disagrees with the comment and responds that threatened and endangered species are governed under separate rules, and that reproducing those lists in the adopted rules would simply be repetition. No changes were made as a result of the comment.

One commenter opposed adoption and stated that it is sad that politicians and lawmakers have nothing better to do with their time and taxpayer money when they should be addressing real crime. The department disagrees with the commenter and responds that under Parks and Wildlife Code, Chapter 67, the department is required to develop and administer programs to insure the continued ability of nongame species of fish and wildlife to perpetuate themselves and to enforce those regulations. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules are unenforceable due to the cost and number of additional personnel and because they are just plain stupid. The commenter stated that none of the listed species are being pressured in any way by collection from the wild because the vast majority of

the habitat is not accessible by the public. The commenter also stated that the rules are "just another dumb attempt by the Texas Parks and Wildlife Dept. to dip into the pockets of reptile enthusiasts because you cannot find a way to profit from it." In addition, the commenter stated that it would make a lot more sense to just offer a permit to anyone wanting to collect animals in Texas like every other state in the U.S. The department disagrees with the commenter and responds that rules as adopted are enforceable and will neither increase costs for the department nor require additional personnel. The department also responds that the lists of species referred to by the commenter were promulgated in an earlier rulemaking and the only effect of the current rulemaking on the lists is to remove species to which the rules do not apply anyway under the statutory definition of nongame species. The department also disagrees that the rules as adopted exert an adverse economic impact on anyone required to comply, as they do not impose additional reporting or recordkeeping requirements, fees, or administrative requirements. The department also comments that the permits referred to by the commenter were promulgated in a previous rulemaking and their cessation or continuation is not germane to the rules as proposed or adopted in this rulemaking. No changes were made as a result of the comment.

One commenter opposed adoption of the rules and stated that the reporting and recordkeeping requirements of the current rules are unfair and put reptile businesses in danger of losing their permits for failure to report a sale. The department disagrees with the comment and responds the requirements referred to by the commenter were promulgated in a previous rulemaking and the cessation, modification, or continuation of those requirements is not germane to the rules as proposed or adopted in this rulemaking. No changes were made as a result of the comment.

One commenter opposed adoption of the rules and stated many species on the "prohibited" list are quite common. The commenter stated that he could not understand how the lists in the rules were created. The department disagrees with the comment and responds that the lists of species referred to by the commenter were promulgated in an earlier rulemaking and the only effect of the current rulemaking on the lists is to remove species to which the rules do not apply anyway under the statutory definition of nongame species. No changes were made as a result of the comment.

One commenter opposed adoption of the rules and stated that the 24-hour reporting requirement for import and export of nongame species is unnecessary and unreasonable and should be changed to 10 days. The department disagrees with the comment and responds that reporting requirement referred to by the commenter was promulgated in a previous rulemaking and the elimination or modification of that requirement is not germane to the rules as proposed or adopted in this rulemaking. No changes were made as a result of the comment.

One commenter opposed adoption of the rules and stated that "the real purpose of the tax-payer funded department of wildlife and of regulations that they impose should be designed solely for the purpose of maintaining the wildlife resources, not to put undo burden on the people who wish to enjoy these resources. To put ANY regulations on the commercial activity of captive-bred specimens over steps those bounds. The distinction should be made between wild-caught versus captive-bred with regard to the import/export regulations." The department agrees with the commenter that the conservation and management of nongame wildlife should be a priority of the department, but disagrees that the rules as adopted put an undue burden on anyone who wishes to enjoy those resources. The department also comments that regulation of captive breeding of certain species is necessary because there is no way to distinguish wild-caught specimens from captive-bred specimens; therefore, captive breeding of those species can only be permitted provided the broodstock is acquired by an avenue other than collection from the wild in Texas. The department also responds that the rules as adopted do, in fact, distinguish wild-caught versus captive bred nongame wildlife with respect to species on the "prohibited" list. No changes were made as a result of the comment.

One commenter opposed adoption of the rules and stated that then creation of a "prohibited" list is wrong, as well as the listing of animals without a scientific basis or knowledge of actual status. The commenter also stated that the use of taxpayer money is a ludicrous and irresponsible waste, and that the department should not restrict public access to its mammals. The commenter also stated that the "Non-game department" has created a de facto "endangered species" list and has opened up the department to significant legal liability for no net results. The commenter added that virtually every non-game mammal in the state, rats and mice included, is now either regulated or prohibited and asked if that was what the department really wants game wardens doing. The department disagrees with the comment and responds that the "prohibited" list, as well as the department's need and authority to regulate of nongame wildlife resources were definitively addressed in a previous rulemaking that was promulgated in full compliance with the Administrative Procedure Act. The comments concerning those topics are not germane to the current rulemaking as proposed and adopted. The department also responds that it is the department's intent that game wardens enforce all regulations as adopted. No changes were made as a result of the comment.

The department received five comments supporting adoption of the proposed rules.

The amendments are adopted under the authority of Parks and Wildlife Code, §67.004, which authorizes the commission to establish any limits on the taking, possession, propagation, transportation, importation, exportation, sale, or offering for sale of nongame fish or wildlife that the department considers necessary to manage the species; and §67.0041, which authorizes the department to issue permits for the taking, possession, propagation, transportation, sale, importation, or exportation of a nongame species of fish or wildlife if necessary to properly manage that species.

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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Ann Bright
General Counsel
Texas Parks and Wildlife Department
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For further information, please call: (512) 389-4775

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 5. FUNDS MANAGEMENT (FISCAL AFFAIRS)

SUBCHAPTER L. CLAIMS PROCESSING--DUPLICATE WARRANTS

34 TAC §5.140

The Comptroller of Public Accounts adopts an amendment to §5.140, concerning replacement warrants, without changes to the proposed text as published in the September 19, 2008, issue of the *Texas Register* (33 TexReg 7974).

This section is being amended to reflect a change in the comptroller's Web cancellation system and the requirements for submitting a payment cancellation voucher. This change is found in subsection (e)(1). This section is also being amended to reflect a change in the delegation of the printing of Texas Assistance for Needy Families (TANF) warrants from the Texas Department of Human Services to the Texas Health and Human Services Commission (HHSC). The change was officially executed in a memorandum of understanding between the Comptroller and HHSC in September 2004. This change is found in subsection (e)(2).

The section also excludes federal guaranteed student loan warrants from the 2-year expiration date as these warrants are federally mandated to expire within 120 days from the date of issuance. This is found in subsection (g)(2). Other changes to the section are for clarity.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Government Code, §403.054, which requires the comptroller to adopt rules relating to the issuance of replacement warrants.

The amendment implements Government Code, §403.054.

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-200805758
Martin Cherry
General Counsel
Comptroller of Public Accounts
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For further information, please call: (512) 475-0387

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 700. CHILD PROTECTIVE SERVICES

SUBCHAPTER H. ADOPTION ASSISTANCE PROGRAM

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), amendments to §700.801 and §700.880; and new §700.806 and §700.807, without changes to the proposed text published in the August 15, 2008, issue of the *Texas Register* (33 TexReg 6560).

The justification for the amendments and new sections is to implement enhanced adoption assistance, as required by Senate Bill 758, Section 4, 80th Legislative Session, which added subsection (g) to §162.304 of the Texas Family Code. The statute requires the executive commissioner of the Health and Human Services Commission to provide, by rule, that the maximum adoption subsidy that may be paid to an adoptive parent of a child under an adoption assistance agreement is an amount that is equal to the amount that would have been paid to the foster parent of the child, based on the child's foster care service level on the date DFPS and the adoptive parent enter into the adoption assistance agreement.

The amendment to §700.801 defines adoptive placement agreement.

New §700.806 defines enhanced adoption assistance.

New §700.807 lists the eligibility criteria for enhanced adoption assistance.

The amendment to §700.880 establishes criteria for the right to appeal a denial by DFPS for enhanced adoption assistance. A person who has been identified as an appropriate prospective adoptive parent of the child may request a fair hearing to appeal the denial of adoption assistance if all of the objective criteria in §700.807(1) - (3) are met.

The amendments and new sections will function by increasing the number of children adopted from foster care who have specialized or intense service level needs, and decreasing the number of children who age out of foster care, thereby effecting improved outcomes.

No comments were received regarding adoption of the amendments and new sections.

DIVISION 1. PROGRAM DESCRIPTION AND DEFINITIONS

40 TAC §§700.801, 700.806, 700.807

The amendment and new sections are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment and new sections implement Senate Bill 758, Section 4, 80th Legislative Session.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 28, 2008.

TRD-200805668
Gerry Williams
General Counsel
Department of Family and Protective Services
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Proposal publication date: August 15, 2008
For further information, please call: (512) 438-3437

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DIVISION 5. APPEALS AND HEARINGS

40 TAC §700.880

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements Senate Bill 758, Section 4, 80th Legislative Session.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Gerry Williams
General Counsel
Department of Family and Protective Services
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For further information, please call: (512) 438-3437

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CHAPTER 711. INVESTIGATIONS IN DADS MENTAL RETARDATION AND DSHS MENTAL HEALTH FACILITIES AND RELATED PROGRAMS

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), amendments to §711.3 and §711.605, without changes to the proposed text published in the August 15, 2008, issue of the *Texas Register* (33 TexReg 6563).

The justification for the amendments is to allow DFPS to release completed reports of investigations conducted in the Texas Department of Aging and Disability Services (DADS) mental retardation and the Texas Department of State Health Services (DSHS) mental health facilities and related programs to the DADS Director of State Schools and the DSHS Assistant Commissioner for Mental Health Substance Abuse Services upon request. The change also states that the request for review of findings procedures remains the same and no additional right to request a review of the findings is granted to DADS and DSHS.

The amendment to §711.3 clarifies the definition of an administrator. Under the proposal, an administrator does not include the DADS Director of State Schools or the DSHS Assistant Commissioner for Mental Health Substance Abuse Services. This is necessary to make clear that forwarding a copy of the investigation as provided in §711.605(a)(6) of this title (relating to Who receives the investigative report?) does not grant the right to request a review of investigation findings from DFPS.

The amendment to §711.605 states that DFPS may release completed reports of investigations conducted in facilities regulated by each agency to the DADS Director of State Schools and the DSHS Assistant Commissioner for Mental Health Substance Abuse Services upon request.

The amendments will function by ensuring that investigations in DADS facilities can be used by state office staff to systemically assess and improve operations of the facilities.

No comments were received regarding adoption of the amendments.

SUBCHAPTER A. INTRODUCTION

40 TAC §711.3

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §48.254 and §48.255(b).

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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Gerry Williams
General Counsel
Department of Family and Protective Services
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For further information, please call: (512) 438-3437

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SUBCHAPTER G. RELEASE OF REPORT AND FINDINGS

40 TAC §711.605

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §48.254 and §48.255(b).

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 745. LICENSING

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective services (DFPS), amendments to §§745.371, 745.8447, and 745.8449, without changes to the proposed text published in the August 15, 2008, issue of the *Texas Register* (33 TexReg 6564).

The justification for the amendments is to clarify rule language, ensure consistency with regulation, and delete language related to due notice. The purpose of due notice was to alert providers that their deficiencies were progressing toward corrective or adverse action. This function is replaced by the new notifications triggered under the Weighted Enforcement System.

The amendment to §745.371 adds language to clarify that only one listing certificate is issued for a single child-care home and the name on the certificate must be the name of the caregiver. This will eliminate the possibility of multiple listing permits being issued to the same address. This rule creates consistency in how DFPS issues listing and registration permits.

The amendment to §745.8447 deletes language related to due notice. The section explains what information is provided to a child-care provider after an inspection or investigation.

The amendment to §745.8449 also deletes language related to due notice. The section explains what action a provider must take when the agency informs the provider of a deficiency after an inspection or investigation has been conducted.

The amendments will function by ensuring that child-care facilities will have a clearer understanding of the rules related to notification of the results of an inspection.

No comments were received regarding adoption of the amendments.

SUBCHAPTER D. APPLICATION PROCESS
DIVISION 8. DUAL AND MULTIPLE PERMITS

40 TAC §745.371

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 28, 2008.

TRD-200805670
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: December 1, 2008
Proposal publication date: August 15, 2008
For further information, please call: (512) 438-3437

♦ ♦ ♦

SUBCHAPTER K. INSPECTIONS AND INVESTIGATIONS
DIVISION 2. NOTIFICATION

40 TAC §745.8447, §745.8449

The amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 28, 2008.

TRD-200805673

Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: December 1, 2008
Proposal publication date: August 15, 2008
For further information, please call: (512) 438-3437

♦ ♦ ♦

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 Review

Credit Union Department

Title 7, Part 6

The Texas Credit Union Commission will review and consider for readoption, revision, or repeal Chapter 97, §§97.101 (Meetings), 97.102 (Delegation of Duties), 97.103 (Recusal or Disqualification of Commission members), 97.105 (Frequency of Examination), 97.107 (Related Entities), 97.113 (Operating Fees), 97.114 (Charges of Public Records), 97.200 (Employee Training Program), 97.205 (Use of Historically Underutilized Businesses), 97.207 (Contracts for Professional or Personal Service) and 97.300 (Gifts of Money or Property) of Title 7, Part 6 of the Texas Administrative Code in preparation for the Commission's Rule Review as required by Section 2001.039, Government Code.

An assessment will be made by the Commission as to whether the reasons for adopting or readopting these rules continue to exist. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Credit Union Department.

Comments or questions regarding these rules may be submitted in writing to, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699, or electronically to info@tcud.state.tx.us. The deadline for comments is December 8, 2008.

The Commission also invites your comments on how to make these rules easier to understand. For example:

* Do the rules organize the material to suit your needs? If not, how could the material be better organized?

* Do the rules clearly state the requirements? If not, how could the rule be more clearly stated?

* Do the rules contain technical language or jargon that isn't clear? If so, what language requires clarification?

* Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand? If so, what changes to the format would make the rule easier to understand?

* Would more (but shorter) sections be better in any of the rules? If so, what sections should be changed?

Any proposed changes to these rules as a result of the rule review will be published in the Proposed Rule section of the *Texas Register*. The proposed rules will be open for public comment prior to final adoption by the Commission.

TRD-200805820

Harold E. Feeney
Commissioner
Credit Union Department
Filed: November 5, 2008

♦ ♦ ♦

Adopted Rule Reviews

Texas Department of Transportation

Title 43, Part 1

The Texas Department of Transportation (department) files notice of the completion of review and the readoption of Title 43 TAC Part 1, Chapter 24, Trans-Texas Corridor, and Chapter 26, Regional Mobility Authorities.

This review and readoption has been conducted in accordance with Government Code, §2001.039. The Texas Transportation Commission (commission) has reviewed these rules and determined that the reasons for adopting them continue to exist. The department received no comments on the proposed rule review, which was published in the September 12, 2008, issue of the *Texas Register* (33 TexReg 7753).

This concludes the review of Chapters 24 and 26.

Questions regarding this rule review may be submitted in writing to Bob Jackson, General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483, or by phone at (512) 463-8630.

TRD-200805755
Bob Jackson
General Counsel
Texas Department of Transportation
Filed: October 31, 2008

♦ ♦ ♦

Texas Water Development Board

Title 31, Part 10

Pursuant to the notice of proposed rule review published in the July 4, 2008, issue of the *Texas Register* (33 TexReg 5351), the Texas Water Development Board (board) has reviewed and considered for readoption, revision, or repeal Title 31, Texas Administrative Code (TAC), Part 10, Chapter 354, Memoranda of Understanding, in accordance with the Texas Government Code §2001.039.

The board considered, among other things, whether the reasons for adoption of these rules continue to exist. No comments were received on the proposed rule review.

As a result of the review, the board determined that the reasons for initially adopting the rules in Chapter 354 continue to exist and readopts the rules. This completes the board's review of 31 TAC Chapter 354, Memoranda of Understanding.

TRD-200805801
Kenneth L. Petersen
General Counsel
Texas Water Development Board
Filed: November 4, 2008

♦ ♦ ♦

Pursuant to the notice of proposed rule review published in the July 13, 2007, issue of the *Texas Register* (32 TexReg 4455), the Texas Water Development Board (board) has reviewed and considered for readoption, revision, or repeal Title 31, Texas Administrative Code (TAC), Part 10, Chapter 359, Water Banking, in accordance with the Texas Government Code §2001.039.

The board considered, among other things, whether the reasons for adoption of these rules continue to exist. No comments were received on the proposed rule review.

As a result of the review, the board determined that the reasons for initially adopting the rules in Chapter 359 continue to exist and readopts the rules. This completes the board's review of 31 TAC Chapter 359, Water Banking.

TRD-200805804
Kenneth L. Petersen
General Counsel
Texas Water Development Board
Filed: November 4, 2008

♦ ♦ ♦

Pursuant to the notice of proposed rule review published in the July 4, 2008, issue of the *Texas Register* (33 TexReg 5351), the Texas Water Development Board (board) has reviewed and considered for readoption, revision, or repeal Title 31, Texas Administrative Code (TAC), Part 10, Chapter 363, Financial Assistance Programs, in accordance with the Texas Government Code §2001.039.

The board considered, among other things, whether the reasons for adoption of these rules continue to exist. No comments were received on the proposed rule review.

As a result of the review, the board determined that the reasons for initially adopting the rules in Chapter 363 continue to exist and readopts the rules. This completes the board's review of 31 TAC Chapter 363, Financial Assistance Programs.

TRD-200805805
Kenneth L. Petersen
General Counsel
Texas Water Development Board
Filed: November 4, 2008

♦ ♦ ♦

Pursuant to the notice of proposed rule review published in the July 4, 2008, issue of the *Texas Register* (33 TexReg 5351), the Texas Water Development Board (board) has reviewed and considered for readoption, revision, or repeal Title 31, Texas Administrative Code (TAC), Part 10, Chapter 364, Model Subdivision Rules, in accordance with the Texas Government Code §2001.039.

The board considered, among other things, whether the reasons for adoption of these rules continue to exist. No comments were received on the proposed rule review.

As a result of the review, the board determined that the reasons for initially adopting the rules in Chapter 364 continue to exist and readopts the rules. This completes the board's review of 31 TAC Chapter 364, Model Subdivision Rules.

TRD-200805806
Kenneth L. Petersen
General Counsel
Texas Water Development Board
Filed: November 4, 2008

♦ ♦ ♦

Pursuant to the notice of proposed rule review published in the July 4, 2008, issue of the *Texas Register* (33 TexReg 5351), the Texas Water Development Board (board) has reviewed and considered for readoption, revision, or repeal Title 31, Texas Administrative Code (TAC), Part 10, Chapter 367, Agricultural Water Conservation Program, in accordance with the Texas Government Code §2001.039.

The board considered, among other things, whether the reasons for adoption of these rules continue to exist. No comments were received on the proposed rule review.

As a result of the review, the board determined that the reasons for initially adopting the rules in Chapter 367 continue to exist and readopts the rules. This completes the board's review of 31 TAC Chapter 367, Agricultural Water Conservation Program.

TRD-200805807
Kenneth L. Petersen
General Counsel
Texas Water Development Board
Filed: November 4, 2008

♦ ♦ ♦

Pursuant to the notice of proposed rule review published in the July 4, 2008, issue of the *Texas Register* (33 TexReg 5352), the Texas Water Development Board (board) has reviewed and considered for readoption, revision, or repeal Title 31, Texas Administrative Code (TAC), Part 10, Chapter 370, Colonia Plumbing Loan Program, in accordance with the Texas Government Code §2001.039.

The board considered, among other things, whether the reasons for adoption of these rules continue to exist. No comments were received on the proposed rule review.

As a result of the review, the board determined that the reasons for initially adopting the rules in Chapter 370 continue to exist and readopts the rules. This completes the board's review of 31 TAC Chapter 370, Colonia Plumbing Loan Program.

TRD-200805808
Kenneth L. Petersen
General Counsel
Texas Water Development Board
Filed: November 4, 2008

♦ ♦ ♦

TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 1 TAC §55.115

CAUSE NUMBER _____

IN THE INTEREST OF	§	IN THE _____
	§	
	§	OF
CHILDREN	§	_____COUNTY, TEXAS

Employer's Motion for Hearing on Applicability of Income Withholding for Support

This Motion is brought by _____, Employer, in accordance with section 158.205 of the Texas Family Code, seeking a hearing on the Income Withholding for Support issued in this case on _____ and delivered to Employer on _____.

Employer should not be required to withhold in accordance with the Income Withholding for Support because:

_____

_____

_____.

Under section 158.205 of the Texas Family Code, hearing on this Motion shall be held within fifteen days following filing of the Motion.

Obligor's employer:
Address:

_____
[Name]
Attorney for **[name]**
State Bar No.:
[Address]
[Telephone]
[Telecopier]

Notice of Hearing

The above Motion is set for hearing on _____ at _____ __. M. in **[designation and location of place of hearing]**.

SIGNED on _____.

_____
Judge or Clerk or Title IV-D Agency Representative

Certificate of Service

I certify that a true copy of the above was served on each attorney of record or party in accordance with the Texas Rules of Civil Procedure on [**date**].

_____

[**Name**]
Attorney for [**name**]

Figure: 1 TAC §55.116(b)

INCOME WITHHOLDING FOR SUPPORT

☐ **ORIGINAL INCOME WITHHOLDING ORDER/NOTICE FOR SUPPORT (IWO)** ☐ **AMENDED IWO**
☐ **ONE-TIME ORDER/NOTICE - LUMP SUM PAYMENT**
☐ **TERMINATION of IWO**

Date: _____

☐ Child Support Enforcement (CSE) Agency ☐Court ☐ Attorney ☐ Private Individual/Entity (Check One)

NOTE: If you receive this document from someone other than a State or Tribal Child Support Enforcement agency or a court, a copy of the underlying order that contains a provision authorizing income withholding must be attached. Or if under State law an attorney in that State, or if under Tribal law a Tribal legal representative, may issue an income withholding order, the attorney or Tribal legal representative must include a copy of the State or Tribal law authorizing the attorney or Tribal legal representative to issue an income withholding order.

State/Tribe/Territory _____ Case Identifier _____
City/County/Dist./Tribe _____ Order Identifier _____
Private Individual/Entity _____

_____ RE: _____
Employer/Income Withholder's Name — Employee/Obligor's Name (Last, First, MI)

_____ _____
Employer/Income Withholder's Address — Employee/Obligor's Social Security Number (if known)

_____ _____
Custodial Party/Obligee's Name (Last, First, MI)

_____
_____
Employer/Income Withholder's Federal EIN

Child's Name (Last, First, MI)	Child's Birth Date

ORDER INFORMATION: This document is based on the support or withholding order from _____.
You are required by law to deduct these amounts from the employee/obligor's income until further notice.
$_____ Per _____ current child support
$_____ Per _____ past-due child support - Arrears greater than 12 weeks? ☐ Yes ☐No
$_____ Per _____ current cash medical support
$_____ Per _____ past-due cash medical support
$_____ Per _____ current spousal support
$_____ Per _____ past-due spousal support
$_____ Per _____ other (must specify) _____.
for a total of $_____ per _____ to be forwarded to the payee below.

