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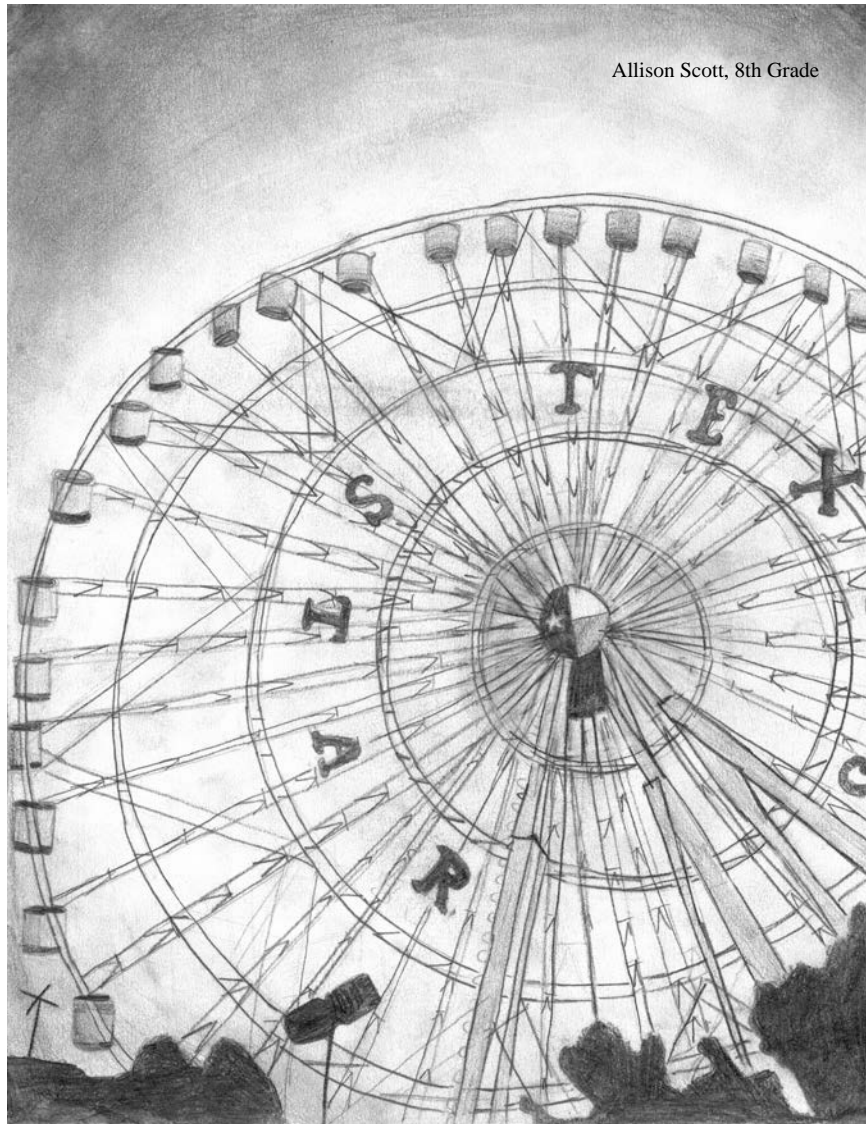
# TEXAS REGISTER

*Volume 37 Number 18*

*May 4, 2012*

*Pages 3247 - 3*

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Allison Scott, 8th 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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# TEXAS REGISTER

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# 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-1053-GA**

**Requestor:**

Dr. Raymund Paredes

Commissioner of Higher Education

Texas Higher Education Coordinating Board

Post Office Box 12788

Austin, Texas 78711-2788

Re: Authority of the Higher Education Coordinating Board to promulgate rules that would permit a veteran who is entitled to two kinds of federal education benefit to be eligible to apply for benefits under section 54.341, Education Code, based upon the federal program to which the veteran opts to apply rather than on the federal program which he or she is entitled to use (RQ-1053-GA)

**Briefs requested by May 21, 2012**

**RQ-1054-GA**

**Requestor:**

Mr. Mark R. Vickery, P.G., Executive Director

Texas Commission on Environmental Quality

Post Office Box 13087

Austin, Texas 78711-3087

Re: Whether a state agency's demand for restitution based upon an unadjudicated claim for breach of a grant contract constitute a "debt" to the state for purposes of section 403.055, Government Code (RQ-1054-GA)

**Briefs requested by May 21, 2012**

**RQ-1055-GA**

**Requestor:**

The Honorable David K. Walker

Montgomery County Attorney

207 West Phillips, Suite 100

Conroe, Texas 77301

Re: Whether an individual may be prosecuted for an alleged assaultive offense that occurred in 1998 when the person was thirteen years of age, and in which the victim died in 2011 (RQ-1055-GA)

**Briefs requested by May 24, 2012**

**RQ-1056-GA**

**Requestor:**

The Honorable Rodney Ellis

Chair, Committee on Government Organization

Texas State Senate

Post Office Box 12068

Austin, Texas 78711

Re: Changes to eminent domain law enacted by Senate Bill 18, Eighty-Second Legislature (RQ-1056-GA)

**Briefs requested by May 24, 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-201202107

Jay Dyer

Deputy Attorney General

Office of the Attorney General

Filed: April 24, 2012



Opinions

**Opinion No. GA-0919**

Katherine A. Thomas, MN, RN

Executive Director

Texas Board of Nursing

333 Guadalupe Street, Suite 3-460

Austin, Texas 78701

Re: Whether the receipt of a nondisclosure order requires the Board of Nursing to redact information relating to a licensee's criminal history record (RQ-0997-GA)

**S U M M A R Y**

A court would likely find that section 411.081 of the Government Code does not require the Texas Board of Nursing to adjust its disciplinary orders to avoid disclosure of criminal history record information that is the subject of a nondisclosure order issued under that section.

**Opinion No. GA-0920**

The Honorable Mark A. Marshall

McCulloch County Attorney

105 North Church

Brady, Texas 76825

Re: Approval of expenditures from asset forfeiture fund of a district attorney (RQ-1004-GA)

**S U M M A R Y**

Expenditures may be made from the 198th Judicial District district attorney's asset forfeiture fund after those expenditures are approved by

a regional review committee under section 24.377 of the Texas Government Code. County commissioners courts and a regional review committee are among the entities that may approve expenditures from a district attorney's asset forfeiture fund. Cash could constitute seized and forfeited property under section 24.377 of the Texas Government Code.

*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-201202106

Jay Dyer

Deputy Attorney General

Office of the Attorney General

Filed: April 24, 2012





# TEXAS ETHICS COMMISSION

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

## Ethics Advisory Opinions

**EAO-504.** The Texas Ethics Commission has been asked to consider whether a communication relating to a measure election complies with section 255.003 of the Election Code. (AOR-568)

### SUMMARY

For purposes of section 255.003 of the Election Code, the fact sheet is not political advertising and, therefore, public funds may be used to distribute the fact sheet unless an officer or employee of the city authorizing such use of public funds knows that the fact sheet contains false information. The fact sheet may be viewed at [http://www.ethics.state.tx.us/opinions/EAO\\_504\\_factsheet.pdf](http://www.ethics.state.tx.us/opinions/EAO_504_factsheet.pdf).

**EAO-505.** The Texas Ethics Commission has been asked to consider whether a complainant or respondent to a sworn complaint filed with the Texas Ethics Commission may disclose a dismissal order issued by the commission. (AOR-569)

### SUMMARY

Section 571.140 of the Government Code does not prohibit a complainant or respondent from publicly disclosing or discussing a commission order that dismisses a complaint filed by the complainant. If a third party receives a copy of such a dismissal order from a complainant

or respondent, the confidentiality provision does not prohibit the third party from possessing or discussing the order with other third parties.

The Texas Ethics Commission is authorized by §571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; (9) Chapter 39, Penal Code; (10) §2152.064, Government Code; and (11) §2155.003, Government Code.

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

TRD-201202108  
Natalia Luna Ashley  
General Counsel  
Texas Ethics Commission  
Filed: April 24, 2012

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# EMERGENCY RULES

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

## TITLE 1. ADMINISTRATION

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

#### CHAPTER 355. REIMBURSEMENT RATES

##### SUBCHAPTER J. PURCHASED HEALTH SERVICES

##### DIVISION 11. TEXAS HEALTHCARE TRANSFORMATION AND QUALITY IMPROVEMENT PROGRAM REIMBURSEMENT

###### 1 TAC §§355.8201, §355.8202

The Texas Health and Human Services Commission is renewing the effectiveness of the emergency adoption of new §§355.8201 and §355.8202, for a 60-day period. The text of the new sections was originally published in the January 20, 2012, issue of the *Texas Register* (37 TexReg 153).

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

TRD-201201967

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Original effective date: January 6, 2012

Expiration date: July 3, 2012

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



## TITLE 4. AGRICULTURE

### PART 1. TEXAS DEPARTMENT OF AGRICULTURE

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

##### SUBCHAPTER V. MEXICAN FRUIT FLY QUARANTINE

###### 4 TAC §§19.500 - 19.508

The Texas Department of Agriculture (the department) adopts on an emergency basis new §§19.500 - 19.508, concerning a quarantine for the Mexican fruit fly (Mexfly) *Anastrepha ludens* (Loew). The new sections are adopted on an emergency basis to prevent the spread of Mexflies and to maintain the pest's eradicated status in Texas. The emergency new sections require ap-

plication of treatments and prescribe specific restrictions on the handling and movement of quarantined articles.

Texas spent more than 80 years under permanent United States Department of Agriculture (USDA) quarantine for Mexfly before, on January 3, 2012, the state's Mexfly population was declared eradicated by USDA's Animal and Plant Health Inspection Service (APHIS) because no Mexflies had been trapped in Texas since May 8, 2009. An ongoing risk of reintroduction of the pest is mitigated by continued trapping to detect incipient re-infestations.

Consistent with this risk, one mated wild-type female Mexfly was found in a grapefruit grove south of San Benito, Cameron County, on March 1, 2012, in a McPhail trap baited with torula yeast; no sterile Mexflies were in that trap. That finding necessitated the March 8, 2012, filing of an emergency quarantine, published in the March 23, 2012, issue of the *Texas Register* (37 TexReg 1967) for the San Benito quarantine area, an 81 square mile area surrounding the capture site, in order to implement measures to maintain the state's eradicated status.

On March 14, 2012, one immature female and one mature unmated female Mexfly were detected in an orange grove east of McAllen, Hidalgo County, triggering the need for a second quarantine area. On March 16, 2012, the department withdrew the filing of March 8, 2012, and filed a new emergency quarantine, published in the March 30, 2012, issue of the *Texas Register* (37 TexReg 2125) that maintained the San Benito quarantined area and added the McAllen quarantined area (126 square miles) that includes nearly 2,727 acres of commercial citrus in or around McAllen.

On April 5, 2012, based on new trapping information, the department withdrew the filing of March 16, 2012, and filed a new emergency quarantine published in the April 20, 2012, issue of the *Texas Register* (37 TexReg 2813) that added four newly quarantined areas and enlarged both existing quarantined areas. The newly quarantined areas were: the Bayview quarantined area (108 square miles in or near Bayview, in Cameron County; including 446 acres of commercial citrus groves; and triggered by the finding in a trap of one mated wild-type female and one sterile Mexfly), the Brownsville quarantined area (42 square miles in or near Brownsville, in Cameron County; including 8.5 acres of commercial citrus groves; and triggered by findings of Mexfly larvae), the Raymondville quarantined area (69 square miles, including 3.9 acres of commercial citrus groves in or near Raymondville, in Willacy County; and triggered by the finding in a trap of one mated wild-type female Mexfly), and the Weslaco quarantined area (79 square miles in or near Weslaco, in Hidalgo County; including 1,141 acres of commercial citrus groves; and quarantined due to findings of Mexfly larvae). Trap captures of wild-type Mexflies in the two existing quarantined areas required: (1) expansion of the San Benito quarantined area to a total of 177 square miles in the Harlingen-San Benito area

of Cameron County, including 1,318 acres of commercial citrus groves; and (2) expansion of the McAllen quarantined area to cover 200 square miles in or near McAllen, in Hidalgo County, including 9,268 acres of commercial citrus groves.

On April 10, 2012, based on new trapping information, the department withdrew the filing of April 5, 2012, and filed a new emergency quarantine, published in the April 27, 2012, issue of the *Texas Register* (37 TexReg 2917) that maintained the existing quarantined areas and, triggered by the trapping of one mated wild-type female outside the previously quarantined area, enlarged the Weslaco quarantined area (182 square miles in Hidalgo County, including 3,895 acres of commercial citrus).

The present emergency quarantine filing, based on new trapping information, replaces the filing of April 10, 2012, establishes a new quarantined area and additional core areas, and maintains or expands the existing quarantined areas. Based on the finding of a mated mature female Mexfly in a grapefruit grove near Hargill, in Willacy County, this filing establishes a new Hargill Quarantined area that straddles the border between Hidalgo and Willacy counties in the area of Hargill, covers 106 acres and includes 1,610 acres of commercial citrus groves. This filing expands two existing quarantined areas: the San Benito quarantined area (expanded to 212 square miles in the Harlingen-San Benito area in Cameron County, including 1,381 acres of commercial citrus), whose extension was triggered by the trapping of one mated wild-type female in a dooryard citrus tree inside the edge of an already existing quarantined area, and the Weslaco quarantined area (expanded to 200 square miles from around Pharr in Hidalgo County to La Feria in Cameron County, including 3,895 acres of commercial citrus groves), whose extension was triggered by the detection of one mated and one unmated mature Mexfly in an orange grove south of Donna and by the detection of one mated female and one unmated female Mexfly in a delimiting trap in a grapefruit grove in Donna. Mexfly host plants include citrus, stone fruits, avocados, mangoes and apples. This updated emergency quarantine also provides for the department to designate additional quarantined areas and core areas within quarantined areas, as new infestations occur, and provides methods of notifying affected producers of additional designated quarantined areas and core areas within an infested area.

The department believes that it is necessary to take this immediate action to maintain the fly-free status of Cameron and Hidalgo counties and to prevent the spread of the Mexican fruit fly into other commercial citrus growing areas of Texas and other states, and that adoption of this quarantine on an emergency basis is both necessary and appropriate. The citrus industry in particular is in peril because without this emergency quarantine and treatment of the infestation, a statewide quarantine implemented by the USDA could become necessary, with resultant losses of important export markets and requirements for regulatory treatments such as fumigation of all exported fruit. This emergency quarantine takes necessary steps to prevent the artificial spread of the quarantined pest and provides for its elimination, thus protecting Texas' important citrus industry.

New §19.500 states the basis for the quarantine and defines the quarantined pest. New §19.501 establishes the duration of the quarantine. New §19.502 designates the infested areas and core areas within the infested areas that are subject to the quarantine. New §19.503 lists the articles subject to the quarantine. New §19.504 provides restrictions on the movement of articles subject to the quarantine. New §19.505 provides require-

ments for monitoring and handling and treatment of regulated articles located within the quarantined area. New §19.506 provides consequences for failure to comply with quarantine restrictions. New §19.507 provides for the appeal of action taken for failure to comply with the quarantine restrictions or requirements. New §19.508 provides procedures for handling of discrepancies or other inconsistencies in textual descriptions in this subchapter with graphic representations. The department may propose adoption of this updated quarantine on a permanent basis in a separate submission. This emergency quarantine replaces the emergency quarantine filed April 10, 2012, by the department, published in the April 27, 2012, issue of the *Texas Register* (37 TexReg 2917).

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 of the Texas Agriculture Code; and the Texas Government Code, §2001.034, which provides for the adoption of administrative rules on an emergency basis, without notice and comment.

§19.500. Basis for Quarantine - Dangerous Insect Pest (Proscribed Biological Entity).

(a) The department finds that *Anastrepha ludens* (Loew), also known as the Mexican fruit fly, is at any stage of development a dangerous insect pest that is not widely distributed in this state.

(b) Description of dangerous insect pest. The Mexican fruit fly, scientific name *Anastrepha ludens* (Loew), is a dangerous pest of the numerous host plants listed in §19.503 of this title (relating to Articles Subject to the Quarantine). The fly oviposits in the fruit where the larvae subsequently hatch and begin feeding. The larvae, feeding inside the fruit, cause damage to the flesh of the fruit, making it unmarketable. The United States Department of Agriculture (USDA), as well as many states, consider the Mexican fruit fly to be a serious plant pest whose control and eventual eradication from quarantined areas is imperative.

(c) Unless otherwise expressly stated, the term "Mexican fruit fly" when used in this subchapter refers to any or all developmental stages of the dangerous insect pest described in this section.

(d) The department is authorized by the Texas Agriculture Code, §71.002, to establish a quarantine against the dangerous insect pest identified in this section.

§19.501. Duration of the Quarantine.

The quarantine established by this subchapter shall remain in effect until the dangerous insect pest described in §19.500 of this title (relating to Basis for Quarantine - Dangerous Insect Pest (Proscribed Biological Entity)) is eradicated. The Mexican fruit fly shall be considered eradicated from the quarantined area when no additional Mexican fruit flies are detected for a time period equal to three consecutive generations after the most recent detection. For the Mexican fruit fly, the number of days required to complete a reproductive cycle, one generation, is dependent upon temperature. Therefore, a day-degree model will be used to calculate the duration of each consecutive generation.

§19.502. Infested Geographical Areas Subject to the Quarantine.

(a) Quarantined infested areas.

(1) Quarantined infested areas (infested geographical areas subject to the quarantine) at any given time are those areas within this state where the department determines that the dangerous insect pest is found at that time, from which dissemination of the pest is to be prevented, and in which the pest is to be eradicated.

(2) The following areas infested with the Mexican fruit fly are declared to be quarantined infested areas. The department may designate additional or expanded quarantined infested areas or core areas within a quarantined infested area based upon the confirmation of the presence of the Mexican fruit fly. The designations will be effective upon the posting of the notification of the quarantined areas or core areas on the Department's website (<http://www.TexasAgriculture.gov>). Notification consists of a map and a description of the quarantined infested areas or core areas. A printed copy of the notification is available at the department's Valley Regional Office, 900-B, East Expressway 83, San Juan, Texas 78217, (956) 787-8866. In addition, notification will be made through press release by the department. Each quarantined area is bounded on all sides by a line drawn using the World Geographic Coordinate System of 1984.

(A) The quarantine boundary of the "Bayview quarantined area" in Cameron County is described as: Starting at a point described as: Starting at a point described as N26.216798 degrees and W97.434614 degrees, then East to a point described as N26.216293 degrees and W97.370199 degrees, then South to a point described as N26.201767 degrees and W97.370343 degrees, then East to a point described as N26.201503 degrees and W97.33814 degrees, then South to a point described as N26.186978 degrees and W97.338288 degrees, then East to a point described as N26.186843 degrees and W97.322189 degrees, then South to a point described as N26.172318 degrees and W97.322339 degrees, then East to a point described as N26.172181 degrees and W97.306242 degrees, then South to a point described as N26.085029 degrees and W97.307155 degrees, then West to a point described as N26.085166 degrees and W97.32324 degrees, then South to a point described as N26.070641 degrees and W97.32339 degrees, then West to a point described as N26.070775 degrees and W97.339473 degrees, then South to a point described as N26.05625 degrees and W97.339621 degrees, then West to a point described as N26.056513 degrees and W97.371783 degrees, then South to a point described as N26.041988 degrees and W97.371926 degrees, then West to a point described as N26.042493 degrees and W97.436243 degrees, then North to a point described as N26.057018 degrees and W97.436108 degrees, then West to a point described as N26.057259 degrees and W97.46827 degrees, then North to a point described as N26.08631 degrees and W97.468007 degrees, then West to a point described as N26.086428 degrees and W97.484093 degrees, then North to a point described as N26.173581 degrees and W97.483315 degrees, then East to a point described as N26.173463 degrees and W97.467217 degrees, then North to a point described as N26.202514 degrees and W97.466954 degrees, then East to a point described as N26.202272 degrees and W97.43475 degrees, then North to the starting point.

(B) The quarantine boundary of the "Brownsville quarantined area" in Cameron County is described as: Starting at a point described as N25.923442 degrees and W97.543262 degrees, then North to a point described as N25.932366 degrees and W97.543188, then East to a point described as N25.932255 degrees and W97.527124 degrees, then North to a point described as N25.94678 degrees and W97.527 degrees, then East to a point described as N25.945951 degrees and W97.41454 degrees, then South to a point described as N25.931426 degrees and W97.414678 degrees, then East to a point described as N25.9313 degrees and W97.398615 degrees, then South to a point described as N25.83838 degrees and W97.399505 degrees, then West along the US/Mexico border boundary following the natural river shore on the US side of the Rio Grande River to the starting point.

(C) The quarantine boundary of the "Hargill quarantined area" in Hidalgo County is described as: Starting at a point described as N26.535761 degrees and W98.007161 degrees, then East to a point described as N26.535388 degrees and W97.910264 degrees, then South to a point described as N26.520861 degrees and W97.910339 degrees, then East to a point described as N26.520793 degrees and W97.894192 degrees, then South to a point described as N26.49174 degrees and W97.894347 degrees, then East to a point described as N26.49167 degrees and W97.878204 degrees, then South to a point described as N26.448091 degrees and W97.878442 degrees, then West to a point described as N26.448162 degrees and W97.894579 degrees, then South to a point described as N26.419109 degrees and W97.894734 degrees, then West to a point described as N26.419178 degrees and W97.910867 degrees, then South to a point described as N26.404652 degrees and W97.910942 degrees, then West to a point described as N26.404719 degrees and W97.927073 degrees, then South to a point described as N26.390193 degrees and W97.927146 degrees, then West to a point described as N26.390258 degrees and W97.943275 degrees, then South to a point described as N26.375732 degrees and W97.943346 degrees, then West to a point described as N26.376029 degrees and W98.02398 degrees, then North to a point described as N26.390555 degrees and W98.023919 degrees, then West to a point described as N26.390661 degrees and W98.056177 degrees, then North to a point described as N26.405187 degrees and W98.056121 degrees, then West to a point described as N26.405237 degrees and W98.072252 degrees, then North to a point described as N26.492395 degrees and W98.071923 degrees, then East to a point described as N26.492344 degrees and W98.05578 degrees, then North to a point described as N26.506871 degrees and W98.055723 degrees, then East to a point described as N26.506819 degrees and W98.039578 degrees, then North to a point described as N26.521345 degrees and W98.039519 degrees, then East to a point described as N26.521235 degrees and W98.007224 degrees, then North to the starting point.

(D) The quarantine boundary of the "McAllen quarantined area" in Hidalgo County is described as: Starting at a point described as N26.421596 degrees and W98.379156 degrees, then East to a point described as N26.421453 degrees and W98.266222 degrees, then South to a point described as N26.406927 degrees and W98.266252 degrees, then East to a point described as N26.406899 degrees and W98.250121 degrees, then South to a point described as N26.392373 degrees and W98.250153 degrees, then East to a point described as N26.392343 degrees and W98.234023 degrees, then South to a point described as N26.305186 degrees and W98.234227 degrees, then East to a point described as N26.305154 degrees and W98.21811 degrees, then South to a point described as N26.290628 degrees and W98.218146 degrees, then East to a point described as N26.290595 degrees and W98.202032 degrees, then South to a point described as N26.203438 degrees and W98.20226 degrees, then West to a point described as N26.203472 degrees and W98.218362 degrees, then South to a point described as N26.174419 degrees and W98.218434 degrees, then West to a point described as N26.174481 degrees and W98.250631 degrees, then South to a point described as N26.159955 degrees and W98.250663 degrees, then West to a point described as N26.160055 degrees and W98.315048 degrees, then North to a point described as N26.174581 degrees and W98.315024 degrees, then West to a point described as N26.174651 degrees and W98.379418 degrees, then North to a point described as N26.189177 degrees and W98.379403 degrees, then West to a point described as N26.18919 degrees and W98.395503 degrees, then North to a point described as N26.203716 degrees and W98.39549 degrees, then West to a point described as N26.203727 degrees and W98.411593 degrees, then North to a point described as N26.319936 degrees and W98.411502 degrees, then West to a point described as N26.319946 degrees and

W98.427621 degrees, then North to a point described as N26.363524 degrees and W98.427594 degrees, then East to a point described as N26.363515 degrees and W98.411468 degrees, then North to a point described as N26.392568 degrees and W98.411446 degrees, then East to a point described as N26.392557 degrees and W98.395316 degrees, then North to a point described as N26.407083 degrees and W98.395303 degrees, then East to a point described as N26.40707 degrees and W98.379172 degrees, then North to the starting point.

(E) The quarantine boundary of the "Raymondville quarantined area" in Willacy County is described as: Starting at a point described as N26.562386 degrees and W97.751958 degrees, then East to a point described as N26.561933 degrees and W97.671192 degrees, then South to a point described as N26.547407 degrees and W97.671299 degrees, then East to a point described as N26.54731 degrees and W97.655148 degrees, then South to a point described as N26.532784 degrees and W97.655256 degrees, then East to a point described as N26.532686 degrees and W97.639107 degrees, then South to a point described as N26.460056 degrees and W97.639657 degrees, then West to a point described as N26.460154 degrees and W97.655796 degrees, then South to a point described as N26.445628 degrees and W97.655904 degrees, then West to a point described as N26.445724 degrees and W97.67204 degrees, then South to a point described as N26.431198 degrees and W97.672146 degrees, then West to a point described as N26.431652 degrees and W97.752819 degrees, then North to a point described as N26.446178 degrees and W97.752723 degrees, then West to a point described as N26.446263 degrees and W97.76886 degrees, then North to a point described as N26.460789 degrees and W97.768766 degrees, then West to a point described as N26.460872 degrees and W97.784905 degrees, then North to a point described as N26.533503 degrees and W97.784448 degrees, then East to a point described as N26.533419 degrees and W97.768299 degrees, then North to a point described as N26.547945 degrees and W97.768205 degrees, then East to a point described as N26.54786 degrees and W97.752054 degrees, then North to the starting point.

(F) The "San Benito area" Quarantine Boundary in Cameron County is described as: Starting at a point described as N26.28736 degrees and W97.757125 degrees, then East to a point described as N26.286815 degrees and W97.660444 degrees, then South to a point described as N26.272248 degrees and W97.660552 degrees, then East to a point described as N26.272151 degrees and W97.64444 degrees, then South to a point described as N26.243099 degrees and W97.644658 degrees, then East to a point described as N26.243 degrees and W97.628551 degrees, then South to a point described as N26.228474 degrees and W97.628662 degrees, then East to a point described as N26.228409 degrees and W97.618015 degrees, then East to a point described as N26.228171 degrees and W97.580363 degrees, then South to a point described as N26.213643 degrees and W97.580477 degrees, then East to a point described as N26.213434 degrees and W97.548266 degrees, then South to a point described as N26.184379 degrees and W97.548502 degrees, then East to a point described as N26.184271 degrees and W97.532401 degrees, then South to a point described as N26.111634 degrees and W97.533001 degrees, then West to a point described as N26.111742 degrees and W97.549093 degrees, then South to a point described as N26.097214 degrees and W97.549211 degrees, then West to a point described as N26.097324 degrees and W97.565313 degrees, then South to a point described as N26.0247 degrees and W97.565908 degrees, then West to a point described as N26.024936 degrees and W97.6379 degrees, then North to a point described as N26.029612 degrees and W97.637846 degrees, then West to a point described as N26.029802 degrees and W97.658129 degrees, then North to a point described as N26.039027 degrees and W97.658024 degrees, then West to a point described as

N26.039378 degrees and W97.710348 degrees, then North to a point described as N26.127272 degrees and W97.709897 degrees, then West to a point described as N26.127621 degrees and W97.774262 degrees, then North to a point described as N26.142147 degrees and W97.77417 degrees, then West to a point described as N26.14231 degrees and W97.806357 degrees, then North to a point described as N26.171362 degrees and W97.80618 degrees, then West to a point described as N26.171441 degrees and W97.822278 degrees, then North to a point described as N26.229544 degrees and W97.821932 degrees, then East to a point described as N26.229465 degrees and W97.805826 degrees, then North to a point described as N26.243991 degrees and W97.805737 degrees, then East to a point described as N26.24391 degrees and W97.789629 degrees, then North to a point described as N26.258436 degrees and W97.789539 degrees, then East to a point described as N26.258353 degrees and W97.773429 degrees, then North to a point described as N26.272879 degrees and W97.773336 degrees, then East to a point described as N26.272795 degrees and W97.757224 degrees, then North to the starting point.

(G) The quarantine boundary of the "Weslaco quarantined area" in Hidalgo County is described as: Starting at a point described as N26.263576 degrees and W98.110376 degrees, then East to a point described as N26.263274 degrees and W98.013711 degrees, then South to a point described as N26.248748 degrees and W98.013773 degrees, then East to a point described as N26.248691 degrees and W97.997664 degrees, then South to a point described as N26.234165 degrees and W97.997728 degrees, then East to a point described as N26.234106 degrees and W97.981621 degrees, then South to a point described as N26.21958 degrees and W97.981687 degrees, then East to a point described as N26.219519 degrees and W97.965583 degrees, then South to a point described as N26.190468 degrees and W97.965719 degrees, then East to a point described as N26.190405 degrees and W97.949619 degrees, then North to a point described as N26.204931 degrees and W97.949548 degrees, then East to a point described as N26.204517 degrees and W97.852933 degrees, then South to a point described as N26.189992 degrees and W97.853016 degrees, then East to a point described as N26.189916 degrees and W97.836915 degrees, then South to a point described as N26.160864 degrees and W97.837084 degrees, then East to a point described as N26.160787 degrees and W97.820988 degrees, then South to a point described as N26.11721 degrees and W97.821248 degrees, then West to a point described as N26.117287 degrees and W97.837338 degrees, then South to a point described as N26.088236 degrees and W97.837507 degrees, then West to a point described as N26.088311 degrees and W97.853593 degrees, then South to a point described as N26.073785 degrees and W97.853675 degrees, then West to a point described as N26.07393 degrees and W97.885843 degrees, then South to a point described as N26.066361 degrees and W97.885884 degrees, then West along the US/Mexico border boundary following the natural River shore on the US side of the Rio Grande River directly south of and running parallel to the northern quarantine boundary line (N26.065387 degrees and W98.030638 degrees) of this described legal description, then North to a point described as N26.067007 degrees and W98.030631 degrees, then West to a point described as N26.067006 degrees and W98.030646 degrees, then North to a point described as N26.089018 degrees and W98.030552 degrees, then West to a point described as N26.089219 degrees and W98.094886 degrees, then North to a point described as N26.103745 degrees and W98.094834 degrees, then West to a point described as N26.10379 degrees and W98.110923 degrees, then North to a point described as N26.118316 degrees and W98.110873 degrees, then West to a point described as N26.11836 degrees and W98.126963 degrees, then North to a point described as N26.161938 degrees and W98.126821 degrees, then West to a point described as N26.16198 degrees and W98.142917 degrees, then North to a point described as

N26.23461 degrees and W98.142689 degrees, then East to a point described as N26.234568 degrees and W98.126583 degrees, then North to a point described as N26.249094 degrees and W98.126535 degrees, then East to a point described as N26.24905 degrees and W98.110426 degrees, then North to the starting point.

(b) Core areas. In addition to the quarantined area, one or more core areas may be established within each quarantined area around a detection site. Each core area shall consist of an approximately 1.0 square mile area with a detection site at or near the center. Each approximately square-shaped core area is defined by four GPS readings for each corner of the core area. In cases where two or more of the 1.0 square mile core areas touch or overlap, the areas are fused into a single core area, which may have more than four sides. Core areas are subject to more extensive monitoring and handling requirements and the Mexican fruit fly host plants within the core area shall be treated by ground or aerial sprays as prescribed by the department or the USDA. The department may designate additional core areas within a quarantined infested area based upon the confirmation of the presence of the Mexican fruit fly. The designations will be effective upon the posting of the notification of the core areas on the Department's website (<http://www.TexasAgriculture.gov>). Notification consists of a map and a description of the core areas. A printed copy of the notification is available at the department's Valley Regional Office, 900-B, East Expressway 83, San Juan, Texas 78217, (956) 787-8866. In addition, notification will be made through press release by the department and through dissemination of the information from the department.

