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# TEXAS REGISTER

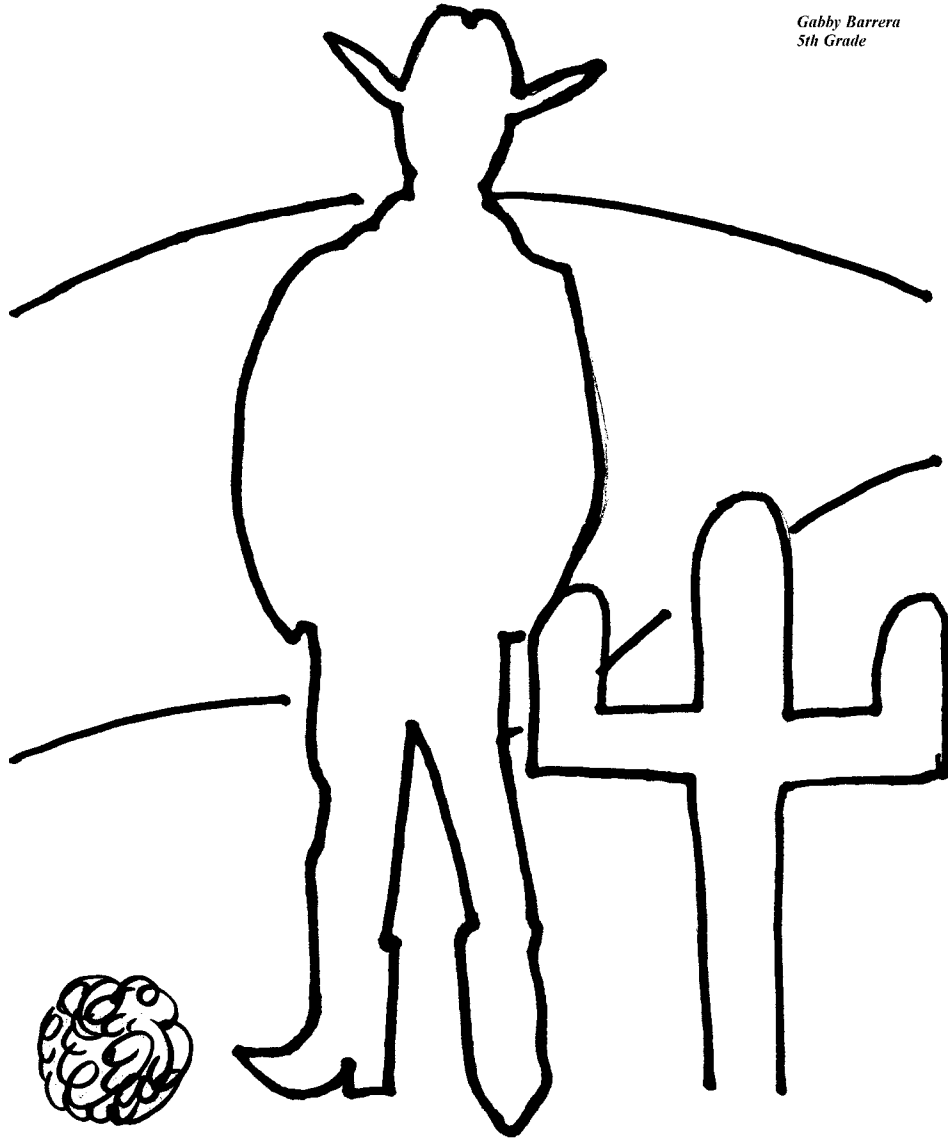
*Volume 37 Number 5*

*February 3, 2012*

*Pages 425 - 552*

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*Gabby Barrera  
5th Grade*



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

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# 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](mailto:register@sos.state.tx.us)

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

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

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

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

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

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

...

**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 ATTORNEY GENERAL

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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>.)

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Requests for Opinions

**RQ-1036-GA**

**Requestor:**

The Honorable Jim Jackson

Chair, Judiciary and Civil Jurisprudence Committee

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether a retail establishment may charge an itemized and disclosed "service fee" on a consumer transaction (RQ-1036-GA)

**Briefs requested by February 20, 2012**

**RQ-1037-GA**

**Requestor:**

The Honorable Jane Nelson

Chair, Committee on Health and Human Services

Texas State Senate

Post Office Box 12068

Austin, Texas 78711

Re: Authority of the Texas Lottery Commission to conduct second chance drawings and other games of chance via the internet (RQ-1037-GA)

**Briefs requested by February 23, 2012**

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

TRD-201200330

Jay Dyer

Deputy Attorney General

Office of the Attorney General

Filed: January 25, 2012



Opinions

**Opinion No. GA-0907**

The Honorable Eddie Lucio, Jr.

Chair, Senate Committee on International Relations and Trade

Post Office Box 12068

Austin, Texas 78711-2068

Re: Vacancies on a junior college district's board of trustees (RQ-0987-GA)

## S U M M A R Y

Depending on the facts of the case and the circumstances surrounding any particular litigation, an application for a writ of quo warranto, a declaratory judgment, or an injunction might allow a court to determine whether a member of a board of trustees of a junior college district vacated his or her position.

A vacancy on the board of trustees of a junior college district whose trustees are elected from single-member trustee districts must be filled by appointment made by the remaining members of the board. A person elected or appointed to fill a vacancy on a junior college district's board of trustees must perform the duties of office until his or her successor is duly qualified.

**Opinion No. GA-0908**

The Honorable John E. Davis

Chair, Committee on Economic and Small Business Development

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether the members of the board of trustees of the Clear Lake City Community Association may hold a meeting by means of a telephone conference call (RQ-0989-GA)

## S U M M A R Y

The members of the board of trustees of the Clear Lake City Community Association, a "property owners' association" as defined in the Open Meetings Act, chapter 551 of the Government Code, may not hold a meeting by means of a telephone conference call, even if only one member so participates, except in the limited circumstances described in section 551.125, Government Code.

**Opinion No. GA-0909**

The Honorable Richard J. Miller

Bell County Attorney

Post Office Box 1127

Belton, Texas 76513

Re: Transportation of a patient after a preliminary examination by a mental health facility (RQ-0990-GA)

**S U M M A R Y**

The Legislature provides for the transportation of a mentally ill person under section 574.045, Health and Safety Code. Section 574.045 does not authorize transportation of a person who has been detained under section 573.021. Accordingly, a person may not, under section 573.021, be taken to the Austin State Hospital or similar treatment facility by private conveyance arranged for by the initial mental health facility that conducted the preliminary examination of the person.

However, once a preliminary examination under section 573.021 has been conducted and a physician has made the written statement con-

taining his or her findings required by section 573.022, an initial mental health facility would be authorized to transport the patient to another mental health facility under sections 573.022 and 574.045.

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

TRD-201200331

Jay Dyer

Deputy Attorney General

Office of the Attorney General

Filed: January 25, 2012





# EMERGENCY RULES

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

## TITLE 4. AGRICULTURE

### PART 1. TEXAS DEPARTMENT OF AGRICULTURE

#### CHAPTER 19. QUARANTINES AND NOXIOUS AND INVASIVE PLANTS

##### SUBCHAPTER X. CITRUS GREENING QUARANTINE

###### 4 TAC §§19.615 - 19.621

The Texas Department of Agriculture (the department) adopts on an emergency basis new §§19.615 - 19.621, concerning establishing a quarantine to prevent the spread of a recently discovered citrus greening (*Candidatus Liberibacter asiaticus*) infection to non-infected areas. The department believes that immediate action is necessary to prevent the spread of this citrus greening infection to other commercial citrus groves, citrus nursery plant production areas of Texas, or other states, and adoption of this quarantine on an emergency basis is both necessary and appropriate.

The new sections (1) require that any citrus plant (any plant in genus Citrus, Eremocitrus, Microcitrus, Poncirus, or Fortunella, including orange jasmine and any hybrid, grafted or other plant having parentage in any of those genera) or detached citrus fruit containing or in close association with citrus leaves, stems, or plant debris located within the quarantined area be destroyed or treated to prevent the spread of the disease and (2) prescribe specific restrictions on the handling and movement of quarantined articles from the quarantined area. The area subject to the emergency quarantine is located in Hidalgo County and is defined as all areas encompassed by a five-mile radius extending from the point in San Juan, Texas on FM 2557 halfway between the intersection of E. Moore Drive and FM 2557 and the intersection of El Gato Road and FM 2557.

This emergency quarantine is being established because the Texas Department of Agriculture (TDA) and USDA Animal and Plant Health Inspection Service (APHIS) have confirmed the detection of citrus greening in a tree in a commercial orange grove in San Juan, Texas in Hidalgo County. Citrus greening is a destructive plant disease that poses a threat to the state's citrus industry. The department took immediate action to quarantine a five-mile area surrounding the detection and issue an emergency seizure order, thereby preventing the movement of quarantine articles outside of the quarantined area, without proper treatment. The infected grove has been treated for the control of the Asian citrus psyllid, an insect that is the vector for spreading citrus greening to citrus trees.

The citrus and nursery industries in particular are in peril because without this emergency quarantine action, USDA could

quarantine the entire state of Texas and, as a result, important export markets for citrus plants could be lost and all citrus plants would be subject to more costly production in enclosed structures under stringent requirements prior to export from the state. This emergency quarantine takes necessary steps to prevent the spread of the infection thus protecting the state's citrus fruit and nursery crops, agricultural industries of vital importance to the state of Texas.

New §19.615 states the basis for the quarantine and defines the quarantined pest. New §19.616 designates the areas subject to quarantine. New §19.617 lists the articles subject to the quarantine. New §19.618 provides restrictions on the movement of articles subject to the quarantine. New §19.619 provides consequences for failure to comply with quarantine restrictions. New §19.620 provides an appeal process for certain agency actions taken against a person for failure to comply with the quarantine restrictions or requirements. New §19.621 provides procedures for handling of discrepancies or other inconsistencies in textual descriptions in this subchapter with graphic representations. This emergency quarantine will expire not later than January 27, 2012 at 5:00 p.m. CST and will be replaced by the department with an updated emergency quarantine prior to that time in a separate submission, using updated information.

The new sections are adopted on an emergency basis under the Texas Agriculture Code, §71.004, which authorizes the department to establish emergency quarantines; §71.007 which authorizes the department to adopt rules as necessary to protect agricultural and horticultural interests, including rules to provide for specific treatment of a grove or orchard or of infested or infected plants, plant products, or substances; §12.020 which authorizes the department to assess administrative penalties for violations of Chapter 71; and the Texas Government Code, §2001.034, which provides for the adoption of administrative rules on an emergency basis, without notice and comment.

§19.615. Basis for Quarantine; Quarantined Pest - Dangerous Plant Disease (Proscribed Biological Entity).

(a) Quarantined pest is Citrus Greening. The department finds that Citrus Greening, (*Candidatus Liberibacter asiaticus*) is a dangerous plant disease that is not widely distributed in this state.

(b) Description of dangerous plant disease. Citrus Greening, scientific name *Candidatus Liberibacter asiaticus*, is a dangerous disease of citrus plants (any plant in genus Citrus, Eremocitrus, Microcitrus, Poncirus, or Fortunella, including orange jasmine and any hybrid, grafted or other plant having parentage in any of those genera). Citrus greening is a bacterial disease that attacks the vascular system of plants. Once infected, there is no cure for a tree with citrus greening disease. In areas of the world where citrus greening is endemic, citrus trees decline and die with a few years. Citrus Greening is considered a serious disease by the United States Department of Agriculture (USDA) as well as many states.

(c) Establishment of quarantine. The department is authorized by the Texas Agriculture Code, §71.002, to establish a quarantine against the dangerous plant disease, Citrus Greening, identified in this section.

§19.616. Geographical Areas Subject to the Quarantine.

(a) The quarantined area (geographical areas subject to the quarantine) is located in Hidalgo County and is defined as all areas encompassed by a five-mile radius extending from the point in San Juan, Texas on FM 2557 halfway between the intersection of E. Moore Drive and FM 2557 and the intersection of El Gato Road and FM 2557.

(b) A map of the quarantined area may be obtained by contacting the department's Valley Regional Office, 900-B East Expressway 82, San Juan, Texas 78598, (956) 787-8866.

§19.617. Articles Subject to the Quarantine.

An article subject to the quarantine, or regulated article, is an item the handling of which is controlled, regulated, or restricted by Chapter 71 of the Texas Agriculture Code, this subchapter, and any department orders issued pursuant to these rules and Chapter 71, in order to prevent dissemination of the dangerous plant disease to areas located outside a quarantined area. The following articles are subject to the quarantine:

(1) Citrus plants (any plant in genus Citrus, Eremocitrus, Microcitrus, Poncirus, or Fortunella, including orange jasmine and any hybrid, grafted or other plant having parentage in any of those genera) located in the quarantined area; and

(2) Detached citrus fruit in the quarantined area with attached citrus leaves, stems, or plant debris or in close association with citrus leaves, stems, or plant debris.

§19.618. Restrictions on Movement of Articles Subject to the Quarantine.

(a) A regulated article originally located within or moved into the quarantined area may not be moved outside the area except as otherwise provided by this subchapter.

(b) Citrus plants (any plant in genus Citrus, Eremocitrus, Microcitrus, Poncirus, or Fortunella, including orange jasmine and any hybrid, grafted or other plant having parentage in any of those genera) must be either:

(1) held without further movement within or outside the quarantined area and treated with a pesticide labeled for the control of Asian Citrus Psyllid and for use on those plants, in accordance with that label, for the duration of the emergency quarantine; or

(2) destroyed.

(c) Detached citrus fruit originating within or brought into a quarantined area may be moved outside the quarantined area if the har-

vested fruit is rendered free of all leaves, stems, or plant debris prior to movement outside of the area.

§19.619. Consequences for Failure to Comply with Quarantine Restrictions.

A person who fails to comply with quarantine restrictions or requirements or a department order relating to the quarantine is subject to administrative or civil penalties up to \$10,000 per day for any violation of the order and to the assessment of costs for any treatment or destruction that must be performed by the department in the absence of such compliance. Additionally, the department is authorized to seize and treat or destroy, or order to be treated or destroyed, any quarantined article that is found to be infested with the quarantined pest or, regardless whether infected or not, transported within, out of, or through the quarantined area in violation of these rules.

§19.620. Appeal of Department Action Taken for Failure to Comply with Quarantine Restrictions.

An order under the quarantine may be appealed according to procedures set forth in the Texas Agriculture Code, §71.010.

§19.621. Conflicts Between Graphical Representations and Textual Descriptions; Other Inconsistencies.

(a) In the event that discrepancies exist between graphical representations and textual descriptions in this subchapter, the representation or description creating the larger geographical area or more stringent requirements regarding the handling or movement of quarantined articles shall control.

(b) The textual description of the plant disease shall control over any graphical representation of the same.

(c) Where otherwise clear as to intent, the mistyping of a scientific or common name in this subchapter shall not be grounds for avoiding the requirements of this subchapter.

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 January 20, 2012.

TRD-201200279

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Effective Date: January 20, 2012

Expiration Date: January 27, 2012

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



# PROPOSED RULES

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

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

## TITLE 1. ADMINISTRATION

### PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

#### CHAPTER 355. REIMBURSEMENT RATES SUBCHAPTER A. COST DETERMINATION PROCESS

##### 1 TAC §355.101, §355.107

The Texas Health and Human Services Commission (HHSC) proposes amendments to §355.101, concerning Introduction, and §355.107, concerning Notification of Exclusions and Adjustments.

##### Background and Justification

HHSC, under its authority and responsibility to administer and implement rates, proposes to amend these rules to adopt a formal definition for the term "line item" and eliminate a reference to auditors.

HHSC is implementing a web-based cost-reporting system, the State of Texas Automated Information and Reporting System (STAIRS), to replace its existing cost-reporting system. The current cost-reporting system identifies each data item by an item number, making it clear that the term "line item" refers to a numbered item on the cost report. STAIRS does not have item numbers. With the elimination of line item numbers under the STAIRS system, a definition of "line item" to accommodate both the current cost-reporting system and the new STAIRS system is needed to avoid confusion and misinterpretation.

Additionally, HHSC is modifying its cost report audit process to focus more audit resources on high-risk cost reports identified through various risk assessment procedures. The rule proposal deletes a reference to "auditors" since both audit and non-audit HHSC staff will now be finalizing cost report desk reviews.

##### Section-by-Section Summary

The proposed amendment to §355.101 adds a definition for "line item" in new paragraph (5) of subsection (b).

The proposed amendment to §355.107 deletes the term "auditors" from subsection (a) and makes several minor technical changes.

##### Fiscal Note

Gordon E. Taylor, Chief Financial Officer for the Department of Aging and Disability Services, has determined that during the first five-year period the amendments are in effect there will be no fiscal impact to state government. The amendments will not result in any fiscal implications for local health and human ser-

vices agencies. There are no fiscal implications for local governments as a result of enforcing or administering the sections.

##### Small Business and Micro-business Impact Analysis

Pam McDonald, Director of Rate Analysis, has determined that there will be no economic effect on small businesses and micro-businesses as a result of enforcing or administering the amendments. The proposed amendments do not require any changes in practice or any additional cost to a contracted provider.

HHSC does not anticipate that there will be any economic cost to persons who are required to comply with these amendments. The amendments should not affect local employment.

##### Public Benefit

Pam McDonald has also determined that, for each of the first five years the amendments are in effect, the expected public benefit is that the rules will define what is meant by "line item" when the term is used in the subchapter and will clarify that reviews of cost reports may be completed by staff other than auditors.

##### Takings Impact Assessment

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

##### Regulatory Analysis

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

##### Public Comment

Questions about the content of this proposal may be directed to Judy Myers in the HHSC Rate Analysis Department by telephone at (512) 491-1179. Written comments on the proposal may be submitted to Ms. Myers by fax to (512) 491-1998; by e-mail to [judy.myers@hhsc.state.tx.us](mailto:judy.myers@hhsc.state.tx.us); or by mail to HHSC Rate Analysis, Mail Code H400, P.O. Box 85200, Austin, Texas, 78708-5200, within 30 days of publication of this proposal in the *Texas Register*.

##### Statutory Authority

The amendments are proposed under Texas Government Code §531.033, which authorizes the Executive Commissioner of

HHSC to adopt rules necessary to carry out the Commission's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

The amendments affect Texas Government Code, Chapter 531 and Texas Human Resources Code, Chapter 32. No other statutes, articles, or codes are affected by this proposal.

*§355.101. Introduction.*

(a) The information in §355.102 of this title (relating to General Principles of Allowable and Unallowable Costs), §355.103 of this title (relating to Specifications for Allowable and Unallowable Costs), §355.104 of this title (relating to Revenues), and §355.105 of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures) applies to Intermediate Care Facilities for Persons with Mental Retardation, Home and Community-based Services, Service Coordination/Targeted Case Management, Rehabilitative Services, School Health and Related Services, and Texas Home Living programs cost reports pertaining to providers' fiscal years ending in calendar year 2004 and subsequent years. For all other programs these sections apply to cost reports pertaining to the providers' fiscal years ending in calendar year 1997 and subsequent years.

(b) The following terms, when used in this subchapter, have the following meanings:

- (1) HHSC--The Texas Health and Human Services Commission.
- (2) DHS--The Texas Department of Human Services or its successor agency.
- (3) TDMHMR--The Texas Department of Mental Health and Mental Retardation or its successor agency.
- (4) TEA--The Texas Education Agency or its successor agency.
- (5) Line item--A specific informational, statistical, revenue or expense data element in a cost report.

(c) HHSC reimburses providers for contracted client services through reimbursement amounts determined as described in this chapter and in reimbursement methodologies for each program. Statewide, uniform reimbursements and reimbursement ceilings are approved by HHSC. Where reimbursements are contractor-specific, HHSC approves the reimbursement parameter dollar amounts, e.g., ceilings, floors, or program reimbursement formula limits. In approving reimbursement amounts HHSC takes into consideration staff recommendations based on the application of formulas and procedures described in this chapter and in reimbursement methodologies for each program. However, HHSC may adjust staff recommendations when HHSC deems such adjustments are warranted by particular circumstances likely to affect achievement of program objectives, including economic conditions and budgetary considerations. Methodology rules are developed and recommended for approval to HHSC. HHSC has oversight authority with respect to the state's reimbursement methodology and cost determination rules.

- (1) Reimbursement amounts will be determined coincident with the state's biennium.
- (2) Objective of cost determination process. The objective of the cost determination process is to define direct and indirect costs that are allowable and, therefore, may be considered for use in

the overall reimbursement determination process. The cost determination process seeks to collect accurate financial and other statistical data that constitutes the foundation upon which reimbursements are determined.

(A) Cost-reporting. In order to ensure adequate financial and statistical information upon which to base reimbursement, HHSC requires that each contracted provider submit a periodic cost report or supplemental report. It is the responsibility of the provider to submit accurate and complete information, in accordance with all pertinent HHSC cost reporting rules and cost report instructions, on the cost report and any supplemental reports required by HHSC.

(B) Pro forma costing. When historical costs are unavailable, such as in the case of a new program, reimbursement may be based on a pro forma approach. This approach involves using historical costs of delivering similar services, where appropriate data are available, and estimating the basic types and costs of products and services necessary to deliver services meeting federal and state requirements.

(3) Relationship between cost determination and reimbursement determination processes. The cost determination process seeks to evaluate individual cost items of providers to determine their allowability and to determine whether individual cost reports are of reasonable accuracy for potential use in reimbursement determination. The reimbursement determination process takes the evaluation of allowable costs one step further by comparing allowable costs across providers to identify those levels of cost, either for individual cost items or groups of cost items, which must be incurred by efficient and economic providers of services meeting all state and federal standards. Thus, all costs allowed in the cost determination process may not necessarily be used in the reimbursement determination process. The basic objective of the reimbursement methodologies employed by HHSC is to facilitate and balance the broader objectives of the programs administered by the agencies by:

(A) promoting reasonable access for eligible clients to services that meet federal and state quality standards via contracting with an adequate number of qualified providers; and

(B) expending taxpayer dollars in a reasonable and prudent manner such that eligible clients are served at the lowest cost to taxpayers consistent with state and federal laws, standards and regulations, and with program objectives.

*§355.107. Notification of Exclusions and Adjustments.*

(a) The Texas Health and Human Services Commission (HHSC) notifies providers of exclusions and adjustments to reported expenses made during HHSC's desk reviews and field audits of cost reports. HHSC mails notices of desk-review exclusions and adjustments within 15 working days after finalization of the desk review [~~desk-review~~] by HHSC [~~auditors~~]. The notice consists of a letter to the provider and desk-review adjustment sheet(s), or an e-mail notification to the provider and online access to view the cost report adjustments, that specifies:

- (1) the line items [~~line-items~~] on the cost report that have been adjusted or excluded;
- (2) the amount of each adjustment or exclusion; and
- (3) the principal reason for each adjustment or exclusion.

(b) HHSC also furnishes providers with written reports of the results of field audits. HHSC mails each field audit report within 30 days after the final exit interview with the provider. An exit interview is final when HHSC audit staff have received, reviewed, and analyzed all documentation from the provider pertinent to the scope of the audit. The field audit report consists of a professional report prepared by

HHSC audit staff to enumerate the results of a field audit. Each field audit report includes a specification of:

- (1) cost report line items [~~line items~~] that have been adjusted or excluded;
- (2) the amount of each adjustment or exclusion; and
- (3) the principal reason for each adjustment or exclusion.

(c) A provider may also submit a written request for HHSC to provide additional information about exceptions and adjustments to the provider's cost report, including citations of the laws or regulations that constitute the grounds for the exceptions and adjustments. HHSC must comply with such requests in writing within 30 calendar days.

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 January 23, 2012.

TRD-201200282

Steve Aragon

General Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: March 4, 2012

For further information, please call: (512) 424-6576



## CHAPTER 372. TEMPORARY ASSISTANCE FOR NEEDY FAMILIES AND SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAMS

The Texas Health and Human Services Commission (HHSC) proposes amendments to §372.107, concerning persons excluded from a Temporary Assistance for Needy Families (TANF) certified group, and §372.1402, concerning changes a Supplemental Nutrition Assistance Program (SNAP) household must report.

### Background and Justification

The amendments are proposed to correct outdated rule references and to reflect current federal regulations and HHSC policy.

The proposed amendment to §372.107 corrects two cross-references to §372.501, concerning disqualifications due to criminal activity. An amendment to §372.501, effective April 24, 2011, affected two cross-references in §372.107. The proposed amendment will update the cross-references.

Federal rule (Title 7, Code of Federal Regulations (CFR) §273.12) requires a household receiving SNAP food benefits to promptly report a change in residence and any change in the household's shelter costs resulting from the change in residence, if the household does not have simplified reporting status. Shelter costs include expenses such as rent, house payments, taxes, insurance, and utilities. "Simplified reporting status" means a household meets the criteria for reporting certain changes less frequently than a household that does not meet the criteria.

The U.S. Department of Agriculture, Food and Nutrition Service (FNS), previously had given HHSC waivers from two reporting requirements in 7 CFR §273.12: (1) HHSC could re-

quire all households, even those with simplified reporting status, to promptly report a change in residence; and (2) HHSC could exempt all households, even those without simplified reporting status, from reporting shelter cost changes when they move. HHSC's current rule at §372.1402 reflects these FNS waivers.

FNS recently approved HHSC's request to continue requiring all households, even those with simplified reporting status, to promptly report a change in residence. However, FNS declined to renew HHSC's request to exempt all households, even those without simplified reporting status, from reporting shelter cost changes when they move. Therefore, to be in compliance with federal regulations, HHSC must amend §372.1402 to remove the exemption for SNAP households without simplified reporting status from reporting shelter cost changes.

### Section-by-Section Summary

The proposed amendment to §372.107(3) changes rule cross-references in subparagraph (G) from §372.501(1) to §372.501(a)(1), and in subparagraph (H) from §372.501(2) to §372.501(a)(2).

The proposed amendment to §372.1402 deletes the provision in subsection (a)(1) that households are not required to report changes in shelter costs and states that the only exception to federal change reporting requirements in 7 CFR §273.12 is that SNAP households with simplified reporting status must report changes in their resident address.

### Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that, for the first five years the proposed amendments are in effect, enforcing or administering the amendments does not have foreseeable implications relating to costs or revenues of state or local governments.

There might be an economic cost to persons who are required to comply with the proposed rules. A household that does not comply with the proposed amendment to §372.1402 and does not report new shelter costs related to a change in residence might see a reduction in the amount of their SNAP food benefits, because the household's budget would be recalculated without using the shelter deduction.

There is no anticipated negative impact on local employment.

### Small Business and Micro-business Impact Analysis

Ms. Rymal has also determined that there will be no effect on small businesses or micro-businesses to comply with the proposal, because the amendments apply only to households receiving TANF or SNAP food benefits and not to businesses.

### Public Benefit

Stephanie Muth, Deputy Executive Commissioner for Social Services, has determined that, for each year of the first five years the amendments are in effect, the anticipated public benefit expected as a result of enforcing the amendments is that the rules will provide correct cross-references for the public and will reflect the current federal regulation and HHSC's current waiver from the regulation on change reporting for SNAP households.

### Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce

risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

#### Takings Impact Assessment

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

#### Public Comment

Written comments on the proposal may be submitted to Lisa Bartels, Health and Human Services Commission, Office of Family Services, MC-2039, 909 West 45th Street, Austin, Texas 78751, or by e-mail to [lisa.bartels@hhsc.state.tx.us](mailto:lisa.bartels@hhsc.state.tx.us), within 30 days after publication of this proposal in the *Texas Register*.

### SUBCHAPTER B. ELIGIBILITY

#### DIVISION 1. TANF CERTIFIED GROUPS

##### 1 TAC §372.107

###### Statutory Authority

The amendment is proposed under Texas Government Code §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code §31.001, which authorizes HHSC to administer financial assistance programs (TANF).

The amendment affects Texas Government Code, Chapter 531 and Texas Human Resources Code, Chapter 31. No other statutes, articles, or codes are affected by this proposal.

###### §372.107. *Excluded TANF Certified Group Members.*

The Texas Health and Human Services Commission (HHSC) excludes from the TANF certified group:

- (1) an authorized representative, payee, or protective payee;
- (2) a recipient of Supplemental Security Income (SSI), foster care, or adoption subsidy payments; and
- (3) a person disqualified from receiving TANF benefits or ineligible to receive TANF benefits, because HHSC determines the person:

(A) does not meet an eligibility requirement relating to the person's:

- (i) age (because, for example, the person does not meet the definition of a child);
- (ii) citizenship as explained in Division 3 of this subchapter (relating to Citizenship);
- (iii) residency as explained in Division 4 of this subchapter (relating to Residency);
- (iv) domicile as explained in Division 5 of this subchapter (relating to Domicile); or
- (v) relationship status (because, for example, the person is not within the degree of relationship required by §372.108 of this division (relating to Relationship Requirement));

(B) committed an intentional TANF program violation as described in §357.562(b) of this title (relating to Determination and Disposition of Intentional Program Violations);

(C) failed to comply with §372.1101 of this chapter (relating to Social Security Number Requirements);

(D) failed to comply with Subchapter E, Division 5 of this chapter (relating to Third-party Resources);

(E) has exhausted the time limits for receiving TANF benefits under Division 8 of this subchapter (relating to Time Limits);

(F) failed to comply with §372.1401 of this chapter (relating to Changes a TANF Household Must Report);

(G) is a fugitive as explained in §372.501(a)(1) [§372.501(4)] of this subchapter (relating to Disqualifications Due to Criminal Activity); or

(H) has been convicted of a felony drug offense as explained in §372.501(a)(2) [§372.501(2)] of this subchapter.

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

Filed with the Office of the Secretary of State on January 23, 2012.

TRD-201200281

Steve Aragon

General Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: March 4, 2012

For further information, please call: (512) 424-6576



### SUBCHAPTER E. PARTICIPATION REQUIREMENTS

#### DIVISION 7. REPORTING CHANGES

##### 1 TAC §372.1402

###### Statutory Authority

The amendment is proposed under Texas Government Code §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code §33.0006, which authorizes HHSC to operate the food stamp program (SNAP).

The amendment affects Texas Government Code, Chapter 531 and Texas Human Resources Code, Chapter 33. No other statutes, articles, or codes are affected by this proposal.

###### §372.1402. *Changes a SNAP Household Must Report.*

(a) A SNAP household must report changes as explained in 7 CFR §273.12, except SNAP households with simplified reporting status must also report changes in their resident address. [?]

~~[(1) households are not required to report changes in shelter costs; and]~~

~~[(2) all households must report changes in their resident address.]~~

(b) This section does not apply to a participant in the SNAP-Combined Application Project (SNAP-CAP), as explained in §372.655 of this chapter (relating to Reporting Changes).

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 January 23, 2012.

TRD-201200280

Steve Aragon

General Counsel

Texas Health and Human Services Commission

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For further information, please call: (512) 424-6576



## TITLE 4. AGRICULTURE

### PART 1. TEXAS DEPARTMENT OF AGRICULTURE

#### CHAPTER 25. SPECIAL NUTRITION PROGRAMS

##### SUBCHAPTER B. SUMMER FOOD SERVICE PROGRAM (SFSP)

The Texas Department of Agriculture (TDA) proposes the amendment of Chapter 25, Subchapter B, Division 1, §25.602, and new Division 3, §25.644, concerning the Summer Food Service Program (SFSP). The proposed amendment to §25.602 adds a definition for "TDA". New §25.644 is proposed to ensure that funding is utilized to feed more eligible children by increasing accountability of SFSP sponsors, minimizing fraud in the program, providing higher levels of accountability and transparency with respect to SFSP sponsors, and ensuring that federal and state tax dollars are spent for the program's purpose, as outlined in 7 CFR Part 225.

Proposed new §25.644 contains requirements regarding the verification of eligibility of SFSP sponsor organizations and their principals, including requirements for government issued identification (state issued driver license, state issued identification card, military identification, valid U.S. passport or other identification approved by TDA), and proof of residential mailing address (official mail sent to the individual's address from a utility provider, governmental agency or bank; a lease executed by the individual; or other proof approved by TDA). Additionally, the proposal allows TDA to perform a criminal background investigation on each principal of a contracting organization. In the event such a report reveals that the applicant and/or any principal knowingly falsified any statements contained in the application, the proposal would allow TDA to seek criminal prosecution for any applicable state or federal charge. Further, the proposed section mandates that TDA deny a sponsor's application if the principal's background investigation reveals any of the following: a criminal conviction in the past seven years that indicates a lack of business integrity, including but not limited to: fraud, anti-trust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, or obstructing justice.

Angela Olige, Chief Administrator for the Food and Nutrition Division, has determined that for the first five-year period the sections are in effect, there will be no fiscal impact for state or local

governments as a result of enforcing or administering the sections.

Ms. Olige has also determined that for each year of the first five years the sections are in effect, the anticipated public benefit resulting from the enforcement of the new section will be a more efficient administration of the SFSP. The new section should not have a fiscal impact on micro-businesses, small businesses or individuals required to comply with the proposed sections, because sponsors and their principals will not be required to pay for the cost of compliance with the sections.

Comments on the proposal may be submitted to Angela Olige, Chief Administrator for the Food and Nutrition Division, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than thirty (30) days from the date of publication of the proposal in the *Texas Register*.

## DIVISION 1. OVERVIEW AND PURPOSE

### 4 TAC §25.602

The amendment to §25.602 is proposed under §12.0025 of the Texas Agriculture Code, which provides that the department shall administer the SFSP, and §12.016, authorizing the department to adopt rules as necessary for the administration of its powers and duties under the code.

The code affected by the proposal is the Texas Agriculture Code, Chapter 12.

§25.602. *What do certain words and terms in this subchapter mean?*

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

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

(4) TDA--The Texas Department of Agriculture.

(5) [(4)] U.S.C.--United States Code.

(6) [(5)] USDA--The United States State Department of Agriculture.

(b) (No change.)

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

Filed with the Office of the Secretary of State on January 19, 2012.

TRD-201200228

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: March 4, 2012

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



## DIVISION 3. APPLICATION PROCESS

### 4 TAC §25.644

New §25.644 is proposed under §12.0025 of the Texas Agriculture Code, which provides that the department shall administer the SFSP, and §12.016, authorizing the department to adopt rules as necessary for the administration of its powers and duties under the code.

The code affected by the proposal is the Texas Agriculture Code, Chapter 12.

§25.644. Additional Requirements for Contracting Organizations.

(a) Upon request from TDA, each principal of a non-governmental contracting organization that participates in the Summer Food Service Program shall submit the following information:

(1) government-issued identification (state issued drivers license, state issued identification card, military identification, valid U.S. passport or other identification approved by TDA); and

(2) proof of residential mailing address (official mail sent to the individuals address from a utility provider, governmental agency or bank; a lease executed by the individual; or other proof approved by TDA).

(b) TDA may perform a criminal background investigation on each principal of a non-governmental contracting organization. In the event such a report reveals that the applicant and/or any principal knowing falsified any statements contained in the application TDA may seek criminal prosecution for any applicable state or federal charge.

(c) TDA shall deny an application based on the principal's background investigation if the investigation reveals any of the following: a criminal conviction in the past seven years that indicates a lack of business integrity, including but not limited to: fraud, anti-trust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, or obstructing justice.

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 January 19, 2012.

TRD-201200227

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: March 4, 2012

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



## TITLE 10. COMMUNITY DEVELOPMENT

### PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

#### CHAPTER 1. ADMINISTRATION

#### SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

##### 10 TAC §1.10

*(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 Department of Housing and Community Affairs or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

The Texas Department of Housing and Community Affairs ("the Department") proposes the repeal of 10 TAC Chapter 1, §1.10, concerning Public Comment Procedures and Topics at Public

Hearings and Meetings. Repeal of the rule is necessary because the Department is separately proposing a new rule which significantly changes the scope and content of the current rule.

Mr. Timothy K. Irvine, Executive Director, has determined that for each year of the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local governments as a result of the repeal.

Mr. Irvine has also determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of the repeal will be an opportunity to improve the efficiency of public comment at board meetings. There are no probable economic costs to persons required to comply with the repeal. The proposed repeal will not impact local employment.

The proposed repeal will not have an adverse economic effect on small businesses or micro-businesses. The proposed repeal will not affect a local economy.

The public comment period is between February 3, 2012 to February 27, 2012. Written comments may be submitted to Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941, ATTN: Jeffrey Pender, Deputy General Counsel; by email to the following address: [tdhcarulecomments@tdhca.state.tx.us](mailto:tdhcarulecomments@tdhca.state.tx.us); or by FAX to (512) 469-9606. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. February 21, 2012.

The repeal is proposed pursuant to authority under §2306.032(f) and §2306.066(d) of the Texas Government Code, which generally require the board to adopt rules to give the public a reasonable amount of time for testimony at meetings.

The proposed repeal affects no other code, article or statute.

*§1.10. Public Comment Procedures and Topics at Public Hearings and Meetings.*

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 January 20, 2012.

TRD-201200275

Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: March 4, 2012

For further information, please call: (512) 475-3916



##### 10 TAC §1.10

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC Chapter 1, §1.10, concerning Public Comment Procedures. The purpose of this rule is to improve the efficiency of the receipt of public comment at meetings of the board by eliminating witness affirmation forms; implementing a queue process; taking public comment on posted items only when the item is called; allowing persons who wish to comment but will not be speaking to register their position with the board secretary; allowing the board chair to adjust comment procedures during a board meeting under certain conditions; and requiring those wishing to provide printed materials to the board, to provide them five (5) business days in advance of the meeting.



Mr. Timothy K. Irvine, Executive Director, has determined that for each year of the first five-year period the proposed new section is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the new section.

Mr. Irvine has also determined that for each year of the first five years the new section is in effect the public benefit anticipated as a result of the new section will be the more efficient and effective receipt of public comment by the board.

The proposed new section will not have an adverse economic effect on small businesses or micro-businesses. The proposed new section will not affect a local economy. The proposed sections will not impact local employment, and there will be no probable economic costs to persons required to comply with the proposed new section.

The public comment period is between February 3, 2012 to February 27, 2012. Written comments may be submitted to Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941, ATTN: Jeffrey Pender, Deputy General Counsel; by email to the following address: [tdhcarulecomments@tdhca.state.tx.us](mailto:tdhcarulecomments@tdhca.state.tx.us); or by FAX to (512) 469-9606. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. February 21, 2012.

The new section is proposed pursuant to authority under §2306.032(f) and §2306.066(d) of the Texas Government Code, which generally require the board to adopt rules to give the public a reasonable amount of time for testimony at meetings.

The proposed new section affects no other code, article, or statute.

#### §1.10. Public Comment Procedures.

(a) Purpose. The purpose of this section is to establish procedures for hearing public comments at meetings open to the public held by the Texas Department of Housing and Community Affairs in accordance with §2306.032(f) and §2306.066(d) of the Texas Government Code.

##### (b) Procedures for taking public comment.

(1) At each meeting open to the public the board shall provide opportunity for members of the public to make:

(A) General public comment, such as reports, recommendations, or other testimony on matters of relevance to the Department's business or to request that the board place specific items on future agendas for consideration, after the board has taken action on all posted agenda items on which it intends to take action; and

(B) Specific public comment on each posted agenda item after the presentation made by department staff and motions made by the board. For purposes of this rule the board may consider the staff's presentation to be staff's written presentation in the board's meeting book and posted on the Department's website.

(2) The opportunity for general public comment under paragraph (1)(A) of this subsection may not be used to advocate for or against any specific action relating to any posted item, the opportunity for any such testimony to be limited to the appointed time when action on such matter is formally considered as a posted agenda item.

(3) At the time general or specific public comment is taken, speakers shall queue up behind the podium or other place designated for speakers. They may, if they wish, agree among themselves on an order in which they will speak. If a large number of speakers wish to testify, the chair may, in his or her reasonable discretion, establish ap-

propriate limits on the total amount of time to be devoted to testimony on any given item or items. As each individual speaker begins his or her testimony, they shall state on the record their name and on whose behalf they are speaking.

(4) Individuals not speaking who wish to register positions for or against a posted agenda item may register their positions, for or against, with the secretary of the meeting, or another person designated by the chair, on a form, which the person wishing to register must sign, stating their name, who they represent, the action item, and their position. At the end of the public comment on the item the chair will have registered positions for and against read into the record.

##### (5) Additional limits on public comment.

(A) The board chair, in her/his sole discretion, may additionally limit the number and length of presentations of public comment, both general and specific, at any time during a meeting based on a consideration of:

(i) the number of persons wishing to give public comment;

(ii) the number of agenda items to be heard;

(iii) the time available for the meeting; and

(iv) the risk of losing a quorum of board members.

(B) If the board chair limits presentations, she or he will not limit them in a manner that inappropriately favors a particular point of view.

(C) The board chair may, in her or his reasonable discretion, grant deference to elected officials and other persons who have traveled great distances.

(6) Presenting printed materials. An individual providing testimony to the board may provide printed materials only if they are provided as outlined in subparagraphs (A) - (C) of this paragraph:

(A) In order to ensure that members of the board and the public are given an opportunity to review any such materials, they must be provided to the Department staff not less than five (5) business days prior to the meeting at which they are to be used. They must be made available in Acrobat electronic format;

(B) Department staff will post such materials to the department's website no later than three (3) business days prior to the meeting at which they are to be used;

(C) In exceptional circumstances the chair may, in her/his sole discretion, provided no member of the board objects, allow materials to be provided at a meeting in hard copy format provided:

(i) they are not so voluminous as to cause inordinate delay while members of the board and public review them;

(ii) they are provided in hard copy format to all members of the public in attendance; and

(iii) they are provided to staff in Acrobat (.pdf) format for inclusion in the electronic records of board materials available to the public via the Department's website.

(7) The fact that an individual provides testimony to the board shall not establish any presumption that a board member or the board collectively gave particular weight or credence to that testimony.

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 January 20, 2012.

TRD-201200276

Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: March 4, 2012

For further information, please call: (512) 475-3916



## TITLE 19. EDUCATION

### PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

#### CHAPTER 4. RULES APPLYING TO ALL PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN TEXAS

##### SUBCHAPTER B. TRANSFER OF CREDIT, CORE CURRICULUM AND FIELD OF STUDY CURRICULA

###### 19 TAC §4.28

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §4.28, concerning Core Curriculum.

The intent of this amendment is to clarify the requirements for the Component Area Option under §4.28(b)(4)(A), and to allow institutions of higher education that offer the fully-transferrable core curriculum an alternative appropriate for interdisciplinary courses for the Component Area Option under §4.28(b)(4)(B). This alternative would allow an institution to certify that a course or courses used to complete up to three semester credit hours of the Component Area Option meets the definition specified for one or more of the foundational component areas, and include(s) a minimum of three Core Objectives, including Critical Thinking Skills, Communication Skills, and one of the remaining Core Objectives of the institution's choice. The amendment to §4.28(b)(4) adds a new subparagraph (C) that states, for the purposes of gaining approval for or reporting a Component Area Option course under the amended provisions in subsection (b)(4)(B), an institution would not be required to notify the Board of the specific foundational component area(s) and Core Objectives associated with the course(s).

Dr. MacGregor M. Stephenson, Assistant Commissioner for Academic Affairs and Research, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Dr. Stephenson has also determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to allow institutions of higher education to develop interdisciplinary courses that would otherwise not be allowed in the core curriculum, but that could benefit student persistence and success. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted by mail to MacGregor M. Stephenson, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or via email at WAARcomments@theccb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Education Code, Chapter 61, Subchapter S, §61.822, which provides the Coordinating Board with the authority to establish a core curriculum for institutions of higher education that offer academic undergraduate degree programs and §61.827 which provides the Coordinating Board with rulemaking authority to implement the subchapter.

The amendments affect the Texas Education Code, Chapter 61, Subchapter S.

###### §4.28. Core Curriculum.

(a) (No change.)

(b) Texas Core Curriculum. Each institution of higher education that offers an undergraduate academic degree program shall develop its core curriculum by using the Board-approved purpose, core objectives, and foundational component areas of the Texas Core Curriculum.

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

(4) Component Area Option (6 SCH).

(A) Except as provided in subparagraph (B) of this paragraph, each course designated [Courses used] to complete the Component Area Option must meet the definition and Core Objectives [criteria] specified in one [or more] of the foundational component areas outlined in paragraph (3)(A) - (H) of this subsection.

(B) As an option for up to three (3) semester credit hours of the Component Area Option, an institution may certify that the course(s): [The Core Objectives required in the corresponding foundational component area apply to each course used to fulfill the Component Area Option.]

(i) Meet(s) the definition specified for one or more of the foundational component areas; and

(ii) Include(s) a minimum of three Core Objectives, including Critical Thinking Skills, Communication Skills, and one of the remaining Core Objectives of the institution's choice.

(C) For the purposes of gaining approval for or reporting a Component Area Option course under subparagraph (B) of this paragraph, an institution is not required to notify the Board of the specific foundational component area(s) and Core Objectives associated with the course(s).

(5) (No change.)

(c) - (k) (No change.)

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

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Bill Franz  
General Counsel  
Texas Higher Education Coordinating Board  
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For further information, please call: (512) 427-6114



## SUBCHAPTER N. PUBLIC ACCESS TO COURSE INFORMATION

### 19 TAC §4.227

The Texas Higher Education Coordinating Board (Coordinating Board) proposes an amendment to §4.227, relating to Rules Applying to All Public Institutions of Higher Education in Texas, concerning Public Access to Course Information by clarifying the definition of "syllabus".

The intent of the amendment to this section is to update the definition of learning objectives and to make it consistent with the language in §4.104 which became effective November 29, 2011. The language in §4.104 was adopted as a result of Senate Bill 1726 of the 82nd Legislature, which specified that, with certain exceptions, each institution of higher education shall identify, adopt, and make available for public inspection measurable learning outcomes for each undergraduate course offered by the institution.

Dr. MacGregor M. Stephenson, Assistant Commissioner for Academic Affairs and Research, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Dr. Stephenson has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be to clarify that undergraduate course syllabi need to state the specific learning outcomes that must be measurable in order to evaluate their success. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted by mail to MacGregor M. Stephenson, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas, 78711 or via email at WAARcomments@theccb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Education Code, Chapter 51, Subchapter Z, §51.974(g) and §51.96851(d), which authorize the Texas Higher Education Coordinating Board to adopt rules regarding institutions of higher education making certain information available to the public.

The amendments affect the Texas Education Code, Chapter 51, Subchapter Z.

#### §4.227. Definitions.

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

- (1) - (8) (No change.)

(9) Syllabus--A document describing the course that satisfies any standards for syllabi adopted by the institution. The document shall include, at a minimum, the following:

(A) brief description of each major course requirement, including each major assignment and examination;

(B) the measurable learning outcomes [learning objectives] for the course, as defined in Subchapter E, §4.104 of this chapter (relating to Measurable Learning Outcomes for Undergraduate Courses);

(C) a general description of the subject matter of each lecture or discussion; and

(D) lists of any required or recommended readings.

(10) - (11) (No change.)

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

Filed with the Office of the Secretary of State on January 23, 2012.

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Bill Franz  
General Counsel  
Texas Higher Education Coordinating Board  
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For further information, please call: (512) 427-6114



## SUBCHAPTER R. REVIEW OF LOW- PRODUCING DEGREE PROGRAMS

### 19 TAC §4.287, §4.291

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §4.287 and §4.291, concerning the Review of Low-Producing Degree Programs.

Specifically, the amendment to §4.287(4) will increase the minimum requirements for the number of graduates produced by degree programs at institutions of higher education to determine which are Low-Producing Degree Programs. This amendment would be implemented beginning with the FY2010 - FY2014 Annual Report of Low-Producing Programs. The amendment to §4.291(a)(2) will give institutions flexibility in identifying programs that have very limited or no additional cost. The amendment to §4.291(b)(4) will specify the course information institutions of higher education must provide in a temporary exemption request.