AMOUNTS TO WITHHOLD: You do not have to vary your pay cycle to be in compliance with the *Order Information*. If your pay cycle does not match the ordered payment cycle, withhold one of the following amounts:

$_____ per weekly pay period
$_____ per biweekly pay period (every two weeks)
$ _____ per semimonthly pay period (twice a month)
$ _____ per monthly pay period

$_____ **ONE-TIME LUMP SUM PAYMENT Do not stop any existing IWO unless you receive a termination order.**

REMITTANCE INFORMATION: If the employee/obligor's principal place of employment is _____ _____, you must begin withholding no later than the first pay period that occurs _____ days after the date of _____. Send payment within _____ working days of the pay date. If you cannot withhold the full amount of support for any or all orders for this employee/obligor, withhold up to _____% of disposable income for all orders. If the employee/obligor's principal place of employment is not _____, see the ADDITIONAL INFORMATION FOR EMPLOYERS AND OTHER INCOME WITHHOLDERS for limitations on withholding, applicable time requirements and any

Document Tracking Identifier _____ OMB 0970-0154

allowable employer's fees.

For EFT/EDI instructions, contact the EFT/EDI office at the website listed below. **If paying by check, make check payable to:** _____. **Include this *Remittance Identifier* with payment:** _____. **Send check to:** _____

_____

FIPS code (If necessary): _____

Signature (if required by State or Tribal law): _____
Print Name: _____
Title of Issuing Official: _____

☐ If checked, you are required to provide a copy of this form to the employee/obligor. If the employee/obligor works in a State or for a Tribe that is different from the State or Tribe that issued this order, a copy must be provided to the employee/obligor even if the box is not checked.

ADDITIONAL INFORMATION FOR EMPLOYERS AND OTHER INCOME WITHHOLDERS

State-specific information may be viewed on the OCSE Employer Services website located at:
http://www.acf.hhs.gov/programs/cse/newhire/employer/contacts/contacts.htm

Priority: Withholding for support has priority over any other legal process under State law (or Tribal law if applicable) against the same income. If a Federal tax levy is in effect, please notify the contact person listed below.

Combining Payments: You may combine withheld amounts from more than one employee/obligor's income in a single payment to each agency/party requesting withholding. You must, however, separately identify the portion of the single payment that is attributable to each employee/obligor.

Reporting the Pay Date: You must report the pay date when sending the payment. The pay date is the date on which the amount was withheld from the employee/obligor's wages. You must comply with the law of the State (or Tribal law if applicable) of the employee/obligor's principal place of employment with respect to the time periods within which you must implement the withholding and forward the support payments.

Employee/Obligor with Multiple Support Withholdings: If there is more than one Order/Notice against this employee/obligor and you are unable to fully honor all support Orders/Notices due to federal, State, or Tribal withholding limits, you must follow the State or Tribal law/procedure of the employee/obligor's principal place of employment. You must honor all Orders/Notices to the greatest extent possible, giving priority to current support before payment of any past-due support.

Lump Sum Payments: You may be required to report and withhold from lump sum payments such as bonuses, commissions, or severance pay. Contact the agency or person listed below to determine if you are required to withhold or if you have any questions about lump sum payments.

Liability: If you have any doubts about the validity of the Order/Notice, contact the agency or person listed below. If you fail to withhold income as the Order/Notice directs, you are liable for both the accumulated amount you should have withheld from the employee/obligor's income and any other penalties set by State or Tribal law/procedure.

_____

_____

Anti-discrimination: You are subject to a fine determined under State or Tribal law for discharging an employee/obligor from employment, refusing to employ, or taking disciplinary action against an employee/obligor because of a child support withholding. _____

_____

Withholding Limits: You may not withhold more than the lesser of: 1) the amounts allowed by the Federal Consumer Credit Protection Act (CCPA) (15 U.S.C. 1673(b)); or 2) the amounts allowed by the State or Tribe of the employee/obligor's principal place of employment. Disposable income is the net income left after making mandatory deductions such as: State, Federal, local taxes, Social Security taxes, statutory pension contributions and Medicare taxes. The Federal limit is 50% of the disposable income if the obligor is supporting another family and 60% of the disposable income if the obligor is not supporting another family. However, that 50% limit is increased to 55% and that 60% limit is increased to 65% if the arrears are greater than 12 weeks. If permitted by the State, you may deduct a fee for administrative costs. The support amount and the fee may not exceed the limit indicated in this section.

OMB Expiration Date – 10/31/2010. The OMB Expiration Date has no bearing on the termination date or validity of the income withholding order; it identifies the version of the form currently in use.

Employee/Obligor's Name: _____ Case Identifier: _____
Order Identifier: _____ Employer's Name: _____

Arrears greater than 12 weeks? If the *Order Information* does not indicate whether the arrears are greater than 12 weeks, then the employer should calculate the CCPA limit using the lower percentage.

For Tribal orders, you may not withhold more than the amounts allowed under the law of the issuing Tribe. For Tribal employers who receive a State order, you may not withhold more than the lesser of the limit set by the law of the jurisdiction in which the employer is located or the maximum amount permitted under section 303(d) of the CCPA (15 U.S.C. 1673 (b)).

Depending upon applicable State law, you may need to take into consideration the amounts paid for health care premiums in determining disposable income and applying appropriate withholding limits.

Additional Information:

_____
_____
_____

NOTIFICATION OF TERMINATION OF EMPLOYMENT: You must promptly notify the Child Support Enforcement agency and/or the person listed below by returning this form to the correspondence address if:

☐ This person has never worked for this employer.

☐ This person no longer works for this employer.

Please provide the following information for the terminated employee:

Termination date: _____ Last known phone number: _____

Last known home address: _____
_____
_____

Date final payment made to the State Disbursement Unit or Tribal CSE agency: _____

Final payment amount: _____ New employer's name: _____
_____

New employer's address:
_____
_____

CONTACT INFORMATION
To employer: If the employer/income withholder has any questions, contact _____
_____ by phone at _____, by fax at _____, by email or website at:
_____.

Send termination notice and other correspondence to:
_____
_____

To employee/obligor: If the employee/obligor has questions, contact _____
_____ by phone at _____, by fax_____, by email or website at
_____

IMPORTANT: The person completing this form is advised that the information may be shared with the employee/obligor.

Figure: 1 TAC §55.117

CAUSE NUMBER _____

IN THE INTEREST OF	§	IN THE _____ JUDICIAL COURT
	§	
	§	OF
CHILDREN	§	_____ COUNTY, TEXAS

REQUEST FOR ISSUANCE OF INCOME WITHHOLDING FOR SUPPORT

TO THE CLERK OF THE COURT:

_____, pursuant to Texas Family Code Chapter 158, requests that you issue a certified copy of the **INCOME WITHHOLDING FOR SUPPORT**, concerning _____, Obligor, signed by the Court on _____, _____, to this employer:

EMPLOYER NAME
Attention:
Address
City, State, Zip

Fax:
New Employer Information:

_____
_____
_____
_____

CLERK'S CERTIFICATE OF NOTICE TO EMPLOYER

Pursuant to Texas Family Code Chapter 158, a certified copy of the INCOME WITHHOLDING FOR SUPPORT, signed by the Court on _____ was mailed on this date to the above-named employer.

Signed this _____ day of _____, _____.
District Clerk of _____ County, Texas

By:_____, Deputy
Certified Mail No:_____ (Return Receipt Requested)

Figure: 1 TAC §55.118

INCOME WITHHOLDING FOR SUPPORT

☐ **ORIGINAL INCOME WITHHOLDING ORDER/NOTICE FOR SUPPORT (IWO)** ☐ **AMENDED IWO**
☐ **ONE-TIME ORDER/NOTICE - LUMP SUM PAYMENT**
☐ **TERMINATION of IWO**

Date: _____

☐ Child Support Enforcement (CSE) Agency ☐Court ☐ Attorney ☐ Private Individual/Entity (Check One)

NOTE: If you receive this document from someone other than a State or Tribal Child Support Enforcement agency or a court, a copy of the underlying order that contains a provision authorizing income withholding must be attached. Or if under State law an attorney in that State, or if under Tribal law a Tribal legal representative, may issue an income withholding order, the attorney or Tribal legal representative must include a copy of the State or Tribal law authorizing the attorney or Tribal legal representative to issue an income withholding order.

State/Tribe/Territory _____ Case Identifier _____
City/County/Dist./Tribe _____ Order Identifier _____
Private Individual/Entity _____

_____ RE: _____
Employer/Income Withholder's Name — Employee/Obligor's Name (Last, First, MI)

_____ _____
Employer/Income Withholder's Address — Employee/Obligor's Social Security Number (if known)

_____ _____
Custodial Party/Obligee's Name (Last, First, MI)

_____

_____
Employer/Income Withholder's Federal EIN

Child's Name (Last, First, MI)	Child's Birth Date

ORDER INFORMATION: This document is based on the support or withholding order from _____.
You are required by law to deduct these amounts from the employee/obligor's income until further notice.
$_____ Per _____ current child support
$_____ Per _____ past-due child support - Arrears greater than 12 weeks? ☐ Yes ☐No
$_____ Per _____ current cash medical support
$_____ Per _____ past-due cash medical support
$_____ Per _____ current spousal support
$_____ Per _____ past-due spousal support
$_____ Per _____ other (must specify) _____.
for a total of $_____ per _____ to be forwarded to the payee below.

AMOUNTS TO WITHHOLD: You do not have to vary your pay cycle to be in compliance with the *Order Information*. If your pay cycle does not match the ordered payment cycle, withhold one of the following amounts:

$_____ per weekly pay period
$_____ per biweekly pay period (every two weeks)
$ _____ per semimonthly pay period (twice a month)
$ _____ per monthly pay period

$_____ **ONE-TIME LUMP SUM PAYMENT Do not stop any existing IWO unless you receive a termination order.**

REMITTANCE INFORMATION: If the employee/obligor's principal place of employment is _____ _____, you must begin withholding no later than the first pay period that occurs _____ days after the date of _____. Send payment within _____ working days of the pay date. If you cannot withhold the full amount of support for any or all orders for this employee/obligor, withhold up to _____% of disposable income for all orders. If the employee/obligor's principal place of employment is not _____, see the ADDITIONAL INFORMATION FOR EMPLOYERS AND OTHER INCOME WITHHOLDERS for limitations on withholding, applicable time requirements and any

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allowable employer's fees.

For EFT/EDI instructions, contact the EFT/EDI office at the website listed below. **If paying by check, make check payable to:** _____. **Include this *Remittance Identifier* with payment:** _____. **Send check to:** _____

_____

FIPS code (If necessary): _____

Signature (if required by State or Tribal law): _____
Print Name: _____
Title of Issuing Official: _____

☐ If checked, you are required to provide a copy of this form to the employee/obligor. If the employee/obligor works in a State or for a Tribe that is different from the State or Tribe that issued this order, a copy must be provided to the employee/obligor even if the box is not checked.

ADDITIONAL INFORMATION FOR EMPLOYERS AND OTHER INCOME WITHHOLDERS

State-specific information may be viewed on the OCSE Employer Services website located at:
http://www.acf.hhs.gov/programs/cse/newhire/employer/contacts/contacts.htm

Priority: Withholding for support has priority over any other legal process under State law (or Tribal law if applicable) against the same income. If a Federal tax levy is in effect, please notify the contact person listed below.

Combining Payments: You may combine withheld amounts from more than one employee/obligor's income in a single payment to each agency/party requesting withholding. You must, however, separately identify the portion of the single payment that is attributable to each employee/obligor.

Reporting the Pay Date: You must report the pay date when sending the payment. The pay date is the date on which the amount was withheld from the employee/obligor's wages. You must comply with the law of the State (or Tribal law if applicable) of the employee/obligor's principal place of employment with respect to the time periods within which you must implement the withholding and forward the support payments.

Employee/Obligor with Multiple Support Withholdings: If there is more than one Order/Notice against this employee/obligor and you are unable to fully honor all support Orders/Notices due to federal, State, or Tribal withholding limits, you must follow the State or Tribal law/procedure of the employee/obligor's principal place of employment. You must honor all Orders/Notices to the greatest extent possible, giving priority to current support before payment of any past-due support.

Lump Sum Payments: You may be required to report and withhold from lump sum payments such as bonuses, commissions, or severance pay. Contact the agency or person listed below to determine if you are required to withhold or if you have any questions about lump sum payments.

Liability: If you have any doubts about the validity of the Order/Notice, contact the agency or person listed below. If you fail to withhold income as the Order/Notice directs, you are liable for both the accumulated amount you should have withheld from the employee/obligor's income and any other penalties set by State or Tribal law/procedure.

_____

_____

Anti-discrimination: You are subject to a fine determined under State or Tribal law for discharging an employee/obligor from employment, refusing to employ, or taking disciplinary action against an employee/obligor because of a child support withholding. _____

_____

Withholding Limits: You may not withhold more than the lesser of: 1) the amounts allowed by the Federal Consumer Credit Protection Act (CCPA) (15 U.S.C. 1673(b)); or 2) the amounts allowed by the State or Tribe of the employee/obligor's principal place of employment. Disposable income is the net income left after making mandatory deductions such as: State, Federal, local taxes, Social Security taxes, statutory pension contributions and Medicare taxes. The Federal limit is 50% of the disposable income if the obligor is supporting another family and 60% of the disposable income if the obligor is not supporting another family. However, that 50% limit is increased to 55% and that 60% limit is increased to 65% if the arrears are greater than 12 weeks. If permitted by the State, you may deduct a fee for administrative costs. The support amount and the fee may not exceed the limit indicated in this section.

OMB Expiration Date – 10/31/2010. The OMB Expiration Date has no bearing on the termination date or validity of the income withholding order; it identifies the version of the form currently in use.

Employee/Obligor's Name: _____ Case Identifier: _____
Order Identifier: _____ Employer's Name: _____

Arrears greater than 12 weeks? If the *Order Information* does not indicate whether the arrears are greater than 12 weeks, then the employer should calculate the CCPA limit using the lower percentage.

For Tribal orders, you may not withhold more than the amounts allowed under the law of the issuing Tribe. For Tribal employers who receive a State order, you may not withhold more than the lesser of the limit set by the law of the jurisdiction in which the employer is located or the maximum amount permitted under section 303(d) of the CCPA (15 U.S.C. 1673 (b)).

Depending upon applicable State law, you may need to take into consideration the amounts paid for health care premiums in determining disposable income and applying appropriate withholding limits.

Additional Information:

_____
_____
_____

NOTIFICATION OF TERMINATION OF EMPLOYMENT: You must promptly notify the Child Support Enforcement agency and/or the person listed below by returning this form to the correspondence address if:

☐ This person has never worked for this employer.

☐ This person no longer works for this employer.

Please provide the following information for the terminated employee:

Termination date: _____ Last known phone number: _____

Last known home address: _____
_____
_____

Date final payment made to the State Disbursement Unit or Tribal CSE agency: _____

Final payment amount: _____ New employer's name: _____
_____

New employer's address:
_____
_____

CONTACT INFORMATION
To employer: If the employer/income withholder has any questions, contact _____
_____ by phone at _____, by fax at _____, by email or website at:
_____.

Send termination notice and other correspondence to:
_____
_____

To employee/obligor: If the employee/obligor has questions, contact _____
_____ by phone at _____, by fax_____, by email or website at
_____

IMPORTANT: The person completing this form is advised that the information may be shared with the employee/obligor.

Figure: 1 TAC §55.119(a)

Notice of Child Support Lien

TO:
(Name/Address of recorder or asset holder)

OBLIGOR:
(Name, Address/DOB, SSN)

FROM:
(IV-D Agency /Claimant)

OBLIGEE:

IV-D Case Number:

This lien results from a child support order, entered on _____ by _____ *Judicial Court,* _____ *COUNTY, TEXAS* in tribunal number _____.

As of _____, the obligor owes unpaid support in the amount of $ _____. This judgment may be subject to interest.

Prospective amounts of child support, not paid when due, are judgments that are added to the lien amount. This lien attaches to all non-exempt real and/or personal property of the above-named obligor which is located or existing within the State/county of filing, including any property specifically described below.

Specific description of property:

All aspects of this lien, including its priority and enforcement, are governed by the law of the State where the property is located. An Obligor must follow the laws and procedures of the State where the property is located or recorded. An obligor may also contact the entity sending the lien. This lien remains in effect until released or withdrawn by the obligee or in accordance with the laws of the State where the property is located.

As an authorized agent of a State or Tribal, or subdivision of a State or Tribal, agency responsible for implementing the child support enforcement program set forth in Title IV, Part D, of the Federal Social Security Act (42 U.S.C. 651 et seq.), I have authority to file this child support lien in any State, or U.S. Territory. For additional information regarding this lien, including the pay-off amount, please contact the authorized agency and reference its case number, both listed above.

_____ _____

Date Authorized Agent

_____

Print Name, e-mail address, phone and fax number

Notice: Respondents are not required to respond to this information collection unless it displays a valid OMB control number. The average burden for responding to this information collection is estimated at 30 minutes. If you believe this estimate is inaccurate, or if you have ideas to reduce this burden, please provide comment to the issuing agency.

OMB Control #: 0970-0153 Expiration Date: 02/28/2011

Figure: 16 TAC §402.205(o)

If	Then
Bingo Cards/Paper	Organization transferring from, organization transferring to, series number, serial number, #on/#up, total number of sets/sheets transferred, signature of an officer, director or the primary operator.
Bingo Equipment	Organization transferring from, organization transferring to, equipment type, manufacturer, model and/or serial number, signature of an officer, director or the primary operator.
Instant Bingo Tickets	Organization transferring from, organization transferring to, form number, name of game, series number, total number of instant bingo tickets transferred, signature of an officer, director or the primary operator.

Figure: 16 TAC §402.442(b)(5)

If the licensed commercial lessor:	Then submit:
License has been in effect since June 10, 1989.	No additional forms.
Is a licensed authorized organization that leases a location but will not have total control and exclusive use of the leased location and will not be leasing the location to another organization.	A Certification of Offer to Lease form prescribed by the Commission.
Is an association of licensed authorized organizations that jointly own or lease a location and lease only to the association members.	A Certification of Association Offer to Lease form prescribed by the Commission.
Leases the location to a single licensed authorized organization that subleases.	No additional forms.
Leases the location for the total control and exclusive use of only one licensed authorized organization as that organization's primary business office.	Certification of Total Control and Exclusive Use form prescribed by the Commission.

Figure: 25 TAC §140.509(d)(2)

TYPE OF LIMITED CERTIFICATE	CLINICAL INSTRUCTION (# OF CLOCK HOURS)	CLINICAL EXPERIENCE (# OF CLOCK HOURS)
Skull	50	100
Chest	6	100
Spine	25	100
Extremities	30	100
Chiropractic	60	100
Podiatric	4	50

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 State Affordable Housing Corporation

Notice of Funding Availability

The Texas State Affordable Housing Corporation hereby gives Notice of Funding Availability (NOFA) for a Hurricane Relief cycle of the Texas Foundations Fund. Funding availability for the Texas Foundations Fund - Hurricane Relief is $250,000, up to $50,000 per grant. The Texas State Affordable Housing Corporation has now posted the Notice of Funding Availability on its website: www.tsahc.org. Eligible grant applicants are nonprofit organizations and rural government entities located in cities with a population less than 50,000 or counties with a population less than 100,000, not located in a federal Metropolitan Statistical Area, as of the last census. Specifically, the following Texas counties are eligible: Cameron, Hidalgo, and Willacy (Hurricane Dolly) and Angelina, Austin, Brazoria, Chambers, Cherokee, Fort Bend, Galveston, Grimes, Hardin, Harris, Houston, Jasper, Jefferson, Liberty, Madison, Matagorda, Montgomery, Nacogdoches, Newton, Orange, Polk, Sabine, San Augustine, San Jacinto, Trinity, Tyler, Walker, Waller, and Washington (Hurricane Ike). Grant awards will be made for the purpose of Rehabilitation and/or Critical Repair of owner-occupied single family homes (excluding mobile homes) located in any one or more counties affected by Hurricanes Ike and Dolly, as identified in Federal Emergency Management Agencies disaster declarations FEMA-1791-DR, Texas and FEMA-1780-DR, Texas, which are owned by individuals or families at 50 percent or below of the area median family income (the "Eligible Hurricane Relief Projects").

For this Hurricane Relief Cycle only, the review and selection of proposals has been expedited. Proposals may be submitted to the Corporation as soon as they are complete. The Corporation staff will review each proposal to ensure that all Threshold requirements have been met and, if so determined, the staff will forward the Proposal to the Advisory Council of the Texas Foundations Fund. The Advisory Council will review the proposals and make recommendations. Because of the urgent need and serious health and safety issues that resulted from Hurricanes Ike and Dolly, the Board of Directors has given the President of the Corporation the authority to make award selections.

Questions should be submitted in writing to Katherine Closmann by email at kclosmann@tsahc.org. To view the Texas Foundations Fund Guidelines, the full NOFA, and the Proposal Checklist, please go to www.tsahc.org.

TRD-200805793
David Long
President
Texas State Affordable Housing Corporation
Filed: November 3, 2008

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Texas Department of Agriculture

Notice of Public Meeting: Texas Capital Fund Rule Amendments

The Texas Department of Agriculture (department) will hold a public meeting to take public comments on proposed amendments to the Texas Capital Fund Program rules for the Downtown Revitalization and Main Street Improvement programs, Title 10, Part 1, §255.7, as submitted by the Office of Rural Community Affairs for publication in the November 14, 2008, issue of the *Texas Register*. The Texas Capital Fund Program is administered by the department.

The hearing will be held on Wednesday, November 19, 2008, beginning at 9:00 a.m. in Room E2.010 of the Texas State Capitol Building, 1100 Congress Ave., Austin, Texas.

For more information, please contact Karl Young, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, (512) 936-0281.

TRD-200805826
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Filed: November 5, 2008

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Office of the Attorney General

Notice of Settlement of a Texas Water Code Enforcement Action

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Water Code. Before the State may settle a judicial enforcement action, pursuant to the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act.