(1) The core areas in the "Bayview quarantined area" in Cameron County are defined as follows:

(A) Core Area 1: Starting at a point described as N26.148353 degrees and W97.411863 degrees, then East to a point described as N26.148353 degrees and W97.395769 degrees, then South to a point described as N26.133827 degrees and W97.395769 degrees, then West to a point described as N26.133827 degrees and W97.411863 degrees, then North to the starting point.

(B) Core Area 2: Starting at a point described as N26.137573 degrees and W97.391461 degrees, then East to a point described as N26.137573 degrees and W97.375369 degrees, then South to a point described as N26.123047 degrees and W97.375369 degrees, then West to a point described as N26.123047 degrees and W97.387226 degrees, then South to a point described as N26.114807 degrees and W97.387226 degrees, then West to a point described as N26.114807 degrees and W97.395954 degrees, then South to a point described as N26.109966 degrees and W97.395954 degrees, then West to a point described as N26.109966 degrees and W97.412045 degrees, then North to a point described as N26.124493 degrees and W97.412045 degrees, then East to a point described as N26.124493 degrees and W97.403317 degrees, then North to a point described as N26.129333 degrees and W97.403317 degrees, then East to a point described as N26.129333 degrees and W97.391461 degrees, then North to the starting point.

(2) The core areas in the "Brownsville quarantined area" in Cameron County are defined as follows:

(A) Core Area 1: Starting at a point described as N25.881337 degrees and W97.479385 degrees, then North to a point described as N25.888335 degrees and W97.479322 degrees, then East to a point described as N25.888237 degrees and W97.470831 degrees, then Southwest along the US/Mexico border boundary following the natural river shore on the US side of the Rio Grande River to the starting point.

(B) Core Area 2: Starting at a point described as N25.88173 degrees and W97.468215, then East to a point described as

N25.888217 and W97.463265 degrees, then South to a point described as N25.882258 degrees and W97.463312 degrees, then West along the US/Mexico border boundary following the natural river shore on the US side of the Rio Grande River to the starting point.

(3) The core areas in the "Hargill quarantined area" in Hidalgo County are defined as follows:

(A) Core Area 1: Starting at a point described as N26.461703 degrees and W98.003069 degrees, then East to a point described as N26.461703 degrees and W97.986931 degrees, then South to a point described as N26.460783 degrees and W97.986931 degrees, then East to a point described as N26.460783 degrees and W97.978711 degrees, then South to a point described as N26.459283 degrees and W97.978711 degrees, then East to a point described as N26.459283 degrees and W97.975222 degrees, then South to a point described as N26.444757 degrees and W97.975222 degrees, then West to a point described as N26.444757 degrees and W97.991358 degrees, then North to a point described as N26.446257 degrees and W97.991358 degrees, then West to a point described as N26.446257 degrees and W97.994849 degrees, then North to a point described as N26.447177 degrees and W97.994849 degrees, then West to a point described as N26.447177 degrees and W98.003069 degrees, then North to the starting point.

(B) Core Area 2: Starting at a point described as N26.472663 degrees and W97.972719 degrees, then East to a point described as N26.472663 degrees and W97.956581 degrees, then South to a point described as N26.458137 degrees and W97.956581 degrees, then West to a point described as N26.458137 degrees and W97.972719 degrees, then North to the starting point.

(4) The core areas in the "McAllen quarantined area" in Hidalgo County are defined as follows:

(A) Core Area 1: Starting at a point described as N26.363315 degrees and W98.334596 degrees, then East to a point described as N26.363295 degrees and W98.318471 degrees, then South to a point described as N26.358009 degrees and W98.318479 degrees, then East to a point described as N26.357994 degrees and W98.317659 degrees, then East to a point described as N26.357972 degrees and W98.301534 degrees, then South to a point described as N26.343446 degrees and W98.301559 degrees, then West to a point described as N26.343468 degrees and W98.317682 degrees, then West to a point described as N26.343649 degrees and W98.319306 degrees, then South to a point described as N26.342134 degrees and W98.319309 degrees, then West to a point described as N26.342144 degrees and W98.327554 degrees, then South to a point described as N26.341124 degrees and W98.327555 degrees, then West to a point described as N26.341136 degrees and W98.337274 degrees, then South to a point described as N26.333827 degrees and W98.337285 degrees, then West to a point described as N26.333845 degrees and W98.353406 degrees, then North to a point described as N26.334176 degrees and W98.353161 degrees, then North to a point described as N26.348372 degrees and W98.353387 degrees, then East to a point described as N26.348361 degrees and W98.343542 degrees, then North to a point described as N26.35567 degrees and W98.343657 degrees, then East to a point described as N26.355662 degrees and W98.336716 degrees, then North to a point described as N26.358346 degrees and W98.336758 degrees, then East to a point described as N26.358343 degrees and W98.334518 degrees, then North to the starting point.

(B) Core Area 2: Starting from a point described as N26.2556 degrees and W98.3346 degrees, then South to a point described as N26.2519 degrees and W98.3346 degrees, then West to a point described as N26.2519 degrees and W98.3454 degrees,

then South to a point described as N26.2374 degrees and W98.3455 degrees, then East to a point described as N26.2374 degrees and W98.3294 degrees, and then North to a point described as N26.241 and W98.3293, and then East to a point described as N26.241 degrees and W98.3185 degrees, and then North to a point described as N26.2429 degrees and W98.3185 degrees, and then East to a point described as N98.3036 degrees and W26.2429 degrees, and then North to a point described as N26.2515 degrees and W98.3036 degrees, and then East to a point described as N26.2515 degrees and W98.2918 degrees, and then South to a point described as N26.2509 degrees and W98.2918 degrees, and then East to a point described as N26.2509 degrees and W98.2817 degrees, and then South to a point described as N26.401 degrees and W98.2818 degrees, and then West to a point described as N26.2401 degrees and W98.2921 degrees, and then South to a point described as N26.2256 degrees and W98.2921 degrees, and then East to a point described as N26.2255 degrees and W98.276 degrees, and then North to a point described as N26.2379 degrees and W98.276 degrees, and then East to a point described as N26.2379 degrees and W98.2657 degrees, and then North to a point described as N26.2524 degrees and W98.2656 degrees, and then West to a point described as N26.2624 degrees and W98.2757 degrees, and then North to a point described as N26.2654 degrees and W98.2757 degrees, and then East to a point described as N26.2654 degrees and W98.2874 degrees, and then North to a point described as N26.266 degrees and W98.2874 degrees, and then West to a point described as N26.266 degrees and W98.3035 degrees, and then South to a point described as N26.2574 degrees and W98.3035 degrees, and then West to a point described as N26.2574 degrees and W98.3197 degrees, and then South to a point described as N26.2556 degrees and W98.3197 degrees, and then return to the starting point.

(5) The core areas in the "Raymondville quarantined area" in Willacy County are defined as follows: Core Area 1: Starting at a point described as N26.504105 degrees and W97.72005 degrees, then East to a point described as N26.504014 degrees and W97.703906 degrees, then South to a point described as N26.48949 degrees and W97.704008 degrees, then West to a point described as N26.48958 degrees and W97.72015 degrees, then North to the starting point.

(6) The core areas in the "San Benito quarantined area" in Cameron County are defined as follows:

(A) Core Area 1: Starting at a point described as N26.205024 degrees and W97.744776 degrees, then East to a point described as N26.204937 degrees and W97.728673 degrees, then South to a point described as N26.190411 degrees and W97.728771 degrees, then West to a point described as N26.190499 degrees and W97.744872 degrees, then North to the starting point.

(B) Core Area 2: Starting at a point described as N26.226067 degrees and W97.719124 degrees, then East to a point described as N26.225977 degrees and W97.703019 degrees, then South to a point described as N26.211451 degrees and W97.703121 degrees, then West to a point described as N26.211542 degrees and W97.719224 degrees, then North to the starting point.

(C) Core Area 3: Starting at a point described as N26.097842 degrees and W97.645749 degrees, then East to a point described as N26.097743 degrees and W97.629661 degrees, then South to a point described as N26.083217 degrees and W97.629772 degrees, then West to a point described as N26.083317 degrees and W97.645858 degrees, then North to the starting point.

(D) Core Area 4: Starting at a point described as N26.159073 degrees and W97.615035 degrees, then East to a point described as N26.159073 degrees and W97.598939 degrees, then

South to a point described as N26.144547 degrees and W97.598939 degrees, then West to a point described as N26.144547 degrees and W97.615035 degrees, then North to the starting point.

(7) The core areas in the "Weslaco quarantined area" in Hidalgo County are defined as follows:

(A) Core Area 1: Starting at a point described as N26.132364 degrees and W97.965992 degrees, then East to a point described as N26.132302 degrees and W97.949899 degrees, then South to a point described as N26.117776 degrees and W97.949969 degrees, then West to a point described as N26.117838 degrees and W97.96606 degrees, then North to the starting point.

(B) Core Area 2: Starting at a point described as N26.203651 degrees and W98.072305 degrees, then East to a point described as N26.203651 degrees and W98.056204 degrees, then South to a point described as N26.189125 degrees and W98.056204 degrees, then West to a point described as N26.189125 degrees and W98.072305 degrees, then North to the starting point.

(C) Core Area 3: Starting at a point described as N26.145943 degrees and W97.910987 degrees, then East to a point described as N26.145943 degrees and W97.894893 degrees, then South to a point described as N26.131417 degrees and W97.894893 degrees, then West to a point described as N26.131417 degrees and W97.910987 degrees, then North to the starting point.

(D) Core Area 4: Starting at a point described as N26.163721 degrees and W98.03601 degrees, then East to a point described as N26.163721 degrees and W98.019914 degrees, then South to a point described as N26.149195 degrees and W98.019914 degrees, then West to a point described as N26.149195 degrees and W98.024499 degrees, then South to a point described as N26.1465 degrees and W98.024499 degrees, then West to a point described as N26.1465 degrees and W98.036867 degrees, then South to a point described as N26.144344 degrees and W98.036867 degrees, then West to a point described as N26.144344 degrees and W98.052962 degrees, then North to a point described as N26.158871 degrees and W98.052962 degrees, then East to a point described as N26.158871 degrees and W98.040595 degrees, then North to a point described as N26.161026 degrees and W98.040595 degrees, then East to a point described as N26.161026 degrees and W98.03601 degrees, then North to the starting point.

(c) Maps and other information on currently quarantined and core areas. For information or to obtain a map or a legal description of areas within this state (including any quarantined areas within this state that are not specifically described in these regulations) where the dangerous insect pest currently is found and which currently are quarantined for Mexican fruit fly or which currently are core areas, contact the department's Valley Regional Office at 900-B East Expressway 83, San Juan, Texas 78217, or (956) 787-8866. Supplemental information may be available on the department's web page (<http://www.TexasAgriculture.gov>), through press releases by the department.

§19.503. 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 this subchapter and Chapter 71, in order to prevent dissemination of the dangerous insect pest to areas located outside a quarantined infested area or into a quarantined non-infested area. The following articles are subject to the quarantine:

(1) The Mexican fruit fly;

(2) The fruit, at any stage of development, of all of the following plants, listed by common name with genus and species in parentheses, when grown, harvested, processed, or otherwise handled within or transported through the quarantined area:

- (A) Apple (*Malus domestica*);
- (B) Apricot (*Prunus armeniaca*);
- (C) Avocado (*Persea americana*);
- (D) Calamondin orange (*X citrofortunella mitis*);
- (E) Cherimoya (*Annona cherimola*);
- (F) Citrus citron (*Citrus medica*);
- (G) Custard apple (*Annona reticulate*);
- (H) Grapefruit (*Citrus paradise*);
- (I) Guava (*Pisidium guajava*);
- (J) Japanese plum (*Prunus salicina*);
- (K) Lemon (*Citrus limon*) except Eureka, Lisbon, and Vila Franca cultivars (smooth skinned sour lemon);
- (L) Lime (*Citrus aurantifolia*);
- (M) Mammy-Apple (*Mammea americana*);
- (N) Mandarin orange (tangerine) (*Citrus reticulate*);
- (O) Mango (*Mangifera indica*);
- (P) Nectarine (*Prunus persica*);
- (Q) Peach (*Prunus persica*);
- (R) Pear (*Pyrus communis*);
- (S) Plum (*Prunus americana*);
- (T) Pomegranate (*Punica granatum*);
- (U) Prune, Plum (*Prunus domestica*);
- (V) Pummelo (shaddock) (*Citrus maxima*);
- (W) Quince (*Cydonia oblonga*);
- (X) Rose apple (*Syzygium jambos*) (*Eugenia jambos*);
- (Y) Sour orange (*Citrus aurantium*);
- (Z) Sapote (*Casimiroa* spp.);
- (AA) Sapota, Sapodilla (*Sapotaceae*);
- (BB) Sargentia, yellow chapote (*Sargentia greggi*);
- (CC) Spanish Plum, purple mombin or Ciruela (*Spondias* spp.);
- (DD) Sweet orange (*Citrus sinensis*);

(3) any other fruit capable of hosting, harboring, propagating, or disseminating the Mexican fruit fly;

(4) the producing plant if it has one or more fruits listed in paragraph (2) of this section attached to or growing from it; and

(5) any article, item, conveyance, or thing on or in which the Mexican fruit fly is actually found.

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

(a) In General.

(1) A regulated article originating within a quarantined infested area may not be moved outside the infested area except as otherwise provided by this subchapter.

(2) In order to prevent the movement of regulated articles, including the dangerous insect pest, from a quarantined area into a non-quarantined area, as required by the Texas Agriculture Code, §71.005(a), a person that transports a regulated article through or within an infested area using a motor vehicle, railcar, or other conveyance capable of transporting the regulated article outside the infested area, is subject to the requirements of subsection (c) of this section.

(b) Conditions Under Which Regulated Articles May Be Moved Out of an Infested Area. Plants that are regulated articles shall not be moved outside the quarantined infested area with fruit attached. Detached fruit originating within a quarantined infested area may be moved outside the infested area if:

(1) the fruit is covered by a tarpaulin or other approved covering and taken directly to and segregated in an approved packing house or other approved treatment facility and fumigated as prescribed in the Texas Rio Grande Valley Mexican Fruit Fly Protocol 2010-2011 Harvest Season, a copy of which may be obtained at the department's Valley Regional Office, 900-B East Expressway 82, San Juan, Texas 78598, (956) 787-8866, and the fruit is accompanied by a copy of all documentation of origin or treatment required by this subchapter or a compliance agreement with the department or USDA;

(2) the grower has entered into a compliance agreement with the department or the USDA, the fruit has been treated and is being handled in accordance with the requirements set forth in the compliance agreement (at the time this subchapter is published, a compliance agreement requires use of approved bait sprays at 10 to 12 day intervals, or a shorter or longer period upon receipt of written notice from the department or the USDA of the modified treatment interval, starting at least 30 days before harvest and continued through the harvest period), and the fruit is accompanied by all documentation of origin or treatment required by this subchapter or a compliance agreement with the department or USDA; or

(3) the fruit is to be moved outside the quarantined area for juicing and the fruit is covered by a tarpaulin or other approved covering and accompanied by all documentation of origin or treatment required by this subchapter or a compliance agreement with the department or USDA.

(c) Requirements for Transporters of Regulated Articles Within or Through an Infested Area.

(1) A person who transports a regulated article within or through an infested area using a motor vehicle, railcar, other conveyance, or equipment capable of transporting the regulated article outside the infested area shall take the following precautions to ensure that the dangerous insect pest is not disseminated outside the quarantined area and that non-infested regulated articles do not become infested by virtue of transport within or through the infested area: if carried in a part of the conveyance or equipment that is open to the outside environment, detached fruit must be covered by a tarpaulin, plastic sheet, or other covering sufficient to prevent the Mexican fruit fly from contacting the fruit; regulated articles other than detached fruit shall not be moved within or through the quarantined area unless handled in accordance with the provisions of a written notice issued by the department or the USDA or a written compliance agreement between the person and the department or the USDA.

(2) Regulated articles originating outside the quarantined area and transported through the quarantined area in an open part of a



conveyance or piece of equipment and without an appropriate covering shall be treated the same under this subchapter as regulated articles originating in the quarantined area and shall be handled according to the procedures described in subsection (b) of this section and elsewhere in this subchapter.

§19.505. *Monitoring and Eradication of the Dangerous Pest.*

(a) A regulated article located within a core area shall be monitored, handled, and treated by ground or aerial sprays, as prescribed in a written notice issued by the department or the USDA or as specified in a written compliance agreement between the owner or person in control of the regulated article or the property on which the regulated article is located.

(b) The owner or manager of an orchard, other commercial fruit operation, or nursery subject to quarantine requirements may be required to bear all treatment expenses.

(c) Homeowners located in the core areas who enter into a written compliance agreement with the department or the USDA shall not be required to pay treatment expenses for fruit or fruit trees grown, harvested, or found on their residential property, unless the fruit or fruit tree is transported to the residential property from an orchard, other commercial fruit operation, or nursery owned or operated by the homeowner or at which the homeowner is employed, at a time during which the quarantine is in effect.

(d) Unless otherwise specified in a written notice issued by the department or the USDA or in a written compliance agreement between the person and the department or the USDA, a wholesaler, fruit retailer, street fruit vendor, or flea market stall operator located within the quarantined area shall cover or enclose detached fruit with air curtains, screens of appropriate mesh, plastic sheets, boxes without holes or other openings, or tarpaulins.

(e) A person who within the quarantined area is holding or displaying for sale or distribution a plant that is a regulated article shall ensure that each such plant is free from fruit at all times prior to sale or distribution.

§19.506. *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 may be subject to administrative penalties not to exceed \$5,000 per occurrence, civil penalties not to exceed \$10,000 per occurrence, or criminal pros-

ecution. Each day a violation occurs or continues may be considered a separate occurrence. 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 infested or not, transported out of or through the quarantined area in violation of this subchapter. Treatment, destruction, storage, or other charges, including those incurred by the department, are chargeable to the owner of the quarantined article to be treated or destroyed.

§19.507. *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.

§19.508. *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 insect pest 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 April 18, 2012.

TRD-201201952

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Effective date: April 18, 2012

Expiration date: August 15, 2012

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

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# PROPOSED RULES

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

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

## TITLE 1. ADMINISTRATION

### PART 2. TEXAS ETHICS COMMISSION

#### CHAPTER 12. SWORN COMPLAINTS

##### SUBCHAPTER B. FILING AND INITIAL PROCESSING OF A COMPLAINT

###### 1 TAC §12.51

The Texas Ethics Commission (the commission) proposes new §12.51, relating to the processing of non-compliant sworn complaints.

Complaints are required to comply with certain requirements. These requirements are meant to guarantee fairness and due process to all persons involved. If a complaint does not comply with the requirements, the complaint is rejected and by law the complainant is given 21 days to re-file a complying complaint.

One of the requirements is that a complaint must describe facts that if true constitute a violation of a law under the commission's enforcement jurisdiction. Currently, a complaint is rejected if none of the allegations raised in a complaint comply with this requirement. A complaint is not rejected if it includes both allegations that comply with the requirement and allegations that do not comply with the requirement. In such instances, the notice of complaint identifies the allegations that do not comply.

Under the proposed §12.51, a complaint including an allegation that does not comply with the requirement to provide facts that if true would constitute a violation of the law would be rejected if the complainant has been previously notified that the alleged conduct is an invalid basis for an allegation. In those instances, the complainant would be given 21 days to fix the problem and re-file the complaint. The goal of the rule is to reduce the amount of staff time necessary to process such complaints, to provide respondents a more concise complaint, and to more quickly process complaints in which complainants have an incentive to take care to raise only valid allegations.

David A. Reisman, Executive Director, has determined that for each year of the first five years that the rule is in effect there will be no fiscal implication for the state and no fiscal implication for local government as a result of enforcing or administering the rule as proposed. Mr. Reisman has also determined that the rule will have no local employment impact.

Mr. Reisman has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be clarity in what is required by the law.

Mr. Reisman has also determined there will be no direct adverse effect on small businesses or micro-businesses because the rule does not apply to single businesses.

Mr. Reisman has further determined that there are no economic costs to persons required to comply with the rule.

The Texas Ethics Commission invites comments on the proposed rule from any member of the public. A written statement should be mailed or delivered to Natalia Luna Ashley, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070 or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the proposed rule may do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period at a commission meeting when the commission considers final adoption of the proposed rule. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800.

The new §12.51 is proposed under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The new §12.51 affects §571.122 of the Government Code.

###### §12.51. Non-Complying Complaint.

(a) A complaint does not comply with the requirements of §571.122 of the Government Code if:

(1) the complaint includes an allegation of conduct that the commission has previously determined is not a violation of a statute or rule within the commission's jurisdiction; and

(2) before the complaint was filed the complainant was provided notice that such conduct is an invalid basis for an allegation.

(b) A complainant has been provided notice if, before a complaint is filed, the commission states the basis for rejecting an allegation in a written communication mailed to the complainant at the last address provided to the commission by the complainant, or in a written communication transmitted by electronic mail to the complainant at the last electronic mail address provided to the commission by the complainant.

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 April 23, 2012.

TRD-201202082

Natalia Luna Ashley

General Counsel

Texas Ethics Commission

Earliest possible date of adoption: June 3, 2012

For further information, please call: (512) 463-5800

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## CHAPTER 18. GENERAL RULES CONCERNING REPORTS

The Texas Ethics Commission (the commission) proposes the repeal of §18.23, new §18.24 and §18.25, and the amendment to §18.27, relating to the administrative waiver and reduction of fines.

Section 18.23 authorizes the executive director to waive certain late fines. Currently, the executive director is not authorized to reduce late fines. The proposal is to repeal §18.23 because it has been largely incorporated into the new §18.24 and §18.25.

Section 18.24 would authorize the executive director to waive or reduce certain fines imposed on a filer in connection with a late personal financial statement (PFS).

Section 18.25 would authorize the executive director to waive or reduce certain late fines imposed on a filer in connection with a report other than a personal financial statement.

The proposed amendment to §18.27 revises the existing rule, which basically states that the commission's sworn complaint authority is not limited by the rules set out in Chapter 18 of the Texas Ethics Commission rules. The proposed amendment to §18.27 would bring the rule in line with §18.24 and §18.25. Also, the proposed amendment would add a subsection providing that the executive director may not waive or reduce a fine under Chapter 18 if a report is filed in response to a complaint.

David A. Reisman, Executive Director, has determined that for each year of the first five years that the rules are in effect there will be no fiscal implication for the state and no fiscal implication for local government as a result of enforcing or administering the rules as proposed. Mr. Reisman has also determined that the rules will have no local employment impact.

Mr. Reisman has also determined that for each year of the first five years the rules are in effect, the anticipated public benefit will be clarity in what is required by the law.

Mr. Reisman has also determined there will be no direct adverse effect on small businesses or micro-businesses because the rules do not apply to single businesses.

Mr. Reisman has further determined that there are no economic costs to persons required to comply with the rules.

The Texas Ethics Commission invites comments on the proposed rules from any member of the public. A written statement should be mailed or delivered to Natalia Luna Ashley, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070 or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the proposed rules may do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period at a commission meeting when the commission considers final adoption of the proposed rules. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800.

### 1 TAC §18.23

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

The repeal of §18.23 is proposed under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The repeal of §18.23 affects §571.061 and §571.1731 of the Government Code.

*§18.23. Administrative Waiver of Fine.*

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 April 25, 2012.

TRD-201202135

Natalia Luna Ashley

General Counsel

Texas Ethics Commission

Earliest possible date of adoption: June 3, 2012

For further information, please call: (512) 463-5800

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### 1 TAC §§18.24, 18.25, 18.27

The new §18.24 and §18.25 and the amendment to §18.27 are proposed under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The new §18.24 and §18.25 and the amendment to §18.27 affect §571.061 and §571.1731 of the Government Code.

*§18.24. Personal Financial Statement Administrative Waiver and Reduction of Fines.*

(a) A filer may request that the executive director waive a late fine imposed on the filer in connection with a personal financial statement by submitting an affidavit to the executive director that states facts that establish that:

(1) the filer was not required to file the personal financial statement as a candidate for an elective public office, and the late report:

(A) was the first report filed late by the filer under Government Code, Chapter 572 in the 10 years preceding the deadline of the report at issue, excluding a late report for which a waiver was granted under paragraphs (2), (3), (4), (5), or (6) of this subsection; and

(B) was filed not later than 30 days after the deadline;

(2) the personal financial statement was filed late because of an unforeseen serious medical emergency that involved the filer, a family member or relative of the filer, a member of the filer's household, or a person whose usual job duties include preparation of the report; the filer has received no more than one waiver under this paragraph in the 10 years preceding the deadline of the late report at issue; and the report was filed within a reasonable time after the deadline;

(3) the personal financial statement was filed late as a result of verifiable severe weather at the filer's location that prevented the filer from filing the report by the applicable deadline and the report was filed within a reasonable time after the deadline;

(4) the personal financial statement was filed late because the filer was on active military duty at the time of the filing deadline and the report was filed within a reasonable time after the deadline;

(5) the filer reasonably relied on incorrect information given to the filer by the agency; or

(6) other administrative error by the agency.

(b) A filer may request that the executive director reduce a late fine imposed on the filer in connection with a personal financial statement by submitting an affidavit to the executive director, who may reduce the fine to:

(1) \$100 if:

(A) the report was filed in the proper format no more than one business day after the deadline; and

(B) the filer of the report has not received a reduction under this paragraph in the 10 years preceding the deadline of the late report at issue;

(2) \$250 if:

(A) the filer was not required to file the report as a candidate for or holder of an elective public office;

(B) the report was filed in the proper format not later than 30 days after the deadline; and

(C) the filer has received no more than one reduction under this paragraph in the 10 years preceding the deadline of the late report at issue; or

(3) \$250 if:

(A) the filer was required to file the report as an unopposed candidate for elective public office in a primary election;

(B) the report was filed in the proper format before the primary election; and

(C) the filer has received no more than one reduction under this paragraph in the 10 years preceding the deadline of the late report at issue.

(c) If, in the executive director's discretion, the affidavit establishes grounds for a waiver or reduction under this section, the executive director may waive or reduce the fine.

§18.25. Administrative Waiver and Reduction of Fines (Other than Personal Financial Statements).

(a) A filer may request that the executive director waive a late fine imposed on the filer in connection with a report, other than a personal financial statement, by submitting an affidavit to the executive director that states facts that establish that:

(1) the late report:

(A) was the first report filed late in the 10 years preceding the deadline of the report at issue, excluding a late report for which a waiver was granted under paragraphs (2), (3), (4), (5), (6), or (7) of this subsection;

(B) disclosed no more than \$2,000 in contributions, expenditures, or loans; and

(C) was filed not later than 30 days after the deadline;

(2) the report was filed late because the filer of the report experienced technical problems while filing the report electronically, and the filer:

(A) made a good-faith effort to timely file the report by speaking with the agency technical support for assistance during normal business hours on or before the filing deadline; and

(B) filed the report not later than seven business days after the deadline;

(3) the report was filed late because of an unforeseen serious medical emergency that involved the filer, a family member or relative of the filer, a member of the filer's household, or a person whose usual job duties include preparation of the report, the filer has received no more than one waiver under this paragraph in the 10 years preceding the deadline of the late report at issue and the report was filed within a reasonable time after the deadline;

(4) the report was filed late as a result of verifiable severe weather at the filer's location that prevented the filer from filing the report by the applicable deadline and the report was filed within a reasonable time after the deadline;

(5) the report was filed late because the filer was on active military duty at the time of the filing deadline and the report was filed within a reasonable time after the deadline;

(6) the filer reasonably relied on incorrect information given to the filer by the agency; or

(7) other administrative error by the agency.

(b) A filer may request that the executive director reduce a late fine imposed on the filer in connection with a report, other than personal financial statement, by submitting an affidavit to the executive director, who may reduce the fine to:

(1) \$100 if:

(A) the report was filed in the proper electronic format after midnight and before 1:00 a.m. on the day after the deadline; and

(B) the filer of the report has received no more than one reduction under this paragraph in the 10 years preceding the deadline of the late report at issue;

(2) \$200 if:

(A) the report was filed in the proper format no more than one business day after the filing deadline;

(B) the report is not a report due eight days before an election, including a report due eight days before a runoff election; and

(C) the filer of the report has not received a reduction under this paragraph in the 10 years preceding the deadline of the late report at issue; or

(3) \$300 if:

(A) the report was filed in the proper format no more than one business day after the filing deadline;

(B) the report is not a report due eight days before an election, including a report due eight days before a runoff election; and

(C) the filer of the report has not received a reduction under this paragraph in the 10 years preceding the deadline of the late report at issue.

§18.27. Sworn Complaints.

(a) The commission may consider the fine amounts established by this chapter in determining the amount of a fine to be assessed in a sworn complaint proceeding.

(b) The commission is not required to waive or reduce the fine for a respondent who files a corrected report in response to a sworn complaint but may consider the correction to be a mitigating factor in determining the amount of any fine.

(c) The executive director shall not waive or reduce the fine under this chapter for a respondent who files a late or corrected report in response to a sworn complaint.

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 April 23, 2012.

TRD-201202081

Natalia Luna Ashley

General Counsel

Texas Ethics Commission

Earliest possible date of adoption: June 3, 2012

For further information, please call: (512) 463-5800



## PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

### CHAPTER 353. MEDICAID MANAGED CARE

The Texas Health and Human Services Commission (HHSC) proposes to amend §353.2, concerning definitions; and §353.403, concerning enrollment and disenrollment; and proposes new Subchapter K, consisting of §353.1001 and §353.1003, concerning Children's Medicaid Dental Services, in Chapter 353, Medicaid Managed Care.

#### BACKGROUND AND JUSTIFICATION

On March 1, 2012, rules regarding the addition of dental services to the Medicaid managed care model (the "dental carve-in rules") became effective. The dental carve-in rules did not include a default assignment process for beneficiaries who do not select a dental home provider. These proposed rule amendments describe the default assignment process for dental homes. For consistency across the medical and dental programs, the amended rules also revise the default assignment process for primary care providers to include criteria similar to those applied to dental home assignments. The amended rules also provide that there is no limit to the number of times a member can request a change in his or her dental home or primary care provider.

Additionally, the proposed rules revise the default assignment process for members who do not select a health care or dental managed care organization (MCO) to more accurately reflect HHSC's enrollment practices and systems capabilities.

The proposed rules also add clarification regarding the children's Medicaid dental services provided by dental MCOs, including general provisions regarding the administration of these services and the beneficiaries who are eligible to receive them.

Finally, the proposed rules update and revise terminology for clarity and consistency and clarify language through the use of plain language principles and consistency with the Code Construction Act (Government Code, Chapter 311).

#### SECTION-BY-SECTION SUMMARY

The amendment to §353.2 adds definitions for "Children's Medicaid Dental Services" and for "intermediate care facility for people with intellectual and developmental disabilities." The amendment also revises the definition of "dental home" to clarify the types of providers that can serve as dental homes.

The amendment to §353.403 revises provisions regarding default assignment of beneficiaries to dental homes, primary care providers, and managed care organizations. The amendment

revises the default assignment methodology to include selection and assignment of a dental home. The amendment adds automated and manual default assignment processes for beneficiaries who do not select a dental home and revises the processes for assignments to primary care providers to more closely align with the process for dental home assignments. The amendment also specifies that there is no limit on the number of times a managed care member can request to change his or her dental home or primary care provider. The amendment to §353.403 also revises the assignment criteria by removing language regarding default assignments when a beneficiary has selected a primary care provider but not a health care managed care organization.