Dr. MacGregor M. Stephenson, Assistant Commissioner for Academic Affairs and Research, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Dr. Stephenson 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 administering the sections will be to promote efficiency in higher education by reducing the number of programs that produce low numbers of graduates annually. Although unlikely, there may be impact to the local employment if degree programs are closed. There is no effect on small busi-

nesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

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

The amendments are proposed under the Texas Education Code, Chapter 61, §61.051, which describes the Board's role in the Texas system of higher education.

The amendments affect implementation of Texas Education Code, Chapter 61, Subchapter C, §61.051(e).

§4.287. *Definitions.*

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

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

(4) Low-Producing Degree Programs--Degree programs that do not meet the following minimum standards for degrees awarded in the program:

(A) Prior to the FY2010 - FY2014 Annual Report of Low-Producing Programs:

(i) [(A)] For career technical certificates, associate and bachelor's programs, an average of five degrees awarded per academic year, to total not fewer than twenty-five degrees awarded for any five-year period;

(ii) [(B)] For master's programs, an average of three degrees awarded per academic year, to total not fewer than fifteen degrees awarded for any five-year period; and

(iii) [(C)] For doctoral degree-research/scholarship and a doctoral degree-professional practice [and special professional degrees], an average of two degrees awarded per academic year, to total not fewer than ten degrees awarded for any five-year period.

(B) Beginning with the FY2010 - FY2014 Annual Report of Low-Producing Programs:

(i) For career technical certificates, associate and bachelor's programs, an average of eight degrees awarded per academic year, to total not fewer than forty degrees awarded for any five-year period;

(ii) For master's programs, an average of five degrees awarded per academic year, to total not fewer than twenty-five degrees awarded for any five-year period; and

(iii) For a doctoral degree-research/scholarship and a doctoral degree-professional practice, an average of three degrees awarded per academic year, to total not fewer than fifteen degrees awarded for any five-year period.

(5) - (8) (No change.)

§4.291. *Process for Requesting a Temporary Exemption.*

(a) A low-producing degree program is eligible for a temporary exemption if:

(1) (No change.)

(2) The degree is composed primarily [exclusively] of courses required for other existing degrees at the institution and there is very limited or no additional cost associated with the degree.

(b) To request a temporary exemption provide the following information:

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

(4) The rubric and number of all required upper-division courses in the major and all prescribed upper-division electives in the major, excluding [~~core curriculum~~] minor requirements, and free electives.

(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.

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Bill Franz

General Counsel

Texas Higher Education Coordinating Board

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



## CHAPTER 5. RULES APPLYING TO PUBLIC UNIVERSITIES, HEALTH-RELATED INSTITUTIONS, AND/OR SELECTED PUBLIC COLLEGES OF HIGHER EDUCATION IN TEXAS

### SUBCHAPTER B. ROLE AND MISSION, TABLES OF PROGRAMS, COURSE INVENTORIES

#### 19 TAC §5.24

The Texas Higher Education Coordinating Board (Coordinating Board) proposes an amendment to §5.24, concerning to Rules Applying to Public Universities, Health-Related Institutions, and/or Selected Public Colleges of Higher Education in Texas concerning Criteria and Approval of Mission Statements and Tables of Programs. The intent of the amendment is to bring consistency across the Coordinating Board rules for the standards applying to new doctoral programs. In particular, the amendment would specify the undergraduate success measure that an institution must meet in order to satisfy §5.24(b)(5) and to be in line with §5.46 adopted in January 2011. The Coordinating Board approved changes to §5.46, adding an additional criterion for the approval of new doctoral degree programs. Section 5.46 stipulates that the most recent six-year baccalaureate degree graduation rate of the institution proposing a new doctoral program must equal or exceed the most recent statewide six-year baccalaureate degree graduation rate. The statewide six-year graduation rate is calculated by determining the number of first-time, full-time undergraduate students at public universities, excluding those enrolled at The University of Texas at Austin and Texas A&M University, and calculating the percentage of those students who graduated in six years from the same or another institution in Texas.

Dr. MacGregor M. Stephenson, Assistant Commissioner for Academic Affairs and Research, has determined that for the first five years there will be no fiscal implications for state or local governments as a result of amending the rule listed above.

Dr. Stephenson has also determined that for the first five years the amendments are in effect, the public benefits anticipated as a result of administering the sections will be to ensure that preliminary authority requests to offer doctoral degrees are only granted to institutions that already meet the standard for having those programs fully approved. The rule will ensure that institutions seeking new programs are providing sufficient support to existing undergraduate programs. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposed amendments may be submitted by mail to MacGregor M. Stephenson, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas, 78711 or via email at WAARcomments@theccb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendment is proposed under the Texas Education Code, Chapter 61, Subchapter C, §61.051(e), which provides the Coordinating Board with the authority to approve new degree programs at public postsecondary institutions operating in Texas.

The amendments affect the Texas Education Code, Chapter 61, Subchapter C.

§5.24. *Criteria and Approval of Mission Statements and Tables of Programs.*

(a) (No change.)

(b) In reviewing a request for preliminary authority to add a doctoral program to the institution's Table of Programs, the Commissioner shall consider the criteria set out in subsection (a) of this section and the following additional criteria:

(1) - (4) (No change.)

(5) demonstrated current excellence of the institution's existing undergraduate and graduate degree programs and how this excellence shall be maintained with the development and addition of a high quality doctoral program; measures of excellence include the number of graduates and six-year baccalaureate graduation rates which should equal or exceed the most recent annual statewide average six-year baccalaureate graduation rate as defined in §5.46(15) of this title (relating to Criteria for New Doctoral Programs) [~~that match or exceed those at peer institutions~~];

(6) - (9) (No change.)

(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 January 23, 2012.

TRD-201200288

Bill Franz  
General Counsel  
Texas Higher Education Coordinating Board  
Proposed date of adoption: April 25, 2012  
For further information, please call: (512) 427-6114

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**CHAPTER 7. DEGREE GRANTING  
COLLEGES AND UNIVERSITIES OTHER THAN  
TEXAS PUBLIC INSTITUTIONS  
SUBCHAPTER A. GENERAL PROVISIONS  
19 TAC §7.3, §7.14**

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §7.3 and §7.14, concerning Degree Granting Colleges and Universities Other Than Texas Public Institutions. The intent of the amendment to §7.3 is to define the meaning of a reciprocal state exemption agreement as it relates to out-of-state postsecondary institutions wanting to offer distance education in Texas. The new definition will provide a clearer understanding for out-of-state institutions to which Chapter 7 rules apply. Staff also proposes an amendment to §7.14 by amending §7.14(1) to include an exemption based upon participation in a reciprocal state exemption agreement. The intent of this amendment is to clarify the process by which out-of-state institutions receive approval for offering distance education in Texas. This amendment allows the Coordinating Board to enter into reciprocal state exemption agreements that could benefit Texas public institutions of higher education by exempting them from the oversight of other state higher education agencies for the purpose of distance education.

Dr. MacGregor M. Stephenson, Assistant Commissioner for Academic Affairs and Research, has determined that for the first five years there will be no fiscal implications for state or local governments as a result of amending the rule listed above.

Dr. Stephenson has also determined that for the first five years the amendments are in effect, the public benefits anticipated as a result of administering the sections will be to streamline the process by allowing certain exempt out-of-state institutions to receive permission to offer distance education to Texas students without extensive staff review and to improve staff efficiencies. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposed amendments may be submitted by mail to MacGregor M. Stephenson, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or via email at WAARcomments@theccb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Education Code, Chapter 61, Subchapters G and H, which provide the Coordinating Board with the authority to administer the laws regulating private and out-of-state public postsecondary institutions operating in Texas.

The amendments affect the Texas Education Code, Chapter 61, Subchapters G and H.

§7.3. *Definitions.*

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

(1) - (33) (No change.)

(34) Reciprocal State Exemption Agreement--An agreement entered into by the Texas Higher Education Coordinating Board with an out-of-state state higher education agency or higher education system for the purpose of creating a reciprocal arrangement whereby that entity's institutions are exempted from THECB oversight for the purposes of distance education. In exchange, Texas institutions of higher education would be exempted from that state's oversight for the purposes of distance education.

(35) [(34)] Recognized Accrediting Agency--Any accrediting agency the standards of accreditation or membership for which have been found by the Board to be sufficiently comprehensive and rigorous to qualify its institutional members for an exemption from the operation of this chapter.

(36) [(35)] Representative--A person who acts on behalf of an institution regulated under this subchapter. The term includes, without limitation, recruiters, agents, tutors, counselors, business agents, instructors, and any other instructional or support personnel.

(37) [(36)] Required State or National Licensure--The requirement for graduates of certain professional programs to obtain a license from state or national entities for entry-level practice.

(38) [(37)] Substantive Change--Any change in principal location, ownership, or governance.

*§7.14. Distance Education Approval Processes for Degree Granting Colleges and Universities Other Than Texas Public Institutions.*

An institution which does not meet the definition of institution of higher education contained in Texas Education Code §61.003 and wishes to offer distance education to students in Texas must follow the requirements in paragraphs (1) - (3) of this section. For the purposes of this section distance education shall mean education or training delivered off campus via educational technologies where the student(s) and the instructor(s) are separated by physical distance and/or time.

(1) Exempt Institutions

(A) (No change.)

(B) An institution is also exempt and does not need to receive permission from the Coordinating Board to offer distance education programs and courses to Texas students if it is covered by a reciprocal state exemption agreement.

(C) [(B)] An institution's exemption applies only to the degree level for which the programs or institution is accredited.

(D) [(C)] An institution's exemption continues as long as it is in compliance with subparagraphs (A), [and] (B), and (C) of this paragraph. If an institution is no longer accredited by an accreditor recognized by Texas and/or maintains a physical presence in Texas or if an institution is no longer covered by a reciprocal state exemption agreement, the institution is no longer eligible for an exemption and must receive Coordinating Board authority to offer distance education to Texas students.

(2) (No change.)

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

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TRD-201200289

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

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



## CHAPTER 21. STUDENT SERVICES

### SUBCHAPTER T. THE VACCINATION AGAINST BACTERIAL MENINGITIS FOR ENTERING STUDENTS AT PUBLIC AND PRIVATE OR INDEPENDENT INSTITUTIONS OF HIGHER EDUCATION

#### 19 TAC §21.612, §21.614

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §21.612 and §21.614, concerning the vaccination against bacterial meningitis for entering students at public or private or independent institutions of higher education. The intent of the amendment to §21.612(1)(A) is to expand the definition of a new student to include a student previously exempt under §21.614(a)(2) - (5), should their exception no longer apply. The proposed amendment in §21.614(b)(2) is to delete the requirement that a student seeking an exception from an initial bacterial meningitis vaccination or booster dose for reasons of conscience, including a religious belief, be required to use a conscientious objection form obtained from the Department of State Health Services (DSHS). The amended rules will allow a student to use a form developed by the Texas Higher Education Coordinating Board, which can be downloaded from the agency website, notarized, and filed with the student's institution of higher education.

Dr. MacGregor M. Stephenson, Assistant Commissioner for Academic Affairs and Research, has determined that for the first five years there will be no fiscal implications for state or local governments as a result of amending the rule listed above.

Dr. Stephenson has also determined that for the first five years the amendments are in effect, the public benefits anticipated as a result of administering the section will be an easing of the burden of requesting the form from the DSHS website and having it sent to the student (which may take up to two weeks). It will also alleviate confusion for institutional representatives in determining when a student is no longer exempt from the immunization requirement under a specific exception. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposed amendments may be submitted by mail to MacGregor M. Stephenson, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or via email at WAARcomments@thehb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Education Code, Chapter 51, §51.9192(e), which provides the Coordinat-

ing Board with the authority to adopt rules to administer the section.

The amendments affect the Texas Education Code, Chapter 51, Subchapter Z, §51.9192.

§21.612. *Definitions.*

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

(1) Entering student includes:

(A) New student--A first-time student of an institution of higher education or private or independent institution of higher education, including a student who transfers to the institution from another institution. A student who was previously exempt under §21.614(a)(2) - (5) of this title (relating to Exceptions) will be treated as a new student, should the exception no longer apply.

(B) (No change.)

(2) - (6) (No change.)

§21.614. *Exceptions.*

(a) (No change.)

(b) A student, or a parent or guardian of a student, is not required to submit evidence of receiving the vaccination against bacterial meningitis if the student, or a parent or guardian of a student, submits to the institution:

(1) (No change.)

(2) an affidavit signed by the student stating that the student declines the vaccination for bacterial meningitis for reasons of conscience, including a religious belief. [~~A conscientious exemption form from the Texas Department of State Health Services must be used.~~]

(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 January 23, 2012.

TRD-201200290

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Proposed date of adoption: April 25, 2012

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



## TITLE 22. EXAMINING BOARDS

### PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

#### CHAPTER 501. RULES OF PROFESSIONAL CONDUCT

#### SUBCHAPTER B. PROFESSIONAL STANDARDS

#### 22 TAC §501.63

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.63, concerning Financial Statement Standards.

The amendment to §501.63 will clarify the preparation of financial standards when not in the client practice of public accountancy, and when in the client practice of public accountancy.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be to non-substantively reword the rules for an easier understanding of its intent.

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on March 5, 2012. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

*§501.63. Reporting [Financial Statement] Standards.*

(a) A licensee in the client practice of public accountancy must comply with SSARS or another similar standard of a [who is an employee or officer of a business entity or governmental agency may prepare the business entity's or governmental agency's financial statements and may issue non-attest transmittals or information regarding non-attest transmittals if the transmittals or information do not purport to be in compliance with standards for accounting and review services adopted by the AICPA or another] national or international accountancy organization recognized by the board when transmitting a client's financial statements to the client or a third party.

(b) A licensee [who is] not employed in the client practice of public accountancy may prepare his employer's financial statements and may issue non-attest transmittals or information regarding non-attest transmittals without a firm license, provided those transmittals do not purport to be in compliance with SSARS or any other similar standard of a national or international accountancy organization recognized [an employee or officer of a business entity or governmental agency shall not submit the business entity's or governmental agency's financial statements to a client or third party unless the person complies with the Statements on Standards for Accounting and Review Services (SSARS) issued by the AICPA and other professional standards adopted] by the board.

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

Filed with the Office of the Secretary of State on January 20, 2012.

TRD-201200273

J. Randel (Jerry) Hill  
General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: March 4, 2012

For further information, please call: (512) 305-7842



## CHAPTER 505. THE BOARD

### 22 TAC §505.1

The Texas State Board of Public Accountancy (Board) proposes an amendment to §505.1, concerning Board Seal and Headquarters.

The amendment to §505.1 will delete unnecessary terms and correct terms that should be lowercase.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be to streamline the rules and make the rules easier to understand.

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on March 5, 2012. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

*§505.1. Board Seal and Headquarters.*

(a) The official seal of the board [~~Texas State Board of Public Accountancy~~] illustrated in paragraph (8) of this subsection [below] shall consist of:

- (1) a circle with a rope border;
- (2) a five point star comprised of five diamond shapes, [is] in the center, with the star placed so that one point is pointed directly at the top, with the remaining points spaced equidistant;
- (3) the word "TEXAS" is spelled out placing one capital letter between each point of the star beginning on the left side of the star;
- (4) the center star is itself bordered by a circle of dots;



(5) the words "TEXAS STATE" in capital letters appear at the top of the seal in the margin between the dot border and the rope border;

(6) the words "BOARD OF PUBLIC ACCOUNTANCY" in capital letters appear at the bottom of the seal in the margin between the dot border and the rope border;

(7) the background of the seal shall be black; and

(8) all features described in paragraphs (1) - (6) of this subsection [is subsections (1) through (6) of this section] shall be in gold. Figure: 22 TAC §505.1(a)(8) (No change.)

(b) The board seal may be embossed on a solid gold background to place official board records and documents under seal. The board may cause the board seal to be reproduced in other color schemes for use in official board business or board authorized functions or publications. The board seal may not be reproduced or used for non-board business without the express written consent of the board's executive director [~~Executive Director~~].

(c) The headquarters and administrative offices of the board shall be at 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701-3900.

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 January 20, 2012.

TRD-201200257

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: March 4, 2012

For further information, please call: (512) 305-7842



## 22 TAC §505.2

The Texas State Board of Public Accountancy (Board) proposes an amendment to §505.2, concerning Duties of the Board.

The amendment to §505.2 clarifies that the executive director is responsible for administrative responsibilities and deletes unnecessary terms.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a clarified understanding of the executive director's responsibilities.

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on March 5, 2012. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

### §505.2. Duties of the Board.

(a) The board is statutorily empowered to regulate the practice of accountancy in Texas.

(b) The board may adopt rules as necessary to govern its proceedings, perform its duties, regulate the practice of accountancy in Texas, and enforce applicable law.

(c) The board may act directly under its statute and rules or through the executive director or a committee of the board.

(d) Pursuant to the [Public Accountancy] Act, the board is responsible for policy-making decisions and the executive director is responsible for the agency's management decisions and administrative responsibilities.

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 January 20, 2012.

TRD-201200258

J. Randel (Jerry) Hill  
General Counsel  
Texas State Board of Public Accountancy  
Earliest possible date of adoption: March 4, 2012  
For further information, please call: (512) 305-7842



## 22 TAC §505.3

The Texas State Board of Public Accountancy (Board) proposes an amendment to §505.3, concerning Presiding Officer of the Board.

The amendment to §505.3 will replace the term title with chapter.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

- A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.
- B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.
- C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be to streamline the rules and make the rules easier to understand.

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on March 5, 2012. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the

proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

### §505.3. *Presiding Officer of the Board.*

When present, the presiding officer shall conduct all board meetings. The presiding officer shall appoint such committees as the board may authorize under §505.10 of this chapter [title] (relating to Board Committees) and may delegate the signing of official documents. The presiding officer may sign board orders on behalf of the board after the board has approved adoption of the order. The presiding officer shall serve as the official spokesman of the board and shall have such other responsibilities as assigned and such other authority as conferred by the board.

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

Filed with the Office of the Secretary of State on January 20, 2012.

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J. Randel (Jerry) Hill  
General Counsel  
Texas State Board of Public Accountancy  
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For further information, please call: (512) 305-7842



## 22 TAC §505.4

The Texas State Board of Public Accountancy (Board) proposes an amendment to §505.4, concerning Assistant Presiding Officer of the Board.

The amendment to §505.4 will replace the term title with chapter.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

- A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.
- B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.
- C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be to streamline the rules and make the rules easier to understand.

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on March 5, 2012. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

*§505.4. Assistant Presiding Officer of the Board.*

The assistant presiding officer, in the absence of the presiding officer, shall perform the duties of the presiding officer as specified in §505.3 of this chapter [title] (relating to Presiding Officer of the Board), and shall perform such other duties as the board shall designate.

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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J. Randel (Jerry) Hill  
General Counsel  
Texas State Board of Public Accountancy  
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For further information, please call: (512) 305-7842



**22 TAC §505.5**

The Texas State Board of Public Accountancy (Board) proposes an amendment to §505.5, concerning Secretary of the Board.

The amendment to §505.5 will expand the duties of the board's secretary to include attesting to the accuracy of the board's meetings minutes.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a clarified understanding of the secretary's responsibilities.

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on March 5, 2012. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

*§505.5. Secretary of the Board.*

The secretary shall perform such duties as in the judgment of the board are necessary, including attesting to the accuracy of the board meeting minutes following approval by the board.

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

Filed with the Office of the Secretary of State on January 20, 2012.

TRD-201200261

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: March 4, 2012

For further information, please call: (512) 305-7842



**22 TAC §505.7**

The Texas State Board of Public Accountancy (Board) proposes an amendment to §505.7, concerning Vacancies in the Board.

The amendment to §505.7 will replace the term "shall occur" with "occurs".

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

- A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.
- B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.
- C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be to streamline the rules and make the rules easier to understand.

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on March 5, 2012.

Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

*§505.7. Vacancies in the Board.*

If for any reason a vacancy occurs [~~shall occur~~] in the board, the presiding officer shall provide a notice to the governor and ask for the appointment of a new member to fill the unexpired term. If the vacancy occurs [~~shall occur~~] in any of the officers of the board, the board shall elect from its own membership at the first regular or special meeting following the vacancy a new officer to serve for the balance of the unexpired term.

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 January 20, 2012.

TRD-201200262

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: March 4, 2012

For further information, please call: (512) 305-7842



**22 TAC §505.8**

The Texas State Board of Public Accountancy (Board) proposes an amendment to §505.8, concerning Board Meetings.

The amendment to §505.8 will clarify that the board may designate a meeting place that is convenient for the public and the board.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

- A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a clearer understanding of the Board's responsibilities.

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on March 5, 2012. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

*§505.8. Board Meetings.*

(a) Board meetings shall be open to the public. The executive director is responsible for providing notice of board meetings pursuant to the Open Meetings Act.

(b) Board meetings shall take place at the headquarters of the board or, if the convenience of the public ~~and~~ the board ~~and the parties to a hearing~~ will be better served ~~thereby~~, at such place as the board may designate.

(c) Special meetings may be held upon the call of the presiding officer, or upon call of a majority of the members of the board, after reasonable notice.

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 January 20, 2012.

TRD-201200263

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: March 4, 2012

For further information, please call: (512) 305-7842



**22 TAC §505.10**

The Texas State Board of Public Accountancy (Board) proposes an amendment to §505.10, concerning Board Committees.

The amendment to §505.10 will amend the functions of the executive committee, qualification committee, licensing committee, and behavioral enforcement and technical standards review committees, amends conflicts of interest guidelines, deletes unnecessary words and add acronyms that have been defined in §501.55.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be to assure a fair hearing on the merits of a complaint.

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on March 5, 2012.

Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§505.10. *Board Committees.*

(a) Committee appointments. Appointments to standing committees and ad hoc committees shall be considered annually by the board's presiding officer to assist in carrying out the functions of the board under the provisions of the Act. Committee appointments shall be made by the presiding officer for a term of two years but may be terminated at any point by the presiding officer. Committee members may be re-appointed at the discretion of the presiding officer. The board's presiding officer shall be an ex officio member of each standing committee and ad hoc committee and chair of the executive committee.

(b) Committee actions. The actions of the committees are recommendations only and are not binding until ratification by the board at a regularly scheduled meeting.

(c) Committee meetings. Committee meetings shall be held at the call of the committee chair, and a report to the board at its next regularly scheduled meeting shall be made by such chair or, in the absence of the chair, by another board member serving on the committee.

(d) Vacancies. If for any reason a vacancy occurs on a committee, the board's presiding officer may appoint a replacement in accordance with subsection (a) of this section.

(e) Standing committee structure and charge to committees. The standing committees shall consist of policy-making committees and working committees comprised of the following individuals and shall be charged with the following responsibilities.

(1) The executive committee shall be a policy-making committee comprised of the board's presiding officer, assistant presiding officer, secretary, treasurer, immediate past presiding officer of the board if still serving on the board, and at least one other officer elected by the board. The executive committee shall also be the board's audit committee. The executive committee may act on behalf of the full board in matters of urgency, or when a meeting of the full board is not feasible; the executive committee's actions are subject to full board ratification at its next regularly scheduled meeting. The functions of the executive committee shall be to advise, consult with, and make recommendations to the board concerning matters requested by the board's presiding officer, including:

(A) the board's budget and finances;

(B) ~~[(A)]~~ litigation;

(C) ~~[(B)]~~ emergency suspensions pursuant to §519.11 [board rule §519.43] of this title (relating to Emergency Suspension);

(D) ~~[(C)]~~ emergency rulemaking pursuant to §2001.034 of the Administrative Procedure Act [proposed changes in the board rules of professional conduct (the rules)];

(E) ~~[(D)]~~ amendments to the Act;

(F) ~~[(E)]~~ responses/positions relating to papers, reports, and other submissions from national or international associations or boards;

(G) ~~[(F)]~~ legislative oversight, including, but not limited to, budget, performance measures, proposed changes in legislation affecting the board, and computer utilization; and

(H) ~~[(G)]~~ special issues.

(2) The CPE [continuing professional education] committee shall be a working committee comprised of at least two board members, one of whom shall serve as chair, assisted by at least two non-board members who shall serve in an advisory capacity. The committee shall make recommendations to the board regarding:

(A) the mandatory CPE [continuing professional education] program as it relates to reporting and attendance requirements, registration and monitoring of CPE [continuing professional education] sponsors, disciplinary actions, reporting forms, and office procedures;

(B) investigations of sponsor compliance with the terms of the sponsor agreements, including the related recordkeeping requirements;

(C) the results of monitoring CPE [continuing professional education] courses for the purpose of evaluating the facilities, course content as presented, and the adequacy of the course presenter(s);

(D) any significant deficiencies observed in carrying out subparagraphs (B) and (C) of this paragraph; and

(E) make recommendations to the board's policy-making committees (the executive committee and the rules committee) concerning proposed changes in board rules, opinions, and policies related to the mandatory CPE [continuing professional education] program as it relates to licensees and to relations with sponsors of CPE [continuing professional education].

(3) The qualifications committee shall be a working committee comprised of at least two board members, one of whom shall serve as chair, assisted by at least two non-board members who shall serve in an advisory capacity. The committee shall make recommendations to the board regarding:

(A) the educational qualifications of an applicant for the UCPAE [Uniform Certified Public Accountant Examination] in accordance with Chapter 511, Subchapter C of this title (relating to Educational Requirements) and courses that may be used to meet the education requirements to take the examination;

(B) the administration, security, discipline, and other aspects of the conduct of the UCPAE [Uniform Certified Public Accountant Examination] in Texas;

(C) the work experience qualifications of an applicant for the CPA [certified public accountant] certificate in accordance with §§511.121 - 511.124 of this title (relating to Experience Requirements); and ~~[(F)]~~

~~(D)~~ where applicable, the equivalency examination measuring the professional competency of an applicant for a CPA certificate by reciprocity; and]

(D) ~~(E)~~ [make] recommendations to the board's policy-making committees (the executive committee and the rules committee) concerning proposed changes in board rules, opinions, and policies relating to the qualifications process.

(4) The licensing committee shall be a working committee comprised of at least two board members, one of whom shall serve as chair, assisted by at least two non-board members who shall serve in an advisory capacity. The committee shall make recommendations to the board regarding:

(A) applications for certification, registration, and licensure;

(B) requests or applications for reinstatement of any certificate, registration, or license which the board previously has revoked, suspended, or refused to renew; [and]

~~(C) where applicable, the equivalency examination measuring the professional competency of an applicant for a CPA certificate by reciprocity; and~~

~~(D) ~~(E)~~ [make] recommendations to the board's policy-making committees (the executive committee and the rules committee) concerning proposed changes in board rules, opinions, and policies as they relate to the licensing process.~~

(5) The behavioral enforcement committee shall be a working committee comprised of at least two board members, one of whom shall serve as chair, assisted by at least two non-board members who shall serve in an advisory capacity. The committee shall:

(A) investigate [study] complaints involving alleged [suspected] violations of the Act and the board's rules, primarily concerning behavioral issues, and based upon its findings, make recommendations to the board or authorize the staff to offer an agreed consent order, or in the alternative, to litigate the findings of Act or rule violations [as appropriate];

(B) follow up on board orders to insure that licensees and certificate [or registration] holders and others adhere to sanctions prescribed by or agreements with the board; and

(C) make recommendations to the board's policy-making committees (the executive committee and the rules committee) concerning proposed changes in board rules, opinions, and policies related to the behavioral restraints of the rules and the Act.

(6) The technical standards review committee shall be a working committee comprised of at least two board members, one of whom shall serve as chair, assisted by at least three non-board members who shall serve in an advisory capacity. The committee shall:

(A) investigate [study] complaints from any source involving alleged [suspected] violations of the Act and the board's rules, primarily concerning technical issues and based upon its findings, make recommendations to the board or authorize the staff to offer an agreed consent order, or in the alternative, to litigate the findings of Act or rule violations [as appropriate];

(B) follow up on board orders to insure that licensees or certificate [or registration] holders and others adhere to sanctions prescribed by or agreements with the board; and

(C) make recommendations to the board's policy-making committees (the executive committee and the rules committee) con-

cerning proposed changes in board rules, opinions, and policies related to enforcement of technical standards.

(7) The peer review committee shall be a working committee comprised of at least two board members, one of whom shall serve as chair, assisted by at least two non-board members who shall serve in an advisory capacity. The committee shall:

(A) conduct a periodic review and evaluation of reports publicly filed with the State of Texas (or any board, commission, or agency thereof) and of each of the various types of reports, as defined by board rule, of each practice unit, as defined by board rule, which is engaged in the practice of public accountancy in the State of Texas;

(B) refer to the technical standards review committee egregious substandard reports issued by practice units for which educational rehabilitation has not been effective; and

(C) make recommendations to the board's policy-making committees (the executive committee and the rules committee) concerning proposed changes in board rules, opinions, and policies relating to the peer review program.

(8) The board rules committee shall be a policy-making committee comprised of at least three board members, one of whom shall serve as chair. The committee shall make recommendations to the board concerning the board's rules, opinions and policies. All working committees shall refer proposed changes to the board's rules, opinions and policies to the rules committee for consideration for recommendation to the board.

(9) The peer assistance oversight committee shall be a working committee comprised of at least two board members, one of whom shall serve as chair, assisted by at least two non-board members who shall serve in an advisory capacity. The committee shall oversee the peer assistance program administered by the TSCPA [Texas Society of Certified Public Accountants] as required under the Texas Health and Safety Code, §467.001(1)(B), and insure that the minimum criteria as set out by the Department of State Health Services are met. It shall make recommendations to the board and the TSCPA regarding modifications to the program and, if warranted, refer cases to other board committees for consideration of disciplinary or remedial action by the board. The committee shall report to the board on a semi-annual basis, by case number, on the status of the program.

(10) The constructive enforcement committee shall be a working committee comprised of at least two board members, one of whom shall serve as chair, assisted by non-board CPA members. At least one Committee member shall be a public member of the board. The committee shall approve the constructive enforcement program, coordinate its activities with board committees and staff, and supervise the training of constructive enforcement advisory committee members. A staff attorney of the board shall supervise the day to day administration of the constructive enforcement program and activities of the committee's non-board members on behalf of the committee chairman. The committee shall:

(A) investigate matters forwarded to the committee from any other board committee or board staff in accordance with board instruction and policy;

(B) prepare, as appropriate, investigative reports regarding each referred matter;

(C) inform referring board committees or board staff of the results of its investigations;

(D) inform the appropriate committee when possible violations of board rules and the [Public Accountancy] Act are observed; and

(E) make recommendations to the board's policy-making committees (the executive committee and the rules committee) concerning proposed changes in board rules, opinions, and policies relating to the constructive enforcement program.

(11) The Fifth-Year Accounting Students Scholarship Program advisory committee was created in §901.657 of the Act (relating to Advisory Committee) and consists of eight members appointed by the board for the purpose of advising the board on how scholarships under the Fifth-Year Accounting Students Scholarship Program should be established and administered; the amount of money needed to adequately fund the scholarships and the maximum amount that may be awarded in any given year to an individual student; and any priorities among the factors of financial need, ethnic or racial minority status, and scholastic ability and performance.

(f) Ad hoc advisory committees. Ad hoc advisory committees may be established by the board's presiding officer and members and advisory members appointed as appropriate.

(g) Policy guidelines. All advisory committee members performing any duties utilizing board facilities and/or who have access to board records, shall conform and adhere to the standards, board rules, and personnel policies of the board as described in its personnel manual and to the laws of the State of Texas governing state employees.

(h) Conflicts of interest. To avoid a conflict of interest or the appearance of a conflict of interest, no committee member provide a report or expert testimony for or otherwise advocate on behalf of a complainant or a respondent in a disciplinary matter pending before the board while serving on a standing committee of the board. [~~A Committee member is not in violation of this rule by reason of testimony given or a report prepared as part of a litigation support engagement in another forum being considered by a committee of the board in an enforcement action; provided however, the board's rules on recusal of that committee member apply.~~]

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 January 20, 2012.

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7842



## 22 TAC §505.12

The Texas State Board of Public Accountancy (Board) proposes an amendment to §505.12, concerning Enforcement Committees.

The amendment to §505.12 will delete the terms for the former TSR I and II committees.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be to streamline the rules and make the rules easier to understand.

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on March 5, 2012. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

### §505.12. *Enforcement Committees.*

(a) The behavioral enforcement committee, the technical standards review committee [~~I and II committees~~] and the constructive enforcement committee shall be the board's enforcement committees.

(b) A member of the board serving on an enforcement committee shall recuse himself and take no part in the board's vote on the final disposition of any case investigated by that enforcement committee.



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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J. Randel (Jerry) Hill

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Texas State Board of Public Accountancy

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## 22 TAC §505.13

The Texas State Board of Public Accountancy (Board) proposes an amendment to §505.13, concerning Board Committee Member Recusals.

The amendment to §505.13 will clarify that board members must recuse themselves when there may be a substantial interest involved or when the appearance of bias may be present.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be to assure a fair hearing on the merits of a complaint.

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on March 5, 2012. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

### §505.13. Board Committee Member Recusals.

A member of a board committee may not participate in the discussion and may not vote on an issue before the committee in which the member has a substantial personal or financial interest or such participation would create or appear to create a bias. Each committee member who is ineligible to participate in the disposition of an issue by reason of this section shall provide a concise, factual statement of the reason why the member is not participating prior to the commencement of discussion of that issue by the committee.

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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J. Randel (Jerry) Hill

General Counsel

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## CHAPTER 511. ELIGIBILITY SUBCHAPTER C. EDUCATIONAL REQUIREMENTS

### 22 TAC §511.51

The Texas State Board of Public Accountancy (Board) proposes new §511.51, concerning Educational Definitions.

New §511.51 will provide definitions for the terms used in Chapter 511.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed new rule will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the new rule will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the new rule will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the new rule will be none.

Mr. Treacy has determined that for the first five-year period the new rule is in effect the public benefits expected as a result of adoption of the proposed new rule will be to streamline the rules and make the rules easier to understand.

The probable economic cost to persons required to comply with the new rule will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed new rule will not affect a local economy.

Mr. Treacy has determined that the proposed new rule will not have an adverse economic effect on small businesses because the new rule does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed new rule will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on March 5, 2012. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed new rule will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The new rule is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed new rule.

*§511.51. Educational Definitions.*

(a) The following words and terms, when used in chapter extracted from rules promulgated by the Texas Higher Education Coordinating Board, shall have the following meanings, unless the context clearly indicates otherwise.

(1) "Accelerated courses" means courses delivered in shortened semesters which are expected to have the same number of contact hours and the same requirement for out-of-class learning as courses taught in a normal semester.

(2) "Contact hour" means a time unit of instruction used by institutions of higher education consisting of 60 minutes, of which 50 minutes must be direct instruction.

(3) "Distance education" means the formal educational process that occurs when students and instructors are not in the same physical setting for the majority (more than 50 percent) of instruction.

(4) "Distance education course" means a course in which a majority (more than 50 percent) of the instruction occurs when the student(s) and instructor(s) are not in the same place. Two categories of distance education courses are defined:

(A) "Fully distance education course" means a course which may have mandatory face-to-face sessions totaling no more than 15 percent of the instruction time. Examples of face-to-face sessions include orientation, laboratory, exam review, or an in-person test.

(B) "Hybrid/Blended course" means a course in which a majority (more than 50 percent but less than 85 percent), of the planned instruction occurs when the students and the instructor(s) are not in the same place.

(5) "Non-traditionally-delivered course" means a course that is offered in a non-traditional way (for example, over the internet, or through a shortened, intensive format) that does not meet the definition of contact hours, the course may be considered if it has been reviewed and approved through a formal, institutional faculty review process that evaluates the course and its learning outcomes and determines that the course does, in fact, have equivalent learning outcomes to an equivalent, traditionally delivered course.

(6) "Semester" means and normally shall include 15 weeks for instruction and one week for final examination or a total of 16 weeks instruction and examinations combined.

(7) "Semester credit hour" means a unit of measure of instruction consisting of 60 minutes, of which 50 minutes must be direct instruction, over a 15-week period in a semester system or a 10-week period in a quarter system.

(8) "Traditionally-delivered three semester-credit-hour course" or "traditional course" means a course containing 15 weeks of instruction (45 contact hours) plus a week for final examinations so that such a course contains 45-48 contact hours depending on whether there is a final exam.

(b) The following words and terms, when used in chapter shall have the following meanings, unless the context clearly indicates otherwise and shall be considered substantially equivalent to definitions and references in rules promulgated by the Texas Higher Education Coordinating Board.

(1) "AACSB-International" means the Association to Advance Collegiate Schools of Business-International.

(2) "ACBSP" means the Accreditation Council for Business Schools and Programs.

(3) "Accredited community college" means a board-recognized Texas community college that holds the designation 'Qualifying Educational Credit for the CPA Examination' awarded by the board.

(4) "CHEA" means the Council for Higher Education Accreditation.

(5) "Institution" or "Institution of Higher Education" means any U.S. public or private senior college or university which confers a baccalaureate or higher degree to its students completing a program of study required for the degree.

(6) "Quarter credit hour" is the unit of measurement based upon an institution of higher education system that divides the academic year into three equal sessions of 10 to 11 weeks. A quarter hour represents proportionately less work than a semester hour because of the shorter session and is counted as 2/3 of a semester hour for each hour of credit.

(7) "Reporting institution" means the institution of higher education in the state that serves as the clearinghouse for educational institutions of higher education in Texas. Currently, the University of Texas-Austin is the reporting institution for the state of Texas.

(8) "SACS" means the Southern Association of Colleges and Schools-Commission on Colleges.

(9) "Self-paced course" means a course in which a student earns semester/quarter hour credit that is completed in less or more than the time required in subsection (a)(5) of this section.

(10) "THECB" means the Texas Higher Education Coordinating Board.

(11) "UCPAE" means the Uniform Certified Public Accountant Examination prepared and graded by the American Institute of Certified Public Accountants.

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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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7842



## 22 TAC §511.52

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.52, concerning Recognized Colleges and Universities.

The amendment to §511.52 will make it clear that accelerated or self-paced format courses and correspondence courses are not acceptable for the purpose of meeting the minimum qualifications to sit for the CPA exam and it identifies the accrediting associations it recognizes when considering the qualifications of an applicant to sit for the CPA exam.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of

the adoption of the proposed amendment will be an understanding of the minimum qualifications necessary to sit for the CPA exam and an understanding of which accrediting organizations a school must be accredited by in order for its coursework to be acceptable to the Board for the purpose of sitting for the CPA exam.

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on March 5, 2012. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§511.52. *Recognized Institutions of Higher Education [Colleges and Universities].*

(a) In considering the qualifications of an applicant, the board shall [generally] accept institutions of higher education that are regionally accredited by SACS or that meet the following requirements: [colleges or universities which offer a baccalaureate or higher degree, and which are recognized by one of the following accrediting associations:]

(1) offer a baccalaureate or higher degree; and

(2) offer college coursework that conforms with the definitions and standards of the THECB for contact hours, semester hours and quarter hours, and as defined by §511.51 of this chapter (relating to Educational Definitions).

~~[(1) Middle States Association of Colleges and Schools;]~~

~~[(2) North Central Association of Colleges and Schools--Higher Learning Commission;]~~

~~[(3) New England Association of Schools and Colleges--Commission on Institutions of Higher Education;]~~

~~[(4) Northwest Commission on Colleges and Universities;]~~

~~[(5) Western Association of Schools and Colleges--Commission for Senior Colleges; or]~~

~~[(6) Southern Association of Colleges and Schools--Commission on Colleges.]~~

(b) Effective January 1, 2013, subsection (a) of this section is superceded in its entirety by subsection (b) and [June 1, 2012] the board will accept institutions of higher education, that are regionally accredited by an organization recognized by CHEA and that meet the following requirements: [schools accredited by the Southern Association of Colleges and Schools--Commission on Colleges and the schools accredited by the associations identified in subsection (a)(1) - (5) of this section so long as the schools accredited by the identified associations offer a baccalaureate or higher degree, and have a business school or accounting program accreditation recognized by the Council for Higher Education Accreditation (CHEA) as a specialized or professional accrediting organization. Examples of a specialized or professional accrediting organization are the Association to Advance Collegiate Schools of Business--International (AACSB) or the Association of Collegiate Business Schools and Programs (ACBSP).]

(1) offer a baccalaureate or higher degree; and

(2) offer college coursework that conforms with the definitions and standards of the THECB or SACS for contact hours, semester hours and quarter hours as defined by §511.51 of this chapter; and either

(3) have a business school or accounting program accredited by AACSB or ACBSP; or

(4) provide evidence of meeting equivalent accreditation requirements of SACS.

(c) An institution of higher education [A university] that does not meet the requirements of subsection (a) or (b) of this section may appeal to the board for consideration. An institution of higher education approved [A university recognized] by the board under this provision must be reconsidered [for approval] by the board on the fifth-year anniversary of the approval. Institutions of higher education [Universities] that do not request or receive re-approval will no longer be recognized under this provision at the conclusion of the fifth-year anniversary.

(d) The board may receive assistance from the reporting institution in the State of Texas in evaluating an [educational] institution of higher education. [Correspondence schools and vocational schools do not meet the criteria.]

(e) The board recognizes and accepts community colleges that offer an accounting program reviewed and accepted by the board. (See §511.57(a)(2) and §511.58(a) of this chapter (relating to Qualified Accounting Courses and Definitions of Related Business Subjects and Ethics Courses) for degree and course requirements).

(f) Correspondence schools and programs, and continuing education courses do not meet the criteria of this section.

(g) ~~[(f)]~~ Interpretive Comment: Subsection (a) of this section shall apply to an applicant for the UCPAE [CPA Examination] who earned a bachelor's degree at a university prior to the effective date

of subsection (b) of this section or who has substantially completed coursework for a bachelor's degree prior to the effective date of subsection (b) of this section. Substantially completed means that the applicant has completed all but the last 18 semester hours required to earn a bachelor's degree.

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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J. Randel (Jerry) Hill

General Counsel

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## 22 TAC §511.56

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.56, concerning Educational Qualifications under the Act.

The amendment to §511.56 will replace terms with acronyms where defined, cite the related sections of the rules and non-substantively reword the rule to make it easier to understand.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be the public's clarification of the terms provided in the rule.

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on March 5, 2012.

Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

*§511.56. Educational Qualifications under the Act.*

(a) An applicant for the UCPAE [Uniform CPA Examination] who met the educational requirements of a prior Act that were in effect at the time of taking the initial examination shall continue to be examined under those requirements unless the applicant chooses to meet the education requirements of the current Act.

(b) An applicant for the UCPAE [Uniform CPA Examination] under the current Act shall meet the following educational requirements at the time of filing the initial application to take the examination and in order to qualify to write the examination:

(1) hold a baccalaureate or graduate degree conferred by an institution of higher education as defined by [board rule,] §511.52 of this chapter (relating to Recognized Institutions of Higher Education) recognized by the board; and

(2) complete no [not] fewer than 150 semester hours or quarter-hour equivalents of courses, as defined by [board rule,] §511.59 of this chapter (relating to Definition of 150 Semester Hours) and consisting of:

(A) no [not] fewer than 30 semester hours or quarter-hour equivalents of upper level accounting courses as defined by [board rule,] §511.57 of this chapter (relating to Qualified Accounting Courses);

(B) no [not] fewer than 24 semester hours or quarter-hour equivalents of upper level related business courses, as defined by [board rule,] §511.58 of this chapter (relating to Definitions of Related Business Subjects and Ethics Courses); and

(C) a 3-semester-hour board-approved [3 semester hour board approved] ethics course as defined by [board rule,] §511.58 of this chapter.

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

Filed with the Office of the Secretary of State on January 20, 2012.

TRD-201200269

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: March 4, 2012

For further information, please call: (512) 305-7842



**22 TAC §511.57**

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.57, concerning Definition of Accounting Courses.

The amendment to §511.57 will reword some of the language of the rule to make its intent clear, require up to 9 hours of intermediate accounting to qualify to sit for the exam, allow the internship course to qualify as a traditional course, disqualify accelerated or self-paced format or by correspondence and clarify that an ethics course taken for CPE does not qualify for purposes of meeting the accounting course definition to sit for the exam.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be clarification of the standards to qualify to sit for the CPA exam.

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on March 5, 2012. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

*§511.57. Qualified [Definition of] Accounting Courses.*

(a) An individual shall meet the board's accounting course requirements in one of the following ways:

(1) Hold a baccalaureate or higher degree from a board-recognized [recognized educational] institution of higher education as defined by [board rule,] §511.52 of this chapter (relating to Recognized Institutions of Higher Education) and present [a] valid transcript(s) [transcript] from board-recognized institution(s) [that institution] that show [shows] degree credit for no [not] fewer than 30 semester hours of accounting courses as defined in subsection (c) of this section; or

(2) Hold a baccalaureate or higher degree from a board-recognized [recognized educational] institution of higher education as defined by [board rule,] §511.52 of this chapter, and after obtaining the degree, complete the requisite [not fewer than] 30 semester hours of accounting courses, as defined in subsection (c) of this section, from four-year degree granting institutions, or accredited community colleges, provided that all such institutions are recognized by the board as defined by [board rule,] §511.52 of this chapter, and that the accounting programs offered at the community colleges are reviewed and accepted by the board.

(b) Credit for hours taken at board-recognized institutions of higher education [recognized colleges and universities] using the quarter system shall be counted as 2/3 of a semester hour for each hour of credit received under the quarter system.

(c) The board will accept no [not] fewer than 30 semester [credit] hours of accounting courses [without repeat] from the courses listed in paragraphs (1) - (13) of this subsection [below]. The courses must meet the board's standards by containing sufficient business knowledge and application to be useful to candidates taking the UCPAE [Uniform CPA Examination]. A board-recognized [recognized educational] institution of higher education must have accepted the courses for purposes of obtaining a baccalaureate degree or its equivalent, and they must be shown on an official transcript. At least 15 of these hours must result from physical attendance at classes meeting regularly on the campus of the transcript-issuing institution. The subject-matter content should be derived from the UCPAE [Uniform CPA Examination] Content Specifications [Specification] Outline and cover some or all of the following:

(1) financial accounting and reporting for business organizations that may include:

- (A) up to nine semester hours of intermediate accounting;
- (B) advanced accounting;
- (C) accounting theory;
- (2) managerial or cost accounting (excluding introductory level courses);
- (3) auditing and attestation services;
- (4) internal accounting control and risk assessment;
- (5) financial statement analysis;
- (6) accounting research and analysis;
- (7) up to twelve semester hours of taxation (including tax research and analysis);
- (8) financial accounting and reporting for governmental and/or other nonprofit entities;
- (9) up to twelve semester hours of accounting information systems, including management information systems ("MIS"), provided the MIS courses are listed or cross-listed as accounting courses, and the institution of higher education [college or university] accepts these courses as satisfying the accounting course requirements for graduation with a degree in accounting;
- (10) fraud examination;
- (11) international accounting and financial reporting; and
- (12) an accounting internship program (not to exceed 3 semester hours) which meets the following requirements:
  - (A) the accounting knowledge gained is equal to or greater than the knowledge gained in a traditional accounting classroom setting;
  - (B) the employing firm provides the faculty coordinator and the student with the objectives to be met during the internship;
  - (C) the internship plan is approved in advance by the faculty coordinator;
  - (D) the employing firm provides a significant accounting work experience with adequate training and supervision of the work performed by the student;
  - (E) the employing firm provides an evaluation of the student at the conclusion of the internship, provides a letter describing the duties performed and the supervision to the student, and provides a copy of the documentation to the faculty coordinator and the student;
  - (F) the student keeps a diary comprising a chronological list of all work experience gained in the internship;
  - (G) the student writes a paper demonstrating the knowledge gained in the internship;
  - (H) the student and/or faculty coordinator provides evidence of all items upon request by the board;
  - (I) the internship course shall not be taken until a minimum of 12 semester hours of upper division accounting course work has been completed; and [-]
  - (J) the internship course shall be the equivalent of a traditional course.
- (13) At its discretion, the board may accept up to three semester hours of credit as accounting [for] course work with substantial merit in the context of a career in public accounting, provided the

course work is predominantly accounting or auditing in nature but not included in paragraphs (1) - (12) of this subsection. For any course submitted under this provision, the Accounting Faculty Head or Chair must affirm to the board in writing the course's [its] merit and content.