Case Title and Court: Settlement Agreement in *State of Texas v. F.C. Smien and Carol Faye Smien;* Cause No. D1-GV-07001277; Travis County District Court

Background: This suit alleges violations of rules promulgated under the Texas Water Code relating to an underground storage tank system in Killeen, Texas. The Defendants are F.C. Smien and Carol Faye Smien. The suit seeks injunctive relief, civil penalties, attorney's fees, unpaid underground storage tank fees, and court costs.

Nature of Settlement: The settlement awards $1,156.00 in civil penalties and $5,844.00 in attorney's fees to the State.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgments, and written comments on the proposed settlement should be directed to Vanessa Puig-Williams, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0052. Written comments must be received within 30 days of publication of this notice to be considered.

For more information regarding this publication, contact Cindy Hodges, Agency Liaison, at (512) 936-1841.

TRD-200805780

Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: November 3, 2008

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Notice of Settlement of a Texas Water Code Enforcement Action

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under Texas Water Code §7.110. Before the State may settle a judicial enforcement action under Chapter 7 of the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code.

Case Title and Court: *State of Texas v. Morgan Oil Company, Inc., Cause No. GV -06002022,* In the 353rd Judicial District, Travis County, Texas.

Nature of Defendant's Operations: Defendant Morgan Oil Company, Inc., owned and operated a wholesale bulk gasoline plant in Lufkin, Angelina County, Texas ("Facility"). TCEQ inspected the Facility on May 4, 2004 and observed violations that the defendant failed to permanently remove the existing UST, failed to install vapor control equipment, and failed to immediately abate and contain a hydrocarbon spill at the Facility. These documented violations were in violation of the Texas Health and Safety Code §382.085(b) (2004) and the Texas Water Code §§26.039(b) and 26.266(a) (2004) and 30 Tex. Admin Code §§334.47(a)(2), 115.212(b)(2), 115.217(b)(3)(B)(i), and 327.5(a) (2004). In 2005, Morgan Oil entered into an agreed administrative order to remedy those violations.

Proposed Agreed Judgment: The proposed agreed judgment contains civil penalties and attorney's fees. In the proposed settlement, Defendants agree to pay a civil penalty of $12,000. The proposed judgment awards attorney's fees of $12,000 to the State.

For a complete description of the proposed settlement, the complete proposed Amended Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement should be directed to Laura E. Miles-Valdez, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0052. Written comments must be received within 30 days of publication of this notice to be considered.

For more information regarding this publication, contact Cindy Hodges, Agency Liaison, at (512) 936-1841.

TRD-200805786
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: November 3, 2008

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **December 15, 2008**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on December 15, 2008**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: ALBERTSON'S LLC dba Albertsons Express 4209; DOCKET NUMBER: 2008-1200-PST-E; IDENTIFIER: RN102024726; LOCATION: San Angelo, Tom Green County; TYPE OF FACILITY: grocery store with retail sales of gasoline; RULE VIOLATED: 30 Texas Administrative Code (TAC) §334.8(c)(5)(A)(iii), by failing to ensure that a valid, current delivery certificate was posted in a location where it is clearly visible; 30 TAC §334.50(b)(2)(A)(i)(III) and the Code, §26.3475(a), by failing to ensure the line leak detectors were properly calibrated and maintained; and 30 TAC §334.50(d)(1)(B)(ii) and the Code, §26.3475(c)(1), by failing to conduct reconciliation of detailed inventory control records; PENALTY: $6,375; ENFORCEMENT COORDINATOR: Steven Lopez, (512) 239-1896; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(2) COMPANY: City of Alvarado; DOCKET NUMBER: 2007-1903-MLM-E; IDENTIFIER: RN101394385 and RN101917334; LOCATION: Alvarado, Johnson County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System (TPDES) Permit Number 10567001, Effluent Limitations and Monitoring Requirements Number 1, Agreed Order Docket Number 2006-0542-MWD-E, Ordering Provision 3, and the Code, §26.121(a), by failing to comply with the permitted limits for ammonia-nitrogen; 30 TAC §305.125(1) and TPDES Permit Number 10567001, Monitoring and Reporting Requirements Number 5, by failing to properly calibrate the flow measuring equipment; 30 TAC §317.4(a)(8), by failing to provide a backflow prevention assembly device; 30 TAC §317.4(i) and TPDES Permit Number 10567001, Operational Requirements Number 1, by failing to properly maintain the water treatment facility's storage pond; 30 TAC §305.125(11) and TPDES Permit Number 10567001, Operational Requirements Number 1, by failing to maintain process control records for the wastewater treatment facility and have those records readily available for review by commission personnel; 30 TAC §290.45(b)(1)(D)(i), Agreed Order Docket Number 2006-0404-MLM-E, Ordering Provision 2.c.i., and Texas Health and Safety Code (THSC), §341.0315(c), by fail-

ing to provide two or more wells with a minimum total well capacity of 0.6 gallons per minute (gpm); 30 TAC §290.41(c)(3)(B) and Agreed Order Docket Number 2006-0404-MLM-E, Ordering Provision 2.a.i., by failing to provide a well casing on well number five; 30 TAC §290.45(b)(1)(D)(iii), Agreed Order Docket Number 2006-0404-MLM-E, Ordering Provision 2.c.ii, and THSC, §341.0315(c), by failing to provide two or more service pumps with a total service pump capacity of two gpm per connection; 30 TAC §290.41(c)(3)(K), by failing to cover the well casing vent on well number one with a 16-mesh or finer corrosion-resistant screen; 30 TAC §290.41(c)(3)(K), by failing to seal the wellhead on well number two with a gasket or a pliable, crack-resistant caulking compound; 30 TAC §290.41(c)(3)(J), by failing to provide a concrete sealing block on well number four that extend a minimum of three feet from the well casing in all directions; 30 TAC §290.42(l), by failing to compile a thorough and up-to-date plant operations manual; 30 TAC §290.43(e), by failing to maintain intruder-resistant fences and lockable gates surrounding well number one and pump station number four; 30 TAC §290.46(f)(3)(D), by failing to maintain records of the results of the water system's annual inspections of its two storage tanks; 30 TAC §290.46(m), by failing to maintain the good working condition and general appearance of the system's facilities and equipment; 30 TAC §290.46(u), by failing to plug an abandoned well with cement or return the well to a non-deteriorated condition; and 30 TAC §290.121(b), by failing to maintain a comprehensive and up-to-date monitoring plan; PENALTY: $54,900; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Ameron International Corporation; DOCKET NUMBER: 2008-1056-AIR-E; IDENTIFIER: RN100678440; LOCATION: Burkburnett, Wichita County; TYPE OF FACILITY: fiberglass pipe and fittings manufacturing plant; RULE VIOLATED: 30 TAC §§113.1060, 116.115(c), and 122.143(4), 40 Code of Federal Regulations (CFR) §63.5905(a), New Source Review (NSR) Permit Number 1967B, Special Condition (SC) Number 8H, Title V Site Operating Permit (SOP) Number O-02908, Special Terms and Conditions (STC) Numbers 5 and 6, and THSC, §382.085(b), by failing to submit the 40 CFR Part 63 Subpart WWWW compliance status notification; 30 TAC §§113.1060, 116.115(c), and 122.143(4), 40 CFR §63.5910(b), NSR Permit Number 1967B, SC Number 8H, Title V SOP Number O-02908, STC Numbers 5 and 6, and THSC, §382.085(b), by failing to submit the 40 CFR Part 63 Subpart WWWW semi-annual compliance reports; and 30 TAC §122.145(2)(C) and THSC, §382.085(b), by failing to submit semi-annual deviation reports; PENALTY: $19,500; Supplemental Environmental Project (SEP) offset amount of $7,800 applied to Texas Parent Teacher Association (PTA) - Clean School Bus Program; ENFORCEMENT COORDINATOR: Bryan Elliott, (512) 239-6162; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(4) COMPANY: Arrowhead Shores Home Owners Association; DOCKET NUMBER: 2008-0982-MLM-E; IDENTIFIER: RN105453781; LOCATION: Granbury, Hood County; TYPE OF FACILITY: unauthorized disposal site; RULE VIOLATED: 30 TAC §111.201 and §330.15(c) and THSC, §382.085(b), by failing to comply with the general prohibition on outdoor burning and to prevent the unauthorized disposal of municipal solid waste; PENALTY: $1,050; ENFORCEMENT COORDINATOR: Clinton Sims, (512) 239-6933; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: Atlas Roofing Corporation; DOCKET NUMBER: 2008-1411-AIR-E; IDENTIFIER: RN101633287; LOCATION: Daingerfield, Morris County; TYPE OF FACILITY: asphalt felts and coatings plant; RULE VIOLATED: 30 TAC §122.143(4) and §122.146(2), Federal Operating Permit (FOP) Number O-02303, General Terms and Conditions (GTC), and THSC, §382.085(b), by failing to submit an annual compliance certification; and 30 TAC §122.143(4) and §122.145(2)(C), FOP Number O-02303, GTC, and THSC, §382.085(b), by failing to submit a semi-annual deviation report; PENALTY: $4,850; ENFORCEMENT COORDINATOR: James Nolan, (512) 239-6634; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(6) COMPANY: Jack Vanover and Rhonda Vanover dba Casey Homes Estate Public Water Supply; DOCKET NUMBER: 2008-0966-PWS-E; IDENTIFIER: RN102679305; LOCATION: Lubbock County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 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 by failing to submit a copy of the annual CCR and certification that the CCR has been distributed to the customers of the water system and that the information in the CCR is correct and consistent with compliance monitoring data; and 30 TAC §290.51(a)(6), by failing to pay all annual and late public health service fees; PENALTY: $1,850; ENFORCEMENT COORDINATOR: Stephen Thompson, (512) 239-2558; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(7) COMPANY: Hyon Walk dba Chantz Cleaners; DOCKET NUMBER: 2008-1195-DCL-E; IDENTIFIER: RN105010417; LOCATION: Killeen, Bell County; TYPE OF FACILITY: dry cleaning drop station; RULE VIOLATED: 30 TAC §337.10(a) and TCEQ Agreed Order Docket Number 2006-1464-DCL-E, Ordering Provisions 2.a and 2.b, by failing to obtain a current registration; PENALTY: $1,535; ENFORCEMENT COORDINATOR: Danielle Porras, (512) 239-2602; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(8) COMPANY: Equistar Chemicals, LP; DOCKET NUMBER: 2008-0530-AIR-E; IDENTIFIER: RN100210319; LOCATION: La Porte, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §116.115(c), Air Permit Numbers 4477 and 18978, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; 30 TAC §101.201(b)(1)(H) and THSC, §382.085(b), by failing to properly report Incident Number 103461; and 30 TAC §116.115(c), Air Permit Number 18978, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $52,038; SEP offset amount of $20,815 applied to Harris County Public Health and Environmental Services-Pollution Control Division's Fourier Transform Intra Red Project; ENFORCEMENT COORDINATOR: Rebecca Johnson, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(9) COMPANY: ExxonMobil Oil Corporation; DOCKET NUMBER: 2008-1231-AIR-E; IDENTIFIER: RN100542844; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: chemical plant; RULE VIOLATED: 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4), Permit Number 7799/PSD-TX-860, SC Number 1, FOP Number O-01173, SC Number 20, GTC, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $8,100; SEP offset amount of $3,240 applied to Texas Association of Resource Conservation and Development Areas, Inc. - Clean School Buses; ENFORCEMENT COORDINATOR: John Muennink, (361) 825-3100; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(10) COMPANY: Fleetwood Travel Trailers of Texas, Inc.; DOCKET NUMBER: 2008-0858-AIR-E; IDENTIFIER: RN102306180; LOCATION: Longview, Gregg County; TYPE OF FACILITY: manufactur-

ing plant; RULE VIOLATED: 30 TAC §§122.143(4), 122.145(2)(B) and (C), and 122.146(1) and (2), FOP Number O-02598, and THSC, §382.085(b), by failing to timely complete and submit three annual permit compliance certifications; PENALTY: $10,250; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(11) COMPANY: GM TRUCKS & EQUIPMENT, INC.; DOCKET NUMBER: 2008-0954-WQ-E; IDENTIFIER: RN103858825; LOCATION: Laredo, Webb County; TYPE OF FACILITY: automobile salvage yard; RULE VIOLATED: 30 TAC §281.25(a)(4), 40 CFR §122.26(c), and the Code, §26.121(a), by failing to maintain authorization to discharge storm water associated with industrial activities; PENALTY: $16,560; ENFORCEMENT COORDINATOR: Steve Villatoro, (512) 239-4930; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (946) 425-6010.

(12) COMPANY: Holly Energy Partners - Operating, L.P.; DOCKET NUMBER: 2008-1011-AIR-E; IDENTIFIER: RN101049195; LOCATION: El Paso, El Paso County; TYPE OF FACILITY: petroleum bulk station and distribution terminal; RULE VIOLATED: 30 TAC §115.252(2) and THSC, §382.085(b), by failing to comply with the maximum Reid vapor pressure limit of seven pounds per square inch absolute for gasoline; PENALTY: $2,700; SEP offset amount of $1,080 applied to Texas PTA - Clean School Bus Program; ENFORCEMENT COORDINATOR: Jeremy Escobar, (512) 239-1460; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(13) COMPANY: LDH Energy Mont Belvieu L.P.; DOCKET NUMBER: 2008-1272-AIR-E; IDENTIFIER: RN102575925; LOCATION: Chambers County; TYPE OF FACILITY: storage terminal with truck and rail car loading operations; RULE VIOLATED: 30 TAC §106.261(a)(2) and (3) and THSC, §382.085(b), by failing to prevent unauthorized emissions; and 30 TAC §101.201(b)(1) and THSC, §382.085(b), by failing to identify all individually listed compounds or mixture of air contaminants and include the preconstruction authorization number in the final report; PENALTY: $850; ENFORCEMENT COORDINATOR: Tom Jecha, (512) 239-2576; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(14) COMPANY: Ramon Martinez, Jr.; DOCKET NUMBER: 2008-0744-PST-E; IDENTIFIER: RN104777552; LOCATION: Encinal, La Salle County; TYPE OF FACILITY: property; RULE VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed implementation date, two underground storage tanks (USTs); 30 TAC §334.54(d)(2), by failing to empty the USTs no less than 2.5 centimeters of petroleum product; and 30 TAC §334.54(b)(2), by failing to maintain all piping, pumps, manways, tank access points, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism; PENALTY: $5,250; ENFORCEMENT COORDINATOR: Steven Lopez, (512) 239-1896; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(15) COMPANY: Methodist Hospital, Plainview, Texas dba Covenant Hospital Plainview; DOCKET NUMBER: 2008-1078-PST-E; IDENTIFIER: RN101745941; LOCATION: Plainview, Hale County; TYPE OF FACILITY: facility with one UST; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued UST delivery certificate; 30 TAC §334.8(c)(5)(A)(i) and the Code, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate; and 30 TAC §334.50(b)(2) and the Code, §26.3475(a), by failing to provide proper release detection; PENALTY: $3,375; ENFORCEMENT COORDINATOR: Wallace Myers, (512) 239-6580; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(16) COMPANY: National Oilwell Varco, L.P.; DOCKET NUMBER: 2008-1084-AIR-E; IDENTIFIER: RN100215268; LOCATION: Houston, Harris County; TYPE OF FACILITY: surface coating plant; RULE VIOLATED: 30 TAC §116.115(c) and §122.143(4), Air Permit Number 7171, SC Number 12, and THSC, §382.085(b), by failing to calibrate the regenerative thermal oxidizer temperature monitor at least annually; PENALTY: $1,140; ENFORCEMENT COORDINATOR: Kirk Schoppe, (512) 239-0489; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(17) COMPANY: Shell Pipeline Company LP; DOCKET NUMBER: 2008-1111-AIR-E; IDENTIFIER: RN102027174; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: petroleum storage plant; RULE VIOLATED: 30 TAC §122.143(4) and §122.145(2)(B), FOP Number O-2733, GTC and SC Number 1A, and THSC, §382.085(b), by failing to submit a deviation report; PENALTY: $2,400; SEP offset amount of $960 applied to South East Texas Regional Planning Commission - West Port Arthur Home Energy Efficiency Program; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3500; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(18) COMPANY: SWH Realty, Ltd.; DOCKET NUMBER: 2008-1215-PST-E; IDENTIFIER: RN100815216; LOCATION: El Paso, El Paso County; TYPE OF FACILITY: long-term health care; RULE VIOLATED: 30 TAC §334.7(d)(3), by failing to provide an amended registration for any change or additional information regarding the USTs; 30 TAC §334.8(c)(4)(C) and (5)(B)(ii), by failing to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form; 30 TAC §334.8(c)(5)(A)(i) and the Code, §26.3467(a), by failing to make available to the common carrier a valid, current TCEQ delivery certificate; 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; 30 TAC §334.49(c)(2)(C) and the Code, §26.3475(d), by failing to inspect the impressed current cathodic protection system; 30 TAC §334.49(c)(4) and the Code, §26.3475(d), by failing to have the cathodic protection system inspected and tested for operability and adequacy of protection; and 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor the UST for releases; PENALTY: $8,450; ENFORCEMENT COORDINATOR: Tom Greimel, (512) 239-5690; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(19) COMPANY: Texas Stop N Shine, Inc.; DOCKET NUMBER: 2008-1244-PST-E; IDENTIFIER: RN100528553; LOCATION: Richardson, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor USTs for releases; 30 TAC §334.50(b)(2) and the Code, §26.3475(a), by failing to provide proper release detection for the pressurized piping associated with the USTs; 30 TAC §334.50(b)(2)(A)(i) and the Code, §26.3475(a), by failing to equip each separate pressurized line with an automatic line leak detector; 30 TAC §334.45(c)(3)(A), by failing to ensure that the emergency shutoff valves were securely anchored at the base of the dispensers; 30 TAC §115.256(7)(A) and THSC, §382.085(b), by failing to maintain Stage II records at the station and make them immediately available for review; 30 TAC §115.248(1) and THSC, §382.085(b), by failing to ensure that at least one station representative received training in the operation and maintenance of the Stage II vapor recovery system (VRS); 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment; and 30 TAC §115.242(3) and THSC, §382.085(b), by failing to maintain the Stage II VRS in proper operating condition and

free of defects; PENALTY: $8,955; ENFORCEMENT COORDINATOR: Steven Lopez, (512) 239-1896; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(20) COMPANY: The Dow Chemical Company; DOCKET NUMBER: 2008-1248-AIR-E; IDENTIFIER: RN100219351; LOCATION: Texas City, Galveston County; TYPE OF FACILITY: gas plant; RULE VIOLATED: 30 TAC §101.20(1) and §116.115(c), 40 CFR §60.18(c)(2), NSR Permit Number 436, SC Numbers 1 and 3, and THSC, §382.085(b), by failing to keep the flare pilot flame lit at all times; PENALTY: $6,725; ENFORCEMENT COORDINATOR: Bryan Elliott, (512) 239-6162; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(21) COMPANY: The Dow Chemical Company; DOCKET NUMBER: 2007-1981-AIR-E; IDENTIFIER: RN100225945; LOCATION: Freeport, Brazoria County; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §101.20(3) and §116.715(a), Flexible Permit Number 20432 and PSD-TX-994, SC Number III-1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; and 30 TAC §116.115(c), NSR Permit Numbers 834 and 6932, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $30,000; SEP offset amount of $15,000 applied to Houston-Galveston Area Emission Reduction Credit Organization - Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: Kimberly Morales, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(22) COMPANY: The Goodyear Tire & Rubber Company; DOCKET NUMBER: 2008-1379-AIR-E; IDENTIFIER: RN100870898; LOCATION: Houston, Harris County; TYPE OF FACILITY: synthetic rubber manufacturing plant; RULE VIOLATED: 30 TAC §116.715(a), Flexible Air Permit Number 6618, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $6,175; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(23) COMPANY: The Premcor Refining Group Inc.; DOCKET NUMBER: 2008-0742-AIR-E; IDENTIFIER: RN102584026; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §§101.20(1) and (3), 111.111(a)(4), 116.715(a) and (c)(7), and 122.143(4), 40 CFR §60.18(c)(1), FOP Number O-01498, GTC, Flexible Permit Number 6825A/PSD-TX-49, SC Numbers 1, 4C, and 5A, and THSC, §382.085(b), by failing to prevent unauthorized visible emissions; 30 TAC §§101.20(3), 116.715(a) and (c)(7), and 122.143(4), FOP Number O-01498, STC, Flexible Permit Number 6825A/PSD-TX-49, SC Number 5A, and THSC, §382.085(b), by failing to prevent unauthorized emissions; 30 TAC §101.201(a)(1) and THSC, §382.085(b), by failing to properly report an emissions event; 30 TAC §101.211(b) and THSC, §382.085(b), by failing to properly report an emissions event; and 30 TAC §§101.20(3), 116.715(a) and (c)(7), and 122.143(4), FOP Number O-01498, GTC, Flexible Permit Number 6825A/PSD-TX-49, SC Number 5A, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $46,213; SEP offset amount of $23,106 applied to South East Texas Regional Planning Commission - West Port Arthur Home Energy Efficiency Program; ENFORCEMENT COORDINATOR: Bryan Elliott, (512) 239-6162; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(24) COMPANY: U-2 STORES, INC. dba New Era Food Mart; DOCKET NUMBER: 2008-0965-PST-E; IDENTIFIER: RN101885564; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to ensure that all USTs are monitored in a manner which will detect a release; 30 TAC §334.50(d)(1)(B)(ii) and the Code, §26.3475(c)(1), by failing to conduct reconciliation of detailed inventory control records; 30 TAC §334.50(d)(1)(B)(iii)(I) and the Code, §26.3475(c)(1), by failing to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day; and 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all USTs; PENALTY: $5,200; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5800; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(25) COMPANY: City of Willow Park; DOCKET NUMBER: 2008-1386-MWD-E; IDENTIFIER: RN102342128; LOCATION: Parker County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0013759001, Effluent Limitations and Monitoring Requirements A, and the Code, §26.121(a), by failing to comply with permit effluent limits; and 30 TAC §305.125(5) and TPDES Permit Number WQ0013759001, Special Provisions Number 3, by failing to properly operate and maintain all facilities and systems of treatment and control; PENALTY: $2,800; ENFORCEMENT COORDINATOR: Steve Villatoro, (512) 239-4930; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-200805799
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: November 4, 2008

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Correction on Close of Comment Date - Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

Texas Commission on Environmental Quality (commission) published Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions in the November 7, 2008, issue of the *Texas Register* (33 TexReg 9101). The close of comment in this notice indicated that the close of comment period is October 28, 2008. The correct close of comment date is **December 8, 2008**.