New §353.1001 describes general provisions for children's Medicaid dental services, including administration of the services, applicable rules, procurement of dental managed care organizations, and geographic availability of the services.

New §353.1003 establishes that enrollment in children's Medicaid dental services is mandatory for children from birth through age 20 who are eligible for Medicaid. The proposed rule also establishes restrictions on enrollment.

#### FISCAL NOTE

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

#### PUBLIC BENEFIT AND COSTS

Billy Millwee, Deputy Executive Commissioner for Health Services Operations, has determined that, for each year of the first five years the amendments and new rules will be in effect, public benefit is expected as a result of adopting the proposed amendments and new rules. The expected public benefit of the default assignment processes is the preservation of established relationships between Medicaid beneficiaries or their families and managed care organizations, primary care providers, and dental homes when possible. The default assignment processes for dental home and primary care providers also benefit the public by ensuring that a provider's proximity to the beneficiary's home is taken into consideration when making default assignments. Finally, the public will benefit from clearer rules regarding default assignments and children's Medicaid dental services.

Mr. Millwee anticipates that there will not be an economic cost to persons who are required to comply with the amendments and new rules.

This proposal will not affect a local economy.

#### SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

HHSC has determined that there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing or administering the amendments and new rules. The rules are designed to preserve preexisting relationships between beneficiaries or their family members and managed care organizations, dental homes, and primary care providers when possible. HHSC therefore anticipates that small business or micro-business providers with preexisting relationships with beneficiaries will not lose current clients under the rules. Furthermore, these providers may gain additional clients if they serve

other Medicaid members in the household, or if their place of business is in close geographic proximity to default assignees.

## 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 Susan Gibson, Health and Human Services Commission, Managed Care Operations, MC-H-320, Braker Center H320, P.O. Box 85200, Austin, TX 78708-5200; by fax to (512) 491-1969; or by e-mail to [susan.gibson@hhsc.state.tx.us](mailto:susan.gibson@hhsc.state.tx.us) within 30 days after publication of this proposal in the *Texas Register*.

## PUBLIC HEARING

The Medical Care Advisory Committee (MCAC) meeting on May 10, 2012, will function as a public hearing to receive public comment on this proposal. The MCAC meeting will be held in the John H. Winters Public Hearing Room at 701 West 51st Street, Austin, Texas. Entry is through Security at the main entrance of the building, which faces 51st Street. Persons requiring American with Disabilities Act (ADA) accommodation or auxiliary aids or services should contact Carol Chavez by calling (512) 491-1763 at least 72 hours prior to the hearing so appropriate arrangements can be made.

## SUBCHAPTER A. GENERAL PROVISIONS

### 1 TAC §353.2

#### STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Human Resources Code §32.021 and Texas Government Code §531.021, which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas and to adopt rules and standards for program administration.

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

#### §353.2. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the content clearly indicates otherwise.

(1) Action--

(A) An action is defined as:

(i) the denial or limited authorization of a requested Medicaid service, including the type or level of service;

(ii) the reduction, suspension, or termination of a previously authorized service;

(iii) the failure to provide services in a timely manner;

(iv) the denial in whole or in part of payment for a service;

(v) the failure of a managed care organization (MCO) to act within the timeframes set forth by the Health and Human Services Commission (HHSC) and state and federal law; or

(vi) for a resident of a rural area with only one MCO, the denial of a member's request to obtain services outside the network.

(B) "Action" does not include expiration of a time-limited service.

(2) Acute care--Preventive care, primary care, and other medical or behavioral health care provided for a condition having a relatively short duration.

(3) Acute care hospital--A hospital that provides acute care services.

(4) Adverse determination--A determination by an MCO that the health care services or dental services furnished, or proposed to be furnished, to a patient are not medically necessary or appropriate.

(5) Agreement or Contract--The formal, written, and legally enforceable contract and amendments thereto between HHSC and an MCO.

(6) Allowable revenue--All managed care revenue received by the MCO pursuant to the contract during the contract period, including retroactive adjustments made by HHSC. This would include any revenue earned on Medicaid managed care funds such as investment income, earned interest, or third party administrator earnings from services to delegated networks.

(7) Appeal--The formal process by which a member or his or her representative requests a review of the MCO's action.

(8) Behavioral health service--A covered service for the treatment of mental, emotional, or chemical dependency disorders.

(9) Capitated service--A benefit available to members under the Texas Medicaid program for which an MCO is responsible for payment.

(10) Capitation rate--A fixed predetermined fee paid by HHSC to the MCO each month, in accordance with the contract, for each enrolled member in exchange for which the MCO arranges for or provides a defined set of covered services to the member, regardless of the amount of covered services used by the enrolled member.

(11) Children's Medicaid Dental Services--The dental services provided through a dental MCO to a client birth through age 20.

(12) [(44)] Client--Any Medicaid-eligible recipient.

(13) [(42)] CMS--The Centers for Medicare and Medicaid Services, which is the federal agency responsible for administering Medicare and overseeing state administration of Medicaid.

(14) [(43)] Complainant--A member, or a treating provider or other individual designated to act on behalf of the member, who files a complaint.

(15) [(14)] Complaint--Any dissatisfaction expressed by a complainant, orally or in writing, to the MCO about any matter related to the MCO other than an action. Subjects for complaints may include:

- (A) the quality of care of services provided;
- (B) aspects of interpersonal relationships such as rudeness of a provider or employee; and
- (C) failure to respect the member's rights.

(16) [(15)] Covered services--Unless a service or item is specifically excluded under the terms of the state plan, a federal waiver, a managed care services contract, or an amendment to any of these, the phrase "covered services" means all health care or dental services or items that the MCO must arrange to provide and pay for on a member's behalf under the terms of the contract executed between the MCO and HHSC, including:

- (A) all services or items comprising "medical assistance" as defined in §32.003 of the Human Resources Code; and
- (B) all value-added services under such contract.

(17) [(16)] Cultural competency--The ability of individuals and systems to provide services effectively to people of various cultures, races, ethnic backgrounds, and religions in a manner that recognizes, values, affirms, and respects the worth of the individuals and protects and preserves their dignity.

(18) [(17)] Day--A calendar day, unless specified otherwise.

(19) [(18)] Default enrollment--The process established by HHSC to assign a Medicaid managed care enrollee to an MCO when the enrollee has not selected an MCO.

(20) [(19)] Dental managed care organization (dental MCO)--A dental indemnity insurance provider or dental health maintenance organization licensed or approved by the Texas Department of Insurance.

(21) [(20)] Dental contractor--A dental MCO that is under contract with HHSC for the delivery of dental services.

(22) [(21)] Dental home--A provider who has contracted with a dental MCO to serve as a dental home to a member and who is responsible for providing routine preventive, diagnostic, urgent, therapeutic, initial, and primary care to patients, maintaining the continuity of patient care, and initiating referral for care. Provider types that can serve as dental homes are federally qualified health centers and individuals who are general dentists or [and] pediatric dentists.

(23) [(22)] Dental service--The routine preventive, diagnostic, urgent, therapeutic, initial, and primary care provided to a member and included within the scope of HHSC's agreement with a dental contractor. For purposes of this chapter, "dental service" does not include dental devices for craniofacial anomalies; treatment rendered in a hospital, urgent care center, or ambulatory surgical center setting for craniofacial anomalies; or emergency services provided in a hospital, urgent care center, or ambulatory surgical center setting involving dental trauma. These types of services are treated as health care services in this chapter.

(24) [(23)] Disproportionate Share Hospital (DSH)--A hospital that serves a higher than average number of Medicaid and other low-income patients and receives additional reimbursement from the State.

(25) [(24)] Disability--A physical or mental impairment that substantially limits one or more of an individual's major life ac-

tivities, such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, socializing, or working.

(26) [(25)] Dual eligible--A Medicaid recipient who is also eligible for Medicare.

(27) [(26)] Elective enrollment--Selection of a primary care provider (PCP) and MCO by a client during the enrollment period established by HHSC.

(28) [(27)] Emergency behavioral health condition--Any condition, without regard to the nature or cause of the condition, that in the opinion of a prudent layperson possessing an average knowledge of health and medicine:

(A) requires immediate intervention and/or medical attention without which the client would present an immediate danger to themselves or others; or

(B) renders the client incapable of controlling, knowing, or understanding the consequences of his or her actions.

(29) [(28)] Emergency service--A covered inpatient and outpatient service, furnished by a network provider or out-of-network provider that is qualified to furnish such service, that is needed to evaluate or stabilize an emergency medical condition and/or an emergency behavioral health condition. For health care MCOs, the term "emergency service" includes post-stabilization care services.

(30) [(29)] Emergency medical condition--A medical condition manifesting itself by acute symptoms of recent onset and sufficient severity (including severe pain), such that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical care could result in:

(A) placing the patient's health in serious jeopardy;

(B) serious impairment to bodily functions;

(C) serious dysfunction of any bodily organ or part;

(D) serious disfigurement; or

(E) serious jeopardy to the health of a pregnant woman or her unborn child.

(31) [(30)] Encounter--A covered service or group of covered services delivered by a provider to a member during a visit between the member and provider. This also includes value-added services.

(32) [(31)] Enrollment--The process by which an individual determined to be eligible for Medicaid is enrolled in a Medicaid MCO serving the service area in which the individual resides.

(33) [(32)] EPSDT--The federally mandated Early and Periodic Screening, Diagnosis and Treatment program defined in 25 TAC Chapter 33. The State of Texas has adopted the name Texas Health Steps (THSteps) for its EPSDT program.

(34) [(33)] EPSDT-CCP--The Early and Periodic Screening, Diagnosis and Treatment-Comprehensive Care Program described in Chapter 363 of this title (relating to Texas Health Steps Comprehensive Care Program).

(35) [(34)] Exclusive provider benefit plan (EPBP)--An MCO that complies with 28 TAC §§3.9201 - 3.9212, relating to the Texas Department of Insurance's requirements for EPBPs, and contracts with HHSC to provide Medicaid coverage.

(36) [(35)] Experience rebate--The portion of the MCO's net income before taxes that is returned to the State in accordance with the MCO's contract with HHSC.

(37) [(36)] Fair hearing--The process adopted and implemented by HHSC in Chapter 357, Subchapter A of this title (relating to Uniform Fair Hearing Rules) in compliance with federal regulations and state rules relating to Medicaid fair hearings.

(38) [(37)] FPL--Federal Poverty Level Income Guidelines.

(39) [(38)] Federally Qualified Health Center (FQHC)--An entity certified by CMS to meet the requirements of §1861(aa)(3) of the Social Security Act (42 U.S.C. §1395x(aa)(3)) as a Federally Qualified Health Center that is enrolled as a provider in the Texas Medicaid program.

(40) [(39)] Federal waiver--Any waiver permitted under federal law and approved by CMS that allows states to implement Medicaid managed care.

(41) [(40)] Health care managed care organization (health care MCO)--An entity that is licensed or approved by the Texas Department of Insurance to operate as a health maintenance organization or to issue an EPBP.

(42) [(41)] Health care services--The acute care, behavioral health care, and health-related services that an enrolled population might reasonably require in order to be maintained in good health, including, at a minimum, emergency services and inpatient and outpatient services.

(43) [(42)] Health and Human Services Commission (HHSC)--The single state agency charged with administration and oversight of the Texas Medicaid program. HHSC's authority is established in Chapter 531 of the Texas Government Code.

(44) [(43)] Health maintenance organization (HMO)--An organization that holds a certificate of authority from the Texas Department of Insurance to operate as an HMO under Chapter 843 of the Texas Insurance Code, or a certified Approved Non-Profit Health Corporation formed in compliance with Chapter 844 of the Texas Insurance Code.

(45) [(44)] Hospital--A licensed public or private institution as defined in the Texas Health and Safety Code at Chapter 241, relating to hospitals, or Chapter 261, relating to municipal hospitals.

(46) Intermediate care facility for people with intellectual and developmental disabilities--An intermediate care facility for the mentally retarded as defined in §1905(d) of the Social Security Act (42 U.S.C. 1396(d)).

(47) [(45)] Long term service and support (LTSS)--A service provided to a qualified member in his or her home or other community-based settings necessary to provide assistance with activities of daily living to allow the member to remain in the most integrated setting possible. LTSS includes services provided to all SSI recipients under the Texas State Plan as well as services available only to persons who qualify for STAR+PLUS Home and Community-Based Waiver Services.

(48) [(46)] Main dental home provider--See definition of "dental home" in this section.

(49) [(47)] Main dentist--See definition of "dental home" in this section.

(50) [(48)] Managed care--A health care delivery system or dental services delivery system in which the overall care of a patient is coordinated by or through a single provider or organization.

(51) [(49)] Managed care organization (MCO)--A dental MCO or a health care MCO.

(52) [(50)] Marketing--Any communication from an MCO to a client who is not enrolled with the MCO that can reasonably be interpreted as intended to influence the client's decision to enroll, not to enroll, or to disenroll from a particular MCO.

(53) [(51)] Marketing materials--Materials that are produced in any medium by or on behalf of the MCO that can reasonably be interpreted as intending to market to potential members. Materials relating to the prevention, diagnosis or treatment of a medical or dental condition are not marketing materials.

(54) [(52)] Medicaid--The medical assistance program authorized and funded pursuant to Title XIX of the Social Security Act (42 U.S.C. §1396 et seq) and administered by HHSC.

(55) [(53)] Medical Assistance Only (MAO)--A person who qualifies financially for Medicaid but does not receive Supplemental Security Income (SSI) payments.

(56) [(54)] Medical home--A PCP or specialty care provider who has accepted the responsibility for providing accessible, continuous, comprehensive, and coordinated care to members participating in an MCO contracted with HHSC.

(57) [(55)] Medically necessary--Means:

(A) For Medicaid members birth through age 20, the following Texas Health Steps services:

(i) screening, vision, dental, and hearing services; and

(ii) other health care services or dental services that are necessary to correct or ameliorate a defect or physical or mental illness or condition. A determination of whether a service is necessary to correct or ameliorate a defect or physical or mental illness or condition:

(I) must comply with the requirements of a final court order that applies to the Texas Medicaid program or the Texas Medicaid managed care program as a whole; and

(II) may include consideration of other relevant factors, such as the criteria described in subparagraphs (B)(ii) - (vii) and (C)(ii) - (vii) of this paragraph.

(B) For Medicaid members over age 20, non-behavioral health services that are:

(i) reasonable and necessary to prevent illnesses or medical conditions, or provide early screening, interventions, or treatments for conditions that cause suffering or pain, cause physical deformity or limitations in function, threaten to cause or worsen a disability, cause illness or infirmity of a member, or endanger life;

(ii) provided at appropriate facilities and at the appropriate levels of care for the treatment of a member's health conditions;

(iii) consistent with health care practice guidelines and standards that are endorsed by professionally recognized health care organizations or governmental agencies;

(iv) consistent with the member's diagnoses;

(v) no more intrusive or restrictive than necessary to provide a proper balance of safety, effectiveness, and efficiency;



- (vi) not experimental or investigative; and
- (vii) not primarily for the convenience of the member or provider.

(C) For Medicaid members over age 20, behavioral health services that:

(i) are reasonable and necessary for the diagnosis or treatment of a mental health or chemical dependency disorder, or to improve, maintain, or prevent deterioration of functioning resulting from such a disorder;

(ii) are in accordance with professionally accepted clinical guidelines and standards of practice in behavioral health care;

(iii) are furnished in the most appropriate and least restrictive setting in which services can be safely provided;

(iv) are the most appropriate level or supply of service that can safely be provided;

(v) could not be omitted without adversely affecting the member's mental and/or physical health or the quality of care rendered;

(vi) are not experimental or investigative; and

(vii) are not primarily for the convenience of the member or provider.

(58) [(56)] Member--A person who is eligible for benefits under Title XIX of the Social Security Act and Medicaid, is in a Medicaid eligibility category included in the Medicaid managed care program, and is enrolled in a Medicaid MCO.

(59) [(57)] Member education program--A planned program of education:

(A) concerning access to health care services or dental services through the MCO and about specific health or dental topics;

(B) that is approved by HHSC; and

(C) that is provided to members through a variety of mechanisms that must include, at a minimum, written materials and face-to-face or audiovisual communications.

(60) [(58)] Member materials--All written materials produced or authorized by the MCO and distributed to members or potential members containing information concerning the managed care program. Member materials include member ID cards, member handbooks, provider directories, and marketing materials.

(61) [(59)] Non-capped service--A benefit available to members under the Texas Medicaid program for which an MCO is not responsible for payment.

(62) [(60)] Outside regular business hours--As applied to FQHCs and rural health clinics (RHCs), means before 8 a.m. and after 5 p.m. Monday through Friday, weekends, and federal holidays.

(63) [(61)] Participating MCO--An MCO that has a contract with HHSC to provide services to members.

(64) [(62)] Post-stabilization care service--A covered service, related to an emergency medical condition, that is provided after a Medicaid member is stabilized in order to maintain the stabilized condition, or, under the circumstances described in 42 C.F.R. §438.114(b) and (e) and 42 C.F.R. §422.113(c)(iii) to improve or resolve the Medicaid member's condition.

(65) [(63)] Primary care provider (PCP)--A physician or other provider who has agreed with the health care MCO to provide a

medical home to members and who is responsible for providing initial and primary care to patients, maintaining the continuity of patient care, and initiating referral for care.

(66) [(64)] Provider--A credentialed and licensed individual, facility, agency, institution, organization, or other entity, and its employees and subcontractors, that have a contract with the MCO for the delivery of covered services to the MCO's members.

(67) [(65)] Provider education program--Program of education about the Medicaid managed care program and about specific health or dental care issues presented by the MCO to its providers through written materials and training events.

(68) [(66)] Provider network or Network--All providers that have contracted with the MCO for the applicable managed care program.

(69) [(67)] Quality improvement--A system to continuously examine, monitor, and revise processes and systems that support and improve administrative and clinical functions.

(70) [(68)] Risk--The potential for loss as a result of expenses and costs of the MCO exceeding payments made by HHSC under the contract.

(71) [(69)] Rural Health Clinic (RHC)--An entity that meets all of the requirements for designation as a rural health clinic under §1861(aa)(1) of the Social Security Act (42 U.S.C. §1395x(aa)(1)) and is approved for participation in the Texas Medicaid program.

(72) [(70)] Service area--The counties included in any HHSC-defined service area as applicable to each MCO.

(73) [(71)] Significant traditional provider (STP)--A provider identified by HHSC as having provided a significant level of care to the target population, including a DSH.

(74) [(72)] STAR--The State of Texas Access Reform (STAR) program that operates under a federal waiver.

(75) [(73)] STAR Health--The STAR Health program that operates under the Medicaid state plan.

(76) [(74)] STAR+PLUS--The STAR+PLUS program that operates under one or more federal waivers.

(77) [(75)] STAR+PLUS Home and Community-Based Waiver Services--The program that provides home and community-based services, as authorized through a federal waiver under §1915(c) or §1115 of the Social Security Act, to qualified clients who are 65 years of age or older, are blind, or have a disability as cost-effective alternatives to institutional care in nursing facilities.

(78) [(76)] State plan--The agreement between the CMS and HHSC regarding the operation of the Texas Medicaid program, in accordance with the requirements of Title XIX of the Social Security Act.

(79) [(77)] Supplemental Security Income (SSI)--The federal cash assistance program of direct financial payments to people who are 65 years of age or older, are blind, or have a disability administered by the Social Security Administration (SSA) under Title XVI of the Social Security Act. All persons who are certified as eligible for SSI in Texas are eligible for Medicaid. Local SSA claims representatives make SSI eligibility determinations. The transactions are forwarded to the SSA in Baltimore, which then notifies the states through the State Data Exchange (SDX).

(80) [(78)] Texas Health Steps (THSteps)--The name adopted by the State of Texas for the federally mandated Early and Periodic Screening, Diagnosis and Treatment (EPSDT) program,

described at 42 U.S.C. §1905d(r) and 42 CFR §440.40 and §§441.40 - 441.62.

(81) [(79)] Value-added service--A service provided by an MCO that is not "medical assistance," as defined by §32.003 of the Human Resources Code.

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

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

TRD-201202059

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: June 3, 2012

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



## SUBCHAPTER E. STANDARDS FOR MEDICAID MANAGED CARE

### 1 TAC §353.403

#### STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Human Resources Code §32.021; and Texas Government Code §531.021, which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas and to adopt rules and standards for program administration.

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

#### §353.403. *Enrollment and Disenrollment.*

(a) Enrollment by the Health and Human Services Commission (HHSC). HHSC or its designee will conduct enrollment and disenrollment activities. Except as provided in subsections (d)(2) and (5) of this section, regarding dental home assignments, HHSC may not contract with a participating managed care organization (MCO) to serve as the administrator for enrollment or disenrollment activities in any area of the state.

(b) Procedures for enrollment. HHSC will establish procedures for enrollment into participating MCOs, [and with] primary care providers (PCPs), and dental homes, including enrollment periods and time limits within which enrollment must occur. Beneficiaries will have 15 calendar days from the date notification is mailed to choose an MCO, PCP, and dental home. [If the beneficiary does not choose an MCO within this time period, HHSC will default the beneficiary into an MCO.]

(c) Default assignment. Beneficiaries who fail to select an MCO, [or] PCP, or dental home within 15 calendar days from the date notification is mailed [during the period established by HHSC] will have an MCO, [or] PCP, or dental home selected for them by HHSC or its designee using the default assignment methodology described in subsection (d) of this section [criteria determined by HHSC].

(d) Default assignment methodology. HHSC's default assignment methodology will include the following criteria, to the maximum

extent possible: [When possible, the default assignment methodology will take into consideration the beneficiary's history with a PCP or main dental home provider. If this is not possible, HHSC will equitably distribute beneficiaries among qualified MCOs. HHSC will establish an automated default methodology that includes, to the maximum extent possible, the following criteria:]

(1) Automated PCP assignment. If a beneficiary has not selected a PCP, HHSC or its administrative services contractor will assign one using an automated algorithm that considers:

(A) the beneficiary's established history with a PCP, as demonstrated by Medicaid claims or encounter history with the provider in the preceding year, if available; [A beneficiary who does not select a PCP and health care MCO will be assigned a PCP and health care MCO through the default process established by HHSC.]

(B) the geographic proximity of the beneficiary's home address to the PCP; [A beneficiary who selects a health care MCO but not a PCP will be assigned to the selected health care MCO and the beneficiary will be assigned to a PCP through the default process.]

(C) whether the provider serves as a PCP to other members of the beneficiary's household; [A beneficiary who selects a PCP but not a health care MCO will be assigned to the PCP chosen by the member, subject to PCP restrictions on client age, gender, and capacity, and the beneficiary will be assigned to a health care MCO through a default process that is established by HHSC.]

(D) limitations on default assignment, such as PCP restrictions on age, gender, and capacity; and [Each beneficiary who has not selected a PCP may be defaulted to the PCP with whom there is the most recent Medicaid managed care encounter history. The number of encounters between the beneficiary and the PCP may also be considered.]

(E) other criteria determined by HHSC. [If there is no Medicaid managed care encounter history, each beneficiary may be defaulted to the PCP with whom there is the most recent traditional Medicaid claims history. The number of prior encounters between the beneficiary and the PCP may also be considered.]

~~[(F) If a member does not have history with a PCP, the beneficiary may be defaulted to a PCP on the basis of geographic proximity to the PCP.]~~

~~[(G) HHSC may identify other criteria to be used along with the criteria based on geographic proximity such as, but not limited to, capacity of the PCP, PCP performance, and greatest variance between the percentage of elective and default enrollments (with the percentage of default enrollments subtracted from the percentage of elective enrollments).]~~

~~[(H) PCP restrictions on member age, gender, and capacity will be considered as limitations to default assignments to PCPs.]~~

(2) Automated dental home assignment. If a beneficiary has not selected a dental home, the dental MCO will assign one using an automated algorithm that considers:

(A) the beneficiary's established history with a dental home, as demonstrated by Medicaid claims or encounter history with the provider in the preceding year, if available;

(B) the geographic proximity of the beneficiary's home address to the dental home;

(C) whether the provider serves as the dental home to other members of the beneficiary's household;

(D) limitations on default assignment, such as dental home restrictions on age and capacity; and

(E) other criteria approved by HHSC.

(3) [(2)] Automated MCO assignment. If a beneficiary has not selected a health care MCO or dental MCO, HHSC or its administrative services contractor will assign one using an automated algorithm that considers the beneficiary's history with a PCP or dental home when possible. If this is not possible, HHSC or its administrative services contractor will equitably distribute beneficiaries among qualified MCOs, using an automated algorithm that considers one or more of the following factors:

(A) whether other members of the beneficiary's household are enrolled in the MCO; [HHSC will develop a methodology for assignment of defaults to each health care MCO and dental MCO participating in the same Medicaid managed care program and service area.]

(B) MCO performance; [Such methodology may be based on MCO performance, the greatest variance between the percentage of elective and default enrollments (with the percentage of default enrollments subtracted from the percentage of elective enrollments), capitation rates, market share, or other factors determined by HHSC.]

(C) the greatest variance between the percentage of elective and default enrollments (with the percentage of default enrollments subtracted from the percentage of elective enrollments); [A beneficiary who has not selected a PCP or MCO, and is defaulted to a PCP who is contracted with only one health care MCO will be assigned to that health care MCO.]

(D) capitation rates; [HHSC will automatically re-enroll a beneficiary in the same MCO if there is a loss of Medicaid eligibility of six months or less.]

(E) market share; and

(F) other criteria determined by HHSC.

(4) Automatic re-enrollment. Notwithstanding subsection (d) of this section, HHSC will automatically re-enroll a beneficiary in the same MCO if there is a loss of Medicaid eligibility of six months or less.

(5) [(3)] Use of manual default processes. A beneficiary [Members] who cannot be assigned to a PCP, dental home, health care MCO, or dental MCO on the basis of an automated default process may be assigned through a manual default process determined by HHSC.

[(4)] Beneficiaries with special medical needs may be defaulted on the basis of a manual default methodology if such beneficiaries can be identified and if the automated default process cannot be administered for such beneficiaries.

[(5)] Treatment of family members. Family members will be defaulted to the same PCP, health care MCO, and dental MCO to the maximum extent possible within the limitation of the MCO's capacity and PCP restrictions on, member age and gender.]

(e) Modified default enrollment process. HHSC has the option to implement a modified default enrollment process for MCOs [ef member enrollment,] when contracting with a new MCO or [when] implementing managed care in a new service area, or when it has placed an MCO on full or partial enrollment suspension.

(f) Request to change dental home or PCP. There is no limit on the number of times a member can request to change his or her dental

home or PCP. A member can request a change in writing or by calling the MCO's toll-free member hotline.

(g) [(f)] Disenrollment.

(1) Disenrollment at a member's request.

(A) Members will be informed of disenrollment opportunities no less than annually.

(B) Except as provided in subsection (c) of this section, during the first 90 days of enrollment in an MCO, a member may request to move to another MCO for any reason. After 90 days with an MCO, a member may move one additional time for any reason. If a member shows good cause, he or she also may move to another MCO at any time.

(C) Members of a health care MCO who are in a hospital, residential substance use disorder treatment, or residential detoxification for substance use disorder treatment cannot move to another health care MCO until discharged.

(D) Disenrollment will take place no later than the first day of the second month after the month in which the member has requested a change.

(2) Disenrollment at an MCO's request.

(A) An MCO may submit a request to HHSC that a member be disenrolled without the member's consent in the following limited circumstances:

(i) the member misuses or loans his or her MCO membership card to another person to obtain services;

(ii) the member is disruptive, unruly, threatening or uncooperative to the extent that the member's membership seriously impairs the MCO's or a provider's ability to provide services to the member or to obtain new members, and member's behavior is not caused by a physical or behavioral health condition; or

(iii) the member steadfastly refuses to comply with managed care restrictions (such as repeatedly using the emergency room in combination with a refusal to allow treatment for the underlying medical condition).

(B) An MCO must take reasonable measures to correct a member's behavior prior to requesting disenrollment. Reasonable measures may include providing education and counseling regarding the offensive acts or behaviors.

(C) HHSC will review all requests for disenrollment. HHSC will grant a request if it determines that all reasonable measures taken by the MCO have failed to correct the member's behavior. If HHSC grants a request, it will notify the member of the disenrollment decision and the availability of HHSC's fair hearings process for an appeal of the disenrollment.

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 April 23, 2012.

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Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: June 3, 2012

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



SUBCHAPTER K. CHILDREN'S MEDICAID  
DENTAL SERVICES

1 TAC §353.1001, §353.1003

STATUTORY AUTHORITY

The new rules are proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Human Resources Code §32.021 and Texas Government Code §531.021, which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas and to adopt rules and standards for program administration.

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

§353.1001. General Provisions.

(a) The Texas Health and Human Services Commission (HHSC) administers Children's Medicaid Dental Services.

(b) Rules governing the operation of Children's Medicaid Dental Services will be in accordance with Subchapter E of this chapter (relating to Standards for Medicaid Managed Care).

(c) HHSC selects dental managed care organizations using the purchasing methods described in Chapter 391, Subchapter D of this title (relating to Purchase of Goods and Services).

(d) Children's Medicaid Dental Services are provided in all areas of the state.

§353.1003. Member Participation.

(a) Except as provided in subsection (b) of this section, enrollment in Children's Medicaid Dental Services is mandatory for clients from birth through age 20.

(b) The following clients are not eligible for Children's Medicaid Dental Services provided through managed care:

(1) clients age 21 and over;

(2) clients, regardless of age, residing in Medicaid-paid facilities such as nursing facilities, state supported living centers, or intermediate care facilities for people with intellectual and developmental disabilities; and

(3) STAR Health program recipients.

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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CHAPTER 355. REIMBURSEMENT RATES  
SUBCHAPTER C. REIMBURSEMENT  
METHODOLOGY FOR NURSING FACILITIES

1 TAC §355.314

The Texas Health and Human Services Commission (HHSC) proposes new §355.314, Supplemental Payments to Non-State Government-Owned Nursing Facilities.

Background and Justification

Federal law and regulations establish the maximum payment for which Medicaid will provide federal matching funds. The maximum payment is called the upper payment limit (UPL). Federal law gives states flexibility regarding payments to health care providers, but stipulates that, in general, Medicaid payments for any class of providers can be no higher than the amount Medicare would pay for the same service. Therefore, Medicare's equivalent payment for a service within a specific class of providers is the UPL for Medicaid payments for that class.

This proposed rule establishes the methodology for determination and payment of supplemental UPL payments for a specific class of nursing facilities (NFs) defined as non-state government-owned NFs. Under this rule, non-state government-owned NFs may apply to receive supplemental payments determined in accordance with Medicaid UPL provisions codified at Title 42 Code of Federal Regulations (CFR) §447.272.

The maximum Medicaid supplemental payment amount for each participating non-state government-owned NF is equal to its proportionate share of the total supplemental payment amount calculated for all non-state government-owned NFs. In brief summary, to calculate the maximum payment amount for each participating NF, HHSC will:

Step 1: determine the total possible supplemental payment to all non-state government-owned NFs (the "room") by calculating the difference between the aggregate amount that would be paid under Medicare to the non-state government-owned NFs for services to their Medicaid recipients and the aggregate amount paid under Medicaid for these same services for these same recipients;

Step 2: determine the total number of Medicaid units of service provided by all non-state government-owned NFs;

Step 3: determine the number of Medicaid units of service provided by the specific non-state government-owned NF in question;

Step 4: determine the proportion of Medicaid units of service associated with the NF in question by dividing the value determined in Step 3 by the value determined in Step 2;

Step 5: determine the maximum supplemental payment for the NF in question by multiplying the quotient from Step 4 by the "room" from Step 1.