(d) Effective July 1, 2011, the board requires that a minimum of two semester [credit] hours in research and analysis relevant to the course content described in subsection (c)(6) or (7) of this section be [is] completed. The semester hours may be obtained through a discrete course or offered through an integrated approach. If the course content is offered through integration, the institution of higher education [university] must advise the board of the course(s) that contain the research and analysis content.

(e) The following types of introductory courses do not meet the accounting course definition in subsection (c) of this section:

- (1) elementary accounting;
- (2) principles of accounting;
- (3) financial and managerial accounting;
- (4) introductory accounting courses; and
- (5) accounting software courses.

(f) Any CPA review course offered by an [educational] institution of higher education or a proprietary organization shall not be used to meet the accounting course definition.

(g) Courses not offered in accordance with this section, including those offered in an accelerated or self-paced format, or by correspondence, do not qualify for purposes of meeting the educational requirements to take the UCPAE.

(h) An ethics course required in §511.58(c) of this chapter (relating to Definitions of Related Business Subjects and Ethics Courses) shall not be used to meet the accounting course definition in subsection (c) of this section.

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

Filed with the Office of the Secretary of State on January 20, 2012.

TRD-201200270

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: March 4, 2012

For further information, please call: (512) 305-7842



## 22 TAC §511.58

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.58, concerning Definitions of Related Business Subjects.

The amendment to §511.58 will reword the rule to clarify its intent and require a minimum of 2 upper level semester credit hours in accounting communications or business communications in order to qualify to sit for the exam.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of the adoption of the proposed amendment will be a clarification of minimum standards to sit for the exam and better qualified CPAs providing accounting services to the public.

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on March 5, 2012. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§511.58. Definitions of Related Business Subjects and Ethics Courses.

(a) An individual who holds a baccalaureate degree from a recognized educational institution as defined by [board rule,] §511.52 of this chapter [title] (relating to Recognized Institutions of Higher Education [Colleges and Universities]) may take related business courses

offered at an accredited community college, provided they are recognized as upper level courses for a 4-year baccalaureate [BBA] degree from an institution recognized by the board.

(b) The board will accept no [nøt] fewer than 24 semester credit hours of upper level courses (for the purposes of this subsection, economics and statistics at any college level will count as upper division courses) as related business subjects (without repeat), taken at a recognized educational institution shown on official transcripts or accepted by a recognized educational institution for purposes of obtaining a baccalaureate degree or its equivalent, in the following areas. No [Nøt] more than 6 credit semester hours taken in any subject area may be used to meet the minimum hour requirement.

- (1) business law, including study of the Uniform Commercial Code;
- (2) economics;
- (3) management;
- (4) marketing;
- (5) business communications;
- (6) statistics and quantitative methods;
- (7) finance;
- (8) information systems or technology; and
- (9) other areas related to accounting.

(c) In addition to the 24 hours required in subsection (b) of this section, the board requires that 3 passing semester hours be earned as a result of taking a course in ethics. The course must be taken at a recognized educational institution and should provide students with a framework of ethical reasoning, professional values and attitudes for exercising professional skepticism and other behavior that is in the best interest of the public and profession. The ethics program should provide a foundation for ethical reasoning and include the core values of integrity, objectivity and independence taught by an instructor who has not been disciplined by the board for a violation of the board's rules of professional conduct unless waived by the board.

(d) Effective July 1, 2011, the board requires that a minimum of 2 upper level semester credit hours in accounting communications or business communications be completed. The semester hours may be obtained through a discrete course or offered through an integrated approach. If the course content is offered through integration, the university must advise the board of the course(s) that contain the accounting communications or business communications content.

(e) Credit for hours taken at recognized institutions of higher education [colleges or universities] using the quarter system shall be counted as 2/3 of a semester hour for each hour of credit received under the quarter 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 January 20, 2012.

TRD-201200271

J. Randel (Jerry) Hill  
General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: March 4, 2012

For further information, please call: (512) 305-7842

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**22 TAC §511.59**

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.59, concerning Definition of 150 Semester Hours.

The amendment to §511.59 will be to reword the rule for a better understanding of the Board's requirements related to the minimum of 150 semester hours of college coursework in order to qualify to sit for the exam.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a clarification of the standards related to the 150 hours of college course work needed to sit for the exam.

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on March 5, 2012. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be



impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

*§511.59. Definition of 150 Semester Hours.*

An individual holding a baccalaureate degree shall meet the board's 150 semester hours or quarter hour equivalents of courses in one of the following ways:

(1) Complete a master's degree or higher degree conferred by an institution of higher education [a university] that is recognized by the board [Board]; or

(2) Complete the upper level accounting courses needed to take the UCPAE [CPA examination] as defined in §511.57 of this chapter (relating to Qualified Accounting Courses). The hours required for a baccalaureate degree plus the additional hours must equal or exceed 150 semester hours; or

(3) Complete additional semester hours or quarter hour equivalents of upper level courses that enhance professional skills and competence, beyond the accounting hours required for a baccalaureate degree in accounting, from a university that is recognized by the board [Board]. The hours required for a baccalaureate degree plus the additional hours must equal or exceed 150 semester hours. The coursework should be in established courses offered through colleges, i.e. [within the university such as]: architecture, business administration, communications, engineering, fine arts, liberal arts, science, or another established discipline, within the university.

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 January 20, 2012.

TRD-201200272

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: March 4, 2012

For further information, please call: (512) 305-7842



## CHAPTER 519. PRACTICE AND PROCEDURE SUBCHAPTER A. GENERAL PROVISIONS

### 22 TAC §519.9

The Texas State Board of Public Accountancy (Board) proposes an amendment to §519.9, concerning Administrative Penalty Guidelines.

The amendment to §519.9 will clarify that the act of "possessing" a controlled substance is a violation of the Board's rules, deletes the three-year non-pay (section 39) and the CPE violations (section 38) as unnecessary sections, amends text to match current rules, and replaces words with acronyms that have been defined in §501.55.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be to clarify what violations of law are actionable under the Texas Public Accountancy Act.

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on March 5, 2012. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

*§519.9. Administrative Penalty Guidelines.*

(a) The following table contains guidelines for the assessment of administrative penalties in disciplinary matters. In determining

whether a violation is minor, moderate or major, the board will apply the factors to be considered set forth in §901.552(b) of the [Public Accountancy] Act (relating to Amount of Penalty). In all cases where the board has determined a violation has occurred, administrative costs will be assessed, regardless of any other sanction imposed by the board.

Figure: 22 TAC §519.9(a)

(b) The amounts specified in subsection (a) of this section are guidelines only. The board retains the right to increase or decrease the amount of an administrative penalty based on the circumstances of each case it considers.

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 January 20, 2012.

TRD-201200274

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7842



## TITLE 25. HEALTH SERVICES

### PART 1. DEPARTMENT OF STATE HEALTH SERVICES

#### CHAPTER 1. MISCELLANEOUS PROVISIONS SUBCHAPTER Y. ADVERSE LICENSING, LISTING, OR REGISTRATION DECISIONS

##### 25 TAC §1.601

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes new §1.601, concerning adverse licensing, listing, or registration decisions.

##### BACKGROUND AND PURPOSE

Senate Bill 78, enacted during the 82nd Legislature, Regular Session, 2011, added Government Code, §§531.951 - 531.954 and requires certain Health and Human Services Commission agencies to capture, retain, and share information regarding adverse actions against regulated entities or persons seeking or renewing a license. This new law applies to the department, as well as the Department of Aging and Disability Services (DADS), and Department of Family and Protective Services (DFPS). Each agency is required to create a monthly list of adverse actions that is shared with the other agencies. Under this law, an agency may take an adverse action against a licensee or applicant based on the information provided by the other agencies. The new rule proposed herein will implement the law by adding Subchapter Y.

Five regulatory programs administered by the department are affected by the new law that includes Youth Camps in 25 Texas Administrative Code (TAC), Chapter 265; Hospital Licensing in 25 TAC Chapter 133; Special Care Facilities in 25 TAC Chapter 125; Chemical Dependency Treatment Facilities in 25 TAC

Chapter 448; and Private Psychiatric Hospitals in 25 TAC Chapter 134. Each program has a unique rule set; therefore, the most efficient way to implement the law is to amend the broad-scope 25 TAC Chapter 1, rather than amending five individual rule text chapters in 25 TAC. The requirements of the law are identical for all programs affected.

The new requirements include creating a record of final decisions for any adverse actions that result in denial, suspension, revocation or termination of a license. The department must provide the records on a monthly basis to DADS, and DFPS; conversely, DADS and DFPS are required to provide such information to the department and to one another. The records of decisions and the relevant applications must be retained by the agencies for a period of 10 years from the anniversary date of the denial, suspension, revocation or termination. The new rule will promote efficient communication between the agencies and facilitate denial or termination of a license in circumstances that pose significant risk or harm to an individual in the care of the entity or person.

##### SECTION-BY-SECTION SUMMARY

Section 1.601(a) defines the scope of the subchapter with respect to the department and the five programs it administers that are subject to the rule. The programs are Youth Camps in Health and Safety Code, Chapter 141; Hospital Licensing in Health and Safety Code, Chapter 241; Special Care Facilities in Health and Safety Code, Chapter 248; Chemical Dependency Treatment Facilities in Health and Safety Code, Chapter 464; and Private Psychiatric Hospitals in Health and Safety Code, Chapter 577.

Section 1.601(b) describes the requirement to create, share, and retain records of decisions, which relate to denying, revoking, suspending, or terminating a license or registration (adverse action). The records that relate to adverse action must include: the name and address of the applicant; the name and address of each person named on the application; the name of each controlling person; a summary of the terms for which the adverse action was taken; and the period that the adverse action will be in effect. This subsection also includes the provisions for providing the monthly report and the ten-year retention period.

Section 1.601(c) describes how the department may deny an application for a license or renewal of a license, based on the adverse actions taken by the other agencies subject to the enabling statute. The license may be denied if the applicant, a person named on the application, or a controlling person of the entity or person seeking a license is listed by DADS or DFPS in a record as described in subsection (b) and the agency's action was based on an act or omission that resulted in physical or mental harm to an individual in the care of the applicant or person; a threat to the health, safety or well-being of an individual in the care of the applicant or person; or a determination by the agency that the applicant or person has committed an act or omission that renders the applicant unqualified to fulfill the obligations of the license or registration.

Section 1.601(d) requires an applicant to include with the application a written statement of the name of any person who is or will be a controlling person of the entity for which the license or registration is sought.

##### FISCAL NOTE

E. Alan Morris, Unit Manager, Enforcement Unit, has determined that for each fiscal year of the first five years that the section will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the rule

as proposed. Implementing the law and new rule will require an adjustment in procedure that has no fiscal impact.

#### SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Mr. Morris has also determined that there will be no adverse economic impact to small businesses and micro-businesses to comply with the section as proposed. This was determined by interpretation of the rule that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the section.

#### ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no anticipated negative impact on local employment.

#### PUBLIC BENEFIT

Mr. Morris has determined that for each year of the first five years the section is in effect, the public will benefit from adoption of the rule. The anticipated public benefit is that the department, DADS, and DFPS will be better equipped to take appropriate action to deny licenses and registrations of entities and persons that have a history of adverse actions. Efficient sharing of information on adverse actions between the agencies will enhance the ability to protect the public.

#### REGULATORY ANALYSIS

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

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Comments on the proposal may be submitted to E. Alan Morris, Enforcement Unit, Division of Regulatory Services, Department of State Health Services, Mail Code 7927, P.O. Box 149347, Austin, Texas 78714-9347, (512) 834-6621 or by email to alan.morris@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

#### PUBLIC HEARING

If requested, a public hearing to receive comments on the proposal will be scheduled after publication in the *Texas Register* and will be held at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas 78754. The meeting date will be posted on the individual program websites affected by this proposed rule. Please contact E. Alan Morris at (512) 834-6621, or alan.morris@dshs.state.tx.us if you have questions.

#### LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rule has been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

#### STATUTORY AUTHORITY

The new rule is authorized by Government Code, Chapter 531, which requires the Executive Commissioner Health and Human Services Commission to adopt a rule necessary to implement the adverse licensing, listing, or registration decisions; 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.

The new rule affects Government Code, Chapter 531 and Health and Safety Code, Chapter 1001.

#### §1.601. Decisions Based on Interagency Records.

(a) Scope of subchapter. In accordance with Health and Safety Code, Chapter 531, this subchapter applies to the final licensing or registration decisions of the Department of State Health Services (department) that resulted in a final order that was not reversed on appeal, for the following persons or entities regulated under the Health and Safety Code:

- (1) a youth camp licensed under Chapter 141;
- (2) a hospital licensed under Chapter 241;
- (3) a special care facility licensed under Chapter 248;
- (4) a chemical dependency treatment facility licensed under Chapter 464; and
- (5) a mental hospital or mental health facility licensed under Chapter 577.

(b) Record of final decision. In accordance with Government Code, §531.952, the department shall maintain a record:

- (1) of each application for a license, including a renewal license or a registration that is denied by the department under the law authorizing the department to regulate the person or entity;
- (2) of each license or registration that is revoked, suspended, or terminated by the department under the applicable law;
- (3) until the 10th anniversary of the date of the denial, revocation, suspension, or termination;
- (4) that includes:

(A) the name and address of the applicant for a license or registration that is denied by the department, and the name and address of each person named on the application for a license or registration that is denied;

(B) the name of each controlling person of an entity for which an application, license or registration is denied, revoked, suspended, or terminated as described in paragraphs (1) and (2) of this subsection and the specific type of license or registration that was denied, revoked, suspended, or terminated by the department;

(C) a summary of the terms of the denial, revocation, suspension, or termination; and

(D) the period the denial, revocation, suspension, or termination was effective.

(5) The department shall provide a copy of the records maintained under this section, in a form determined by the department, to the Department of Aging and Disability Services and the Department of Family and Protective Services (each Health and Human Services agency that regulates a person described by Government Code, Chapter 531) on a monthly basis.

(c) Denial of application based on adverse agency decision. The department may deny an application for a license, including a renewal license or a registration of a person described in subsection (a) of this section if:

(1) the applicant, a person named on the application, or a person determined by the regulating agency to be a controlling person of an entity for which the license, listing, or registration is sought is listed in a record maintained by a Health and Human Services agency under Government Code, §531.952; and

(2) the agency's action that resulted in the person being listed in a record maintained under Government Code, §531.952, is based on:

(A) an act or omission that resulted in physical or mental harm to an individual in the care of the applicant or person;

(B) a threat to the health, safety, or well-being of an individual in the care of the applicant or person;

(C) the physical, mental, or financial exploitation of an individual in the care of the applicant or person; or

(D) a determination by the agency that the applicant or person has committed an act or omission that renders the applicant unqualified or unfit to fulfill the obligations of the license, listing, or registration.

(d) Required application information. An applicant submitting an initial or renewal application for a license, including a renewal license or a registration described in subsection (a) of this section must include with the application a written statement of:

(1) the name of any person who is or will be a controlling person of the entity for which the license or registration is sought; and

(2) any other relevant information required by law, rule, or department policy.

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

Filed with the Office of the Secretary of State on January 20, 2012.

TRD-201200277

Lisa Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: March 4, 2012

For further information, please call: (512) 776-6972



## CHAPTER 200. HEALTHCARE-ASSOCIATED INFECTIONS

### SUBCHAPTER A. CONTROL OF COMMUNICABLE DISEASES

25 TAC §§200.2 - 200.4, 200.6 - 200.9

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes amendments to §§200.2 - 200.4 and §§200.6 - 200.9, concerning the reporting of healthcare-associated infections.

#### BACKGROUND AND PURPOSE

Health and Safety Code, Chapter 98, requires general hospitals and ambulatory surgical centers in Texas to report to the department the incidence of surgical site infections occurring after seven specific surgeries. Pediatric and adolescent hospitals are required to report the incidence of surgical site infections occurring after three specific surgeries. In addition, general hospitals are required to report the incidence of laboratory-confirmed central line-associated primary bloodstream infections occurring in any special care setting in the hospital and the incidence of respiratory syncytial virus occurring in any inpatient unit in the hospital.

The amendments are necessary to comply with Senate Bill 7, 82nd Legislature, First Called Special Session, 2011, which amended Health and Safety Code, Chapter 98, concerning the "Reporting of Health Care-Associated Infections and Preventable Adverse Events."

The revised language to Health and Safety Code, Chapter 98, states that "The executive commissioner by rule may designate the federal Centers for Disease Control and Prevention's National Healthcare Safety Network (NHSN), or its successor to receive reports of health care-associated infections from health care facilities on behalf of the department." It also indicates that the executive commissioner may require the reporting to NHSN or its successor to be no less often than monthly if that is the process set forth by NHSN or its successor. The amended Health and Safety Code, Chapter 98, also deletes references to different reporting requirements for facilities that perform less than a cumulative average of 50 of the reportable procedures.

#### SECTION-BY-SECTION SUMMARY

Sections 200.2(a); 200.3(a) - (b), (c)(2), (e)(1) - (2); 200.6(a) and (e); and 200.8(b)(1) and (4) are amended to designate NHSN or its successor as the secure electronic computer system that facilities will use to report the required data and further indicates that the reporting facilities must give the department access to those data.

The amendments to §200.4(c), (d), and (f); and §200.6(b)(2) - (3), (c)(1) - (2) and (d)(1) - (2) remove references regarding different reporting requirements by facilities that do not perform at least a monthly average of 50 of any combination of reportable procedures.

Additionally, §200.3(d) - (e); 200.8(a)(2) and (b)(4); and 200.9(a)(5) and (b)(1) - (2) are amended to clarify how facilities will report and make comments on their data displays and how communications between the department and facilities will occur.

The reporting time frames in Table 1, §200.7(a), is also amended to clarify its title and to align it more closely with NHSN reporting time frames. The Departmental Data Reconciliation dates in the table were changed from the 15th to the 1st for the months of June, September, December, and March. Facility deadline submission dates were also removed and replaced with reference to NHSN reporting guidelines.

#### FISCAL NOTE

Adolfo Valadez, M.D., M.P.H., Assistant Commissioner, Infectious Disease Prevention Section, has determined that for each year of the first five years that the sections will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the sections as proposed.

#### SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Dr. Valadez has also determined that there will be no adverse effect on small businesses or micro-businesses that are required to comply with the sections as proposed because their business practices will not be altered.

#### ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no anticipated negative impact on local employment.

#### PUBLIC BENEFIT

Dr. Valadez has determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The department will compile an annual summary, by health care facility, of the reporting infections. The summary will be made available on an Internet website. Showing infections rates by procedure and health care facility will benefit the public by providing information on infection risk at each health care facility. Efforts by health care facilities to reduce the infection rate for their facility will also benefit the public. The department and other Health and Human Service Commission agencies may use the reported data for research and analysis. In the case of the department, this will consist of earlier identification of outbreaks or infections associated with particular types of procedures, equipment or facilities.

#### REGULATORY ANALYSIS

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

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Comments on the proposal may be submitted to Ron Gernsbacher, Program Coordinator, Emerging and Acute Infectious Disease Branch, Infectious Disease Control Unit, Prevention and Preparedness Services Division, Department of State Health Services, Mail Code 1960, P.O. Box 149347, Austin, Texas 78714-9347, (512) 458-7676 or by email to ron.gernsbacher@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

#### LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

#### STATUTORY AUTHORITY

The amendments are proposed under Health and Safety Code, §98.101, which authorizes the Executive Commissioner to adopt rules to implement Chapter 98; 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.

The amendments affect the Health and Safety Code, Chapters 98 and 1001; and Government Code, Chapter 531.

#### §200.2. *General Reporting Guidelines for Healthcare-Associated Infection Data.*

(a) All general hospitals and ambulatory surgical centers in operation during any part of a reporting quarter described in §200.1 of this title (relating to Definitions) shall submit healthcare-associated infection (HAI) data as specified in §§200.3 - 200.7 of this title to the Centers for Disease Control and Prevention's National Healthcare Safety Network (NHSN) or its successor [~~department~~].

(b) - (e) (No change.)

#### §200.3. *How to Report.*

(a) Facilities shall submit HAI data required by this section to NHSN or its successor [~~a secure, electronic interface designated by the department~~].

(b) Facilities shall comply with the process prescribed by NHSN or its successor [~~of the designated secure, electronic interface~~] to allow the department access to HAI data as specified in §§200.3 - 200.7 of this title.

(c) Facilities shall use their facility identification number to identify their facility in the electronic data and correspondence with the department. Each facility meeting the definition of ambulatory surgical center or general hospital as defined in §200.1(1) and (11) of this title (relating to Definitions) shall have its own facility identification number.

(1) (No change.)

(2) If a facility has multiple campuses or a hospital and ambulatory surgical center are associated by ownership, each site shall each use a unique CMS provider number. In the event that a facility is not CMS certified or a facility operates multiple facilities under one CMS number, the facility shall use the identification number assigned by NHSN or its successor [~~contact the designated electronic interface administrator to receive a facility identification number~~].

(3) The relationship between CMS-assigned and NHSN-assigned [~~department assigned~~] facility identifiers and the name and license number of the facility is public information.

(d) The department shall notify the facility contact by email[, fax, or in writing] 90 calendar days in advance of any change in requirements for reporting HAI data.

(e) Facilities shall report HAI data on patients identified with [~~who are admitted to the facility for inpatient treatment of~~] a surgical site infection associated with a procedure listed in §200.4 of this title (relating to Which Events to Report) [~~within 30 calendar days of the~~].

procedure or within 1 year of the procedure if the procedure involved an implant].

(1) If the facility treating the patient performed the procedure, the facility shall report the infection to NHSN or its successor according to [in the designated electronic data interface according to] the surveillance methods described by NHSN or its successor [the interface] and this chapter [these rules].

(2) If the facility treating the patient did not perform the surgery, the treating facility shall notify the facility that performed the procedure, document the notification, and maintain this documentation for audit purposes. The facility that performed the procedure shall verify the data related to the SSI and shall report the infection to NHSN or its successor [in the designated electronic data interface] according to the surveillance methods described by NHSN or its successor [the interface] and this chapter [these rules].

#### §200.4. Which Events to Report.

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

(c) General hospitals, other than pediatric and adolescent hospitals, and ambulatory surgical centers [(except those hospitals or ambulatory surgical centers described in subsection (d) of this section)] shall report the HAI data related to the following surgical procedures. The surgical procedure is defined by the NHSN operative procedure and the ICD-9-CM codes linked to that operative procedure.

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

[(d) A general hospital, other than a pediatric and adolescent hospital, or ambulatory surgical center that does not perform at least a monthly average of 50 of any combination of the procedures listed in subsection (c) of this section shall report HAI data relating to all of the three surgical procedures most frequently performed at the facility that are also listed by NHSN. The average number of procedures and the three most frequently performed procedures shall be determined based on the calendar year prior to the reporting year as determined by facility contact.]

[(e)] Pediatric and adolescent hospitals [except those described in subsection (f) of this section] shall report the HAI data relating to the following surgical procedures. The surgical procedure is defined by the NHSN operative procedure and the ICD-9-CM codes linked to that operative procedure.

(1) Spinal surgery with instrumentation (Spinal fusion--81.00 - 81.08, 81.62 - 81.64; Laminectomy--03.01, 03.02, 03.09, 80.50, 80.51, 80.53, 80.54, 80.59, 84.60 - 84.69, 84.80 - 84.85; Refusion of spine--81.30 - 81.39).

(2) Cardiac procedures, excluding thoracic cardiac procedures (Cardiac surgery--35.00 - 35.04, 35.10 - 35.14, 35.20 - 35.28, 35.31 - 35.35, 35.39, 35.42, 35.50, 35.51, 35.53, 35.54, 35.60 - 35.63, 35.70 - 35.73, 35.81 - 35.84, 35.91 - 35.95, 35.98, 35.99, 37.10, 37.11, 37.24, 37.31 - 37.33, 37.35, 37.36, 37.41, 37.49, 37.60; Heart transplant--37.51 - 37.55).

(3) Ventriculoperitoneal shunt procedures (Ventricular shunt operations), including revision and removal of shunt--02.2, 02.31 - 02.35, 02.39, 02.42, 02.43, 54.95).

[(f) A pediatric and adolescent hospital that does not perform at least a monthly average of 50 of any combination of the procedures listed in subsection (e) of this section shall report the HAI data relating to all of the three surgical procedures most frequently performed at the facility that are also listed by NHSN. The average number of procedures and the three most frequently performed procedures shall be determined based on the calendar year prior to the reporting year. Reporting of HAI data for all three surgeries shall begin for the entire

quarter in which the enrollment deadline occurs as specified in §200.6 of this title (relating to When to Initiate Reporting).]

(e) [(g)] Facilities shall also report denominator data for the events identified in this rule [above] for calculation of risk adjusted infection rates as required in Texas Health and Safety Code, §98.106(b). NHSN protocols shall be used for the determination of denominator data.

#### §200.6. When to Initiate Reporting.

(a) All healthcare facilities who meet the criteria in §200.4 of this title (relating to Which Events to Report) shall enroll in NHSN [the secure, electronic interface] within 90 calendar days of [the effective date of this rule, or] the designation of NHSN as the secure electronic interface[, whichever is later].

(b) Facilities shall submit HAI data beginning with the entire reporting quarter of the effective date in subsection (a) of this section.

(1) (No change.)

(2) Ambulatory surgical centers and general hospitals, except pediatric and adolescent hospitals--HAI data relating to knee arthroplasties as defined in §200.4(c)(3) of this title [(relating to Which Events to Report) or the three surgical procedures most frequently performed as described in §200.4(d) of this title].

(3) Pediatric and adolescent hospitals--HAI data relating to ventriculoperitoneal shunts as defined in §200.4(d)(3) [§200.4(e)(3)] of this title [or the three surgical procedures most frequently performed as defined in §200.4(f) of this title].

(c) In addition to the data listed in subsection (b) of this section, facilities shall submit the following data beginning January 1, 2012.

(1) Ambulatory surgical centers and general hospitals, except pediatric and adolescent hospitals - HAI data relating to hip arthroplasties as defined in §200.4(c)(2) of this title and coronary artery bypass grafts as defined in §200.4(c)(6) of this title [or HAI data relating to the three surgical procedures most frequently performed as described in §200.4(d) of this title].

(2) Pediatric and adolescent hospitals - HAI data relating to cardiac procedures and as defined in §200.4(d)(2) [§200.4(e)(2)] of this title [or the three surgical procedures most frequently performed as described in §200.4(f) of this title].

(d) In addition to the data listed in subsections (b) and (c) of this section, facilities shall submit the following data beginning January 1, 2013.

(1) Ambulatory surgical centers and general hospitals, except pediatric and adolescent hospitals--HAI data relating to abdominal and vaginal hysterectomies as defined in §200.4(c)(4) and [§200.4(e)](5) of this title, colon surgeries as defined in §200.4(c)(1) of this title, and vascular procedures as defined in §200.4(c)(7) of this title [or the three surgical procedures and associated infections most frequently performed as described in §200.4(d) of this title].

(2) Pediatric and adolescent hospitals--HAI data relating to spinal surgeries with instrumentation as defined in §200.4(d)(1) [§200.4(e)(1)] of this title [or the three surgical procedures most frequently performed as described in §200.4(f) of this title].

(e) Facilities that are required to report after this initial enrollment period (e.g., newly licensed, change in provider status, etc.) shall enroll within 90 calendar days of the receipt of a CMS provider number or a NHSN facility identification number [HAI reporting facility identification number] and shall submit data beginning with the entire reporting quarter after receipt of the identification number.

§200.7. *Schedule for HAI Reporting.*

(a) Facilities shall submit HAI data according to the following schedule in Table 1.

Figure: 25 TAC §200.7(a)

[Figure: 25 TAC §200.7(a)]

(1) - (4) (No change.)

(b) (No change.)

§200.8. *Verification of Healthcare-associated Infection Data and Correction of Errors.*

(a) Data verification.

(1) (No change.)

(2) The department will notify the facility contact by email[; fax, or in writing] to acknowledge receipt of data and to communicate its acceptability within 15 calendar days after the facility data submission deadline described in §200.7 of this title (relating to Schedule for HAI Reporting). This notification will include specific information on any errors found.

(b) Correction of Errors and Disputes.

(1) Facilities shall correct all identified errors, including data determined to be missing, and resubmit the corrected data through NHSN or its successor [the designated secure electronic interface].

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

(4) Data corrections that occur following publication of a data summary shall be submitted to NHSN or its successor [the department for use in future data complications].

(c) (No change.)

§200.9. *Data Summary Display.*

(a) Development of data summary.

(1) - (4) (No change.)

(5) Data displays shall be based on the best available data at the time the summaries are completed. [Displays of trends over time may include updated or corrected data that are discrepant with previous summaries.]

(b) Facility comments.

(1) Prior to publication of the data summary for public use, the department shall notify the facility contact by email[; fax, or in writing] of the opportunity to submit comments for publication with the data summary.

(2) The facility contact shall submit comments using the format determined by the department or indicate [notify the department by email, fax, or in writing] that the facility does not wish to comment.

(3) - (5) (No change.)

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

Filed with the Office of the Secretary of State on January 23, 2012.

TRD-201200293

Lisa Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: March 4, 2012

For further information, please call: (512) 776-6972

◆ ◆ ◆  
CHAPTER 265. GENERAL SANITATION  
SUBCHAPTER N. CAMPUS PROGRAMS FOR  
MINORS

**25 TAC §§265.401 - 265.405**

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes new §§265.401 - 265.405, concerning sexual abuse and child molestation training and examination for employees of certain programs for minors operated by or held on campuses of institutions of higher education or private or independent institutions of higher education.

BACKGROUND AND PURPOSE

These proposed new sections will implement the legislative requirements of Senate Bill 1414, 82nd Legislature, Regular Session, 2011, to be codified at Texas Education Code, Chapter 51, Subchapter Z, §51.976, Training and Examination Program for Employees of Campus Programs for Minors on Warning Signs of Sexual Abuse and Child Molestation.

SECTION-BY-SECTION SUMMARY

Section 265.401 establishes the scope and purpose of the rules. Section 265.402 defines terms used in this new subchapter. Section 265.403 imposes a requirement for all employees in a position involving contact with campers at a campus program for minors to successfully complete an approved training and examination program on sexual abuse and child molestation. Section 265.404 establishes criteria found in Texas Health and Safety Code, §141.0095(e), Youth Camps, for a training and examination program on sexual abuse and child molestation and requires a training and examination program on sexual abuse and child molestation to be approved by the department. Section 265.405 provides civil penalties and injunctive relief in accordance with Texas Health and Safety Code, §141.015, for a person violating the Texas Education Code, §51.976, (Act), a rule, or an order adopted under the Act.

FISCAL NOTE

Susan E. Tennyson, Section Director, Environmental and Consumer Safety Section, has determined that for each year of the first five years that the new rules are in effect, there will be no fiscal implications to state or local governments as a result of administering the sections as proposed.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO-BUSINESSES

Ms. Tennyson has also determined that there may be an adverse economic effect on small businesses or micro-businesses required to comply with the new sections as proposed, depending on several criteria. All campus programs for minors, including small businesses and micro-businesses, may choose to comply with these new sections by selecting one of the following options.

Choose a free already-approved training program for staff. There may be a cost to the employer if the employees are paid for the time (approximately 60 minutes) to take the course.

Choose an already-approved training program for staff that charges a fee. There will be a cost to the employer if the employees are paid for the time to take the course and the cost of the course for each person.

Develop and get approval of a new training program for staff. There will be a \$125 fee for approval of the training program, which is approved for a five-year period, as well as the cost to the employer if the employees are paid for the time to take the course. The employer would also incur costs related to developing the training program.

The department estimates that there are approximately 200 campus programs for minors that will be subject to this new training requirement, each of which is likely to employ between 2 and 150 employees over an annual period. Approximately 25 percent of these programs are predicted to be operated by small or micro-businesses, on which the economic impact is expected to be similar. The costs of implementing the employee training, including the training course, employee time, and administration, are expected to range from \$0 to \$15,000 per campus program for minors.

Under Texas Government Code, §2006.002(c-1), the department is required to consider alternative regulatory methods only if the alternative methods would be consistent with the health, safety, and environmental and economic welfare of the state. The department has developed these proposed rules in accordance with the legislative mandate in new Texas Education Code, §51.976. Consequently, any variance from the statutory requirement for training and examination of employees of campus programs for minors on warning signs of sexual abuse and child molestation would not be consistent with the health, safety, and environmental and economic welfare of the state, and therefore no alternative regulatory methods have been considered.

#### ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There may be economic costs to persons, including institutions of higher education and private or independent institutions of higher education that are required to comply with the new sections as proposed, depending upon the specific training course chosen. The cost of the training and examination programs varies greatly, starting at free and increasing in costs. Additionally, there will be a \$125 approval fee if an individual, including institutions of higher education and private or independent institutions of higher education, decides to develop and get approved a training and examination program on sexual abuse and child molestation. However, campus programs for minors may use already-approved training courses and would not be required to develop a new training and examination program on sexual abuse and child molestation to satisfy Texas Education Code, §51.976. There is no anticipated negative impact on local employment.

#### PUBLIC BENEFIT

In addition, Ms. Tennyson has also determined that for each year of the first five years the new rules are in effect, the public will benefit by education of campus programs for minors staff in the definitions and effects of sexual abuse and child molestation; the typical patterns of behavior and methods of operation of child molesters and sex offenders that put children at risk; the warning signs and symptoms associated with sexual abuse or child molestation; recognition of the signs and symptoms; the recommended methods of reporting suspected abuse; and the recommended rules and procedures for campus programs for minors to address, reduce, prevent, and report suspected sexual abuse or child molestation between an adult and minor or between two minors.

#### REGULATORY ANALYSIS

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

#### TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed new rules do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Texas Government Code, §2007.043.

#### PUBLIC COMMENT

Comments on the proposed rules may be submitted to Michael Minoia, Public Health Sanitation and Consumer Product Safety Group, Division of Regulatory Services, Department of State Health Services, Mail Code 1987, P.O. Box 149347, Austin, Texas 78714-9347, (512) 834-6770, extension 2303, or by email to michael.minoia@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

#### LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

#### STATUTORY AUTHORITY

The new rules are proposed under Texas Education Code, §51.976, which authorizes the Executive Commissioner of the Health and Human Services Commission to adopt rules to implement the Training and Examination Program for Employees of Campus Programs for Minors on Warning Signs of Sexual Abuse and Child Molestation; and by Texas Government Code, §531.0055, and Texas 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 Texas Health and Safety Code, Chapter 1001.

The new rules affect the Texas Education Code, Chapter 51; Texas Government Code, Chapter 531, and the Texas Health and Safety Code, Chapter 1001.

#### §265.401. General Provisions.

Scope and purpose of rules. The purpose of this subchapter is to establish requirements relating to sexual abuse and child molestation training and examination for employees of certain programs for minors operated by or held on the campus of an institution of higher education or a private or independent institution of higher education, and to provide penalties. This subchapter implements Texas Education Code, Chapter 51, Subchapter Z, §51.976, Training and Examination Program for Employees of Campus Programs for Minors on Warning Signs of Sexual Abuse and Child Molestation.



§265.402. Definitions.

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

(1) Act--Texas Education Code, Chapter 51, Subchapter Z, §51.976, Training And Examination Program For Employees of Campus Programs For Minors on Warning Signs Of Sexual Abuse and Child Molestation.

(2) Camper--A minor, under the age of 18 years, who is attending a campus program for minors.

(3) Campus program for minors--A program that:

(A) is operated by or on the campus of an institution of higher education or a private or independent institution of higher education;

(B) offers recreational, athletic, religious, or educational activities for at least 20 campers who:

(i) are not enrolled at the institution;

(ii) attend or temporarily reside at the camp for all or part of at least four days; and

(C) is not a day camp or youth camp as defined by Texas Health and Safety Code, §141.002, or a facility or program required to be licensed by the Department of Family and Protective Services.

(4) Department--Department of State Health Services.

(5) Employee--A person of any age who receives pay, a stipend, reimbursement of tuition, services, credit including credit for books or tuition, course credit, or any other thing of value in exchange for work or service at a campus program for minors.

(6) Institution of higher education--Has the meaning assigned by Texas Education Code, §61.003.

(7) Private or independent institution of higher education--Has the meaning assigned by Texas Education Code, §61.003.

(8) Program operator--A person who owns, operates, or supervises a campus program for minors, regardless of whether it is operated on a for-profit or non-profit basis.

(9) Training and examination program on sexual abuse and child molestation--A program approved by the department under §265.404 of this title (relating to Training and Examination Program on Sexual Abuse and Child Molestation).

§265.403. Program Operators.

(a) A program operator may not employ an individual in a position involving contact with campers at a campus program for minors unless:

(1) the individual submits to the program operator or the campus program for minors has on file documentation verifying that within the preceding two years of the beginning date of employment, the individual successfully completed the required training and examination program on sexual abuse and child molestation; or

(2) the individual successfully completes during the individual's first five days of employment the required training and examination program on sexual abuse and child molestation.

(b) For purposes of this subsection, the term "contact with campers" does not include an employee acting as a guest speaker, an entertainer, or fulfilling any other role who visits for a limited purpose or a limited time if the employee has no direct and unsupervised interaction with campers. A program operator may require training and an examination for visitors, including parents, if it chooses.

(c) Subsection (a) of this section does not apply to an individual who is a student enrolled at the institution of higher education or private or independent institution of higher education that operates the campus program for minors or at which the campus program is conducted and whose contact with campers is limited to a single class of short duration.

(d) A program operator must:

(1) submit to the department on the form provided by the department and within five days of the start of the campus program for minors verification that each employee of the campus program for minors has complied with the requirements of this section; and

(2) retain in the operator's records a copy of the documentation required or issued in subsection (a) of this section for each employee until the second anniversary of the examination date.

(e) A person applying for or holding an employee position involving contact with campers at a campus program for minors must successfully complete the training and examination program on sexual abuse and child molestation during the applicable period prescribed in subsection (a) of this section.

§265.404. Training and Examination Program on Sexual Abuse and Child Molestation.

(a) A training and examination program on sexual abuse and child molestation must be approved by the department prior to being offered and shall at a minimum include training and an examination on:

(1) the definitions and effects of sexual abuse and child molestation;

(2) the typical patterns of behavior and methods of operation of child molesters and sex offenders that put children at risk;

(3) the warning signs and symptoms associated with sexual abuse or child molestation, recognition of the signs and symptoms, and the recommended methods of reporting suspected abuse;

(4) the recommended rules and procedures to implement to address, reduce, prevent, and report suspected sexual abuse or child molestation; and

(5) the need to minimize one-on-one isolated encounters between an adult and a minor or between two minors.

(b) The training program shall last for a minimum of one hour and discuss each of the topics described in subsection (a) of this section.

(c) The examination shall consist of a minimum of 25 questions that cover each of the topics described in subsection (a) of this section.

(d) To successfully complete the training program, each employee must achieve a score of 70% or more correct on an individual examination. If the examination is taken on-line, the employee shall retain a certificate of completion indicating successful completion of the course.

(e) Applicants for a training and examination program required to be approved in subsection (a) of this section shall pay a fee of \$125 to cover the costs of the department's initial review and an additional \$125 fee for each follow-up review of a training and examination program.

(f) Applications shall be made on forms provided by the department and fees shall be mailed to the Environmental and Sanitation Licensing Group, Department of State Health Services, Mail Code 2003, P.O. Box 149347, Austin, Texas 78714-9347. Application forms may be obtained by calling the Environmental and Sanitation

Licensing Group at (512) 834-6600 or may be downloaded from <http://www.dshs.state.tx.us/youthcamp/default.shtm>.

(g) The department, at least every five years from the date of initial approval, shall review each training and examination program approved by the department to ensure the program continues to meet the criteria and guidelines established under this section.

(h) A program operator shall consider the costs of compliance with this section in determining any charges or fees imposed and collected for participation in the campus program for minors.

§265.405. Civil Penalty; Injunction.

(a) The department may investigate a person the department suspects of violating the Act, a rule, or an order adopted under the Act.

(b) A person violating the Act, a rule, or an order adopted under the Act is subject to a civil penalty of not less than \$50 or more than \$1,000 for each act of violation.

(c) If it appears that a person has violated, is violating, or is threatening to violate the Act or a rule or order adopted under the Act, the department may bring a civil action in a district court for injunctive relief, a civil penalty, or both.

(d) The district court, upon finding that the person is violating the Act, a rule, or an order adopted under the Act, shall grant injunctive relief, assess a civil penalty, or both, as warranted by the facts.

(e) The department may petition a district court for a temporary restraining order to immediately halt a violation or other action creating an emergency condition if it appears that a person is:

(1) violating or threatening to violate the Act, a rule, or an order adopted under the Act; or

(2) taking any other action that creates an emergency condition that constitutes an imminent danger to the health, safety, or welfare of campers at a campus program for minors.

(f) An action under this section may be brought in the county in which the defendant resides or in which the violation or threat of violation occurs.

(g) If an action for injunctive relief under this section is granted by the court, the court may grant any prohibitory or mandatory injunction warranted by the facts, including temporary restraining orders, temporary injunctions, and permanent injunctions. The court shall grant injunctive relief without a bond or other undertaking by the department.

(h) An appellate court shall give precedence to an action brought under this section over other cases of a different nature on the docket of the court.

(i) The program operator and the institution that operate the campus program for minors or at which the campus program is conducted are immune from civil or criminal liability for any act or omission of an employee for which the employee is immune under Texas Family Code, §261.106.

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 January 20, 2012.

TRD-201200278

Lisa Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: March 4, 2012

For further information, please call: (512) 776-6972



## TITLE 28. INSURANCE

### PART 1. TEXAS DEPARTMENT OF INSURANCE

#### CHAPTER 26. SMALL EMPLOYER HEALTH INSURANCE REGULATIONS

##### SUBCHAPTER A. SMALL EMPLOYER HEALTH INSURANCE PORTABILITY AND AVAILABILITY ACT REGULATIONS

###### 28 TAC §26.8

The Texas Department of Insurance (Department) proposes amendments to §26.8, concerning contribution and participation requirements for guaranteed issue small employer health benefit plans. The proposed amendments are necessary to reflect changes in the law as a result of Senate Bill (SB) 80, enacted by the 81st Legislature, Regular Session. SB 80 amends Insurance Code Chapter 1501 by adding §1501.153(a-1) to permit a small employer health benefit plan issuer (small employer carrier) to offer a small employer the option of a health benefit plan for which the employer is required to contribute 100 percent of the premium paid.

Insurance Code §1501.153(a-1) applies only to a small employer health benefit plan delivered, issued for delivery, or renewed on or after January 1, 2010. SB 80, SECTION 2, provides that a small employer health benefit plan delivered, issued for delivery, or renewed before January 1, 2010, is governed by the law as it existed immediately before the effective date of SB 80. The previous law is continued in effect for that purpose.

Prior to the enactment of SB 80, small employer carriers were already permitted to require an employer contribution based on the small employer carrier's usual and customary practices applicable to its employer group health benefit plans in this state. However, Insurance Code §1501.153(a) requires small employer carriers to apply the employer contribution level uniformly to each small employer offered or issued coverage by the small employer carrier in this state.

New Insurance Code §1501.153(a-1) provides another option for small employer carriers by permitting a small employer carrier to offer a small employer the option of a health benefit plan for which the employer is required to contribute 100 percent of the premium paid. Insurance Code §1501.153(a-1) further provides that a plan offered under this subsection may be offered in addition to a plan offered by the small employer carrier that requires a lower percentage of the premium paid to be contributed by the employer.

The proposed amendments to §26.8 conform the section's requirements for consistency with Insurance Code §1501.153(a-1).

The proposed amendments are also necessary to make non-substantive changes that include updating statutory references, correcting rule citation references, and making technical corrections. The Department is broadening the reference in §26.8(f)(2) to prevent ambiguity in the applicability of the statutes in the chapter as amended by the Legislature.

**FISCAL NOTE.** Judy Wooten, Project Manager for the Regulatory Matters Team, Life, Accident and Health Section, has determined that for each year of the first five years the proposed amendments are in effect, there will be no fiscal impact to state or local government as a result of enforcing or administering the sections. There will be no measurable effect on local employment or the local economy as a result of enforcing or administering this proposal.

**PUBLIC BENEFIT/COST NOTE.** Ms. Wooten also has determined that for each year of the first five years the proposed amendments are in effect, the public benefits anticipated as a result of the proposal include allowing small employer carriers to present additional plans with full employer premium contribution as options for small employer consideration. The Department anticipates there will be no costs to comply with the requirements as a result of the proposed amendments to §26.8.

The proposed amendments do not impose any new requirements upon small employer carriers in offering coverage to small employers, or upon small employers in selecting health coverage options for employees. Neither Insurance Code §1501.153(a-1) nor the proposed amendments to §26.8 require a small employer carrier to offer a small employer the option of a health benefit plan for which the employer is required to contribute 100 percent of the premium paid.

Additionally, neither Insurance Code §1501.153(a-1) nor the proposed amendments require a small employer to select a health benefit plan for which the employer is required to contribute 100 percent of the premium paid. However, Insurance Code §1501.153(a-1) specifies that a plan issued under this subsection must require the employer to contribute 100 percent of the premium paid for each eligible participating employee. Therefore, any costs to comply with proposed amendments to §26.8 result from the enactment of SB 80.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES.** In accordance with Government Code §2006.002(c), the Department has determined that the proposed amendments will not have an adverse economic effect on small or micro businesses that are required to comply with the proposal. The proposed amendments do not impose any new requirements or costs with which businesses, including small and micro businesses as identified by Government Code §2006.001(1) and (2), must comply that are not already required under statutes.

The proposed amendments are consistent with Insurance Code §1501.153(a-1) that allows a small employer carrier to offer a small employer the option of a health benefit plan for which the employer is required to contribute 100 percent of the premium paid. The proposed amendments are also consistent with the requirement that a plan offered under Insurance Code §1501.153(a-1) may be offered in addition to a plan that requires a lower percentage of the premium paid to be contributed by the employer.

Additionally, the proposed amendments and Insurance Code §1501.153(a-1) do not require a carrier to offer a plan that would require a small employer to make a 100 percent premium

contribution for each eligible participating employee; nor do the statute and proposed amendments require a small or micro business to purchase insurance coverage for its employees. Therefore, in accordance with Government Code §2006.002(c), the Department has determined that a regulatory flexibility analysis is not required because the proposal will not have an adverse impact on small or micro businesses.

**TAKINGS IMPACT ASSESSMENT.** The Department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

**REQUEST FOR PUBLIC COMMENT.** To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on March 5, 2012, to Sara Waitt, Acting General Counsel, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments must be simultaneously submitted to Judy Wooten, Project Manager for the Regulatory Matters Team, Life, Accident and Health Section, Mail Code 107-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

Any request for a public hearing should be submitted separately to the Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104, before the close of the public comment period. If a hearing is held, written and oral comments presented at the hearing will be considered.