TRD-200805763
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: October 31, 2008

♦ ♦ ♦

Correction on Close of Comment Date - Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

Texas Commission on Environmental Quality (commission) published Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions in the November 7, 2008, issue of the *Texas Register* (33 TexReg 9102). The close of comment in this notice indicated that the close of comment period is October 28, 2008. The correct close of comment date is **December 8, 2008**.

TRD-200805764

Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: October 31, 2008

♦ ♦ ♦

Enforcement Orders

A default order was entered regarding Hari Enterprises, L.L.C., Docket No. 2006-0175-PWS-E on October 27, 2008 assessing $2,835 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Dinniah Chahin, Staff Attorney at (512) 239-0060, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Demitree Ochoa Yo Cleaners, Docket No. 2006-1211-DCL-E on October 27, 2008 assessing $1,185 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Benjamin Thompson, Staff Attorney at (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Inwood Center, LLC dba 99 Center Cleaners aka Inwood Center, LLC dba Inwood Center Cleaners, Docket No. 2006-1719-DCL-E on October 27, 2008 assessing $420 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tracy Chandler, Staff Attorney at (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding George Zambrano dba Zambrano Roofing and Sheet Metal Co., Docket No. 2006-2241-MSW-E on October 27, 2008 assessing $5,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Barham Richard, Staff Attorney at (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Exxon Mobil Corporation, Docket No. 2007-0463-AIR-E on October 27, 2008 assessing $30,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kathleen Decker, Staff Attorney at (512) 239-6500, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sharon Skinner, Docket No. 2007-0541-PST-E on October 27, 2008 assessing $8,925 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Alfred Oloko, Staff Attorney at (713) 422-8918, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Advantage Asphalt Products, Ltd., Docket No. 2007-0548-WQ-E on October 27, 2008 assessing $2,205 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Alfred Oloko, Staff Attorney at (713) 422-8918, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Ray Lawton and Shuran Lawton, Docket No. 2007-0790-PST-E on October 27, 2008 assessing $8,925 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tracy Chandler, Staff Attorney at (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding U.S. Oil Recovery, L.P., Docket No. 2007-0857-IHW-E on October 27, 2008 assessing $6,700 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kathleen Decker, Staff Attorney at (512) 239-6500, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Michael Nassif, Docket No. 2007-1054-PST-E on October 27, 2008 assessing $5,145 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Gary Shiu, Staff Attorney at (713) 422-8916, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Beverly Breaux, Docket No. 2007-1125-PST-E on October 27, 2008 assessing $10,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rudy Calderon, Staff Attorney at (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Enterprise Products Operating LLC, Docket No. 2007-1162-AIR-E on October 27, 2008 assessing $541,450 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Leonard Morris dba Western Stone, Docket No. 2007-1196-WQ-E on October 27, 2008 assessing $5,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Patrick Jackson, Staff Attorney at (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Shell Chemical LP, Docket No. 2007-1218-AIR-E on October 27, 2008 assessing $31,540 in administrative penalties with $15,770 deferred.

Information concerning any aspect of this order may be obtained by contacting Laurencia Fasoyiro, Staff Attorney at (713) 422-8914, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Plano, Docket No. 2007-1337-WQ-E on October 27, 2008 assessing $11,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Gulf Coast Composite Marine Specialist Inc., Docket No. 2007-1424-AIR-E on October 27, 2008 assessing $3,300 in administrative penalties with $1,650 deferred.

Information concerning any aspect of this order may be obtained by contacting Anna Cox, Staff Attorney at (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DCP Midstream, LP, Docket No. 2007-1733-AIR-E on October 27, 2008 assessing $72,600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Suzanne Walrath, Enforcement Coordinator at (512) 239-2134, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Terry R. James, Docket No. 2008-0130-LII-E on October 27, 2008 assessing $625 in administrative penalties with $125 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 Sid Richardson Carbon, Ltd., Docket No. 2008-0145-AIR-E on October 27, 2008 assessing $24,072 in administrative penalties with $4,814 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, 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 Chevron Phillips Chemical Company LP, Docket No. 2008-0230-IHW-E on October 27, 2008 assessing $36,974 in administrative penalties with $7,394 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Total Petrochemicals USA, Inc., Docket No. 2008-0243-AIR-E on October 27, 2008 assessing $59,329 in administrative penalties with $11,865 deferred.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator at (512) 239-1044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Rincon Water Supply Corporation, Docket No. 2008-0254-PWS-E on October 27, 2008 assessing $1,440 in administrative penalties with $288 deferred.

Information concerning any aspect of this order may be obtained by contacting Richard Croston, Enforcement Coordinator at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding AUSTIN EQUIPMENT COMPANY, LC, Docket No. 2008-0288-MLM-E on October 27, 2008 assessing $18,415 in administrative penalties with $3,683 deferred.

Information concerning any aspect of this order may be obtained by contacting Steven Lopez, Enforcement Coordinator at (512) 239-1896, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Harris County Water Control and Improvement District No. 89, Docket No. 2008-0299-MWD-E on October 27, 2008 assessing $18,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Pamela Campbell, Enforcement Coordinator at (512) 239-4493, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Joel Bazan dba Bazan Scrap Tire Facility, Docket No. 2008-0300-MLM-E on October 27, 2008 assessing $10,054 in administrative penalties with $2,010 deferred.

Information concerning any aspect of this order may be obtained by contacting Colin Barth, Enforcement Coordinator at (512) 239-0086, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Near Bore Resources, Inc., Docket No. 2008-0312-MLM-E on October 27, 2008 assessing $26,000 in administrative penalties with $5,200 deferred.

Information concerning any aspect of this order may be obtained by contacting Ross Fife, Enforcement Coordinator at (512) 239-2541, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding H. G. Word, Docket No. 2008-0332-PST-E on October 27, 2008 assessing $7,875 in administrative penalties with $1,575 deferred.

Information concerning any aspect of this order may be obtained by contacting Ross Fife, Enforcement Coordinator at (512) 239-2541, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Enbridge Pipelines (NE Texas) L.P., Docket No. 2008-0342-AIR-E on October 27, 2008 assessing $12,954 in administrative penalties with $2,590 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, 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 City of La Feria, Docket No. 2008-0412-PWS-E on October 27, 2008 assessing $1,782 in administrative penalties with $356 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Clausewitz, Enforcement Coordinator at (210) 403-4012, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Permian Tank & Manufacturing, Inc., Docket No. 2008-0433-AIR-E on October 27, 2008 assessing $42,500 in administrative penalties with $8,500 deferred.

Information concerning any aspect of this order may be obtained by contacting Craig Fleming, Enforcement Coordinator at (512) 239-5806, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DESI GROUP, INC. dba Fina Mart, Docket No. 2008-0444-PST-E on October 27, 2008 assessing $12,038 in administrative penalties with $2,407 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Owens Corning Roofing and Asphalt, LLC,, Docket No. 2008-0455-AIR-E on October 27, 2008 assessing $28,055 in administrative penalties with $5,611 deferred.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator at (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Harris County Fresh Water Supply District 1A, Docket No. 2008-0502-WQ-E on October 27, 2008 assessing $3,150 in administrative penalties with $630 deferred.

Information concerning any aspect of this order may be obtained by contacting Craig Fleming, Enforcement Coordinator at (512) 239-5806, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Camp Champions Texas L.P., Docket No. 2008-0519-PWS-E on October 27, 2008 assessing $105 in administrative penalties with $21 deferred.

Information concerning any aspect of this order may be obtained by contacting Stephen Thompson, Enforcement Coordinator at (512) 239-2558, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding John T. Leslie, Docket No. 2008-0522-PST-E on October 27, 2008 assessing $3,675 in administrative penalties with $735 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding AL-AZAR ENTERPRISES, INC. dba I & A Food Store, Docket No. 2008-0525-PST-E on October 27, 2008 assessing $9,875 in administrative penalties with $1,975 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 Pete Terrazas, Docket No. 2008-0556-WQ-E on October 27, 2008 assessing $1,050 in administrative penalties with $210 deferred.

Information concerning any aspect of this order may be obtained by contacting Tom Jecha, Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Bishop, Docket No. 2008-0557-MWD-E on October 27, 2008 assessing $6,000 in administrative penalties with $1,200 deferred.

Information concerning any aspect of this order may be obtained by contacting Pamela Campbell, Enforcement Coordinator at (512) 239-4493, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Gulf South Pipeline Company, LP, Docket No. 2008-0558-AIR-E on October 27, 2008 assessing $7,800 in administrative penalties with $1,560 deferred.

Information concerning any aspect of this order may be obtained by contacting Daniel Siringi, Enforcement Coordinator at (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Roger Collins, Docket No. 2008-0581-IHW-E on October 27, 2008 assessing $1,020 in administrative penalties with $204 deferred.

Information concerning any aspect of this order may be obtained by contacting John Shelton, Enforcement Coordinator at (512) 239-2563, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CAMPBELL OIL CO. dba Shop & Go No. 5, Docket No. 2008-0609-PST-E on October 27, 2008 assessing $6,101 in administrative penalties with $1,220 deferred.

Information concerning any aspect of this order may be obtained by contacting Steven Lopez, Enforcement Coordinator at (512) 239-1896, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Weatherford, Docket No. 2008-0613-MWD-E on October 27, 2008 assessing $3,050 in administrative penalties with $610 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 ESHAAN INVESTMENTS, L.L.C. dba Metro Food 2, Docket No. 2008-0616-PST-E on October 27, 2008 assessing $4,246 in administrative penalties with $849 deferred.

Information concerning any aspect of this order may be obtained by contacting Wallace Myers, Enforcement Coordinator at (512) 239-6580, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BP Amoco Chemical Company, Docket No. 2008-0628-AIR-E on October 27, 2008 assessing $10,000 in administrative penalties with $2,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, 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 Bell Bottom Foundation Co., Docket No. 2008-0631-PST-E on October 27, 2008 assessing $9,500 in administrative penalties with $1,900 deferred.

Information concerning any aspect of this order may be obtained by contacting Ross Fife, Enforcement Coordinator at (512) 239-2541, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding C & L Diamond Liquor, Inc. dba Diamond Famous Fried Chicken, Docket No. 2008-0644-PST-E on October 27, 2008 assessing $9,499 in administrative penalties with $1,899 deferred.

Information concerning any aspect of this order may be obtained by contacting Tom Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Petrochemicals LP, Docket No. 2008-0662-IWD-E on October 27, 2008 assessing $17,213 in administrative penalties with $3,442 deferred.

Information concerning any aspect of this order may be obtained by contacting Mark Oliver, Enforcement Coordinator at (512) 239-3308,

Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mobil Chemical Company Inc., Docket No. 2008-0665-AIR-E on October 27, 2008 assessing $2,725 in administrative penalties with $545 deferred.

Information concerning any aspect of this order may be obtained by contacting Tom Jecha, Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Houston Refining LP, Docket No. 2008-0674-MLM-E on October 27, 2008 assessing $481,105 in administrative penalties with $96,221 deferred.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator at (512) 239-1044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Archdiocese of San Antonio, Docket No. 2008-0705-EAQ-E on October 27, 2008 assessing $750 in administrative penalties with $150 deferred.

Information concerning any aspect of this order may be obtained by contacting Lauren Smitherman, Enforcement Coordinator at (512) 239-5223, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Rodney W. Watkins, Docket No. 2008-0711-WOC-E on October 27, 2008 assessing $500 in administrative penalties with $100 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Clausewitz, Enforcement Coordinator at (210) 403-4012, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Equistar Chemicals, LP, Docket No. 2008-0714-AIR-E on October 27, 2008 assessing $5,650 in administrative penalties with $1,130 deferred.

Information concerning any aspect of this order may be obtained by contacting Terry Murphy, Enforcement Coordinator at (512) 239-5025, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Keith Sherrell, Docket No. 2008-0737-LII-E on October 27, 2008 assessing $742 in administrative penalties with $148 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 Atlas Pipeline Mid-Continent WestTex, LLC, Docket No. 2008-0758-AIR-E on October 27, 2008 assessing $1,875 in administrative penalties with $375 deferred.

Information concerning any aspect of this order may be obtained by contacting Terry Murphy, Enforcement Coordinator at (512) 239-5025, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding James Lewis Allen dba Holiday Springs Mobile Home Park, Docket No. 2008-0770-MWD-E on October 27, 2008 assessing $2,440 in administrative penalties with $488 deferred.

Information concerning any aspect of this order may be obtained by contacting Pamela Campbell, Enforcement Coordinator at (512) 239-4493, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PD Glycol LP, Docket No. 2008-0775-AIR-E on October 27, 2008 assessing $5,500 in administrative penalties with $1,100 deferred.

Information concerning any aspect of this order may be obtained by contacting James Nolan, Enforcement Coordinator at (512) 239-6634, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Bardwell, Docket No. 2008-0777-PWS-E on October 27, 2008 assessing $188 in administrative penalties with $37 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrea Linson-Mgbeoduru, Enforcement Coordinator at (512) 239-1482, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding UNITED PETROLEUM TRANSPORTS, INC., Docket No. 2008-0778-PST-E on October 27, 2008 assessing $850 in administrative penalties with $170 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Troup, Docket No. 2008-0808-PWS-E on October 27, 2008 assessing $3,815 in administrative penalties with $763 deferred.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (210) 403-4033, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding AVALON GOLDEN JUBILEE, INC. dba Friendswood Chevron, Docket No. 2008-0823-PST-E on October 27, 2008 assessing $4,418 in administrative penalties with $883 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Northwest Harris County Municipal Utility District No. 5, Docket No. 2008-0826-MWD-E on October 27, 2008 assessing $4,320 in administrative penalties with $864 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 Hess Corporation, Docket No. 2008-0867-AIR-E on October 27, 2008 assessing $1,975 in administrative penalties with $395 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Chesapeake Energy Marketing, Inc., Docket No. 2008-0876-WR-E on October 27, 2008 assessing $1,711 in administrative penalties with $342 deferred.

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.

An agreed order was entered regarding Rhodia, Inc., Docket No. 2008-0888-PWS-E on October 27, 2008 assessing $937 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Amanda Henry, Enforcement Coordinator at (713) 767-3672, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Deep Water Holdings, Inc., Docket No. 2008-0900-PWS-E on October 27, 2008 assessing $262 in administrative penalties with $52 deferred.

Information concerning any aspect of this order may be obtained by contacting Christopher Keffer, Enforcement Coordinator at (512) 239-5610, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mobile Mini I, Inc., Docket No. 2008-0957-AIR-E on October 27, 2008 assessing $2,100 in administrative penalties with $420 deferred.

Information concerning any aspect of this order may be obtained by contacting James Nolan, Enforcement Coordinator at (512) 239-6634, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding GASGO MARKETS, INC. dba Gasgo Markets 12, Docket No. 2008-1004-PST-E on October 27, 2008 assessing $6,250 in administrative penalties with $1,250 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.

A field citation was entered regarding Kenneth L. Gillespie, Docket No. 2008-1325-OSI-E on October 27, 2008 assessing $175 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Dorothy A. Thompson, Docket No. 2008-1333-WOC-E on October 27, 2008 assessing $210 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding L H Lacy Co Ltd, Docket No. 2008-1337-WQ-E on October 27, 2008 assessing $700 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An order was entered regarding Klass Talsma dba Talsma Dairy, Docket No. 2007-0543-AGR-E on October 27, 2008 assessing $3,100 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Thomas Jecha, Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200805825
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 5, 2008

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Notice of District Petition

Notice issued October 24, 2008.

TCEQ Internal Control No. 07012008-D04; Canyon Falls Land Partners, L.P., (Petitioner) filed a petition for creation of Canyon Falls Municipal Utility District No. 1 of Denton County (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner is the owner of a majority in value of the land, consisting of one tract, to be included in the proposed District; (2) there is one lien holder, American Bank of Texas, on the property to be included in the proposed District; (3) the proposed District will contain approximately 172.579 acres located in Denton County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the Town of Argyle, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project and from the information available at the time, the cost of the project is estimated to be approximately $12,200,000.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.state.tx.us/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at

a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en Español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-200805824
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 5, 2008

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Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **December 15, 2008**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on December 15, 2008**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: Ballpark Mart, Inc. dba Ballpark Mart; DOCKET NUMBER: 2003-1244-PST-E; TCEQ ID NUMBER: RN101570083; LOCATION: 2100 East Lamar Boulevard, Arlington, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.10(b), by failing to have required underground storage tank (UST) records which are maintained at the facility readily available for inspection by commission personnel; and 30 TAC §334.50(d)(1)(B)(ii), by failing to conduct inventory control procedures; PENALTY: $3,920; STAFF ATTORNEY: Anna Cox, Litigation Division, MC 175, (512) 239-0974; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Fallbrook Enterprises, Inc. dba Fashion Cleaners; DOCKET NUMBER: 2006-1544-DCL-E; TCEQ ID NUMBER: RN104355912; LOCATION: 8925 Fallbrook Drive, Suite 1200, Houston, Harris County; TYPE OF FACILITY: dry cleaning facility; RULES VIOLATED: 30 TAC §337.10(a) and Texas Health and Safety Code (THSC), §374.102, by failing to complete and submit the required registration form to the TCEQ for a dry cleaning and/or drop station facility; and 30 TAC §337.14(c) and TWC, §5.705, by failing to pay Dry Cleaner registration fees for TCEQ Financial Administration Account Number 24004034 and associated late fees for Fiscal Year 2007; PENALTY: $1,185; STAFF ATTORNEY: Anna Cox, Litigation Division, MC 175, (512) 239-0974; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(3) COMPANY: Gian O'Donnell dba American Convenience; DOCKET NUMBER: 2008-0287-PST-E; TCEQ ID NUMBER: RN101809719; LOCATION: 1001 College Avenue, South Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; 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 timely and proper submission of a completed UST registration and self-certification form to the agency at least 30 days before the expiration date of the delivery certificate; TWC, §26.3467(a) and 30 TAC §334.8(c)(5)(A)(i), 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; THSC, §382.085(b) and 30 TAC §115.242(1)(C), by failing to upgrade the Stage II equipment to onboard refueling vapor recovery compatible system; and TWC, §5.702 and 30 TAC §334.22(a), by failing to pay outstanding UST fees and associated late fees for TCEQ Financial Account Number 0036044U for Fiscal Years 2005 - 2007; PENALTY: $3,060; STAFF ATTORNEY: Anna Cox, Litigation Division, MC 175, (512) 239-0974; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(4) COMPANY: Loveladdy Oil Company, Inc.; DOCKET NUMBER: 2007-1536-PST-E; TCEQ ID NUMBER: RN101751592; LOCATION: United States Highway 87 East, Joaquin, Shelby County; TYPE OF FACILITY: former gasoline retail service station; RULES VIOLATED: 30 TAC §334.47(a), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, four USTs for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; PENALTY: $21,000; STAFF ATTORNEY: Anna Cox, Litigation Division, MC 175, (512) 239-0974; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

TRD-200805811
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: November 4, 2008

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a

hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **December 15, 2008.** The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on December 15, 2008.** 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: Shali Enterprises, Inc. dba US Cleaners; DOCKET NUMBER: 2006-1215-DCL-E; TCEQ ID NUMBER: RN104996400; LOCATION: 867 Dairy Ashford Street, Houston, Harris County; TYPE OF FACILITY: drop station; RULES VIOLATED: 30 TAC §337.10(a) and Texas Health and Safety Code (THSC), §374.102, by failing to complete and submit the required registration form to the TCEQ for a dry cleaning and/or drop station facility; PENALTY: $1,185; STAFF ATTORNEY: Peipey Tang, Litigation Division, MC 175, (512) 239-0654; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(2) COMPANY: Shali Enterprises, Inc. dba US Cleaners; DOCKET NUMBER: 2006-1234-DCL-E; TCEQ ID NUMBER: RN103956769; LOCATION: 19714 Saums Road, Houston, Harris County; TYPE OF FACILITY: dry cleaning facility; RULES VIOLATED: 30 TAC §337.11(e) and THSC, §374.102(a), by failing to renew the facility's registration by completing and submitting the required registration form to the TCEQ for a dry cleaning facility; and 30 TAC §337.14(c) and TWC, §5.702, by failing to pay outstanding dry cleaner fees for TCEQ Financial Account Number 24000136 for Fiscal Years 2004 - 2007; PENALTY: $1,185; STAFF ATTORNEY: Peipey Tang, Litigation Division, MC 175, (512) 239-0654; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

TRD-200805810
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: November 4, 2008

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Notice of Water Quality Applications

The following notices were issued during the period of October 23, 2008 through October 30, 2008.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

INFORMATION SECTION

AQUA DEVELOPMENT INC has applied for a renewal of TPDES Permit No. WQ0014186001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 330,000 gallons per day. The facility is located approximately 4 miles east of the intersection of Interstate 287 and Highway 114 in Denton County, Texas.

ARTURO BRISENO has applied for a new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0004850000, for a Concentrated Animal Feeding Operation (CAFO), to authorize the applicant to operate a dairy heifer replacement facility at a maximum capacity of 2,500 head. The facility is located on the east side of County Road 406 approximately 1.5 miles north of the intersection of Farm to Market Road 219 and County Road 406 in Erath County, Texas.

CHAMPION TECHNOLOGIES INC which operates Fresno Plant, has applied for a renewal of TPDES Permit No. WQ0004306000, which authorizes the discharge of cooling tower blowdown, storm water runoff, and previously monitored effluent (boiler blowdown) at a daily average flow not to exceed 4,400 gallons per day via Outfall 001, and boiler blowdown on an intermittent and flow variable basis via Outfall 101. The facility is located at 3130 Farm-to-Market Road 521, approximately 2.25 miles north of the intersection of Farm-to-Market Road 521 and State Highway 6, in the City of Fresno, Fort Bend County, Texas.

CHRISTIAN TABERNACLE OF HOUSTON INC has applied for a renewal of TPDES Permit No. WQ0014513001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 19,000 gallons per day. The facility is located on the north side of Garrett Road, approximately 0.262 mile west of the intersection of Beltway 8 and Garrett Road in Harris County, Texas.

CITY OF COVINGTON has applied for a renewal of TPDES Permit No. WQ0012279001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 60,000 gallons per day. The facility is located approximately 800 feet south and 250 feet west of the intersection of Weir Avenue and State Highway 171 in Hill County, Texas.

CITY OF ODONNELL has applied for a renewal of Permit No. WQ0011126001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 120,000 gallons per day via evaporation and irrigation of 50 acres of non-public access agricultural land. The wastewater treatment facility and disposal site are located immediately west of the intersection of U.S. Highway 87 and Farm-to-Market Road 2053 in Lynn County, Texas. This permit will not authorize a discharge of pollutants into waters in the State.

CITY OF SUGAR LAND has applied for a renewal of TPDES Permit No. WQ0012833002, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 10,000,000 gallons per day. The facility is located at 4802 Oilfield Road in Fort Bend County, Texas.