The supplemental payment to each participating NF as determined above will consist of two parts: (1) the non-federal part, which is paid through an intergovernmental transfer (IGT) of funds by the non-state governmental entity that owns the nursing facility; and (2) the federal part, which is paid by the federal government. There are three steps involved in a non-state government-owned nursing facility supplemental financing arrangement. These steps are similar to the methodologies that have been used in other HHSC supplemental programs for hospitals and physician practice groups:

Step 1: a non-state governmental entity makes an IGT to the state for the participating NFs owned by that entity;

Step 2: the state claims federal matching payment for the supplemental payment;

Step 3: the state makes a supplemental payment to the NF based on the supplemental amount for the NFs owned by the entity determined in Step 5 above and the amount of IGT transferred by the entity. If the IGT transferred in Step 1 was less than the full amount necessary to fund all NFs owned by that entity to their maximum payment amount, each NF will receive its proportionate share of the total supplemental payment, based on units of service.

This supplemental payment is in addition to the routine Medicaid reimbursements for the NF(s) owned by the entity, and total payments (supplemental payment plus routine Medicaid reimbursements) can exceed the actual cost of providing care.

There is no cost to the state for these payments, because the non-federal share is financed by IGTs from non-state governmental entities and the federal share is financed by the federal government.

#### Section-by-Section Summary

Subsection (a) provides an introduction to this rule.

Subsection (b) provides a list of definitions that relate to the administration of this supplemental payment program.

Subsection (c) describes the types of nursing facilities eligible for this supplemental payment program.

Subsection (d) lists the required documentation and describes the documentation submission requirements for eligible nursing facilities.

Subsection (e) describes the source of funding requirements for this supplemental payment program.

Subsection (f) describes the methodology for calculating supplemental payments for non-state government-owned nursing facilities.

Subsection (g) describes the frequency with which HHSC will make payments to eligible non-state government-owned nursing facilities.

Subsection (h) describes the payment methodology, including the allocation of intergovernmental transfers and a provision to allow for a fourth-quarter payment reconciliation.

Subsection (i) describes the process HHSC will use to recoup funds due to an overpayment or a disallowance by the Centers for Medicare and Medicaid Services.

#### 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 new rule is in effect there will be no fiscal impact to state government. There will be an impact to the federal government; however, this increase cannot be estimated at this time due to uncertainty about the extent to which non-state government-owned nursing facilities will apply to receive supplemental payments. The proposed rule will not result in any fiscal implications for local health and human services agencies. There are no fiscal implications for local governments as a result of enforcing or administering the section.

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

HHSC has determined that there is no adverse economic effect on small businesses or micro-businesses as a result of enforcing or administering the new rule. The implementation of the proposed new rule does not require any changes in practice or

any additional cost to the contracted provider, because participation in the non-state government-owned nursing facility UPL is voluntary.

HHSC does not anticipate that there will be any economic cost to persons who are required to comply with this new rule. The new rule will not affect local employment.

#### Public Benefit

Pam McDonald, Director of Rate Analysis, has determined that, for each of the first five years the new rule is in effect, the expected public benefit is that non-state government-owned nursing facilities will be able to receive supplemental payments under the UPL program.

#### 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 Pam McDonald in the HHSC Rate Analysis Department by telephone at (512) 491-1373. Written comments on the proposal may be submitted to Ms. McDonald by fax at (512) 491-1998, by e-mail to pam.mcdonald@hhsc.state.tx.us or by mail to HHSC Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas, 78708-5200 within 30 days of publication of this proposal in the *Texas Register*.

#### Statutory Authority

The new section is 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 establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Human Resources Code, Chapter 32.

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

#### §355.314. Supplemental Payments to Non-State Government-Owned Nursing Facilities.

(a) Introduction. Notwithstanding other provisions of this subchapter and subject to the availability of funds, supplemental payments are available under this section for nursing facility services provided by eligible non-state government-owned nursing facilities.

(b) Definitions. When used in this section, the following definitions apply:

(1) Adjudicated claim--A claim for a covered Medicaid nursing facility service that has been paid by HHSC.

(2) Aggregate upper payment limit--A reasonable estimate of the amount that would be paid for the services furnished by non-state government-owned nursing facilities under Medicare payment principles, as calculated in subsection (f) of this section.

(3) Aggregate upper payment limit calculation period--The federal fiscal year prior to the supplemental payment calculation period. For example, federal fiscal year 2011 is the aggregate upper payment limit calculation period for the federal fiscal year 2012 first through fourth quarter supplemental payment calculation periods.

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

(5) Intergovernmental transfer (IGT)--A transfer of public funds from a non-state governmental entity to HHSC.

(6) Medicaid supplemental payment limit--The maximum supplemental payment available to a participating non-state government-owned nursing facility for a specific calculation period as calculated in subsection (f) of this section.

(7) Medicaid supplemental payment limit calculation period--The federal fiscal quarter determined by HHSC for which supplemental payment amounts are calculated based on adjudicated claims processed in the prior federal fiscal year.

(8) Non-state governmental entity--A hospital authority, hospital district, healthcare district, city, or county.

(9) Non-state government-owned nursing facility--A nursing facility where a non-state governmental entity holds the license and is party to the facility's Medicaid contract.

(10) Public funds--Funds derived from taxes, assessments, levies, investments, and other public revenues within the sole and unrestricted control of a non-state governmental entity that holds the license and is party to the Medicaid contract of the nursing facility identified in subsection (c) of this section. Public funds do not include gifts, grants, trusts, or donations, the use of which is conditioned on supplying a benefit solely to the donor or grantor of the funds.

(c) Eligible nursing facilities.

(1) Supplemental payments are available under this section to all non-state government-owned nursing facilities that comply with the requirements described in subsection (d) of this section.

(2) A nursing facility participating in this supplemental payment program must notify the HHSC Rate Analysis Department of changes in ownership that may affect the nursing facility's continued eligibility within 30 days after such change.

(3) A nursing facility that has not received a payment under this supplemental payment program for four consecutive quarters is ineligible for future supplemental payments unless the nursing facility applies again for the supplemental payment program in accordance with subsection (d) of this section.

(d) Required application. Before a non-state government-owned nursing facility may receive supplemental payments under this section, the appropriate non-state governmental entity must certify certain facts, representations, and assurances regarding program requirements.

(1) The appropriate non-state governmental entity must certify the following facts, including the following, on a form prescribed by HHSC before the first day of the next scheduled Medicaid supplemental payment limit calculation period in order for the nursing facility to receive a supplemental payment for that period:

(A) That it is a non-state government-owned nursing facility where a non-state governmental entity holds the license and is party to the facility's Medicaid contract.

(B) That all funds transferred to HHSC via IGT for use as the state share of supplemental payments are public funds.

(C) That no part of any supplemental payment paid to the nursing facility under this section will be used to pay a contingent fee, consulting fee, or legal fee associated with the nursing facility's receipt of the supplemental funds.

(D) That the person signing the certification on behalf of the nursing facility is legally authorized to bind the nursing facility and to certify the matters described in the application.

(2) The nursing facility is eligible for supplemental payments for Medicaid supplemental payment limit calculation periods that begin after HHSC receives completed application forms from the appropriate non-state governmental entity.

(e) Source of funding.

(1) State funding for supplemental payments authorized under this section is limited to and obtained through IGTs of public funds from the non-state governmental entity that holds the license and is party to the Medicaid contract of the nursing facility identified in subsection (c) of this section.

(2) An IGT that is not received by the date specified by HHSC may not be accepted. In such a situation, the IGT will be returned to the non-state governmental entity and the NF will not be eligible to receive a supplemental payment.

(f) Medicaid supplemental payment limits.

(1) The aggregate supplemental payment amount for non-state government owned nursing facilities is calculated for each aggregate upper payment limit calculation period using the most recent reliable data available at the time the calculation is made by taking the difference between the aggregate upper payment limit from subparagraph (A) of this paragraph and the aggregate Medicaid payment from subparagraph (B) of this paragraph:

(A) The aggregate upper payment limit for non-state government-owned nursing facilities will be calculated based on Medicare payment provisions and in accordance with the Medicaid upper payment limit provisions codified at Title 42 Code of Federal Regulations (CFR) §447.272. A total Medicare-equivalent payment is determined for each non-state government-owned facility as the sum of the products of Medicaid days of service by Resource Utilization Group (RUG) for Medicaid claims adjudicated for the facility during the aggregate upper payment limit calculation period multiplied by the Medicare payment rate for that RUG in effect on the last day of the aggregate upper payment limit calculation period. The aggregate upper payment limit is equal to the sum of the Medicare-equivalent payments for all non-state government-owned nursing facilities.

(B) The aggregate Medicaid payment for non-state government-owned nursing facilities prior to the supplemental payment will be the sum of the following components calculated for all non-state government-owned nursing facilities from data derived from aggregate upper payment limit calculation period:

(i) The sum of Medicaid RUG payments for all non-state government-owned nursing facility claims adjudicated during the aggregate upper payment limit calculation period; and

(ii) Medicaid payments for pharmacy services as defined in 40 TAC Chapter 19, Subchapter P (relating to Pharmacy Services), specialized services as defined in 40 TAC §19.1303 (relating to Specialized Services in Medicaid-certified Facilities), and emergency dental services as defined in 40 TAC §19.1402 (relating to Medicaid-certified Nursing Facility Emergency Dental Services), for non-state government-owned nursing facilities not included in the Medicaid nursing facility rate in effect during the aggregate upper payment limit calculation period.

(I) Medicaid payments for pharmacy services are based on Texas specific pharmacy payment and rebate data for Texas Medicaid nursing facility residents during the aggregate upper payment limit calculation period. The portion of the estimated nursing facility pharmacy payments related to the non-state government-owned nursing facilities is based on the ratio of the total Medicaid days for non-state government-owned nursing facilities to total Medicaid days for all nursing facilities during the aggregate upper payment limit calculation period.

(II) Medicaid payments for emergency dental and specialized services are based on Texas specific emergency dental and specialized services payment data for Texas Medicaid nursing facility residents during the aggregate upper payment limit calculation period. The portion of the estimated nursing facility emergency dental and specialized services payments related to the non-state government-owned nursing facilities is based on the ratio of the total Medicaid days for non-state government-owned nursing facilities to total Medicaid days for all nursing facilities during the aggregate upper payment limit calculation period.

(2) The Medicaid supplemental payment limit for each participating non-state government-owned nursing facility for each Medicaid supplemental payment limit calculation period will be determined by dividing that facility's Medicaid units of service during the Medicaid supplemental payment limit calculation period by the total Medicaid units of service during the Medicaid supplemental payment limit calculation period for all non-state government-owned nursing facilities, multiplying the resulting percentage by the aggregate supplemental payment amount from paragraph (1) of this subsection, and dividing the resulting product by four to allow for payments to be made on a quarterly basis as described in subsection (g) of this section.

(g) Payment frequency. HHSC will distribute supplemental payments to participating non-state government-owned nursing facilities on a quarterly basis subsequent to the Medicaid supplemental payment limit calculation period.

(h) Supplemental payment methodology.

(1) HHSC will give notice of the non-state government-owned nursing facility Medicaid supplemental payment limits determined in subsection (f) of this section, the maximum IGT amount that can be provided for each participating nursing facility based on the Federal Medical Assistance Percentage (FMAP) in place at the time notice is given, and the deadline for completing the transfer.

(2) The amount of the supplemental payment to the nursing facility will be calculated in proportion to the amount transferred by the non-state governmental entity.

(A) For governmental entities that own a single nursing facility:

(i) If the non-state governmental entity transfers the maximum IGT described in paragraph (1) of this subsection, the nursing facility will receive the Medicaid supplemental payment limit amount calculated for it in subsection (f) of this section.

(ii) If the non-state governmental entity transfers less than the maximum IGT described in paragraph (1) of this subsection, the nursing facility will receive a supplemental payment that is proportionate to the percentage of the maximum IGT that was actually transferred.

(B) For governmental entities that own multiple nursing facilities:

(i) If the non-state governmental entity transfers the maximum IGT described in paragraph (1) of this subsection for all of the nursing facilities it owns, each of the nursing facilities will receive the Medicaid supplemental payment limit amount calculated for it in subsection (f) of this section.

(ii) If the non-state governmental entity transfers less than the maximum IGT described in paragraph (1) of this subsection for all of the nursing facilities it owns, each of the nursing facilities will receive a proportion of the Medicaid supplemental payment limit amount calculated for it in subsection (f) of this section based on the proportion of the total maximum IGT for all of the nursing facilities owned by the non-state governmental entity that was actually transferred.

(C) Supplemental payments to remaining non-state government-owned nursing facilities will not be increased due to the failure of a non-state governmental entity to transfer the maximum IGT described in paragraph (1) of this subsection.

(3) A non-state governmental entity that did not transfer the maximum IGT described in paragraph (1) of this subsection in one or more of the first three quarters in a federal fiscal year will be allowed to fund the remaining Medicaid supplemental payment limit during the fourth quarter of that fiscal year, subject to the following:

(A) HHSC will give notice of the remaining Medicaid supplemental payment limits and the maximum IGT that can be provided for each non-state government-owned nursing facility. Such notice will also contain instructions and deadlines for governmental entities to notify HHSC of the fourth-quarter transfer amount.

(B) Following the deadline for notification described in subparagraph (A) of this paragraph, if HHSC determines that the supplemental payments for the federal fiscal year will exceed the applicable aggregate supplemental payment amount for non-state government-owned nursing facilities, HHSC will reduce the amount of the transfer for the fourth-quarter payment under this clause proportionately for each participating nursing facility in an amount sufficient to ensure compliance with the applicable aggregate supplemental payment amount.

(4) The amount of the payment to the nursing facility will be calculated using the FMAP in place when HHSC gave notice as described in paragraph (1) or (3) of this subsection, as applicable.

(i) Recoupment.

(1) If payments under this section result in overpayment to a nursing facility, or in the event of a disallowance by the federal Centers for Medicare and Medicaid Services (CMS) of federal participation related to a nursing facility's receipt or use of supplemental payments authorized under this section, HHSC may recoup an amount equivalent to the amount of supplemental payments overpaid or disallowed.

(2) Supplemental payments under this section may be subject to any adjustments for payments made in error, including, without limitation, adjustments made under the Texas Administrative Code, the Code of Federal Regulations and state and federal statutes. HHSC may recoup an amount equivalent to any such adjustment.

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

(A) HHSC will recoup from the nursing facility to which an overpayment was made or against which any disallowance was directed.

(B) If, within 30 days of the nursing facility's receipt of HHSC's written notice of recoupment, the nursing facility has not paid the full amount of the recoupment or entered into a written agreement with HHSC to do so, HHSC may withhold any or all Medicaid payments from the nursing facility until HHSC has recovered an amount equal to the amount overpaid or disallowed. If funds identified for recoupment cannot be repaid from the nursing facility's Medicaid payments, the non-state governmental entity that owns the nursing facility will be liable for any additional payment due to HHSC or its designee. Failure to repay the amount due or submit an acceptable payment plan within 60 days of notification will result in the recoupment of the owed funds from other Medicaid contracts controlled by the non-state governmental entity and will bar the non-state governmental entity from receiving any new contracts with HHSC or its designees until repayment is made in full.

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

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Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

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



## SUBCHAPTER D. REIMBURSEMENT METHODOLOGY FOR INTERMEDIATE CARE FACILITIES FOR PERSONS WITH MENTAL RETARDATION (ICF/MR)

### 1 TAC §355.458

The Texas Health and Human Services Commission (HHSC) proposes new §355.458, concerning supplemental payments to non-state government-owned intermediate care facilities for persons with mental retardation (ICFs/MR).

#### Background and Justification

Federal law and regulations establish the maximum payment for which Medicaid will provide federal matching funds. The maximum payment is called the upper payment limit (UPL). Federal law gives states flexibility regarding payments to health care providers, but stipulates that, in general, Medicaid payments for any class of providers can be no higher than the amount Medicare would pay for the same service. Therefore, Medicare's equivalent payment for a service within a specific class of providers is the UPL for Medicaid payments for that class.

This proposed rule establishes the methodology for determination and payment of supplemental UPL payments for a specific class of ICFs/MR defined as non-state government-owned ICFs/MR. Under this rule, non-state government-owned ICFs/MR may apply to receive supplemental payments determined in accordance with Medicaid UPL provisions codified at Title 42 Code of Federal Regulations (CFR) §447.272.

The maximum Medicaid supplemental payment amount for each participating non-state government-owned ICF/MR is equal to its proportionate share of the total supplemental payment amount calculated for all non-state government-owned ICFs/MR. In brief summary, to calculate the maximum payment amount for each participating ICF/MR, HHSC will:

Step 1: determine the total possible supplemental payment to all non-state government-owned ICFs/MR (the "room") by calculating the difference between a proxy of the aggregate amount that would be paid under Medicare to the non-state government-owned ICFs/MR for services to their Medicaid recipients and the aggregate amount paid under Medicaid for these same services for these same recipients. Since ICF/MR is not a covered service under Medicare, the Centers for Medicare and Medicaid Services has defined the proxy amount as 112 percent of the routine costs of the ICFs/MR in the class less their ancillary and fixed capital expenses;

Step 2: determine the total number of Medicaid units of service provided by all non-state government-owned ICFs/MR;

Step 3: determine the number of Medicaid units of service provided by the specific non-state government-owned ICF/MR in question;

Step 4: determine the proportion of Medicaid units of service associated with the ICF/MR in question by dividing the value determined in Step 3 by the value determined in Step 2;

Step 5: determine the maximum supplemental payment for the ICF/MR in question by multiplying the quotient from Step 4 by the "room" from Step 1.

The supplemental payment to each participating ICF/MR as determined above will consist of two parts: (1) the non-federal part which is paid through an intergovernmental transfer (IGT) of funds by the non-state governmental entity that owns the ICF/MR; and (2) the federal part which is paid by the federal government. There are three steps involved in a non-state government-owned ICF/MR supplemental financing arrangement. These steps are similar to the methodologies that have been used within other HHSC supplemental programs for hospitals and physician practice groups:

Step 1: a non-state governmental entity makes an IGT to the state for the participating ICF/MR(s) owned by that entity;

Step 2: the state claims federal matching payment for the supplemental payment;

Step 3: the state makes a supplemental payment to the ICF/MR based on the supplemental amount for the ICF/MR(s) owned by the entity determined in Step 5 above and the amount of IGT transferred by the entity. If the IGT transferred in Step 1 was less than the full amount necessary to fund all ICFs/MR owned by that entity to their maximum payment amount, each ICF/MR will receive its proportionate share of the total supplemental payment, based on units of service.

This supplemental payment is above the routine Medicaid reimbursements for the ICF/MR(s) owned by the entity and total



payments (supplemental payment plus routine Medicaid reimbursements) can exceed the actual cost of providing care.

There is no cost to the state for these payments as the non-federal share is financed by IGTs from non-state governmental entities and the federal share is financed by the federal government.

#### Section-by-Section Summary

Subsection (a) provides an introduction to this rule.

Subsection (b) provides a list of definitions that relate to the administration of this supplemental payment program.

Subsection (c) describes the types of ICFs/MR eligible for this supplemental payment program.

Subsection (d) lists the required documentation and describes the documentation submission requirements for eligible ICFs/MR.

Subsection (e) describes the source of funding requirements for this supplemental payment program.

Subsection (f) describes the methodology for calculating supplemental payments for non-state government-owned ICFs/MR.

Subsection (g) describes the frequency with which HHSC will make payments to eligible non-state government-owned ICFs/MR.

Subsection (h) describes the payment methodology, including the allocation of intergovernmental transfers and a provision to allow for a fourth-quarter payment reconciliation.

Subsection (i) describes the process HHSC will use to recoup funds due to an overpayment or a disallowance by the Centers for Medicare and Medicaid Services.

#### 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 new rule is in effect there will be no fiscal impact to state government. There will be an impact to the federal government; however, this impact cannot be estimated at this time due to uncertainty about the extent to which non-state government-owned ICFs/MR will apply to receive supplemental payments. The proposed rule will not result in any fiscal implications for local health and human services agencies. There are no fiscal implications for local governments as a result of enforcing or administering the section.

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

HHSC has determined that there is no adverse economic effect on small businesses or micro-businesses as a result of enforcing or administering the new rule. The implementation of the proposed new rule does not require any changes in practice or any additional cost to the contracted provider because participation in the non-state government-owned ICF/MR UPL is voluntary. As well, this rule only affects non-state government-owned ICFs/MR and thus does not apply to small businesses or micro-businesses.

HHSC does not anticipate that there will be any economic cost to persons who are required to comply with this new rule. The new rule will not affect local employment.

#### Public Benefit

Pam McDonald, Director of Rate Analysis, has determined that, for each of the first five years the new rule is in effect, the

expected public benefit is that non-state government-owned ICFs/MR will be able to receive supplemental payments under the UPL program.

#### 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 Pam McDonald in the HHSC Rate Analysis Department by telephone at (512) 491-1373. Written comments on the proposal may be submitted to Ms. McDonald by fax at (512) 491-1998, by e-mail to [pam.mcdonald@hhsc.state.tx.us](mailto:pam.mcdonald@hhsc.state.tx.us), or by mail to HHSC Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200, within 30 days of publication of this proposal in the *Texas Register*.

#### Statutory Authority

The new section is 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 establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Human Resources Code, Chapter 32.

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

#### §355.458. Supplemental Payments to Non-State Government-Owned Facilities.

(a) Introduction. Notwithstanding other provisions of this subchapter and subject to the availability of funds, supplemental payments are available under this section for intermediate care facility for persons with mental retardation (ICF/MR) services provided by eligible non-state government-owned ICFs/MR.

(b) Definitions. When used in this section, the following definitions apply:

(1) Aggregate upper payment limit--A reasonable estimate of the amount that would be paid for the services furnished by non-state government-owned ICFs/MR under Medicare payment principles, as calculated in subsection (f) of this section.

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

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

(4) Medicaid supplemental payment limit--The maximum supplemental payment available to a participating non-state government-owned ICF/MR for a specific Medicaid supplemental payment limit calculation period as calculated in subsection (f) of this section.

(5) Medicaid supplemental payment limit calculation period--The federal fiscal quarter determined by HHSC for which supplemental payment amounts are calculated.

(6) Non-state government-owned ICF/MR--An ICF/MR where a non-state governmental entity is party to the facility's Medicaid contract.

(7) Non-state governmental entity--A community center established under Chapter 534, Subchapter A of the Texas Health and Safety Code or a hospital authority, hospital district, healthcare district, city, or county.

(8) Public funds--Funds derived from taxes, assessments, levies, investments, and other public revenues within the sole and unrestricted control of the governmental entity that is party to the Medicaid contract of the ICF/MR identified in subsection (c) of this section. Public funds do not include gifts, grants, trusts, or donations, the use of which is conditioned on supplying a benefit solely to the donor or grantor of the funds.

(c) Eligible ICFs/MR.

(1) Supplemental payments are available under this section to all non-state government-owned ICFs/MR that comply with the requirements described in subsection (d) of this section.

(2) An ICF/MR participating in this supplemental payment program must notify the HHSC Rate Analysis Department of changes in ownership that may affect the ICF/MR's continued eligibility within 30 days after such change.

(3) An ICF/MR that has not received a payment under this supplemental payment program for four consecutive quarters is ineligible for future supplemental payments unless the ICF/MR applies again for the supplemental payment program in accordance with subsection (d) of this section.

(d) Required application. Before a non-state government-owned ICF/MR may receive supplemental payments under this section, the appropriate governmental entity must certify certain facts, representations, and assurances regarding program requirements.

(1) The appropriate governmental entity must certify the following facts on a form prescribed by HHSC before the first day of the next scheduled Medicaid supplemental payment limit calculation period in order for the ICF/MR to receive a supplemental payment for that period:

(A) That a non-state governmental entity is party to the ICF/MR's Medicaid contract.

(B) That all funds transferred to HHSC via IGT for use as the state share of supplemental payments are public funds.

(C) That no part of any supplemental payment paid to the ICF/MR under this section will be used to pay a contingent fee, consulting fee, or legal fee associated with the ICF/MR's receipt of the supplemental funds.

(D) That the person signing the certification on behalf of the ICF/MR is legally authorized to bind the ICF/MR and to certify the matters described in the application; and

(2) The ICF/MR is eligible for supplemental payments for Medicaid supplemental payment limit calculation periods that begin after HHSC receives completed application forms from the appropriate governmental entity.

(e) Source of funding.

(1) State funding for supplemental payments authorized under this section is limited to and obtained through IGTs of public funds from the governmental entity that is party to the Medicaid contract of the ICF/MR identified in subsection (c) of this section.

(2) An IGT that is not received by the date specified by HHSC may not be accepted. In such a situation, the IGT will be returned to the governmental entity and the ICF/MR will not be eligible to receive a supplemental payment.

(f) Medicaid supplemental payment limits.

(1) The aggregate supplemental payment amount for non-state government-owned ICFs/MR is calculated for each Medicaid supplemental payment limit calculation period by taking the difference between the aggregate upper payment limit from subparagraph (A) of this paragraph and the aggregate Medicaid payment from subparagraph (B) of this paragraph:

(A) The aggregate upper payment limit for non-state government-owned ICFs/MR will be calculated based on Medicare payment principles and in accordance with the Medicaid upper payment limit provisions codified at Title 42 Code of Federal Regulations (CFR) §447.272. The aggregate upper payment limit is equal to the sum of the Medicare-equivalent payments for all non-state government-owned ICFs/MR. The Medicare-equivalent payment for each non-state government-owned ICF/MR is calculated as follows based on data from the most recent reliable Medicaid cost report:

(i) Determine the Medicare adjusted cost by subtracting ancillary and fixed capital costs from total Medicaid allowable costs and multiplying the remaining costs by 1.12.

(ii) Determine the Medicare adjusted cost per day of service by dividing the value from clause (i) of this subparagraph by the total days of service.

(iii) Determine the Medicare-equivalent payment by multiplying the dividend from clause (ii) of this subparagraph by the total Medicaid days of service.

(B) The aggregate Medicaid payment for non-state government-owned ICFs/MR prior to the supplemental payment will be the sum of Medicaid Level of Need (LON) payments for all non-state government-owned ICFs/MR as captured on the most recent reliable Medicaid cost report.

(2) The Medicaid supplemental payment limit for each participating non-state government-owned ICF/MR for each Medicaid supplemental payment limit calculation period will be determined by dividing that facility's Medicaid units of service during the Medicaid supplemental payment limit calculation period by the total Medicaid units of service during the Medicaid supplemental payment limit calculation period for all non-state government-owned ICFs/MR, multiplying the resulting percentage by the aggregate supplemental payment amount from paragraph (1) of this subsection, and dividing the resulting product by four.

(g) Payment frequency. HHSC will distribute supplemental payments to participating non-state government-owned ICFs/MR on a quarterly basis subsequent to the Medicaid supplemental payment limit calculation period.

(h) Supplemental payment methodology.

(1) HHSC will give notice of the non-state government-owned ICF/MR Medicaid supplemental payment limits determined in subsection (f) of this section, the maximum IGT amount that can be provided for each participating ICF/MR based on the Federal Medical Assistance Percentage (FMAP) in place at the time notice is given, and the deadline for completing the transfer.

(2) The amount of the supplemental payment to the ICF/MR will be calculated in proportion to the amount transferred by the governmental entity.

(A) For governmental entities that own a single ICF/MR:

(i) If the governmental entity transfers the maximum IGT described in paragraph (1) of this subsection, the ICF/MR will receive the Medicaid supplemental payment limit amount calculated for it in subsection (f) of this section.

(ii) If the governmental entity transfers less than the maximum IGT described in paragraph (1) of this subsection, the ICF/MR will receive a supplemental payment that is proportionate to the percentage of the maximum IGT that was actually transferred.

(B) For governmental entities that own multiple ICFs/MR:

(i) If the governmental entity transfers the maximum IGT described in paragraph (1) of this subsection for all of the ICFs/MR it owns, each of the ICFs/MR will receive the Medicaid supplemental payment limit amount calculated for it in subsection (f) of this section.

(ii) If the governmental entity transfers less than the maximum IGT described in paragraph (1) of this subsection for all of the ICFs/MR it owns, each of the ICFs/MR will receive a proportion of the Medicaid supplemental payment limit amount calculated for it in subsection (f) of this section based on the proportion of the total maximum IGT for all of the ICFs/MR owned by the governmental entity that was actually transferred.

(C) Supplemental payments to remaining non-state government-owned ICFs/MR will not be increased due to the failure of a governmental entity to transfer the maximum IGT described in paragraph (1) of this subsection.

(3) A governmental entity that did not transfer the maximum IGT described in paragraph (1) of this subsection in one or more of the first three quarters in a federal fiscal year will be allowed to fund the remaining Medicaid supplemental payment limit during the fourth quarter of that fiscal year, subject to the following:

(A) HHSC will give notice of the remaining Medicaid supplemental payment limits and the maximum IGT that can be provided for each non-state government-owned ICF/MR. Such notice will also contain instructions and deadlines for governmental entities to notify HHSC of the fourth-quarter transfer amount.

(B) Following the deadline for notification described in subparagraph (A) of this paragraph, if HHSC determines that the supplemental payments for the federal fiscal year will exceed the applicable aggregate supplemental payment amount for non-state government-owned ICFs/MR, HHSC will reduce the amount of the transfer for the fourth-quarter payment under this clause proportionately for each participating ICF/MR in an amount sufficient to ensure compliance with the applicable aggregate supplemental payment amount.

(4) The amount of the payment to the ICF/MR will be calculated using the FMAP in place when HHSC gave notice as described in paragraph (1) or (3) of this subsection, as applicable.

(i) Recoupment.

(1) If payments under this section result in overpayment to an ICF/MR, or in the event of a disallowance by the federal Centers for Medicare and Medicaid Services (CMS) of federal participation related to an ICF/MR's receipt or use of supplemental payments authorized under this section, HHSC may recoup an amount equivalent to the amount of supplemental payments overpaid or disallowed.

(2) Supplemental payments under this section may be subject to any adjustments for payments made in error, including, without limitation, adjustments made under the Texas Administrative Code, the Code of Federal Regulations and state and federal statutes. HHSC may recoup an amount equivalent to any such adjustment.

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

(A) HHSC will recoup from the ICF/MR to which an overpayment was made or against which any disallowance was directed.

(B) If, within 30 days of the ICF/MR's receipt of HHSC's written notice of recoupment, the ICF/MR has not paid the full amount of the recoupment or entered into a written agreement with HHSC to do so, HHSC may withhold any or all Medicaid payments from the ICF/MR until HHSC has recovered an amount equal to the amount overpaid or disallowed. If funds identified for recoupment cannot be repaid from the ICF/MR's Medicaid payments, the governmental entity that owns the ICF/MR will be liable for any additional payment due to HHSC or its designee. Failure to repay the amount due or submit an acceptable payment plan within 60 days of notification will result in the recoupment of the owed funds from other Medicaid contracts controlled by the governmental entity and will bar the governmental entity from receiving any new contracts with HHSC or its designees until repayment is made in full.

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

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

TRD-201201975

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: June 3, 2012

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



## SUBCHAPTER E. COMMUNITY CARE FOR AGED AND DISABLED

### 1 TAC §355.506

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

The Texas Health and Human Services Commission (HHSC) proposes to repeal §355.506, concerning Reimbursement Methodology for Consolidated Waiver Program.

#### Background and Justification

Senate Bill 705, 81st Legislature, Regular Session, 2009, abolished the Consolidated Waiver Program (CWP). CWP was a pilot

program, administered by the Texas Department of Aging and Disability Services (DADS), to test the feasibility of combining five of the state's Medicaid waiver programs under §1915(c) of the Social Security Act. In response to the legislation, HHSC and DADS terminated CWP effective December 31, 2011, and HHSC proposes to repeal the reimbursement methodology for CWP.

#### Section-by-Section Summary

The proposed repeal of §355.506 deletes obsolete information.

#### 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 proposed repealed rule is in effect there will be no fiscal impact to state government. The proposed repeal will not result in any fiscal implications for local health and human services agencies. There are no fiscal implications for local governments as a result of the proposed repeal of this section.