**STATUTORY AUTHORITY.** The amendments are proposed under Insurance Code §1501.010 and §36.001. Insurance Code §1501.010 provides that the Commissioner shall adopt rules necessary to implement Insurance Code Chapter 1501 and to meet the minimum requirements of federal law, including regulations. Insurance Code §36.001 provides that the Commissioner 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 this state.

**CROSS REFERENCE TO STATUTE.** The following statutes are affected by this proposal: Insurance Code §§1501.056, 1501.108 - 1501.110, and 1501.151 - 1501.154.

*§26.8. Guaranteed Issue; Contribution and Participation Requirements.*

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

(c) A health carrier may require an employer premium contribution for the plan selected by the employer for each eligible employee in accordance with the carrier's usual and customary practices for all employer group health insurance plans in the state.

(1) The same premium contribution level shall be applied to each small employer offered or issued coverage by the small employer carrier, except that a small employer carrier may simultaneously offer to each small employer an additional plan that requires the small employer to contribute 100 percent of the premium paid for each eligible participating employee.

(2) If two or more small employer carriers participate in a purchasing cooperative established under the Insurance Code §1501.056, [Article 26.14,] the carrier may use the contribution requirement established by the purchasing cooperative for policies marketed by the cooperative.

(3) (No change.)

(4) If a small employer fails to meet a contribution requirement for a small employer health benefit plan, the health carrier may terminate coverage as provided under the plan in accordance with the terms and conditions of the plan requiring such contribution and in accordance with the Insurance Code §§1501.108, 1501.109, and 1501.110[; Articles 26.23, 26.24, and 26.25].

(d) Coverage under a small employer health benefit plan is available if at least 75 percent [75%] of the eligible employees of a small employer elect to be covered, as provided in Insurance Code §1501.154 [Article 26.24]. This 75 percent [75%] requirement shall not apply to a small employer that has only two eligible employees. A small employer that has only two eligible employees shall be subject to a 100 percent [100%] participation requirement.

(1) If a small employer makes available multiple health benefit plans to its employees, the collective enrollment of all of those plans must be at least 75 percent [75%] of the small employer's eligible employees or, if applicable, the lower participation level offered by the small employer carrier under subsection (e) of this section.

(2) A small employer carrier may elect not to offer health benefit plans to a small employer who offers multiple health benefit plans if such plans are to be provided by more than one carrier and the carrier would have less than 75 percent [75%] of the small employer's eligible employees enrolled in the carrier's health benefit plan unless the coverage is provided through a purchasing cooperative.

(e) A small employer carrier may offer small employer health benefit plans to a small employer even if less than 75 percent [75%] of the eligible employees of that employer elect to be covered if the small employer carrier permits the same percentage of participation as a qualifying percentage for each small employer benefit plan offered by that carrier in the state.

(f) A small employer carrier may offer small employer health benefit plans to a small employer even if the employer's percentage of participation is less than the small employer carrier's qualifying participation level established under subsection (e) of this section if the small employer carrier:

(1) obtains the written waiver required by §26.7(e) of this subchapter [title] (relating to Requirement to [Tø] Insure Entire Groups); and

(2) accepts or rejects the entire group of eligible employees that choose to participate and excludes only those employees that have declined coverage. A carrier may not provide coverage under this subsection if the circumstances set out in §26.7(f) of this subchapter [title] apply and may not use this subsection to circumvent the guaranteed issue and other requirements of Insurance Code[;] Chapter 1501 [26, Subchapters A - G,] or this subchapter.

(g) (No change.)

(h) If a small employer fails to meet the qualifying participation requirement for a small employer health benefit plan, for a period of at least six consecutive months, the health carrier may terminate coverage under the plan upon the first renewal date following the end of the six-month consecutive period during which the qualifying participation requirement was not met, provided that the termination shall be in accordance with the terms and conditions of the plan concerning termination for failure to meet the qualifying participation requirement and in accordance with the Insurance Code §§1501.108, 1501.109, and 1501.110[; Articles 26.23, 26.24, and 26.25] and §26.15 of this subchapter [title] (relating to Renewability of Coverage and Cancellation).

(i) In determining whether an employer has the required percentage of participation of eligible employees, if the percentage of eligible employees is not a whole number, the result of applying the percentage to the number of eligible employees shall be rounded down to the nearest whole number. For example: 75 percent [75%] of 5 employees is 3.75, so 3.75 would be rounded down to 3; therefore, 75 percent [75%] participation by a five employee group will be achieved if three [3] of the eligible employees participate.

(j) If a small employer fails to meet, for a period of at least six consecutive months, the qualifying minimum group size requirement set forth in §26.5(a) of this subchapter [chapter] (relating to Applicability and Scope) for a small employer health benefit plan, the health carrier may terminate coverage under the plan no earlier than the first day of the next month following the end of the six-month consecutive period during which the small employer did not meet the qualifying minimum group size requirement, provided that the termination shall be in accordance with the terms and conditions of the plan concerning termination for failure to meet the qualifying minimum group size requirement and in accordance with Insurance Code §§1501.108, 1501.109, and 1501.110 [Articles 26.23, 26.24, and 26.25] and §26.15 of this subchapter [chapter (relating to Renewability of Coverage and Cancellation)].

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 January 17, 2012.

TRD-201200185

Sara Waitt

Acting General Counsel

Texas Department of Insurance

Earliest possible date of adoption: March 4, 2012

For further information, please call: (512) 463-6327



## TITLE 31. NATURAL RESOURCES AND CONSERVATION

### PART 17. TEXAS STATE SOIL AND WATER CONSERVATION BOARD

#### CHAPTER 520. DISTRICT OPERATIONS

##### SUBCHAPTER A. ELECTION PROCEDURES

###### 31 TAC §520.3

The Texas State Soil and Water Conservation Board (State Board) proposes an amendment to §520.3, concerning District Conducted Elections; Notice, to address those situations when no one files to run as a candidate.

The State Board proposes new §520.3(d) to specify that in the event that no one files to run as a candidate as prescribed by §201.073(b), Agriculture Code of Texas, it is presumed that the incumbent in that position has resigned and vacated the position and a vacancy exists from the election date forward and that the district board by majority vote may then appoint a director for the vacancy as prescribed by §201.076, Agriculture Code of Texas, provided the appointment is not an individual presumed to have resigned from that position.

Kenny Zajicek, Fiscal Officer of the State Board, 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 administering the amendment as proposed.

Mr. Zajicek has also determined that for the first five-year period the amendment is in effect, the public benefit anticipated as a result of administering the amended section will be a procedure to address those situations when no one files to run as candidate. There is no anticipated cost to individuals or small businesses resulting from the amendment.

Comments on the proposed amendment may be submitted in writing to Rex Isom, Executive Director, Texas State Soil and Water Conservation Board, P.O. Box 658, Temple, Texas 76503, (254) 773-2250, extension 231.

The amendment is proposed under the Agriculture Code, Title 7, Chapter 201, §201.020, which authorizes the State Board to adopt rules that are necessary for the performance of its functions under the Agriculture Code, which authorizes the State Board to adopt reasonable rules that are necessary to carry out the provisions of that chapter.

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

§520.3. *District Conducted Elections; Notice.*

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

(d) In the event that no one files a written notice of candidacy as prescribed by §201.073(b), Agriculture Code of Texas, it is presumed that any incumbent in that position has resigned and vacated the position and a vacancy exist from the election date forward. The board by majority vote may then appoint a director for the vacancy as prescribed by §201.076, Agriculture Code of Texas, provided the appointment is not an individual presumed to have resigned from that position.

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 January 23, 2012.

TRD-201200284

Mel Davis

Special Projects Coordinator

Texas State Soil and Water Conservation Board

Earliest possible date of adoption: March 4, 2012

For further information, please call: (254) 773-2250 x252



## TITLE 34. PUBLIC FINANCE

### PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

#### CHAPTER 9. PROPERTY TAX ADMINISTRATION

##### SUBCHAPTER C. APPRAISAL DISTRICT ADMINISTRATION

###### 34 TAC §9.402

The Comptroller of Public Accounts proposes an amendment to §9.402, concerning special use application forms. This amendment is being proposed to update current special use application forms and to increase administrative efficiency by providing for comptroller revision of applicable forms that are not required to be adopted by rule.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by improving the administration of local property valuation and taxation. 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 amendment may be submitted to Deborah Cartwright, Director, Property Tax Assistance Division, P.O. Box 13528, Austin, Texas 78711-3528. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendment is proposed under Tax Code, §§23.43(d), 23.54(b), 23.75(b), 23.84(f), 23.94(f), and 23.9804(c), which provide for the comptroller to prescribe special use application forms.

The amendment implements Tax Code, §§23.43(d), 23.54(b), 23.75(b), 23.84(f), 23.94(f), and 23.9804(c).

§9.402. *Special Use Application Forms.*

(a) In applying for special use valuation under Tax Code, Chapter 23, the applicant shall use a form provided by the appraisal office. The appraisal office shall use the model form adopted by the Comptroller of Public Accounts which is appropriate to the special use type, or use a form containing information which is in substantial compliance with the model form adopted by the comptroller. All forms referenced in this section must include all language required by statute.

(b) The comptroller's model forms applicable to this section may be revised at the discretion of the comptroller. Current forms can be obtained from the Comptroller of Public Accounts' Property Tax Assistance Division. The model special use application forms are: [The model application forms listed in paragraphs (1) - (7) of this subsection are adopted by the Comptroller of Public Accounts by reference. Copies of these forms are available for inspection at the office of the Texas Register or can be obtained from the Comptroller of Public Accounts, Property Tax Division, P.O. Box 13528, Austin, Texas 78711-3528. Copies may also be requested by calling our toll-free number 1-800-252-9121. In Austin, call (512) 305-9999.]

(1) Application for 1-d Agricultural Appraisal [1-d Appraisal Application (1-d Agricultural Land)] (Form 50-165);

(2) Application for 1-d-1 (Open-Space) Agricultural Use Appraisal [1-d-1 Appraisal Application (1-d-1 Agricultural Land)] (Form 50-129);

(3) Application for 1-d-1 (Open-Space) Timber Land Appraisal [open-space land application (1-d-1 timberland)] (Form 50-167);

(4) Application for Open Space Land Appraisal for Ecological Laboratories [1-d-1 Ecological Laboratory Appraisal Application] (Form 50-166);

(5) Application for Appraisal of Recreational, Park, and Scenic Land [application for recreational, park, and scenic land] (Form 50-168);

(6) Application for Appraisal of Public Access Airport Property [application for public access airport property] (Form 50-169); and

(7) Application for Restricted-Use Timber Land Appraisal [application for restricted-use timberland appraisal] (Form 50-281).

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 January 19, 2012.

TRD-201200217

Ashley Harden

General Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: March 4, 2012

For further information, please call: (512) 475-0387



### 34 TAC §9.417

The Comptroller of Public Accounts proposes an amendment to §9.417, concerning property tax exemption for organizations engaged primarily in charitable activities. This amendment is being proposed to update the exemption application form, to increase administrative efficiency by providing for comptroller revision of applicable forms that are not required to be adopted by rule, and to delete language that merely duplicates language set forth in the Tax Code.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by improving the administration of local property valuation and taxation. 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 amendment may be submitted to Deborah Cartwright, Director, Property Tax Assistance Division, P.O. Box 13528, Austin, Texas 78711-3528. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendment is proposed under Tax Code, §11.184(g) which provides for the comptroller to adopt rules to implement Tax Code, §11.184 and Tax Code, §11.43(f) which provides for the comptroller to prescribe exemption application forms.

This section implements Tax Code, §11.184 and §11.43(f).

*§9.417. Property Tax Exemption for Organizations Engaged Primarily in Charitable Activities.*

(a) Request for Comptroller Determination Submitted to Comptroller. An organization seeking an exemption pursuant to Tax Code, §11.184 shall use the model determination request form prescribed by the comptroller and follow all instructions and guidelines

published by the comptroller for requesting a comptroller determination as provided by Tax Code, §11.184. [Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.]

[(1) Local charitable organization—An organization that is a chapter, subsidiary, or branch of a statewide charitable organization and that is engaged primarily in performing functions that are listed in Tax Code, §11.184(d).]

[(2) Statewide charitable organization—An organization that is statewide and that is engaged primarily in performing functions that are listed in Tax Code, §11.184(d).]

(b) Application for Exemption Submitted to Appraisal District. An organization seeking an exemption pursuant to Tax Code, §11.184 may use the model exemption application form prescribed by the comptroller or another form containing all information included in the comptroller's model form. [A statewide or local charitable organization is entitled to a tax exemption for property that the charitable organization owns if the property is used exclusively by the charitable organization or by other organizations that are eligible for tax exemption under Tax Code, §11.18 or §11.184, except as provided in subsection (e) of this section.]

[(e) Use of exempt property by persons who are not charitable organizations eligible for exemption does not result in the loss of an exemption authorized by this section if the use is incidental to use by those charitable organizations and limited to activities that benefit the charitable organization that owns or uses the property.]

[(d) A charitable organization that seeks a tax exemption under this section must obtain from the comptroller and submit with its application a determination letter that verifies that the organization is exempt from sales tax and, if applicable, franchise tax, as a charitable organization. For information or procedures on obtaining a determination letter from the comptroller, see §3-322 of this title (relating to Exempt Organizations) and other publications that the comptroller issues.]

[(e) A determination by the comptroller that a statewide charitable organization is exempt from sales tax and, if applicable, franchise tax, will also constitute a determination of exempt status for any local charitable organizations that have been identified in the statewide charitable organization's application for determination. The comptroller will send a determination letter to that statewide organization and to any subchapters that are included in the statewide organization's application.]

[(f) A corporation that is not a qualified charitable organization that seeks a tax exemption under this section must obtain from the comptroller and submit with its application a determination letter that verifies that the organization meets the requirements of Tax Code, §11.184(l). A determination letter issued under this subsection will also include a statement that the qualified charitable organization for which the corporation holds title to the property would qualify for an exemption from taxation of the property if the qualified organization owned the property.]

[(g) An organization must submit a copy of the comptroller's determination letter to the chief appraiser at the same time that the organization submits its application for property tax exemption. The chief appraiser shall determine if the charitable organization is using its property exclusively for charitable activities.]

(c) [(h)] An organization seeking an exemption pursuant to Tax Code, §11.184 must comply with the filing requirements for application for property tax exemption that are stated in Tax Code, §11.43(d). A request to the comptroller for a determination letter for

purposes of compliance with Tax Code, §11.184 [subsection (d) or (f) of this section] does not automatically extend the deadline for filing an application for exemption [filing due date of April 30].

(1) If an organization has not received a determination letter from the comptroller, the organization may use the following procedure to request that the chief appraiser extend the filing deadline [due date] for an application for exemption.

(A) The organization must submit to the chief appraiser a written request for an extension by no later than April 1;

(B) The request for extension should state that the organization has submitted a request for a determination letter to the comptroller and should have as an attachment a copy of the request for determination letter that the organization submitted to the comptroller;

(C) The chief appraiser shall grant the organization's request for extension for a period of not longer than 60 days if the organization has complied with subparagraphs (A) and (B) of this paragraph;

(D) The chief appraiser may verify with the comptroller that a request for a determination letter has been submitted.

(2) Notwithstanding paragraph (1) of this subsection, the chief appraiser may extend the deadline for filing an application for exemption at any time under the authority provided by Tax Code, §11.43.

(d) [(+) If the chief appraiser, upon receipt of the application for tax exemption, disagrees with the comptroller's determination, then the chief appraiser may request a review of the determination by submitting a written request to the comptroller.

(1) The written request for reconsideration must be directed to the manager of the Tax Policy Division, must contain specific grounds on which the chief appraiser disagrees with the comptroller's determination, and must be accompanied by specific evidence that supports each ground that the chief appraiser asserts.

(2) The comptroller will respond to the written request for reconsideration within 30 calendar days from the date on which the request for reconsideration was received.

(3) The comptroller's decision to uphold the determination is conclusive evidence that an organization is engaged primarily in per-

forming charitable function as well as whether the corporation meets the requirements of Tax Code, §11.184(1)(1) and (2), if applicable. The decision is not subject to further appeal.

(e) Forms. All comptroller forms applicable to this section may be revised at the discretion of the comptroller. Current forms can be obtained from the Comptroller of Public Accounts' Property Tax Assistance Division.

[(+) An exemption under this section expires at the end of the fifth tax year after the year in which the exemption is granted. The organization may obtain a new determination letter and reapply for the exemption.]

[(k) An application for exemption must be substantially in the form of the Application for Primarily Charitable Organization Property Tax Exemption (Form 50-299). The comptroller adopts this form by reference. Copies of the form are available for inspection at the office of the Texas Register or may be obtained from the Comptroller of Public Accounts, P.O. Box 13528, Austin, Texas 78711. Copies may also be requested by calling our toll-free number, 1-800-252-9121. In Austin, call (512) 305-9999.]

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 January 17, 2012.

TRD-201200179

Ashley Harden

General Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: March 4, 2012

For further information, please call: (512) 475-0387



# 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 1. ADMINISTRATION

### PART 4. OFFICE OF THE SECRETARY OF STATE

#### CHAPTER 75. AUTOMOBILE CLUB

##### SUBCHAPTER A. APPLICATION FOR CERTIFICATE OF AUTHORITY

###### 1 TAC §75.1, §75.2

The Office of the Secretary of State withdraws the proposed repeal of §75.1 and §75.2 which appeared in the August 19, 2011, issue of the *Texas Register* (36 TexReg 5155).

Filed with the Office of the Secretary of State on January 19, 2012.

TRD-201200218

Lorna Wassdorf

Director, Business and Public Filings

Office of the Secretary of State

Effective date: January 19, 2012

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



##### SUBCHAPTER B. REGISTRATION OF AGENTS

###### 1 TAC §§75.10 - 75.13

The Office of the Secretary of State withdraws the proposed repeal of §§75.10 - 75.13 which appeared in the August 19, 2011, issue of the *Texas Register* (36 TexReg 5155).

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Lorna Wassdorf

Director, Business and Public Filings

Office of the Secretary of State

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



##### SUBCHAPTER C. AUTOMOBILE CLUB SERVICES

###### 1 TAC §75.21

The Office of the Secretary of State withdraws the proposed repeal of §75.21 which appeared in the August 19, 2011, issue of the *Texas Register* (36 TexReg 5155).

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Lorna Wassdorf

Director, Business and Public Filings

Office of the Secretary of State

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



##### SUBCHAPTER D. REVOCATION AND SUSPENSION OF CERTIFICATE

###### 1 TAC §§75.31 - 75.34

The Office of the Secretary of State withdraws the proposed repeal of §§75.31 - 75.34 which appeared in the August 19, 2011, issue of the *Texas Register* (36 TexReg 5155).

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TRD-201200221

Lorna Wassdorf

Director, Business and Public Filings

Office of the Secretary of State

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



##### SUBCHAPTER F. TIME PERIODS

###### 1 TAC §75.41, §75.42

The Office of the Secretary of State withdraws the proposed repeal of §75.41 and §75.42 which appeared in the August 19, 2011, issue of the *Texas Register* (36 TexReg 5155).

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Lorna Wassdorf

Director, Business and Public Filings

Office of the Secretary of State

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





**SUBCHAPTER A. AUTHORITY TO ACT AS AN AUTOMOBILE CLUB**

**1 TAC §§75.1 - 75.4**

The Office of the Secretary of State withdraws proposed new §§75.1 - 75.4 which appeared in the August 19, 2011, issue of the *Texas Register* (36 TexReg 5155).

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



**SUBCHAPTER B. AGENT REGISTRATION AND RENEWAL**

**1 TAC §§75.10 - 75.12**

The Office of the Secretary of State withdraws proposed new §§75.10 - 75.12 which appeared in the August 19, 2011, issue of the *Texas Register* (36 TexReg 5155).

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



**SUBCHAPTER C. FORMS**

**1 TAC §75.20**

The Office of the Secretary of State withdraws proposed new §75.20 which appeared in the August 19, 2011, issue of the *Texas Register* (36 TexReg 5155).

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



# 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 22. EXAMINING BOARDS

### PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

#### CHAPTER 157. RULES RELATING TO PRACTICE AND PROCEDURE

##### SUBCHAPTER B. CONTESTED CASE HEARINGS

###### 22 TAC §157.11

The Texas Appraiser Licensing and Certification Board (TALCB) adopts an amendment to 22 TAC §157.11, Contested Cases; Entry of Appearance; Continuance, without changes to the proposed text as published in the October 28, 2011, issue of the *Texas Register* (36 TexReg 7245), which will not be republished. The amendment deletes an erroneous reference to the statute relating to notice of hearing and conforms it to general provisions regarding contested cases for appraisal management companies.

The reasoned justification for the rule as adopted is clarity and standardization through extension of existing procedural rules to appraisal management companies.

No comments were received regarding the amendment as proposed.

The amendment is adopted under the Texas Occupations Code, §1103.151, Rules Relating to Certificates and Licenses, and §1104.051, Rules.

The statutes affected by this adoption are Texas Occupations Code, Chapters 1103 and 1104. No other statute, code, or article is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 13, 2012.

TRD-201200163

Devon V. Bijansky

General Counsel

Texas Appraiser Licensing and Certification Board

Effective date: February 2, 2012

Proposal publication date: October 28, 2011

For further information, please call: (512) 936-3001

### CHAPTER 159. RULES RELATING TO THE PROVISIONS OF THE TEXAS APPRAISAL MANAGEMENT COMPANY REGISTRATION AND REGULATION ACT

#### 22 TAC §§159.52, 159.154, 159.155, 159.157

The Texas Appraiser Licensing and Certification Board (TALCB) adopts new §§159.52, Fees, 159.154, Competency of Appraisers, 159.155, Periodic Review of Appraisals, and 159.157, Compensation of Appraisers. Sections 159.154, 159.155, and 159.157 are adopted without changes to the proposed text as published in the November 11, 2011, issue of the *Texas Register* (36 TexReg 7645) and will not be republished. Section 159.52, Fees, is adopted with the following changes: The application fee to become registered as an appraisal management company (AMC), proposed to be \$4,000 for two years, is reduced to \$3,300; the renewal fee, proposed to be \$3,600 for two years, is reduced to \$3,300; the fee to be paid per panelist on the panel of an AMC at the time of renewal, proposed to be \$20, is reduced to \$10; and the fee to add a panelist, proposed to be \$20, is reduced to \$10. 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 and reflect the consideration of additional data regarding the number and size of AMCs in Texas.

The new rules implement House Bill 1146, which enacted Chapter 1104, Texas Occupations Code (the Texas Appraisal Management Company Registration and Regulation Act or the Act) to provide for registration and regulation of appraisal management companies. These rules will become effective March 5, 2012. These rules have been reviewed and approved by the Appraisal Management Company Working Group.

New §159.52, Fees, establishes application, renewal, and other fees in amounts sufficient for the administration of the AMC registration program, including a base renewal fee and a fee to be paid at renewal according to the number of panelists on an AMC's panel. Application and renewal fees (including the fee per panelist) are based on a two-year registration.

New §159.154, Competency of Appraisers, clarifies the requirement to verify the competency of an appraiser, including obtaining a written certification from the appraiser that the appraiser is competent in the property type of the assignment, is compe-

tent in the geographical area of the assignment, has access to appropriate data sources for the assignment, will immediately notify the AMC if the appraiser later determines that he or she is not qualified under subsection (a)(1), (2), or (3) to complete the assignment, and is aware that misrepresentation of competency is subject to the mandatory reporting requirement in §1104.160 of the Act.

New §159.155, Periodic Review of Appraisals, establishes a requirement to perform a Standard 3 review of five percent of all appraisals performed within a year, including one of the first five appraisals performed by appraisers serving on a panel.

New §159.157, Compensation of Appraisers, clarifies the statutory requirement that registrants compensate appraisers at a rate that is customary and reasonable by requiring registrants to establish a compensation policy in accordance with federal law, and further prohibits registrants from requiring appraisers to sign a certification that the fee he or she was paid is customary and reasonable.

The reasoned justification for §159.52 is that the agency will raise sufficient revenue to fund costs of agency operations; the reasoned justification for §§159.154, 159.155, and 159.157 is enforcement of Chapter 1104, Texas Occupations Code, in accordance with the legislative mandate of House Bill 1146.

The TALCB received 38 comments regarding the rules as proposed, including several commenters who raised more than one issue. The comments are summarized as follows:

One commenter, a trade association of Texas appraisers, wrote in support of the rules as written, recommending reevaluating the fee structure after the initial round of registrations to ensure the adequacy and appropriateness of the fees.

One commenter opposed the per-panelist fees in 22 TAC §159.52, including the addition and termination fees, stating a belief that such fees lack a statutory basis, fail to serve a legitimate purpose, and may constitute an illegal restraint of trade. Another commenter also alleged that the Board lacks statutory authority to charge this fee, and a third commenter raised an objection on the basis that appraiser panels are proprietary trade secrets and that requiring disclosure of an AMC's panel may be an unconstitutional taking or is a violation of privacy. The Board respectfully disagrees, as the per-panelist fees are imposed in lieu of higher application and renewal fees as a means of scaling such fees to the size of each registrant, and the Board further disagrees that charging a per-panelist fee constitutes a restraint of trade, a taking, or a violation of privacy. One commenter also objected to the fee, in §159.52(a)(8), to return to active status (for an AMC that goes inactive after losing its primary contact or appraiser contact), although the basis for this objection was not made clear. Another commenter also objected to the rule regarding national AMC registry fees, as the registry has not yet been established. The Board agrees that collection of such fees would be premature; for that reason, the rule states that the Board will only collect a fee in the amount charged by the Appraisal Subcommittee (at this time, zero).

One commenter opposed the proposed application fee of \$4,000, the proposed renewal fee of \$3,600, and the proposed per-panelist fee of \$20. Based on new data and revised estimates of the likely number of panelists per AMC, the Board is reducing these fees to \$3,300 for application or renewal (for a two-year period) and a per-panelist fee of \$10.

One commenter suggested that the competency certification that 22 TAC §159.154 requires AMCs to obtain from appraisers at the time of or before making an assignment is meaningless because it is duplicative of the certification that the appraiser must sign on every appraisal. The Board respectfully disagrees and points out that obtaining the certification before the assignment is begun reinforces the competency requirements at the outset of the assignment.

One commenter opposed the requirement, in 22 TAC §159.155, to review one of the first five appraisals performed by each appraiser on the panel and five percent of all appraisals annually, stating that this will result in a disproportionately high number of reviews of appraisals performed by appraisers who may only perform one appraisal for the AMC in a year. The Board respectfully disagrees with this analysis; in fact, the requirement to review one of the first five appraisals means that an AMC would not have to review any appraisals for a given appraiser until that appraiser has performed five appraisals for the AMC, even if takes more than one year to reach that point.

Ten commenters expressed support for the requirement in §1104.157, Texas Occupations Code, and 22 TAC §159.157 to pay customary and reasonable fees. Six more commenters urged the Board to set a minimum fee for appraisals. The Board respectfully declines to set a minimum fee, as the retirement that AMCs pay fees that are customary and reasonable is based on federal law, which outlines two methods of establishing customary and reasonable fees, and the determination of whether a fee is customary and reasonable may depend on the parameters of the assignment. Four commenters stated that fees should reflect the requirements of each assignment. The Board agrees that, in evaluating whether a fee is customary and reasonable, the complexity and other unique factors related to the assignment will generally affect what fee is considered "customary and reasonable."

One commenter opposes the prohibition, in 22 TAC §159.157(d), against requiring appraisers to sign a certification that the fee they are paid for an assignment is customary and reasonable, stating that such a prohibition would put AMCs at a disadvantage when contracting with appraisers for assignments. However, as federal law states that such a certification does not by itself create a presumption that the fee was customary and reasonable, the Board believes that such certifications do not serve a valid purpose and should be prohibited.

One commenter expressed concern about the record-keeping requirements of the new AMC regulations, although he did not articulate the specific nature of his concern. The Board does not believe that these rules impose onerous record-keeping requirements.

Four commenters expressed concern regarding unreasonable turnaround times requested by AMCs. The Board notes that this issue is already addressed in §1104.203(18)(B) of the Texas Occupations Code, which prohibits a registrant from requiring an appraiser to prepare an appraisal report under a schedule that the appraiser, in the appraiser's own professional judgment, believes does not afford the appraiser the ability to meet all of the relevant legal and professional obligations if the appraiser has notified the company of this belief.

Eleven commenters generally expressed dissatisfaction with AMCs without expressing a position on the proposed rules.

The Board also conducted a survey of approximately 1,100 appraisers and 38 AMCs, seeking general information regarding

the mechanics of appraiser panels, including the number of appraisers on an average AMC panel and the number of panels on which the average appraiser serves. The results of the survey were the basis for the reduced registration fees in 22 TAC §159.52.

The new sections are adopted under the Texas Occupations Code, §1104.051, Rules, and §1104.052, Fees.

The statute affected by this adoption is Texas Occupations Code, Chapter 1104. No other statute, code, or article is affected by the new sections.

*§159.52. Fees.*

(a) The Board shall charge and the commissioner shall collect the following fees:

- (1) a fee of \$3,300 for an application for a two-year registration;
- (2) a fee of \$3,300 for a timely renewal of a two-year registration;
- (3) a fee equal to 1-1/2 times the timely renewal fee for the late renewal of a registration within 90 days of expiration; a fee equal to two times the timely renewal fee for the late renewal of a registration more than 90 days but less than six months after expiration;
- (4) the national registry fee in the amount charged by the Appraisal Subcommittee for the appraisal management company registry;
- (5) a fee of \$10 for each appraiser on a panel at the time of renewal of a registration;
- (6) a fee of \$10 to add an appraiser to a panel in the Board's records;
- (7) a fee of \$10 for the termination of an appraiser from a panel;
- (8) a fee of \$50 to return to active status;
- (9) a fee of \$40 for providing each licensure history;
- (10) a fee for a returned check equal to that charged for a returned check by the Texas Real Estate Commission;
- (11) a fee of \$20 for filing any application, renewal, change request, or other record on paper when the person may otherwise file electronically by accessing the Board's website and entering the required information online; and
- (12) any fee required by the Department of Information Resources for establishing and maintaining online applications.

(b) Fees must be submitted in U.S. funds payable to the order of the Texas Appraiser Licensing and Certification Board. Fees are not refundable once an application has been accepted for filing. Persons who have submitted a check which has been returned, and who have not made good on that check within 30 days, for whatever reason, shall submit all future fees in the form of a cashier's check or money order.

(c) AMCs registered with the Board shall pay any annual registry fee as required under federal law. All registry fees collected by the Board shall be deposited in the Texas Treasury Safekeeping Trust Company to the credit of the appraiser registry fund. The Board shall send the fees to the Appraisal Subcommittee as required by federal law.

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 January 13, 2012.

TRD-201200164

Devon V. Bijansky

General Counsel

Texas Appraiser Licensing and Certification Board

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Proposal publication date: November 11, 2011

For further information, please call: (512) 936-3001



## PART 17. TEXAS STATE BOARD OF PLUMBING EXAMINERS

### CHAPTER 361. ADMINISTRATION

#### SUBCHAPTER A. GENERAL PROVISIONS

##### 22 TAC §361.1

**INTRODUCTION.** The Texas State Board of Plumbing Examiners adopts amendments to §361.1, concerning Definitions, without changes to the proposed text as published in the October 28, 2011, issue of the *Texas Register* (36 TexReg 7246).

**REASONED JUSTIFICATION.** The amendments to §361.1 are in response to amendments made to §1301.002(9-a)(E) and §1301.3576, as amended by House Bill (HB) 2376, 82nd Legislature, Regular Session, which require a Master Plumber to present evidence, satisfactory to the Board, of successful completion of a training program approved or administered by the Board regarding the laws and rules applicable to the operation of a plumbing business in this state, before working as a Responsible Master Plumber. HB 2376 provides an exemption to the requirement for any Responsible Master Plumber who has a Certificate of Insurance on file with the Board on January 1, 2012, that is effective for that date.

The amendments to §361.1 essentially reflect the language in §1301.002(9-a)(E), as amended by HB 2376.

**COMMENTS RECEIVED.** Two comments were received regarding the proposed amendments during the comment period. Both comments were opposed to the amendments. The comments were received from Master Plumbers Fallon L. Foster and Howard Bruce Hudeck.

**STATUTORY AUTHORITY.** The amendments to §361.1 are adopted under and affect Title 8, Chapter 1301, Texas Occupations Code ("Plumbing License Law" or "Law") as amended by HB 2376, the 82nd Legislature, Regular Session, §§1301.251, 1301.002(9-a), 1301.3576 and the rule it amends. Section 1301.251 requires the Board to adopt and enforce rules necessary to administer the Plumbing License Law. Section 1301.002(9-a) defines a Responsible Master Plumber as a person who has completed a training program as required by §1301.3576. Section 1301.3576 requires a Master Plumber to complete a training program applicable to the operation of a plumbing business in this state prior to working as a Responsible Master Plumber.

No other statute, article or code 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 January 17, 2012.

TRD-201200172

Lisa G. Hill

Executive Director

Texas State Board of Plumbing Examiners

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Proposal publication date: October 28, 2011

For further information, please call: (512) 936-5224



## CHAPTER 363. EXAMINATIONS

### 22 TAC §363.6

**INTRODUCTION.** The Texas State Board of Plumbing Examiners adopts amendments to §363.6, concerning Non-Standard Examination Accommodations, without changes to the proposed text as published in the October 28, 2011, issue of the *Texas Register* (36 TexReg 7250).

**REASONED JUSTIFICATION.** The adopted amendments are necessary to implement Senate Bill (SB) 867, 82nd Legislature, Regular Session, which requires occupational licensing agencies to adopt rules to ensure that examination applicants who have been diagnosed with dyslexia are provided reasonable examination accommodations. The adopted amendments establish a procedure for examination applicants who have been diagnosed with dyslexia, or other condition which require special needs, to request non-standard examination accommodations.

**COMMENTS RECEIVED.** No comments were received regarding the proposed amendments after publication in the *Texas Register*.

**STATUTORY AUTHORITY.** The amendments to §363.6 are adopted under and affect SB 867, 82nd Legislature, Regular Session, and Title 8, Chapter 1301, Texas Occupations Code ("Plumbing License Law" or "Law") as amended during the 82nd Legislature, Regular Session. SB 867 requires each occupational licensing agency to adopt rules to ensure that examination applicants who have been diagnosed with dyslexia are provided reasonable examination accommodations. Section 1301.251 of the Plumbing License Law requires the Board to adopt and enforce rules necessary to administer the Plumbing License Law.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-201200173

Lisa G. Hill

Executive Director

Texas State Board of Plumbing Examiners

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For further information, please call: (512) 936-5224



### 22 TAC §363.11

**INTRODUCTION.** The Texas State Board of Plumbing Examiners adopts amendments to §363.11, concerning Endorsement Training Programs, without changes to the proposed text as published in the October 28, 2011, issue of the *Texas Register* (36 TexReg 7251).

**REASONED JUSTIFICATION.** The amendments to §363.11 are adopted, in part, in response to amendments made to §1301.3565 of the Plumbing License Law by House Bill (HB) 2376, 82nd Legislature, Regular Session. HB 2376 prohibits any person from designing a multipurpose residential fire protection sprinkler system, unless the person holds a Master Plumber license with a Multipurpose Residential Fire Protection Sprinkler Specialist endorsement on the license. The amendments to §363.11 are also adopted under §1301.3565(f), which authorizes a Plumbing Inspector licensed by the Board who meets the requirements of the Board to inspect a multipurpose residential fire protection sprinkler system installation.

The amendments to §363.11 require a licensed Plumbing Inspector to complete the Multipurpose Residential Fire Protection Sprinkler Specialist endorsement training program prior to qualifying to take the Multipurpose Residential Fire Protection Sprinkler System Inspector examination. A licensed Plumbing Inspector who successfully passes the examination may inspect multipurpose residential fire protection sprinkler system installations.

The amendments to §363.11 also allow a person who holds a valid Master or Journeyman Plumber license issued by the Board and a valid RME-General or RME-Dwelling license issued by the State Fire Marshal's Office, Texas Department of Insurance, to qualify to take the Multipurpose Residential Fire Protection Sprinkler Specialist endorsement examination without completing the Multipurpose Residential Fire Protection Sprinkler Specialist Endorsement training program. The requirements to obtain a RME-General or RME-Dwelling license are substantial enough to negate the need to complete the training program when the applicant also holds a Master or Journeyman Plumber license.

**COMMENTS RECEIVED.** No comments were received regarding the proposed amendment after publication in the *Texas Register*.

**STATUTORY AUTHORITY.** The amendments to §363.11 are adopted under and affect Title 8, Chapter 1301, Texas Occupations Code ("Plumbing License Law" or "Law") as amended by HB 2376, the 82nd Legislature, Regular Session, §1301.251, §1301.3565 and the rule it amends. Section 1301.251 requires the Board to adopt and enforce rules necessary to administer the Plumbing License Law. Section 1301.3565 authorizes a Plumbing Inspector licensed by the Board who meets the requirements of the Board to inspect a multipurpose residential fire protection sprinkler system installation.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 17, 2012.

TRD-201200174

Lisa G. Hill

Executive Director

Texas State Board of Plumbing Examiners

Effective date: February 6, 2012

Proposal publication date: October 28, 2011

For further information, please call: (512) 936-5224



## 22 TAC §363.13

**INTRODUCTION.** The Texas State Board of Plumbing Examiners adopts new §363.13, concerning Training Program for Responsible Master Plumber Applicants, without changes to the proposed text as published in the October 28, 2011, issue of the *Texas Register* (36 TexReg 7253).

**REASONED JUSTIFICATION.** The new §363.13 is adopted in response to amendments made to §1301.002(9-a)(E) and §1301.3576, by House Bill (HB) 2376, 82nd Legislature, Regular Session, which require a Master Plumber to present evidence, satisfactory to the Board, of successful completion of a training program approved or administered by the Board regarding the laws and rules applicable to the operation of a plumbing business in this state, before working as a Responsible Master Plumber.

The new rule reflects an exemption from the requirements provided in HB 2376 for any Responsible Master Plumber who has a Certificate of Insurance on file with the Board on January 1, 2012, that is effective for that date.

The new rule sets forth the criteria for a minimum 24 hour training program to be provided by Course Providers who are approved by the Board to provide Continuing Professional Education, under Board Rule §365.14. The criteria are general in nature, in order to provide certain flexibility within each subject to the Course Providers. The new rule also allows an approved Course Provider to utilize another government and/or education entity, such as the Small Business Administration, to provide the instruction through the Course Provider.

**COMMENTS RECEIVED.** Two comments were received regarding the proposed rule during the comment period. Both comments were opposed to the rule. The comments were received from Master Plumbers Fallon L. Foster and Howard Bruce Hudeck.

**STATUTORY AUTHORITY.** The new §363.13 is adopted under and affects Title 8, Chapter 1301, Texas Occupations Code ("Plumbing License Law" or "Law") as amended by HB 2376, the 82nd Legislature, Regular Session, §§1301.251, 1301.002(9-a), and 1301.3576. Section 1301.251 requires the Board to adopt and enforce rules necessary to administer the Plumbing License Law. Section 1301.002(9-a) defines a Responsible Master Plumber as a person who has completed a training program as required by §1301.3576. Section 1301.3576 requires a Master Plumber to complete a training program applicable to the

operation of a plumbing business in this state prior to working as a Responsible Master Plumber.

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

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-201200175

Lisa G. Hill

Executive Director

Texas State Board of Plumbing Examiners

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Proposal publication date: October 28, 2011

For further information, please call: (512) 936-5224



## CHAPTER 365. LICENSING AND REGISTRATION

### 22 TAC §365.15

**INTRODUCTION.** The Texas State Board of Plumbing Examiners adopts new §365.15, concerning Alternative Licensing Procedures for Military Spouse, with changes to the proposed text as published in the October 28, 2011, issue of the *Texas Register* (36 TexReg 7255). Changes in the adopted rule reflect non-substantive variations from the proposal.

**REASONED JUSTIFICATION.** The new rule is necessary to implement Senate Bill (SB) 1733, 82nd Legislature, Regular Session, relating to the licensing of certain military spouses. SB 1733 amended Texas Occupations Code, Chapter 55, to require state agencies that issue occupational licenses to adopt rules to provide for the issuance of a license to an applicant who is the spouse of a person serving on active duty as a member of the armed forces of the United States. The applicant must either hold a current license issued by another state that has licensing requirements that are substantially equivalent to the requirements for the Texas license or within the five years preceding the application date held a license in Texas that expired while the applicant lived in another state for at least six months. The state agency rules must include provisions to allow for alternative demonstrations of competency to meet the requirements for obtaining a license. The bill also allows a state agency to issue a license by endorsement. The new rule is necessary to implement these new statutory requirements under Chapter 55.

The new §365.15 establishes who qualifies to apply for a license under this section, states the requirements for applying for a license under this section, provides an explanation of what qualifies as the standard method of demonstrating competency to obtain a license, and lists the alternative methods for demonstrating competency to obtain a license issued by the Board under this section.

**COMMENTS RECEIVED.** No comments were received regarding the proposed new rule after publication in the *Texas Register*.

**STATUTORY AUTHORITY.** The new §365.15 is adopted under and affects SB 1733, 82nd Legislature, Regular Session, and Title 8, Chapter 1301, Texas Occupations Code ("Plumbing License Law" or "Law") as amended during the 82nd Legislature,

Regular Session. SB 1733 requires each occupational licensing agency to adopt rules to provide for the issuance of a license to an applicant who is the spouse of a person serving on active duty as a member of the armed forces of the United States. Section 1301.251 of the Plumbing License Law requires the Board to adopt and enforce rules necessary to administer the Plumbing License Law.

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

§365.15. *Alternative Licensing Procedures for Military Spouse.*

(a) This section applies to an applicant who is the spouse of a person serving on active duty as a member of the armed forces of the United States.

(b) The Board may issue a license to an applicant described under subsection (a) of this section who:

(1) holds a current license issued by another state that has licensing requirements that are substantially equivalent to the requirements for the license; or

(2) within the five years preceding the application date held the license in this state that expired while the applicant lived in another state for at least six months.

(c) The Board may allow an applicant described under subsection (b) of this section to demonstrate competency by alternative methods in order to meet the requirements for obtaining a particular license issued by the Board. For purposes of this section, the standard method of demonstrating competency is the specific exam, education, and/or experience required to obtain a particular license.

(d) In lieu of the standard method(s) of demonstrating competency for a particular license, and based on the applicant's circumstances, the alternative methods for demonstrating competency may include any combination of the following as determined by the Board:

- (1) education;
- (2) continuing education;
- (3) examinations (written and/or practical);
- (4) letters of good standing;
- (5) letters of recommendation;
- (6) work experience; or
- (7) other methods required by the executive director.

(e) The executive director may issue a license by endorsement in the same manner as the commission under Texas Occupations Code, §51.404 to an applicant described under subsection (b) of this section.

(f) The applicant described under subsection (b) of this section shall submit an application and proof of the requirements under this section and for that particular license on a form and in a manner prescribed by the Board.

(g) The applicant described under subsection (b) of this section shall submit the applicable fee(s) required for that particular license.

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 January 17, 2012.

TRD-201200176

Lisa G. Hill  
Executive Director  
Texas State Board of Plumbing Examiners  
Effective date: February 6, 2012  
Proposal publication date: October 28, 2011  
For further information, please call: (512) 936-5224



## CHAPTER 367. ENFORCEMENT

### 22 TAC §367.2

**INTRODUCTION.** The Texas State Board of Plumbing Examiners adopts amendments to §367.2, concerning Standards of Conduct, without changes to the proposed text as published in the October 28, 2011, issue of the *Texas Register* (36 TexReg 7256).

**REASONED JUSTIFICATION.** The amendments to §367.2 are necessary under the Plumbing License Law, §1301.3565(f), which authorizes a Plumbing Inspector licensed by the Board who meets the requirements of the Board to inspect a multipurpose residential fire protection sprinkler system installation.

The adopted amendments to §367.2 require a licensed Plumbing Inspector to complete the Multipurpose Residential Fire Protection Sprinkler Specialist Endorsement training program and successfully pass the Multipurpose Residential Fire Protection Sprinkler System Inspector examination prior to inspecting multipurpose residential fire protection sprinkler system installations.

**COMMENTS RECEIVED.** No comments were received regarding the proposed amendments after publication in the *Texas Register*.

**STATUTORY AUTHORITY.** The amendments to §367.2 are adopted under and affect Title 8, Chapter 1301, Texas Occupations Code ("Plumbing License Law" or "Law,") as amended during the 82nd Legislature, Regular Session, §1301.251, §1301.3565 and the rule it amends. Section 1301.251 requires the Board to adopt and enforce rules necessary to administer the Plumbing License Law. Section 1301.3565 authorizes a Plumbing Inspector licensed by the Board who meets the requirements of the Board to inspect a multipurpose residential fire protection sprinkler system installation.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Lisa G. Hill  
Executive Director  
Texas State Board of Plumbing Examiners  
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Proposal publication date: October 28, 2011  
For further information, please call: (512) 936-5224



### 22 TAC §367.3

INTRODUCTION. The Texas State Board of Plumbing Examiners adopts amendments to §367.3, concerning Requirements for Plumbing Companies, Responsible Master Plumbers; Certificate of Insurance, without changes to the proposed text as published in the October 28, 2011, issue of the *Texas Register* (36 TexReg 7257).

REASONED JUSTIFICATION. The amendments to §367.3 are adopted, in part, in response to amendments made to §1301.002(9-a)(E) and §1301.3576, by House Bill (HB) 2376, 82nd Legislature, Regular Session, which require a Master Plumber to present evidence, satisfactory to the Board, of successful completion of a training program approved or administered by the Board regarding the laws and rules applicable to the operation of a plumbing business in this state, before working as a Responsible Master Plumber.

The amendments reflect an exemption from the Master Plumber training requirements provided in HB 2376 for any Responsible Master Plumber who has a Certificate of Insurance on file with the Board on January 1, 2012, that is effective for that date.

The amendments to §367.3 are also necessary in part, in response to amendments made to §1301.3565 of the Plumbing License Law by HB 2376, 82nd Legislature, Regular Session. HB 2376 prohibits any person from designing a multipurpose residential fire protection sprinkler system, unless the person holds a Master Plumber license with a Multipurpose Residential Fire Protection Sprinkler Specialist endorsement on the license. The amendments require that a Master Plumber with a Multipurpose Residential Fire Protection Sprinkler Specialist endorsement who designs a multipurpose residential fire protection sprinkler system to obtain a seal and affix the seal to designed plans. The amendments specify the design of the seal and use of the seal. The amendments also require the designer to sign and date the designed plans.

COMMENTS RECEIVED. Two comments were received regarding the proposed amendment during the comment period. Both comments were opposed to the amendments. The comments were received from Master Plumbers Fallon L. Foster and Howard Bruce Hudeck.

STATUTORY AUTHORITY. The amendments to §367.3 are adopted under and affect Title 8, Chapter 1301, Texas Occupations Code ("Plumbing License Law" or "Law,") as amended by HB 2376, the 82nd Legislature, Regular Session, §§1301.251, 1301.002(9-a), 1301.3576, 1301.3565 and the rule it amends. Section 1301.251 requires the Board to adopt and enforce rules necessary to administer the Plumbing License Law. Section 1301.002(9-a) defines a Responsible Master Plumber as a person who has completed a training program as required by §1301.3576. Section 1301.3576 requires a Master Plumber to complete a training program applicable to the operation of a plumbing business in this state prior to working as a Responsible Master Plumber. Section 1301.3565 requires a multipurpose residential fire protection sprinkler system to be designed only by a Master Plumber with a Multipurpose Residential Fire Protection Sprinkler Specialist endorsement. The amendments are also proposed under Texas Government Code §2006.002, as amended by the 80th Legislature, HB 3430, which requires an agency to perform an Economic Impact Statement and Regulatory Flexibility Analysis if a proposed rule could have an adverse economic impact on small businesses.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-201200178

Lisa G. Hill

Executive Director

Texas State Board of Plumbing Examiners

Effective date: February 6, 2012

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For further information, please call: (512) 936-5224



## PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

### CHAPTER 515. LICENSES

#### 22 TAC §515.11

The Texas State Board of Public Accountancy adopts an amendment to §515.11, concerning Exemption from Payment of the Professional Fee for Other than State of Texas Government Employees, without changes to the proposed text as published in the December 2, 2011, issue of the *Texas Register* (36 TexReg 8130) and will not be republished.