CITY OF VALLEY MILLS has applied for a renewal of TPDES Permit No. WQ0010307001, which authorizes the discharge of treated

domestic wastewater at a daily average flow not to exceed 360,000 gallons per day. The facility is located approximately one mile northeast of the intersection of State Highway 6 and Farm-to-Market Road 56, northeast of the City of Valley Mills in Bosque County, Texas.

COUPLAND WATER SUPPLY CORPORATION has applied for a renewal of TPDES Permit No. WQ0014499001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 25,000 gallons per day. The facility is located approximately 180 feet north of Farm-to-Market Road 1466, approximately 200 feet west of an unnamed tributary of Brushy Creek, and approximately 500 feet east of the intersection of the Union Pacific railroad tracks and Farm-to-Market Road 1466 in the community of Coupland in Williamson County, Texas.

DEL LAGO ESTATES WATER SUPPLY CORPORATION has applied for a major amendment to TPDES Permit No. WQ0012686001 to remove a permit provision specifying the location and depth of the effluent outfall in Lake Conroe. The applicant also requested a variance to the buffer zone requirements according to 30 TAC §309.13(f) based on the 1988 approval of the facility plans and specifications; no process, design and capacity changes are proposed. The facility is located east of Walden Road approximately one mile north of State Highway 105 in Montgomery County, Texas.

DIXIE CHEMICAL COMPANY INC which operates an organic chemical manufacturing facility, has applied for a renewal of TPDES Permit No. WQ0004594000, which authorizes the discharge of storm water associated with industrial activities and steam condensate on an intermittent and flow variable basis via Outfall 001. The facility is located approximately 400 feet northwest of the intersection of Bay Area Boulevard and Port Road in the City of Pasadena, Harris County, Texas.

HARRIS COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO 89 has applied for a renewal of TPDES Permit No. WQ0012939001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 950,000 gallons per day. The facility is located at 4055 Fellows Road, approximately 3,600 feet west of the intersection of Fellows Road and Farm-to-Market Road 518 (Cullen Boulevard) in Harris County, Texas.

JOSEPH WILSON OSINGA JENNIFER SHEREE OSINGA BERT MARCEL VELSEN AND HEIDI VELSEN has applied for a Major Amendment of, and conversion to an individual permit, Texas Pollutant Discharge Elimination System (TPDES) Registration No. WQ0003682000, for a Concentrated Animal Feeding Operation (CAFO), to authorize the applicant to expand an existing dairy cattle facility from 850 head to a maximum capacity of 1,600 head, of which 700 head are milking cows. The facility is located on the east side of US Highway 281, approximately 10 miles south of the city limits's sign of Stephenville in Erath County, Texas.

JWR HO LP has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014921001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 32,000 gallons per day. The facility was previously permitted under expired TPDES Permit No. WQ0013560001. The facility is located at 716 Northville Street, Houston in Harris County, Texas.

LCY ELASTOMERS LP which operates LCY Elastomers that manufactures thermoplastic elastomers including styrenic block copolymer, styrene butadiene-based copolymers, and styrene isoprene-based copolymers, has applied for a renewal of TPDES Permit No. WQ00004772000, with a request for removal of authorization of discharges via Outfall 001 as a minor modification. The permit authorizes the discharge of process area storm water, non-contact cooling water blowdown, steam condensate, water softener regenerate, condesate from the cyclohexane stripping section, washdown wastewater and other process wastewater via Outfalls 001 and 002; and the sum of pollutants discharged from Outfalls 001 and 002 via reporting outfall 003, which was created for regulation of pollutants discharged via Outfalls 001 and 002, at a daily average flow not to exceed 120,000 gallons per day. The draft permit authorizes the discharge of process area storm water, non-contact cooling water blowdown, steam condensate, water softener regenerate, condesate from the cyclohexane stripping section, washdown wastewater and other process wastewater via Outfall 002 at a daily average flow not to exceed 120,000 gallons per day. The facility is located on the west side of Decker Drive, approximately 1,700 feet north of Baker Road and 1,600 feet south of Redell Road, Harris County, Texas.

LYONDELL CHEMICAL COMPANY which operates a plant which manufactures synthetic organic chemicals, has applied for a major amendment to TPDES Permit No. WQ0002927000 to authorize the discharge of Barge Dock wastewater (from Tanks 6901 and 6902) at Outfall 001. The current permit authorizes the discharge of process wastewater, utility wastewater, (including wastewater from the adjacent Cogen Lyondell facility), hydrostatic test water, and storm water at a daily average flow not to exceed 2,740,000 gallons per day via Outfall 001; and storm water, hydrostatic test water, water from the maintenance activities, steam condensate, uncontaminated potable water, firewater, construction water, and de minimus discharges of water from spill cleanup on an intermittent and flow variable basis via Outfalls 002, 003, 004, 005, and 006. The facility is located at 2502 Sheldon Road in the City of Channelview, Harris County, Texas.

LUMINANT GENERATION COMPANY LLC which operates the Martin Lake Steam Electric Station, a steam electric generating facility, has applied for a major amendment to TPDES Permit No. WQ0001784000 to authorize increase in the daily average discharge temperature from 110 degrees Fahrenheit (°F) to 112°F and the daily maximum discharge temperature from 115°F to 117°F at Outfall 001. The current permit authorizes the discharge of once-through cooling water and previously monitored effluent (domestic wastewater, low volume wastes, storm water, bottom ash transport water, and wastewater from the solid waste disposal area) at a daily average flow not to exceed 3,045,000,000 gallons per day via Outfall 001. The facility is located adjacent to Martin Lake, east of Farm-to-Market Road 2658 and approximately five miles southwest of the City of Tatum, in Rusk and Panola Counties, Texas.

ODFJELL TERMINALS HOUSTON INC which operates Odfjell Terminals Houston, has applied for a major amendment to TPDES Permit No. WQ0002547000 to authorize the addition of first-flush storm water to Outfall 001, and the addition of a background concentration correction for organic nitrogen at Outfall 001. The current permit authorizes the discharge of storm water runoff, filter backflush water, hydrostatic test water, and fire protection water on an intermittent and flow variable basis via Outfall 001. The facility is located on Port Road, adjacent to and south of the Bayport Ship Channel Turning Basin in the Bayport Industrial Complex, in the City of Seabrook, Harris County, Texas.

PENN CAL LLC has applied for a Renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0003199000, for a Concentrated Animal Feeding Operation (CAFO), to authorize the applicant to operate an existing dairy facility at a maximum capacity of 1,830 head, of which 1,500 head are milking cows. The facility is located on the south side of County Road 230, approximately 0.25 mile west of the intersection of County Road 230 and County Road 209. The intersection is located approximately 2.5 miles south of the intersection of County Road 209 and U.S. Highway 67 in Erath County, Texas.

PRAXAIR INC which operates Praxair, Inc. Facility, a liquid carbon dioxide manufacturing facility, has applied for a renewal of TPDES Permit No. WQ0002750000, which authorizes the discharge of cooling tower blowdown and stormwater runoff from the truck scale area at a daily average dry weather flow not to exceed 6,000 gallons per day via Outfall 001. The facility is located at 1800 Grant Avenue, approximately 1/2 mile north of the intersection of Grant Avenue and Texas Highway 341 in the City of Texas, Galveston County, Texas.

R AND A HARRIS SOUTH LP which operates an automotive dealership, has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0004853000, to authorize the discharge of treated domestic wastewater and carwash wastewater at a daily average flow not to exceed 6,000 gallons per day via Outfall 001. This permit will replace TPDES Permit No. 02550 which expired on December 1, 2007. The facility is located at 13915 Interstate Highway 45 North, 1/4 mile northwest of the intersection of Interstate 45 North and Rankin Road in the City of Houston, Harris County, Texas.

SCHLUMBERGER TECHNOLOGY CORPORATION which operates Schlumberger Reservoir Completion, an oilfield equipment and light manufacturing, and development facility, has applied for a renewal of TPDES Permit No. WQ0004679000, which authorizes the discharge of non-contact cooling tower blowdown and treated domestic wastewater at a daily average flow not to exceed 24,800 gallons per day via Outfall 002. The facility is located approximately 1.9 miles northwest of the intersection of Farm-to-Market Road 1462 and State Highway 288, Brazoria County, Texas.

SPEER PROPERTIES INC has applied for a renewal of TPDES Permit No. WQ0014540001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 10,000 gallons per day. The facility will be located 1.32 miles east of the intersection of State Highway 146 and Needle Point Road in Chambers County, Texas.

THE COMMONS OF LAKE HOUSTON LTD has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014914001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The facility will be located approximately 4.4 miles northwest of the intersection of Huffman Cleveland Road (Farm-to-Market Road 2100) and Farm-to-Market Road 1960, North of Lake Houston in northeastern Harris County, Texas.

THE TEXAS DEPARTMENT OF CRIMINAL JUSTICE has applied for a major amendment to TPDES Permit No. WQ0011181001 to authorize an increase in the permitted Total Suspended Solids effluent concentrations to be consistent with enhanced secondary treatment that are achievable with a Biological Oxygen Demand concentrations of 7 mg/l. The facility is located approximately 2.7 miles west of the intersection of the Prison Service Road with Farm-to-Market Road 230 and approximately 14.5 miles west of the City of Trinity in Houston County, Texas.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.tceq.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200805822
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 5, 2008

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Notice of Water Rights Applications

Notices issued October 29, 2008.

APPLICATION NO. 12346; Ray Davis, Applicant, P.O. Box 885, Denison, Texas 75021, has applied for a water use permit to divert and use not to exceed 2.6 acre-feet of water per year from Choctaw Creek, Red River Basin, for agricultural purposes to irrigate land in Grayson County. More information on the application and how to participate in the permitting process is given below. The application and fees were received on July 9, 2008. Additional information was received on September 8, 2008. The application was accepted for filing and declared administratively complete on September 23, 2008. Written public comments and requests for a public meeting should be submitted to the Office of 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. 12336; Midcontinent Express Pipeline, LLC, Applicant, 500 Dallas Street, Suite 1000, Houston, Texas 77002, has applied for a temporary water use permit to divert and use not to exceed 23.1 acre-feet of water within a period of eight months from the Red River, Red River Basin, for industrial purposes in Fannin County. 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 June 12, 2008. Additional information and fees were received on August 13 and August 28, 2008. The application was accepted for filing and declared administratively complete on September 23, 2008. 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 November 19, 2008.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.state.tx.us/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

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 for a group or association, an official representative), 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, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ

can be found at our web site at www.tceq.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200805823
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 5, 2008

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Texas Health and Human Services Commission

Notice of Hearing on Proposed Provider Payment Rates

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on December 3, 2008, at 9:00 a.m., to receive public comment on proposed payment rates for the assisted living/residential care services under the Community Based Alternatives (CBA AL/RC) program, ICM Assisted Living/Residential Care (ICM AL/RC) program, assisted living/residential care services under the Consolidated Waiver program (CWP), Community Based Alternatives Personal Care III (PCIII) services and Residential Care (RC) program. The Department of Aging and Disability Services (DADS) operates these programs. The payment rates are proposed to be effective January 1, 2009.

The public hearing will be held in compliance with Human Resources Code §32.0282 and Title 1 of the Texas Administrative Code (TAC) §355.105(g), which require public notice and hearings on proposed reimbursement rates. The public hearing will be held in the Lone Star Conference Room of the Health and Human Services Commission, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. Persons requiring American with Disabilities Act (ADA) accommodation or auxiliary aids or services should contact Josie Wheatfall by calling (512) 491-1445, at least 72 hours prior to the hearing so appropriate arrangements can be made.

Proposal. HHSC proposes to decrease the facility cost area rates for the RC, CBA AL/RC, CW and PCIII programs to reflect the most recent increase in Federal Supplemental Security Income (SSI) payments in accordance with the rate setting methodologies listed below under Methodology and Justification. The methodologies require that when SSI is increased, the per diem reimbursement be decreased by an amount equal to that increase.

Methodology and Justification. The proposed rates were determined in accordance with the rate reimbursement setting methodology at 1 TAC §355.509(c)(2) for the RC program, 1 TAC §355.503(d)(2)(B) for the CBA and ICM AL/RC programs, 1 TAC §355.503(d)(2)(D) for the PC III program and 1 TAC §355.506(a) for the CW program.

Briefing Package. A briefing package describing the proposed reimbursement rates will be available on November 17, 2008. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Josie Wheatfall by telephone at (512) 491-1445; by fax at (512) 491-1998; or by e-mail at Josie.Wheatfall@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written and Oral Comments. Written comments regarding the payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Josie Wheatfall, Health and Human Services Commission, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Josie Wheatfall at (512) 491-1998; or by e-mail to Josie.Wheatfall@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Josie Wheatfall, HHSC Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

TRD-200805752
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: October 30, 2008

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Notice of Public Hearing on Proposed Medicaid Payment Rates

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on December 3, 2008, at 9:30 a.m. to receive public comment on proposed rates for Adjunct and Respite Nursing in the Consumer Directed Services (CDS) option in the Medically Dependent Children Program (MDCP) operated by the Texas Department of Aging and Disability Services (DADS). The hearing will be held in compliance with Human Resources Code §32.0282 and Texas Administrative Code (TAC) Title 1, §355.105(g), which require public notice of and hearings on proposed Medicaid reimbursements. The public hearing will be held in the Lone Star Conference Room of the Health and Human Services Commission, Braker Center, Building H, located at 11209 Metric Blvd, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. Persons requiring Americans with Disability Act (ADA) accommodation or auxiliary aids or services should contact Josie Wheatfall by calling (512) 491-1445, at least 72 hours prior to the hearing so appropriate arrangements can be made.

Proposal. HHSC proposes to adopt payment rates for CDS Adjunct and Respite Nursing rates in MDCP. The proposed rates will be effective January 1, 2009, and were determined in accordance with the rate setting methodologies listed below under "Methodology and Justification."

Methodology and Justification. The proposed rates were determined in accordance with the rate setting methodology codified at 1 TAC Chapter 355, Subchapter A, §355.114, Consumer Directed Services Payment Option, and 1 TAC Chapter 355, Subchapter E, §355.507, Reimbursement Methodology for the Medically Dependent Children Program. DADS is adding Adjunct and Respite Nursing to the CDS option in MDCP effective February 1, 2009. A rate must be adopted before DADS can implement the service.

Briefing Package. A briefing package describing the proposed payment rates will be available on November 17, 2008. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Josie Wheatfall by telephone at (512) 491-1445; by fax at (512) 491-1998; or by e-mail at josie.wheatfall@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Kimbra Rawlings, Health and Human Services Commission, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Kimbra Rawlings at (512) 491-1998; or by e-mail to Kimbra.Rawlings@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Kimbra Rawlings, HHSC, Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

TRD-200805750

Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: October 30, 2008

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Notice of Public Hearing on Proposed Medicaid Payment Rates

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on December 3, 2008, at 10:00 a.m. to receive public comment on the proposed rates for Overnight Companion Services (OCS) under the Consumer Directed Services (CDS) option in the Community Based Alternatives (CBA) Waiver program operated by the Texas Department of Aging and Disability Services (DADS). The hearing will be held in compliance with Human Resources Code §32.0282 and 1 Texas Administrative Code (TAC) §355.105(g), which require public notice and hearings on proposed Medicaid reimbursements. The public hearing will be held in the Lone Star Conference Room of the Health and Human Services Commission, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. Persons requiring Americans with Disability Act accommodation or auxiliary aids or services should contact Josie Wheatfall by calling (512) 491-1445, at least 72 hours prior to the hearing so appropriate arrangements can be made.

Proposal. HHSC proposes to adopt payment rates for CDS OCS in CBA. The proposed rate will be effective January 1, 2009, and were determined in accordance with the rate setting methodologies listed below under "Methodology and Justification."

Methodology and Justification. The proposed rates were determined in accordance with the rate setting methodology codified at 1 TAC Chapter 355, Subchapter A, §355.114, Consumer Directed Services Payment Option, and 1 TAC Chapter 355, Subchapter E, §355.503, Reimbursement Methodology for the Community Based Alternatives and Integrated Care Management HCSS and Assisted Living/Residential Care Programs. DADS is adding OCS to the CDS option in CBA effective January 1, 2009. A rate must be adopted before DADS can implement the service.

Briefing Package. A briefing package describing the proposed payment rates will be available on November 17, 2008. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Josie Wheatfall by telephone at (512) 491-1445; by fax at (512) 491-1998; or by e-mail at josie.wheatfall@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Josie Wheatfall, Health and Human Services Commission, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Josie Wheatfall at (512) 491-1998; or by e-mail to josie.wheatfall@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Josie Wheatfall, HHSC, Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

TRD-200805800
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: November 4, 2008

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Department of State Health Services

Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Plano	Clements Clinic PLLC	L06194	Plano	00	10/21/08
Throughout Tx	East Texas Geotech	L06196	Clarksville	00	10/20/08

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Amarillo	Cardiology Center of Amarillo LLP	L05736	Amarillo	10	10/16/08
Amarillo	The Don and Sybil Harrington Cancer Center	L03053	Amarillo	43	10/27/08
Angleton	Isotherapeutics Group LLC	L05969	Angleton	08	10/17/08
Arlington	Metroplex Hematology Oncology Associates DBA Arlington Cancer Center	L03211	Arlington	83	10/20/08
Athens	East Texas Medical Center	L02470	Athens	42	10/31/08
Austin	ARA Imaging	L05862	Austin	39	10/14/08
Austin	Austin Radiological Association	L00545	Austin	149	10/14/08
Austin	Daughters of Charity Health Services of Austin DBA Dell Childrens Medical Ctr. of Central Tx	L06065	Austin	07	10/14/08
Austin	Howerton Eye Center DBA Eye Center	L03318	Austin	08	10/15/08
Austin	ARA Imaging	L05862	Austin	40	10/17/08
Austin	Asuragen, Inc.	L05977	Austin	06	10/21/08
Austin	Columbia St. David's Healthcare System LP DBA South Austin Hospital	L03273	Austin	82	10/21/08
Austin	Texas Oncology PA DBA Positron Imaging of Austin	L05696	Austin	07	10/24/08
Bedford	Harris Methodist Hospital - HEB Division of Radiology	L02303	Bedford	34	10/13/08
Channelview	Lyondell Chemical Company	L04439	Channelview	23	10/15/08
Corpus Christi	Spohn Hospital	L02495	Corpus Christi	98	10/21/08
Corpus Christi	Cardinal Health	L04043	Corpus Christi	39	10/24/08
Corpus Christi	Associates in Heart Disease DBA The Heart Clinic of Corpus Christi	L05023	Corpus Christi	16	10/31/08
Dallas	University of Tx Southwestern Medical Center at Dallas	L05947	Dallas	15	10/17/08
Dallas	Henley-Johnston and Associates, Inc.	L00286	Dallas	32	10/22/08
Dallas	Baylor College of Dentistry	L00323	Dallas	38	10/29/08
Dallas	North Texas Heart Center P.A.	L04608	Dallas	35	10/31/08
Decatur	Wise Regional Health System	L02382	Decatur	34	10/15/08
Denton	Trace Life Sciences, Inc.	L05435	Denton	18	10/17/08
Denton	University of North Texas DBA Risk Management Services Radiation Safety Office	L00101	Denton	84	10/31/08
El Paso	BRK Brands Inc	L03725	El Paso	14	10/13/08
El Paso	East El Paso Physicians' Medical Center LLC	L05676	El Paso	11	10/24/08
El Paso	Nuclear Diagnostics LLC	L05695	El Paso	05	10/28/08
Fort Worth	Adventist Health Syst Sunbelt Healthcare Corp. DBA Huguley Health System	L02920	Fort Worth	33	10/13/08
Garland	E+ PET Imaging XII LP DBA PET Imaging of Garland	L05875	Garland	04	10/24/08
Harlingen	Valley Baptist Medical Center	L01909	Harlingen	71	10/24/08

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amend-ment #	Date of Action
Houston	Memorial MRI and Diagnostic LLC DBA Memorial Nuclear Imaging LP	L05997	Houston	07	10/13/08
Houston	American Diagnostic Tech LLC	L05514	Houston	51	10/14/08
Houston	The Methodist Hospital	L00457	Houston	163	10/15/08
Houston	Harris County Hospital District DBA LBJ General Hospital	L04412	Houston	37	10/17/08
Houston	Gulf Coast Cancer and Diagnostic Center at Southeast Inc. DBA Gulf Coast Cancer Center at Southeast	L05194	Houston	13	10/16/08
Houston	University of Texas MD Anderson Cancer Ctr.	L00466	Houston	114	10/29/08
Houston	Memorial Hermann Hospital System DBA Memorial Hospital Memorial City	L01168	Houston	105	10/31/08
Ingleside	E. I. Du Pont De Nemours and Company	L01753	Ingleside	41	10/15/08
Katy	Memorial Hermann Hospital System DBA Memorial Hermann Katy Hospital	L03052	Katy	54	10/15/08
Katy	Memorial City Cardiology Associates DBA Katy Cardiology Associates	L05713	Katy	09	10/22/08
Katy	St. Catherine Health and Wellness Center	L05310	Katy	17	10/28/08
Kingwood	Lieber-Moore Cardiology Associates DBA Texas Cardiology Associates	L04622	Kingwood	12	10/27/08
Longview	Texas Oncology PA DBA Longview Cancer Ctr.	L05017	Longview	12	10/28/08
Lubbock	Texas Tech University Health Sciences Center	L01869	Lubbock	88	10/29/08
Lubbock	University Medical Center	L04719	Lubbock	101	10/30/08
Lubbock	Methodist Diagnostic Imaging DBA Covenant Diagnostic Imaging	L03948	Lubbock	42	10/31/08
McAllen	McAllen Hospitals LP DBA McAllen Med. Ctr.	L01713	McAllen	88	10/15/08
McAllen	Valley Nuclear Incorporated	L04521	McAllen	25	10/24/08
McAllen	McAllen Hospitals LP DBA McAllen Medical Heart Hospital	L04902	McAllen	18	10/23/08
McAllen	Texas Oncology PA DBA South Texas Cancer Center at McAllen	L04880	McAllen	08	10/29/08
McKinney	Raytheon Company	L05632	McKinney	07	10/23/08
McKinney	West Park Surgery Center LP DBA McKinney Surgery Center	L05991	McKinney	01	10/27/08
Midland	Midland County Hospital District DBA Midland Memorial Hospital	L00728	Midland	92	10/22/08
Nacogdoches	Memorial Hospital	L01071	Nacogdoches	43	10/15/08
Orange	Cardinal Health 414 Inc. DBA Cardinal Health Nuclear Pharmacy Svcs.	L04785	Orange	37	10/15/08
Paris	Essent PRMC LP DBA Paris Regional Med. Ctr.	L03199	Paris	45	10/15/08
Paris	Physician Reliance Network Inc. DBA Paris Regional Cancer Center	L04664	Paris	18	10/21/08
Pasadena	CHCA Bayshore LP DBA Bayshore Med. Ctr.	L00153	Pasadena	84	10/16/08
Pasadena	Cardiovascular Center PA	L04345	Pasadena	13	10/27/08
Pittsburg	East Texas Medical Center Pittsburg	L03106	Pittsburg	23	10/24/08
Port Arthur	S K RAO MD PA	L05415	Port Arthur	14	10/16/08
Richardson	Richardson Cardiology Associates	L05667	Richardson	08	10/15/08
Richardson	Medical Edge Healthcare Group PA DBA PET/CT Center of Richardson	L05688	Richardson	07	10/22/08
San Antonio	Cardiology Clinic of San Antonio PA	L04489	San Antonio	37	10/13/08
San Antonio	Sioco Cardiology PA	L05662	San Antonio	03	10/24/08