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

HHSC has determined that there is no adverse economic effect on small businesses or micro-businesses as a result of the proposed repeal of this rule. Consumers receiving benefits under CWP are being transferred to other DADS programs, and any qualified small business or micro-business may participate in those programs.

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

Pam McDonald, Director of Rate Analysis, expects the proposed repeal of §355.506, if adopted, to benefit the state by aligning the agency's rules with state law.

#### 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 Sarah Hambrick in the HHSC Rate Analysis Department by telephone at (512) 491-1431. Written comments on the proposal may be submitted to Ms. Hambrick by fax at (512) 491-1998, by e-mail to sarah.hambrick@hhsc.state.tx.us, or by mail to HHSC Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200 within 30 days of publication of this proposal in the *Texas Register*.

#### Statutory Authority

The repeal is proposed under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out the Commissioner'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 repeal affects Texas Government Code, Chapter 531 and Texas Human Resources Code, Chapter 32. No other statutes, articles, or codes are affected by this proposal.

*§355.506. Reimbursement Methodology for Consolidated Waiver Program.*

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

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

TRD-201202042

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: June 3, 2012

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



## CHAPTER 370. STATE CHILDREN'S HEALTH INSURANCE PROGRAM

The Texas Health and Human Services Commission (HHSC) proposes to amend §370.4, concerning definitions, §370.301, concerning CHIP enrollment packet, and §370.303, concerning completion of enrollment, in Chapter 370, State Children's Health Insurance Program.

### BACKGROUND AND JUSTIFICATION

On March 1, 2012, rules regarding dental services provided through the Children's Health Insurance Program (CHIP) managed care model became effective. The rules did not include a default assignment process for applicants who do not select a dental home provider. These proposed rule amendments describe the default assignment process for dental homes. For consistency across the medical and dental programs, the amended rules also revise the default assignment process for primary care providers to include criteria similar to those applied to dental home assignments. The amended rules also provide that there is no limit to the number of times a CHIP member can request a change in his or her dental home or primary care provider.

Additionally, the proposed rules revise the default assignment process for members who do not select a health care or dental managed care organization to include a more detailed description of the agency's default assignment criteria.

The proposed rules also add clarification regarding the CHIP dental services provided by dental managed care organizations.

Finally, the proposed rules update and revise terminology for clarity and consistency and clarify language through the use of

plain language principles and consistency with the Code Construction Act (Government Code, Chapter 311).

#### SECTION-BY-SECTION SUMMARY

The amendment to §370.4 adds a definition for "CHIP dental services" and renumbers the subsequent definitions. The amendment also revises the definitions of "dental home" and "primary care provider" to clarify the types of providers that can serve as dental homes and to clarify that primary care providers contract with health care managed care organizations.

The amendment to §353.301 clarifies that the CHIP enrollment packet provides: (1) information on how to obtain a provider directory, and (2) information summarizing the importance of choosing an appropriate dental home, as well as a managed care organization and a primary care provider.

The amendment to §353.303 revises provisions regarding completion of a CHIP enrollment packet to include the selection of a dental home. The amendment also adds a requirement that, if the applicant does not choose a health care managed care organization, dental managed care organization, primary care provider, or dental home within 30 days after their enrollment packet is mailed, HHSC or its designee will assign one for the applicant. HHSC or its designee will use the applicable default assignment methodology as outlined in the amendment. Further, the amendment provides for a modified default enrollment process under certain circumstances. Finally, the rules provide that there is no limit to the number of times a member can request a change in his or her dental home or primary care provider.

#### FISCAL NOTE

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

#### PUBLIC BENEFIT AND COSTS

Billy Millwee, Deputy Executive Commissioner for Health Services Operations, has determined that, for each year of the first five years the amendments will be in effect, public benefit is expected as a result of adopting the proposed amendments. The expected public benefit of the default assignment processes is the preservation of established relationships between CHIP members or their families and managed care organizations, primary care providers, and dental homes when possible. The default assignment processes for dental home and primary care providers also benefit the public by ensuring that a provider's proximity to the member's home is taken into consideration when making default assignments. Finally, the public will benefit from clearer rules regarding default assignments and CHIP dental services.

Mr. Millwee anticipates that there will not be an economic cost to persons who are required to comply with the amendments.

This proposal will not affect a local economy.

#### SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

HHSC has determined that there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing or administering the amendments. The rules are designed to preserve preexisting relationships between beneficiaries or their family members and managed care or-

ganizations, dental homes, and primary care providers when possible. HHSC therefore anticipates that small business and micro-business providers with preexisting relationships with beneficiaries will not lose current clients under the rules. Furthermore, these providers may gain additional clients if they serve other Medicaid members in the household, or if their place of business is in close geographic proximity to default assignees.

#### 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 Susan Gibson, Health and Human Services Commission, Managed Care Operations, MC-H-320, Braker Center H320, P.O. Box 85200, Austin, TX 78708-5200; by fax to (512) 491-1969; or by e-mail to [susan.gibson@hhsc.state.tx.us](mailto:susan.gibson@hhsc.state.tx.us) within 30 days after publication of this proposal in the *Texas Register*.

#### PUBLIC HEARING

The Medical Care Advisory Committee (MCAC) meeting on May 10, 2012, will function as a public hearing to receive public comment on the proposed amendments. The MCAC meeting will be held in the John H. Winters Public Hearing Room at 701 West 51st Street, Austin, Texas. Entry is through Security at the main entrance of the building, which faces 51st Street. Persons requiring American with Disabilities Act (ADA) accommodation or auxiliary aids or services should contact Carol Chavez by calling (512) 491-1763 at least 72 hours prior to the hearing so appropriate arrangements can be made.

#### SUBCHAPTER A. PROGRAM ADMINISTRATION

##### 1 TAC §370.4

#### STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Health and Safety Code §62.051(d), which directs HHSC to adopt rules as necessary to implement the Children's Health Insurance Program.

The amendments affect the Texas Government Code, Chapter 531, and the Texas Health and Safety Code, Chapter 62. No other statutes, articles, or codes are affected by this proposal.

§370.4. *Definitions.*

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

- (1) **Action**--
- (A) In the context of an eligibility or disenrollment determination by the Health and Human Services Commission (HHSC) or its designee, action is defined as:
- (i) denial of CHIP eligibility;
- (ii) disenrollment from CHIP; or
- (iii) the failure of HHSC or its designee to act within 45 days on an applicant's request for CHIP eligibility determination.
- (B) "Action" does not include expiration of a time-limited service.
- (2) **Acute care**--Preventive care, primary care, and other medical or behavioral health care provided for a condition having a relatively short duration.
- (3) **Acute care hospital**--A hospital that provides acute care services.
- (4) **Adverse determination**--A determination by a managed care organization (MCO) that the health care services or dental services furnished, or proposed to be furnished, to a patient are not medically necessary or appropriate.
- (5) **Agreement or Contract**--The formal, written, and legally enforceable contract and amendments thereto between HHSC and an MCO.
- (6) **Alien**--A person who is not a native born or naturalized citizen of the United States of America.
- (7) **Allowable revenue**--All managed care revenue received by the MCO pursuant to the contract during the contract period, including retroactive adjustments made by HHSC. This would include any revenue earned on CHIP managed care funds such as investment income, earned interest, or third party administrator earnings from services to delegated networks.
- (8) **Appeal**--The formal process by which a member or his or her representative requests a review of the MCO's action.
- (9) **Applicant**--An individual who lives with the child and applies for health and dental care coverage on behalf of the child. An applicant can only be:
- (A) a child's parent, whether biological or adoptive;
- (B) a child's grandparent, relative or other adult who provides care for the child;
- (C) a minor not living with an adult relative applying for himself/herself; or
- (D) a child's step-parent.
- (10) **Application**--The standardized, written document that an applicant must complete to apply for health and dental care coverage through CHIP.
- (11) **Behavioral health service**--A covered service for the treatment of mental, emotional, or chemical dependency disorders.
- (12) **Budget Group**--The group of individuals who live in the home with the child for whom an application for health and dental care coverage is submitted and whose information is used to establish family size and calculate income. Individuals receiving Supplemental Security Income payments are not included in the Budget Group. Budget Group members include only:

- (A) the child seeking health and dental care coverage;
- (B) the child's siblings under age 19 who live with the child (biological, adopted, or step-siblings);
- (C) the child's biological or adoptive parents;
- (D) the child's step-parent;
- (E) the child's spouse, if married, and they have children.

(13) **Capitation rate**--A fixed, predetermined fee paid by HHSC to the MCO each month, in accordance with the contract, for each enrolled member in exchange for which the MCO arranges for or provides a defined set of covered services to the member, regardless of the amount of covered services used by the enrolled member.

(14) **Child**--An individual under the age of 19.

(15) **Children's Health Insurance Program or CHIP or Program**--The Texas State Children's Health Insurance Program established under Title XXI of the federal Social Security Act (42 U.S.C. §§1397aa, et seq.) and chapters 62 and 63, Health and Safety Code.

(16) **CHIP Dental Services**--The dental services provided through a dental MCO to a CHIP member.

(17) [~~46~~] **Claims processing entity**--The MCO or its subcontractor that processes claims for CHIP.

(18) [~~47~~] **CMS**--The Centers for Medicare and Medicaid Services, which is the federal agency responsible for administering Medicare and overseeing state administration of Medicaid and CHIP.

(19) [~~48~~] **Commission or HHSC**--The Texas Health and Human Services Commission.

(20) [~~49~~] **Complainant**--A member, or a treating provider or other individual designated to act on behalf of the member, who files a complaint.

(21) [~~20~~] **Complaint**--Any dissatisfaction, expressed by a complainant, orally or in writing, to the MCO, with any aspect of the MCO's operation, including dissatisfaction with plan administration; procedures related to review or appeal of an adverse determination, as set forth in Texas Insurance Code, Chapter 843, Subchapter G; the denial, reduction, or termination of a service for reasons not related to medical necessity; the way a service is provided; or disenrollment decisions. The term does not include misinformation that is resolved promptly by supplying the appropriate information or clearing up the misunderstanding to the satisfaction of the member.

(22) [~~24~~] **Cost Sharing**--Any enrollment fees or co-payments the member is responsible for paying.

(23) [~~22~~] **Countable Income**--For the month of receipt, any type of payment that is a regular and predictable gain or a benefit to a Budget Group that is not specifically exempted. In determining countable income, do not include income received by the child or sibling member of the Budget Group who is under age 18 and enrolled in school.

(24) [~~23~~] **Countable Liquid Assets**--Personal Property that is cash or that an applicant can readily convert to cash that is used in calculating a child's eligibility for CHIP.

(A) Countable liquid assets include the balances, less income received or deposited in the current month of the following:

- (i) cash on hand;
- (ii) cash in the bank;

(iii) cash in a Temporary Assistance to Needy Families (TANF) Electronic Benefit Transfer account;

(iv) money remaining from the sale of a homestead; and

(v) accessible trust funds.

(B) Countable Liquid Assets do not include:

(i) any resource exempted by federal law from consideration for purposes of determining eligibility or benefit levels for any federally funded needs-based program, such as TANF and Assets for Independence Act (AFIA) Individual Development Accounts; or

(ii) any financial instrument subject to rules limiting use of its proceeds, including penalties and/or tax liabilities incurred for early liquidation, such as individual retirement accounts and Keogh plans; or

(iii) the cash value of any insurance policy; or

(iv) Internal Revenue Code 529 qualified college savings program accounts, such as Texas Guaranteed Tuition Plan accounts; or

(v) funds received as educational grants or scholarships.

(25) [(24)] Covered service--A health care service or a dental service or item that the MCO must arrange to provide and pay for on a member's behalf under the terms of the contract executed between the MCO and HHSC. This includes all covered services and benefits identified in the Texas CHIP State Plan, and all value-added services approved by HHSC.

(26) [(25)] Cultural competency--The ability of individuals and systems to provide services effectively to people of various cultures, races, ethnic backgrounds, and religions in a manner that recognizes, values, affirms, and respects the worth of the individuals and protects and preserves their dignity.

(27) [(26)] Day--Calendar day, unless otherwise specified.

(28) [(27)] Default enrollment--The process established by HHSC to assign a CHIP managed care enrollee to an MCO when the enrollee has not selected an MCO.

(29) [(28)] Dental contractor--A dental MCO that is under contract with HHSC for the delivery of dental services.

(30) [(29)] Dental home--A provider who has contracted with a dental MCO to serve as a dental home to a member and who is responsible for providing routine preventive, diagnostic, urgent, therapeutic, initial, and primary care to patients, maintaining the continuity of patient care, and initiating referral for care. Provider types that can serve as dental homes are federally qualified health centers and individuals who are general dentists or [and] pediatric dentists.

(31) [(30)] Dental managed care organization (dental MCO)--A dental indemnity insurance provider or dental health maintenance organization licensed or approved by the Texas Department of Insurance.

(32) [(31)] Dental service--The routine preventive, diagnostic, urgent, therapeutic, initial, and primary care provided to a member and included within the scope of HHSC's agreement with a dental contractor. For purposes of this chapter, "dental service" does not include dental devices for craniofacial anomalies; treatment rendered in a hospital, urgent care center, or ambulatory surgical center setting for craniofacial anomalies; or emergency services provided in a hospital, urgent care center, or ambulatory surgical center setting involving den-

tal trauma. These types of emergency services are treated as health care services in this chapter.

(33) [(32)] Designee--A contractor of HHSC authorized to act on behalf of HHSC under this chapter.

(34) [(33)] Disability--A physical or mental impairment that substantially limits one or more of an individual's major life activities, such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, socializing, or working.

(35) [(34)] Eligible provider--A network provider who provides medical services to a member or a non-network provider who agrees with an MCO to see a member for an agreed-upon rate on a case-by-case basis.

(36) [(35)] Enrollment--The process by which a child determined to be eligible for CHIP is enrolled in a CHIP MCO serving the service area in which the child resides.

(37) [(36)] Exclusive provider benefit plan (EPBP)--An MCO that complies with 28 TAC §§3.9201 - 3.9212, relating to the Texas Department of Insurance's requirements for EPBPs, and contracts with HHSC to provide CHIP coverage.

(38) [(37)] Exempt Income--Income received by the Budget Group that is not counted in determining income eligibility.

(39) [(38)] Experience rebate--The portion of the MCO's net income before taxes that is returned to the State in accordance with the MCO's contract with HHSC.

(40) [(39)] FPL--Federal Poverty Level Income Guidelines.

(41) [(40)] Gross Budget Group Income--Monthly Countable Income before any payroll deductions.

(42) [(41)] Health care managed care organization (health care MCO)--An entity that is licensed or approved by the Texas Department of Insurance to operate as a health maintenance organization or to issue an EPBP.

(43) [(42)] Health care services--The acute care, behavioral health care, and health-related services that an enrolled population might reasonably require in order to be maintained in good health, including, at a minimum, emergency services and inpatient and outpatient services.

(44) [(43)] Health maintenance organization (HMO)--An organization that holds a certificate of authority from the Texas Department of Insurance to operate as an HMO under Chapter 843 of the Texas Insurance Code, or a certified Approved Non-Profit Health Corporation formed in compliance with Chapter 844 of the Texas Insurance Code.

(45) [(44)] Hospital--A licensed public or private institution as defined in the Texas Health and Safety Code at Chapter 241, relating to hospitals, or Chapter 261, relating to municipal hospitals.

(46) [(45)] Household--The Budget Group plus any SSI recipient who is the child's:

(A) sibling who lives with the child (biological, adopted, or step-sibling);

(B) biological or adoptive parent; or

(C) step-parent.

(47) [(46)] Main dental home provider--See definition of "dental home" in this section.

(48) [(47)] Main dentist--See definition of "dental home" in this section.

(49) [(48)] Managed care--A health care delivery system or dental services delivery system in which the overall care of a patient is coordinated by or through a single provider or organization.

(50) [(49)] Managed care organization (MCO)--A dental MCO or a health care MCO.

(51) [(50)] Marketing--Any communication from an MCO to a client who is not enrolled with the MCO that can reasonably be interpreted as intended to influence the client's decision to enroll, not to enroll, or to disenroll from a particular MCO.

(52) [(51)] Marketing materials--Materials that are produced in any medium by or on behalf of the MCO that can reasonably be interpreted as intending to market to potential members. Materials relating to the prevention, diagnosis or treatment of a medical or dental condition are not marketing materials.

(53) [(52)] Medical home--A primary care provider (PCP) or specialty care provider who has accepted the responsibility for providing accessible, continuous, comprehensive, and coordinated care to members participating in an MCO contracted with HHSC.

(54) [(53)] Medically necessary health care services--Means:

(A) Dental services and non-behavioral health services that are:

(i) reasonable and necessary to prevent illnesses or medical conditions, or provide early screening, interventions, or treatments for conditions that cause suffering or pain, cause physical deformity or limitations in function, threaten to cause or worsen a disability, cause illness or infirmity of a member, or endanger life;

(ii) provided at appropriate facilities and at the appropriate levels of care for the treatment of a member's health conditions;

(iii) consistent with health care practice guidelines and standards that are endorsed by professionally recognized health care organizations or governmental agencies;

(iv) consistent with the member's diagnoses;

(v) no more intrusive or restrictive than necessary to provide a proper balance of safety, effectiveness, and efficiency;

(vi) not experimental or investigative; and

(vii) not primarily for the convenience of the member or provider.

(B) Behavioral health services that:

(i) are reasonable and necessary for the diagnosis or treatment of a mental health or chemical dependency disorder, or to improve, maintain, or prevent deterioration of functioning resulting from such a disorder;

(ii) are in accordance with professionally accepted clinical guidelines and standards of practice in behavioral health care;

(iii) are furnished in the most appropriate and least restrictive setting in which services can be safely provided;

(iv) are the most appropriate level or supply of service that can safely be provided;

(v) could not be omitted without adversely affecting the member's mental and/or physical health or the quality of care rendered;

(vi) are not experimental or investigative; and

(vii) are not primarily for the convenience of the member or provider.

(55) [(54)] Member education program--A planned program of education:

(A) concerning access to health care services or dental services through the MCO and about specific health or dental topics;

(B) that is approved by HHSC; and

(C) that is provided to members through a variety of mechanisms that must include, at a minimum, written materials and face-to-face or audiovisual communications.

(56) [(55)] Member materials--All written materials produced or authorized by the MCO and distributed to members or potential members containing information concerning the managed care program. Member materials include member ID cards, member handbooks, provider directories, and marketing materials.

(57) [(56)] Member--A child enrolled in a CHIP MCO.

(58) [(57)] Net Budget Group Income--Gross Monthly Countable Income minus any allowable deductions.

(59) [(58)] Participating MCO--An MCO that has a contract with HHSC to provide services to members.

(60) [(59)] Primary care provider (PCP)--A physician or other provider who has agreed with the health care MCO to provide a medical home to members and who is responsible for providing initial and primary care to patients, maintaining the continuity of patient care, and initiating referral for care.

(61) [(60)] Provider--A credentialed and licensed individual, facility, agency, institution, organization or other entity, and its employees and subcontractors, that has a contract with the MCO for the delivery of covered services to the MCO's members.

(62) [(61)] Provider education program--Program of education about the CHIP managed care program and about specific health or dental care issues presented by the MCO to its providers through written materials and training events.

(63) [(62)] Provider network or network--All providers that have contracted with the MCO for the CHIP program.

(64) [(63)] Quality improvement--A system to continuously examine, monitor, and revise processes and systems that support and improve administrative and clinical functions.

(65) [(64)] Risk--The potential for loss as a result of expenses and costs of the MCO exceeding payments made by HHSC under the contract.

(66) [(65)] Service area--The counties included in any HHSC-defined service area as applicable to each MCO.

(67) [(66)] Qualified Alien--An alien who, at the time of application, satisfies the criteria established under 8 U.S.C. §1641(b).

(68) [(67)] Significant traditional provider (STP)--A provider identified by HHSC as having provided a significant level of care to the target population.

(69) [(68)] SSI--Supplemental Security Income.



(70) [(69)] State Fiscal Year--The 12-month period beginning September 1 of each calendar year and ending August 31 of the following calendar year.

(71) [(70)] State Plan--The plan permitted under federal law and approved by CMS that allows the state to implement the CHIP program.

(72) [(71)] Value-added service--A service provided by an MCO that is in addition to the covered services included within the scope of the CHIP State Plan and the MCO's contract with HHSC.

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 April 23, 2012.

TRD-201202062

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: June 3, 2012

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



## SUBCHAPTER C. ENROLLMENT, RENEWAL, DISENROLLMENT, AND COST SHARING DIVISION 1. ENROLLMENT AND DISENROLLMENT

### 1 TAC §370.301, §370.303

#### STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Health and Safety Code §62.051(d), which directs HHSC to adopt rules as necessary to implement the Children's Health Insurance Program.

The amendments affect the Texas Government Code, Chapter 531, and the Texas Health and Safety Code, Chapter 62. No other statutes, articles, or codes are affected by this proposal.

#### §370.301. CHIP Enrollment Packet.

(a) The Health and Human Services Commission (HHSC) or its designee will conduct enrollment and disenrollment activities.

(b) Within 5 business days of determining a child is CHIP eligible, HHSC's designee must send the applicant a CHIP enrollment packet containing:

- (1) an explanation of CHIP benefits;
- (2) information about the value-added services provided by MCOs;
- (3) an enrollment form and instructions for completing the form;
- (4) information on how to obtain a provider directory for each MCO available in the applicant's service area;
- (5) a CHIP member guide;
- (6) cost-sharing information specific to the Budget Group's percentage of Federal Poverty Level (FPL), which includes:
  - (A) the enrollment fee, if any;

(B) a schedule of co-payments, if any; and

(C) information about the cost-sharing cap;

(7) the process for requesting review of an action;

(8) information specifying the earliest date coverage can begin and the latest date the completed enrollment form must be received by HHSC or its designee to ensure enrollment on the first day of the appropriate month; and

(9) information summarizing the importance of appropriate MCO, primary care provider [and Primary Care Provider] (PCP), and dental home choices [for applicants who live in service areas covered by more than one MCO].

#### §370.303. Completion of Enrollment.

(a) To complete CHIP enrollment an applicant must:

(1) select and indicate on the enrollment form, a single health care managed care organization (MCO) and a single dental MCO to cover all eligible children, regardless of the number of eligible children in the Budget Group;

(2) select a primary care provider (PCP) and a dental home, and place the names [name] on the enrollment form;

(3) indicate if an eligible child has special health care needs based on criteria in the member guide; and

(4) sign and return the enrollment form.

(b) An applicant may select a PCP, dental home, health care MCO, and dental MCO by mail, telephone, or facsimile. An applicant will have 30 calendar days from the date the enrollment packet is mailed to choose a health care MCO, dental MCO, PCP, and dental home. If the applicant does not choose a health care MCO, dental MCO, PCP, or dental home within this time period, the Health and Human Services Commission (HHSC) or its designee will assign one using the default assignment methodologies described in this section.

(c) PCP assignment. If an applicant has not selected a PCP, the health care MCO will assign one using an algorithm that considers: [fails to choose a PCP, or if the chosen PCP is not accepting new members, the health care MCO must assign a PCP to each member in the Budget Group and inform the applicant.]

(1) the applicant's established history with a PCP, as demonstrated by the health care MCO's encounter history with the provider in the preceding year;

(2) the geographic proximity of the applicant's home address to the PCP;

(3) whether the provider serves as a PCP to other members of the applicant's household;

(4) limitations on default assignment, such as PCP restrictions on age, gender, and capacity; and

(5) other criteria approved by HHSC.

(d) Dental home assignment. If an applicant has not selected a dental home, the dental MCO will assign one using an algorithm that considers: [Members who fail to select a health care MCO or dental MCO, during the period established by the commission will have an MCO selected for them by HHSC or its designee using criteria determined by HHSC. HHSC will establish a default methodology. When possible, the default assignment methodology will take into consideration the beneficiary's history with a PCP or main dental provider. If this is not possible, HHSC will distribute beneficiaries among qualified MCOs.]

(1) the applicant's established history with a dental home, as demonstrated by the dental MCO's encounter history with the provider in the preceding year;

(2) the geographic proximity of the applicant's home address to the dental home;

(3) whether the provider serves as the dental home to other members of the applicant's household;

(4) limitations on default assignment, such as dental home restrictions on age and capacity; and

(5) other criteria approved by HHSC.

(e) MCO assignment. If a beneficiary has not selected a health care MCO or dental MCO, HHSC or its administrative services contractor will assign one using an algorithm that considers the beneficiary's history with a PCP or dental home when possible. If this is not possible, HHSC or its administrative services contractor will equitably distribute beneficiaries among qualified MCOs, using an algorithm that considers one or more of the following factors:

(1) whether other members of the beneficiary's household are enrolled in the MCO;

(2) MCO performance;

(3) the greatest variance between the percentage of elective and default enrollments (with the percentage of default enrollments subtracted from the percentage of elective enrollments);

(4) capitation rates;

(5) market share; and

(6) other criteria determined by HHSC.

(f) Modified default enrollment process. HHSC has the option to implement a modified default enrollment process for MCOs when contracting with a new MCO or implementing managed care in a new service area, or when it has placed an MCO on full or partial enrollment suspension.

(g) Request to change dental home or PCP. There is no limit on the number of times a member can request to change his or her dental home or PCP. A member can request a change in writing or by calling the MCO's toll-free member hotline.

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 April 23, 2012.

TRD-201202063

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: June 3, 2012

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



## **TITLE 7. BANKING AND SECURITIES**

### **PART 2. TEXAS DEPARTMENT OF BANKING**

#### **CHAPTER 25. PREPAID FUNERAL CONTRACTS**

## **SUBCHAPTER B. REGULATION OF LICENSES**

### **7 TAC §25.25**

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes to amend §25.25, concerning conversion from trust-funded to insurance-funded benefits. The amendment is proposed to increase flexibility in setting guaranteed interest rates used in conversion annuities.

Existing prepaid contracts for trust-funded prepaid funeral benefits may be converted to insurance-funded prepaid funeral benefits under Finance Code, §154.204, if the department finds that the proposed insurance-funded arrangement safeguards the rights and interests of the individuals who purchased the prepaid contracts to substantially the same degree as the trust-funded arrangement proposed to be replaced. Pursuant to existing §25.25(c)(9)(A), the funding insurance policy must be a fixed annuity that provides guaranteed growth based on a minimum annual interest rate of two percent. This rate creates difficulties in the current low interest rate environment.

The proposed amendment to existing §25.25(c)(9)(A) will add flexibility to the interest rate determination to better balance the need for a fair return with the potential for long periods of low interest rates. The proposal will allow the minimum guaranteed fixed interest rate to be set between one percent and three percent, depending upon the yield of five-year treasury bonds at the time the application is approved. The calculation method is patterned on the manner in which minimum nonforfeiture amounts for certain annuities are calculated under Insurance Code §1107.055.

In addition, for comparison purposes the proposal expands the historical yield table or graph required by §25.25(c)(11) to include annuities sold in this state in the last five years to fund new prepaid funeral contracts.

The proposal also makes conforming changes to §25.25(c)(16) and (17) and corrects cross-reference errors in §25.25(c)(4) and (19).

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

Ms. Newberg also has determined that, for each year of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing the rule is better conformity with the prevailing interest rate environment at the time of a conversion, thereby ensuring a fair return for the consumer at a rate that is affordable to the insurer.

For each year of the first five years that the rule will be in effect, there will be no economic costs to persons required to comply with the rule as proposed. There will be no adverse economic effect on small businesses or micro-businesses, and no difference in the cost of compliance for small businesses as compared to large businesses.

To be considered, comments on the proposed amended section must be submitted no later than 5:00 p.m. on June 4, 2012. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boule-

ward, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to legal@dob.texas.gov.

The amendment is proposed under Finance Code, §154.204, which provides for department approval of a conversion from trust-funded prepaid funeral benefits to insurance-funded prepaid funeral benefits to safeguard the rights and interests of the individual who purchases a prepaid funeral benefits contract, and under Finance Code, §154.051, which authorizes the commission to adopt rules relating to the enforcement and administration of Chapter 154.

Finance Code, §154.204, is affected by the proposed amendment.

§25.25. *Conversion from Trust-Funded to Insurance-Funded Benefits.*

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

(c) Contents of application. An application for conversion must respond to each paragraph of this subsection by number. Overlapping or duplicate responses may be cross-referenced for brevity.

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

(4) Agreement of post-conversion permit holder and applicant. The applicant must submit a written agreement between the post-conversion permit holder and the applicant that, at a minimum, requires the applicant to relinquish the individual prepaid contract ledgers formerly maintained by the applicant under §25.11 of this title (relating to Recordkeeping [~~Record Keeping~~] Requirements for Trust-Funded Contracts) and obligates the post-conversion permit holder to maintain such ledgers to reflect the paid-in principal and the unpaid principal balance under each converted prepaid contract.

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

(9) Form of annuity. The applicant must submit a copy of the form(s) of annuity proposed to be issued as part of the conversion. The submitted form(s) must be accompanied by a copy of the TDI notice of action approval letter. The applicant and not TDI is responsible for ensuring that the form of annuity complies with this section. Among other matters, the annuity must:

(A) provide guaranteed growth of the death benefit based on a fixed annual interest rate, [~~of no less than 2.0%~~] compounded annually on gross premiums paid beginning in the first year of the policy, that is at least equal to a rate determined as the lesser of: [;]

(i) 3.0%; and

(ii) the average of the five-year Constant Maturity Treasury Rate reported by the Federal Reserve Board of Governors for the 90 calendar day period ending not more than 30 days prior to the date of the commissioner's order of approval, rounded to the nearest 1/20th of one percent, less 125 basis points, but not less than 1.0%;

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

(10) (No change.)

(11) Past performance. For purposes of this paragraph, the annual growth under an annuity equals the growth rate credited by the insurance company to the death benefit for the year. The applicant must submit separate [~~an~~] historical yield tables or graphs [~~table or graph~~] reflecting the annual rate of growth in the death benefit, expressed as a percentage for each year of the most recent five-year period, under:

(A) previously issued annuities similar to the form of annuity proposed to be issued by the insurance company in the proposed conversion, [~~expressed as a percentage for each year of the most~~

recent five-year period,] to the extent such annuities were in existence in those periods; and[- For purposes of this paragraph, the annual growth under the annuity equals the growth rate credited by the insurance company to the death benefit for the year.]

(B) annuities sold by the insurance company in this state during the most recent five-year period for the purpose of funding new prepaid funeral contracts.

(12) - (15) (No change.)

(16) Pre-conversion summary. The applicant must submit a pre-conversion summary pertaining to each prepaid contract to be converted, determined as of a date no earlier than 30 days prior to the date the application is filed, with totals for all prepaid contracts to be converted, if applicable, addressing each of the following categories:

(A) - (G) (No change.)

(H) amount eligible to be withdrawn from the trust fund by the applicant upon death of the contract beneficiary, assuming death were to occur on the calculation date; [~~and~~]

(I) amount retained by the applicant under Finance Code, §154.252; and[-]

(J) the guaranteed minimum interest rate to be applied to the death benefit calculated as if the date of the application were the date of the commissioner's order of approval.

(17) Pro forma post-conversion summary. The applicant must submit a pro forma post-conversion summary pertaining to each prepaid contract as if converted, determined as of the same date as the pre-conversion summary, with totals for all prepaid contracts, if applicable, addressing each of the following categories:

(A) - (F) (No change.)

(G) cash surrender value of each annuity, assuming the annuity were to be surrendered on the calculation date; [~~and~~]

(H) death benefit under each annuity, assuming death were to occur on the calculation date; and[-]

(I) the guaranteed minimum interest rate to be applied to the death benefit, including the actual calculation as determined under paragraph (9)(A) of this subsection.

(18) (No change.)

(19) Application fee. In connection with an application submitted under this section, the applicant must submit the conversion application fee required by §25.23 of this title (relating to Application and Renewal Fees).

(20) (No change.)