The amendment will delete the requirement for a licensee qualifying for the exemption from the professional fee related to their employment with a federal, county or municipal government of another state to submit a notarized affidavit with their statement of exemption.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-201200232

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Effective date: February 9, 2012

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For further information, please call: (512) 305-7842



#### 22 TAC §515.12

The Texas State Board of Public Accountancy adopts an amendment to §515.12, concerning Exemption from Payment of the



Professional Fee for State of Texas Employees, without changes to the proposed text as published in the December 2, 2011, issue of the *Texas Register* (36 TexReg 8130) and will not be republished.

The amendment will delete the requirement for a licensee qualifying for the exemption from the professional fee related to their employment with the State of Texas to submit a notarized affidavit with their statement of exemption.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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J. Randel (Jerry) Hill  
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Texas State Board of Public Accountancy

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Proposal publication date: December 2, 2011

For further information, please call: (512) 305-7842



## CHAPTER 519. PRACTICE AND PROCEDURE SUBCHAPTER A. GENERAL PROVISIONS

### 22 TAC §519.1

The Texas State Board of Public Accountancy adopts an amendment to §519.1, concerning Purpose and Scope, without changes to the proposed text as published in the December 2, 2011, issue of the *Texas Register* (36 TexReg 8131) and will not be republished.

The amendment will replace terms with acronyms that have been defined in §501.55.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7842



### 22 TAC §519.2

The Texas State Board of Public Accountancy adopts an amendment to §519.2, concerning Definitions, without changes to the proposed text as published in the December 2, 2011, issue of the *Texas Register* (36 TexReg 8132) and will not be republished.

The amendment will replace terms with acronyms that have been defined and adds the definition of petitioner, which is a term used in this chapter and defines the term respondent to include "licensee, certified holder, individual or entity".

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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J. Randel (Jerry) Hill  
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Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7842



### 22 TAC §519.4

The Texas State Board of Public Accountancy adopts an amendment to §519.4, concerning Conduct and Decorum, without changes to the proposed text as published in the December 2, 2011, issue of the *Texas Register* (36 TexReg 8133) and will not be republished.

The amendment will add the term person to better identify those affected by the rule.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Texas State Board of Public Accountancy  
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## 22 TAC §519.5

The Texas State Board of Public Accountancy adopts an amendment to §519.5, concerning Ex Parte Consultations, without changes to the proposed text as published in the December 2, 2011, issue of the *Texas Register* (36 TexReg 8134) and will not be republished.

The amendment will clarify that committee members and employees of the board do not render decisions and that the prohibition on ex parte communications extends to state agencies and persons.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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General Counsel  
Texas State Board of Public Accountancy  
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For further information, please call: (512) 305-7842



## 22 TAC §519.6

The Texas State Board of Public Accountancy adopts an amendment to §519.6, concerning Subpoenas, without changes to the proposed text as published in the December 2, 2011, issue of the *Texas Register* (36 TexReg 8134) and will not be republished.

The amendment will better define who may be subpoenaed by the board.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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J. Randel (Jerry) Hill  
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Texas State Board of Public Accountancy  
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For further information, please call: (512) 305-7842



## 22 TAC §519.7

The Texas State Board of Public Accountancy adopts an amendment to §519.7, concerning Misdemeanors that Subject a Licensee or Certificate Holder to Discipline by the Board, without changes to the proposed text as published in the December 2, 2011, issue of the *Texas Register* (36 TexReg 8135) and will not be republished.

The amendment reformats the rule so that it is easier to read, adds new offenses, deletes those offenses currently covered under §501.90(4) as felony offenses and places licensees and certificate holders on notice that the listed misdemeanors are considered to reflect a question of integrity, morality and honesty.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Texas State Board of Public Accountancy  
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For further information, please call: (512) 305-7842



## 22 TAC §519.10

The Texas State Board of Public Accountancy adopts an amendment to §519.10, concerning Cooperation with Regulatory Bodies, without changes to the proposed text as published in the December 2, 2011, issue of the *Texas Register* (36 TexReg 8139) and will not be republished.

The amendment will delete unnecessary words and add a reference to the Act.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7842



## 22 TAC §519.11

The Texas State Board of Public Accountancy adopts new §519.11, concerning Emergency Suspension, without changes to the proposed text as published in the December 2, 2011, issue of the *Texas Register* (36 TexReg 8140) and will not be republished.

New §519.11, which replaces §519.43, moves the rule from Subchapter C to Subchapter A of this chapter and clarifies that licensees and certificate holders are affected by the rule.

No comments were received regarding adoption of the amendment.

The new rule is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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J. Randel (Jerry) Hill

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Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7842



## SUBCHAPTER B. COMPLAINTS AND INVESTIGATIONS

### 22 TAC §519.20

The Texas State Board of Public Accountancy adopts an amendment to §519.20, concerning Complaints, without changes to the proposed text as published in the December 2, 2011, issue of the *Texas Register* (36 TexReg 8141) and will not be republished.

The amendment will correct terms that should be lowercase, provide guidance to the public bringing a complaint against a CPA violating the Act and clarify that licensees and certificate holders are included in this rule.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7842



### 22 TAC §519.21

The Texas State Board of Public Accountancy adopts an amendment to §519.21, concerning Investigations, without changes to the proposed text as published in the December 2, 2011, issue of the *Texas Register* (36 TexReg 8142) and will not be republished.

The amendment corrects terms that should be lowercase and clarifies that the rule affects licensees and certificate holders.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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J. Randel (Jerry) Hill  
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Texas State Board of Public Accountancy  
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For further information, please call: (512) 305-7842



## 22 TAC §519.22

The Texas State Board of Public Accountancy adopts an amendment to §519.22, concerning Committee Considerations, without changes to the proposed text as published in the December 2, 2011, issue of the *Texas Register* (36 TexReg 8143) and will not be republished.

The amendment corrects terms that should be lowercase.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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J. Randel (Jerry) Hill  
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Texas State Board of Public Accountancy  
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For further information, please call: (512) 305-7842



## 22 TAC §519.23

The Texas State Board of Public Accountancy adopts an amendment to §519.23, concerning Informal Conferences, without changes to the proposed text as published in the December 2, 2011, issue of the *Texas Register* (36 TexReg 8144) and will not be republished.

The amendment will correct terms that should be lowercase.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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J. Randel (Jerry) Hill  
General Counsel  
Texas State Board of Public Accountancy  
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For further information, please call: (512) 305-7842



## 22 TAC §519.24

The Texas State Board of Public Accountancy adopts an amendment to §519.24, concerning Committee Recommendations, without changes to the proposed text as published in the December 2, 2011, issue of the *Texas Register* (36 TexReg 8144) and will not be republished.

The amendment will correct terms that should be lowercase, add a reference to the Act, and add violations of board rules and board orders to subsection (a).

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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J. Randel (Jerry) Hill  
General Counsel  
Texas State Board of Public Accountancy  
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For further information, please call: (512) 305-7842



## 22 TAC §519.25

The Texas State Board of Public Accountancy adopts an amendment to §519.25, concerning Mediation and Alternative Dispute Resolution, without changes to the proposed text as published in

the December 2, 2011, issue of the *Texas Register* (36 TexReg 8145) and will not be republished.

The amendment will correct a term that should be lowercase.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7842



## SUBCHAPTER C. PROCEEDINGS AT SOAH

### 22 TAC §519.40

The Texas State Board of Public Accountancy adopts an amendment to §519.40, concerning General Provisions, without changes to the proposed text as published in the December 2, 2011, issue of the *Texas Register* (36 TexReg 8147) and will not be republished.

The amendment will add a reference to the Act.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

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

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7842



### 22 TAC §519.41

The Texas State Board of Public Accountancy adopts an amendment to §519.41, concerning Disciplinary Powers of the Board, without changes to the proposed text as published in the December 2, 2011, issue of the *Texas Register* (36 TexReg 8147) and will not be republished.

The amendment deletes unnecessary words, adds references to the Act, replaces accounting terms with acronyms that have been defined in §501.55, and adds the term certificate holder as someone affected by this rule.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7842



### 22 TAC §519.42

The Texas State Board of Public Accountancy adopts new §519.42, concerning Administrative Hearings, without changes to the proposed text as published in the December 2, 2011, issue of the *Texas Register* (36 TexReg 8149) and will not be republished.

New §519.42 will require respondents to file an answer within 20 days of receiving a notice of hearing and complaint with SOAH in order to avoid a default judgment.

No comments were received regarding adoption of the new rule.

The new rule is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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J. Randel (Jerry) Hill  
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Texas State Board of Public Accountancy  
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For further information, please call: (512) 305-7842



## 22 TAC §519.43

The Texas State Board of Public Accountancy adopts the repeal of §519.43, concerning Emergency Suspension, without changes to the proposal as published in the December 2, 2011, issue of the *Texas Register* (36 TexReg 8150) and will not be republished.

The repeal of §519.43 is necessary to relocate the rule to Subchapter A, §519.11.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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J. Randel (Jerry) Hill  
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For further information, please call: (512) 305-7842



## SUBCHAPTER D. PROCEDURES AFTER HEARING

### 22 TAC §519.71

The Texas State Board of Public Accountancy adopts an amendment to §519.71, concerning Exceptions and Replies, without changes to the proposed text as published in the December 2, 2011, issue of the *Texas Register* (36 TexReg 8150) and will not be republished.

The amendment will correct terms that should be lowercase.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 20, 2012.

TRD-201200252  
J. Randel (Jerry) Hill  
General Counsel  
Texas State Board of Public Accountancy  
Effective date: February 9, 2012  
Proposal publication date: December 2, 2011  
For further information, please call: (512) 305-7842



### 22 TAC §519.72

The Texas State Board of Public Accountancy adopts an amendment to §519.72, concerning Final Decisions and Orders, without changes to the proposed text as published in the December 2, 2011, issue of the *Texas Register* (36 TexReg 8151) and will not be republished.

The amendment will delete unnecessary words and add acronyms that have been defined in §519.2.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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J. Randel (Jerry) Hill  
General Counsel  
Texas State Board of Public Accountancy  
Effective date: February 9, 2012  
Proposal publication date: December 2, 2011  
For further information, please call: (512) 305-7842



## SUBCHAPTER E. POST BOARD ORDER PROCEDURES

### 22 TAC §519.91

The Texas State Board of Public Accountancy adopts an amendment to §519.91, concerning Judicial Review, without changes to the proposed text as published in the December 2, 2011, issue of the *Texas Register* (36 TexReg 8152) and will not be republished.

The amendment will delete the term title and replace it with chapter.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 20, 2012.

TRD-201200254

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Effective date: February 9, 2012

Proposal publication date: December 2, 2011

For further information, please call: (512) 305-7842



## 22 TAC §519.93

The Texas State Board of Public Accountancy adopts an amendment to §519.93, concerning Publication of Disciplinary/Administrative Sanctions, without changes to the proposed text as published in the December 2, 2011, issue of the *Texas Register* (36 TexReg 8153) and will not be republished.

The amendment will add the term licensee and delete the term registration holder.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 20, 2012.

TRD-201200255

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Effective date: February 9, 2012

Proposal publication date: December 2, 2011

For further information, please call: (512) 305-7842



## 22 TAC §519.95

The Texas State Board of Public Accountancy adopts an amendment to §519.95, concerning Reinstatement, without changes to the proposed text as published in the December 2, 2011, issue

of the *Texas Register* (36 TexReg 8154) and will not be republished.

The amendment will clarify the process of requesting a reinstatement and that there be no criminal convictions for at least two years from the date of the successful completion of the obligations to the criminal justice system before applying for reinstatement.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 20, 2012.

TRD-201200256

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Effective date: February 9, 2012

Proposal publication date: December 2, 2011

For further information, please call: (512) 305-7842



## TITLE 25. HEALTH SERVICES

### PART 1. DEPARTMENT OF STATE HEALTH SERVICES

#### CHAPTER 1. MISCELLANEOUS PROVISIONS SUBCHAPTER W. PRIVACY POLICY

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 §§1.501 - 1.503 and new §§1.501 - 1.504, concerning the privacy of health information, without changes to the proposal as published in the August 5, 2011, issue of the *Texas Register* (36 TexReg 4891) and, therefore, the sections will not be republished.

#### BACKGROUND AND PURPOSE

The rules implement the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), which protects the privacy of a client's individually identifiable health information. The repeal of §§1.501 - 1.503 and new §§1.501 - 1.504 will reorganize the rules and provide the public with current procedures for the department's privacy practices and instructions to individuals on how they can exercise their privacy rights within the department. References to legacy agencies within the rules are also updated.

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 1.501 - 1.503 have been reviewed and the department has determined that reasons for

adopting the sections continue to exist because rules on this subject are needed to inform individuals of the department's privacy practices and procedures for exercising their privacy rights with the department.

#### SECTION-BY-SECTION SUMMARY

The repeal of §§1.501 - 1.503 and new §§1.501 - 1.504 allow for reorganization and clarification of the rules governing the department's privacy practices.

New §1.501 informs individuals of the department's privacy practices and procedures. For clarification purposes, it contains added terms and definitions consistent with 45 C.F.R. §164.103. Various rights of an individual are discussed in this section, including the right to receive notice of privacy practices, the right of access to protected health information, the right to request an amendment to a designated record set, the right to receive an accounting of certain disclosures, the right to request further limits on uses and disclosures of protected health information, the right to request confidential communication, and the right to file a complaint. The section also includes the uses and disclosures of protected health information among Health and Human Services System agencies, and other state agencies.

New §1.502 was added to specify the requirements for designated health care components within the department to comply with all applicable state and federal confidentiality provisions and to collect, use, or disclose protected health information in accordance with applicable state and federal law. This section states the right of an individual to file a complaint with a program or office within the department for an alleged violation of state and/or federal law as it relates to the confidentiality of protected health information.

New §1.503 informs of an individual's right to correct information collected by and in the possession of the department. It also sets forth the requirements and procedures to request corrections. (This section was previously §1.502 and renumbered as §1.503.)

New §1.504 specifies department procedures in responding to requests to correct information collected by and in the possession of the department. (This section was previously §1.503 and renumbered as §1.504.)

#### COMMENTS

The department, on behalf of the commission, did not receive any comments regarding the proposal 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.

#### 25 TAC §§1.501 - 1.503

##### STATUTORY AUTHORITY

The repeals are authorized by 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 necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 23, 2012.

TRD-201200292

Lisa Hernandez

General Counsel

Department of State Health Services

Effective date: February 12, 2012

Proposal publication date: August 5, 2011

For further information, please call: (512) 776-6972



#### 25 TAC §§1.501 - 1.504

##### STATUTORY AUTHORITY

The new sections are authorized by 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 necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 23, 2012.

TRD-201200291

Lisa Hernandez

General Counsel

Department of State Health Services

Effective date: February 12, 2012

Proposal publication date: August 5, 2011

For further information, please call: (512) 776-6972



#### CHAPTER 265. GENERAL SANITATION SUBCHAPTER G. SANITARY CONDITIONS OF BARBER SHOPS, BARBER SCHOOLS, AND COLLEGES

#### 25 TAC §§265.91 - 265.102

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 §§265.91 - 265.102, concerning the sanitary conditions of barber shops, barber schools, and colleges, without changes to the proposal as published in the October 21, 2011, issue of the *Texas Register* (36 TexReg 7113) and, therefore, the sections will not be republished.

##### BACKGROUND AND PURPOSE

The repeal of the barber shop rules is necessary as a result of Senate Bill 411, 79th Legislature, Regular Session, 2005, which



amended Occupations Code, Chapters 1601 and 1602, and added Chapter 1603. Senate Bill 411 transferred the regulation of barbering from the Texas State Board of Barber Examiners and the Texas Cosmetology Commission to the Texas Department of Licensing and Regulation effective January 1, 2006.

Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 265.91 - 265.102 have been reviewed, and the department has determined that the reasons for adopting the sections no longer exist.

#### SECTION-BY-SECTION SUMMARY

The rules are no longer necessary and will eliminate duplication concerning the regulation of barbering. New rules were promulgated in 16 Texas Administrative Code Chapters 82 and 83, under the authority of the Occupations Code, Chapters 51, and 1601 - 1603.

#### COMMENTS

The department, on behalf of the commission, did not receive any comments regarding the proposed repeals during the comment period.

#### LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the repeals, 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 a result of the passage of Senate Bill 411, 79th Legislature, Regular Session, 2005, which amended Occupations Code, Chapters 1601 and 1602, and added Chapter 1603. These statutory changes authorized the Texas Department of Licensing and Regulation to promulgate sanitary rules and regulations for the conduct of barbering and cosmetology under 16 Texas Administrative Code Chapter 82, Barbers, and Chapter 83, Cosmetologists; and by 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. The 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 January 23, 2012.

TRD-201200294

Lisa Hernandez

General Counsel

Department of State Health Services

Effective date: February 12, 2012

Proposal publication date: October 21, 2011

For further information, please call: (512) 776-6972



## PART 11. CANCER PREVENTION AND RESEARCH INSTITUTE OF TEXAS

### CHAPTER 703. GRANTS FOR CANCER PREVENTION AND RESEARCH

#### 25 TAC §703.20

The Cancer Prevention and Research Institute of Texas (Institute) adopts §703.20, concerning Certification of Tobacco-Free Policy for Entities Receiving CPRIT Funds, with changes to the proposed text as published in the November 18, 2011, issue of the *Texas Register* (36 TexReg 7763). The adopted rule was filed with the Office of the Secretary of State on January 19, 2012.

The 2007 Legislature enacted legislation amending Chapter 102 of the Health and Safety Code to create the Institute and provide rulemaking authority to the Institute's Oversight Committee. The statute expressly directs the Institute's Oversight Committee to adopt rules regarding the procedure for making grant awards for cancer prevention and research funded by the Institute. The adopted rule provides guidance regarding the Institute's requirement that grant recipients certify compliance with a tobacco-free policy as a condition of eligibility for receiving grant funds.

The Institute received comments from the following parties: Cheryl L. Perry, Ph.D., Professor and Regional Dean of the University of Texas School of Public Health at Austin Regional Campus; K. Vendrell Rankin, DDS, Dept. of Public Health Sciences, Baylor College of Dentistry Texas A&M Health Science Center; Maria D. Person, Ph.D., Director, ICMB/CRED Protein and Metabolite Analysis Facility, University of Texas at Austin; Steve H. Kelder, Ph.D., MPH, Co-Director, Michael & Susan Dell Center for Healthy Living Professor, The University of Texas School of Public Health, Austin Regional Campus; Kenneth Shine, M.D., Executive Vice Chancellor for Health Affairs, The University of Texas System (UT System); Patricia Ohlendorf, Vice President for Legal Affairs, The University of Texas at Austin (UT Austin); The Texas Medical Association (TMA); Clair B. Jordan, MSN, RN, executive director for The Texas Nurses Foundation, on behalf of its Nurse Oncology Education Program (collectively referred to as TNF); Taylor Eighmy, Vice President for Research, Texas Tech University (Texas Tech); and Roberto Osegueda, Ph.D., Vice President for Research, University of Texas at El Paso (UT El Paso).

All parties providing comments indicated support for the proposed rule. Specific observations and suggested changes are provided in the following summary of the comments received.

Dr. Perry supports the rule and notes in her comments that, "tobacco use is still the number one cause of premature death in this country, and tobacco-free policies have proven to be effective in reducing tobacco use among employees, and importantly, in changing norms about the acceptability of smoking around others." Dr. Perry also reports that, "those who are exposed to a tobacco-free policy at work are more likely to institute tobacco-free policies at home as well. This is critical for reducing overall exposure to tobacco smoke, especially for children."

Dr. Person supports the proposed rule, contending that, "This policy will incentivize organizations to move towards reducing exposure to smoke through smoking and second hand smoke. These changes will lower the smoking related cancer deaths in Texas, reducing medical costs and providing higher quality of life."

*Subsection (a)*

The UT System recommends that "consideration be given to including the definitions set forth in §703.20(a) of the proposed rule in Title 25, Part 11, Chapter 703, §703.2, which is the definition section of the chapter on grants." CPRIT declines to make the change at this time, but takes the suggestion under advisement for future Chapter 703 rulemaking projects.

*Subsection (c)(1)*

Comments filed by Dr. Rankin, the UT System, UT Austin, UT El Paso and Texas Tech question the advisability of including a requirement that grant recipients prohibit possession of all tobacco products and/or paraphernalia by all employees and visitors to the property. The comments noted that it will be difficult for grant recipients to enforce a ban on possession of these products. CPRIT agrees and has amended subsection (c)(1) to remove the requirement that the CPRIT grant recipient's tobacco-free policy addresses possession of tobacco products and/or paraphernalia.

Dr. Kelder recommends that the tobacco-free policy should apply to "all property owned or operated by the recipient, not just where the project takes place," on the grounds that "the benefits to the public, individuals, and organization derived from enacting the policy outweigh the inconvenience of smoking individuals." The requirement that the tobacco-free policy apply to the buildings and structures where the project takes place is the minimum acceptable standard. There is nothing in the rule that prevents the recipient from adopting a tobacco-free policy that applies to all property owned or operated by the recipient as suggested by Dr. Kelder. Allowing the grant recipient organization to establish its own tobacco-free policy provides the entity some degree of flexibility in fashioning standards applicable to its unique arrangement while fulfilling the intent to reduce exposure to tobacco and second-hand smoke. For these reasons, CPRIT declines to make the requested change.

Dr. Kelder also proposes that "greenspace, easements, parks" be added to the property where the grant recipient's tobacco-free policy must apply because "the intent is to curtail tobacco use on all property owned or operated by the recipient." CPRIT declines to make the requested change. The rule requires a tobacco-free policy that, at a minimum, applies to the sidewalks, parking lots, walkways and attached parking structures immediately adjacent to the buildings and structures where the CPRIT-sponsored project is taking place. To the extent that the grant recipient organization owns greenspace, easements, and/or parks, the entity may include such areas in its tobacco-free policy.

TMA proposes no changes to the rule but seeks clarification regarding an acceptable policy for a grant recipient that leases space to one or more entities that do not receive CPRIT grants. TMA contends that it has "numerous non-TMA tenants in the [TMA] building and presently the lease agreement does not address tobacco. We anticipate we could not comply with the Tobacco free policy requirement for another ten years, the time it would take to unwind these leases." To the extent that a grant recipient is unable to seek an agreement from its tenants regarding implementation of building-wide tobacco-free policies, the rule provides for the option to seek a waiver from the executive director. TMA also seeks clarification regarding whether a designated outdoor smoking area in the parking garage complies with the proposed rule. The rule indicates a minimally acceptable workplace policy "encompasses all buildings and structures where the CPRIT project is taking place as well as the sidewalks,

parking lots, walkways, and attached parking structures immediately adjacent." A policy that permits smoking in attached parking structures does not meet this minimum standard.

TNF requests the addition of the following language to the end of the last sentence of subsection (c)(1), ". . . but only to the extent the CPRIT-funded entity owns, leases or controls the building, sidewalks, parking lots and parking structures." In support, TNF states that the Nurse Oncology Education Program is a CPRIT-funded entity and occupies space leased by TNF in an office building which has a number of other tenants, one of whom is a bank. As lessee, TNF contends that it does not control any part of the building other than its leased space, and does not control the parking lot and sidewalks. TNF asserts that it can do nothing until its current lease expires and even then TNF believes that it is unlikely it would be able to dictate the lessor's policy for the parking lot and sidewalk or even the use and possession of smokeless tobacco products in the entire building. CPRIT agrees and amends the rule to incorporate the language proposed by TNF.

*Subsection (c)(2)*

The UT System and TNF raise questions regarding the use of the term "separately" for referrals of tobacco-use cessation services for employees. The UT System seeks clarification regarding whether "the [tobacco-use cessation] services that the institution may offer that are available to the public as well as employees would satisfy the requirement." CPRIT agrees that the term creates unnecessary confusion and has amended the rule to remove the term so that there is no restriction on the type of tobacco-cessation services that may be offered. The UT System also seeks clarification regarding whether the entity would be required to pay for the tobacco-use cessation services or would demonstrate compliance by providing employees with a list of publicly available cessation services. The rule does not mandate that the grant recipient pay for tobacco-use cessation services.

*Subsection (d)*

Dr. Kelder recommends that, in addition to CPRIT's executive director, the commissioner of the Department of State Health Services (DSHS) should review and approve waiver requests. Dr. Kelder states that the executive director should not possess sole decision-making authority with regard to a request for waiver of compliance. CPRIT declines to make the requested change. The DSHS is a separate state agency and, as such, plays no role in the selection, funding, or performance oversight of any CPRIT-funded grant. There is no compelling legal or statutory reason to include the DSHS commissioner in the waiver request process. Furthermore, pursuant to CPRIT's statute, the executive director is provided great deference with regard to CPRIT grant decisions. Vesting the authority to grant waivers with the executive director is consistent with the statute.

TNF seeks clarification regarding the term period of the waiver. TNF contends that, "Subsection (d) would require a waiver be granted on September 1 or later of a fiscal year for it to apply to that fiscal year. But if not granted on the 1st, the entity would be out of compliance with the proposed rule from September 1 until the waiver is granted unless the effective date of the waiver is retroactive to the start of the fiscal year in which granted." NOEP requests subsection (d) be changed either a) to permit a waiver to be granted in one fiscal year for the following fiscal year or b) to clarify that a waiver applies retroactively to the start of the fiscal year in which granted. CPRIT declines to make this change. The grant recipient may seek a waiver at any time during a fiscal year,

but the application of the waiver will only be on a going forward basis unless specifically stated in the executive director's waiver approval. The responsibility will be on the grant recipient to seek a timely waiver if it is unable to satisfy the tobacco-free policy requirements.

The new rule is adopted under the authority of the Texas Health and Safety Code Annotated, §102.108 and §102.251, which provide the Institute's Oversight Committee with rulemaking authority and direct the Institute to adopt rules relating to grant award procedures.

§703.20. *Certification of Tobacco-Free Policy for Entities Receiving CPRIT Funds.*

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

(1) CPRIT-funded entity--An institution, organization or company that receives grant funding from CPRIT equal to or more than \$25,000 during the applicable fiscal year. All references to the CPRIT funded-entity include the entity's faculty, staff, employees, and students.

(2) Tobacco--All forms of tobacco products, including but not limited to cigarettes, cigars, pipes, water pipes (hookah), bidis, kreteks, electronic cigarettes, smokeless tobacco, snuff and chewing tobacco.

(b) To be eligible to receive CPRIT funding, a CPRIT-funded entity shall certify that the entity has adopted and enforces Tobacco-free workplace policy.

(c) A Tobacco-free workplace policy will comply with the certification required by this section if the policy is adopted by the CPRIT-funded entity's board of directors, governing body, or similar, and at a minimum, includes provisions:

(1) Prohibiting the use of all Tobacco products by all employees and visitors to the property owned, operated, leased, occupied, or controlled by the CPRIT-funded entity. For purposes of the Tobacco-free workplace policy, the CPRIT-funded entity may designate the property to which the policy applies, so long as the workplace policy encompasses all buildings and structures where the CPRIT project is taking place as well as the sidewalks, parking lots, walkways, and attached parking structures immediately adjacent, but only to the extent the CPRIT-funded entity owns, leases or controls the building, sidewalks, parking lots and parking structures.

(2) Providing for and/or referring to Tobacco use cessation services for employees.

(d) Exceptions--Upon request by a CPRIT-funded entity, the CPRIT executive director may grant a waiver of compliance with this section. If granted, the waiver is effective only for the fiscal year during which it was granted.

(e) Provisions in this section apply to all grant proposals submitted to the Institute in response to a request for proposals issued by the Institute on or after March 1, 2012. All other CPRIT-funded entities must certify compliance with this rule by August 31, 2012 or the first anniversary of the CPRIT-funded entity's grant award, whichever is later.

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 January 19, 2012.

TRD-201200216  
William "Bill" Gimson  
Executive Director  
Cancer Prevention and Research Institute of Texas  
Effective date: February 8, 2012  
Proposal publication date: November 18, 2011  
For further information, please call: (512) 305-8498



## TITLE 34. PUBLIC FINANCE

### PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

#### CHAPTER 3. TAX ADMINISTRATION SUBCHAPTER JJ. CIGARETTE AND TOBACCO PRODUCTS REGULATION

##### 34 TAC §3.1202

The Comptroller of Public Accounts adopts an amendment to §3.1202, concerning the tobacco warning signs made available by the comptroller that must be conspicuously displayed at retail locations where cigarettes and tobacco products may be purchased, without changes to the proposed text as published in the November 25, 2011, issue of the *Texas Register* (36 TexReg 7967). The adopted amendment changes the comptroller's local Austin telephone number where a caller can request the warning signs.

No comments were received regarding adoption of the amendment.

This amendment is adopted under Tax Code, §154.1142 and §155.0592, which provide the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2, and taxes, fees, or other charges which the comptroller administers under other law.

The amendment implements Health and Safety Code, §161.084.

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 January 17, 2012.

TRD-201200181  
Ashley Harden  
General Counsel  
Comptroller of Public Accounts  
Effective date: February 6, 2012  
Proposal publication date: November 25, 2011  
For further information, please call: (512) 936-6472



##### 34 TAC §3.1204

The Comptroller of Public Accounts adopts an amendment to §3.1204, concerning administrative remedies for violation of

the Health and Safety Code, Chapter 161, Subchapter H or K, regarding minors and tobacco products, without changes to the proposed text as published in the November 25, 2011, issue of the *Texas Register* (36 TexReg 7968). The amendment to subsection (b)(2) removes the organization named the Statewide Tobacco Education and Prevention (STEP), which effective September 1, 2011, no longer exists. Nonsubstantive changes have been made throughout to improve clarity and readability.

No comments were received regarding adoption of the amendment.

This amendment is adopted under Tax Code, §154.1142 and §155.0592, which provide the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2, and taxes, fees, or other charges which the comptroller administers under other law.

The amendment implements Health and Safety Code, §161.090.

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 January 17, 2012.

TRD-201200180

Ashley Harden

General Counsel

Comptroller of Public Accounts

Effective date: February 6, 2012

Proposal publication date: November 25, 2011

For further information, please call: (512) 475-0387



## PART 9. TEXAS BOND REVIEW BOARD

### CHAPTER 181. BOND REVIEW BOARD SUBCHAPTER A. BOND REVIEW RULES

#### 34 TAC §§181.1 - 181.3, 181.9, 181.10

The Texas Bond Review Board (BRB) adopts amendments to 34 TAC Chapter 181, Subchapter A, §181.1, concerning Definitions; §181.2, concerning Notice of Intention to Issue; §181.3, concerning Application for Board Approval of State Securities Issuance; §181.9, concerning State Exemptions; and §181.10, concerning State Debt Issuer Reports. The amendments are adopted without changes to the proposed text as published in the December 2, 2011, issue of the *Texas Register* (36 TexReg 8171).

The amendments make changes related to the implementation of Senate Bill 5 in the 82nd Legislature as it provides for certain institution of higher education state securities to be exempt from BRB approval and clarify requirements for reporting information by issuers of state securities. The amendments to §181.10 clarify that reporting requirements imposed pursuant to Subchapters D and E of Chapter 1231 of the Texas Government Code apply regardless of whether state securities are exempt from BRB approval.

The Notice of Proposed Rules did not impose a deadline for receiving comments. BRB did not receive any comments on the

proposed amendments. No public hearing was requested under Texas Government Code §2001.029.

The amendments are adopted pursuant to Texas Government Code §1231.022, which gives BRB authority to adopt rules governing application for review, the review process, and reporting requirements.

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 January 19, 2012.

TRD-201200231

Bob Kline

Executive Director

Texas Bond Review Board

Effective date: February 8, 2012

Proposal publication date: December 2, 2011

For further information, please call: (512) 475-4805



## TITLE 43. TRANSPORTATION

### PART 3. AUTOMOBILE BURGLARY AND THEFT PREVENTION AUTHORITY

#### CHAPTER 57. AUTOMOBILE BURGLARY AND THEFT PREVENTION AUTHORITY

##### 43 TAC §57.48

The Automobile Burglary and Theft Prevention Authority (ABTPA) adopts amendments to §57.48, concerning guidelines for insurers in calculating the statutory fee, without changes to the proposed text as published in the November 4, 2011, issue of the *Texas Register* (36 TexReg 7500).

The adopted amendments would increase the fee paid by insurers from \$1 to \$2 per motor vehicle year of insurance required pursuant to House Bill (HB) 1541, 82nd Regular Legislative Session.

No written comments were received regarding amendments to the rule.

The amendments are adopted under Texas Civil Statutes, Article 4413(37), §6(a), which ABTPA interprets as authorizing it to adopt rules that implement its statutory powers and duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 23, 2012.

TRD-201200295

Charles Caldwell

Director

Automobile Burglary and Theft Prevention Authority

Effective date: February 12, 2012

Proposal publication date: November 4, 2011

For further information, please call: (512) 374-5101

# REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

## Proposed Rule Reviews

Automobile Burglary and Theft Prevention Authority

### Title 43, Part 3

The Automobile Burglary and Theft Prevention Authority (ABTPA) proposes to review Title 43 of the Texas Administrative Code, Chapter 57, concerning Automobile Burglary and Theft Prevention Authority, in accordance with Texas Government Code, §2001.039.

Review of the rules under this chapter will determine whether the reason for adoption of the rules continues to exist. During the review process, ABTPA may also determine that a specific rule may need to be amended to further refine ABTPA's legal and policy considerations, whether the rules reflect current ABTPA procedures, that no changes to a rule as currently in effect are necessary, or that a rule is no longer valid or applicable. Rules may also be combined or reduced for simplification and clarity when feasible. Readopted rules will be noted in the *Texas Register's* Rule Review section without publication of the text. Any proposed amendments or repeal of a rule or chapter as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30-day public comment period prior to final adoption or repeal.

ABTPA invites comments during the review process for 30 days following the publication of this notice in the *Texas Register*. Any questions or comments pertaining to this notice of intention to review should be directed to Charles Caldwell, Director, Automobile Burglary and Theft Prevention Authority, 4000 Jackson Avenue, Austin, Texas 78731 within 30 days of publication.

TRD-201200296

Charles Caldwell

Director

Automobile Burglary and Theft Prevention Authority

Filed: January 23, 2012



Texas Department of Criminal Justice

### Title 37, Part 6

The Texas Board of Criminal Justice files this notice of intent to review §151.25, Texas Department of Criminal Justice Tobacco Policy. This review is conducted pursuant to Texas Government Code §2001.039, which requires rule review every four years.

Comments should be directed to Melinda Hoyle Bozarth, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084,

Austin, Texas 78711 or [Melinda.Bozarth@tdcj.state.tx.us](mailto:Melinda.Bozarth@tdcj.state.tx.us). Written comments from the general public should be received within 30 days of the publication of this proposed rule review.

TRD-201200308

Melinda Hoyle Bozarth

General Counsel

Texas Department of Criminal Justice

Filed: January 24, 2012



## Adopted Rule Reviews

Texas Education Agency

### Title 19, Part 2

The Texas Education Agency (TEA) adopts the review of 19 TAC Chapter 176, Driver Training Schools, Subchapter AA, Commissioner's Rules on Minimum Standards for Operation of Licensed Texas Driver Education Schools; Subchapter BB, Commissioner's Rules on Minimum Standards for Operation of Licensed Texas Driving Safety Schools and Course Providers; Subchapter CC, Commissioner's Rules on Minimum Standards for Operation of Texas Drug and Alcohol Driving Awareness Programs; and Subchapter DD, Commissioner's Rules on Hearings Held Under the Texas Education Code, Chapter 1001, pursuant to the Texas Government Code, §2001.039. The TEA proposed the review of 19 TAC Chapter 176, Subchapters AA-DD, in the October 7, 2011, issue of the *Texas Register* (36 TexReg 6773).

Relating to the review of 19 TAC Chapter 176, Subchapters AA-DD, the TEA finds that the reasons for adopting Subchapters AA-DD continue to exist and readopts the rules. The TEA received no comments related to the review of Subchapters AA-DD. At a later date, the TEA plans to propose revisions to align rules with legislative changes resulting from the 82nd Texas Legislature, 2011.

This concludes the review of 19 TAC Chapter 176.

TRD-201200332

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Filed: January 25, 2012



# TABLES & GRAPHICS

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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.

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Figure: 22 TAC §519.9(a)

No.	Violation	Citation	Administrative Penalty Range
1	Failure to follow Generally Accepted Auditing Standards; Yellow Book Auditing Standards; AICPA Auditing Standards; and other auditing standards.	22 TEX. ADMIN. CODE §§501.60 & 501.74;  TEX. OCC. CODE §§901.502(6) & 901.502(11)	<b>Minor:</b> \$0 to \$25,000 per violation.  <b>Moderate:</b> \$25,000 to 75,000 per violation.  <b>Major:</b> \$75,000 to \$100,000 per violation.
2	Failure to follow Generally Accepted Accounting Principles	22 TEX. ADMIN. CODE §§501.53, 501.61 & 501.74;  TEX. OCC. CODE §§901.502(6) & 901.502(11)	<b>Minor:</b> \$0 to \$25,000 per violation.  <b>Moderate:</b> \$25,000 to 75,000 per violation.  <b>Major:</b> \$75,000 to \$100,000 per violation.
3	Failure to follow other Professional Standards (e.g. Compilation Standards)	22 TEX. ADMIN. CODE §§501.62 & 501.74;  TEX. OCC. CODE §§901.502(6) & 901.502(11)	<b>Minor:</b> \$0 to \$25,000 per violation.  <b>Moderate:</b> \$25,000 to 75,000 per violation.  <b>Major:</b> \$75,000 to \$100,000 per violation.
4	Lack of independence	22 TEX. ADMIN. CODE §§501.70 & 501.73  TEX. OCC. CODE §§901.458, 901.502(6) & 901.502(11)	<b>Minor:</b> \$0 to \$25,000 per violation.  <b>Moderate:</b> \$25,000 to 75,000 per violation.  <b>Major:</b> \$75,000 to \$100,000 per violation.
5	Violation of rules regarding receipt of <b>commission, compensation, or other benefit</b> [commissions and other compensation]	22 TEX. ADMIN. CODE §501.71;  TEX. OCC. CODE §§901.502(6) & 901.502(11)	<b>Minor:</b> \$0 to \$25,000 per violation.  <b>Moderate:</b> \$25,000 to 75,000 per violation.  <b>Major:</b> \$75,000 to \$100,000 per violation.
6	Violation of rules regarding contingency fees	22 TEX. ADMIN. CODE §501.72;  TEX. OCC. CODE §§901.502(6) & 901.502(11)	<b>Minor:</b> \$0 to \$25,000 per violation.  <b>Moderate:</b> \$25,000 to 75,000 per violation.  <b>Major:</b> \$75,000 to \$100,000 per violation.

7	Lack of integrity and objectivity	22 TEX. ADMIN. CODE §501.73;  TEX. OCC. CODE §§901.502(6) & 901.502(11)	<b>Minor:</b> \$0 to \$25,000 per violation.  <b>Moderate:</b> \$25,000 to 75,000 per violation.  <b>Major:</b> \$75,000 to \$100,000 per violation.
8	Incompetence	22 TEX. ADMIN. CODE §501.74;  TEX. OCC. CODE §§901.502(6) & 901.502(11)	<b>Minor:</b> \$0 to \$25,000 per violation.  <b>Moderate:</b> \$25,000 to 75,000 per violation.  <b>Major:</b> \$75,000 to \$100,000 per violation.
9	Breach of confidential <u>client</u> communications	22 TEX. ADMIN. CODE §501.75;  TEX. OCC. CODE §§901.502(6) & 901.502(11)	<b>Minor:</b> \$0 to \$25,000 per violation.  <b>Moderate:</b> \$25,000 to 75,000 per violation.  <b>Major:</b> \$75,000 to \$100,000 per violation.
10	Failure to return client records or client's portion of work papers	22 TEX. ADMIN. CODE §501.76;  TEX. OCC. CODE §§901.502(6) & 901.502(11)	\$0 to \$25,000 per violation.
11	Acting through others	22 TEX. ADMIN. CODE §501.77 (AND THE RULE VIOLATED BY THE ACTOR);  TEX. OCC. CODE §§901.502(6) & 901.502(11)	<b>Minor:</b> \$0 to \$25,000 per violation.  <b>Moderate:</b> \$25,000 to 75,000 per violation.  <b>Major:</b> \$75,000 to \$100,000 per violation.
12	Practicing without a license	22 TEX. ADMIN. CODE §501.80;  TEX. OCC. CODE §§901.401, 901.453, 901.456, 901.502(6) & 901.502(11)	\$0 to \$25,000 per violation.
13	Practicing through an unregistered entity	22 TEX. ADMIN. CODE §501.81;  TEX. OCC. CODE §§901.401, 901.502(6) & 901.502(11)	\$0 to \$25,000 per violation.



14	False, fraudulent, misleading, or deceptive advertising	22 TEX. ADMIN. CODE §501.82;  TEX. OCC. CODE §§901.502(6) & 901.502(11)	<b>Minor:</b> \$0 to \$1,000 per violation. <b>Moderate:</b> \$1,000 to \$50,000 per violation. <b>Major:</b> \$50,000 to \$100,000 per violation.
15	Improper firm name	22 TEX. ADMIN. CODE §501.83;  TEX. OCC. CODE §§901.502(6) & 901.502(11)	\$0 to \$10,000 per violation.
16	Improper form of practice	22 TEX. ADMIN. CODE §501.84;  TEX. OCC. CODE §§901.502(6) & 901.502(11)	\$0 to \$10,000 per violation.
17	<b>Committing</b> [Performing] discreditable acts  (1) fraud or deceit in obtaining a certificate as a <b>CPA</b> [certified public accountant] or in obtaining registration under the Act or in obtaining a license to practice public accounting	22 TEX. ADMIN. CODE §501.90(1);  TEX. OCC. CODE §§901.502(1), 901.502(6) & 901.502(11)	<b>Minor:</b> \$0 to \$25,000 per violation. <b>Moderate:</b> \$25,000 to 75,000 per violation. <b>Major:</b> \$75,000 to \$100,000 per violation.
18	<b>Committing</b> [Performing] discreditable acts  (2) dishonesty, fraud or gross negligence in the practice of public accountancy	22 TEX. ADMIN. CODE §501.90(2);  TEX. OCC. CODE §§901.502(2), 901.502(6) & 901.502(11)	<b>Minor:</b> \$0 to \$25,000 per violation. <b>Moderate:</b> \$25,000 to 75,000 per violation. <b>Major:</b> \$75,000 to \$100,000 per violation.
19	<b>Committing</b> [Performing] discreditable acts  (3) violation of any of the provisions of Subchapter J or §901.458 of the Act ( <b>relating to Loss of Independence</b> ) applicable to a person certified or registered by the board	22 TEX. ADMIN. CODE §501.90(3);  TEX. OCC. CODE §§901.502(5), 901.502(6) & 901.502(11)	<b>Minor:</b> \$0 to \$25,000 per violation. <b>Moderate:</b> \$25,000 to 75,000 per violation. <b>Major:</b> \$75,000 to \$100,000 per violation.

20	<p><b>Committing</b> <del>[Performing]</del> discreditable acts</p> <p>(4) final conviction of a felony or imposition of deferred adjudication or community supervision in connection with a criminal prosecution of a felony under the laws of any state or the United States</p>	<p>22 TEX. ADMIN. CODE §501.90(4);</p> <p>TEX. OCC. CODE §§901.502(6), 901.502(10), &amp; 901.502(11)</p> <p>TEX. OCC. CODE CHAP. 53</p>	\$0 to \$100,000 per violation.
21	<p><b>Committing</b> <del>[Performing]</del> discreditable acts</p> <p>(5) final conviction of any crime or imposition of deferred adjudication or community supervision in connection with a criminal prosecution, an element of which is dishonesty or fraud under the laws of any state or the United States; <b>a criminal prosecution for a crime of moral turpitude; a criminal prosecution involving alcohol</b> abuse [of alcohol] or <b>possession of</b> controlled substances; or <b>a criminal prosecution for a crime involving physical harm</b> [injury] or <b>the threat</b> [threats] of physical <b>harm</b> [injury to a person]</p>	<p>22 TEX. ADMIN. CODE §501.90(5) &amp; <b>§519.7</b>;</p> <p>TEX. OCC. CODE §§901.502(6), 901.502(10), &amp; 901.502(11)</p>	\$0 to \$100,000 per violation.
22	<p><b>Committing</b> <del>[Performing]</del> discreditable acts</p> <p>(6) cancellation, revocation, suspension or refusal to renew authority to practice as a <b>CPA</b> [certified public accountant] or a public accountant by any other state for any cause other than failure to pay the appropriate registration fee in such other state</p>	<p>22 TEX. ADMIN. CODE §501.90(6);</p> <p>TEX. OCC. CODE §§901.502(6), 901.502(8), 901.502(9), &amp; 901.502(11)</p>	\$0 to \$100,000 per violation.

23	<b>Committing</b> [Performing] discreditable acts  (7) suspension or revocation of or <b>any</b> [a-voluntary] consent decree concerning the right to practice before any state or federal <b>regulatory or licensing body</b> [agency] for a cause which in the opinion of the board warrants its action	22 TEX. ADMIN. CODE §501.90(7);  TEX. OCC. CODE §§901.502(6), 901.502(8), 901.502(9), & 901.502(11)	<b>Minor:</b> \$0 to \$25,000 per violation.  <b>Moderate:</b> \$25,000 to 75,000 per violation.  <b>Major:</b> \$75,000 to \$100,000 per violation.
24	<b>Committing</b> [Performing] discreditable acts  (8) knowingly participating in the preparation of a false or misleading financial statement or tax return	22 TEX. ADMIN. CODE §501.90(8);  TEX. OCC. CODE §§901.502(2), 901.502(6) & 901.502(11)	<b>Minor:</b> \$0 to \$25,000 per violation.  <b>Moderate:</b> \$25,000 to 75,000 per violation.  <b>Major:</b> \$75,000 to \$100,000 per violation.
25	<b>Committing</b> [Performing] discreditable acts  (9) fiscal dishonesty or breach of fiduciary responsibility of any type	22 TEX. ADMIN. CODE §501.90(9);  TEX. OCC. CODE §§901.502(6) & 901.502(11)	<b>Minor:</b> \$0 to \$25,000 per violation.  <b>Moderate:</b> \$25,000 to 75,000 per violation.  <b>Major:</b> \$75,000 to \$100,000 per violation.
26	<b>Committing</b> [Performing] discreditable acts  (10) failure to comply with a final order of any state or federal court	22 TEX. ADMIN. CODE §501.90(10);  TEX. OCC. CODE §§901.502(6) & 901.502(11)	<b>Minor:</b> \$0 to \$25,000 per violation.  <b>Moderate:</b> \$25,000 to 75,000 per violation.  <b>Major:</b> \$75,000 to \$100,000 per violation.
27	<b>Committing</b> [Performing] discreditable acts  (11) repeated failure to respond to a client's inquiry within a reasonable time without good cause	22 TEX. ADMIN. CODE §501.90(11);  TEX. OCC. CODE §§901.502(6) & 901.502(11)	<b>Minor:</b> \$0 to \$25,000 per violation.  <b>Moderate:</b> \$25,000 to 75,000 per violation.  <b>Major:</b> \$75,000 to \$100,000 per violation.
28	<b>Committing</b> [Performing] discreditable acts  (12) <b>intentionally</b> misrepresenting facts or making a misleading or deceitful statement to a client, <b>employer, the board, board staff or any person acting on behalf of the board</b>	22 TEX. ADMIN. CODE §501.90(12);  TEX. OCC. CODE §§901.502(6) & 901.502(11)	<b>Minor:</b> \$0 to \$25,000 per violation.  <b>Moderate:</b> \$25,000 to 75,000 per violation.  <b>Major:</b> \$75,000 to \$100,000 per violation.