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amend-ment #	Date of Action
San Antonio	VHS San Antonio Partners LLC DBA Baptist Health System	L00455	San Antonio	180	10/24/08
San Antonio	Methodist Healthcare System of San Antonio DBA Methodist Hospital	L00594	San Antonio	248	10/23/08
San Antonio	Christus Santa Rosa Surgery Center	L05805	San Antonio	08	10/27/08
San Antonio	Medi-Physics Inc DBA G.E. Healthcare	L04764	San Antonio	35	10/31/08
San Antonio	O'Neill and Associates PA	L03710	San Antonio	16	10/30/08
San Antonio	Adult Cardiovascular Consultants PA	L05836	San Antonio	03	10/30/08
San Antonio	South Texas Cardiovascular Consultants PLLC	L03833	San Antonio	28	10/30/08
Sherman	Wilson N Jones Memorial Hospital	L02384	Sherman	36	10/23/08
Stephenville	Cardiac Care PA DBA Cardiac Care	L06009	Stephenville	01	10/22/08
Texas City	CHCA Mainland LP DBA Mainland Med. Ctr.	L02577	Texas City	35	10/20/08
The Woodlands	Memorial Hospital The Woodlands	L03772	The Woodlands	66	10/13/08
Throughout Tx	Desert Industrial X-Ray LP	L04590	Abilene	90	10/13/08
Throughout Tx	Eagle NDT LLC	L06176	Abilene	03	10/17/08
Throughout Tx	J-W Wireline Company	L06132	Addison	07	10/15/08
Throughout Tx	Team Industrial Services, Inc.	L00087	Alvin	194	10/16/08
Throughout Tx	Team Industrial Services, Inc.	L00087	Alvin	195	10/29/08
Throughout Tx	Exxonmobil Chemical Company	L01135	Baytown	71	10/16/08
Throughout Tx	ATC Group Svcs Inc. DBA ATC Associates, Inc.	L05920	Carrollton	03	10/17/08
Throughout Tx	Escot NDE Inc. DBA Basin Industrial X-Ray	L05002	Corpus Christi	29	10/29/08
Throughout Tx	Fargo Consultants, Inc.	L05300	Dallas	09	10/15/08
Throughout Tx	Southwestern Testing Laboratories LLC DBA STL Engineers	L06100	Dallas	01	10/24/08
Throughout Tx	Pavetex Engineering and Testing, Inc.	L05533	Dripping Springs	09	10/14/08
Throughout Tx	H and H X-Ray Services. Inc.	L02516	Flint	74	10/20/08
Throughout Tx	Waggoner and Associates, Inc. DBA Waggoner-Texas and Associates Inc.	L06159	Flint	03	10/22/08
Throughout Tx	Gray Wireline Service, Inc.	L03541	Fort Worth	29	10/15/08
Throughout Tx	Weatherford US LP	L05291	Fort Worth	21	10/23/08
Throughout Tx	Weatherford International, Inc.	L04286	Fort Worth	78	10/28/08
Throughout Tx	Superior Production Logging, Inc. DBA SPL Wireline Services	L01983	Granbury	41	10/23/08
Throughout Tx	Roxar Inc.	L05547	Houston	13	10/16/08
Throughout Tx	Component Sales and Service, Inc.	L02243	Houston	28	10/16/08
Throughout Tx	Mandes Inspection and Testing Services, Inc.	L05220	Houston	62	10/21/08
Throughout Tx	Wood Group Logging Services, Inc.	L05262	Houston	30	10/27/08
Throughout Tx	Fugro Consultants Inc.	L00058	Houston	53	10/28/08
Throughout Tx	Framo Engineering Houston, Inc.	L05867	Houston	04	10/29/08
Throughout Tx	Marco Inspection Services LLC	L06072	Kilgore	16	10/17/08
Throughout Tx	Marco Inspection Services LLC	L06072	Kilgore	17	10/23/08
Throughout Tx	High Plains Underground Water Conservation District #1	L02598	Lubbock	21	10/15/08
Throughout Tx	Terra Testing, Inc.	L02464	Lubbock	36	10/27/08
Throughout Tx	American X-Ray and Inspection Services, Inc. DBA A X I S Inc.	L05974	Midland	15	10/15/08
Throughout Tx	Anatec Texas, Inc.	L04865	Nederland	77	10/15/08
Throughout Tx	Conam Inspection and Engineering, Inc.	L05010	Pasadena	152	10/16/08
Throughout Tx	Conam Inspection and Engineering, Inc.	L05010	Pasadena	153	10/17/08
Throughout Tx	Conam Inspection and Engineering, Inc.	L05010	Pasadena	154	10/22/08
Throughout Tx	Techcorr USA LLC	L05972	Pasadena	54	10/22/08

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amend-ment #	Date of Action
Throughout Tx	Conam Inspection and Engineering, Inc.	L05010	Pasadena	155	10/24/08
Throughout Tx	Great Guns, Inc.	L01990	Sour Lake	27	10/15/08
Throughout Tx	Schlumberger Technology Corporation	L01833	Sugarland	148	10/14/08
Throughout Tx	Luminant Mining Company LLC	L06081	Tatum	06	10/22/08
Throughout Tx	Insight Health Corporation	L05504	Tiki Island	08	10/31/08
Trinity	East Texas Medical Center Trinity	L05392	Trinity	08	10/14/08
Tyler	Sigal Heart Center	L05704	Tyler	04	10/22/08

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Alvin	Ineos USA LLC	L01422	Alvin	69	10/30/08
Baytown	Chevron Phillips Chemical Company LP	L00962	Baytown	40	10/23/08
Corpus Christi	Citgo Refining and Chemicals	L00243	Corpus Christi	43	10/14/08
Edinburg	McAllen Hospitals LP DBA Edinburg Regional Medical Center	L04262	Edinburg	19	10/27/08
Lubbock	Isorx Texas Ltd.	L05284	Lubbock	24	10/30/08
Orange	Chevron Phillips Chemical Company LP	L00031	Orange	58	10/21/08
Rowlett	Rowlett Cardiology Associates PA DBA Texas Cardiac Associates	L05450	Rowlett	08	10/22/08

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Beaumont	Timothy K Colgan, MD PA	L05706	Beaumont	04	10/21/08
Houston	CHCA East Houston LP DBA East Houston Regional Medical Center	L03306	Houston	28	10/16/08
Houston	Encysive Pharmaceuticals, Inc.	L04568	Houston	19	10/22/08
Throughout Tx	Woodard Construction Company, Inc.	L04991	Gatesville	04	10/27/08
Throughout Tx	Baker Oil Tools	L03272	Houston	28	10/29/08

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of Title 25 Texas Administrative Code (TAC) Chapter 289 regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, Radiation Material Licensing - MC 2835, PO Box 149347, Austin, Texas 78714-9347. For information call (512) 834-6688.

TRD-200805814
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: November 5, 2008

♦ ♦ ♦

Texas Lottery Commission

Instant Game Number 1116 "Welcome to Fabulous Las Vegas"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1116 is "WELCOME TO FABULOUS LAS VEGAS". The play style is "poker".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1116 shall be $5.00 per ticket.

1.2 Definitions in Instant Game No. 1116.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible red play symbols are: A DIAMOND SYMBOL, K DIAMOND SYMBOL, Q DIAMOND SYMBOL, J DIAMOND SYMBOL, 10 DIAMOND SYMBOL, 9 DIAMOND SYMBOL, 8 DIAMOND SYMBOL, 7 DIAMOND SYMBOL, 6 DIAMOND SYMBOL, 5 DIAMOND SYMBOL, 4 DIAMOND SYMBOL, 3 DIAMOND SYMBOL, 2 DIAMOND SYMBOL, A HEART SYMBOL, K HEART SYMBOL, Q HEART SYMBOL, J HEART SYMBOL, 10 HEART SYMBOL, 9 HEART SYMBOL, 8 HEART SYMBOL, 7 HEART SYMBOL, 6 HEART SYMBOL, 5 HEART SYMBOL, 4 HEART SYMBOL, 3 HEART SYMBOL and 2 HEART SYMBOL. The possible black play symbols are: A SPADE SYMBOL, K SPADE SYMBOL, Q SPADE SYMBOL, J SPADE SYMBOL, 10 SPADE SYMBOL, 9 SPADE SYMBOL, 8 SPADE SYMBOL, 7 SPADE SYMBOL, 6 SPADE SYMBOL, 5 SPADE SYMBOL, 4 SPADE SYMBOL, 3 SPADE SYMBOL, 2 SPADE SYMBOL, JOKER SYMBOL, A CLUB SYMBOL, K CLUB SYMBOL, Q CLUB SYMBOL, J CLUB SYMBOL, 10 CLUB SYMBOL, 9 CLUB SYMBOL, 8 CLUB SYMBOL, 7 CLUB SYMBOL, 6 CLUB SYMBOL, 5 CLUB SYMBOL, 4 CLUB SYMBOL, 3 CLUB SYMBOL, 2 CLUB SYMBOL, $5.00, $10.00, $15.00, $20.00, $40.00, $50.00, $100, $500, $1,000 and $50,000.

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. 1116 - 1.2D

PLAY SYMBOL	CAPTION
2 DIAMOND SYMBOL (red)	
3 DIAMOND SYMBOL (red)	
4 DIAMOND SYMBOL (red)	
5 DIAMOND SYMBOL (red)	
6 DIAMOND SYMBOL (red)	
7 DIAMOND SYMBOL (red)	
8 DIAMOND SYMBOL (red)	
9 DIAMOND SYMBOL (red)	
10 DIAMOND SYMBOL (red)	
J DIAMOND SYMBOL (red)	
Q DIAMOND SYMBOL (red)	
K DIAMOND SYMBOL (red)	
A DIAMOND SYMBOL (red)	
2 HEART SYMBOL (red)	
3 HEART SYMBOL (red)	
4 HEART SYMBOL (red)	
5 HEART SYMBOL (red)	
6 HEART SYMBOL (red)	
7 HEART SYMBOL (red)	
8 HEART SYMBOL (red)	
9 HEART SYMBOL (red)	
10 HEART SYMBOL (red)	
J HEART SYMBOL (red)	
Q HEART SYMBOL (red)	
K HEART SYMBOL (red)	
A HEART SYMBOL (red)	
2 SPADE SYMBOL (black)	
3 SPADE SYMBOL (black)	
4 SPADE SYMBOL (black)	
5 SPADE SYMBOL (black)	
6 SPADE SYMBOL (black)	
7 SPADE SYMBOL (black)	
8 SPADE SYMBOL (black)	
9 SPADE SYMBOL (black)	
10 SPADE SYMBOL (black)	
J SPADE SYMBOL (black)	
Q SPADE SYMBOL (black)	
K SPADE SYMBOL (black)	
A SPADE SYMBOL (black)	
2 CLUB SYMBOL (black)	
3 CLUB SYMBOL (black)	
4 CLUB SYMBOL (black)	
5 CLUB SYMBOL (black)	
6 CLUB SYMBOL (black)	
7 CLUB SYMBOL (black)	
8 CLUB SYMBOL (black)	

9 CLUB SYMBOL (black)	
10 CLUB SYMBOL (black)	
J CLUB SYMBOL (black)	
Q CLUB SYMBOL (black)	
K CLUB SYMBOL (black)	
A CLUB SYMBOL (black)	
JOKER SYMBOL (black)	
$5.00 (black)	FIVE$
$10.00 (black)	TEN$
$15.00 (black)	FIFTN
$20.00 (black)	TWENTY
$40.00 (black)	FORTY
$50.00 (black)	FIFTY
$100 (black)	ONE HUND
$500 (black)	FIV HUND
$1,000 (black)	ONE THOU
$50,000 (black)	50 THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $5.00, $10.00, $15.00 or $20.00.

G. Mid-Tier Prize - A prize of $50.00, $100 or $500.

H. High-Tier Prize - A prize of $1,000, $5,000 or $50,000.

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 (1116), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 75 within each pack. The format will be: 1116-0000001-001.

K. Pack - A pack of "WELCOME TO FABULOUS LAS VEGAS" Instant Game tickets contains 75 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front of 075.

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 "WELCOME TO FABULOUS LAS VEGAS" Instant Game No. 1116 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 "WELCOME TO FABULOUS LAS VEGAS" Instant Game is determined once the latex on the ticket is scratched off to expose 55 (fifty-five) Play Symbols. If a player matches any of YOUR CARDS play symbols to any of the WINNING CARDS play symbols, the player wins the PRIZE shown for that card. If a player reveals a "joker" play symbol, the player wins TRIPLE the PRIZE shown for that symbol instantly. There are no Wild Cards in this game. 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 55 (fifty-five) 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 55 (fifty-five) 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 55 (fifty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 55 (fifty-five) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. The "JOKER" (tripler) play symbol will only appear on intended winning tickets as dictated by the prize structure.

C. No duplicate WINNING CARDS play symbols on a ticket.

D. No duplicate non-winning YOUR CARDS play symbols on a ticket.

E. Non-winning prize symbols will never be the same as the winning prize symbol(s).

F. No five or more matching non-winning prize symbols will appear on a ticket.

G. The top prize symbol will appear on every ticket unless otherwise restricted.

2.3 Procedure for Claiming Prizes.

A. To claim a "WELCOME TO FABULOUS LAS VEGAS" Instant Game prize of $5.00, $10.00, $15.00, $20.00, $50.00, $100 or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to, pay a $50.00, $100 or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "WELCOME TO FABULOUS LAS VEGAS" Instant Game prize of $1,000, $5,000 or $50,000, 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 "WELCOME TO FABULOUS LAS VEGAS" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "WELCOME TO FABULOUS LAS VEGAS" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "WELCOME TO FABULOUS LAS VEGAS" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 6,000,000 tickets in the Instant Game No. 1116. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1116 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$5	480,000	12.50
$10	640,000	9.38
$15	180,000	33.33
$20	160,000	37.50
$50	80,000	75.00
$100	6,900	869.57
$500	750	8,000.00
$1,000	150	40,000.00
$5,000	17	352,941.18
$50,000	8	750,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.88. 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. 1116 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1116, 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-200805797
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: November 4, 2008

♦ ♦ ♦

Instant Game Number 1127 "Fortune Cookie®"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1127 is "FORTUNE COOKIE®". The play style is "key number match with win all".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1127 shall be $2.00 per ticket.

1.2 Definitions in Instant Game No. 1127.

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, WIN ALL 10 PRIZES SYMBOL, ASSORTED FORTUNE COOKIE MESSAGES, $2.00, $4.00, $5.00, $10.00, $20.00, $50.00, $100, $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. 1127 - 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
WIN ALL 10 PRIZES	
ASSORTED FORTUNE COOKIE MESSAGES	
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$50.00	FIFTY
$100	ONE 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 positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $2.00, $4.00, $5.00, $10.00 or $20.00.

G. Mid-Tier Prize - A prize of $50.00 or $100.

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 (1127), 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: 1127-0000001-001.

K. Pack - A pack of "FORTUNE COOKIE®" Instant Game tickets contains 125 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). There will be 2 fanfold configurations for this game. Configuration A will show the front of ticket 001 and the back

of ticket 125. Configuration B will show the back of ticket 001 and the front of ticket 125.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "FORTUNE COOKIE®" Instant Game No. 1127 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 "FORTUNE COOKIE®" Instant Game is determined once the latex on the ticket is scratched off to expose 22 (twenty-two) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to either WINNING NUMBER play symbol, the player wins the PRIZE shown for that number. If a player reveals a "lucky" play symbol in the LUCKY FORTUNE, the player instantly WIN ALL 10 PRIZES! No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 22 (twenty-two) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 22 (twenty-two) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 22 (twenty-two) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 22 (twenty-two) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. No more than two (2) matching non-winning prize symbols will appear on a ticket.

C. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

D. No duplicate WINNING NUMBERS play symbols on a ticket.

E. Non-winning prize symbols will never be the same as the winning prize symbol(s).

F. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e. 5 and $5).

G. The "LUCKY" (win all) play symbol will only appear on intended winning tickets as dictated by the prize structure.

H. The top prize symbol will appear on every ticket unless otherwise restricted.

2.3 Procedure for Claiming Prizes.

A. To claim a "FORTUNE COOKIE®" Instant Game prize of $2.00, $4.00, $5.00, $10.00, $20.00, $50.00 or $100, 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 $100 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 "FORTUNE COOKIE®" 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 "FORTUNE COOKIE®" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "FORTUNE COOKIE®" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "FORTUNE COOKIE®" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 8,040,000 tickets in the Instant Game No. 1127. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1127 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$2	1,029,120	7.81
$4	514,560	15.63
$5	128,640	62.50
$10	112,560	71.43
$20	64,320	125.00
$50	52,059	154.44
$100	3,216	2,500.00
$1,000	35	229,714.29
$20,000	8	1,005,000.00

*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 4.22. 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. 1127 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1127, 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-200805759

Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

Filed: October 31, 2008

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Instant Game Number 1148 "Sapphire Blue 5's"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1148 is "SAPPHIRE BLUE 5'S". The play style is "multiple games".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1148 shall be $5.00 per ticket.

1.2 Definitions in Instant Game No. 1148.

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: $5.00, $10.00, $15.00, $20.00, $40.00, $50.00, $100, $500, $1,000, $50,000, 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 18, 19, 20 and 5 Symbol. The possible blue play symbols are: 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 18, 19, 20 and 5 Symbol.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1148 - 1.2D

PLAY SYMBOL	CAPTION
$5.00 (black)	FIVE$
$10.00 (black)	TEN$
$15.00 (black)	FIFTN
$20.00 (black)	TWENTY
$40.00 (black)	FORTY
$50.00 (black)	FIFTY
$100 (black)	ONE HUND
$500 (black)	FIV HUND
$1,000 (black)	ONE THOU
$50,000 (black)	50 THOU
1 (black)	ONE
2 (black)	TWO
3 (black)	THR
4 (black)	FOR
6 (black)	SIX
7 (black)	SVN
8 (black)	EGT
9 (black)	NIN
10 (black)	TEN
11 (black)	ELV
12 (black)	TLV
13 (black)	TRN
14 (black)	FTN
16 (black)	SXN
17 (black)	SVT
18 (black)	ETN
19 (black)	NTN
20 (black)	TWY
5 SYMBOL (black)	AUTO
1 (blue)	ONE
2 (blue)	TWO
3 (blue)	THR
4 (blue)	FOR
6 (blue)	SIX
7 (blue)	SVN
8 (blue)	EGT
9 (blue)	NIN
10 (blue)	TEN
11 (blue)	ELV
12 (blue)	TLV
13 (blue)	TRN
14 (blue)	FTN
16 (blue)	SXN
17 (blue)	SVT
18 (blue)	ETN
19 (blue)	NTN
20 (blue)	TWY
5 SYMBOL (blue)	DBL

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $5.00, $10.00, $15.00 or $20.00.

G. Mid-Tier Prize - A prize of $50.00, $100 or $500.

H. High-Tier Prize - A prize of $1,000, $5,000 or $50,000.

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 (1148), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 1148-0000001-001.

K. Pack - A pack of "SAPPHIRE BLUE 5'S" Instant Game tickets contains 75 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front 075.

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 "SAPPHIRE BLUE 5'S" Instant Game No. 1148 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 "SAPPHIRE BLUE 5'S" Instant Game is determined once the latex on the ticket is scratched off to expose 44 (forty-four) Play Symbols. For Game 1, if YOUR # play symbol beats THEIR # play symbol within the same PLAY, the player wins the PRIZE shown for that PLAY. If a player reveals a BLACK "5" play symbol, the player wins the PRIZE shown for that PLAY instantly. If a player reveals a BLUE "5" play symbol, the player wins DOUBLE the prize shown for that PLAY. For game 2, if a player matches any of YOUR NUMBERS play symbols to the WINNING NUMBER play symbol, the player wins the prize shown that number. If a player reveals a BLACK "5" play symbol, the player wins the PRIZE shown for that symbol instantly. If a player reveals a BLUE "5" play symbol, the player wins DOUBLE the PRIZE shown for that symbol. For game 3, if a player reveals three BLACK "5" play symbols in a row, column or diagonal line, the player wins the PRIZE shown. If a player reveals three BLUE "5" play symbols in a row, column or diagonal line, the player wins DOUBLE the PRIZE shown For game 4, if a player reveals a BLACK "5" play symbol the player wins the PRIZE shown for that symbol. If a player reveals a BLUE "5" play symbol, the player wins DOUBLE the PRIZE shown for that symbol. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 44 (forty-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 44 (forty-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 44 (forty four) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 44 (forty-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. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. No duplicate non-winning prize symbols within the same game.

C. Non-winning prize symbols will never be the same as a winning prize symbol within the same game.

D. The "BLACK 5" (auto win) feature may be used multiple times on a ticket but GAME 1 and GAME 2 will never have more than one occurrence within the same game.

E. GAME 1: No duplicate THEIR # play symbols in this game.

F. GAME 1: No duplicate non-winning YOUR # play symbols in this game regardless of color.

G. GAME 1: There will be no ties between any YOUR # play symbol and THEIR # play symbol within a play regardless of color.

H. GAME 1: When a "BLACK 5" (auto win) or "BLUE 5" (doubler) play symbol appears, the THEIR # play symbol will always be 6 or higher.

I. GAME 2: No duplicate non-winning YOUR NUMBER play symbols in this game regardless of color.

J. GAME 3: There will only be one occurrence of three matching play symbols appearing in a row, column or diagonal line as dictated by the prize structure.