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

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

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

TRD-201201987

A. Kaylene Ray

General Counsel

Texas Department of Banking

Proposed date of adoption: June 15, 2012

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



# PART 4. TEXAS DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

## CHAPTER 80. TEXAS RESIDENTIAL MORTGAGE LOAN ORIGINATOR REGULATIONS

The Finance Commission of Texas (the Commission) proposes new 7 TAC Chapter 80, §§80.1 - 80.5, 80.100 - 80.107, 80.200 - 80.205, and 80.300 - 80.302, concerning Texas Residential Mortgage Loan Originator Regulations. The new rules under Chapter 80 are proposed to allow the Texas Department of Savings and Mortgage Lending (the Department) to reorganize its rules, clarify existing rules and practices, and use current terminology.

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

Commissioner Foster has also determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of the proposed rules will be the reorganization of the Department's rules for clarity and to allow for additional rules to be implemented. There will be no effect on individuals required to comply with the rules as proposed. There will be no adverse economic effect on small or micro businesses.

Comments on the proposed new 7 TAC Chapter 80 may be submitted in writing to Caroline C. Jones, General Counsel, Texas Department of Savings and Mortgage Lending, 2601 North Lamar, Suite 201, Austin, Texas 78705 or by email to [smlinfo@sml.texas.gov](mailto:smlinfo@sml.texas.gov) within 30 days of publication in the *Texas Register*.

### SUBCHAPTER A. GENERAL PROVISIONS

#### 7 TAC §§80.1 - 80.5

The new rules are proposed under Finance Code, §11.306 and §156.102, which authorize the Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Finance Code, Chapter 156.

The statutory provisions affected by the proposed new rules are contained in Finance Code, Chapter 156.

#### *§80.1. Scope.*

This chapter governs the licensing, registration and conduct of Residential Mortgage Loan Originators, Mortgage Companies, Financial Services Companies, Credit Union Subsidiary Organizations, Auxiliary Mortgage Loan Activity Companies, and Independent Contractor Loan Processors and Underwriters under Finance Code, Chapter 156 and Chapter 180, the Texas Secure and Fair Enforcement for Mortgage Licensing Act of 2009 ("SAFE Act"), except for individuals engaged in authorized activity subject to the authority of a regulatory official under Finance Code, §180.251(c). The terms "licensed" and "registered" may be used interchangeably.

#### *§80.2. Definitions.*

As used in this chapter, the following terms have the meanings indicated:

(1) "Branch Office" means any office that is separate and distinct from the company's headquarters location, whether located in

Texas or not, which conducts mortgage business on residential real estate located in the state of Texas.

(2) "Commissioner's designee" means an employee of the department performing his or her assigned duties or such other person as the Commissioner may designate in writing. A Commissioner's designee is deemed to be the Commissioner's authorized "personnel or representative" as such term is used in Finance Code, Chapter 156.

(3) "Company" means, for purposes of this chapter, a residential mortgage loan company, as that term is defined in Finance Code, §156.002.

(4) "Control Person" means an individual that directly or indirectly exercises control over a company. Control is defined by the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. Any person that:

(A) is a director, general partner or executive officer;

(B) directly or indirectly has the right to vote 10% or more of a class of a voting security or has the power to sell or direct the sale of 10% or more of a class of voting securities;

(C) in the case of an LLC, managing member; or

(D) in the case of a partnership, has the right to receive upon dissolution, or had contributed, 10% or more of the capital, is presumed to control that company.

(5) "Dwelling" has the meaning assigned by §103(v) of the Truth in Lending Act (15 U.S.C. §1602(v)).

(6) "One-to-four family residential real property" means improved or unimproved real property, or any portion of or interest in any such real property, on which a one-to-four family dwelling, including a manufactured home, is being or is to be constructed or situated.

(7) "Originator" means, for purposes of this chapter, a residential mortgage loan originator, as that term is defined in Finance Code, §180.002.

(8) "Physical Office" means an actual office where the business of mortgage lending and/or the business of taking or soliciting residential mortgage loan applications are conducted. It must have a street address. A post office box or other similar designation will not suffice. It must be accessible to the general public as a place of business and must hold itself open on a regular basis during posted hours. The hours of business must be posted in a manner to give effective notice to walk-up traffic as to the hours of opening and closing. Normally this will require posting of the hours on an exterior door or window of the office. In those instances where the physical office is in a shared office suite or building, the hours may be posted in a common lobby or reception area. During the hours in which the physical office is open, at least one staff member must be present to assist customers. The physical office of a licensee need not be the location at which such person's required records are maintained, but the location at which such required records are maintained must be accessible to the Commissioner or the Commissioner's designee for inspection during normal business hours.

(9) "Qualifying Individual" shall have the same meaning as that provided in Finance Code, §156.002. Additionally, the license held by the qualifying individual must be held in a status, which authorizes them to conduct regulated activities, and is sponsored by the company for which they are the qualifying individual.

(10) "Residential Mortgage Loan" shall have the same meaning as that provided in Finance Code, §180.002 and includes new loans and renewals, extensions, modifications, and rearrangements of such loans. The term does not include a loan which is secured

by a structure that is suitable for occupancy as a one-to-four family residence, but is used for a commercial purpose such as a professional office, beauty salon, or other non-residential use, and is not used as a residence.

§80.3. Interpretations.

In order to provide clarification as to how Finance Code, Chapter 156 will be construed and implemented the Commissioner may, from time to time, publish written interpretations of Finance Code, Chapter 156 and this chapter.

§80.4. Enforceability of Liens.

A violation of this chapter shall not render an otherwise lawfully taken lien unenforceable.

§80.5. Savings Clause.

If any portion or provision of this chapter is found to be illegal, invalid, or unenforceable, such illegality, invalidity, or lack of enforceability shall not affect or impair the legality, validity, and enforceability of the remainder hereof, all of which shall remain in full force and effect.

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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Caroline C. Jones

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Texas Department of Savings and Mortgage Lending

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## SUBCHAPTER B. LICENSING

### 7 TAC §§80.100 - 80.107

The new rules are proposed under Finance Code, §11.306 and §156.102, which authorize the Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Finance Code, Chapter 156.

The statutory provisions affected by the proposed new rules are contained in Finance Code, Chapter 156.

§80.100. Licensing - General.

(a) A person is required to be licensed under Finance Code, Chapter 156 if the person:

(1) Engages in the business of residential mortgage loan origination on real property located in the state of Texas;

(2) Represents or holds himself out to the public as a "loan officer," "mortgage consultant," "mortgage broker," "loan modification/refinance consultant," or "residential mortgage loan originator," or otherwise represents that the individual can or will perform the activities of a residential mortgage loan originator;

(3) Provides disclosures to a prospective borrower or discusses or explains such disclosures. Disclosures include but are not limited to the residential mortgage loan originator disclosure form; truth in lending disclosures, the good faith estimate of settlement costs, affiliated business arrangements; and disclosures relating to the dual role as a residential mortgage loan originator and real estate broker or sales agent. An individual who prepares a required disclosure under the direction and supervision of a licensed residential mortgage loan originator, but who does not discuss the disclosure with a prospective

borrower shall not be deemed to have provided a disclosure for purposes of this paragraph;

(4) Determines the lender(s) or investor(s) to whom the loan will be submitted;

(5) Issues or signs a prequalification letter or preapproval letter; or

(6) Is a loan processor or underwriter who is an independent contractor.

(b) Applications for a company or an originator license must be submitted through the Nationwide Mortgage Licensing System and Registry and must be on the prescribed application forms.

(c) An application, notice, or any other filing with the department will only be deemed submitted if it is complete. A filing is complete only if all required supporting documentation is included and only if all required fees have been received by the department. The application may be deemed withdrawn if an applicant fails to provide to the department, within 30 days from the date of request, any information or supplemental documentation.

(d) An applicant may be issued a license in an inactive status if the applicant completes the required application form and complies with all requirements of licensure except for the requirement of an approved sponsorship. Upon submission and approval of a sponsorship, the license may be changed to active status.

(e) The department is limited to those specific license and registration status codes available through the Nationwide Mortgage Licensing System and Registry. The Nationwide Mortgage Licensing System and Registry maintains a website that contains the specific status codes available and their definitions. The available status codes changed by the department are reflected in the licensee's record on the Nationwide Mortgage Licensing System and Registry and on the Nationwide Mortgage Licensing System and Registry Consumer Access website.

(f) The Commissioner may authorize an investigation to be conducted against an originator if there is reasonable cause to suspect or believe that an originator may have been convicted of a criminal offense which may constitute grounds for the suspension or revocation of that originator's license.

(g) The Commissioner may require such additional, clarifying, or supplemental information from any applicant for the issuance of any license pursuant to Finance Code, Chapter 156 as is deemed necessary or advisable to determine that the requirements of Finance Code, Chapter 156 have been met.

§80.101. Education Program.

Pre-licensing and continuing education courses required under Finance Code, Chapter 156 and Chapter 180 shall be reviewed and approved by the Nationwide Mortgage Licensing System and Registry.

§80.102. Sponsorship and Termination Thereof.

(a) An originator's license must be sponsored in the Nationwide Mortgage Licensing System and Registry by any company employing the originator.

(b) By sponsoring an originator, a company acknowledges and accepts responsibility for the actions of the originator pursuant to Finance Code, Chapter 156.

(c) Sponsorship may be removed by either the sponsoring company or the sponsored originator. If sponsorship is terminated the party terminating the sponsorship shall notify the Commissioner through the Nationwide Mortgage Licensing System and Registry that the sponsorship has terminated.

§80.103. License Record Changes.

(a) Each originator's application for a license under Finance Code, Chapter 156 requires the applicant to indicate the location(s) at which he or she proposes to conduct licensed activity. Proper sponsorship and disclosure of each location is required on their Nationwide Mortgage Licensing System and Registry record.

(b) A licensee shall notify the Commissioner by filing a license amendment through the Nationwide Mortgage Licensing System and Registry of the following:

- (1) any change of address;
- (2) personal name change; or
- (3) a new, or changed company, organization, or assumed name.

§80.104. Background Checks.

(a) In connection with each application for an originator's license, the applicant shall provide authorization and fingerprints as prescribed by the Nationwide Mortgage Licensing System and Registry necessary to conduct a criminal background history check through the Federal Bureau of Investigation.

(b) In connection with each application for an originator's license, the Commissioner may conduct a criminal background history check through the Texas Department of Public Safety.

(c) In connection with each application for the issuance of an originator's license, the applicant shall provide authorization for the Nationwide Mortgage Licensing System and Registry and the Commissioner to obtain an independent credit report from a consumer reporting agency.

(d) In connection with each application for the issuance of an originator's license, the applicant shall provide to the Commissioner and the Nationwide Mortgage Licensing System and Registry information related to any administrative, civil, or criminal findings by a governmental jurisdiction.

§80.105. Request for Criminal History Eligibility Determination.

An individual considering applying for an originator license may request a criminal history evaluation letter regarding the person's eligibility for a license, as defined in Occupations Code, Chapter 53, Subchapter D. The request must be made on a form promulgated by the department and include all pertinent court documentation including certified copies of all judgments and orders, and an explanation of the circumstances and events of the criminal action that led to the conviction or sentence, and the basis for the person's potential ineligibility. The fee for this process is \$75 per request. Upon receipt of the request, the department will:

- (1) Investigate the information provided by the individual to determine if there are grounds for ineligibility; and
- (2) Notify the individual as to the department's determination within 90 days of receipt of the individual's request.

§80.106. Renewals.

(a) A license may be renewed upon:

- (1) submission of a completed application for renewal through the Nationwide Mortgage Licensing System and Registry together with the payment of the applicable renewal application fee;
- (2) determination that the applicant continues to meet the minimum requirements for license issuance; and
- (3) providing satisfactory evidence to the Commissioner that the license holder has completed the continuing education requirements of Finance Code, §180.060.

(b) Renewal of a license may be denied for reasons provided in Finance Code, §156.208.

(c) For service members on active military duty, as detailed in Occupations Code, Chapter 55, the department will comply with the requirements as set out in that statute.

(d) The Commissioner may require such additional, clarifying, or supplemental information from any applicant for the renewal of any license pursuant to Finance Code, Chapter 156 as is deemed necessary or advisable to determine compliance with the requirements of Finance Code, Chapter 156.

§80.107. Fees.

(a) Fees relating to a license or registration shall be established by the Commissioner in accordance with Finance Code, Chapter 156. The amount of the fees may be modified upon not less than 30 days advance notice posted on the department's website.

(b) All fees are nonrefundable and nontransferable.

(c) The Commissioner may, in addition to any disciplinary action, collect a fee in an amount not to exceed \$50 for any returned check or credit card chargeback.

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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Caroline C. Jones

General Counsel

Texas Department of Savings and Mortgage Lending

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## SUBCHAPTER C. DUTIES AND RESPONSIBILITIES

### 7 TAC §§80.200 - 80.205

The new rules are proposed under Finance Code, §11.306 and §156.102, which authorize the Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Finance Code, Chapter 156.

The statutory provisions affected by the proposed new rules are contained in Finance Code, Chapter 156.

§80.200. Required Disclosures.

(a) An originator shall include the following notice, Figure: 7 TAC §80.200(a), to a residential mortgage loan applicant with an initial application for a residential mortgage loan:  
Figure: 7 TAC §80.200(a)

(b) At each physical office, and on its website, a company or an originator shall conspicuously post the following notice:

(1) "CONSUMERS WISHING TO FILE A COMPLAINT AGAINST A COMPANY OR A RESIDENTIAL MORTGAGE LOAN ORIGINATOR SHOULD COMPLETE AND SEND A COMPLAINT FORM TO THE TEXAS DEPARTMENT OF SAVINGS AND MORTGAGE LENDING, 2601 NORTH LAMAR, SUITE 201, AUSTIN, TEXAS 78705. COMPLAINT FORMS AND INSTRUCTIONS MAY BE OBTAINED FROM THE DEPARTMENT'S

WEBSITE AT WWW.SML.TEXAS.GOV. A TOLL-FREE CONSUMER HOTLINE IS AVAILABLE AT 1-877-276-5550.

(2) THE DEPARTMENT MAINTAINS A RECOVERY FUND TO MAKE PAYMENTS OF CERTAIN ACTUAL OUT OF POCKET DAMAGES SUSTAINED BY BORROWERS CAUSED BY ACTS OF LICENSED RESIDENTIAL MORTGAGE LOAN ORIGINATORS. A WRITTEN APPLICATION FOR REIMBURSEMENT FROM THE RECOVERY FUND MUST BE FILED WITH AND INVESTIGATED BY THE DEPARTMENT PRIOR TO THE PAYMENT OF A CLAIM. FOR MORE INFORMATION ABOUT THE RECOVERY FUND, PLEASE CONSULT THE DEPARTMENT'S WEBSITE AT WWW.SML.TEXAS.GOV."

(c) A notice is deemed to be conspicuously posted under subsection (b) of this section if a customer with 20/20 vision can read it from each place where he or she would typically conduct business or if it is included on a bulletin board, in plain view, on which all required notices to the general public (such as equal housing posters, licenses, etc.) are posted. If applicable a notice is deemed conspicuously posted if prominently displayed on the website.

§80.201. Loan Status Forms.

(a) Except as otherwise provided by subsection (c) of this section, when provided to a mortgage applicant, written confirmation of conditional qualification shall include the information in Form A, Figure: 7 TAC §80.201(a). This information can be provided by utilizing Form A or an alternate form that includes all of the information found on Form A. Either form may be modified by adding any of the following as needed:

Figure: 7 TAC §80.201(a)

(1) Any additional aspects of the loan as long as not misleading;

(2) Any additional items that the originator has reviewed in determining conditional qualifications; or

(3) Any additional terms, conditions, and requirements.

(b) When provided to a mortgage applicant, written notification of loan application approval on the basis of credit worthiness, but not on the basis of collateral, shall include the information in Form B, Figure: 7 TAC §80.201(b). This information can be provided by utilizing Form B or an alternate form that includes all of the information found on Form B. Either form may be modified by adding the additional information permitted by subsection (a)(1) - (3) of this section, or disclosure of fees charged. A disclosure of fees charged, on Form B or an alternate form, does not serve as a substitute for any fee disclosure required by state or federal laws or regulations.

Figure: 7 TAC §80.201(b)

(c) Subsection (a) of this section does not apply to "firm offers of credit," as that term is defined in 15 U.S.C. §1681a(1).

§80.202. Prohibition on False, Misleading, or Deceptive Practices and Improper Dealings.

(a) No company or originator may:

(1) knowingly misrepresent his or her relationship to a mortgage applicant or any other party to an actual or proposed residential mortgage loan transaction;

(2) knowingly misrepresent or understate any cost, fee, interest rate, or other expense in connection with a mortgage applicant's applying for or obtaining a residential mortgage loan;

(3) disparage any source or potential source of residential mortgage loan funds in a manner which knowingly disregards the truth or makes any knowing and material misstatement or omission;

(4) knowingly participate in or permit the submission of false or misleading information of a material nature to any person in connection with a decision by that person whether or not to make or acquire a residential mortgage loan;

(5) as provided for by the Real Estate Settlement Procedures Act and its implementing regulations, broker, arrange, or make a residential mortgage loan in which the company or originator retains fees or receives other compensation for services which are not actually performed or where the fees or other compensation received bear no reasonable relationship to the value of services actually performed;

(6) recommend or encourage default or delinquency or continuation of an existing default or delinquency by a mortgage applicant on any existing indebtedness prior to closing a residential mortgage loan which refinances all or a portion of such existing indebtedness;

(7) induce or attempt to induce a party to a contract to breach that contract so the person may make a residential mortgage loan;

(8) alter any document produced or issued by the department, unless otherwise permitted by statutory regulation; or

(9) engage in any other practice which the Commissioner, by published interpretation, has determined to be false, misleading, or deceptive.

(b) The term "improper dealings" in Finance Code, §156.303(a)(3) includes, but is not limited to the following:

(1) Acting negligently in performing an act for which a person is required under Finance Code, Chapter 156 to hold a license;

(2) Violating any provision of a local, State of Texas, or federal, constitution, statute, rule, ordinance, regulation, or final court decision that governs the same activity, transaction, or subject matter that is governed by the provisions of Finance Code, Chapter 156 or this chapter including, but not limited to, the following:

(A) Real Estate Settlement Procedures Act, 12 U.S.C. Chapter 2600;

(B) Regulation X, 24 C.F.R. Part 3500;

(C) Consumer Credit Protection Act, 15 U.S.C. Chapter 1600 (Truth in Lending Act);

(D) Regulation Z, 12 C.F.R. Part 226;

(E) Equal Credit Opportunity Act, 15 U.S.C. §1691;

(F) Regulation B, 12 C.F.R. Part 202; and

(G) Texas Constitution, Article XVI, §50.

(3) Representing to a mortgage applicant that a charge or fee which is payable to the company or originator is a "discount point" unless the loan closes and:

(A) The company or originator is the lender in the transaction. For purposes of this paragraph, the company or originator is deemed to be the lender if the company or originator, is the payee as evidenced on the face of the note or other written evidence of indebtedness; or

(B) The company or originator, is not the lender, but demonstrates by clear and convincing evidence that the lender has charged or collected discount point(s) or other fees which the company or originator has remitted to the lender on behalf of the mortgage applicant, to buy down the interest rate on a residential mortgage loan.

(C) A company or an originator engages in a false, misleading or deceptive practice or improper dealings when in connection with the origination of a residential mortgage loan:

(i) The company or originator offers other goods or services to a consumer in a separate but related transaction and the company or originator engages in a false misleading or deceptive practice in the related transaction; or

(ii) The sponsor of an originator who offers other goods or services to a consumer in a separate but related transaction and the person engages in a false, misleading or deceptive practice in the related transaction; and the sponsor knew or should have known of the transaction.

(D) An originator receiving a verbal or written inquiry about his or her services shall respond accurately to any questions about the scope and nature of such services and any costs.

§80.203. Advertising.

(a) Licensees who advertise rates, terms, or conditions must comply with the disclosure requirements of 12 C.F.R. §226.24 (Regulation Z).

(b) Any advertisement of residential mortgage loans which are offered by or through a mortgage banker or originator shall conform to the following requirements:

(1) An advertisement shall be made only for such products and terms as are actually available and, if their availability is subject to any material requirements or limitations, the advertisement shall specify those requirements or limitations.

(2) Except as provided in subsection (c) of this section, if the person who caused the advertisement to be published is an originator the advertisement shall contain:

(A) the name of the originator followed by the phrase "Residential Mortgage Loan Originator";

(B) the originator's Nationwide Mortgage Licensing System and Registry identification number;

(C) the name of the company, as designated in the records of the Commissioner as of the date of the advertisement, through or for whom the originator conducts the advertised mortgage origination activities; and

(D) the company's physical office or branch office street address in Texas.

(3) An advertisement shall not make any statement or omit to make any statement the result of which is to present a misleading or deceptive impression to consumers.

(4) An advertisement shall otherwise comply with applicable state and federal disclosure requirements.

(c) For purposes of this section, an advertisement means a commercial message in any medium that promotes directly or indirectly, a credit transaction. However, the requirements of subsection (b)(2) of this section shall not apply to:

(1) any advertisement which indirectly promotes a credit transaction and which contains only the name of the company or originator and does not contain any contact information, such as the inscription of the name on a coffee mug, pencil, youth league jersey, or other promotional item; or

(2) any rate sheet, pricing sheet, or similar proprietary information provided to realtors, builders, and other commercial entities that is not intended for distribution to consumers.

§80.204. Books and Records.

(a) In order to assure that each licensee will have all records necessary to enable the Commissioner or the Commissioner's designee to investigate complaints and discharge their responsibilities under Finance Code, Chapter 156 and this chapter, each company or originator shall maintain records as set forth in this section. The particular format of records to be maintained is not specified. However, they must be complete, current, legible, readily accessible, and readily sortable. Records maintained for other purposes, such as compliance with other state and federal laws, will be deemed to satisfy these requirements if they include the same information.

(b) Mortgage Application Records. Each company or originator is required to maintain, at the location specified in their official record on file with the department, the following books and records:

(1) Residential Mortgage Loan File. For each residential mortgage loan application received the residential mortgage loan file shall contain at a minimum the following:

(A) a copy of the initial signed and dated residential mortgage loan application (including any attachments, supplements, or addenda thereto);

(B) either a copy of the signed closing statement, documentation of the timely denial, or other disposition of the application for a residential mortgage loan;

(C) a copy of the signed and dated disclosure statement required by Finance Code, Chapter 156 and §80.200(a) of this chapter;

(D) a copy of each item of correspondence, all evidence of any contractual agreement or understanding (including, but not limited to, any interest rate lock-ins or loan commitments), and all notes and memoranda of conversations or meetings with any mortgage applicant or any other party in connection with that residential mortgage loan application or its ultimate disposition;

(E) a copy of the notice to applicants required by Finance Code, §343.105; and

(F) a copy of the initial Good Faith Estimate and the initial Good Faith Estimate fee itemization worksheet; if applicable.

(2) Mortgage Transaction Log. A mortgage transaction log, maintained on a current basis (which means that all entries must be made within no more than seven days from the date on which the matters they relate to occurred), setting forth, at a minimum:

(A) name of each mortgage applicant and how to contact them;

(B) date of the initial residential mortgage loan application;

(C) description of the disposition of the application for a residential mortgage loan;

(D) identity of the person or entity who initially funded and/or acquired the residential mortgage loan and information as to how to contact them; and

(E) full name of the originator and their Nationwide Mortgage Licensing System and Registry identification number.

(3) General Business Records. General business records include the following:

(A) all checkbooks, check registers, bank statements, deposit slips, withdrawal slips, and cancelled checks (or copies thereof) relating to the mortgage brokerage business;



(B) complete records (including invoices and supporting documentation) for all expenses and fees paid on behalf of a mortgage applicant, including a record of the date and amount of all such payments actually made by each mortgage applicant;

(C) copies of all federal tax withholding forms, reports of income for federal taxation, and evidence of payments to all company employees, independent contractors and all others compensated by such originator in connection with the mortgage lending business;

(D) copies of all written complaints or inquiries (or summaries of any verbal complaints or inquiries) along with any and all correspondence, notes, responses, and documentation relating thereto and the disposition thereof;

(E) copies of all contractual agreements or understandings with third parties in any way relating to mortgage lending services including, but not limited to, any delegations of underwriting authority, any agreements for pricing of goods or services, investor contracts, or employment agreements;

(F) copies of all reports of audits, examinations, inspections, reviews, investigations, or other similar matters performed by any third party, including any regulatory or supervisory authorities; and

(G) copies of all advertisements in the medium (e.g., recorded audio, video, and print) in which they were published or distributed.

(c) A company and/or originator shall maintain such other books and records as may be required to evidence compliance with applicable state and federal laws and regulations including, but not limited to: the Real Estate Settlement Procedures Act, the Equal Credit Opportunity Act, and the Truth in Lending Act.

(d) A company and/or originator shall maintain such other books and records as the Commissioner or the Commissioner's designee may from time to time specify in writing.

(e) All books and records required by this section shall be maintained in good order and shall be produced for the Commissioner or the Commissioner's designee upon request. Failure to produce such books and records upon request, after a reasonable time for compliance, may be grounds for suspension or revocation of a license.

(f) All books and records required by this section shall be maintained for three years or such longer period(s) as may be required by applicable state and/or federal laws and regulations.

(g) An originator may meet applicable recordkeeping requirements if his or her sponsoring company maintains the required records.

(h) Upon termination of operations, the licensee shall notify the Commissioner, in writing, within ten days where the required records will be maintained for the prescribed periods. If such records are transferred to another licensee the transferee shall, in writing, within ten days of accepting responsibility for maintaining such records, notify the Commissioner.

§80.205. Mortgage Call Reports.

(a) Call Report.

(1) A company shall file a mortgage call report on a quarterly basis. The filing deadlines are set by the Nationwide Mortgage Licensing System and Registry.

(2) A call report is required to be filed for each quarter a license is held, including partial quarters.

(3) The call report shall be submitted through and in the manner and form prescribed by the Nationwide Mortgage Licensing System and Registry.

(b) Statement of Condition Report.

(1) A company shall file a statement of condition on an annual basis.

(2) A statement of condition report is required to be filed for each year a license is held, including partial years.

(3) The statement of condition report shall be submitted through and in the manner and form prescribed by the Nationwide Mortgage Licensing System and Registry.

(c) Submission of a call report or statement of condition report, by a company, satisfies the requirements of an originator under Finance Code, §180.101 for the period of sponsorship, provided that the originator's information is included in the report.

(d) Failure to file a mortgage call report or a statement of condition report can result in an administrative penalty for each missed or late filing.

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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Texas Department of Savings and Mortgage Lending

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## SUBCHAPTER D. COMPLIANCE AND ENFORCEMENT

### 7 TAC §§80.300 - 80.302

The new rules are proposed under Finance Code, §11.306 and §156.102, which authorize the Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Finance Code, Chapter 156.

The statutory provisions affected by the proposed new rules are contained in Finance Code, Chapter 156.

#### §80.300. Examinations.

(a) The Commissioner, operating through the department staff and such others as the Commissioner may from time to time designate, will conduct periodic examinations of a company or an originator as the Commissioner deems necessary.

(b) Except when the department determines that giving advance notice would impair the examination, the department will give the qualifying individual of the company advance notice of each examination. Such notice will be sent to the qualifying individual's address of record or e-mail address on file with the department and will specify the date on which the department's examiners are scheduled to begin the examination. Failure of the qualifying individual to actually receive the notice will not be grounds for delay or postponement of the examination. The notice will include a list of the documents and records the qualifying individual should have available for the examiner to review.

(c) Examinations will be conducted to determine compliance with Finance Code, Chapter 156 and will specifically address whether:

(1) All persons conducting residential mortgage loan origination activities are properly licensed;

(2) All locations at which such activities are conducted are properly licensed;

(3) All required books and records are being maintained in accordance with §80.204 of this chapter;

(4) Legal and regulatory requirements applicable to licensees are being properly followed; and

(5) Other matters as the Commissioner may deem necessary or advisable to carry out the purposes of Finance Code, Chapter 156.

(d) The examiner will review a sample of residential mortgage loan files identified by the examiner and randomly selected from the company's residential mortgage transaction log. The examiner may expand the number of files to be reviewed if, in his or her discretion, conditions warrant.

(e) The examiner may require a company or an originator at their own cost, to make copies of loan files or such other books and records as the examiner deems appropriate for the preparation of or inclusion in the examination report.

(f) The workpapers, findings, reports, summaries, and other materials, in whatever form, relating to an examination conducted under this section, shall be maintained as confidential except as required or expressly permitted by law.

(g) Failure of a company or an originator to cooperate with an examination or failure to grant the examiner access to books, records, documents, operations, and facilities will subject the company or originator to enforcement actions by the Commissioner, including, but not limited to, administrative penalties.

(h) When the department must travel out-of-state to conduct an examination of a company or an originator because the required records are maintained at a location outside of the state, the company or originator will be required to reimburse the department for the actual cost the department incurs in connection with such out-of-state travel including, but not limited to, transportation, lodging, meals, employee travel time, telephone and facsimile communications, courier service and any other reasonably related costs.

§80.301. Complaints, Investigations, Administrative Penalties, and Disciplinary and/or Enforcement Actions.

(a) Upon receipt of a written complaint alleging acts or omissions of a person as defined in Finance Code, §180.002(14) required to be licensed under Finance Code, Chapter 156, the Commissioner or the Commissioner's designee will make an initial determination whether the complaint sets forth reasonable cause to warrant an investigation:

(1) if it has been determined that the complaint warrants an investigation, advise all parties who are subject of the complaint by written notice that a complaint has been filed and an investigation will be conducted. The investigation will be conducted as is deemed appropriate in light of all the relevant facts and circumstance then known. Such investigation may include any or all of the following:

(A) review of documentary evidence;

(B) interviews with complainants, licensees, and third parties;

(C) obtaining reports, advice, and other comments and assistance of other state and/or federal regulatory, enforcement, or oversight bodies; and

(D) other lawful investigative techniques as the Commissioner reasonably deems necessary and/or appropriate, including, but not limited to, requesting that complainants and/or other parties

made the subject of complaints provide explanatory, clarifying, or supplemental information.

(2) if determined that a complaint does not warrant investigation, advise the complainant of the right to bring forth additional facts or information to have the initiation of an investigation reconsidered, and close the file.

(b) The Commissioner may, upon a finding of reasonable cause, investigate a licensee or registrant to determine whether they are complying with Finance Code, Chapter 156 and this chapter.

(c) The Commissioner may conduct an undercover or covert investigation only if the Commissioner, after due consideration of the circumstances, determines that the investigation is necessary to prevent immediate harm and to carry out the purposes of Finance Code, Chapter 156.

(d) Reasonable cause will be deemed to exist if the Commissioner has received information from a source he or she has no reason to believe to be other than reliable, including documentary or other evidence or information, indicating facts which a prudent person would deem worthy of investigation as a violation of Finance Code, Chapter 156.

(e) A complaint which names a company or sponsored originator as the subject of the complaint is also a complaint against the qualifying individual at the time of any alleged violation. The qualifying individual of a company is responsible for all acts and conduct performed by or through the company and is required to fulfill his or her professional responsibility to the Commissioner and members of the public.

(f) If the Commissioner determines that a person has violated the requirements of Finance Code, Chapter 156, this chapter, or any order pursuant to Finance Code, Chapter 156 or this chapter, the Commissioner, after notice and opportunity for hearing, may impose an administrative penalty on that person. Such penalties shall not exceed \$25,000 per violation. The amount of the violation is at the Commissioner's discretion. In determining the amount of any administrative penalty(ies) for any violation(s) of Finance Code, Chapter 156 or this chapter, the Commissioner shall consider such factors as required by Finance Code, §156.302.