29	<p><b>Committing</b> [Performing] discreditable acts</p> <p>(13) <b>giving intentional false sworn testimony</b> [swearing] or perjury <b>in court or in connection with discovery in a court proceeding or</b> in any communication to the board <b>or board staff</b>, or any other federal or state regulatory or licensing <b>body</b> [authority]</p>	<p>22 TEX. ADMIN. CODE §501.90(13);</p> <p>TEX. OCC. CODE §§901.502(6) &amp; 901.502(11)</p>	<p><b>Minor:</b> \$0 to \$25,000 per violation.</p> <p><b>Moderate:</b> \$25,000 to 75,000 per violation.</p> <p><b>Major:</b> \$75,000 to \$100,000 per violation.</p>
30	<p><b>Committing</b> [Performing] discreditable acts</p> <p>(14) threats of bodily harm or retribution to a client</p>	<p>22 TEX. ADMIN. CODE §501.90(14);</p> <p>TEX. OCC. CODE §§901.502(6) &amp; 901.502(11)</p>	<p><b>Minor:</b> \$0 to \$25,000 per violation.</p> <p><b>Moderate:</b> \$25,000 to 75,000 per violation.</p> <p><b>Major:</b> \$75,000 to \$100,000 per violation.</p>
31	<p><b>Committing</b> [Performing] discreditable acts</p> <p>(15) public allegations of a lack of mental capacity of a client which cannot be supported in fact</p>	<p>22 TEX. ADMIN. CODE §501.90(15);</p> <p>TEX. OCC. CODE §§901.502(6) &amp; 901.502(11)</p>	<p><b>Minor:</b> \$0 to \$25,000 per violation.</p> <p><b>Moderate:</b> \$25,000 to 75,000 per violation.</p> <p><b>Major:</b> \$75,000 to \$100,000 per violation.</p>
[32]	<p>[Performing discreditable acts]</p> <p>[(16) causing a breach in the security of the CPA examination]</p>	<p>[22 TEX. ADMIN. CODE §501.90(16);</p> <p>[TEX. OCC. CODE §§901.502(6) &amp; 901.502(11)]</p>	<p>[<b>Minor:</b> \$0 to \$25,000 per violation.]</p> <p>[<b>Moderate:</b> \$25,000 to 75,000 per violation.]</p> <p>[<b>Major:</b> \$75,000 to \$100,000 per violation.]</p>
32, [33]	<p><b>Committing</b> [Performing] discreditable acts</p> <p>(16) [(17)] voluntarily disclosing information communicated to the <b>person</b> [certificate holder] by an employer, past or present, or through the <b>person's</b> [certificate holder's] employment in connection with accounting services rendered to the employer, except:</p> <p>(A) by permission of the employer;</p> <p>(B) pursuant to the Government Code, Chapter 554 (commonly referred to as the "Whistle Blowers Act");</p> <p>(C) pursuant to: [a court order</p>	<p>22 TEX. ADMIN. CODE <b>§501.90(16)</b> [§501.90(17)];</p> <p>TEX. OCC. CODE §§901.502(6) &amp; 901.502(11)</p>	<p><b>Minor:</b> \$0 to \$25,000 per violation.</p> <p><b>Moderate:</b> \$25,000 to 75,000 per violation.</p> <p><b>Major:</b> \$75,000 to \$100,000 per violation.</p>

	<p>or other compulsory process in a court proceeding;]</p> <p><b><u>(i) a court order signed by a judge; or</u></b></p> <p><b><u>(ii) a summons:</u></b></p> <p><b><u>(I) under the provisions of the Internal Revenue Code of 1986 and its subsequent amendments,</u></b></p> <p><b><u>(II) the Securities Act of 1933 (15 U.S.C. §77a et seq.) and its subsequent amendments,</u></b></p> <p><b><u>or</u></b></p> <p><b><u>(III) the Securities Exchange Act of 1934 (15 U.S.C. §78a et seq.) and its subsequent amendments;</u></b></p> <p>(D) in an investigation or proceeding by the board [under the Public Accountancy Act of];</p> <p>(E) in an ethical investigation conducted by a professional organization of <b><u>CPAs</u></b> [certified public accountants];</p> <p><b><u>(F) in the course of a peer review under §901.159 of the Act (relating to Peer Review);</u></b></p> <p><b><u>or</u></b></p> <p><b><u>(G) any information that is required to be disclosed by the professional standards for reporting on the examination of a financial statement.</u></b></p>		
<b>33</b> [34]	<p><b>Committing</b> [Performing] discreditable acts</p> <p><b>[17]</b> [(48)] breaching the terms of an agreed consent order entered by the <b>board</b> [Board] or violating any Board Order</p>	<p>22 TEX. ADMIN. CODE <b>§501.90(17)</b> [§504.90(48)];</p> <p>TEX. OCC. CODE §§901.502(6), 901.502(11) &amp; 901.502(12)</p>	<p><b>Minor:</b> \$0 to \$25,000 per violation.</p> <p><b>Moderate:</b> \$25,000 to 75,000 per violation.</p> <p><b>Major:</b> \$75,000 to \$100,000 per violation.</p>
<b>34</b> [35]	<p>Failure to report reportable events</p>	<p>22 TEX. ADMIN. CODE §501.91</p> <p>TEX. OCC. CODE §§901.502(6) &amp; 901.502(11)</p>	<p><b>Minor:</b> \$0 to \$25,000 per violation.</p> <p><b>Moderate:</b> \$25,000 to 75,000 per violation.</p> <p><b>Major:</b> \$75,000 to \$100,000 per violation.</p>
<b>35</b> [36]	<p>Filing a frivolous complaint</p>	<p>22 TEX. ADMIN. CODE §501.92</p> <p>TEX. OCC. CODE §§901.502(6) &amp; 901.502(11)</p>	<p>\$0 to \$10,000 per violation.</p>

<u>36</u> [37]	Failure to respond to Board communications	22 TEX. ADMIN. CODE §501.93  TEX. OCC. CODE §§901.502(6) & 901.502(11)	<b>Minor:</b> \$0 to \$1,000 per violation.  <b>Moderate:</b> \$1,000 to \$50,000 per violation.  <b>Major:</b> \$50,000 to \$100,000 per violation.
[38]	[Failure to comply with mandatory CPE]	[22 TEX. ADMIN. CODE §§501.94 & 523.62]  [TEX. OCC. CODE §§901.502(6), 901.502(11) & 901.502(12)]	[\$0 to \$10,000 per violation.]
[39]	[Three-year no-pay individual]	[TEX. OCC. CODE §§901.502(4) & 901.502(11)]	[\$0 to \$10,000 per violation.]
[40]	[CPA exam irregularities]	[22 TEX. ADMIN. CODE §511.70]  [TEX. OCC. CODE §§901.502(11) & 901.502(12)]	[ <b>Minor:</b> \$0 to \$25,000 per violation.]  [ <b>Moderate:</b> \$25,000 to 75,000 per violation.]  [ <b>Major:</b> \$75,000 to \$100,000 per violation.]
[41]	[Ineligible applicant certification hearings]	[22 TEX. ADMIN. CODE §§511.161 & 511.176]  [TEX. OCC. CODE §§901.502(11) & 901.502(12)]	[\$0 to \$10,000 per violation.]
[42]	[Moral character]	[22 TEX. ADMIN. CODE §§511.27 & 525.1]  [TEX. OCC. CODE §§901.502(11) & 901.502(12)]	[ <b>Moderate:</b> \$1,000 to \$50,000 per violation.]  [ <b>Major:</b> \$50,000 to \$100,000 per violation.]
<u>37</u> [43]	Failure to satisfy peer review requirements	22 TEX. ADMIN. CODE §527.4  TEX. OCC. CODE §§901.502(11) & 901.502(12)	<b>Minor:</b> \$0 to \$1,000 per violation.  <b>Moderate:</b> \$1,000 to \$50,000 per violation.  <b>Major:</b> \$50,000 to \$100,000 per violation.

**Table 1. HAI Data Verification Deadlines**

Reporting Quarter	January 1 - March 31	April 1 - June 30	July 1 - September 30	October 1 - December 31
Facility Data Submission	As set forth in NHSN or its successor			
Departmental Data Reconciliation	June 1	September 1	December 1	March 1
Facility Correction	June 30	September 30	December 31	March 31
Departmental Data Summary	NA	October 15	NA	April 15
Facility Comment Period	NA	October 30	NA	April 30
Departmental Review of Comments	NA	November 15	NA	May 15
Posting of Summary	NA	December 1	NA	June 1

\*Reporting deadline for infections related to implant procedures are the same dates but in the calendar year following the procedure.

## Texas Department of Agriculture

### 2012 Boll Weevil Quarantine Administrative Penalty Matrix and Cotton Pest Enforcement Guidelines

The Texas Legislature, under Chapter 71 and under Chapter 74 of the Texas Agriculture Code (Code), has given the Texas Department of Agriculture (the department) the authority and responsibility to regulate and control cotton pests in this state. The department's regulatory authority in the Code, Chapter 71, General Control, provides for the establishment of quarantines against dangerous insect pests and plant diseases at the boundaries of the state or in other areas within the state. The Code, Chapter 74, Subchapter D, also provides for the establishment of quarantine rules relating to boll weevil control. Quarantine regulations for boll weevil are found in 4 TAC Chapter 20. To protect the cotton industry of this state, regulated articles such as cotton harvesting equipment must meet certain requirements to prevent the artificial re-infestation of areas suppressed, functionally eradicated, or eradicated of boll weevil.

Department enforcement occurs through administrative actions, including seizure and administrative penalties. In instances of serious fraud, widespread deliberate violation of the law, or repeat offenders who have failed to be deterred through administrative action, the matter may be referred to the Office of the Attorney General for assessment of civil penalties or to a local district or county attorney for assessment of civil penalties, criminal prosecution, or both. Civil penalties under Chapter 74 can be as high as \$5,000 per violation. Civil penalties or criminal prosecution may be pursued instead of or in addition to any administrative action.

The department's authority to assess administrative penalties for the enforcement of Chapter 74 and associated rules is found in §12.020 of the Code. Such penalties can range up to a statutorily imposed maximum of \$5,000 for each violation. Each day that a violation continues or occurs may be considered a separate violation.

The department publishes these Cotton Pest Enforcement Guidelines, including the Boll Weevil Quarantine Administrative Penalty Matrix, to inform the regulated public about the department's enforcement policies for violations of requirements. These guidelines describe in general the most likely consequences, as published in Chapter 12 of the Code, of noncompliance with Chapter 71 and Chapter 74 of the Code and rules adopted under that chapter, found in 4 TAC Chapter 20, Subchapter B. These guidelines and the matrix have been developed to encourage consistent, uniform, and fair assessment of penalties by the department's enforcement staff for violations of the aforementioned statutory and rule provisions.

These guidelines do not constitute a policy or rule of general applicability. Under §12.020(d) of the Code, all penalties assessed by the department ultimately must be individualized to the specific nature, circumstances, extent, and gravity (NCEG) and the hazard or potential hazard (HPH) of the violation, and must take into account other factors related to the violation or violator listed in the aforementioned subsection when appropriate. Although the department has determined that in general the NCEG and HPH of the violations described in the matrix, as well as any other factors, will vary little from case to case for the viola-

tions listed therein, thus establishing a prescribed penalty for each such violation type, the actual penalty amount to be assessed in a particular case remains within the department's prosecutorial discretion. That discretion will be informed by those factors and circumstances for a particular violator and violation that might warrant deviation from the prescribed penalty. Thus, in extraordinary circumstances outside the general principles that inform these basic guidelines, the penalties set forth in the matrix may be adjusted upwards or downwards as justice may require.

The department's enforcement staff is authorized to settle disputed claims or address unusual or extraordinary circumstances informally through penalty reductions, probationary periods, deferred penalties, remedial actions in lieu of penalties, or by other appropriate lawful means, at their discretion and subject to approval of the Commissioner or Deputy Commissioner of Agriculture. **The department encourages all respondents to timely respond to notices of violation or other enforcement actions and to submit any information believed to mitigate or negate the alleged violation or which would, as justice requires, warrant reduction or waiver of the penalty. The department's enforcement staff will consider all relevant and responsive information, claims, or contentions submitted in response to an enforcement action before further legal action is taken to enforce the assessed penalty.**

The general principles incorporated into these guidelines, including the matrix, and the department's enforcement responses to violations of Chapter 71 and Chapter 74 and associated rules are as follows:

1. The standards, prohibitions, duties, or other requirements of Chapter 71 and Chapter 74 and the rules adopted under the authority of that chapter are considered strict liability laws, unless intent or knowledge is expressly required by the underlying Chapter 71 and Chapter 74 provision or applicable rule.
2. The prescribed penalties in the first-occurrence column of the matrix, therefore, are generally the minimum penalties to be assessed for unintentional or unknowing noncompliance with a Chapter 71 and Chapter 74 standard, prohibition, duty, or other requirement. In other words, the department has presumed in determining the amount of the penalty for a first violation, unless otherwise expressly noted, that the noncompliant person acted without intent or knowledge in violating the law. Thus, unless the matrix provision expressly states that a penalty is to be assessed only upon proof that the violation was intentional or knowing, a claim that the noncompliant actor did not intend to commit or did not know they were committing a violation is not a defense and does not constitute a circumstance for which a penalty in this matrix may be reduced or waived.
3. The penalties in the matrix, for all offense levels, also assume no significant, specific, identifiable harm has occurred as the result of the noncompliant conduct. A primary goal of regulation is to deter conduct that may cause harm before harm actually occurs. Thus, conduct that may cause harm will be punished, even when no harm has in fact occurred or cannot be shown to have occurred, in order to deter future noncompliance that may or would result in harm. Regulatory systems are intended to be proactive, not reactive.



4. Because the penalties in the matrix are for noncompliant conduct that is presumed, in the absence of evidence to the contrary, not intentional or knowing and for which no significant, specific, identifiable harm has occurred, the department may, as justice requires, assess penalties greater than specified in the matrix, bound only by the statutory limit, when the evidence demonstrates that the misconduct was knowing, intentional, has caused or will cause significant economic harm to one or more Texas consumers, or is the result of deliberate indifference to or habitual negligence in complying with the law. The amount of any increase in the penalty will be determined by considering the nature of the intent or knowledge, the amount and nature of the harm, the need for deterrence, and any other relevant factor.

5. A person who has previously been assessed a penalty or license sanction for violating the same or a similar provision of the law or who has received an inspection finding, warning, or other department notice regarding the same or similar noncompliant conduct **may** be presumed to have acted with intent when committing subsequent violations of the same or a similar provision of the law. The consequence of an intentional or knowing violation may be an increase in the penalty above what is prescribed in the matrix. The department, however, will not readily presume intent and a single violation will not automatically result in an allegation of intent absent exceptional circumstances and clear evidence of such intent.

6. The date of a violation is the actual date the violation occurred, the date the violation first began occurring in the case of a continuing violation that occurs over a number of consecutive days, or any date within the period of consecutive days that constitutes a continuing violation, as appropriate to the violation and circumstances.

If the date of first occurrence cannot be determined, the date of the violation is the date the department first discovers the violation (or the date of the first provable violation) and any consecutive day thereafter on which the violation continues (or continued).

7. The department will evaluate whether a prior violation has occurred by consulting the continuous 5-year period immediately preceding the date on which the current violation occurred, or if that date is uncertain the first date on which the violation was discovered by the department, for an order finding that a similar violation was committed by the respondent. The penalty for a subsequent occurrence will be assessed if the department has issued an order within the aforementioned period of time that found the respondent had committed a similar violation. The current violation occurs on the date the respondent failed to comply with the law, including a department order, or if that date is uncertain the first date on which the violation was discovered by the department. A continuous current violation that occurs during a period of consecutive days occurs on any or all days during that period and the department may use the first day, the last day, any other day, or all days of, within, or during that period for purposes of determining when the current violation occurred and the number of individual penalties to assess.

8. Payment of the full amount of an assessed penalty in any form, outside of an authorized settlement agreement, constitutes a waiver of all

objections to the department's allegations. All objections, assertions, comments, or qualifications of any kind accompanying any penalty payment shall be considered void and of no effect. No such objection, assertion, or comment shall be acknowledged by or incorporated into the findings of fact or conclusions of law set forth in the order approving payment of the penalty. If a respondent wishes to object to or otherwise contest any portion of the department's notice of violation, the respondent must request a hearing.

Each no-contest disposition regardless of form shall operate as a prior violation (occurrence) for purposes of future department penalty determinations. Payment of a penalty in full or payment of a penalty in full with one or more objections, assertions, comments, or qualifications by the respondent shall constitute a no-contest disposition, in the absence of a stipulation or hearing determination. Absent withdrawal or rescission of the alleged violation by the department, or an approved settlement, a respondent must request a hearing and obtain a favorable ruling through the hearing process, or by district court or appellate court judgment on appeal, that the violation did not occur to avoid use of the alleged violation as a prior violation (occurrence) or to obtain findings of fact or conclusions of law that incorporate or take into account any objections, assertions, comments, or qualifications proffered by the respondent.

Partial payments of an assessed penalty, absent an authorized settlement, shall be returned and the department shall consider any such failure to pay the full penalty amount to be a request for a hearing.

9. The department does not consider the immediate correction or cessation of noncompliant conduct or correction or removal of noncompliant equipment or products to be a defense or excuse to assessment of a penalty or license sanction. Nothing in this provision, however, shall prevent the department from adopting policies that provide for no penalty or a waiver of penalty upon correction, cessation, or removal of noncompliance in particular circumstances.

These guidelines, including the matrix, are based on current circumstances, including extant information, laws, and department policies. As the enforcement of these types of violations continues and additional data are gathered, these guidelines will be reviewed and may be adjusted from time to time to reflect any changes in the circumstances on which it is based. Such modifications may be implemented retroactively, to the extent permitted by law, or become effective, at the department's discretion, prior to, concurrent with, after or at the end of a specific time period following publication.

This matrix is effective immediately upon publication in the *Texas Register* and supersedes the Boll Weevil Quarantine Administrative Penalty Matrix as published in the February 25, 2005, issue of the *Texas Register* (30 TexReg 1171) for those violations committed on or after the date of its publication.

For purposes of these Guidelines "Respondent" means a person who is alleged to have or has committed a violation.

**Boll Weevil Quarantine Administrative Penalty Matrix**

<b>Source Law</b>	<b>Violation</b>	<b>First Offense<sup>1</sup> - Penalty Description</b>	<b>Subsequent Offenses<sup>1,2</sup> - Penalty Description</b>
\$20.3 <sup>4</sup> §71.0092 <sup>3</sup>	Violation of notice of seizure	\$5,000	\$5,000
\$20.16 <sup>4</sup> §71.005 <sup>3</sup>	Violation of a provision of a compliance agreement <sup>6</sup>	\$3,000	\$5,000 and revocation of agreement
\$20.16 <sup>4</sup> §74.007 <sup>5</sup>	Movement of a regulated article in violation of an applicable rule, statute or written directive of the department <sup>5</sup>	\$5,000	\$5,000
\$20.16 <sup>4</sup> §74.007 <sup>5</sup>	Movement of a quarantined pest in violation of an applicable rule, statute or written directive of the department <sup>5</sup>	\$5,000	\$5,000
\$20.17 <sup>4</sup> §71.005 <sup>3</sup>	Alteration or unauthorized use of a certificate issued by the department	\$5,000	\$5,000
Various	Any other violations that may arise under requirements of the Texas Agriculture Code, Chapter 71 or Chapter 74, or regulations adopted pursuant to the Texas Agriculture Code, Chapter 71 or Chapter 74 which is not expressly described in this matrix <sup>6</sup>	\$1000 - \$3,000	\$3000 - \$5,000

<sup>1</sup> Each day a violation continues or occurs may be considered a separate violation for purposes of penalty assessments.

<sup>2</sup> An offense shall be considered a subsequent offense if the responsible party has been the subject of any final order for one or more violations of the same requirement during the 5 years immediately preceding the initial inspection for the current offense.

<sup>3</sup> Texas Agriculture Code Chapter 71, General Control

<sup>4</sup> Texas Administrative Code, Title 4, Chapter 20, Cotton Pest Control

<sup>5</sup> Texas Agriculture Code, Chapter 74, Cotton Diseases and Pests

<sup>6</sup> Regulated articles found in violation may be subjected to seizure and detained, required to be treated, destroyed, or returned to the point of origin.



## 2012 Citrus Budwood Administrative Penalty Matrix and Enforcement Guidelines

The Texas Legislature, under Chapter 19 of the Texas Agriculture Code (Code), established the Citrus Budwood Certification Program, which gives the Texas Department of Agriculture (the department) the authority and responsibility to regulate and control the production and use of citrus budwood in this state. The Texas Legislature's purpose was to establish a certified citrus budwood program to produce citrus trees that are free from virus and other recognizable bud-transmissible diseases, are horticulturally sound, and are of an assured type of citrus variety.

The department's regulatory goals are to provide control of citrus budwood production and use as a public necessity. To achieve these goals, the department enforces a variety of prohibitions, and/or other requirements. Department enforcement occurs through administrative actions, including stop-sales, and by direct enforcement with monetary administrative penalties or license sanctions. In instances of serious fraud, widespread deliberate violation of the law, or repeat offenders who have failed to be deterred through administrative action, the matter may be referred to the Office of the Attorney General for assessment of civil penalties or to a local district or county attorney for assessment of civil penalties, criminal prosecution, or both. Civil penalties under Chapter 19 can be as high as \$5,000 per violation. Civil penalties or criminal prosecution may be pursued instead of or in addition to any administrative action.

The department's authority to assess administrative penalties for the enforcement of Chapter 19 and associated rules is found in §12.020 of the Code. Such penalties can range up to a statutorily imposed maximum of \$5,000 for each violation. Each day that a violation continues or occurs may be considered a separate violation. Each transaction may be considered a separate violation and, under certain circumstances, each unit of measure involved in a transaction also may be considered a separate violation.

The department publishes these Enforcement Guidelines for Citrus Budwood, including the Citrus Budwood Administrative Penalty Matrix, to inform the regulated public about the department's enforcement policies. These guidelines describe in general the most likely consequences of noncompliance with Chapter 19 of the Code and rules adopted under that chapter, found in 4 TAC Chapter 21, Subchapter C. These guidelines and the matrix have been developed to encourage consistent, uniform, and fair assessment of penalties by the department's enforcement staff for violations of the aforementioned statutory and rule provisions.

These guidelines do not constitute a policy or rule of general applicability. Under §12.020(d) of the Code, all penalties assessed by the department ultimately must be individualized to the specific nature, circumstances, extent, and gravity (NCEG) and the hazard or potential hazard (HPH) of the violation, and must take into account other factors related to the violation or violator listed in the aforementioned subsection when appropriate. Although the department has determined that in general the NCEG and HPH of the violations described in the matrix, as well as any other factors, will vary little from case to case for the violations listed therein, thus establishing a prescribed penalty for each such violation type, the actual penalty amount to be assessed in a particular case remains within the department's prosecutorial discretion. That

discretion will be informed by those factors and circumstances for a particular violator and violation that might warrant deviation from the prescribed penalty. Thus, in extraordinary circumstances outside the general principles that inform these basic guidelines, the penalties set forth in the matrix may be adjusted upwards or downwards as justice may require.

The department's enforcement staff is authorized to settle disputed claims or address unusual or extraordinary circumstances informally through penalty reductions, probationary periods, deferred penalties, remedial actions in lieu of penalties, or by other appropriate lawful means, at their discretion and subject to approval of the Commissioner or Deputy Commissioner of Agriculture. **The department encourages all respondents to timely respond to notices of violation or other enforcement actions and to submit any information believed to mitigate or negate the alleged violation or which would, as justice requires, warrant reduction or waiver of the penalty. The department's enforcement staff will consider all relevant and responsive information, claims, or contentions submitted in response to an enforcement action before further legal action is taken to enforce the assessed penalty.**

The general principles incorporated into these guidelines, including the matrix, and the department's enforcement responses to violations of Chapter 19 and associated rules are as follows:

1. The standards, prohibitions, duties, or other requirements of Chapter 19 and the rules adopted under the authority of that chapter are considered strict liability laws, unless intent or knowledge is expressly required by the underlying Chapter 19 provision or applicable rule.
2. The prescribed penalties in the first-occurrence column of the matrix, therefore, are generally the minimum penalties to be assessed for unintentional or unknowing noncompliance with a Chapter 19 standard, prohibition, duty, or other requirement. In other words, the department has presumed in determining the amount of the penalty for a first violation, unless otherwise expressly noted, that the noncompliant person acted without intent or knowledge in violating the law. Thus, unless the matrix provision expressly states that a penalty is to be assessed only upon proof that the violation was intentional or knowing, a claim that the noncompliant actor did not intend to commit or did not know they were committing a violation is not a defense and does not constitute a circumstance for which a penalty in this matrix may be reduced or waived.
3. The penalties in the matrix, for all offense levels, also assume no significant, specific, identifiable harm has occurred as the result of the noncompliant conduct. A primary goal of regulation is to deter conduct that may cause harm before harm actually occurs. Thus, conduct that may cause harm will be punished, even when no harm has in fact occurred or cannot be shown to have occurred, in order to deter future noncompliance that may or would result in harm. Regulatory systems are intended to be proactive, not reactive.
4. Because the penalties in the matrix are for noncompliant conduct that is presumed, in the absence of evidence to the contrary, not intentional or knowing and for which no significant, specific, identifiable harm has occurred, the department may, as justice requires, assess penalties greater than specified in the matrix, bound only by the statutory limit, when the evidence demonstrates that the misconduct was knowing, intentional, has caused or will cause significant economic harm to one or more Texas consumers, or is the result of deliberate indifference to or habitual negligence in complying with the law. The amount of any increase in the penalty will be determined by considering the nature of the intent or knowledge, the amount and nature of the harm, the need for deterrence, and any other relevant factor.

5. A person who has previously been assessed a penalty or license sanction for violating the same or a similar provision of the law or who has received an inspection finding, warning, or other department notice regarding the same or similar noncompliant conduct **may** be presumed to have acted with intent when committing subsequent violations of the same or a similar provision of the law. The consequence of an intentional or knowing violation may be an increase in the penalty above what is prescribed in the matrix. The department, however, will not readily presume intent and a single violation will not automatically result in an allegation of intent absent exceptional circumstances and clear evidence of such intent.

6. The department evaluates prior violations at the client or owner level, not the managerial level. In other words, for a single legal entity operating multiple separate locations, whether concurrently or sequentially, a violation at any one location will be considered a prior violation with respect to any future violation(s) committed by that same entity at the same or a different location. For some violations, however, the penalty remains a flat amount across multiple subsequent violations and the penalty amount for such violations will not automatically increase as the result of a prior violation absent clear evidence demonstrating that the misconduct was knowing, intentional, has caused or will cause significant economic harm to one or more Texas consumers, or is the result of deliberate indifference to or habitual negligence in complying with the law.

7. The date of a violation is the actual date the violation occurred, the date the violation first began occurring in the case of a continuing violation that occurs over a number of consecutive days, or any date within the period of consecutive days that constitutes a continuing violation, as appropriate to the violation and circumstances.

If the date of first occurrence cannot be determined, the date of the violation is the date the department first discovers the violation (or the date of the first provable violation) and any consecutive day thereafter on which the violation continues (or continued).

8. In determining whether a prior violation has occurred, the department will review the 5-year period immediately preceding the date of the current violation or, if that date is uncertain, the first date on which the violation was discovered by the department. A violation is a prior violation only if an alleged violation resulted in an order finding that a violation in fact occurred or if an entity has agreed, in a no-contest plea regarding a prior alleged violation, that the prior alleged violation would operate in the future as a prior violation for purposes of department penalty determinations. The penalty for a subsequent occurrence will be assessed if within the aforementioned period the department has issued an order that found the respondent had committed a similar violation.

9. Payment of the full amount of an assessed penalty in any form, outside of an authorized settlement agreement, constitutes a waiver of all objections to the department's allegations. All objections, assertions, comments, or qualifications of any kind accompanying any penalty

payment shall be considered void and of no effect. No such objection, assertion, or comment shall be acknowledged by or incorporated into the findings of fact or conclusions of law set forth in the order approving payment of the penalty. If a respondent wishes to object to or otherwise contest any portion of the department's notice of violation, the respondent must request a hearing.

Each no-contest disposition regardless of form shall operate as a prior violation (occurrence) for purposes of future department penalty determinations. Payment of a penalty in full or payment of a penalty in full with one or more objections, assertions, comments, or qualifications by the respondent shall constitute a no-contest disposition, in the absence of a stipulation or hearing determination. Absent withdrawal or rescission of the alleged violation by the department, or an approved settlement, a respondent must request a hearing and obtain a favorable ruling through the hearing process, or by district court or appellate court judgment on appeal, that the violation did not occur to avoid use of the alleged violation as a prior violation (occurrence) or to obtain findings of fact or conclusions of law that incorporate or take into account any objections, assertions, comments, or qualifications proffered by the respondent.

Partial payments of an assessed penalty, absent an authorized settlement, shall be returned and the department shall consider any such failure to pay the full penalty amount to be a request for a hearing.

10. The department does not consider the immediate correction or cessation of noncompliant conduct or correction or removal of noncompliant equipment or products to be a defense or excuse to assessment of a penalty or license sanction. Nothing in this provision, however, shall prevent the department from adopting policies that provide for no penalty or a waiver of penalty upon correction, cessation, or removal of noncompliance in particular circumstances.

These guidelines, including the matrix, are based on current circumstances, including extant information, laws, and department policies. As the enforcement of these types of violations continues and additional data are gathered, these guidelines will be reviewed and may be adjusted from time to time to reflect any changes in the circumstances on which it is based. Such modifications may be implemented retroactively, to the extent permitted by law, or become effective, at the department's discretion, prior to, concurrent with, after or at the end of a specific time period following publication.

This matrix is effective immediately upon publication in the *Texas Register* and supersedes the Citrus Budwood Administrative Penalty Matrix as published in the March 9, 2007, issue of the *Texas Register* (32 TexReg 1381) for those violations committed on or after the date of its publication.

For purposes of these Guidelines "Respondent" means a person who is alleged to have or has committed a violation.

**Citrus Budwood Administrative Penalty Matrix**

<u>Source Law</u>	<u>Violation</u>	<u>First Offense - Penalty Description</u>	<u>Subsequent Offenses<sup>1</sup> - Penalty Description</u>
§21.38 <sup>2</sup> §19.008 <sup>3</sup> §19.010 <sup>3</sup> §19.014 <sup>3</sup>	Failure to pay citrus budwood certification fee	200% of required fee plus \$250	200% of required fee plus \$1,000
§21.39 <sup>2</sup> §19.014 <sup>3</sup>	Sale or offer for sale or distribution of citrus budwood falsely claiming that it is certified or that it comes from a foundation grove or the increase block <sup>4</sup>	\$2,500	\$5,000
§21.39 <sup>2</sup> §19.014 <sup>3</sup>	Sale or offer for sale or distribution of a citrus tree falsely claiming that it originated from certified budwood or that it comes from a designated foundation grove or the increase block <sup>4</sup>	\$2,500	\$5,000
§21.39 <sup>2</sup> §19.014 <sup>3</sup>	The use or attempted use of citrus budwood that is neither certified nor from a designated foundation grove to propagate citrus nursery trees for commercial use <sup>4</sup>	\$500	\$1,500
§21.39 <sup>2</sup> §19.014 <sup>3</sup>	Falsification of an application for foundation grove designation	\$1,000	\$5,000
§21.36 <sup>2</sup> §21.39 <sup>2</sup> §19.014 <sup>3</sup>	Falsification of required records	\$2,500	\$5,000
§21.36 <sup>2</sup> §21.39 <sup>2</sup> §19.014 <sup>3</sup>	Failure to maintain or provide required records for inspection <sup>4</sup>	\$500	\$1,500
§21.39 <sup>2</sup> §19.011 <sup>5</sup> §19.014 <sup>3</sup>	Failure to comply with a stop sale order	\$2,500	\$5,000
Various	Any other violations that may arise under requirements of the Texas Agriculture Code, Chapter 19, or regulations adopted pursuant to the Texas Agriculture Code, Chapter 19 which is not expressly described in this matrix	\$50 - \$2,500	\$100 - \$5,000

<sup>1</sup> The department will evaluate whether a prior violation has occurred by consulting the continuous five-year period immediately preceding the date on which the current violation occurred or if that date is uncertain the first date on which the violation was discovered by the department.

<sup>2</sup> Texas Administrative Code, Title 4, Chapter 21, Citrus

<sup>3</sup> Texas Agriculture Code, Chapter 19, Citrus Budwood Certification Program

<sup>4</sup> In addition to the penalty specified, the article found in violation is subject to a stop-sale order



## 2012 Commercial and Noncommercial Cotton Administrative Penalty Matrix and Enforcement Guidelines

The Texas Legislature, under Chapter 74 of the Texas Agriculture Code (Code), has given the Texas Department of Agriculture (the department) the authority and responsibility to regulate and control cotton pests in this state. The department's regulatory goals are to provide control of cotton pests as a public necessity. Any portion of the state that is susceptible to infestation by cotton pests must be protected from this public nuisance and threat to the continued stability of the cotton industry. The Texas Legislature, under Chapter 74 of the Texas Agriculture Code (Code), found that volunteer and other noncommercial cotton is a public nuisance that threatens the cotton growers' boll weevil eradication program by serving as a host for cotton pests such as the boll weevil and pink bollworm. To protect the cotton industry of this state, hostable volunteer and other noncommercial cotton must be eliminated. To achieve these goals, the department enforces a variety of prohibitions, and/or other requirements.

Department enforcement occurs through administrative actions, including a Hostable Commercial Cotton Fee, a Hostable Noncommercial Cotton Fee and administrative penalties. In instances of serious fraud, widespread deliberate violation of the law, or repeat offenders who have failed to be deterred through administrative action, the matter may be referred to the Office of the Attorney General for assessment of civil penalties or to a local district or county attorney for assessment of civil penalties, criminal prosecution, or both. Civil penalties under Chapter 74 can be as high as \$5,000 per violation. Civil penalties or criminal prosecution may be pursued instead of or in addition to any administrative action.

The department's authority to assess administrative penalties for the enforcement of Chapter 74 and associated rules is found in §12.020 of the Code. Such penalties can range up to a statutorily imposed maximum of \$5,000 for each violation. Each day that a violation continues or occurs may be considered a separate violation.

The department publishes these Enforcement Guidelines for Commercial and Noncommercial Cotton, including the Commercial and Noncommercial Cotton Administrative Penalty Matrix, to inform the regulated public about the department's enforcement policies for violations of requirements of 4 TAC Chapter 3, Subchapter C and in 4 TAC Chapter 20, Subchapters C and D.

These guidelines describe in general the most likely consequences, as published in Chapter 12 of the Code, of noncompliance with Chapter 74 of the Code and rules adopted under that chapter. These guidelines and the matrix have been developed to encourage consistent, uniform, and fair assessment of penalties by the department's enforcement staff for violations of the aforementioned statutory and rule provisions.

These guidelines do not constitute a policy or rule of general applicability. Under §12.020(d) of the Code, all penalties assessed by the department ultimately must be individualized to the specific nature, circumstances, extent, and gravity (NCEG) and the hazard or potential hazard (HPH) of the violation, and must take into account other factors related to the violation or violator listed in the aforementioned subsection when appropriate. Although the department has determined that in general the NCEG and HPH of the violations described in the matrix, as

well as any other factors, will vary little from case to case for the violations listed therein, thus establishing a prescribed penalty for each such violation type, the actual penalty amount to be assessed in a particular case remains within the department's prosecutorial discretion. That discretion will be informed by those factors and circumstances for a particular violator and violation that might warrant deviation from the prescribed penalty. Thus, in extraordinary circumstances outside the general principles that inform these basic guidelines, the penalties set forth in the matrix may be adjusted upwards or downwards as justice may require.

The department's enforcement staff is authorized to settle disputed claims or address unusual or extraordinary circumstances informally through penalty reductions, probationary periods, deferred penalties, remedial actions in lieu of penalties, or by other appropriate lawful means, at their discretion and subject to approval of the Commissioner or Deputy Commissioner of Agriculture. **The department encourages all respondents to timely respond to notices of violation or other enforcement actions and to submit any information believed to mitigate or negate the alleged violation or which would, as justice requires, warrant reduction or waiver of the penalty. The department's enforcement staff will consider all relevant and responsive information, claims, or contentions submitted in response to an enforcement action before further legal action is taken to enforce the assessed penalty.**

The general principles incorporated into these guidelines, including the matrix, and the department's enforcement responses to violations of Chapter 74 and associated rules are as follows:

1. The standards, prohibitions, duties, or other requirements of Chapter 74 and the rules adopted under the authority of that chapter are considered strict liability laws, unless intent or knowledge is expressly required by the underlying Chapter 74 provision or applicable rule.
2. The prescribed penalties in the first-occurrence column of the matrix, therefore, are generally the minimum penalties to be assessed for unintentional or unknowing noncompliance with a Chapter 74 standard, prohibition, duty, or other requirement. In other words, the department has presumed in determining the amount of the penalty for a first violation, unless otherwise expressly noted, that the noncompliant person acted without intent or knowledge in violating the law. Thus, unless the matrix provision expressly states that a penalty is to be assessed only upon proof that the violation was intentional or knowing, a claim that the noncompliant actor did not intend to commit or did not know they were committing a violation is not a defense and does not constitute a circumstance for which a penalty in this matrix may be reduced or waived.
3. The penalties in the matrix, for all offense levels, also assume no significant, specific, identifiable harm has occurred as the result of the noncompliant conduct. A primary goal of regulation is to deter conduct that may cause harm before harm actually occurs. Thus, conduct that may cause harm will be punished, even when no harm has in fact occurred or cannot be shown to have occurred, in order to deter future noncompliance that may or would result in harm. Regulatory systems are intended to be proactive, not reactive.
4. Because the penalties in the matrix are for noncompliant conduct that is presumed, in the absence of evidence to the contrary, not intentional or knowing and for which no significant, specific, identifiable harm has occurred, the department may, as justice requires, assess penalties greater than specified in the matrix, bound only by the statutory limit, when the evidence demonstrates that the misconduct was knowing, intentional, has caused or will cause significant economic harm to one or more Texas consumers, or is the result of deliberate indifference to or habitual negligence in complying with the law. The amount of any

increase in the penalty will be determined by considering the nature of the intent or knowledge, the amount and nature of the harm, the need for deterrence, and any other relevant factor.

5. A person who has previously been assessed a penalty or license sanction for violating the same or a similar provision of the law or who has received an inspection finding, warning, or other department notice regarding the same or similar noncompliant conduct **may** be presumed to have acted with intent when committing subsequent violations of the same or a similar provision of the law. The consequence of an intentional or knowing violation may be an increase in the penalty above what is prescribed in the matrix. The department, however, will not readily presume intent and a single violation will not automatically result in an allegation of intent absent exceptional circumstances and clear evidence of such intent.

6. The date of a violation is the actual date the violation occurred, the date the violation first began occurring in the case of a continuing violation that occurs over a number of consecutive days, or any date within the period of consecutive days that constitutes a continuing violation, as appropriate to the violation and circumstances.

If the date of first occurrence cannot be determined, the date of the violation is the date the department first discovers the violation (or the date of the first provable violation) and any consecutive day thereafter on which the violation continues (or continued).

7. The department will evaluate whether a prior violation has occurred by consulting the continuous 5-year period immediately preceding the date on which the current violation occurred, or if that date is uncertain the first date on which the violation was discovered by the department, for an order finding that a similar violation was committed by the respondent. The penalty for a subsequent occurrence will be assessed if the department has issued an order within the aforementioned period of time that found the respondent had committed a similar violation. The current violation occurs on the date the respondent failed to comply with the law, including a department order, or if that date is uncertain the first date on which the violation was discovered by the department. A continuous current violation that occurs during a period of consecutive days occurs on any or all days during that period and the department may use the first day, the last day, any other day, or all days of, within, or during that period for purposes of determining when the current violation occurred and the number of individual penalties to assess.

8. Payment of the full amount of an assessed penalty in any form, outside of an authorized settlement agreement, constitutes a waiver of all objections to the department's allegations. All objections, assertions, comments, or qualifications of any kind accompanying any penalty payment shall be considered void and of no effect. No such objection, assertion, or comment shall be acknowledged by or incorporated into the findings of fact or conclusions of law set forth in the order approving payment of the penalty. If a respondent wishes to object to or

otherwise contest any portion of the department's notice of violation, the respondent must request a hearing.

Each no-contest disposition regardless of form shall operate as a prior violation (occurrence) for purposes of future department penalty determinations. Payment of a penalty in full or payment of a penalty in full with one or more objections, assertions, comments, or qualifications by the respondent shall constitute a no-contest disposition, in the absence of a stipulation or hearing determination. Absent withdrawal or rescission of the alleged violation by the department, or an approved settlement, a respondent must request a hearing and obtain a favorable ruling through the hearing process, or by district court or appellate court judgment on appeal, that the violation did not occur to avoid use of the alleged violation as a prior violation (occurrence) or to obtain findings of fact or conclusions of law that incorporate or take into account any objections, assertions, comments, or qualifications proffered by the respondent.

Partial payments of an assessed penalty, absent an authorized settlement, shall be returned and the department shall consider any such failure to pay the full penalty amount to be a request for a hearing.

9. The department does not consider the immediate correction or cessation of noncompliant conduct or correction or removal of noncompliant equipment or products to be a defense or excuse to assessment of a penalty or license sanction. Nothing in this provision, however, shall prevent the department from adopting policies that provide for no penalty or a waiver of penalty upon correction, cessation, or removal of noncompliance in particular circumstances.

These guidelines, including the matrix, are based on current circumstances, including extant information, laws, and department policies. As the enforcement of these types of violations continues and additional data are gathered, these guidelines will be reviewed and may be adjusted from time to time to reflect any changes in the circumstances on which it is based. Such modifications may be implemented retroactively, to the extent permitted by law, or become effective, at the department's discretion, prior to, concurrent with, after or at the end of a specific time period following publication.

This matrix is effective immediately upon publication in the *Texas Register* and supersedes the Cotton Administrative Penalty Matrix as published in the August 12, 2005, issue of the *Texas Register* (30 TexReg 4715) and the Prohibited Noncommercial Cotton Administrative Penalty Matrix as published in the July 17, 2009, issue of the *Texas Register* (34 TexReg 4749) for those violations committed on or after the date of its publication.

For purposes of these Guidelines "Respondent" means a person who is alleged to have or has committed a violation.

**Commercial and Noncommercial Cotton Administrative Penalty Matrix**

Source Law	Violation	First Offense <sup>1,2</sup> - Penalty Description	Subsequent Offenses <sup>1,2</sup> - Penalty Description
\$20.22 <sup>7</sup> \$74.0031 <sup>4</sup>	Failure to comply with cotton stalk destruction requirements (Pest Management Zones 9 and 10 only)	If compliant within seven days of receipt of written notification by the department and the producer has NOT been issued a Notice of Noncompliance or a warning letter, or a Notice of Violation in any of the previous five years, a Notice of Noncompliance;  If compliant within seven days of receipt of written notification by the department and the producer has been issued a Notice of Noncompliance or a warning letter, or a Notice of Violation in any of the previous five years, \$250 per field;  Otherwise, \$250 per field plus \$0.50 per acre per day of noncompliance <sup>8</sup>	If compliant within seven days of receipt of written notification by the department, \$250 per field;  Otherwise, \$250 per field plus \$0.50 per acre per day of noncompliance <sup>8</sup>
\$20.30 <sup>7</sup> \$74.0032 <sup>4</sup>	Failure to pay Hostable Commercial Cotton Fee assessment (Pest Management Zones 1 - 8 only)	200% of required fee plus \$250 <sup>9</sup>  or  Payment of the required fee and a two-year probation with deferred penalty of 100% of the required fee plus \$250 <sup>9</sup>	200% of required fee plus \$1,000 <sup>9</sup>  or  Payment of the required fee and a two-year probation with deferred penalty of 100% of the required fee plus \$500 <sup>9</sup>
\$20.31 <sup>7</sup> \$74.0032 <sup>4</sup>	Failure to pay Hostable Noncommercial Cotton Fee assessment for hostable noncommercial cotton	200% of required fee plus \$250 <sup>9</sup>  or  Payment of the required fee and a two-year probation with deferred penalty of 100% of the required fee plus \$250 <sup>10</sup>	200% of required fee plus \$1,000 <sup>10</sup>  or  Payment of the required fee and a two-year probation with deferred penalty of 100% of the required fee plus \$500 <sup>9</sup>
\$20.31 <sup>7</sup> \$74.0032 <sup>4</sup>	Failure to destroy hostable noncommercial cotton not located in a crop field or commercial cotton field	200% of required fee plus \$250 <sup>9</sup>  or  Payment of the required fee and a two-year probation with deferred penalty of 100% of the required fee plus \$250 <sup>10</sup>	200% of required fee plus \$1,000 <sup>10</sup>  or  Payment of the required fee and a two-year probation with deferred penalty of 100% of the required fee plus \$500 <sup>9</sup>



§3.52(c) <sup>2</sup> §3.54(a) <sup>3</sup> §74.118 <sup>4</sup>	Planting noncommercial cotton in a Boll Weevil Eradication Zone without a permit	If compliant within seven days of receipt of written notification of violation, a Notice of Noncompliance <sup>5</sup> Otherwise, \$1,000 <sup>5</sup>	\$5,000 <sup>5</sup>
§3.52(c) <sup>3</sup> §74.118 <sup>4</sup> Various	Violation of a provision of a noncommercial cotton permit Any other violation of requirements either in Chapter 74 of the Texas Agriculture Code, or in Chapter 3 or Chapter 20 of the Texas Administrative Code	\$2,500 <sup>6</sup> \$50 - \$5,000	\$5,000 <sup>6</sup> \$50 - \$5,000

<sup>1</sup> Each day a violation continues or occurs may be considered a separate violation for purposes of penalty assessments.

<sup>2</sup> An offense shall be considered a subsequent offense if the responsible party has been the subject of any final order for one or more violations of the same requirement during the five years immediately preceding the initial inspection for the current offense. If a field in any zone is brought into compliance within seven days of the date of notification by the department, no penalty will be assessed unless the producer has been issued a Notice of Noncompliance or a warning letter, or a Notice of Violation in any of the previous five years.

<sup>3</sup> Texas Administrative Code (Rule), Title 4, Chapter 3, Boll Weevil Eradication Program

<sup>4</sup> Texas Agriculture Code (the Code), Chapter 74, Cotton Diseases and Pests

<sup>5</sup> In addition to any Notice of Noncompliance or administrative penalty, the department also shall require that the noncommercial cotton either be covered by a Noncommercial Cotton Permit or be destroyed. Per Rule §3.54(c), if the department has to destroy the cotton, in addition to any administrative penalty, the grower shall reimburse all costs incurred by the department in the destruction of the cotton.