K. GAME 3: No three matching play symbols other than the "BLACK 5" (auto win) or "BLUE 5" (doubler) play symbols.

L. GAME 3: There will always be at least two "BLACK 5" (auto win) or "BLUE 5" (doubler) play symbols.

M. GAME 3: No six or more "5" play symbols regardless of color.

N. GAME 4: No duplicate non-winning play symbols in this game regardless of color.

2.3 Procedure for Claiming Prizes.

A. To claim a "SAPPHIRE BLUE 5'S" Instant Game prize of $5.00, $10.00, $15.00, $20.00, $50.00, $100 or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to, pay a $50.00, $100 or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "SAPPHIRE BLUE 5'S" Instant Game prize of $1,000, $5,000 or $50,000, 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 "SAPPHIRE BLUE 5'S" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "SAPPHIRE BLUE 5'S" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "SAPPHIRE BLUE 5'S" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 6,000,000 tickets in the Instant Game No. 1148. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1148 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$5	480,000	12.50
$10	640,000	9.38
$15	180,000	33.33
$20	160,000	37.50
$50	80,000	75.00
$100	6,150	975.61
$500	800	7,500.00
$1,000	200	30,000.00
$5,000	17	352,941.18
$50,000	8	750,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.88. 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. 1148 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1148, 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-200805760
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: October 31, 2008

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Instant Game Number 1158 "Pure Gold"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1158 is "PURE GOLD". The play style is "key number match with multiplier ".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1158 shall be $5.00 per ticket.

1.2 Definitions in Instant Game No. 1158.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play

Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, COIN SYMBOL, GOLD BAR SYMBOL, $5.00, $10.00, $15.00, $20.00, $25.00, $40.00, $50.00, $100, $500, $1,000 and $50,000.

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. 1158 - 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	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
COIN SYMBOL	AUTO
GOLD BAR SYMBOL	WINX5
$5.00	FIVE$
$10.00	TEN$
$15.00	FIFTN
$20.00	TWENTY

$25.00	TWY FIV
$40.00	FORTY
$50.00	FIFTY
$100	ONE HUND
$500	FIV HUND
$1,000	ONE THOU
$50,000	50 THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $5.00, $10.00, $15.00 or $20.00.

G. Mid-Tier Prize - A prize of $50.00, $100 or $500.

H. High-Tier Prize - A prize of $1,000, $5,000 or $50,000.

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 (1158), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 1158-0000001-001.

K. Pack - A pack of "PURE GOLD" Instant Game tickets contains 75 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front of 075.

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 "PURE GOLD" Instant Game No. 1158 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 "PURE GOLD" Instant Game is determined once the latex on the ticket is scratched off to expose 44 (forty-four) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to any of the WINNING NUMBERS play symbols, the player wins PRIZE shown for that number. If a player reveals a "COIN" play symbol, the player wins the PRIZE shown for that symbol instantly. If a player reveals a "GOLD BAR" play symbol, the player wins 5 TIMES the PRIZE shown for that symbol. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 44 (forty-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 44 (forty-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 44 (forty-four) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 44 (forty 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. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. No more than four (4) matching non-winning prize symbols will appear on a ticket.

C. The "GOLD BAR" (win x 5) play symbol will only appear on intended winning tickets and only as dictated by the prize structure.

D. No duplicate WINNING NUMBERS play symbols on a ticket.

E. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

F. Non-winning prize symbols will never be the same as the winning prize symbol(s).

G. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e. 10 and $10).

H. The "COIN" (auto win) play symbol will never appear more than once on a ticket.

I. The top prize symbol will appear on every ticket unless otherwise restricted.

2.3 Procedure for Claiming Prizes.

A. To claim a "PURE GOLD" Instant Game prize of $5.00, $10.00, $15.00, $20.00, $50.00, $100 or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to, pay a $50.00, $100 or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "PURE GOLD" Instant Game prize of $1,000, $5,000 or $50,000, 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 "PURE GOLD" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "PURE GOLD" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "PURE GOLD" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or

within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 7,080,000 tickets in the Instant Game No. 1158. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1158 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$5	566,400	12.50
$10	755,200	9.38
$15	212,400	33.33
$20	188,800	37.50
$50	94,400	75.00
$100	9,086	779.22
$500	944	7,500.00
$1,000	177	40,000.00
$5,000	20	354,000.00
$50,000	7	1,011,428.57

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.87. 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. 1158 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1158, 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-200805798
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: November 4, 2008

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Notice of Public Hearing

A public hearing to receive public comments regarding the proposed new 16 Texas Administrative Code (TAC) §402.406 relating to Bingo Chairperson, proposed repeal of 16 TAC §402.103, relating to Training Program, proposed new 16 TAC §402.103, relating to Training Program, proposed new 16 TAC §402.422, relating to Amendment to a Regular License to Conduct Charitable Bingo, proposed new 16 TAC §402.410, relating to Amendment of a License-General Provisions, and proposed new 16 TAC §402.604, relating to Delinquent Purchaser, will be held on Thursday, December 4, 2008, at 10:00 a.m. at the Texas Lottery Commission, Commission Auditorium, First Floor, 611 E. Sixth Street, Austin, Texas 78701. Persons requiring any accommodation for a disability should notify Michelle Guerrero, Executive Assistant to the General Counsel, Texas Lottery Commission at (512) 344-5113 at least 72 hours prior to the public hearing.

TRD-200805748

Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: October 30, 2008

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Notice of Public Hearing

A public hearing to receive public comments regarding proposed new 16 Texas Administrative Code (TAC) §402.104, relating to Gambling Promoter and Professional Gambler, and proposed amendments to 16 TAC §401.153, relating to Qualifications for License, will be held on Thursday, December 4, 2008, at 2:00 p.m. at the Texas Lottery Commission, Commission Auditorium, First Floor, 611 E. Sixth Street, Austin, Texas 78701. Persons requiring any accommodation for a disability should notify Michelle Guerrero, Executive Assistant to the General Counsel, Texas Lottery Commission at (512) 344-5113 at least 72 hours prior to the public hearing.

TRD-200805749
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: October 30, 2008

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Office of the Controller, Lotto Texas® Jackpot Estimation Procedure

The Texas Lottery Commission has determined that information that is confidential by law, because it goes to the security of the lottery, is contained within the procedure referenced below. The confidential information has been redacted within this procedure.

TEXAS LOTTERY COMMISSION

OFFICE OF THE CONTROLLER

PROCEDURE

Number: OC-JE-002 Page: 1 of 8	Title: *Lotto Texas*® Jackpot Estimation	Approval: Texas Lottery Commission
Effective Date: October 29, 2008	Approval Date: October 29, 2008	Review Date:

PROCEDURE NUMBER
OC-JE-002 [Supersedes OC-JE-002 effective February 13, 2007]

PURPOSE
To provide standard guidelines for projecting and estimating sales for future *Lotto Texas* estimated annuitized jackpot prize amounts that will be advertised.

SCOPE
This procedure applies to the Office of the Controller, the Lottery Operations Division, and the Executive Division.

RESPONSIBILITY
This procedure is primarily the responsibility of the Controller, Financial Operations Manager, Lottery Operations Director, Lottery Products Manager, the Deputy Executive Director, the Executive Director, and designated jackpot team personnel (jackpot team) in the Office of the Controller and the Lottery Products Department. The final approval for the estimated jackpot to advertise will be provided by the Executive Director.

GENERAL
The Texas Lottery Commission (TLC) jackpot team ensures that *Lotto Texas* sales and other information necessary to estimate the jackpot amount to be advertised is gathered so the Controller, the Lottery Products Manager and the Lottery Operations Director, or their designee(s) may review and recommend estimates and projections that will be presented to the Deputy Executive Director and the Executive Director, or their designee(s). The Executive Director, or their designee, has the sole authority to approve the final projected estimated annuitized jackpot to advertise for *Lotto Texas* Drawings.

The "Lotto Texas" On-Line Game rule is found in the Texas Administrative Code, Title 16, Part 9, Chapter 401, Subchapter D, Rule 401.305. The Lotto Texas Game rules state, "The jackpot prize for a drawing is the greater of 40.47 percent of the proceeds from Lotto Texas ticket sales for all drawings in the roll cycle and any earnings on an investment of all or part of the sales proceeds, paid in 25 annual installments; or the amount advertised in accordance with subsection (e) of the Lotto Texas On-Line Game Rule as the estimated jackpot for the drawing, paid in 25 annual installments."

A roll cycle is a series of drawings that ends when there is a drawing for which one or more tickets are sold that match the six numbers drawn in the drawing. A new roll cycle begins with the next drawing after a drawing for which one or more jackpot tickets are sold that match the six numbers drawn in the drawing.

The advertised amount shall be an amount payable in 25 annual installments. To the extent that the advertised amount is based on projected sales, the projections shall be fair and reasonable. The Executive Director, or designee, may approve an increase in the amount of the jackpot originally advertised for a drawing if the increase is supported by reasonable sales projections. The Lottery Products Department will be responsible for notifying all necessary personnel and/or vendors.

REFERENCE
OC-WP-003, *Lotto Texas* Jackpot Payment and Investment

PROCEDURE

I. Timeline

1. The completed Lotto Texas Jackpot Estimation Worksheet shall be presented to the Executive Director no later than 4:00 p.m. on Wednesdays and Fridays.
2. In the event there is a delay in presenting the worksheet to the Executive Director, the jackpot team shall immediately determine the cause for the delay and inform each member of the jackpot estimation team of the cause for the delay.
3. Distribution of estimated jackpot information as outlined in Section VI shall be completed by close of business, or 5:00 p.m. on Wednesdays and Fridays.
4. The advertised jackpot for the current draw may be increased based on revised sales projections, if the Executive Director, or their designee, determines that sales have grown sufficiently to support an increased advertised jackpot. The Executive Director, or their designee, will be consulted regarding the time frame for increasing the advertised jackpot amount.
5. In the event Wednesday or Friday falls on a holiday and management has agreed that the sales trends and jackpot levels are such that an early estimation may be achieved, or if, due to a large jackpot level, a Friday estimation is delayed until Saturday, the above deadlines may be revised as needed.

II. Compile Estimate Information:

1. Determine the Interest Factor: Investment cost information is obtained from the Texas Treasury Safekeeping Trust Company by designated Controller staff and approved by

Financial Operations Manager prior to each estimation. Controller staff requests the estimated cost of 25 annual payments to yield the advertised jackpot. The interest factor is calculated by dividing the advertised jackpot by the estimated cost, including the initial payment required, to fund an investment stream that would yield the total advertised jackpot over a 25-year period. Note that the investment information may not be obtainable if the appropriate financial institutions and/or brokers are not open for business such as on business holidays. In those instances either a request for the information is made the day before or the prior estimation interest factor is used.

2. Compile actual draw sales for the current drawing: Draw sales for each *Lotto Texas* drawing are recorded both on the [redacted].

III. Estimate the Sales and Jackpot Support for the Current and Future Draws:

The Office of the Controller and the Lottery Products Department will independently estimate draw sales and jackpot support for the current *Lotto Texas* drawing and project the jackpot to be advertised for the next drawing in the event of a roll. Estimations may be made on a day prior to Wednesday or Friday if Wednesday or Friday fall on a holiday and management has agreed that the sales trends and jackpot levels are such that an early estimation may be achieved. If the estimation is completed prior to the holiday, at least one member of the estimation team will review sales prior to the drawing for changes in *Lotto Texas* sales or other factors that may impact jackpot prize support. If a revision to the advertised jackpot on the day of estimation or the day of the drawing is necessary, management or their designee(s) will be contacted.

1. Project the *Lotto Texas* draw sales for the current drawing: Estimations are made each Wednesday and Friday. If the draw day is on a Wednesday, estimate sales for that Wednesday. If the draw day is on a Saturday, estimate sales for Friday and Saturday. However, jackpot estimations may be updated at any time if either of the Lottery Products or Controller staff believe that changes in *Lotto Texas* sales or other factors may impact jackpot prize support. Estimate draw sales by using historical sales data and other relevant factors that may impact sales. Combine the actual draw sales to date with the projected draw sales for the remainder of the draw period to calculate the total projected draw sales.

   a) Evaluate historical sales data: Project the current draw day sales by estimating the expected increase/decrease in sales using the hourly sales trend and/or growth pattern for previous like-day drawings. Hourly sales information for Wednesday and Friday are available from [redacted].

   b) Other factors to consider in estimating draw sales, along with evaluating historical sales data, include but are not limited to:

- Wednesday draw sales are generally lower than Saturday draw sales.
- length of time since a large jackpot was advertised
- effect of holidays (Holidays generally cause sales to peak early and then fall below average on the holiday.)
- weather throughout the state, especially in key markets
- sales trends for like jackpots and/or most recent roll cycles
- current advertising/promotions schedule
- relevant media issues
- on-line terminal connection problems
- jackpots advertised in neighboring states and similar games such as Mega Millions
- new on-line game launches or other game enhancements
- overall trends in sales over similar time periods
- other - IRS deadlines, spring break, strength of the economy, etc.

It is not necessary to evaluate all these factor for every estimate. Sound judgment should be used in determining which factors to consider.

2. Evaluate Sales Support for the Current Advertised Jackpot: Determine the projected *Lotto Texas* jackpot sales support given the current advertised jackpot.

   a) If sales proceeds and the Lotto Texas prize reserve fund, if applicable, are not sufficient to pay a jackpot prize, the TLC shall use funds from other authorized sources, including the State Lottery Account as identified in Government Code, Section 466.355.

   b) The advertised jackpot for the current draw may be increased prior to the draw based on revised sales projections, if the Executive Director, or their designee, determines that sales have grown sufficiently to support an increased advertised jackpot.

3. Estimate sales for the next draw in the event of a rollover: To estimate sales for the next draw, use historical sales data and any other relevant information as described in 1.a) and 1.b) above.

4. Project a range of prospective estimated annuitized jackpot prize amounts that may be advertised in the event of a rollover: Use estimated draw sales for the current draw, estimated draw sales for the next draw, and the estimated interest factor to identify a range of prospective estimated annuitized jackpot prize amounts.

   a) The estimated annuitized jackpot prize amount will automatically be set to four million dollars for the first draw following a draw in which at least one jackpot prize ticket is identified.

b) The range of projected estimated annuitized jackpot amounts to advertise in the event of a rollover should reflect at least one million dollars greater than the current advertised jackpot.

c) Controller staff will complete a checklist to verify that all prior information is correct and that all of the required steps have been completed.

IV. Approval of Estimated Annuitized Jackpot Amount to Advertise:

1. Office of the Controller and Lottery Products Department personnel should consult with each other regarding the most fair and reasonable sales projections and other factors which may impact jackpot prize support for the estimated annuitized jackpot amount to advertise. Office of the Controller and Lottery Products Department staff will agree on a negotiated sales projection and this information will be presented to the Controller, the Products Manager and Lottery Operations Director or their designee(s), for their independent recommendations to the Deputy Executive Director and the Executive Director. In the event that any member of the above authorized staff is unavailable to sign the jackpot estimation worksheet in person, then approval of the projected estimated annuitized jackpot amount to advertise in the event of a rollover can be authorized and documented by email, pager or phone. Temporary signature authority may be designated to appropriate personnel that will be accountable for jackpot estimation approval. Additionally, this temporary signature authority designation may be granted to an individual on this list of authorized signatures reflected above. For example, the Lottery Operations Director may grant temporary signature authority to the Products Manager thus resulting in two signatures from the Products Manager. Temporary signature authorization is to be in writing, by email or pager, and should specify the effective length of time. Documentation of such approval or delegation shall be kept with the estimation file maintained by Lottery Products Department and a copy of the documentation should be provided to each member of the jackpot estimation team.

   a) The recommendation of the jackpot amount to advertise in the event of a rollover should typically be based on the "low end" sales support shown at the time of estimation, however, for marketing related purposes there may be instances when the recommended jackpot could be based on an amount exceeding the "high end" sales support.

   b) The range of potential jackpots to advertise in the event of a rollover should be used by management as a tool to understand the amount of additional funds that may be required to fund the jackpot prize. In the event that "low end" sales do not support a roll from the currently advertised jackpot, the TLC will roll the jackpot in $1 million increments.

2. In the event one of the authorized staff (Controller, Products Manager or Lottery Operations Director) identified in Section IV.1. is unavailable for signature authority and temporary signature authority cannot be obtained by 4:00 p.m., the matter shall be

brought to the attention of the Deputy Executive Director, Executive Director, or person in charge of the agency by Executive Order (in that order), who shall appoint one of the authorized staff identified in Section IV.1. to act instead of the unavailable signatory. The temporary signature authority should be designated to appropriate personnel that will be accountable for jackpot estimation approval.

3. The recommended jackpot amount to advertise is then presented to the Deputy Executive Director for review and concurrence or disagreement, and ultimately to the Executive Director for final approval of the subsequent (annuitized) jackpot prize amount that will be advertised in the event of a *Lotto Texas* jackpot rollover. The *Lotto Texas Jackpot Estimation Worksheet* presented will state the projected current (annuitized) jackpot prize amount for the current draw. In the event that any member of the above authorized staff is unavailable to sign the worksheet in person, then approval can be authorized and documented by email, pager or phone. Temporary signature authority for the Deputy Executive Director and the Executive Director may be designated to appropriate personnel other than those individuals listed above in Section IV.1 that will be accountable for jackpot estimation approval. Temporary signature authorization is to be in writing, by email or pager, and should specify the effective length of time. Documentation of such approval or delegation shall be kept with the estimation file maintained by Lottery Products Department and a copy of the documentation should be provided to each member of the jackpot estimation team.

4. In the event the Deputy Executive Director or the Executive Director is not available, the matter shall be brought to the attention of the Executive Director or Deputy Executive Director or their designee(s). The Deputy Executive Director or Executive Director shall appoint an authorized person other than those individuals identified in Section IV.1. to act instead of the unavailable signatory. In the event neither the Executive Director or their designee nor the Deputy Executive Director or their designee are available, the matter shall be brought to the attention of the person in charge of the agency by Executive Order who shall designate a substitute signature authority for the absent signatory authority that will be accountable for jackpot estimation approval. This will ensure the reliability and business continuity required for the advertisement of future prospective *Lotto Texas* estimated annuitized jackpot prize amount. Should this occur, the substitute signature authority event shall be documented and kept in the estimation file maintained by the Lottery Products Department and a copy of the documentation shall be provided to each member of the jackpot estimation team. The Internal Auditor, Chairman of the Commission, and each Commissioner should also be provided notification of the substitute signature authority event. Following this notification, documentation should also be placed in the estimation file maintained by the Lottery Products Department.

V. Distribution of Estimated Jackpot Information on the Agency Website:

1. The Office of Controller staff will perform the following:
   a) After the Executive Director has approved an advertised estimated jackpot under subsection (e) of the Lotto Texas On-Line Game Rule, a member of the

jackpot team will post the amount of ticket sales, if any, for previous drawings in the roll cycle, the amount of projected ticket sales for the upcoming drawing, investment information used to determine the advertised estimated jackpot, and other information used to determine the advertised estimated jackpot. This may be achieved by uploading a scan of the signed *Lotto Texas Jackpot Estimation Worksheet.*

b) The interest factor calculated by the agency based on investment information obtained from the Texas Treasury Safekeeping Trust Company and used by the TLC to determine the advertised jackpot will be entered on the [redacted] for posting to the agency website.

c) The approved estimated jackpot for the next draw in the roll cycle and the approximate cash value of the estimated jackpot will be entered on the [redacted] for posting to the agency website and will be published after the draw if no jackpot tickets were sold.

d) In addition, the approximate cash value of the jackpot prize amount for four million dollars is entered on the advertised jackpot screens for posting to the agency website and publishing after the draw if a jackpot prize ticket is sold for a drawing.

VI. Distribution of Estimated Jackpot Information:

1. The On-Line Product Specialist or designee:
   a) Fills in the approved estimated annuitized jackpot prize amount and the associated approximate cash value amount for the next drawing on the [redacted] In addition, the approximate cash value for the annuitized four million dollar starting jackpot amount is also filled in. This form is used to notify the Lottery Operator of the estimated annuitized jackpot prize amount and the associated approximate cash value for the next drawing.

   b) Faxes a copy of the [redacted] to the Lottery Operator for processing.

   c) Reviews the entry of the current advertised *Lotto Texas* jackpot prize amount, the estimated annuitized jackpot prize amount to be advertised in the event of a rollover and the associated approximate cash values for these annuitized amounts in the [redacted]. The application is used to disseminate estimated annuitized jackpot information and the associated approximate cash value amount to the agency website as well as to pertinent TLC staff.

   d) If the application is not functioning and the dissemination of the roll amount cannot be automatically sent, the [redacted] must be physically delivered to

the Texas Lottery Computer Room so the agency website can be updated by Information Resources after the drawing results are finalized. Before 5:00 p.m., an e-mail message must be sent to pertinent TLC and vendor staff to notify them of the jackpot prize amount that will be advertised in the event of a rollover.

e) Calls the Lottery Operator's control room to verify receipt of the fax and to confirm that the *Lotto Texas* estimated annuitized jackpot prize amount and the approximate cash value is legible. The name of the Lottery Operator staff member and time and date the verification took place shall be kept in the estimation file maintained by the Lottery Products Department.

f) Sends a voicemail broadcast message to pertinent TLC and vendor staff, notifying them of the estimated annuitized jackpot prize amount that will be advertised in the event of a rollover.

2. The Office of Controller staff will email the final and approved jackpot estimation worksheet to the Internal Audit Department, the Legislative Budget Board and the Governor's Office.

a) Internal Audit Department Contacts:
Assigned Internal Audit Contact – (contact name)@lottery.state.tx.us

b) Legislative Budget Board Contacts:
Assigned Budget Analyst - (analyst name)@lbb.state.tx.us
Assigned Revenue Analyst – (analyst name)@lbb.state.tx.us.

c) Governor's Office Contact:
Assigned Analyst, Governor's Advisor Budget Planning and Policy, (analyst name)@governor.state.tx.us

VII. Distribution of information when the current advertised jackpot prize amount is changed:

If the estimated annuitized jackpot prize amount that is currently advertised is changed prior to the drawing, Lottery Products Department personnel will update the outdoor billboards with the new *Lotto Texas* estimated annuitized jackpot prize amount to advertise and will also contact the advertising agency(s) and the Lottery Operator control room. Media Relations will notify the media that there is a new estimated annuitized jackpot prize amount being advertised.