(g) If the Commissioner has reasonable cause to believe that a licensee has violated or is about to violate Finance Code, Chapter 156, this chapter, or an order issued pursuant to this chapter, the Commissioner may, without notice and hearing, issue an order to cease and desist a particular action or an order to take affirmative action, or both, to enforce compliance with Finance Code, Chapter 156 and this chapter. Any such order must contain a reasonably detailed statement of the facts on which the order is made. If a person against whom an order is made requests a hearing, the Commissioner shall set and give notice of a hearing to be held in accordance with this chapter and Government Code, Chapter 2001. Based on the findings of fact and conclusions of law, the Commissioner may find by order that a violation has or has not occurred.

(h) The Commissioner may, after giving notice and an opportunity for hearing, impose against any person who violates a cease and desist order, an administrative penalty in an amount not to exceed \$1,000 for each day on which the violation is continuing. In addition to any other remedy provided for by law, the Commissioner may institute in District Court for Travis County an action for injunctive relief and/or to collect the administrative penalty. A bond is not required of the Commissioner with respect to any request for injunctive relief under this subsection.

(i) The Commissioner may order disciplinary action after notice and opportunity for hearing against a company or an originator if the Commissioner becomes aware during the term of the license of any fact that would have been grounds for denial of an original license if the fact had been known by the Commissioner on the date the license was issued.

§80.302. Hearings and Appeals.

(a) Hearings are to be conducted in accordance with Chapter 9 of this title including, but not limited to motions for rehearing, notices of appeal, and applications for review. All such hearings shall, unless specifically authorized by the Commissioner, be conducted in Austin, Travis County, Texas. All appeals of decisions of the Commissioner shall be made to the State District Court in Travis County, Texas. Such rules, as set forth in Chapter 9 of this title are incorporated herein by reference for all purposes.

(b) If a person against whom an order is made requires a hearing, the Commissioner shall set and give notice of a hearing before the Commissioner or a hearings officer. The hearing shall be governed by Government Code, Chapter 2001. Based on the findings of fact, conclusions of law, and any recommendations of the hearings officer, the Commissioner shall, by order, find that a violation has or has not occurred.

(c) Appeals of an order denying an application or the renewal of a license must be properly requested within ten calendar days of the date on which the initial order is received. All other appeals must be properly requested within thirty days of the date on which the initial order is issued. Any order not properly appealed by the applicable deadline becomes final and cannot be appealed with no further action by the Commissioner.

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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Caroline C. Jones

General Counsel

Texas Department of Savings and Mortgage Lending

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For further information, please call: (512) 475-1297



## CHAPTER 80. TEXAS RESIDENTIAL MORTGAGE LOAN ORIGINATOR REGULATIONS

The Finance Commission of Texas (the Commission) proposes the repeal of 7 TAC Chapter 80, Subchapter B (§§80.8 - 80.11), relating to Professional Conduct; Subchapter C (§§80.12 - 80.14), relating to Administration and Records; Subchapter D (§80.15), relating to Complaints and Investigations; Subchapter E (§80.16), relating to Hearings and Appeals; Subchapter F (§80.17), relating to Interpretations; Subchapter G (§80.18), relating to Enforcement of Liens; Subchapter H (§80.19), relating to Savings Clause; Subchapter I (§80.20 and §80.21), relating to Inspections and Investigations; Subchapter J (§80.22), relating to Forms; Subchapter K (§80.23), relating to Mortgage Call Reports; and Subchapter L (§§80.301 - 80.307), relating to Licensing.

The repeal of 7 TAC Chapter 80 is proposed to enhance the clarity of existing language, to repeal language that unnecessarily duplicates existing statutes, to enhance structural organization, and to reflect current practice. To that end, the Texas Department of Savings and Mortgage Lending (the Department) will propose new 7 TAC Chapter 80, reflecting these changes.

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

Commissioner Foster 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 proposed repeal will be that the reorganization of the Department's rules clarify the rules and allow for additional rules to be implemented. There will be no effect on individuals required to comply with the repeal as proposed. There will be no adverse economic effect on small or micro businesses.

Comments on the proposed repeal may be submitted in writing to Caroline C. Jones, General Counsel, Texas Department of Savings and Mortgage Lending, 2601 North Lamar, Suite 201, Austin, Texas 78705 or by email to [smlinfo@sml.texas.gov](mailto:smlinfo@sml.texas.gov) within 30 days of publication in the *Texas Register*.

## SUBCHAPTER B. PROFESSIONAL CONDUCT

### 7 TAC §§80.8 - 80.11

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Savings and Mortgage Lending or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

The repeal is proposed under Finance Code, §11.306 and §156.102, which authorize the Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Finance Code, Chapter 156.

The statutory provisions affected by the proposed repeal are contained in Finance Code, Chapter 156.

§80.8. *Limitations on Charging of Fees.*

§80.9. *Required Disclosures.*

§80.10. *Prohibition on False, Misleading, or Deceptive Practices and Improper Dealings.*

§80.11. *Advertising.*

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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Caroline C. Jones

General Counsel

Texas Department of Savings and Mortgage Lending

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## SUBCHAPTER C. ADMINISTRATION AND RECORDS

**7 TAC §§80.12 - 80.14**

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Savings and Mortgage Lending or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

The repeal is proposed under Finance Code, §11.306 and §156.102, which authorize the Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Finance Code, Chapter 156.

The statutory provisions affected by the proposed repeal are contained in Finance Code, Chapter 156.

§80.12. *License Record Changes.*

§80.13. *Books and Records.*

§80.14. *Education Program.*

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

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Caroline C. Jones

General Counsel

Texas Department of Savings and Mortgage Lending

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**SUBCHAPTER D. COMPLAINTS AND INVESTIGATIONS**

**7 TAC §80.15**

*(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 Savings and Mortgage Lending or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

The repeal is proposed under Finance Code, §11.306 and §156.102, which authorize the Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Finance Code, Chapter 156.

The statutory provisions affected by the proposed repeal are contained in Finance Code, Chapter 156.

§80.15. *Complaints, Administrative Penalties, and Disciplinary and/or Enforcement Actions.*

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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Caroline C. Jones

General Counsel

Texas Department of Savings and Mortgage Lending

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**SUBCHAPTER E. HEARINGS AND APPEALS**

**7 TAC §80.16**

*(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 Savings and Mortgage Lending or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

The repeal is proposed under Finance Code, §11.306 and §156.102, which authorize the Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Finance Code, Chapter 156.

The statutory provisions affected by the proposed repeal are contained in Finance Code, Chapter 156.

§80.16. *Hearings and appeals.*

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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General Counsel

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**SUBCHAPTER F. INTERPRETATIONS**

**7 TAC §80.17**

*(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 Savings and Mortgage Lending or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

The repeal is proposed under Finance Code, §11.306 and §156.102, which authorize the Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Finance Code, Chapter 156.

The statutory provisions affected by the proposed repeal are contained in Finance Code, Chapter 156.

§80.17. *Interpretations.*

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

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**SUBCHAPTER G. ENFORCEMENT OF LIENS**

**7 TAC §80.18**

*(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 Savings and Mortgage Lending or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

The repeal is proposed under Finance Code, §11.306 and §156.102, which authorize the Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Finance Code, Chapter 156.

The statutory provisions affected by the proposed repeal are contained in Finance Code, Chapter 156.

§80.18. *Enforceability of Liens.*

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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Caroline C. Jones

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## SUBCHAPTER H. SAVINGS CLAUSE

### 7 TAC §80.19

*(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 Savings and Mortgage Lending or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

The repeal is proposed under Finance Code, §11.306 and §156.102, which authorize the Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Finance Code, Chapter 156.

The statutory provisions affected by the proposed repeal are contained in Finance Code, Chapter 156.

§80.19. *Savings Clause.*

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

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## SUBCHAPTER I. INSPECTIONS AND INVESTIGATIONS

### 7 TAC §80.20, §80.21

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Savings and Mortgage Lending or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

The repeal is proposed under Finance Code, §11.306 and §156.102, which authorize the Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Finance Code, Chapter 156.

The statutory provisions affected by the proposed repeal are contained in Finance Code, Chapter 156.

§80.20. *Examinations.*

§80.21. *Investigations.*

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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Caroline C. Jones

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## SUBCHAPTER J. FORMS

### 7 TAC §80.22

*(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 Savings and Mortgage Lending or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

The repeal is proposed under Finance Code, §11.306 and §156.102, which authorize the Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Finance Code, Chapter 156.

The statutory provisions affected by the proposed repeal are contained in Finance Code, Chapter 156.

§80.22. *Loan Status Forms.*

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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Caroline C. Jones

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## SUBCHAPTER K. MORTGAGE CALL REPORTS

## 7 TAC §80.23

*(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 Savings and Mortgage Lending or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

The repeal is proposed under Finance Code, §11.306 and §156.102, which authorize the Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Finance Code, Chapter 156.

The statutory provisions affected by the proposed repeal are contained in Finance Code, Chapter 156.

### §80.23. *Mortgage Call Reports.*

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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Caroline C. Jones

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Texas Department of Savings and Mortgage Lending

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## SUBCHAPTER L. LICENSING

### 7 TAC §§80.301 - 80.307

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Savings and Mortgage Lending or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

The repeal is proposed under Finance Code, §11.306 and §156.102, which authorize the Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Finance Code, Chapter 156.

The statutory provisions affected by the proposed repeal are contained in Finance Code, Chapter 156.

#### §80.301. *Scope.*

#### §80.302. *Definitions.*

#### §80.303. *Licensing - General.*

#### §80.304. *Qualifications for Obtaining Licenses.*

#### §80.305. *Renewals.*

#### §80.306. *Sponsorship and Termination Thereof.*

#### §80.307. *Background Checks.*

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 April 20, 2012.

TRD-201202016

Caroline C. Jones

General Counsel

Texas Department of Savings and Mortgage Lending

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## CHAPTER 81. MORTGAGE BANKER REGISTRATION AND RESIDENTIAL MORTGAGE LOAN OFFICER LICENSING

The Finance Commission of Texas (the Commission) proposes the repeal of 7 TAC Chapter 81, Subchapter A (§§81.1 - 81.6), relating to Licensing; Subchapter B (§§81.7 - 81.9), relating to Professional Conduct; Subchapter C (§81.10), relating to Administration and Records; Subchapter D (§81.11), relating to Complaints and Investigations; Subchapter E (§81.12 and §81.13), relating to Examinations and Investigations; Subchapter F (§81.14), relating to Hearings and Appeals; Subchapter G (§81.15), relating to Mortgage Call Reports; Subchapter H (§81.16), relating to Recovery Fund; Subchapter I (§81.17), relating to Interpretations; Subchapter J (§81.18), relating to Enforcement of Liens; Subchapter K (§81.19), relating to Savings Clause; and Subchapter L (§81.20), relating to Sponsorship and Termination Thereof.

The repeal of 7 TAC Chapter 81 is proposed to enhance the clarity of existing language, to repeal language that unnecessarily duplicates existing statutes, to enhance structural organization, and to reflect current practice. To that end, the Texas Department of Savings and Mortgage Lending (the Department) will propose new 7 TAC Chapter 81, reflecting these changes.

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

Commissioner Foster 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 proposed repeal will be that the reorganization of the Department's rules clarify the rules and allow for additional rules to be implemented. There will be no effect on individuals required to comply with the repeal as proposed. There will be no adverse economic effect on small or micro businesses.

Comments on the proposed repeal may be submitted in writing to Caroline C. Jones, General Counsel, Texas Department of Savings and Mortgage Lending, 2601 North Lamar, Suite 201, Austin, Texas 78705 or by email to [smlinfo@sml.texas.gov](mailto:smlinfo@sml.texas.gov) within 30 days of publication in the *Texas Register*.

## SUBCHAPTER A. LICENSING

### 7 TAC §§81.1 - 81.6

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Savings and Mortgage Lending or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

The repeal is proposed under Finance Code, §157.011, which authorizes the Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Chapter 157.

The statutory provisions affected by the proposed repeal are contained in Finance Code, Chapter 157.

#### §81.1. *Definitions.*

#### §81.2. *Loan Status Forms.*

#### §81.3. *Licensing - General.*

#### §81.4. *Qualifications for Obtaining Licenses.*

§81.5. *Renewals.*

§81.6. *Criminal History.*

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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Caroline C. Jones

General Counsel

Texas Department of Savings and Mortgage Lending

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## SUBCHAPTER B. PROFESSIONAL CONDUCT

### 7 TAC §§81.7 - 81.9

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Savings and Mortgage Lending or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

The repeal is proposed under Finance Code, §157.011, which authorizes the Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Chapter 157.

The statutory provisions affected by the proposed repeal are contained in Finance Code, Chapter 157.

§81.7. *Required Disclosures.*

§81.8. *Prohibition on False, Misleading, or Deceptive Practices and Improper Dealings.*

§81.9. *Advertising.*

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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Caroline C. Jones

General Counsel

Texas Department of Savings and Mortgage Lending

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## SUBCHAPTER C. ADMINISTRATION AND RECORDS

### 7 TAC §81.10

*(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 Savings and Mortgage Lending or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

The repeal is proposed under Finance Code, §157.011, which authorizes the Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Chapter 157.

The statutory provisions affected by the proposed repeal are contained in Finance Code, Chapter 157.

§81.10. *Books and Records.*

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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Caroline C. Jones

General Counsel

Texas Department of Savings and Mortgage Lending

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## SUBCHAPTER D. COMPLAINTS AND INVESTIGATIONS

### 7 TAC §81.11

*(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 Savings and Mortgage Lending or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

The repeal is proposed under Finance Code, §157.011, which authorizes the Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Chapter 157.

The statutory provisions affected by the proposed repeal are contained in Finance Code, Chapter 157.

§81.11. *Complaints and Investigations.*

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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Caroline C. Jones

General Counsel

Texas Department of Savings and Mortgage Lending

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## SUBCHAPTER E. EXAMINATIONS AND INVESTIGATIONS

### 7 TAC §§81.12, §81.13

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Savings and Mortgage Lending or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

The repeal is proposed under Finance Code, §157.011, which authorizes the Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Chapter 157.

The statutory provisions affected by the proposed repeal are contained in Finance Code, Chapter 157.

§81.12. *Examinations.*

§81.13. *Investigations.*

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

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## SUBCHAPTER F. HEARINGS AND APPEALS

### 7 TAC §81.14

*(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 Savings and Mortgage Lending or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

The repeal is proposed under Finance Code, §157.011, which authorizes the Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Chapter 157.

The statutory provisions affected by the proposed repeal are contained in Finance Code, Chapter 157.

§81.14. *Hearings and Appeals.*

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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Caroline C. Jones

General Counsel

Texas Department of Savings and Mortgage Lending

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For further information, please call: (512) 475-1297



## SUBCHAPTER G. MORTGAGE CALL REPORTS

### 7 TAC §81.15

*(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 Savings and Mortgage Lending or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

The repeal is proposed under Finance Code, §157.011, which authorizes the Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Chapter 157.

The statutory provisions affected by the proposed repeal are contained in Finance Code, Chapter 157.

§81.15. *Mortgage Call Reports.*

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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Caroline C. Jones

General Counsel

Texas Department of Savings and Mortgage Lending

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For further information, please call: (512) 475-1297



## SUBCHAPTER H. RECOVERY FUND

### 7 TAC §81.16

*(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 Savings and Mortgage Lending or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

The repeal is proposed under Finance Code, §157.011, which authorizes the Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Chapter 157.

The statutory provisions affected by the proposed repeal are contained in Finance Code, Chapter 157.

§81.16. *Recovery Fund.*

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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Caroline C. Jones

General Counsel

Texas Department of Savings and Mortgage Lending

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## SUBCHAPTER I. INTERPRETATIONS

### 7 TAC §81.17

*(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 Savings and Mortgage Lending or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

The repeal is proposed under Finance Code, §157.011, which authorizes the Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Chapter 157.

The statutory provisions affected by the proposed repeal are contained in Finance Code, Chapter 157.

§81.17. *Interpretations.*

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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Texas Department of Savings and Mortgage Lending

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## SUBCHAPTER J. ENFORCEMENT OF LIENS

### 7 TAC §81.18

*(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 Savings and Mortgage Lending or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

The repeal is proposed under Finance Code, §157.011, which authorizes the Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Chapter 157.

The statutory provisions affected by the proposed repeal are contained in Finance Code, Chapter 157.

§81.18. *Enforceability of Liens.*

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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Caroline C. Jones

General Counsel

Texas Department of Savings and Mortgage Lending

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## SUBCHAPTER K. SAVINGS CLAUSE

### 7 TAC §81.19

*(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 Savings and Mortgage Lending or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

The repeal is proposed under Finance Code, §157.011, which authorizes the Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Chapter 157.

The statutory provisions affected by the proposed repeal are contained in Finance Code, Chapter 157.

§81.19. *Savings Clause.*

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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Caroline C. Jones

General Counsel

Texas Department of Savings and Mortgage Lending

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For further information, please call: (512) 475-1297



## SUBCHAPTER L. SPONSORSHIP AND TERMINATION THEREOF

### 7 TAC §81.20

*(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 Savings and Mortgage Lending or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

The repeal is proposed under Finance Code, §157.011, which authorizes the Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Chapter 157.

The statutory provisions affected by the proposed repeal are contained in Finance Code, Chapter 157.

§81.20. *Sponsorship and Termination Thereof.*

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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## CHAPTER 81. MORTGAGE BANKER REGISTRATION AND RESIDENTIAL MORTGAGE LOAN ORIGINATOR LICENSING

The Finance Commission of Texas (the Commission) proposes new 7 TAC Chapter 81, §§81.1 - 81.5, 81.100 - 81.105, 81.200 - 81.205, and 81.300 - 81.302, concerning Mortgage Banker Registration and Residential Mortgage Loan Originator Licensing. The new rules under Chapter 81 are proposed to allow the Texas Department of Savings and Mortgage Lending (the Department) to reorganize its rules, clarify existing rules and practices, and use current terminology.

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

Commissioner Foster has also determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of the proposed new rules will be that the reorganization of the Department's rules clarify the rules and allow for additional rules to be implemented. There will be no effect on

individuals required to comply with the rules as proposed. There will be no adverse economic effect on small or micro businesses.

Comments on the proposed new 7 TAC Chapter 81 may be submitted in writing to Caroline C. Jones, General Counsel, Texas Department of Savings and Mortgage Lending, 2601 North Lamar, Suite 201, Austin, Texas 78705 or by email to [smlinfo@sml.texas.gov](mailto:smlinfo@sml.texas.gov) within 30 days of publication in the *Texas Register*.

## SUBCHAPTER A. GENERAL PROVISIONS

### 7 TAC §§81.1 - 81.5

The new rules are proposed under Finance Code, §157.011, which authorizes the Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Finance Code, Chapter 157.

The statutory provisions affected by the proposed new rules are contained in Finance Code, Chapter 157.

#### *§81.1. Scope.*

This chapter governs the licensing, registration and conduct of residential mortgage loan originators and mortgage bankers under Finance Code, Chapter 157 and Chapter 180, the Texas Secure and Fair Enforcement for Mortgage Licensing Act of 2009 ("SAFE Act"), except for individuals engaged in authorized activity subject to the authority of a regulatory official under Finance Code, §180.251(c). The terms "licensed" and "registered" may be used interchangeably.

#### *§81.2. Definitions.*

As used in this chapter, the following terms have the meanings indicated:

(1) "Commissioner's designee" means an employee of the department performing his or her assigned duties or such other person as the Commissioner may designate in writing. A Commissioner's designee is deemed to be the Commissioner's authorized "personnel or representative" as such term is used in Finance Code, Chapter 157.

(2) "Criminal Offense" means any violation of any state or federal criminal statute which:

(A) involves theft, misappropriation, or misapplication, of monies or goods in any amount;

(B) involves the falsification of records, perjury, or other similar criminal offenses indicating dishonesty;

(C) involves the solicitation of, the giving of, or the taking of bribes, kickbacks, or other illegal compensation;

(D) involves deceiving the public by means of swindling, false advertising or the like;

(E) involves acts of moral turpitude and violation of duties owed to the public including, but not limited to, the unlawful manufacture, distribution, or trafficking in a controlled substance, dangerous drug, or marijuana;

(F) involves acts of violence or use of a deadly weapon;

(G) when considered with other violations committed over a period of time appears to establish a pattern of disregard for, a lack of respect for, or apparent inability to follow, the criminal law; or

(H) involves any other crime which the Commissioner determines has a reasonable relationship to whether a person is fit to serve as an originator in a manner consistent with the purposes of Finance Code, Chapter 157 and the best interest of the State of Texas and its residents.

(3) "Department" means the Texas Department of Savings and Mortgage Lending.

(4) "Mortgage banker" shall have the same meaning as that provided in Finance Code, §157.002.

(5) "Originator" means, for purposes of this chapter, a Residential Mortgage Loan Originator, as that term is defined in Finance Code, §180.002.

(6) "Physical Office" means an actual office where the business of mortgage lending and/or the business of taking or soliciting residential mortgage loan applications are conducted. It must have a street address. A post office box or other similar designation will not suffice. It must be accessible to the general public as a place of business and must hold itself open on a regular basis during posted hours. The hours of business must be posted in a manner to give effective notice to walk-up traffic as to the hours of opening and closing. Normally this will require posting of the hours on an exterior door or window of the office. In those instances where the physical office is in a shared office suite or building, the hours may be posted in a common lobby or reception area. During the hours in which the physical office is open, at least one staff member must be present to assist customers. The physical office of an originator need not be the location at which such originator's required records are maintained, but the location at which such required records are maintained must be accessible to the Commissioner or the Commissioner's designee for examination during normal business hours.

(7) "Residential mortgage loan" shall have the same meaning as that provided in Finance Code, §180.002 and includes new loans and renewals, extensions, modifications, and rearrangements of such loans. The term does not include a loan which is secured by a structure that is suitable for occupancy as a one-to-four family residence, but is used for a commercial purpose such as a professional office, beauty salon, or other non-residential use, and is not used as a residence.

#### *§81.3. Interpretations.*

In order to provide clarification as to how Finance Code, Chapter 157 will be construed and implemented, the Commissioner may, from time to time, publish written interpretations of Finance Code, Chapter 157 and this chapter.

#### *§81.4. Enforceability of Liens.*

A violation of this chapter shall not render an otherwise lawfully taken lien unenforceable.

#### *§81.5. Savings Clause.*

If any portion or provision of this chapter is found to be illegal, invalid, or unenforceable, such illegality, invalidity, or lack of enforceability shall not affect or impair the legality, validity, and enforceability of the remainder thereof, all of which shall remain in full force and effect.

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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General Counsel

Texas Department of Savings and Mortgage Lending

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## SUBCHAPTER B. LICENSING

**7 TAC §§81.100 - 81.105**

The new rules are proposed under Finance Code, §157.011, which authorizes the Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Finance Code, Chapter 157.

The statutory provisions affected by the proposed new rules are contained in Finance Code, Chapter 157.

§81.100. Licensing - General.

(a) The department is limited to those specific license and registration status codes available through the Nationwide Mortgage Licensing System and Registry. The Nationwide Mortgage Licensing System and Registry maintains a website that contains the specific status codes available and their definitions. The available status codes changed by the department are reflected in the licensee's record on the Nationwide Mortgage Licensing System and Registry and on the Nationwide Mortgage Licensing System and Registry Consumer Access website.

(b) An applicant may be issued a license in an inactive status if the applicant completes the required application form and complies with all requirements of licensure except for the requirement of an approved sponsorship. Upon submission and approval of a sponsorship, the license may be changed to active status.

(c) An originator, through written notice to the department, may place his or her license in an inactive status at any time during the license term. While in an inactive status an originator must not engage in the origination of residential mortgage loans as defined in §81.2(7) of this chapter, and must continue to meet the statutory requirements of the license. Upon submission and approval of a sponsorship, the license may be changed to an active status.

(d) The Commissioner may require such additional, clarifying, or supplemental information from any applicant for the issuance or renewal of any license pursuant to Finance Code, Chapter 157 as is deemed necessary or advisable to determine that the requirements of Finance Code, Chapter 157 have been met and maintained.

(e) The Commissioner may authorize an investigation to be conducted against an originator if there is reasonable cause to suspect or believe that an originator may have been convicted of a criminal offense which may constitute grounds for the suspension or revocation of that originator's license.

(f) An application, notice, or any other filing with the department will only be deemed submitted if it is complete. A filing is complete only if all required supporting documentation is included and only if all required fees have been received by the department. The application may be deemed withdrawn if an applicant fails to provide to the department, within 30 days from the date of request, any information or supplemental documentation.

§81.101. Sponsorship and Termination Thereof.

(a) An originator's license must be sponsored in the Nationwide Mortgage Licensing System and Registry by a mortgage banker.

(b) Sponsorship may be removed by either the sponsoring mortgage banker or the originator. If sponsorship is terminated, the party terminating the sponsorship shall notify the Commissioner through the Nationwide Mortgage Licensing System and Registry that the sponsorship has been terminated.

§81.102. Recovery Fund.

(a) A designated portion of the originator's license and renewal fees, as determined by the Commissioner, shall be allocated to the Recovery Fund for the purpose of compliance with Finance Code, Chapter 180.

(b) Administration of the Recovery Fund and any claims to the Recovery Fund against an originator shall be in accordance with the provisions of Finance Code, Chapter 156, Subchapter F.

§81.103. Request for Criminal History Eligibility Determination.

An individual considering applying for an originator license may request a criminal history evaluation letter regarding the person's eligibility for a license, as defined in Occupations Code, Chapter 53, Subchapter D. The request must be made on a form promulgated by the department and include all pertinent court documentation including certified copies of all judgments and orders, and an explanation of the circumstances and events of the criminal action that led to the conviction or sentence, and the basis for the person's potential ineligibility. The fee for this process is \$75 per request. Upon receipt of the request, the department will:

(1) Investigate the information provided by the individual to determine if there are grounds for ineligibility; and

(2) Notify the individual as to the department's determination within 90 days of receipt of the individual's request.

§81.104. Renewals.

(a) A license may be renewed upon:

(1) submission of a completed application for renewal through the Nationwide Mortgage Licensing System and Registry together with the payment of the applicable renewal application fee;

(2) determination that the applicant continues to meet the minimum requirements for license issuance; and

(3) providing satisfactory evidence to the Commissioner that the license holder has completed the continuing education requirements of Finance Code, §180.060.

(b) Renewal of a license may be denied for reasons provided in Finance Code, §157.015.

(c) For service members on active military duty, as detailed in Occupations Code, Chapter 55, the department will comply with the requirements as set out in that statute.

§81.105. Fees.

(a) Fees relating to a license or registration shall be established by the Commissioner in accordance with Finance Code, Chapter 157. The amount of the fees may be modified upon not less than 30 days advance notice posted on the department's website.

(b) All fees are nonrefundable and nontransferable.

(c) The Commissioner may, in addition to any disciplinary action, collect a fee in an amount not to exceed \$50 for any returned check or credit card chargeback.

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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Caroline C. Jones

General Counsel

Texas Department of Savings and Mortgage Lending

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## SUBCHAPTER C. DUTIES AND RESPONSIBILITIES

### 7 TAC §§81.200 - 81.205

The new rules are proposed under Finance Code, §157.011, which authorizes the Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Finance Code, Chapter 157.

The statutory provisions affected by the proposed new rules are contained in Finance Code, Chapter 157.

#### §81.200. Required Disclosures.

(a) An originator shall include the following notice, Figure: 7 TAC §81.200(a), to a residential mortgage loan applicant with an initial application for a residential mortgage loan:

Figure: 7 TAC §81.200(a)

(b) A mortgage banker or originator shall maintain in its records evidence of timely delivery of the disclosure in subsection (a) of this section.

(c) At each physical office, and on its website, a mortgage banker or an originator shall conspicuously post the following notice:

(1) "CONSUMERS WISHING TO FILE A COMPLAINT AGAINST A MORTGAGE BANKER OR A LICENSED MORTGAGE BANKER RESIDENTIAL MORTGAGE LOAN ORIGINATOR SHOULD COMPLETE AND SEND A COMPLAINT FORM TO THE TEXAS DEPARTMENT OF SAVINGS AND MORTGAGE LENDING, 2601 NORTH LAMAR, SUITE 201, AUSTIN, TEXAS 78705. COMPLAINT FORMS AND INSTRUCTIONS MAY BE OBTAINED FROM THE DEPARTMENT'S WEBSITE AT WWW.SML.TEXAS.GOV. A TOLL-FREE CONSUMER HOTLINE IS AVAILABLE AT 1-877-276-5550.

(2) THE DEPARTMENT MAINTAINS A RECOVERY FUND TO MAKE PAYMENTS OF CERTAIN ACTUAL OUT OF POCKET DAMAGES SUSTAINED BY BORROWERS CAUSED BY ACTS OF LICENSED MORTGAGE BANKER RESIDENTIAL MORTGAGE LOAN ORIGINATORS. A WRITTEN APPLICATION FOR REIMBURSEMENT FROM THE RECOVERY FUND MUST BE FILED WITH AND INVESTIGATED BY THE DEPARTMENT PRIOR TO THE PAYMENT OF A CLAIM. FOR MORE INFORMATION ABOUT THE RECOVERY FUND, PLEASE CONSULT THE DEPARTMENT'S WEBSITE AT WWW.SML.TEXAS.GOV."

(d) A notice is deemed to be conspicuously posted under subsection (c) of this section if a customer with 20/20 vision can read it from each place where he or she would typically conduct business or if it is included on a bulletin board, in plain view, on which all required notices to the general public (such as equal housing posters, licenses, etc.) are posted. If applicable, a notice is deemed conspicuously posted if prominently displayed on the website.

#### §81.201. Loan Status Forms.

(a) Except as otherwise provided by subsection (c) of this section, when provided to a mortgage applicant, written confirmation of conditional qualification shall include the information in Form A, Figure: 7 TAC §81.201(a). This information can be provided by utilizing Form A or an alternate form that includes all of the information found on Form A. Either form may be modified by adding any of the following as needed:

Figure: 7 TAC §81.201(a)

(1) Any additional aspects of the loan as long as not misleading;

(2) Any additional items that the originator has reviewed in determining conditional qualifications; or

(3) Any additional terms, conditions, and requirements.

(b) When provided to a mortgage applicant, written notification of loan application approval on the basis of credit worthiness, but not on the basis of collateral, shall include the information in Form B, Figure: 7 TAC §81.201(b). This information can be provided by utilizing Form B or an alternate form that includes all of the information found on Form B. Either form may be modified by adding the additional information permitted by subsection (a)(1) - (3) of this section, or disclosure of fees charged. A disclosure of fees charged, on Form B or an alternate form, does not serve as a substitute for any fee disclosure required by state or federal laws or regulations.

Figure: 7 TAC §81.201(b)

(c) Subsection (a) of this section does not apply to "firm offers of credit," as that term is defined in 15 U.S.C. §1681a(1).

#### §81.202. Prohibition on False, Misleading, or Deceptive Practices and Improper Dealings.

(a) No originator may:

(1) knowingly misrepresent his or her relationship to a residential mortgage loan applicant or any other party to an actual or proposed residential mortgage loan transaction;

(2) knowingly misrepresent or understate any cost, fee, interest rate, or other expense in connection with a residential mortgage loan applicant's applying for or obtaining a residential mortgage loan;

(3) disparage any source or potential source of residential mortgage loan funds in a manner which knowingly disregards the truth or makes any knowing and material misstatement or omission;

(4) knowingly participate in or permit the submission of false or misleading information of a material nature to any person in connection with a decision by that person whether or not to make or acquire a residential mortgage loan;

(5) as provided for by the Real Estate Settlement Procedures Act and its implementing regulations, broker, arrange, or make a residential mortgage loan in which the originator retains fees or receives other compensation for services which are not actually performed or where the fees or other compensation received bear no reasonable relationship to the value of services actually performed;

(6) recommend or encourage default or delinquency or continuation of an existing default or delinquency by a residential mortgage applicant on any existing indebtedness prior to closing a residential mortgage loan which refinances all or a portion of such existing indebtedness;

(7) induce or attempt to induce a party to a contract to breach that contract so the person may make a residential mortgage loan;

(8) alter any document produced or issued by the department, unless otherwise permitted by statute or regulation; or

(9) engage in any other practice which the Commissioner, by published interpretation, has determined to be false, misleading, or deceptive.