<sup>6</sup> In addition to any administrative penalty, the department also shall require that the violation be corrected or that the noncommercial cotton be destroyed. Per the Code §74.004(e), if the department has to destroy the cotton, in addition to any administrative penalty, the farm owner or operator shall reimburse the department for 1-1/2 times the actual costs required for destruction.

<sup>7</sup> Texas Administrative Code, Title 4, Chapter 20, Cotton Pest Control

<sup>8</sup> In addition to any administrative penalty, the department also shall require that the commercial cotton be destroyed. Per the Code §74.004(e), if the department has to destroy the cotton, in addition to any administrative penalty, the farm owner or operator shall reimburse the department for 1-1/2 times the actual costs required for destruction.

<sup>9</sup> Penalty is in addition to any Hostable Commercial Cotton Fee due. Per Rule §20.30(7), if it becomes necessary for the department to contract with someone to destroy the hostable cotton, the cotton grower must reimburse the department for 150% of the actual costs required for destruction.

<sup>10</sup> Penalty is in addition to any Hostable Noncommercial Cotton Fee due and to requirement that the owner of the noncommercial cotton destroy the noncommercial cotton. Per the Code §74.004(e), when the cotton is located in a crop field that is not a commercial cotton field, if the department has to destroy the cotton, in addition to any administrative penalty, the farm owner or operator shall reimburse the department for 1-1/2 times the actual costs required for destruction. Per Rule §20.31(c)(2), when the cotton is not located in a crop field or commercial cotton field, if it becomes necessary for the department to contract with someone to destroy the hostable noncommercial cotton, the department may charge the landowner 150% of the actual destruction costs.



## 2012 Egg Administrative Penalty Matrix and Egg Law Enforcement Guidelines

The Texas Legislature, under Chapter 132 of the Texas Agriculture Code (Code), has given the Texas Department of Agriculture (the department) the authority and responsibility to monitor and regulate eggs in Texas. The department's regulatory goals are to provide consumers and businesses with a fair and efficient trade environment, to encourage business development, and to inspire consumer confidence. To achieve these goals, the department enforces grading, sizing and temperature standards set by the USDA, and labeling requirements set by rule, or other requirements through routine and risk-based inspections.

Department enforcement occurs through administrative actions, including stop sales and by direct enforcement with monetary administrative penalties or license sanctions. In instances of serious fraud, widespread deliberate violation of the law, or repeat offenders who have failed to be deterred through administrative action, the matter may be referred to the Office of the Attorney General for assessment of civil penalties or to a local district or county attorney for assessment of civil penalties, criminal prosecution, or both. Civil penalties under Chapter 132 can be as high as \$500 per violation. Referral for civil penalties or criminal prosecution may be pursued instead of or in addition to any administrative or direct enforcement action.

The department's authority to assess administrative penalties for the enforcement of Chapter 132 and associated rules is found in §12.020 of the Code. Such penalties can range up to a statutorily imposed maximum of \$5,000 for each violation. Each day that a violation continues or occurs may be considered a separate violation. Each transaction may be considered a separate violation and, under certain circumstances, each document involved in a transaction also may be considered a separate violation. Given the wide variety of possible egg industry transactions, the department cannot describe all possible circumstances that would constitute a separate violation for which the maximum penalty may be assessed.

The department publishes these Egg Law Enforcement Guidelines, including the Egg Law Penalty and Sanction Matrix, to inform the regulated public about the department's enforcement policies. These guidelines describe in general the most likely consequences of noncompliance with Chapter 132 of the Code and rules adopted under that chapter, found in 4 TAC Chapter 15. These guidelines and the matrix have been developed to encourage consistent, uniform, and fair assessment of penalties by the department's enforcement staff for violations of the aforementioned statutory and rule provisions.

These guidelines do not constitute a policy or rule of general applicability. Under §12.020(d) of the Code, all penalties assessed by the department ultimately must be individualized to the specific nature, circumstances, extent, and gravity (NCEG) and the hazard or potential hazard (HPH) of the violation, and must take into account other factors related to the violation or violator listed in the aforementioned subsection when appropriate. Although the department has determined that in general the NCEG and HPH of the violations described in the matrix, as well as any other factors, will vary little from case to case for the violations listed therein, thus establishing a prescribed penalty for each such violation type, the actual penalty amount to be assessed in a particular case remains within the department's prosecutorial discretion. That

discretion will be informed by those factors and circumstances for a particular violator and violation that might warrant deviation from the prescribed penalty. Thus, in extraordinary circumstances outside the general principles that inform these basic guidelines, the penalties set forth in the matrix may be adjusted upwards or downwards as justice may require.

The department's enforcement staff is authorized to settle disputed claims or address unusual or extraordinary circumstances informally through penalty reductions, probationary periods, deferred penalties, remedial actions in lieu of penalties, or by other appropriate lawful means, at their discretion and subject to approval of the Commissioner or Deputy Commissioner of Agriculture. **The department encourages all respondents to timely respond to notices of violation or other enforcement actions and to submit any information believed to mitigate or negate the alleged violation or which would, as justice requires, warrant reduction or waiver of the penalty. The department's enforcement staff will consider all relevant and responsive information, claims, or contentions submitted in response to an enforcement action before further legal action is taken to enforce the assessed penalty.**

The general principles incorporated into these guidelines, including the matrix, and the department's enforcement responses to violations of Chapter 132 and associated rules are as follows:

1. The standards, prohibitions, duties, or other requirements of Chapter 132 and the rules adopted under the authority of that chapter are considered strict liability laws, unless intent or knowledge is expressly required by the underlying Chapter 132 provision or applicable rule.
2. The prescribed penalties in the matrix, therefore, are generally the minimum penalties to be assessed for unintentional or unknowing non-compliance with a Chapter 132 standard, prohibition, duty, or other requirement. In other words, the department has presumed in determining the amount of the penalty for any violation, unless otherwise expressly noted, that the noncompliant person acted without intent or knowledge in violating the law. Thus, unless the matrix provision expressly states that a penalty is to be assessed only upon proof that the violation was intentional or knowing, a claim that the noncompliant actor did not intend to commit or did not know they were committing a violation is not a defense and does not constitute a circumstance for which a penalty in this matrix may be reduced or waived.
3. The penalties in the matrix, for all offenses, also assume no significant, specific, identifiable harm has occurred as the result of the non-compliant conduct. A primary goal of regulation is to deter conduct that may cause harm before harm actually occurs. Thus, conduct that may cause harm will be punished, even when no harm has in fact occurred or cannot be shown to have occurred, in order to deter future noncompliance that may or would result in harm. Regulatory systems are intended to be proactive, not reactive.
4. Because the penalties in the matrix are for noncompliant conduct that is presumed, in the absence of evidence to the contrary, not intentional or knowing and for which no significant, specific, identifiable harm has occurred, the department may, as justice requires, assess penalties greater than specified in the matrix, bound only by the statutory limit, when the evidence demonstrates that the misconduct was knowing, intentional, has caused or will cause significant economic harm to one or more Texas consumers, or is the result of deliberate indifference to or habitual negligence in complying with the law. The amount of any increase in the penalty will be determined by considering the nature of the intent or knowledge, the amount and nature of the harm, the need for deterrence, and any other relevant factor.
5. A person who has previously been assessed a penalty or license sanction for violating the same or a similar provision of the law or who

has received an inspection finding, warning, or other department notice regarding the same or similar noncompliant conduct **may** be presumed to have acted with intent when committing subsequent violations of the same or a similar provision of the law. The consequence of an intentional or knowing violation may be an increase in the penalty above what is prescribed in the matrix. The department, however, will not readily presume intent and a single violation will not automatically result in an allegation of intent absent exceptional circumstances and clear evidence of such intent.

6. The department evaluates prior violations at the client or owner level, not the managerial level. In other words, for a single legal entity operating multiple separate locations, whether concurrently or sequentially, a violation at any one location will be considered a prior violation with respect to any future violation(s) committed by that same entity at the same or a different location. For many violations, however, the penalty remains a flat amount across multiple subsequent violations and the penalty amount for such violations will not automatically increase as the result of a prior violation absent clear evidence demonstrating that the misconduct was knowing, intentional, has caused or will cause significant economic harm to one or more Texas consumers, or is the result of deliberate indifference to or habitual negligence in complying with the law.

7. The date of a violation is the actual date the violation occurred, the date the violation first began occurring in the case of a continuing violation that occurs over a number of consecutive days, or any date within the period of consecutive days that constitutes a continuing violation, as appropriate to the violation and circumstances.

If the date of first occurrence cannot be determined, the date of the violation is the date the department first discovers the violation (or the date of the first provable violation) and any consecutive day thereafter on which the violation continues (or continued).

8. In determining whether a particular entity has a prior violation, the department will review the five-year time period immediately preceding the date of the current violation. A violation is a prior violation only if an alleged violation resulted in an order finding that a violation in fact occurred or if an entity has agreed, in a no-contest plea regarding a prior alleged violation, that the prior alleged violation would operate in the future as a prior violation for purposes of department penalty determinations.

9. Payment of the full amount of an assessed penalty in any form, outside of an authorized settlement agreement, constitutes a waiver of all objections to the department's allegations. All objections, assertions, comments, or qualifications of any kind accompanying any penalty payment shall be considered void and of no effect. No such objection, assertion, or comment shall be acknowledged by or incorporated into the findings of fact or conclusions of law set forth in the order approving payment of the penalty. If a respondent wishes to object to or

otherwise contest any portion of the department's notice of violation, the respondent must request a hearing.

Each no-contest disposition regardless of form shall operate as a prior violation (occurrence) for purposes of future department penalty determinations. Payment of a penalty in full or payment of a penalty in full with one or more objections, assertions, comments, or qualifications by the respondent shall constitute a no-contest disposition, in the absence of a stipulation or hearing determination. Absent withdrawal or rescission of the alleged violation by the department, or an approved settlement, a respondent must request a hearing and obtain a favorable ruling through the hearing process, or by district court or appellate court judgment on appeal, that the violation did not occur to avoid use of the alleged violation as a prior violation (occurrence) or to obtain findings of fact or conclusions of law that incorporate or take into account any objections, assertions, comments, or qualifications proffered by the respondent.

Partial payments of an assessed penalty, absent an authorized settlement, shall be returned and the department shall consider any such failure to pay the full penalty amount to be a request for a hearing.

10. The department does not consider the immediate correction or cessation of noncompliant conduct or correction or removal of noncompliant equipment or products to be a defense or excuse to assessment of a penalty or license sanction. Nothing in this provision, however, shall prevent the department from adopting policies that provide for no penalty or a waiver of penalty upon correction, cessation, or removal of noncompliance in particular circumstances.

These guidelines, including the matrix, are based on current circumstances, including extant information, laws, and department policies. As the enforcement of these types of violations continues and additional data are gathered, these guidelines will be reviewed and may be adjusted from time to time to reflect any changes in the circumstances on which it is based. Such modifications may be implemented retroactively, to the extent permitted by law, or become effective, at the department's discretion, prior to, concurrent with, or at after the end of a specific time period following publication.

This matrix is effective immediately upon publication in the *Texas Register* and supersedes the Egg Administrative Penalty Matrix as published in the October 21, 2005, issue of the *Texas Register* (30 TexReg 6945) for those violations committed on or after the date of its publication.

For purposes of these Guidelines "Respondent" means a person who is alleged to have or has committed a violation.

**Egg Administrative Penalty and Sanction Matrix**

<b>Source Law</b>	<b>Violation</b>	<b>First Offense - Penalty Description</b>	<b>Subsequent Offenses - Penalty Description</b>
§132.071(b) <sup>2</sup>	Selling eggs in violation of a Stop Sale Order.		\$5,000 <sup>9</sup>
§132.004 <sup>2</sup> §132.045 <sup>2</sup> §132.046 <sup>2</sup> §132.082(a) <sup>2</sup> §15.7 <sup>1</sup> §15.6 <sup>3</sup>	Failure to meet standards of quality, grade, and/or size.	<p>If failed to handle eggs under reasonably sanitary conditions. \$2,500<sup>9</sup></p> <p>If eggs are not shipped under refrigeration, stored or maintained at the temperature set by USDA or FDA. \$2,500<sup>9</sup></p> <p>If shipped eggs packed ready for retail sale are not at least grade "A". \$1,000<sup>9</sup></p> <p>If shipped eggs in Texas are not inspected or graded before being offered for retail sale. \$1,000<sup>9</sup></p> <p>If inedible<sup>6</sup> eggs are offered for sale. \$1,500<sup>9</sup></p>	<p>If failing to handle egg under reasonably sanitary conditions. \$5,000<sup>9</sup></p> <p>If eggs are not shipped under refrigeration, stored or maintained at the temperature set by the department. \$5,000<sup>9</sup></p> <p>If shipped eggs packed ready for retail sale are not at least grade "A". \$1,500<sup>9</sup></p> <p>If shipped eggs in Texas are not inspected or graded before being offered for retail sale. \$1,500<sup>9</sup></p> <p>If inedible<sup>6</sup> eggs are offered for sale. \$5,000<sup>9</sup></p>
§132.041 <sup>2</sup> §132.042 <sup>2</sup>	Offering graded eggs for sale that are not graded by consumer grade and weight classes.	<p>If eggs are graded or sized using a method other than by candling and weighing: \$1,000<sup>9</sup></p> <p>If eggs are not graded and weighed in accordance to sales towards consumers or wholesalers. \$1,000<sup>9</sup></p>	<p>Grading or sizing eggs by a method other than by candling and weighing. Stop-sale and \$1,500</p> <p>If eggs are not graded and weighed in accordance to sales towards consumers or wholesalers. \$1,500<sup>9</sup></p>
§132.044(a,b) <sup>2</sup> §132.047 <sup>2</sup> §15.7 <sup>1</sup> §15.8 <sup>3</sup>	Improper labeling <sup>7</sup> .	<p>If label does not state one or more of the following items: either a Texas egg license number or USDA plant number, grade, size, or quantity of eggs. \$500<sup>9</sup></p> <p>If label makes reference to grade type other than that claimed. \$500<sup>9</sup></p> <p>Stock carton does not contain in legible print one or more of the following items: grade, size, Texas license number, street address, city, or state of packing plant. \$200<sup>9</sup></p> <p>Loose-pack case for retail or wholesale does not include label identifying, in legible boldface capital type or print one or more of the following: size and grade of eggs (if graded) or Texas egg license number, street address; city; or state. \$500<sup>9</sup></p>	<p>If label does not state one or more of the following items: either a Texas egg license number or USDA plant number, grade, size, or quantity of eggs. \$1,000<sup>9</sup></p> <p>If label makes reference to grade type other than that claimed. \$1,000<sup>9</sup></p> <p>Stock carton does not contain in legible print one or more of the following items: grade, size, Texas license number, street address, city, or state of packing plant. \$500<sup>9</sup></p> <p>Loose-pack case for retail or wholesale does not include label identifying, in legible boldface capital type or print one or more of the following: size and grade of eggs (if graded) or Texas egg license number; street address; city; or state. \$1,500<sup>9</sup></p>
		Failure of each breakaway portion of a container to	Failure of each breakaway portion of a container to

			contain full information about one or more of the following: size and grade; quantity of eggs in divided portion; or Texas egg license number, street address, city, and state of grader/packer. \$1,000 <sup>9</sup>
			Failure to label eggs as ungraded where appropriate followed by producer's name, only when packed by producer and sold directly to consumer or licensee offering ungraded eggs for sale. \$1,000 <sup>9</sup>
§132.044(b) <sup>2</sup>	Misleading the consumer.		Advertising or selling shell eggs below grade "A" by advertising as fresh, yard, selected, henmy, etc. or words having a similar meaning. \$500 <sup>9</sup>
§132.084(a)(1,2) <sup>2</sup>			Advertising eggs by price without indicating the full, correct and unabbreviated designation of size and grade. \$500 <sup>9</sup>
§15.12 <sup>3</sup>			Failure to make records available for department inspection. \$500 <sup>9</sup>
§132.005(b) <sup>2</sup>	Impeding departmental powers.		Denial of access to business during normal business hours to take samples of eggs and containers. \$2,500 for each day during which the person refuses to permit access.
§132.006 <sup>4</sup>			plus, at the department's discretion, suspension or revocation of license.
§132.061(c) <sup>2</sup>			Failure of a licensed dealer/wholesaler or processor to keep on file for two years a complete record of all eggs bought or sold, including name of person to whom sold or from whom bought, number of cases in each transaction, and/or the date of the transaction.
§132.072(b) <sup>2</sup>			For each reporting period, up to maximum of \$1,500: Dealer/Wholesaler Class 1-5 \$500 Class 6-12 \$1,000 Processor Class 1-2 \$500 Class 3-4 \$1,000 Broker Up to 270 Cases \$500 More than 270 Cases \$1,000
§132.061 <sup>2</sup>	Failure to provide or maintain accurate records or reports.		Failure of a licensed dealer/wholesaler or processor to keep on file for two years a complete record of all eggs bought or sold, including name of person to whom sold or from whom bought, number of cases in each transaction, and/or the date of the transaction.
§132.062 <sup>2</sup>			For each reporting period, up to maximum of \$1,500: Dealer/Wholesaler Class 1-5 \$250 Class 6-12 \$500 Processor Class 1-2 \$250 Class 3-4 \$500 Broker Up to 270 Cases \$250 More than 270 Cases \$500
§15.9 <sup>3</sup>			

		<p>Failure of licensed dealer/wholesaler or processor to deliver with each transaction or to keep a copy of a signed invoice listing date, quantity, grade and size of eggs sold. \$1,000</p> <p>Failure to submit<sup>8</sup> monthly or quarterly report prior to the eleventh day following the reporting period.</p> <p>For each reporting period, up to maximum of \$1,500:</p> <p>Dealer/Wholesaler</p> <p>Class 1-3 \$100</p> <p>Class 4-6 \$200</p> <p>Class 7-8 \$500</p> <p>Class 9-11 \$700</p> <p>Class 12 \$850</p> <p>Processor</p> <p>Class 1 \$100</p> <p>Class 2-3 \$200</p> <p>Class 4 \$500</p> <p>Broker</p> <p>1-99 Cases \$100</p> <p>100-999 Cases \$200</p> <p>1,000-2,999 Cases \$500</p> <p>3,000-9,999 Cases \$700</p> <p>10,000 Cases or more \$850</p> <p>Failure of a licensed dealer/wholesaler or processor to accurately report egg business during any month/quarter. \$500</p>	<p>Failure of licensed dealer/wholesaler or processor to deliver with each transaction or to keep a copy of a signed invoice listing date, quantity, grade and size of eggs sold. \$1,500</p> <p>Failure to submit<sup>8</sup> monthly or quarterly report prior to the eleventh day following the reporting period.</p> <p>For each reporting period, up to maximum of \$1,500:</p> <p>Dealer/Wholesaler</p> <p>Class 1-3 \$200</p> <p>Class 4-6 \$350</p> <p>Class 7-8 \$750</p> <p>Class 9-11 \$850</p> <p>Class 12 \$1,000</p> <p>Processor</p> <p>Class 1 \$250</p> <p>Class 2-3 \$400</p> <p>Class 4 \$800</p> <p>Broker</p> <p>1-99 Cases \$200</p> <p>100-999 Cases \$350</p> <p>1,000-2,999 Cases \$750</p> <p>3,000-9,999 Cases \$850</p> <p>10,000 Cases or more \$1,000</p> <p>Failure of a licensed dealer/wholesaler or processor to accurately report egg business during any month/quarter. \$1,000</p>
<p>§132.021(a)<sup>2</sup></p> <p>§132.022<sup>2</sup></p> <p>§132.024<sup>2</sup></p> <p>§132.025<sup>2</sup></p> <p>§15.2(a)<sup>3</sup></p> <p>§15.3<sup>3</sup></p>	<p>Failure to be properly licensed.</p>	<p>Buying or selling eggs in Texas without first obtaining a license. \$1,500<sup>4</sup></p> <p>Selling eggs with a license that is expired for a time period of one year or more. \$2,000 (penalty is in addition to any registration fee due)</p> <p>Selling eggs with a license that is expired for a time period less than one year. \$500 (penalty is in addition to any registration or late fee due)</p> <p>Failure of dealer/wholesaler or processor to obtain a separate license for each separate facility from which eggs are graded, stored, or processed. \$1,000</p>	<p>Buying or selling eggs in Texas without first obtaining a license. \$2,500<sup>9</sup></p> <p>Selling eggs with a license that is expired for a time period of one year or more. \$3,000<sup>9</sup> (penalty is in addition to any registration fee due)</p> <p>Selling eggs with a license that is expired for a time period less than one year. \$1,000<sup>9</sup> (penalty is in addition to any registration or late fee due)</p> <p>Failure of dealer/wholesaler or processor to obtain a separate license for each separate facility from which eggs are graded, stored, or processed. \$2,000<sup>9</sup></p>

§132.006(a,b) <sup>2</sup> §132.025(b) <sup>2</sup> §15.4 <sup>3</sup> §15.5(c) <sup>3</sup>	Failure to pay required fee or out of state expenses.	Entity required to pay either 200% of required fee/out of state expenses plus \$350 <sup>5</sup> .	200% of the required fee/out of state of state expenses plus \$1,000 multiplied by the number of previous violations within the continuous five-year period immediately preceding the date of the current violation, not to exceed \$2,500
§15.11 <sup>3</sup>	Failure to meet retail egg replacement guidelines.	\$1,000 <sup>9</sup>	plus, at the department's discretion, suspension or revocation of license.
Various	Failure to comply with any requirement of Texas Agriculture Code or department rules adopted under the authority of that chapter which is not specifically stated herein.	\$50 - \$5,000	\$50 - \$5,000 plus, at the department's discretion, suspension or revocation of license.

<sup>1</sup> The department will evaluate whether a current violation is considered to be a "subsequent offense" by consulting the continuous five-year period immediately preceding the date on which the current violation occurred, or if that date is uncertain the first date on which the violation was discovered by the department, for an order finding that a similar violation was committed by the respondent. The penalty for a subsequent offense will be assessed if the department has issued an order within the aforementioned period of time that found the respondent had committed a similar violation or that approved a no-contest plea to the same or a similar violation. The current violation occurs on the date the respondent failed to comply with the law, including a department order, or if that date is uncertain the first date on which the violation was discovered by the department. A continuous current violation that occurs during a period of consecutive days occurs on any or all days during that period and the department may use the first day, the last day, any other day, or all days of, within, or during that period for purposes of determining when the current violation occurred and the number of individual penalties to assess.

<sup>2</sup> Texas Agriculture Code

<sup>3</sup> Texas Administrative Code (Title 4, Part 1)

<sup>4</sup> Each facility is considered a separate violation.

<sup>5</sup> If respondent agrees to pay the required fees or out of state expenses, the department may offer a settlement agreement reducing the penalty.

<sup>6</sup> Inedible eggs are: leakers; black rots; mixed rots; white rots; added eggs; incubated eggs; eggs showing blood rings; eggs containing embryo chicks (at or beyond the blood ring state); and any eggs made unfit for human consumption by treatment or addition of a foreign substance or one-half of more of the shell's surface covered by a permanent black, dark purple or dark blue dye, or due to causes other than those listed in Code §132.082(a) and 4 TAC §15.1(7) and §15.1(10).

<sup>7</sup> Does not apply to label exemptions approved by the Texas Department of Agriculture.

<sup>8</sup> For the purpose of this violation, submitted has the same meaning as received by the department.

<sup>9</sup> In addition to a stop-sale of the eggs.

TRD-201200336  
Dolores Alvarado Hibbs  
General Counsel  
Texas Department of Agriculture  
Filed: January 25, 2012

◆ ◆ ◆  
**Office of the Attorney General**

**Texas Water Code and Texas Health and Safety Code  
Settlement Notice**

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Water Code and the Texas Health and Safety Code. Before the State may settle a judicial enforcement action under the 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 Texas Water Code and the Texas Health and Safety Code.

Case Title and Court: *Harris County, Texas and the State of Texas acting on behalf of the Texas Commission on Environmental Quality v. Agrifos Fertilizer L.L.C.*, Cause No. 2011-72100; in the 129th Judicial District Court, Harris County, Texas.

Nature of Defendant's Operations: Defendant owns and operates a phosphate fertilizer manufacturing facility in Harris County. Defendant is authorized to discharge certain air pollutants from its facility in accordance with its permit as issued by the TCEQ. According to reports submitted by Defendant, the Defendant discharged air contaminants, including ammonia gas above the limit set forth in its permit. The Defendant also failed to properly notify Harris County within 24 hours of a release of air contaminants, as required by law.

Proposed Agreed Judgment: The Agreed Final Judgment orders the Defendant to pay \$18,750 in civil penalties, to be divided equally between Harris County and the State of Texas. In addition, the Defendant will pay \$1,500 in attorney's fees to Harris County, and \$1,500 in attorneys fees to the State of Texas, plus all court costs.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement, should be directed to Ryan P. Fite, Assistant Attorney General, Office of the Texas Attorney General, P. O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

*For information regarding this publication, contact Zindia Thomas, Agency Liaison, at (512) 936-9901.*

TRD-201200344  
Jay Dyer  
Deputy Attorney General  
Office of the Attorney General  
Filed: January 25, 2012

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**Cancer Prevention and Research Institute of  
Texas**

Request for Applications R-12-RTR-1 Recruitment of  
Investigators Performing Translational Research

The Cancer Prevention and Research Institute of Texas (CPRIT) seeks grant applications from qualified organizations located in the State of Texas to support investigators performing translational research who have the ability to make outstanding contributions to the field of cancer research, promote inquiry into new areas, foster collaboration, and stimulate growth in the field. This request for applications specifically addresses the recognized shortage of investigators performing translational research. Applicants may address any research topic or issue related to cancer biology, causation, prevention, detection or screening, treatment, or cure by conducting studies that bridge the gap between mechanistically oriented, laboratory-based cancer research and its ultimate clinical application. Institutions must apply for a specific candidate. Unless the candidate is a newly independent investigator, the candidate must not reside in Texas at the time the application is submitted. Successful applicants would be eligible for a grant award of up to \$7,500,000 depending upon experience level for a period not to exceed five years. A request for applications is available online at [www.cprit.state.tx.us](http://www.cprit.state.tx.us). Applications must be submitted via the CPRIT Application Receipt System ([www.CPRITGrants.org](http://www.CPRITGrants.org)). Only applications submitted at this portal will be considered eligible for evaluation. This is an ongoing grant opportunity with no deadline for applications.

TRD-201200226  
William "Bill" Gimson  
Executive Director  
Cancer Prevention and Research Institute of Texas  
Filed: January 19, 2012

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**Office of Consumer Credit Commissioner**

**Notice of Rate Ceilings**

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 01/30/12 - 02/05/12 is 18% for Consumer<sup>1</sup>/Agricultural/Commercial<sup>2</sup> credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 01/30/12 - 02/05/12 is 18% for Commercial over \$250,000.

<sup>1</sup> Credit for personal, family or household use.

<sup>2</sup> Credit for business, commercial, investment or other similar purpose.

TRD-201200304  
Leslie L. Pettijohn  
Commissioner  
Office of Consumer Credit Commissioner  
Filed: January 23, 2012

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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 (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes,



which in this case is March 5, 2012. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on March 5, 2012. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: AAA Sanitation, Incorporated; DOCKET NUMBER: 2011-1642-SLG-E; IDENTIFIER: RN100632249; LOCATION: Tyler, Henderson County; TYPE OF FACILITY: beneficial land use site; RULE VIOLATED: Permit Number 04551, Section IV, General Requirements Number C.7. and 30 TAC §312.11(j), by failing to submit written notice and receive authorization from the TCEQ of any changes to the source of sewage sludge; Permit Number 04551, Section III, General Description and Location of Site and 30 TAC §312.42(a) and §312.44(e), by failing to land apply sewage sludge at an annual rate not to exceed 1.96 dry tons per acre per year; and Permit Number 04551, Section XI, Reporting Requirements Number A.4 and 30 TAC §305.125(1), by failing to properly report the type of waste disposed of at the facility on the annual summary report; PENALTY: \$12,960; ENFORCEMENT COORDINATOR: Jorge Ibarra, P.E., (817) 588-5890; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(2) COMPANY: Air Products LLC; DOCKET NUMBER: 2011-1886-AIR-E; IDENTIFIER: RN100221324; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §122.143(4) and §122.146(2), Federal Operating Permit (FOP) Number O-02309, General Terms and Conditions (GTC), and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit an annual compliance certification for the period of July 1, 2009 - June 30, 2010 by July 30, 2010; 30 TAC §122.143(4) and (15) and §122.165(a)(7), FOP Number O-02309, GTC, and THSC, §382.085(b), by failing to certify the deviation report dated January 21, 2010 for the period of July 1, 2009 - December 31, 2009; 30 TAC §117.345(b)(1) and §122.143(4), FOP Number O-01675, Special Terms and Conditions (STC) 1.A., and THSC, §382.085(b), by failing to submit the notification 15 days prior to the compliance emissions stack test conducted on May 21, 2009 for Boiler 15.20 (Emission Point Number (EPN) 801); and 30 TAC §117.9020(2)(C)(i) and §122.143(4), FOP Number O-01675, STC 1.A., and THSC, §382.085(b), by failing to conduct an initial stack test on Boiler 15.20 (EPN 801) by the March 31, 2007 deadline; PENALTY: \$7,930; ENFORCEMENT COORDINATOR: Miriam Hall, (512) 239-1044; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: Alibhai Bahadurali dba HUB Food Store; DOCKET NUMBER: 2011-1898-PST-E; IDENTIFIER: RN101547677; LO-

CATION: Dallas, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tank for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$2,000; ENFORCEMENT COORDINATOR: Aaron Benmark, (512) 239-2569; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: AL-ROYAL INCORPORATED dba T.J.'s Grocery and Market; DOCKET NUMBER: 2011-1539-PST-E; IDENTIFIER: RN101728830; LOCATION: Navasota, Grimes County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2)(A) and TWC, §26.3475(a), by failing to conduct proper release detection for the piping associated with the underground storage tank system; PENALTY: \$2,004; ENFORCEMENT COORDINATOR: Andrea Linson, (512) 239-1482; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(5) COMPANY: Aqua Texas, Incorporated; DOCKET NUMBER: 2011-2022-PWS-E; IDENTIFIER: RN102691771; LOCATION: Wimberly, Hays County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(r), by failing to operate the facility to maintain a minimum pressure of 35 pounds per square inch (psi) throughout the distribution system under normal operating conditions and a minimum pressure of 20 psi during emergencies such as fire fighting; PENALTY: \$312; ENFORCEMENT COORDINATOR: Epifanio Villareal, (361) 825-3425; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(6) COMPANY: Ascend Performance Materials LLC; DOCKET NUMBER: 2011-1808-AIR-E; IDENTIFIER: RN100238682; LOCATION: Alvin, Brazoria County; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §116.115(c) and §122.143(4), New Source Review Permit Number 2271, Special Conditions Number 1, Federal Operating Permit Number O-01258, Special Terms and Conditions Number 19, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions of 4,793.00 pounds of ammonia from pressure relief valve PSV-316 during an emissions event (Incident Number 155268) lasting three hours and 50 minutes on June 4, 2011; PENALTY: \$10,000; ENFORCEMENT COORDINATOR: Miriam Hall, (512) 239-1044; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(7) COMPANY: BFI WASTE SERVICES OF TEXAS, LP; DOCKET NUMBER: 2011-1698-PST-E; IDENTIFIER: RN102258159; LOCATION: Houston, Harris County; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to timely renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the UST; and 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the UST for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$4,738; Supplemental Environmental Project offset amount of \$1,895 applied to Gulf Coast Waste Disposal Authority, River, Lakes, Bays, and Bayous Trash Bash; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(8) COMPANY: Blinn College; DOCKET NUMBER: 2011-1592-PST-E; IDENTIFIER: RN101671485; LOCATION: Brenham, Washington County; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$2,500; ENFORCEMENT COORDINATOR: Jaime Geil, (512) 239-5717; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(9) COMPANY: Bravo Aviation, L.L.C.; DOCKET NUMBER: 2011-1704-PST-E; IDENTIFIER: RN106186646; LOCATION: Jasper, Jasper County; TYPE OF FACILITY: aircraft refueling; RULE VIOLATED: 30 TAC §334.127(a)(1), by failing to register with the agency all aboveground storage tanks (ASTs) in existence on or after September 1, 1989; and 30 TAC §334.125(b), by failing to make available to a common carrier a valid, current TCEQ tank registration certificate before accepting delivery of a regulated substance into the ASTs; PENALTY: \$1,500; ENFORCEMENT COORDINATOR: Wallace Myers, (512) 239-6580; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(10) COMPANY: CASMITH, INCORPORATED dba N-N-Out Convenience Store; DOCKET NUMBER: 2011-1861-PST-E; IDENTIFIER: RN102715604; LOCATION: Odessa, Ector County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the piping associated with the underground storage tanks; PENALTY: \$1,129; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5825; REGIONAL OFFICE: 9900 West IH 20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(11) COMPANY: City of Brazoria; DOCKET NUMBER: 2011-1529-MWD-E; IDENTIFIER: RN101613552; LOCATION: Brazoria, Brazoria County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0014581001, Interim Effluent Limitations and Monitoring Requirements Number 4, Permit Conditions Number 2.d. and TWC, §26.121(a)(1), by failing to prevent the discharge of wastewater-related debris to the receiving stream; TPDES Permit Number WQ0014581001, Operational Requirements (OR) Number 1 and 30 TAC §305.125(5), by failing to properly operate and maintain the sludge drying beds and to properly dispose of wastewater screenings; TPDES Permit Number WQ0014581001, OR Number 1 and 30 TAC §305.125(5), by failing to properly operate and maintain the clarifiers; and TPDES Permit Number WQ0014581001, Effluent Limitations and Monitoring Requirements Number 1, 30 TAC §305.125(1) and TWC, §26.121(a), by failing to comply with permitted effluent limits; PENALTY: \$14,920; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 925-9336; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(12) COMPANY: City of Karnes City; DOCKET NUMBER: 2011-1883-MWD-E; IDENTIFIER: RN105333280; LOCATION: Karnes City, Karnes County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010352003, Permit Conditions Number 2.g., by failing to prevent the unauthorized discharge of untreated wastewater from the collection system; PENALTY: \$1,200; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(13) COMPANY: City of Lovelady; DOCKET NUMBER: 2011-1699-MWD-E; IDENTIFIER: RN102185543; LOCATION:

Lovelady, Houston County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: Texas Pollutant Discharge Elimination System Permit Number WQ0010734001, Effluent Limitations and Monitoring Requirements Number 4 and Permit Conditions Number 2.d. and TWC, §26.121(a), by failing to prevent the discharge of sludge from the facility into or adjacent to water in the state; PENALTY: \$10,200; ENFORCEMENT COORDINATOR: Jorge Ibarra, P.E., (817) 588-5890; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(14) COMPANY: City of Muenster; DOCKET NUMBER: 2011-1873-MWD-E; IDENTIFIER: RN102065448; LOCATION: Muenster, Cooke County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010341001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: \$1,920; ENFORCEMENT COORDINATOR: Jill Russell, (512) 239-4564; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(15) COMPANY: City of Roxton; DOCKET NUMBER: 2011-1679-MWD-E; IDENTIFIER: RN101920759; LOCATION: Roxton, Lamar County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010204001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; and 30 TAC §305.125(1) and (17) and TPDES Permit Number WQ0010204001, Sludge Provisions, by failing to timely submit the annual sludge report by September 1, 2010, for the monitoring period ending July 31, 2010; PENALTY: \$8,835; ENFORCEMENT COORDINATOR: Jill Russell, (512) 239-4564; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(16) COMPANY: City of Shallowater; DOCKET NUMBER: 2011-1491-PWS-E; IDENTIFIER: RN101218980; LOCATION: Shallowater, Lubbock County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(j) and (f)(3)(E)(iv), by failing to complete, and provide a record of, customer service inspection certificates prior to providing continuous water service to new construction, on any existing service either when the water purveyor has reason to believe that cross-connections or other potential contaminant hazards exist, or after any material improvements, corrections, or additions to the private water distribution facilities; 30 TAC §290.43(c)(4), by failing to provide all water storage tanks with a liquid level indicator located at the tank site; and 30 TAC §290.44(h)(1)(A), by failing to provide records of backflow prevention assemblies installed at all residences or establishments where an actual or potential contamination hazard identified in 30 TAC §290.47(i) exists; PENALTY: \$1,276; ENFORCEMENT COORDINATOR: Andrea Linson, (512) 239-1482; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7092.

(17) COMPANY: D.N.D. CORPORATION dba Quick Stop Food Mart; DOCKET NUMBER: 2011-1632-PST-E; IDENTIFIER: RN101997948; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for review upon request by agency personnel; PENALTY: \$3,500; ENFORCEMENT COORDINATOR: Lanae Foard, (512) 239-2554; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(18) COMPANY: Flint Hills Resources Port Arthur, LLC; DOCKET NUMBER: 2011-1562-AIR-E; IDENTIFIER: RN100217389; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: petrochemical manufacturing; RULE VIOLATED: 30 TAC §§101.20(3), 116.715(a), and 122.143(4), New Source Review (NSR) Flexible Permit Numbers 16989 and PSD-TX-794, Special Conditions (SC) Number 1, Federal Operating Permit (FOP) Number O1317, Special Terms and Conditions (STC) Number 22, and Texas Health and Safety Code (THSC), §382.085(b), by failing to prevent unauthorized emissions (Incident Number 153788); and 30 TAC §§101.20(3), 116.715(a), and 122.143(4), NSR Flexible Permit Numbers 16989 and PSD-TX-794, SC Number 1, FOP Number O1317, STC Number 22, and THSC, §382.085(b), by failing to prevent unauthorized emissions in the Light Olefins Unit; PENALTY: \$46,450; Supplemental Environmental Project offset amount of \$18,580 applied to Southeast Texas Regional Planning Commission, West Port Arthur Home Energy Efficiency Program; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 403-4006; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(19) COMPANY: Igloo Products Corporation; DOCKET NUMBER: 2011-1806-IWD-E; IDENTIFIER: RN101919280; LOCATION: Katy, Waller County; TYPE OF FACILITY: plastic container manufacturing; RULE VIOLATED: Texas Pollutant Discharge Elimination System Permit Number WQ0002229000, Effluent Limitations and Monitoring Requirements Number 1 for Outfalls 001, 101, and 201, 30 TAC §305.125(1) and TWC, §26.121(a), by failing to comply with permitted effluent limits; PENALTY: \$13,620; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5886; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(20) COMPANY: INVISTA S.a r.l.; DOCKET NUMBER: 2011-1547-AIR-E; IDENTIFIER: RN104392626; LOCATION: Orange, Orange County; TYPE OF FACILITY: chemical manufacturing; RULE VIOLATED: Federal Operating Permit (FOP) Number O1897, Special Terms and Conditions (STC) Number 21, New Source Review (NSR) Permit Numbers 1302 and PSD-TX-1085, Special Conditions (SC) Number 1, 30 TAC §§101.20(3), 116.115(c), and 122.143(4), and Texas Health and Safety Code (THSC), §382.085(b), by failing to prevent unauthorized emissions (Incident Number 151694); FOP Number O1897, STC Number 21, NSR Permit Number 1790, SC Number 1, 30 TAC §116.115(c) and §122.143(4), and THSC, §382.085(b), by failing to prevent unauthorized emissions (Incident Number 152089); and FOP Number O1897, General Terms and Conditions (GTC), FOP Number O1898, GTC, 30 TAC §122.143(4) and §122.146(2), and THSC, §382.085(b), by failing to submit an annual compliance certification within 30 days after the end of the certification period; PENALTY: \$36,100; Supplemental Environmental Project offset amount of \$14,440 applied to the City of Orange Municipal Building Energy Efficiency Project; ENFORCEMENT COORDINATOR: Rebecca Johnson, (361) 825-3423; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(21) COMPANY: Kinder Morgan Tejas Pipeline LLC; DOCKET NUMBER: 2011-1904-AIR-E; IDENTIFIER: RN100217629; LOCATION: Clute, Brazoria County; TYPE OF FACILITY: natural gas storage and compressor station; RULE VIOLATED: 30 TAC §117.345(c)(1) and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit the stack test report for three engines (Emission Point Numbers (EPNs) C-1, C-2, and C-3), which were tested on April 15 and 16, 2009, within 60 days as required; 30 TAC §117.345(b)(1) and THSC, §382.085(b), by failing to notify the TCEQ of compliance testing for engines (EPNs C-1, C-2, and C-3) as required; 30 TAC §117.9020(2)(C)(i) and THSC, §382.085(b), by failing to conduct stack testing on three engines (EPNs C-1, C-2, and C-3) by March 31, 2007; and 30 TAC §122.143(4) and §122.145(2)(A),

Federal Operating Permit Number O-00100/General Operating Permit Number 511, Site-wide requirements (b)(2), and THSC, §382.085(b), by failing to include all deviations in the deviation reports submitted for the reporting period of January 23, 2009 to July 22, 2009; PENALTY: \$12,650; ENFORCEMENT COORDINATOR: Miriam Hall, (512) 239-1044; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(22) COMPANY: National Retail Properties, Incorporated dba NNN National Retail Properties, Incorporated; DOCKET NUMBER: 2011-1694-PWS-E; IDENTIFIER: RN104375787; LOCATION: Amarillo, Potter County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(B) and Texas Health and Safety Code, §341.033(d), by failing to collect routine distribution water samples for coliform analysis and by failing to provide public notification of the failure to collect routine samples; PENALTY: \$4,263; ENFORCEMENT COORDINATOR: Epifanio Villareal, (512) 239-2579; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(23) COMPANY: REEYAN BUSINESS, INCORPORATED dba Country Food Mart; DOCKET NUMBER: 2011-1439-PST-E; IDENTIFIER: RN101729861; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the underground storage tank (UST) system; and 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$4,000; ENFORCEMENT COORDINATOR: Wallace Myers, (512) 239-6580; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(24) COMPANY: Ricky Brewer dba AAA Portable Toilets of Altus; DOCKET NUMBER: 2011-1948-SLG-E; IDENTIFIER: RN106229701; LOCATION: Altus, Jackson County, Oklahoma; TYPE OF FACILITY: sludge transportation service; RULE VIOLATED: TWC, §26.121(a) and 30 TAC §312.143, by failing to prevent an unauthorized discharge of sludge waste into or adjacent to water in the state; and 30 TAC §312.142(a), by failing to obtain authorization prior to transporting sludge; PENALTY: \$2,250; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5886; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(25) COMPANY: RIVER CITY ROLLOFFS, INCORPORATED; DOCKET NUMBER: 2011-1345-MSW-E; IDENTIFIER: RN105380380; LOCATION: Austin, Travis County; TYPE OF FACILITY: recycling; RULE VIOLATED: 30 TAC §328.5(c)(2)(A), by failing to provide an updated written cost closure estimate demonstrating the cost of closure of the facility, including disposition of the maximum inventories of all processed and unprocessed combustible materials stored outdoors; and 30 TAC §328.4(b)(1), by failing to demonstrate compliance with recycling requirements related to accumulated material; PENALTY: \$2,100; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(26) COMPANY: SHAKU BROTHERS INCORPORATED dba Memorial Hill Food Mart; DOCKET NUMBER: 2011-1593-PST-E; IDENTIFIER: RN101817740; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the underground

storage tank (UST) system; 30 TAC §334.50(b)(1)(A) and (2), and TWC, §26.3475(a) and (c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and also by failing to provide release detection for the piping associated with the USTs; and 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: \$6,822; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(27) COMPANY: STAFFORD MOBILE HOME PARK, INCORPORATED; DOCKET NUMBER: 2011-1460-MWD-E; IDENTIFIER: RN102080397; LOCATION: Stafford, Fort Bend County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0014064001, Interim Effluent Limitations and Monitoring Requirements Numbers 1 and 2, by failing to comply with permit effluent limits for chlorine residual minimum of 1.0 milligrams per liter (mg/L) and total suspended solids single grab limit of 60 mg/L; 30 TAC §319.11(d), by failing to install flow measuring equipment as prescribed in the Water Measurement Manual, United States Department of the Interior Bureau of Reclamation, Washington, D.C., or by methods that are equivalent as approved by the executive director; 30 TAC §305.125(5) and TPDES Permit Number WQ0014064001, Operational Requirements (OR) Number 1, by failing to properly operate and maintain the facility; 30 TAC §305.125(5), 317.3(e)(5), and 317.7(e) and TPDES Permit Number WQ0014064001, OR Number 1, by failing to properly operate and maintain the facility; TWC, §26.121(a)(1), 30 TAC §305.125(1), and TPDES Permit Number WQ0014064001, Permit Conditions 2.d., by failing to prevent the unauthorized discharge of sludge into the receiving stream; and 30 TAC §305.125(1) and (9) and TPDES Permit Number WQ0014064001, Monitoring and Reporting Requirements Number 7.a, by failing to report the unauthorized discharge of sludge into the receiving stream; PENALTY: \$13,425; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(28) COMPANY: Tarrant County; DOCKET NUMBER: 2011-1514-AIR-E; IDENTIFIER: RN106170343; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: hospital/medical/infectious waste incinerator (HMIWI); RULE VIOLATED: 30 TAC §§101.4, 106.494(b)(2)(C) and 113.2072(b)(2) and Texas Health and Safety Code (THSC), §382.085(b), by failing to prevent a nuisance condition and maintain opacity of emissions from the incinerator at less than or equal to 5.0% averaged over a six-minute period; 30 TAC §106.494(b)(1)(D) and §113.2072(b)(1), and THSC, §382.085(b), by failing to equip the HMIWI with a monitoring device for recording parameters; 30 TAC §113.2072(b)(3) and THSC, §382.085(b), by failing to apply for an abbreviated federal operating permit; 30 TAC §113.2075(a)(1) and THSC, §382.085(b), by failing to conduct an initial performance test; 30 TAC §113.2076(c) and THSC, §382.085(b), by failing to maintain operating records; 30 TAC §113.2077 and THSC, §382.085(b), by failing to prepare a waste management plan; 30 TAC §113.2078(a) and THSC, §382.085(b), by failing to maintain documentation of operating procedures; 30 TAC §113.2078(b)(1) and THSC, §382.085(b), by failing to meet the operator training requirements; and 30 TAC §106.494(b)(2)(B) and THSC, §382.085(b), by failing to post manufacturer's recommended operating instructions; PENALTY: \$6,000; ENFORCEMENT COORDINATOR: Raymond Marlow, P.G., (409) 899-8785; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(29) COMPANY: Triumph Structures, East Texas, Incorporated; DOCKET NUMBER: 2011-1713-IHW-E; IDENTIFIER: RN101059459; LOCATION: Kilgore, Gregg County; TYPE OF FACILITY: machine shop; RULE VIOLATED: 30 TAC §37.111 and §37.404(a) and Hazardous Waste Permit Number 50394, Permit Provision VII.C.1. and 40 Code of Federal Regulations §264.147, by failing to provide a demonstration of continuous financial assurance for closure, post closure, or corrective action for the facility and also by failing to provide liability coverage for bodily injury and property damage to third parties caused by sudden or nonsudden accidental occurrences arising from operations of the facility; PENALTY: \$10,470; Supplemental Environmental Project offset amount of \$4,188 applied to Texas Association of Resource Conservation and Development Areas, Incorporated, Clean School Buses; ENFORCEMENT COORDINATOR: Philip Aldridge, (512) 239-0855; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(30) COMPANY: WALNUT HILL I-35 ENTERPRISES, L.L.C. dba Flash Mart; DOCKET NUMBER: 2011-1391-PST-E; IDENTIFIER: RN102713377; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances used as motor fuel; 30 TAC §334.7(d)(3), by failing to provide an amended registration for any change or additional information regarding the USTs within 30 days of ownership change; 30 TAC §334.72(3), by failing to report a release to the TCEQ within 24 hours of discovery; and 30 TAC §334.48(a), by failing to ensure the UST system is operated, maintained, and managed in accordance with industry practices to prevent a release of a regulated substance; PENALTY: \$16,200; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5825; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201200307

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: January 24, 2012



### Enforcement Orders

An agreed order was entered regarding K C Utilities, Inc., Docket No. 2010-1111-MWD-E on January 19, 2012 assessing \$34,510 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kari L. Gilbreth, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Four States Recycling, Inc., Docket No. 2010-1179-MSW-E on January 19, 2012 assessing \$12,465 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Xavier Guerra, Staff Attorney at (210) 403-4016, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding White Oak Estates MHC LLC dba WHIYE MHC LLC, dba White Oak Estates I and White Oak Es-

tates II, Docket No. 2010-1574-PWS-E on January 19, 2012 assessing \$5,532 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Stephanie J. Frazee, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Carrollton, Docket No. 2010-1619-WQ-E on January 19, 2012 assessing \$23,600 in administrative penalties.