TRD-200805827
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: November 5, 2008

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Texas Board of Nursing

Notice of Request for Information for Outside Legal Services Related to Contested Case Proceedings at the State Office of Administrative Hearings

The Texas Board of Nursing (BON) requests information from law firms or attorneys interested in representing the Board in occupational license disciplinary hearings before the State Office of Administra-

tive Hearings (SOAH). The contested case proceedings are conducted pursuant to the procedures outlined in the Texas Administrative Procedures Act (Chapter 2001, Texas Government Code) and the Texas Nursing Practice Act (Chapter 301, Texas Occupations Code). This Request for Information (RFI) is issued to establish (for the time frame beginning December 1, 2008 to August 31, 2009) a referral list or actual contracts for legal services to perform legal services associated with contested case proceedings before SOAH.

Description: The mission of the BON is to protect and promote the welfare of the people of Texas by ensuring that each person holding a license as a nurse in the State of Texas is competent to practice safely. The Board fulfills its mission through the regulation of the practice of nursing and the approval of nursing education programs. Acting in accordance with the highest standards of ethics, accountability, efficiency, effectiveness, and openness, the BON approaches its mission with a deep sense of purpose and responsibility and affirms that the regulation of nursing is a public and private trust.

A main function of the BON is to protect the people of Texas by ensuring that individuals that hold an occupational license to practice nursing who are proven to have violated the Nursing Practice Act receive reasonable, uniform and appropriate discipline. A person alleged to have violated the Nursing Practice Act and regulations of the Board of Nursing are entitled to due process consistent with the Texas Administrative Procedures Act, Chapter 2001 of the Texas Government Code, including a formal hearing before the State Board of Administrative Hearing. The Board is currently experiencing a backlog of cases needing to be set for a formal contested case proceeding at the SOAH. Public policy dictates that with regard to questions of nursing competency or professional character, the BON should resolve its disciplinary matters quickly and fairly.

Responses; Qualifications: Responses to this RFI should include at least the following information: (1) a description of the firm's or attorney's qualifications for performing the legal services requested, including the firm's prior experience in general civil or criminal litigation, trial practice, evidentiary hearings or contested case hearings at the SOAH; (2) the names, experience, and expertise of the attorneys who may be assigned to work on such matters; (3) the submission of fee information (either in the form of hourly rates for each attorney who may be assigned to perform services, flat fees, or other fee arrangements directly related to the achievement of the specific goals; (4) disclosures of conflicts of interest (identifying each and every matter in which the firm has, within the past calendar year, represented any entity or individual with an interest adverse to the Board of Nursing, or to the State of Texas, or any of its employees or appointed officials; and (5) confirmation of willingness to comply with policies, directives and guidelines of the BON.

The law firm(s) or attorney(s) will be selected based on demonstrated knowledge and experience, quality of staff assigned to perform services under the contract, compatibility with the goals and objectives of BON, and reasonableness of proposed fees. The successful firm(s) or attorney(s) will be required to sign the Texas Office of Attorney General's Outside Counsel Agreement, and execution of a contract with the BON is subject to approval by the Texas Office of Attorney General. The BON reserves the right to accept or reject any or all responses submitted. The BON is not responsible for and will not reimburse any costs incurred in developing and submitting a response.

Format and Person to Contact: The response should be sent by mail, facsimile, or electronic mail, or delivered in person, marked "Response to Request for Information," and addressed to Dusty Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas; or e-mail dusty.johnston@bon.state.tx.us or fax to (512) 305-8101.

Deadline for Submission of Response: All responses must be received at the address set forth above no later than 5:00 p.m., November 28, 2008. Questions regarding this request may be directed to Dusty Johnston (512) 305-6821.

TRD-200805792
James W. Johnston
General Counsel
Texas Board of Nursing
Filed: November 3, 2008

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Public Utility Commission of Texas

Announcement of Application for an Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on October 30, 2008, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Cebridge Acquisition, LP d/b/a Suddenlink Communications for an Amendment to a State-Issued Certificate of Franchise Authority; Project Number 36330 before the Public Utility Commission of Texas.

The requested amended CFA service area expands the service area footprint to include the city limits of Willis, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 36330.

TRD-200805802
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 4, 2008

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Notice of Application for a Service Provider Certificate of Operating Authority

On October 27, 2008, Tennessee Telephone Services, LLC d/b/a Freedom Communications USA, LLC filed an application with the Public Utility Commission of Texas (commission) for a service provider certificate of operating authority pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of Tennessee Telephone Services, LLC d/b/a Freedom Communications USA, LLC for a Service Provider Certificate of Operating Authority, Docket Number 36323.

Applicant intends to provide facilities-based/UNE, resale, and data telecommunications services.

Applicant's requested SPCOA geographic area includes the entire State of Texas.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than November 19, 2008. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commis-

sion at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 36323.

TRD-200805757
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 31, 2008

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Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of an application for sale, transfer, or merger filed with the Public Utility Commission of Texas on October 30, 2008, pursuant to the Public Utility Regulatory Act, Tex. Util. Code Ann. §39.158 (Vernon 2007 & Supp. 2008) (PURA).

Docket Style and Number: Report of AEP Texas North Company of the Acquisition of the Distribution Facilities of Goodfellow Air Force Base, Docket Number 36333.

The Application: AEP Texas North Company (AEP Texas North) filed a report of its intent to acquire the distribution facilities of Goodfellow Air Force Base at San Angelo, Texas. All of the facilities are located within AEP Texas North's singly-certificated service area and are being purchased at fair market value, which is $937,900. The distribution facilities to be acquired are: (1) approximately 3.6 miles of overhead primary voltage circuits; (2) approximately 8 miles of underground primary voltage circuits; (3) 147 transformers; and (4) all other associated hardware and fixtures that compose the system, providing service to approximately 200 government buildings. AEP Texas North will own, operate, and maintain the facilities and Goodfellow Air Force Base will lease the facilities back from AEP Texas North under AEP Texas North's Facilities Rental Service discretionary service fee.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the Commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the Commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All correspondence should refer to Docket Number 36333.

TRD-200805766
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 31, 2008

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Notice of Application to Relinquish a Service Provider Certificate of Operating Authority

On October 31, 2008, AmeriMex Communications Corp. filed an application with the Public Utility Commission of Texas (commission) to relinquish its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60531. Applicant intends to relinquish its certificate.

The Application: Application of AmeriMex Communications Corp. to Relinquish its Service Provider Certificate of Operating Authority, Docket Number 36336.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than November 25, 2008. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 36336.

TRD-200805803
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 4, 2008

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Notice of Application to Relinquish Retail Electric Provider (REP) Certification

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application filed on October 27, 2008, to relinquish a retail electric provider (REP) certification, pursuant to §§39.101 - 39.109 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of SGE Energy Management, Ltd. to Relinquish its Retail Electric Provider Certification, Docket Number 36328 before the Public Utility Commission of Texas.

SGE Energy Management, Ltd. is requesting to relinquish its REP certificate. SGE Energy Management, Ltd. stated that it has never done business in Texas and has not provided any services or served any customers under its REP certificate.

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than November 21, 2008. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936- 7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 36328.

TRD-200805756
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 31, 2008

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Notice of Intent to Implement Minor Rate Changes Pursuant to P.U.C. Substantive Rule §26.171

Notice is given to the public of Mid Plains Rural Telephone Cooperative, Inc. (Mid Plains Rural Telephone) application filed with the Public Utility Commission of Texas (commission) on October 24, 2008, for approval of a minor rate change pursuant to P.U.C. Substantive Rule §26.171.

Tariff Control Title and Number: Mid-Plains Rural Telephone Cooperative, Inc. Statement of Intent to Implement Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171; Tariff Control Number 36317.

The Application: Mid-Plains Rural Telephone filed an application, pursuant to the P.U.C. SUBST. R. §26.171, to implement a minor rate change to the Returned Check Charge and the Directory Assistance Service in its Member Services Tariff and the service charges for Two-Point Long Distance Service in its Long Distance Message Telecommunications Services Tariff. The Cooperative also seeks to eliminate the free call allowance for local and intraLATA Directory Assistance and remove obsolete operator services no longer provided by the Cooperative's Operator and Directory Assistance Service Provider, AT&T Texas. The proposed effective date for the proposed rate changes is

February 1, 2009. The estimated annual revenue increase recognized by Mid-Plains Rural Telephone is $46,025.85 or less than 5% of Mid-Plains Rural Telephone's gross annual intrastate revenues. Mid-Plains Rural Telephone has 3,300 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 the lesser of 5% or 1,500 of the affected local service customers to which this application applies by December 30, 2008, 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 December 30, 2008. 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 36317.

TRD-200805765
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 31, 2008

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South East Texas Regional Planning Commission

Request for Proposals

The South East Texas Regional Planning Commission (SETRPC) announces the issuance of Request for Proposals (RFP) #110508. SETRPC seeks to obtain pricing for and procure an integrated telephone system capable of IP, analog and digital endpoints.

The deadline for proposals is November 26, 2008 at 12:00 p.m. SETPRC reserves the right to accept or reject any or all proposals submitted. The only purpose of this Request for Proposal (RFP) is to ensure uniform information in the solicitation of proposals and procurement of services. Neither this notice nor the RFP is to be construed as a purchase agreement or contract or as a commitment of any kind; nor does it commit the SETRPC to pay for costs incurred prior to the execution of a formal contract or purchase order unless such costs are specifically authorized in writing by SETRPC.

Parties interested in submitting a proposal may obtain information by contacting Information Technology Manager, Jeremy Robison at (409) 899-8444 x125. A copy of the RFP may be downloaded from the SETRPC website at *http://www.setrpc.org/index.php?option=com_content&task=view&id=37&Itemid=91*.

TRD-200805821
Shaun Davis
Executive Director
South East Texas Regional Planning Commission
Filed: November 5, 2008

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The Texas A&M University System

Award Notification

In accordance with the provisions of Texas Government Code, Chapter 2254, The Texas A&M University System has entered into a consulting contract for hurricane assessment services. The consultant will perform damage assessments for member institutions/agencies affected by Hurricane Ike.

The Name and Address of Consultant is as follows: James Lee Witt Associates, DBA GlobalOptions, Inc., 1501 M Street, Washington, D.C. 20005.

The A&M System will pay an amount of $150,000.00. The contract will begin on October 15, 2008 and shall terminate three years thereafter unless renewed for an additional two years.

If any, the consultant will submit documents, films, recordings, or reports compiled by the consultant under the contract to TAMUS, no later than one year after completion of services.

Any questions regarding this posting should be directed to: Don Barwick, HUB & Procurement Manager, Office of HUB & Procurement Programs, The Texas A&M University System, 200 Technology Way, Ste 1273, College Station, TX 77845, Voice: (979) 458-6410, E-mail: dbarwick@tamu.edu.

TRD-200805796
Don Barwick
HUB and Procurement Manager
The Texas A&M University System
Filed: November 4, 2008

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Texas Department of Transportation

Second Extension of Comment Deadline - Public Notice of FEIS (Grand Parkway Segment F-2), Harris County

In the August 8, 2008, issue of the *Texas Register* (33 TexReg 6468), the Texas Department of Transportation published Public Notice of FEIS (Grand Parkway Segment F-2), Harris County. In the September 19, 2008, issue of the *Texas Register* (33 TexReg 8088), the Texas Department of Transportation published Extension of Comment Deadline - Public Notice of FEIS (Grand Parkway Segment F-2), Harris County extending the comment deadline. **The deadline date for submittal of comments has been changed and extended again**. The following notice is re-published with the new deadline.

Public Notice of FEIS: Pursuant to Title 43, Texas Administrative Code, §2.5(e)(8)(B), the Texas Department of Transportation is advising the public of the availability of the Final Environmental Impact Statement (FEIS) for the proposed construction of State Highway 99, SH 249 to IH 45 (the Grand Parkway Segment F-2) northwest of Houston in Harris County, Texas. Comments regarding the FEIS may be submitted via email to:

segmentf2comments@grandpky.com

or to The Grand Parkway Association, Attention: Segment F-2 Comments, 4544 Post Oak Place, Suite 222, Houston, Texas 77027 or the Director of Project Development at the Texas Department of Transportation's Houston District Office, 7600 Washington Avenue, Houston, Texas. **Comments should be postmarked by November 26, 2008**. The Texas Department of Transportation's (department) mailing address is P.O. Box 1386, Houston, Texas 77251-1386.

The purpose of the proposed action is to provide improved access to the existing and future thoroughfare system, reduce area traffic congestion, improve safety, and improve area-wide mobility. A full range of alternatives were identified and evaluated for Segment F-2 at the corridor level (five corridors), transportation mode level (No Build, Transportation System Management Alternatives, Travel Demand Alternatives, and Modal Alternatives), and at the alignment level. The proposed action consists of the construction of a controlled access tollway from

SH 249 to IH 45 in Harris County, a distance ranging from 12.0 to 13.0 miles, depending on the alternative alignment considered. The proposed facility will consist of a four-mainlane controlled access tollway within a 400-foot (right of way) width. A total of seven build alternative alignments, in addition to the No-Build alternative, have been presented in the FEIS. All seven alternative alignments lie between SH 249 and IH 45 in a west-east direction and begin approximately 0.2 miles south of Boudreaux Road. Alternative Alignment A traverses mainly through the center of the study area. This alignment alternative terminates at IH 45, approximately 0.6 miles north of Spring Stuebner Road and is 12.5 miles in length. Alternative Alignment B traverses mainly through the southern portion of the study area. Alternative Alignment B terminates approximately 0.1 miles south of the Hardy Toll Road and IH 45 intersection and is 13.0 miles in length. Alternative Alignment C passes through the north and middle portion of the study area. Alternative Alignment C terminates at the same location as Alternative Alignment A and is 12.2 miles in length. Alternative Alignment D passes through the middle of the study area from Boudreaux Road approximately 0.3 mile northeast of FM 2920 for approximately 7.0 miles before ending at the same location as Alternative Alignment C and is 12.0 miles in length. Alternative Alignment E passes through the northern portion of the study area where it ends at the same location as Alternative Alignment B and is 12.5 miles in length. Alternative Alignment F passes through the northern portion of the study area before ending at the same location as Alternative Alignment C and is 12.1 miles in length.

The preferred corridor and transportation mode and the recommended alternative alignment, as presented in the Draft Environmental Impact Statement (DEIS), were selected after careful consideration and assessment of the potential environmental impacts and evaluation of agency and public comments. After consideration of all agency and public comments received on the Revised Draft Environmental Impact Statement (RDEIS) of 2006 and the original DEIS of 2004, coordination with landowners, as well as updated environmental data, the Grand Parkway Association, in coordination with department and Federal Highway Administration (FHWA), selected a Preferred Alternative Alignment. It was determined after careful review of the RDEIS and DEIS comments that a shift of the Recommended Alternative Alignment shown in the RDEIS in two locations was necessary to create a Preferred Alternative Alignment. These shifts are as follows:

In Reach 7, near Boudreaux Road, where the Recommended Alternative Alignment passed through a portion of the Spring Terrace subdivision, the alignment was shifted approximately 120 feet to the northeast, thereby avoiding four platted home sites.

In the far eastern end of Reach 7, the Recommended Alignment was modified to a route more closely in line with Alternative Alignment A, with an added dip to the south near the border of Reach 8. This adjustment allowed engineers of the roadway to avoid a relocation of the railroad which had been included in the Recommended Alternative Alignment. Relocating the railroad necessitated additional Right-of-Way impacts and would have added a large expense in time, energy, and money. This modification does not increase impacts to any other resource.

The preferred build alternative that has emerged from the study was proposed on the basis of its ability to best facilitate the project's Need and Purpose while minimizing impacts to the natural, physical, and social environments. The Preferred Build Alternative Alignment is approximately 12.01 miles long. It begins at SH 249 approximately 0.2 miles south of Boudreaux Road, the alignment travels east approximately 1.8 miles, then heads northeast approximately 2.5 miles, running parallel and adjacent to Boudreaux Road. After crossing FM 2920, the Preferred Alternative Alignment travels east 1.2 miles before veering northeast for 0.8 miles and crossing Boudreaux Road and Kuykendahl Road just north of the Spring Terrace subdivision. Continuing northeast, crossing Northcrest Drive, and then turning eastward to a crossing of Gosling Road and on to a joint crossing of Rothwood Drive and the Union Pacific Railroad (UPRR). The alignment turns east-southeast parallel to and north of the UPRR tracks until it turns northeast to connect to IH 45, approximately one mile south of the IH 45/Hardy Toll Road interchange. The Preferred Alternative Alignment for Segment F-2 would require the acquisition of new right of way (630 acres), the adjustment of utility lines, and the filling of aquatic resources including jurisdictional wetlands (58.89 acres). The Preferred Alignment as presented in the FEIS would displace 120 residential properties and nine commercial properties. No archeological sites, historic properties, or endangered species are expected to be affected.

A minor design modification for Segment F-2 has been proposed. The design modification involves a slight shift in the Preferred Alignment for approximately two miles between FM 2920 and Kuykendahl Road near the subdivisions of Willow Trace and Lakes of Avalon Village. This minor shift in alignment is in response to comments from affected property owners and is intended to reduce impacts in the proposed project area. Other than that proposed above, no additional design modifications for Segment F-2 are currently under consideration.

Copies of the FEIS may be viewed at the Grand Parkway Association website, www.grandpky.com; at the offices of the Grand Parkway Association or the Texas Department of Transportation's Houston District (addresses previously mentioned); at the Houston Public Library, Central Branch, 500 McKinney, Houston, Texas; at the Harris County Public Library, Tomball Branch, 30555 Tomball Parkway, Tomball, Texas; at the Harris County Public Library, Northwest Branch, 11355 Regency Green Drive, Cypress, Texas; and at the Harris County Public Library, Barbara Bush Branch, 6817 Cypresswood Drive, Spring, Texas. Copies of the FEIS and other information about the project may be obtained at the Grand Parkway Association office or the department's Houston District Office. For further information, please contact David Gornet, P.E. at (713) 965-0871 or Pat Henry, P.E. at (713) 802-5241.

TRD-200805778
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: November 3, 2008

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Texas Water Development Board

Request for Statements of Interest for Federal Funding under the Texas Environmental Infrastructure Program

The Texas Water Development Board (board) is requesting Statements of Interest (SOIs) from interested political subdivisions under the Texas Environmental Infrastructure Program (TEIP). "Political subdivision" includes a county, city, or other body politic or corporate of the state, including any district or authority created under Article III, Section 52 or Article XVI, Section 59 of the Texas Constitution and including any interstate compact commission to which the state is a party. Contingent on congressional appropriations, approximately $40,000,000 will be available through TEIP for water resources projects identified by the board.

The board's objective is to support construction of projects (or discrete increments of projects) to meet near-term water supply needs. Pre-construction activities are also eligible for TEIP assistance, but preference will be given to those SOIs that support construction of water supply within a reasonable time frame.

TEIP Background

The TEIP is administered by the U.S. Army Corps of Engineers (USACE) under Public Law 110-114, the Water Resources Development Act of 2007 (WRDA). TEIP authorizes the USACE to provide financial assistance to develop water supply projects in Texas, including implementation of water management strategies recommended in "Water for Texas - 2007," the Texas State Water Plan, and not otherwise authorized under WRDA. This assistance is "in the form of planning, design and construction assistance for water-related environmental infrastructure and resource protection and development projects in Texas, including projects for water supply, storage, treatment and related facilities, environmental restoration, and surface water resource protection and development."

Funding Limitations

The $40,000,000, if appropriated, will be dedicated to a cost-sharing program. The federal share of a project cost will be 75%, which may be provided in the form of grants or reimbursements of project costs. The non-federal share of 25% may be provided in the form of materials and in-kind services, including planning, design, construction and management services, as determined to be necessary for the project. Design work carried out before the date of project funding under WRDA may be credited toward the non-federal share. Additionally, the non-federal share may be in the form of a credit for land, easements, rights-of-way, and relocations. More details on eligibility for the non-federal cost-share will be available upon the release of USACE implementation guidance for TEIP. (Upon receipt, the board will make the USACE guidance available to all interested political subdivisions.) Finally, the eligible applicant may apply for funding of the non-federal 25% share through one of the board's state authorized funding programs.

Contingent on congressional appropriations, funds will be distributed directly from the USACE to the political subdivision.

Eligibility and Ranking

The board's executive administrator will prioritize SOIs on the basis of the criteria specified herein, and forward the prioritized list of eligible SOIs to Congress and the USACE by February 2009 for consideration in Fiscal Year 2010 appropriations. The list also will be posted to the TWDB website and provided to all political subdivisions that submit a SOI.

The ranking criteria to be used by the executive administrator are as follows:

1. Whether the proposed project is identified in the State Water Plan;

2. Whether the proposed project is for new water supply;

3. Construction projects are preferred over pre-construction projects;

4. Projected completion date;

5. Status of federal 404 permit authorization; and

6. Other benefits.

General Requirements

Interested political subdivisions or their authorized representative should submit an SOI to the address below no later than 5:00 p.m. central time on January 14, 2009. Responses should be limited to ten pages, excluding necessary maps.

The SOI shall contain the following information:

1. Name and address and geographical jurisdiction of the project sponsor(s);

2. Name, phone number and email address of main points of contact for the sponsor;

3. Name of project as identified by page number in the State Water Plan, "Water for Texas - 2007," and in the applicable Regional Water Plan;

4. Description of the physical boundaries of the project and the geographic area and region to be served by the project and the congressional district(s) in which the project is located;

5. Brief description of overall project and estimated total cost of entire project;

6. Brief description of the portion of the project for which federal funding is requested under the TEIP, and estimated cost of the portion, date of the cost estimate, and estimated time to complete the project;

If requesting funding for a discrete portion of a project, the portion must be a 'usable increment' to be defined in the USACE implementation guidelines.

7. A resolution from the governing body of the political subdivision approving the project and committing non-federal cost share. If, due to the schedule for governing body meetings, the applicant cannot provide a resolution by the January 14, 2009 deadline for SOI, then the board will accept a letter from the chair or chief executive of the governing body stating the intent to request a resolution at the next regularly scheduled meeting (must include date of the meeting) of the governing body; and

8. Statement by the project sponsor that the project has not been authorized in WRDA 2007 or previous Acts.

Submission of SOI and Questions

The SOI shall be submitted by U.S. Mail, electronic mail or facsimile to:

Mr. Dave Mitamura

Texas Water Development Board

P.O. Box 13231

Austin, Texas 78711-3231

Phone: (512) 463-7965

Fax: (512) 475-2053

Email: dave.mitamura@twdb.state.tx.us

The SOI must be received by 5:00 p.m. central time, January 14, 2009.

TRD-200805812
Kenneth L. Petersen
General Counsel
Texas Water Development Board
Filed: November 4, 2008

How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 33 (2008) is cited as follows: 33 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "33 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 33 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For website subscription information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The ***Texas Administrative Code (TAC***) is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (800-356-6548), and West Publishing Company (800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affected***. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register***. If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).