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 Calabrian Corporation, Docket No. 2010-1631-IWD-E on January 19, 2012 assessing \$38,870 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jennifer Cook, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Driscoll, Docket No. 2010-1852-MLM-E on January 19, 2012 assessing \$12,000 in administrative penalties with \$2,400 deferred.

Information concerning any aspect of this order may be obtained by contacting Philip Aldridge, Enforcement Coordinator at (512) 239-0855, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Jacksonville, Docket No. 2011-0203-MWD-E on January 19, 2012 assessing \$43,702 in administrative penalties with \$8,740 deferred.

Information concerning any aspect of this order may be obtained by contacting Merrilee Hupp, Enforcement Coordinator at (512) 239-4490, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Hamilton Custom Service, Inc., Docket No. 2011-0216-SLG-E on January 19, 2012 assessing \$12,064 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Xavier Guerra, Staff Attorney at (210) 403-4016, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Gulf Copper & Manufacturing Corporation, Docket No. 2011-0284-IWD-E on January 19, 2012 assessing \$11,426 in administrative penalties with \$2,285 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, P.E., Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mike Oda dba Riverbend RV Park and Resort, Docket No. 2011-0544-MWD-E on January 19, 2012 assessing \$12,575 in administrative penalties with \$2,515 deferred.

Information concerning any aspect of this order may be obtained by contacting Jeremy Escobar, Enforcement Coordinator at (361) 825-3422, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding JATRA International, INC., Docket No. 2011-0558-MWD-E on January 19, 2012 assessing \$17,680 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kari L. Gilbreth, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ONEOK Hydrocarbon Southwest, LLC, Docket No. 2011-0659-AIR-E on January 19, 2012 assessing \$82,875 in administrative penalties with \$16,575 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator at (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Motiva Enterprises LLC, Docket No. 2011-0688-AIR-E on January 19, 2012 assessing \$10,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Audra Benoit, Enforcement Coordinator at (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Diamond Shamrock Refining Company, L.P., Docket No. 2011-0710-AIR-E on January 19, 2012 assessing \$145,211 in administrative penalties with \$29,042 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 Enbridge G & P (East Texas) L.P., Docket No. 2011-0782-AIR-E on January 19, 2012 assessing \$30,672 in administrative penalties with \$6,134 deferred.

Information concerning any aspect of this order may be obtained by contacting Allison Fischer, Enforcement Coordinator at (512) 239-2574, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Belvan Corp., Docket No. 2011-0783-AIR-E on January 19, 2012 assessing \$40,230 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator at (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Whitharral Water and Sewer Service Supply Corporation, Docket No. 2011-0874-PWS-E on January 19, 2012 assessing \$950 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Andrea Byington, Enforcement Coordinator at (512) 239-2579, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Masood Ahmad dba Fannett Drive In, Docket No. 2011-0895-PST-E on January 19, 2012 assessing \$9,677 in administrative penalties with \$1,935 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.

A default order was entered regarding Richard Sullivan dba Country View Mobile Home Park and dba Valley Estates, Docket No. 2011-0911-PWS-E on January 19, 2012 assessing \$28,954 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rudy Calderon, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding David Longoria Trucking & Construction, L.L.C., Docket No. 2011-0934-AIR-E on January 19, 2012 assessing \$20,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SAAI LLC dba Bar G Store, Docket No. 2011-0953-PST-E on January 19, 2012 assessing \$12,012 in administrative penalties with \$2,402 deferred.

Information concerning any aspect of this order may be obtained by contacting Brianna Carlson, Enforcement Coordinator at (956) 430-6021, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Zoltek Corporation, Docket No. 2011-0956-AIR-E on January 19, 2012 assessing \$32,660 in administrative penalties with \$6,532 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.

A default order was entered regarding Ashok K. Sharma dba A-1 Mart and Pokhrel Enterprises Inc dba A-1 Mart, Docket No. 2011-0968-PST-E on January 19, 2012 assessing \$2,120 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Phillip M. Goodwin, P.G., Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Trinity Bay Conservation District, Docket No. 2011-0969-MWD-E on January 19, 2012 assessing \$20,925 in administrative penalties with \$4,185 deferred.

Information concerning any aspect of this order may be obtained by contacting Merrilee Hupp, Enforcement Coordinator at (512) 239-4490, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Christopher W. Duncan dba Lakeside Water Company, Docket No. 2011-0970-PWS-E on January 19, 2012 assessing \$330 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kari L. Gilbreth, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Olmito Water Supply Corporation, Docket No. 2011-0990-PWS-E on January 19, 2012 assessing \$6,240 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Michaelle Sherlock, Enforcement Coordinator at (210) 403-

4076, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Valero Refining Texas LP, Docket No. 2011-0991-AIR-E on January 19, 2012 assessing \$10,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Audra Benoit, Enforcement Coordinator at (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding AVG-Austin, LP, Docket No. 2011-1035-EAQ-E on January 19, 2012 assessing \$15,400 in administrative penalties with \$3,080 deferred.

Information concerning any aspect of this order may be obtained by contacting JR Cao, Enforcement Coordinator at (512) 239-2543, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Voss Road Exxon, LLC, Docket No. 2011-1054-PST-E on January 19, 2012 assessing \$7,929 in administrative penalties with \$1,585 deferred.

Information concerning any aspect of this order may be obtained by contacting Kimberly Walker, Enforcement Coordinator at (512) 239-2596, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sadler's Smokehouse, Ltd., Docket No. 2011-1066-WQ-E on January 19, 2012 assessing \$18,600 in administrative penalties.

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 Prairie View A&M University, Docket No. 2011-1121-AIR-E on January 19, 2012 assessing \$10,970 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kimberly Morales, Enforcement Coordinator at (713) 422-8938, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Richard J. Duda, Docket No. 2011-1126-PWS-E on January 19, 2012 assessing \$2,904 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rudy Calderon, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Quick Gas & Lube INC., Docket No. 2011-1142-PST-E on January 19, 2012 assessing \$25,584 in administrative penalties with \$5,116 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 Oldcastle BuildingEnvelope, Inc., Docket No. 2011-1190-AIR-E on January 19, 2012 assessing \$12,730 in administrative penalties with \$2,546 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006,

Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding George Santos, Docket No. 2011-1218-LII-E on January 19, 2012 assessing \$650 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steven M. Fishburn, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lief Zars, Docket No. 2011-1229-PWS-E on January 19, 2012 assessing \$4,743 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Merrilee Hupp, Enforcement Coordinator at (512) 239-4490, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Carl Homeyer, Docket No. 2011-1278-PST-E on January 19, 2012 assessing \$9,011 in administrative penalties with \$1,802 deferred.

Information concerning any aspect of this order may be obtained by contacting John Muennink, Enforcement Coordinator at (713) 422-8970, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Terry L. Babb, Sr. dba Twin Oaks Mobile Home Park, Docket No. 2011-1313-PWS-E on January 19, 2012 assessing \$1,932 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Peipey Tang, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Happy Hill Farm Children's Home, Inc., Docket No. 2011-1318-PWS-E on January 19, 2012 assessing \$3,480 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steve Villatoro, Enforcement Coordinator at (512) 239-4930, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Arkema Inc., Docket No. 2011-1353-AIR-E on January 19, 2012 assessing \$10,000 in administrative penalties with \$2,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Raymond Marlow, P.G., Enforcement Coordinator at (409) 899-8785, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sivalls, Inc., Docket No. 2011-1354-AIR-E on January 19, 2012 assessing \$35,000 in administrative penalties with \$7,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Allison Fischer, Enforcement Coordinator at (512) 239-2574, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Houston, Docket No. 2011-1023-PST-E on January 19, 2012 assessing \$7,600 in administrative penalties with \$1,520 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 order was entered regarding Micro Dirt, Inc., dba Texas Organic Recovery, Docket No. 2009-0096-MWS-E on January 19, 2012 assessing \$103,800 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (713) 767-3882, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An order was entered regarding Chwiki Corp. dba Panther Market, Docket No. 2009-1756-PST-E on January 19, 2012 assessing \$9,350 in administrative penalties with \$140 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Pace, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201200335  
Bridget C. Bohac  
Chief Clerk  
Texas Commission on Environmental Quality  
Filed: January 25, 2012



### Notice of Low-Level Radioactive Waste Rate Application, Preliminary Decision, and Opportunity for a Contested Case Hearing

Waste Control Specialists LLC (WCS) has submitted a rate application (Application Number RDR001) to the Texas Commission on Environmental Quality (TCEQ or commission) to establish the initial maximum disposal rates for commercial low-level radioactive waste at the Compact Waste Disposal Facility in Andrews County, Texas, that is owned by the State of Texas and operated by WCS. The land disposal facility for low-level radioactive waste disposal is currently under construction and is located at 9998 State Highway 176 West in Andrews County, Texas. The following link to an electronic map of the facility's general location is provided as a public courtesy and is not part of the application: <http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=32.4425&lng=-103.063055&zoom=13&type=>. For an exact location, refer to the application. This application was initially submitted to the TCEQ on June 1, 2010, with application revisions received on July 12, 2010, October 15, 2010, January 28, 2011, February 22, 2011, and November 8, 2011. In its latest revision to its rate application, WCS proposes the following rates:

#### *Initial Year Rates per cubic foot*

- Class A Compactable: \$52.57
- Class A Non-Compactable: \$157.70
- Class A High Dose Rate: \$353.56
- Class B/C Waste Routine: \$6,153.01
- Class B/C High Activity: \$18,459.04

The TCEQ Executive Director (ED) has completed a review of the WCS rate application and has prepared a recommended schedule for the maximum disposal rates based on information submitted and the Texas statutory and rule requirements. The ED recommends the following disposal rate schedule:

#### **1. Base Disposal Charge:**

- 1A. Waste Volume Charge per cubic foot*



Class A low level waste (LLW) - Routine: \$100

Class A LLW - Shielded: \$250

Class B and C LLW: \$1,000

Sealed Sources: \$500

Biological Waste (Untreated): \$350

*1B. Radioactivity Charge*

Curie Inventory Charge (dollars/millicurie or \$/mCi): \$0.55/mCi

Maximum Curie Charge (per shipment) (excluding C-14): \$220,000/shipment

Carbon-14 Inventory Charge: \$1.00/mCi

Special Nuclear Material Charge: \$100/gram

**2. Surcharges to the Base Disposal Charge:**

*2A. Weight Surcharge Weight (lbs) of Container*

10,000 to 50,000 lbs: \$10,000 per container

Greater than 50,000 lbs: \$20,000 per container

*2B. Dose Rate Surcharge - Surface Dose Rate (roentgens per hour or R/hour) of Container*

1-5 R/hour: \$100 per cubic foot

Greater than 5 to 50 R/hour: \$200 per cubic foot

Greater than 50 to 100 R/hour: \$300 per cubic foot

Greater than 100 R/hour: \$400 per cubic foot

*2C. Irradiated Hardware Surcharge*

Surcharge for special handling: \$75,000 per shipment

*2D. Cask (Shielding Waste) Surcharge*

Cask handling surcharge: \$2,500 per cask

You may inspect a copy of WCS's rate application at the Andrews County Library located at 109 Northwest First Street in Andrews, Texas. These documents are also available at the offices of the TCEQ at 12100 Park 35 Circle, Building F, Austin, Texas 78753 and are on the internet at: <http://www.tceq.texas.gov/permitting/radmat/licensing/rates>.

OPPORTUNITY FOR A CONTESTED CASE HEARING. A contested case hearing is a legal proceeding similar to a civil trial in a state district court. The TCEQ may grant a contested case hearing on this application if a written hearing request is timely submitted by the licensee or a party state compact generator. If the commission receives a hearing request from the licensee or a party state compact generator by **March 5, 2012**, which is at least 30 days after this notice was published in the *Texas Register*; a public hearing will be scheduled to determine if the rates proposed by WCS are fair, just, and reasonable.

TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST: your name, mailing address, phone number, applicant's name and application number; a clear and concise statement that you are requesting a contested case hearing; and if you are a compact generator, provide the generator's licensing numbers indicating the location or locations where the compact waste is generated. Hearing requests should be mailed to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087 and received by **March 5, 2012**, which is at least 30 days after this notice was published in the *Texas Register*. Generators must initiate a request for a contested case hearing by filing individual requests rather than joint requests. Following

the close of all applicable request periods, if the ED receives a hearing request, the ED will directly refer the application to the State Office of Administrative Hearings (SOAH) for a contested case hearing.

EXECUTIVE DIRECTOR ACTION. Unless a hearing request is received from the licensee or an eligible generator, no hearing will be held and the ED will issue final approval of the ED's recommended rates. Upon the commissioners' approval for rulemaking, the final approved rates will be established by rule as the maximum disposal rates for disposal of compact low-level radioactive waste. If a timely hearing request is filed, the ED will not issue the ED's recommended rates and will forward the rate application to SOAH for a hearing on the rates proposed by WCS.

MAILING LIST. If you submit a request for a contested case hearing, you will be added to the mailing list for this specific application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: 1) the permanent mailing list for a specific applicant name and application number; and/or 2) the mailing list for a specific county. If you wish to be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below. All written requests must be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087.

AGENCY CONTACTS AND INFORMATION. If you need more information about this rate application or the rate application process, please call the TCEQ Public Education Program, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our Web site at [www.tceq.texas.gov](http://www.tceq.texas.gov). Si desea información en español, puede llamar al 1-800-687-4040. Further information may also be obtained from WCS, LLC at Three Lincoln Center, 5430 LBJ Freeway, Suite 1700, Dallas, Texas 75240 or by calling Elicia Sanchez, Chief Financial Officer, at (432) 525-8500.

TRD-201200343

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: January 25, 2012



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. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **March 5, 2012**. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the appli-



cable 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 March 5, 2012**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, TWC, §7.075 provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: Ash Grove Texas. L.P.; DOCKET NUMBER: 2010-1402-AIR-E; TCEQ ID NUMBER: RN100225978; LOCATION: 900 Gifco Road, Midlothian, Ellis County; TYPE OF FACILITY: cement manufacturing plant; RULES VIOLATED: Texas Health and Safety Code (THSC), §382.085(b) and 30 TAC §122.146(2), by failing to timely submit the permit compliance certification within 30 days of the end of the certification period; and THSC, §382.085(b), 30 TAC §101.20(2) and §113.690, and 40 Code of Federal Regulations §63.10(d)(5)(i), by failing to timely submit the semi-annual start-up, shutdown, and malfunction report within 30 days after the end of the calendar half; PENALTY: \$10,975; STAFF ATTORNEY: Anna Treadwell, 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: Suny Singh d/b/a Center Drive In 2; DOCKET NUMBER: 2011-1078-PST-E; TCEQ ID NUMBER: RN101676856; LOCATION: 1612 South Day Street, Brenham, Washington County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 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; TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide proper corrosion protection for the UST system; TWC, §26.3475(a) and (c)(1) and 30 TAC §334.50(b)(1)(A) and (2), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide release detection for the piping associated with the USTs; and 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: \$8,742; STAFF ATTORNEY: Kari L. Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(3) COMPANY: Zack Burkett Co.; DOCKET NUMBER: 2011-0570-AIR-E; TCEQ ID NUMBER: RN105013239; LOCATION: the east side of State Highway 6, approximately 1.5 miles north of United States Highway 180, Lueders, Shackelford County; TYPE OF FACILITY: portable rock crusher; RULES VIOLATED: Texas Health and Safety Code, §382.0518(a) and §382.085(b) and 30 TAC §116.110(a), by failing to obtain authorization prior to locating and operating a rock crusher; PENALTY: \$10,000; STAFF ATTORNEY: Anna Treadwell, Litigation Division, MC 175, (512) 239-0974; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

TRD-201200317

Kathleen C. Decker  
Director, Litigation Division  
Texas Commission on Environmental Quality  
Filed: January 24, 2012



### Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **March 5, 2012**. 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 March 5, 2012**. 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: Fernando Trevino; DOCKET NUMBER: 2011-1301-MSW-E; TCEQ ID NUMBER: 104595509; LOCATION: 2.8 miles west of United States Expressway 77 on the north side of Farm-to-Market Road 1732, Olmito, Cameron County; TYPE OF FACILITY: property; RULES VIOLATED: 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of municipal solid waste; PENALTY: \$15,000; STAFF ATTORNEY: Stephanie Frazee, Litigation Division, MC 175, (512) 239-3693; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(2) COMPANY: Susan Pape d/b/a 3-S Construction and Shane Pape d/b/a 3-S Construction; DOCKET NUMBER: 2011-1151-MLM-E; TCEQ ID NUMBER: RN105137434; LOCATION: 30204 Smithson Valley Road, San Antonio, Bexar County; TYPE OF FACILITY: construction landscape company with offices and equipment maintenance shops, mulch storage, construction debris storage, and soil and rock mining operations; RULES VIOLATED: 30 TAC §213.4(a)(1) and (4), by failing to obtain approval of a water pollution abatement

plan prior to beginning a regulated activity over the Edwards Aquifer Recharge Zone; 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of municipal solid waste at the facility; 30 TAC §334.127(a)(2) and TWC, §26.346(a), by failing to register with the commission, on authorized agency forms, an aboveground storage (AST) tank in existence on or after September 1, 1989; and 30 TAC §213.4(a)(1) and (4), by failing to obtain approval of an AST facility plan prior to beginning a regulated activity over the Edwards Aquifer Recharge Zone; PENALTY: \$88,275; STAFF ATTORNEY: Peipey Tang, Litigation Division, MC 175, (512) 239-0654; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

TRD-201200318

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: January 24, 2012



### Notice of Opportunity to Comment on Shut Down/Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Shutdown/Default Order (S/DO). Texas Water Code (TWC), §26.3475 authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overflow prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes a Shutdown Order after the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill and overflow prevention, and/or, after December 22, 1998, cathodic protection violations documented at the facility. The commission proposes a Default Order when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. In accordance with TWC, §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **March 5, 2012**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a S/DO if a comment discloses facts or considerations that indicate that consent to the proposed S/DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed S/DO is not required to be published if those changes are made in response to written comments.

Copies of the proposed S/DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the S/DO shall be sent to the attorney designated for the S/DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on March 5, 2012**. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission attorneys are available to

discuss the S/DO and/or the comment procedure at the listed phone numbers; however, comments on the S/DO shall be submitted to the commission in **writing**.

(1) COMPANY: B.K. TRADING, INC. d/b/a Speedy Stop 9; DOCKET NUMBER: 2011-1169-PST-E; TCEQ ID NUMBER: RN102034725; LOCATION: 3909 Farm-to-Market Road 195, Paris, Lamar County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the piping associated with the USTs system; and 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: \$3,629; STAFF ATTORNEY: Phillip Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

TRD-201200319

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: January 24, 2012



### Notice of Water Quality Applications

The following notices were issued on January 13, 2012 through January 20, 2012.

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

EXPLORER PIPELINE COMPANY which proposes to operate the Fauna Facility, a bulk petroleum products terminal, has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0004965000, to authorize the discharge of treated tank water drainage and storm water runoff at a daily average flow not to exceed 43,000 gallons per day via Outfall 001. The facility is located at 6404 Uvalde Road, 0.8 mile north of the intersection of Wallisville Road and Uvalde Road, on the east side of Uvalde Road, Harris County, Texas 77049.

CHHOTUBHAI THAKORBHAI PATEL has applied for a renewal of TPDES Permit No. WQ0011286001 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 at 6108 West U.S. Highway 80, approximately 1/4 mile north of the intersection of Interstate Highway 20 and U.S. Highway 80, and approximately 1.5 miles west of the intersection of Farm-to-Market Road 1392 and U.S. Highway 80 in Kaufman County, Texas 75160.

SAN JACINTO BARGE REPAIR INC which operates the San Jacinto Barge Repair Facility, has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0004963000 to authorize the discharge of wash water from steel and iron transporting barge cleaning operations and barge ballast water at a daily maximum flow not to exceed 32,000 gallons per day via Outfall 001, wash water from fertilizer and gypsum transporting barge

cleaning operations at a daily maximum flow not to exceed 20,000 gallons per day via Outfall 002, wash water from cement transporting barge cleaning operations at a daily maximum flow not to exceed 10,000 gallons per day via Outfall 003, and wash water from general barge cleaning operations at a daily maximum flow not to exceed 10,000 gallons per day via Outfall 004. The facility is located at 16526 DeZavalla Road, Harris County, Texas 77530.

SYNGARO OF TEXAS CDR INC has applied for a new permit, Proposed TCEQ Permit No. WQ0004964000, to authorize the land application of wastewater treatment plant sludge and water treatment plant sludge for beneficial use on 562.57 acres. The anticipated date of the first application of sludge, subject to the issuance of the permit, is May 1, 2012. This permit will not authorize a discharge of pollutants into waters in the State. The sludge land application site will be located at 1200 County Road 362, 1.1 miles northeast of the intersection of County Road 362 and Farm-to-Market Road 971, approximately 8.9 miles east-northeast from the intersection of Farm-to-Market Road 971 and Highway 95, in Williamson and Milam Counties, Texas 76530.

CITY OF FAIRFIELD has applied for a renewal of TPDES Permit No. WQ0010168002, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,500,000 gallons per day. The facility is located at 190 Farm-to-Market Road 1580, approximately 4,000 feet east of U.S. Highway 75 and approximately 6,000 feet south of U.S. Highway 84 in Freestone County, Texas 75840.

CITY OF KARNES CITY has applied for a renewal of TPDES Permit No. WQ0010352003 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 800,000 gallons per day. The facility is located at 800 West Riddleville Street, approximately 3,600 feet west of the intersection of State Highway 123 and Riddleville Street, along Riddleville Street to its intersection with Cleveland Street in Karnes County, Texas 78118.

CITY OF TRINIDAD has applied for a renewal of TPDES Permit No. WQ0010467002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 150,000 gallons per day. The facility is located southeast of the City of Trinidad, approximately 1.2 miles south of the intersection of Farm-to-Market Road 1667 and U.S. Highway 31 in Henderson County, Texas 75163.

THE CITY OF JACKSONVILLE has applied for a renewal with changes of TPDES Permit No. WQ0010693003. The applicant has requested the removal of the final phase, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 4,000,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,900,000 gallons per day. The facility is located at 232 County Road 1411, along State Highway 204, approximately 1.6 miles southeast of the intersection of State Highway 204 and Loop 456 in Cherokee County, Texas 75766.

CHIMNEY HILL MUNICIPAL UTILITY DISTRICT has applied for a renewal of TPDES Permit No. WQ0012304001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,200,000 gallons per day. The facility is located at 13450 Traders Village Drive, approximately 1,800 feet east of Jackrabbit Road and 4,500 feet north of Farm-to-Market Road 529 in Harris County, Texas 77041.

MARTIN REALTY AND LAND INC has applied for a renewal of TPDES Permit No. WQ0012621001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 150,000 gallons per day. The facility is located at 18165 William Lane, approximately two miles southeast of the intersection of Farm-to-Market Road 1485 and Farm-to-Market Road 2090 in the Country West Subdivision in Montgomery County, Texas 77302.

CITY OF JERSEY VILLAGE has applied for a renewal of TPDES Permit No. WQ0012681001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 800,000 gallons per day. The facility is located at 12103 Castlebridge Drive, approximately 0.75 mile northwest of the intersection of U.S. Highway 290 and Jones Road and 2.0 miles southeast of the intersection of U.S. Highway 290 and Farm-to-Market Road 1960 in Harris County, Texas 77040.

THE WHITE ROCK ESTATES PROPERTY OWNERS CIVIC ASSOCIATION has applied for a renewal of TPDES Permit No. WQ0013354001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 10,000 gallons per day. The facility is located on Kevin Lane in the White Rock Estates Subdivision, on the west side of Farm-to-Market Road 356, in Trinity County, Texas 77045.

TRINITY RIVER AUTHORITY OF TEXAS has applied for a major amendment to TPDES Permit No. WQ0013457001 to authorize an increase in the 2-hour peak flow for Outfall 001 from 12,917 gallons per minute (gpm) to 19,444 gpm and to reduce the 2-hour peak flow for Outfall 002 from 19,444 gpm to 13,889 gpm. The existing permit authorizes the discharge of treated domestic wastewater at a combined annual average flow not to exceed 11,500,000 gallons per day via Outfalls 001 and 002. The facility is located at 1687 U.S. Highway 377 north of Roanoke, approximately 1.5 miles north-northeast of the intersection of State Highway 114 and U.S. Highway 377, in Denton County, Texas 76262.

NORTH TEXAS MUNICIPAL WATER DISTRICT has applied for a renewal of TPDES Permit No. WQ0014216001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 20,000,000 gallons per day. The application also includes a request for a temporary variance to the existing water quality standards for total copper. The variance would authorize a three-year period in which to conduct a water quality study of Muddy Creek. The study will determine whether a site-specific amendment to water quality standards is justified. Prior to the expiration of the three-year variance period, the Commission will consider the site-specific standards and determine whether to adopt the standards or require the existing water quality standards to remain in effect. The facility is located at 5401 Pleasant Valley Road, 1,100 feet northeast of the crossing of Muddy Creek by Pleasant Valley Road in Dallas County, Texas 75098.

FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO 185 has applied for a renewal of TPDES Permit No. WQ0014704001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 350,000 gallons per day. The facility is located approximately 0.8 mile east and 0.2 mile north of the intersection of Greenbusch Road and Gaston Road in Fort Bend County, Texas 77494.

TEXAS DEPARTMENT OF TRANSPORTATION has applied for a renewal of TPDES Permit No. WQ0014767001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 10,000 gallons per day. The facility is located at 4080 Interstate Highway 37, on the northbound side of Interstate Highway 37, approximately 5.9 miles north of the intersection of Interstate Highway 37 and U.S. Highway 281, near the City of Three Rivers in Live Oak County, Texas 78071.

The following do not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, at the address provided in the information section above, WITHIN 30 DAYS OF THE DATE THE NOTICE IS ISSUED.

THE CITIES OF WACO AND WOODWAY AND BELLMEAD AND LACY-LAKEVIEW AND ROBINSON AND HEWITT AND

LORENA have applied for a Minor Amendment of TPDES Permit No. WQ0011071001, to modify language in Section IV, B.8., found on page 29 of the existing permit. The modification is to include existing sludge surface disposal units leak detection monitoring wells. The existing permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 45,000,000 gallons per day. The facility is located at 1147 Treatment Plant Road, on the southwest bank of the Brazos River, approximately 4.5 miles downstream from the crossing of Interstate Highway 35 and the Brazos River in McLennan County, Texas 76706.

CITY OF MIAMI has applied for a minor amendment to the Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0011027001 to authorize the use of an accredited laboratory that has obtained a variance from the maximum holding time for bacteria from EPA Region 6 pursuant to 40 CFR §136.3(e). The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 75,000 gallons per day. The facility is located northeast of the intersection of Houston Street and Austin Street in the City of Miami in Roberts County, Texas 79059.

If you need more information about these permit applications or the permitting process, please call the TCEQ Public Education Program, 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](http://www.TCEQ.state.tx.us). Si desea información en español, puede llamar al 1-800-687-4040.

TRD-201200333

Bidget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: January 25, 2012



## Notice of Water Rights Applications

Notice issued January 17, 2012.

APPLICATION NO. 14-1798A; Kothmann Commission Co., P.O. Box 578, Menard, Texas 76859, Applicant, pursuant to a Water Rights Lease Agreement with Menard County, seeks an amendment to Certificate of Adjudication No. 14-1798 to add an adjacent place of use and downstream diversion point on the San Saba River, Colorado River Basin, in Menard County, the same as those authorized in Certificate No. 14-1802, owned by Menard County. The application was received on September 15, 2011. Additional information and fees were received on September 19, September 21, September 22, October 3, and October 4, 2011. The application was declared administratively complete and filed with the Office of the Chief Clerk on October 6, 2011. The Executive Director has completed the technical review of the application and prepared a draft amendment. The draft amendment, if granted, would include special conditions including, but not limited to, the maintenance of the lease agreement. The application, technical memoranda, and Executive Director's amendment are available for viewing and copying at the Office of the Chief Clerk, 12100 Park 35 Circle, Bldg. F, Austin, TX 78753. Written public comments and requests for a public meeting should be received in the Office of Chief Clerk, at the address provided in the information section below, by February 6, 2012.

## 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](http://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](http://www.tceq.state.tx.us). Si desea información en español, puede llamar al 1-800-687-4040.

TRD-201200334

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: January 25, 2012



## Texas Department of Insurance

### Company Licensing

Application for admission to the State of Texas by RIDER INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Springfield, New Jersey.

Application for admission to the State of Texas by U.S. UNDERWRITERS INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Bismarck, North Dakota.

Any objections must be filed with the Texas Department of Insurance, within 20 calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, MC 305-2C, Austin, Texas 78701.

TRD-201200338

Sara Waitt

Acting General Counsel

Texas Department of Insurance

Filed: January 25, 2012



### Third Party Administrator Application

The following third party administrator application has been filed with the Texas Department of Insurance and is under consideration.

Application of OPTICARE VISION COMPANY, INC., a foreign third party administrator. The home office is DOVER, DELAWARE.

Any objections must be filed within 20 days after this notice is published in the *Texas Register*, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, MC 305-2C, Austin, Texas 78701.

TRD-201200337

Sara Waitt

Acting General Counsel

Texas Department of Insurance

Filed: January 25, 2012

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## Texas Lottery Commission

Instant Game Number 1397 "Lucky 7's"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1397 is "LUCKY 7'S". The play style is "row/column/diagonal".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1397 shall be \$1.00 per ticket.

1.2 Definitions in Instant Game No. 1397.

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 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, \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$100, \$200 and \$1,000.

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. 1397 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
\$1.00	ONE\$
\$2.00	TWO\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$50.00	FIFTY
\$100	ONE HUND
\$200	TWO HUND
\$1,000	ONE THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$1.00, \$2.00, \$4.00, \$5.00, \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$50.00, \$100 or \$200.

H. High-Tier Prize - A prize of \$1,000.

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 (1397), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 150 within each pack. The format will be: 1397-0000001-001.

K. Pack - A pack of "LUCKY 7'S" Instant Game tickets contains 150 tickets, packed in plastic shrink-wrapping and fanfolded in pages of

five (5). Tickets 001 to 005 will be on the top page; tickets 006 to 010 on the next page, etc.; and tickets 146 to 150 will be on the last page with backs exposed. Ticket 001 will be folded over so the front of ticket 001 and 010 will be exposed.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "LUCKY 7'S" Instant Game No. 1397 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, 16 TAC §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 "LUCKY 7'S" Instant Game is determined once the latex on the ticket is scratched off to expose 10 (ten) play symbols. If the player reveals three "7" play symbols in any one row, column or diagonal, the player wins the PRIZE shown. 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 10 (ten) 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 10 (ten) 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 10 (ten) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 10 (ten) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

#### 2.2 Programmed Game Parameters.

A. Players can win up to one (1) time on a ticket in accordance with the approved prize structure.

B. Adjacent non-winning tickets within a pack will not have identical play symbol patterns. Two (2) tickets have identical play symbol patterns if they have the same play symbols in the same positions.

C. No ticket will ever contain two (2) or more identical play symbols (with the exception of the "7" play symbol).

D. Non-winning tickets will contain two (2) "7" play symbols in at least one (1) row, column or diagonal.

E. Non-winning tickets will contain at least four (4) "7" play symbols, at least one (1) of which is in the top horizontal row.

F. Winning tickets will have only one occurrence of three "7" play symbols in any row, column, or diagonal.

#### 2.3 Procedure for Claiming Prizes.

A. To claim a "LUCKY 7'S" Instant Game prize of \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$100 or \$200, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to pay a \$50.00, \$100 or \$200 ticket. In the event the Texas Lottery Retailer cannot verify the claim,

the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "LUCKY 7'S" Instant Game prize of \$1,000, 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 "LUCKY 7'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 Texas Lottery is not responsible for tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. a sufficient amount from the winnings of a prize winner who has been finally determined to be:

- a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code, §403.055;
- b. in default on a loan made under Chapter 52, Education Code; or
- c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "LUCKY 7'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 \$600 or more from the "LUCKY 7'S" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code, §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 10,080,000 tickets in the Instant Game No. 1397. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1397 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$1	1,008,000	10.00
\$2	672,000	15.00
\$4	268,800	37.50
\$5	100,800	100.00
\$10	50,400	200.00
\$20	50,400	200.00
\$50	9,072	1,111.11
\$100	420	24,000.00
\$200	126	80,000.00
\$1,000	84	120,000.00

\*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 4.67. 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.

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. 1397 without advance notice, at which point no further tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the instant game closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1397, 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-201200306  
 Kimberly L. Kiplin  
 General Counsel  
 Texas Lottery Commission  
 Filed: January 24, 2012



**Public Utility Commission of Texas**

**Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority**

The Public Utility Commission of Texas received an application on January 17, 2012, to amend a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Cebridge Acquisition, L.P. d/b/a Suddenlink Communications to Amend Its State-Issued Certifi-

cate of Franchise Authority; to Add the Cities of Gladewater and Sulphur Springs, Texas, Project Number 40109.

The requested amendment is to expand the service area footprint to include the municipalities of Gladewater and Sulphur Springs, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) (800) 735-2989. All inquiries should reference Project Number 40109.

TRD-201200215  
 Adriana A. Gonzales  
 Rules Coordinator  
 Public Utility Commission of Texas  
 Filed: January 18, 2012



**Notice of Application for a Service Provider Certificate of Operating Authority**

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on January 18, 2012, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act.

Docket Title and Number: Application of East Texas Fiber Line Incorporated for a Service Provider Certificate of Operating Authority, Docket Number 40116.

Applicant intends to provide data, facilities-based, and resale telecommunications services.



Applicant's requested SPCOA geographic area consists of the entire State of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by telephone at (512) 936-7120 or toll-free at 1-888-782-8477 no later than February 10, 2012. 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 40116.

TRD-201200328  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: January 24, 2012



### Notice of Petition for Good Cause Exception

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on January 20, 2012.

Docket Style and Number: Petition of Oncor Electric Delivery Company LLC (Oncon) for a Good Cause Exception Order. Docket Number 40123.

The Application: Oncon filed with the commission a petition for a good cause exception order. Oncon stated that its petition is to help address potential reliability issues relating to the possibility that there may not be sufficient reserves to prevent interruption of electric service during the 2012 summer peak period. Oncon seeks commission approval allowing it to pursue obtaining an additional 50 MW of commercial load to be available for curtailment during the 2012 summer peak period. Oncon requests an order from the commission no later than the commission's open meeting scheduled for March 7, 2012, that determines the following:

1. there is a significant risk that electric service may be interrupted during the 2012 summer peak period due to anticipated reserve margins that are too low;
2. Oncon is authorized to pursue obtaining an additional 50 MW of commercial load to be available for curtailment during the 2012 summer peak period in an effort to help prevent the interruption of electric service;
3. the circumstances related to the potential interruption of electric service is outside of Oncon's control and that Oncon's proposal to help address the situation is necessary to carry out the provisions of the Public Utility Regulatory Act and, therefore, Oncon will be allowed recovery in its Energy Efficiency Cost Recovery Factor proceeding initiated in 2013 or in another appropriate proceeding of all program costs (including carrying costs and administrative costs) that the commission determines are reasonable regarding the procurement of additional 50 MW of commercial load for curtailment; and
4. the costs associated with curtailing the additional 50 MW of commercial load shall be allocated to all rate classes on the basis of the actual 2012 4CP demand because this is a benefit to Oncon's entire system.

Oncon also requests that the commission determine that the current energy efficiency regulations found in P.U.C. Substantive Rule §25.181 and elsewhere either do not apply to these unique circumstances or that there is good cause based on the foregoing to waive application of such provisions in these circumstances pursuant to P.U.C. Substantive Rule §25.3(b).

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 Customer Protection Division at (512) 936-7120 or 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) at 1-800-735-2989. All correspondence should refer to Docket Number 40123.

TRD-201200329  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: January 24, 2012



### Rio Grande Council of Governments

#### Request for Proposals - El Paso County Dispute Resolution Center

The Rio Grande Council of Governments (RGCOG) requests proposals for services of qualified Family Mediation Trainers to provide a 30-hour family mediation training course and an 8-hour course in arbitration for the El Paso County Dispute Resolution Center.

Proposals will be received at its office located at 1100 N. Stanton, Suite 610, El Paso, Texas 79902 on February 3, 2012 by no later than 12:00 p.m. MST. Proposal packets may be obtained at [www.riocog.org](http://www.riocog.org) or by calling (915) 533-0998. Please contact Marisa Quintanilla, Regional Services Director, RGCOG, 1100 N. Stanton, Suite 610, El Paso, Texas 79902; (915) 533-0998 ext. 119 (Office); (915) 532-9385 (Fax); or email: [marisaq@riocog.org](mailto:marisaq@riocog.org).

TRD-201200320  
Annette Gutierrez  
Executive Director  
Rio Grande Council of Governments  
Filed: January 24, 2012



### Texas Department of Transportation

#### Aviation Division - Request for Proposal for Professional Engineering Services

Brazoria County, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional services firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional services as described below:

Airport Sponsor: Brazoria County; Texas Gulf Coast Regional Airport. TxDOT CSJ No. 1212ANGLE. Scope: Perform a Wildlife Hazard Assessment (WHA) by a qualified Wildlife Damage Management Biologist meeting the requirements established by FAA Advisory Circular AC 150/5200-36, latest edition. The assessment will include but is not limited to identifying local wildlife hazards to aviation safety and providing mitigation strategies for specific threats to aircraft operations.

There is no DBE goal. TxDOT Project Manager is Daniel Benson.

Interested firms shall utilize the Form AVN-551, titled "Aviation Planning Services Proposal." The form may be requested from TxDOT Aviation Division, 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at <http://www.txdot.gov/business/projects/aviation.htm>. The form

may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. A prime provider may only submit one proposal. If a prime provider submits more than one proposal, that provider will be disqualified. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-551, firms are encouraged to download Form AVN-551 from the TxDOT website as addressed above. Utilization of Form AVN-551 from a previous download may not be the exact same format. Form AVN-551 is a PDF Template.

**Please note:**

**FIVE** completed, unfolded copies of Form AVN-551 **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than **February 28, 2012, 4:00 p.m.** Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Sheri Quinlan.

The consultant selection committee will be composed of local government members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The evaluation criteria for airport planning projects can be found at <http://www.txdot.gov/business/projects/aviation.htm>. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

If there are any procedural questions, please contact Sheri Quinlan, Grant Manager, or Daniel Benson, Project Manager for technical questions at 1-800-68-PILOT (74568).

TRD-201200323

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: January 24, 2012



Aviation Division - Request for Proposal for Professional Engineering Services

The Texas State Technical College - Waco, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below.

The following is a listing of proposed projects at the Texas State Technical College - Waco Airport during the course of the next five years through multiple grants.

**Current Project:** Texas State Technical College - Waco. TxDOT CSJ No.: 1209TSTCW. Scope: **Drainage Infrastructure Evaluation and provide engineering/design services for a four-year multi-phase construction project to:**

FY2012: rehabilitate Main Terminal Apron and shade Hangar Taxi-lane; rehabilitate Taxilane from Terminal Apron to Taxiway H; reha-

bilitate Taxilane from Terminal Apron to Taxiway E; replace culvert under Taxiway G; rehabilitate and mark Taxiway G; rehabilitate shoulders Taxiway G for FOD control; reconstruct Hardstand/Compass Rose @RWY 30L/Taxiway G; upgrade airfield signage and pavement markings.

FY2013: rehabilitate and mark Runway 17R-35L.

FY2014: rehabilitate and mark Runway 17L-35R.

FY2015: reconstruct Taxiway A between TXY B and TXY H; rehabilitate and mark Taxiways A, B, C, D, E; rehabilitate Taxiway H to Runway 17R.

Future scope work items for engineering/design services within the next five years may include the following:

1. Construct/realign connecting Taxiway from Runway 35L to Runway 35R and partial parallel
2. Construct/realign main cross stub Taxiway to main Apron
3. Install Medium Intensity Taxiway Lights Taxiway A

The DBE goal for the current project is 7%. The TxDOT Project Manager is Paul Slusser.

To assist in your proposal preparation the criteria, 5010 drawing, project diagram, and most recent Airport Layout Plan are available online at [www.txdot.gov/avn/avninfo/notice/consult/index.htm](http://www.txdot.gov/avn/avninfo/notice/consult/index.htm) by selecting "Texas State Technical College -Waco Airport." The proposal should address a technical approach for the current scope only. Firms shall use page 4, Recent Airport Experience, to list relevant past projects for both current and future scope.

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal." The form may be requested from TxDOT Aviation Division, 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at <http://www.txdot.gov/business/projects/aviation.htm>. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. A prime provider may only submit one proposal. If a prime provider submits more than one proposal, that provider will be disqualified. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

**Please note:**

**SIX** completed, unfolded copies of Form AVN-550 **must be received** by TxDOT, Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than **March 6, 2012, 4:00 p.m.** Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Beverly Longfellow.

The consultant selection committee will be composed of Aviation Division staff members and one local committee member. The final selection by the committee will generally be made following the com-

pletion of review of proposals. The committee will review all proposals and rate and rank each. The Evaluation Criteria for Engineering Proposals can be found at <http://www.txdot.gov/business/projects/aviation.htm> under the Notice to Consultants link. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Beverly Longfellow, Grant Manager. For technical questions, please contact Paul Slusser, Project Manager.

TRD-201200324

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: January 24, 2012



### Aviation Division - Request for Proposal for Professional Engineering Services

The City of Rockdale, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional services firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional services as described below:

Airport Sponsor: City of Rockdale, H.H. Coffield Regional Airport. TxDOT CSJ No. 1217ROCKD. Scope: Prepare an Airport Action/Business Development Plan that includes, but is not limited to, preparing an approved Airport Layout Plan (ALP), information and overviews regarding existing and future conditions, an airport target market analysis, a business and financial analysis, a business financial plan, review of minimum standards and airport rules and regulations, rates and charges reviews, contract provisions, standardized development provisions and site standards, and staffing recommendations. The Airport Business Plan should be tailored to the individual needs of the airport.

There is no HUB goal. TxDOT Project Manager is Bill Macke.

Interested firms shall utilize the Form AVN-551, titled "Aviation Planning Services Proposal." The form may be requested from TxDOT Aviation Division, 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at <http://www.txdot.gov/business/projects/aviation.htm>. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. A prime provider may only submit one proposal. If a prime provider submits more than one proposal, that provider will be disqualified. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-551, firms are encouraged to download Form AVN-551 from the TxDOT website as addressed above. Utilization of Form AVN-551 from a previous download may not be the exact same format. Form AVN-551 is a PDF Template.

**Please note:**

**SEVEN** completed, unfolded copies of Form AVN-551 **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than **March 13, 2012, 4:00 p.m.** Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Beverly Longfellow.

The consultant selection committee will be composed of local City staff members, a representative of the Rockdale Municipal Development District, and representatives of the Rockdale Airport Advisory Board. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The Evaluation Criteria for Airport Planning Projects can be found at <http://www.txdot.gov/business/projects/aviation.htm>. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

If there are any procedural questions, please contact Beverly Longfellow, Grant Manager, or call Bill Macke, Project Manager for technical questions at 1-800-68-PILOT (74568). Should any potential proposer desire to visit Rockdale and the Airport prior to submission, please contact Kelvin Knauf, City Manager, at (512) 446-2511 or Collier Perry at (512) 809-8004.

TRD-201200325

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: January 24, 2012



### Public Notice - Aviation

Pursuant to Transportation Code, §21.111, and Texas Administrative Code, Title 43, §30.209, the Texas Department of Transportation conducts public hearings to receive comments from interested parties concerning proposed approval of various aviation projects.

For information regarding actions and times for aviation public hearings, please go to the following web site:

[http://www.txdot.gov/public\\_involvement/hearings\\_meetings](http://www.txdot.gov/public_involvement/hearings_meetings).

Or visit [www.txdot.gov](http://www.txdot.gov), click on Public Involvement and click on Hearings and Meetings.

Or contact Texas Department of Transportation, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4501 or 1-800-68-PILOT.

TRD-201200326

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: January 24, 2012



### Workforce Solutions Brazos Valley Board

#### Public Notice

The Workforce Solutions Brazos Valley Board seeks public comment on their updated local strategic integrated plan for the time period July 1, 2011, to June 30, 2012. This plan outlines the Board's strategic integrated plan for workforce service delivery that includes program services in WIA, CCMS, TANF Choices, Food Stamps, Employment Ser-

vices, and Veterans Services. A copy of this plan modification may be reviewed at their office located at 3991 East 29th, Bryan, Texas 77802 between 8:00 a.m. to 5:00 p.m., Monday through Friday, for the period of January 30, 2012 to February 29, 2012.

Workforce Solutions Brazos Valley is an equal opportunity employer and provides equal opportunity employment programs. Auxiliary aids are available upon request to disabled individuals. Texas Relay (800) 735-2989; TDD (800) 735-2988 voice.

TRD-201200341  
Tom Wilkinson  
Executive Director  
Workforce Solutions Brazos Valley Board  
Filed: January 25, 2012



## How to Use the Texas Register

**Information Available:** The 14 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

**Governor** - Appointments, executive orders, and proclamations.

**Attorney General** - summaries of requests for opinions, opinions, and open records decisions.

**Secretary of State** - opinions based on the election laws.

**Texas Ethics Commission** - summaries of requests for opinions and opinions.

**Emergency Rules**- sections adopted by state agencies on an emergency basis.

**Proposed Rules** - sections proposed for adoption.

**Withdrawn Rules** - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

**Adopted Rules** - sections adopted following public comment period.

**Texas Department of Insurance Exempt Filings** - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

**Texas Department of Banking** - opinions and exempt rules filed by the Texas Department of Banking.

**Tables and Graphics** - graphic material from the proposed, emergency and adopted sections.

**Transferred Rules**- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

**In Addition** - miscellaneous information required to be published by statute or provided as a public service.

**Review of Agency Rules** - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

**How to Cite:** Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 36 (2011) is cited as follows: 36 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "36 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 36 TexReg 3."

**How to Research:** The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: <http://www.sos.state.tx.us>. The *Register* is available in an .html version as well as a .pdf (portable document

format) version through the internet. For website information, call the Texas Register at (512) 463-5561.

## Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>.

The following companies also provide complete copies of the TAC: Lexis-Nexis (800-356-6548), and West Publishing Company (800-328-9352).

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

**How to Cite:** Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

**How to update:** To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*. The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*. If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

### TITLE 1. ADMINISTRATION

#### Part 4. Office of the Secretary of State

#### Chapter 91. Texas Register

40 TAC §3.704.....950 (P)