(b) The term "improper dealings" in Finance Code, §157.024(a)(3) includes, but is not limited to the following:

(1) Acting negligently in performing an act for which a person is required under Finance Code, Chapter 157 to hold a license;

(2) Violating any provision of a local, State of Texas, or federal, constitution, statute, rule, ordinance, regulation, or final court decision that governs the same activity, transaction, or subject matter that is governed by the provisions of Finance Code, Chapter 157 or this chapter including, but not limited to, the following:

(A) Real Estate Settlement Procedures Act, 12 U.S.C. Chapter 2600;

(B) Regulation X, 24 C.F.R. Part 3500;

(C) Consumer Credit Protection Act, 15 U.S.C. Chapter 1600 (Truth in Lending Act);

(D) Regulation Z, 12 C.F.R. Part 226;

(E) Equal Credit Opportunity Act, 15 U.S.C. §1691;

(F) Regulation B, 12 C.F.R. Part 202; and

(G) Texas Constitution, Article XVI, §50.

(c) A mortgage banker or originator engages in a false, misleading or deceptive practice or improper dealings when in connection with the origination of a mortgage loan:

(1) The mortgage banker or originator offers other goods or services to a consumer in a separate but related transaction and the mortgage banker or originator engages in a false misleading or deceptive practice in the related transaction; or

(2) The originator offers other goods or services to a consumer in a separate but related transaction and the mortgage banker or originator engages in a false, misleading or deceptive practice in the related transaction, and the mortgage banker knew or should have known of the transaction; or

(3) A mortgage banker or originator affiliates with a second originator who offers other goods or services to a consumer in a separate but related transaction, and the second originator engages in a false, misleading or deceptive practice in the related transaction when the mortgage banker or originator participates with the second originator in the separate transaction or when the mortgage banker allows the second originator to originate loans in the name of the mortgage banker and the mortgage banker knew or should have known of the related transaction performed by the second originator.

(d) An originator receiving a verbal or written inquiry about his or her services shall respond accurately to any questions about the scope and nature of such services and any costs.

#### §81.203. Advertising.

(a) Licensees who advertise rates, terms, or conditions must comply with the disclosure requirements of 12 C.F.R. §226.24 (Regulation Z).

(b) Any advertisement of residential mortgage loans which are offered by or through a mortgage banker or originator shall conform to the following requirements:

(1) An advertisement shall be made only for such products and terms as are actually available and, if their availability is subject to any material requirements or limitations, the advertisement shall specify those requirements or limitations;

(2) Except as provided in subsection (c) of this section, the advertisement shall contain:

(A) the name of the originator followed by the name of the sponsoring mortgage banker, as designated in the records of the Commissioner as of the date of the advertisement;

(B) the originator's Nationwide Mortgage Licensing System and Registry identification number; and

(C) the mortgage banker's physical office address. If a physical office exists in this State, the advertisement must contain that address; otherwise, it must contain the address of a location registered with the department;

(3) An advertisement shall not make or omit any statement the result of which is to present a misleading or deceptive impression to consumers; and

(4) An advertisement shall otherwise comply with applicable state and federal disclosure requirements.

(c) For purposes of this section, an advertisement means a commercial message in any medium that promotes directly or indirectly, a credit transaction. However, the requirements of subsection (b)(2) of this section shall not apply to:

(1) any advertisement which indirectly promotes a credit transaction and which contains only the name of the mortgage banker or originator and does not contain any contact information, such as the inscription of the name on a coffee mug, pencil, youth league jersey, or other promotional item; or

(2) any rate sheet, pricing sheet, or similar proprietary information provided to realtors, builders, and other commercial entities that is not intended for distribution to consumers.

#### §81.204. Books and Records.

(a) In order to assure that each licensee will have all records necessary to enable the Commissioner or the Commissioner's designee to investigate complaints and discharge their responsibilities under Finance Code, Chapter 157 and this chapter, each originator shall maintain records as set forth in this section. The particular format of records to be maintained is not specified. However, they must be complete, current, legible, readily accessible, and readily sortable. Records maintained for other purposes, such as compliance with other state and federal laws, will be deemed to satisfy these requirements if they include the same information.

(b) Mortgage Application Records. Each originator is required to maintain, at the location specified in their official record on file with the department, the following books and records:

(1) A residential mortgage loan file for each mortgage loan application received; each file shall contain at a minimum the following:

(A) a copy of the initial signed and dated mortgage loan application (including any attachments, supplements, or addenda thereto);

(B) either a copy of the signed closing statement, documentation of the timely denial, or other disposition of the application for a residential mortgage loan;

(C) a copy of the disclosure statement required by Finance Code, §157.007 and §81.200(a) of this chapter;

(D) a copy of each item of correspondence, all evidence of any contractual agreement or understanding (including, but not limited to, any interest rate lock-ins or loan commitments), and all notes and memoranda of conversations or meetings with any mortgage applicant or any other party in connection with that residential mortgage loan application or its ultimate disposition;

(E) a copy of the notice to applicants required by Finance Code, §343.105; and

(F) a copy of both the initial Good Faith Estimate and the initial Good Faith Estimate fee itemization worksheet, if applicable.

(2) Mortgage Transaction Log. A residential mortgage transaction log, maintained on a current basis, which means that all entries must be made within no more than seven days from the date on which the matters they relate to occurred, setting forth, at a minimum:

(A) name of each mortgage applicant and how to contact them;

(B) date of the initial residential mortgage loan application;

(C) description of the disposition of the application for a residential mortgage loan;

(D) identity of the person or entity who initially funded and/or acquired the residential mortgage loan and information as to how to contact them; and

(E) full name of the originator and their Nationwide Mortgage Licensing System and Registry identification number.

(3) General Business Records. General business records include the following:

(A) all checkbooks, check registers, bank statements, deposit slips, withdrawal slips, and cancelled checks (or copies thereof) relating to the residential mortgage business;

(B) complete records (including invoices and supporting documentation) for all expenses and fees paid on behalf of a residential mortgage loan applicant, including a record of the date and amount of all such payments actually made by each applicant;

(C) copies of all federal tax withholding forms, reports of income for federal taxation, and evidence of payments to all mortgage banker employees, independent contractors and others compensated by such originator in connection with the mortgage lending business;

(D) copies of all written complaints or inquiries (or summaries of any verbal complaints or inquiries) along with any and all correspondence, notes, responses, and documentation relating thereto and the disposition thereof;

(E) copies of all contractual agreements or understandings with third parties in any way relating to mortgage lending services including, but not limited to, delegations of underwriting authority, price agreements for goods or services, investor contracts, or employment agreements;

(F) copies of all reports of audits, examinations, reviews, investigations, or other similar matters performed by any third party, including any regulatory or supervisory authorities; and

(G) copies of all advertisements in the medium (e.g., recorded audio, video, and print) in which they were published or distributed.

(c) Each originator shall maintain such other books and records as may be required to evidence compliance with applicable state and federal laws and regulations including, but not limited to, the Real Estate Settlement Procedures Act, the Equal Credit Opportunity Act, and the Truth in Lending Act.

(d) Each originator shall maintain such other books and records as the Commissioner or the Commissioner's designee may from time to time specify in writing.

(e) All books and records required by this section shall be maintained in good order and shall be produced for the Commissioner or the Commissioner's designee upon request. Failure to produce such books and records upon request, after a reasonable time for compliance, may be grounds for suspension or revocation of a license.

(f) All books and records required by this section shall be maintained for three years or such longer period(s) as may be required by applicable state and/or federal laws and regulations.

(g) An originator may meet applicable recordkeeping requirements if his or her sponsoring mortgage banker maintains the required records. Upon termination of a mortgage banker's sponsorship of an originator, that originator's records shall remain with the mortgage banker or be transferred to the new sponsoring mortgage banker. Upon written request from a former originator, a former mortgage banker may release to his or her former originator copies of records relating to residential mortgage loans handled by such former originator.

(h) Upon the termination of operations as a mortgage banker or an originator, the mortgage banker or originator shall notify the Commissioner, in writing, within ten days where the required records will be maintained for the prescribed periods. If such records are transferred to another mortgage banker, the transferee shall, in writing, within ten days of accepting responsibility for maintaining such records, notify the Commissioner.

§81.205. Mortgage Call Reports.

(a) Call Report.

(1) A mortgage banker shall file a mortgage call report on a quarterly basis. The filing deadlines are set by the Nationwide Mortgage Licensing System and Registry.

(2) A call report is required to be filed for each quarter a license is held, including partial quarters.

(3) The call report shall be submitted through and in the manner and form prescribed by the Nationwide Mortgage Licensing System and Registry.

(b) Statement of Condition Report.

(1) A mortgage banker shall file a statement of condition on an annual basis.

(2) A statement of condition report is required to be filed for each year a license is held, including partial years.

(3) The statement of condition report shall be submitted through and in the manner and form prescribed by the Nationwide Mortgage Licensing System and Registry.

(c) Submission of a call report or statement of condition report, by a mortgage banker, satisfies the requirements of an originator under Finance Code, §180.101 for the period of sponsorship, provided that the originator's information is included in the report.

(d) Failure to file a mortgage call report or statement of condition report can result in an administrative penalty for each missed or late filing.

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

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SUBCHAPTER D. COMPLIANCE AND  
ENFORCEMENT

7 TAC §§81.300 - 81.302

The new rules are proposed under Finance Code, §157.011, which authorizes the Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Finance Code, Chapter 157.

The statutory provisions affected by the proposed new rules are contained in Finance Code, Chapter 157.

§81.300. Examinations.

(a) The Commissioner, operating through the department staff and such others as the Commissioner may, from time to time, designate will conduct periodic examinations of an originator sponsored by mortgage bankers as the Commissioner deems necessary.

(b) Except when the department determines that giving advance notice would impair the examination, the department will give the mortgage banker advance notice of each examination. Such notice will be sent to the contact person's address of record or e-mail address on file with the department and will specify the date on which the department's examiners will commence the examination. Failure of the mortgage banker to actually receive the notice will not be grounds for delay or postponement of the examination. The notice will include a list of the documents and records the mortgage banker should have available for the examiner to review.

(c) Examinations will be conducted to determine compliance with Finance Code, Chapter 157 and this chapter. The examination will specifically address whether:

(1) All persons conducting residential mortgage loan activity are properly licensed;

(2) All locations at which such activities are conducted are properly licensed;

(3) All required books and records are being maintained in accordance with §81.204 of this chapter;

(4) Legal and regulatory requirements applicable to originators or the originator's residential mortgage business are being properly followed; and

(5) Other matters as the Commissioner may deem necessary or advisable to carry out the purposes of Finance Code, Chapter 157.

(d) The examiner will review a sample of residential mortgage loan files identified by the examiner and randomly selected from the originator's residential mortgage transaction log. The examiner may expand the number of files to be reviewed if, in his or her discretion, conditions warrant.

(e) The examiner may require an originator, at his or her own cost, to make copies of loan files or such other books and records as the examiner deems appropriate for the preparation of or inclusion in the examination report.

(f) The workpapers, compilations, findings, reports, summaries, and other materials, in whatever form, relating to an examination conducted under this section, shall be maintained as confidential except as required or expressly permitted by law.

(g) Failure of an originator to cooperate with the examination or failure to grant the examiner access to books, records, documents, operations, and facilities will subject the originator and any mortgage banker employer to enforcement actions by the Commissioner, including, but not limited to, administrative penalties.

(h) When the department must travel out-of-state to conduct an examination of an originator, because that originator maintains required records at a location outside of the state, the originator will be required to reimburse the department for the actual cost the department incurs in connection with such out-of-state travel including, but not limited to, transportation, lodging, meals, employee travel time, telephone and facsimile communications, courier service and any other reasonably related costs.

§81.301. Complaints and Investigations.

(a) Upon receipt of a written complaint alleging acts or omissions of a person as defined under Finance Code, §180.002(14) required to be licensed or a mortgage banker required to be registered under Finance Code, Chapter 157, the Commissioner or the Commissioner's designee will make an initial determination whether the complaint sets forth reasonable cause to warrant an investigation:

(1) If it has been determined that the complaint warrants an investigation, advise all parties who are subject of the complaint by written notice that a complaint has been filed and an investigation will be conducted. The investigation will be conducted as is deemed appropriate in light of all the relevant facts and circumstances then known. Such investigation may include any or all of the following:

(A) review of documentary evidence;

(B) interviews with complainants, licensees, and third parties;

(C) obtaining reports, advice, and other comments and assistance of other state and/or federal regulatory, enforcement, or oversight bodies;

(D) other lawful investigative techniques as the Commissioner reasonably deems necessary and/or appropriate, including, but not limited to, requesting that complainants and/or other parties made the subject of complaints provide explanatory, clarifying, or supplemental information.

(2) If determined that a complaint does not warrant investigation, advise the complainant of the right to bring forth additional facts or information to have the initiation of an investigation reconsidered, and close the file.

(b) The Commissioner may, upon a finding of reasonable cause, investigate a licensee or registrant to determine whether they are complying with Finance Code, Chapter 157 and this chapter.

(c) The Commissioner may conduct an undercover or covert investigation only if the Commissioner, after due consideration of the circumstances, determines that the investigation is necessary to prevent immediate harm and to carry out the purposes of Finance Code, Chapter 157.

(d) Reasonable cause will be deemed to exist if the Commissioner has received information from a source he or she has no reason to believe to be other than reliable, including documentary or other evidence or information, indicating facts which a prudent person would

deem worthy of investigation as a violation of Finance Code, Chapter 157.

§81.302. Hearings and Appeals.

(a) Hearings are to be conducted in accordance with Chapter 9 of this title including, but not limited to motions for rehearing, notices of appeal, and applications for review. All such hearings shall, unless specifically authorized by the Commissioner, be conducted in Austin, Travis County, Texas. All appeals of decisions of the Commissioner shall be made to the State District Court in Travis County, Texas. Such rules, as set forth in Chapter 9 of this title are incorporated herein by reference for all purposes.

(b) If a person against whom an order is made requires a hearing, the Commissioner shall set and give notice of a hearing before the Commissioner or a hearings officer. The hearing shall be governed by Government Code, Chapter 2001. Based on the findings of fact, conclusions of law, and any recommendations of the hearings officer, the Commissioner shall, by order, find that a violation has or has not occurred.

(c) Appeals of an order denying an application or the renewal of a license must be properly requested within ten calendar days of the date on which the initial order is received. All other appeals must be properly requested within thirty days of the date on which the initial order is issued. Any order not properly appealed by the applicable deadline becomes final and cannot be appealed with no further action by the Commissioner.

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 April 20, 2012.

TRD-201202036

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General Counsel

Texas Department of Savings and Mortgage Lending

Earliest possible date of adoption: June 3, 2012

For further information, please call: (512) 475-1297



## PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

### CHAPTER 89. PROPERTY TAX LENDERS

The Finance Commission of Texas (commission) proposes amendments to 7 TAC Chapter 89, §§89.204, 89.205, 89.301 - 89.304, 89.306 - 89.310, 89.405 - 89.407, 89.409, 89.504, 89.602, 89.701, and 89.702, concerning Property Tax Lenders. The proposed amendments affect rules contained in Subchapter B, concerning Authorized Activities; Subchapter C, concerning Application Procedures; Subchapter D, concerning License; Subchapter E, concerning Disclosures; Subchapter F, concerning Costs and Fees; and Subchapter G, concerning Transfer of Tax Lien. The commission also proposes new §89.207, concerning Files and Records Required; and §89.312, concerning Property Tax Employee License Under Nationwide Mortgage Licensing System and Registry. Additionally, the agency is developing a proposal related to maximum interest charges and fees for closing costs to be presented at a future meeting.

The majority of the rules in Chapter 89 are being amended. Any Chapter 89 rule not included in this proposal will be maintained in its current form.

In general, the purpose of the amendments and new rules regarding 7 TAC Chapter 89 is to implement changes resulting from the commission's review of Chapter 89 under Texas Government Code, §2001.039. The notice of intention to review 7 TAC Chapter 89 was published in the March 16, 2012, issue of the *Texas Register* (37 TexReg 1917). The agency did not receive any comments on the notice of intention to review. The agency circulated an early draft of these proposed changes to interested stakeholders and has incorporated several changes suggested by stakeholders.

Most of the changes are technical in nature and relate to improvements in consistency, grammar, punctuation, capitalization, and formatting. Additional changes provide clarification, more precise legal citations, and improved internal regulation references. These technical corrections have been modeled after improvements made during the rule review of Chapter 83, Subchapter A, Rules for Regulated Lenders, as the property tax lender statute and rules were both patterned after their regulated lender counterparts. There are, however, two proposed new sections, existing sections with proposed new substantive language, and some significant formatting amendments. The new language is generally intended to address issues discovered during the examination process. The major formatting changes serve to implement streamlining improvements in the licensing process similar to those used for the newly licensed credit access businesses.

The individual purposes of the amended and new rules are provided in the following paragraphs. Specific explanation is included with regard to new rules, new substantive language, substantive changes in language, and significant formatting amendments. The remaining changes throughout all sections consist of minor technical revisions and will be summarized more generally.

Concerning technical corrections in §89.204, the title of Texas Finance Code, Chapter 351, along with the short title and citation have been removed from §89.204(a). When Chapter 89 was first adopted, this language was needed in order to distinguish the chapter regarding property tax lenders from another chapter with an identical number. The legislature has since corrected the duplicate numbering and hence made this language unnecessary. Similar deletions of these references occur throughout the rules. In addition, technical corrections have been made in §89.204 to provide parallel formatting.

The title to §89.205 has been amended by adding the words "and Internet" after "Loans by Mail." This section currently contains subsection (c), which states: "a loan made, negotiated, arranged, or collected by or through the Internet is considered a 'loan by mail.'" The "Internet" reference in the title is intended to assist Internet lenders in locating this regulation with more ease. In addition, §89.205 includes revisions related to parallel formatting and the removal of unnecessary Chapter 351 descriptors, as explained in the preceding paragraph.

Section 89.207, Files and Records Required, is a proposed new rule outlining the recordkeeping requirements for property tax lenders. These records must be maintained and made available for examination in compliance with Texas Finance Code, §351.008. Proposed §89.207 includes language throughout allowing for the use of paper or manual, electronic, optically im-



aged, or a combination of the preceding types of recordkeeping systems.

Paragraph (1) provides for the following required records: a loan register, general business and accounting records, advertising records, adverse action records, and an official correspondence file. Paragraph (2) outlines the information that must be included in the record of an individual borrower's account. Paragraph (3) details the records that must be maintained for each individual property tax loan transaction file or be able to be produced within a reasonable amount of time. This paragraph includes files that must be maintained for all property tax loan transactions and the records associated with certain situations (e.g., residential property used for personal, family, or household use; loans delinquent for 90 consecutive days; loans where separate disclosures are provided under federal or state law; loans involving foreclosure or attempted foreclosure).

Paragraph (4) of proposed §89.207 outlines the procedures for making corrective entries to the borrower's account record. Paragraph (5) provides for the maintenance of litigation and foreclosure records. Paragraph (6) requires property tax lenders to maintain a disaster recovery plan. Paragraph (7) describes the record retention period and required availability of records for examinations.

Section 89.301, which contains the licensing definitions, has experienced several minor revisions relating to grammar and punctuation. Two of these changes are recurring throughout the rules. First, the verb "shall" has been changed to "will" in the introductory paragraph and to "must" in paragraph (2)(E). Similar changes have been made to numerous rules in Chapter 89 by replacing "shall" with either "will" or "must," as appropriate, since the latter language is reflective of a more modern and plain language approach in regulations. Second, the hyphens have been removed from the phrases "privately held" and "publicly held," as these hyphens are deemed unnecessary by modern usage guides. This section also includes the removal of unnecessary Chapter 351 descriptors and corrections to business terminology.

Section 89.302 regarding the filing of new applications has been revised and reorganized to increase the efficiency of the licensing process and to better align the rules with the streamlined application forms prepared by the agency. First, the provisions that have been relocated to provide proper alignment with the revised licensing forms are as follows: §89.302(1)(D) concerning statutory or registered agent has been relocated to proposed paragraph (1)(A)(iii), paragraph (1)(B) concerning owners and principal parties has been relocated to proposed (1)(A)(iv), paragraph (2)(C)(vii)(II) concerning statement of records has been relocated to proposed paragraph (1)(D)(iii), paragraph (1)(A)(iii) concerning authorized signatures has been renamed "Consent form" and relocated to proposed paragraph (1)(E), paragraph (1)(J) concerning financial statements has been relocated to proposed paragraph (2)(D), and paragraph (1)(K) concerning assumed names has been relocated to paragraph (2)(E).

In particular, one of the relocated provisions relates to the creation of a new separate licensing form, which is the consent form. This provision involves some minor wording changes in addition to its relocation. In proposed §89.302(1)(F), the following new language relating to the term "authorized individual" has been added: "Each applicant must submit a consent form signed by an authorized individual.... The following are authorized individuals...."

Second, the wording and format of several taglines or form titles have been revised to correspond with the new licensing forms. These title changes are found in the following proposed provisions: §89.302(1)(A), (1)(A)(i), (1)(A)(iii) - (iv), (1)(B), (1)(C), (1)(C)(i) - (iii), (1)(D), (1)(D)(i) - (iii), (1)(E), (2)(D), and (2)(E). Other changes relating to form titles may be found in §89.308(a) and §89.309(a) and (b). Additionally, any surrounding provisions affected by the relocations have been renumbered or relettered as appropriate, along with other technical corrections.

In conjunction with the reorganization of §89.302, certain provisions have experienced revised language to improve clarity and flexibility. The amendments to §89.302(1)(A)(i) accommodate applicants (e.g., Internet businesses) that will not have a location in Texas. In proposed §89.302(1)(A)(iii), the term "statutory agent" has been replaced with "registered agent" throughout this clause. Parallel changes have also been made to §89.302(2)(C)(ii) and (iv). In reference to agents who are natural persons, a "physical residential address" is no longer required and has been replaced with a requirement for "a different address than the licensed location address." In addition, for registered agents not matching those on file with the Office of the Texas Secretary of State, an applicant must only submit "a certification from the secretary of the company identifying the registered agent" as opposed to the current language requiring certified minutes of the appointment.

A revision reflected throughout §89.302 relates to the percentage of ownership that must be disclosed by various entities. In the current rule, some of these percentages were 5% whereas others were 10%. In evaluating the appropriate level of disclosure necessary for the agency to properly assess principal parties, the agency determined that 10% would achieve the needed information and provide more consistency for licensees. Consequently, 5% has been replaced with 10% in the following proposed provisions: §89.302(1)(A)(iv)(III)(-b-), (1)(A)(iv)(IV) and (1)(A)(iv)(V). A parallel change has also been made to §89.304, Change in Form or Proportionate Ownership, as found in subsection (c)(1).

In proposed §89.302(1)(A)(iv)(III) concerning disclosure of partners for limited partnerships, the first sentence is inconsistent with the requirements outlined in the related items. Accordingly, to clarify and resolve this issue, the first sentence has been revised as per *Texas Register* guidelines: "Each partner, general and limited, fulfilling the requirements of items (-a-) - (-c-) of this subclause must be listed and the percentage of ownership stated."

Section 89.302(1)(C)(iii) concerning employment history has been revised by removing the phrase "with no gaps." As the rule still requires "a continuous 10-year [employment] history," the deleted language is not necessary.

Section 89.302(2)(A)(iv) relates to the fingerprints of individuals who have previously been licensed by the agency and who are principal parties of currently licensed entities. In response to an audit finding, the agency has clarified that while fingerprints are not generally required for these individuals, they may be required under certain circumstances. Fingerprints are not required if "fingerprints are on record with the OCCC, are less than 10 years old, and have been processed by both the Texas Department of Public Safety and the Federal Bureau of Investigation." Fingerprints may be requested in order to complete the agency's records.

Regarding the entity documents under §89.302(2)(C), several changes have been made in order to increase the efficiency of the licensing process. The provisions under current (2)(C)(ii)(II) and (III) and (2)(C)(iv)(II) and (III) had required that applicants provide copies of the relevant portions of bylaws, operating agreements, and minutes addressing the number and election of officers and directors. The agency recognizes that these documents are only necessary in limited situations. Thus, these provisions have been shifted to the end of each respective provision and language has been added to reflect that such documents should only be provided upon request. The relocated provisions are proposed in §89.302(2)(C)(ii)(IV) and (V) and (2)(C)(iv)(IV) and (V).

To further streamline the licensing process, the current requirements in §89.302(2)(C)(ii)(IV)(-a-) and (2)(C)(iv)(IV)(-a-) have been deleted for this proposal. The current provisions required applicants to provide minutes electing the statutory agent. Upon review of the licensing process, the agency can streamline the process for verification of the registered agent by certification from the secretary of the company. Additionally, the verification of good standing may be obtained either directly from the Texas Comptroller of Public Accounts or upon request to the licensee if the Comptroller does not have an online record of the company. Thus, the phrase "if requested" has been added to proposed §89.302(2)(C)(ii)(VI) and (2)(C)(iv)(VI).

Concerning the required financial statements in proposed §89.302(2)(D), the number of days has been changed from 60 to 90, resulting in the first sentence reading as follows: "The financial statement must be dated no earlier than 90 days prior to the date of application." This revision better aligns with the quarterly reports that many applicants have readily available.

Another clarifying change concerning financial statements has been made to §89.302(2)(D). Although the types of financial statements vary by business entity, all submitted statements must comply with generally accepted accounting principles (GAAP). Complying with GAAP helps to demonstrate the applicant's budgetary integrity, which is important to the agency's determination that the applicant's financial responsibility, experience, character, and general fitness are sufficient to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly. Thus, language concerning GAAP compliance has been relocated to the "all entity types" provision.

Updates have been made to proposed §89.302(2)(E) to include revised citations to the Texas Business and Commerce Code provisions concerning assumed name certificates, as relocated during the 2009 legislative session. Additionally, corrections to business terminology have been made and unnecessary language has been removed throughout §89.302(2)(D) and (E).

Technical corrections have been made to §89.303, Transfer of License, and to §89.306, Reportable Actions After Application. In particular, these changes provide parallel formatting and improve grammar, punctuation, and internal references.

Changes have been made to §89.304 and §89.306 to minimize unnecessary transfer applications and provide additional time for licensees to notify the agency of certain actions. In cases involving changes in organizational form and mergers resulting in different parent entities, the current language in §89.304(a) and (b) requiring a transfer has been revised to instead only require a license amendment and payment of the accompanying fee under §89.310. Similarly, a license amendment and fee requirement

have been added to §89.304(c) when a change in proportionate ownership results in the exact same owners still owning the business (absent an owner crossing the 10% ownership threshold). In addition, throughout §89.304 and §89.306, the deadline for notifying the agency has been extended to 14 days rather than the current 10 days after the date of the event.

Section 89.307 describes how an application for a property tax lender license is processed, including a description of when an application is complete, as well as an explanation of what may occur if an applicant fails to complete an application. Subsection (a) has been revised for this proposal to clarify when a response will be provided by the agency, as follows: "A response to an incomplete application will ordinarily be made within 14 calendar days of receipt stating that the application is incomplete and specifying the information required for acceptance." In addition, technical corrections to improve grammar and citations have been made to §89.307.

Section 89.309, relating to License Status includes technical amendments to improve clarity and grammar. Clarification has been added with regard to license expiration in §89.309(d) in order to better track the statutory provisions found in Texas Finance Code, §351.155.

Changes have been made to other sections requiring that a license amendment be filed in certain situations. Accordingly, these situations have been added to the fee provision concerning license amendments. Thus, §89.310(d) has been amended with the following phrases added before "or relocating an office": "changing the organizational form or proportionate ownership, providing notification of a new parent entity." In subsection (g), the phrase "not to exceed" has been added so that annual fees may be discounted when appropriate. Additionally, technical corrections to §89.310 include changes to improve punctuation and grammar and to remove unnecessary Chapter 351 descriptors.

Proposed new §89.312 outlines the requirement that a property tax lenders' employees who operate as residential mortgage loan originators with respect to property tax loans must obtain a license through the Nationwide Mortgage Licensing System and Registry.

The following sections contain technical corrections: §89.404, Effect of Criminal History Information on Applicants and Licensees; §89.405, Crimes Directly Related to Fitness for License; Mitigating Factors; §89.406, Effect of Revocation, Suspension, or Surrender of License; §89.409, License Reissuance; and §89.602, Fee for Filing Release. Of note, the revisions remove unnecessary language, revise internal regulation references, provide more precise legal citations, provide parallel formatting, and improve grammar and punctuation.

Section 89.504 contains amendments that provide clarification and flexibility concerning the requirements for the disclosure statement that must be delivered to the property owner. In subsection (a)(6), language has been added referencing collection costs in order to better track the statute. In §89.504(c)(2)(A), the new option to deliver the disclosure statement by email with the borrower's consent increases flexibility for lenders and property owners. In addition, subparagraph (F) has been added to §89.504(d)(2) to provide for verification of email delivery.

Section 89.701 and §89.702 provide the standard forms used to transfer a tax lien. An addition has been made to the permissible changes subsection of each rule in order to allow the title of both forms to be relocated to the top of the page. The amendments

are intended to facilitate the electronic recording of these documents.

In §89.702, further flexibility is proposed with the addition of paragraph (3) to §89.702(b) regarding optional information. The new provision allows the following clarifying phrase to be added after the name of the county transferring the tax lien: "and all political subdivisions and districts for which it collects ad valorem taxes." This phrase parallels language used by the Comptroller and simplifies the listing of taxing units.

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

Commissioner Pettijohn also has determined that for each year of the first five years the amendments and new rules are in effect, the public benefit anticipated as a result of the changes from the previously enacted version of these rules will be that the commission's rules will be more easily understood by licensees required to comply with the rules and will be more easily enforced. The general substance of these rules has already been in effect, as the majority of the amendments involve clarification and reorganization. Additionally, the proposed new rules incorporate into rule form the actions that licensees should already be performing in order to fulfill existing statutory requirements. Thus, there is no anticipated cost to persons who are required to comply with the amendments and new rules as proposed. There is no anticipated adverse economic effect on small or micro businesses. There will be no effect on individuals required to comply with the amendments and new rules as proposed.

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

## SUBCHAPTER B. AUTHORIZED ACTIVITIES

### 7 TAC §§89.204, 89.205, 89.207

These amendments and new section are proposed under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §351.007 grants the Finance Commission the authority to ensure compliance with the property tax lender chapter (Chapter 351) and Texas Tax Code, §32.06 and §32.065.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 351, and Texas Tax Code, §32.06 and §32.065.

#### §89.204. *Multiple Licenses.*

(a) Definitions. The words "made," "negotiated," and "collected" as used in Texas Finance Code, §351.052(b) [(Acts 2007, 80th Leg., ch. 1220)] are to be construed as follows.

(1) Made or make [Make]--Loans are "made" by the office or offices where either the credit decision is made or the cash advance is disbursed.

(2) Negotiated or arranged; negotiate or arrange [Arranged; Negotiate or Arrange]--Loans are "negotiated" or "arranged" in the office or offices that received any information preliminary to a credit decision on a prospective borrower or received the executed application, agreement, or other necessary loan documentation.

(3) Collected or collect [Collect]--Loans are "collected" in the office or offices from which attempts are made to collect past-due payments from the borrowers under a loan. The mere receipt and accounting of payments does not constitute "collection."

(b) (No change.)

#### §89.205. *Loans by Mail or Internet.*

(a) Definitions. The words "make," "negotiate," "arrange," and "collect" as used in Texas Finance Code, §351.053(b) [(Acts 2007, 80th Leg., ch. 1220)] are to be construed according to the definitions contained in §89.204(a) of this title (relating to Multiple Licenses).

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

#### §89.207. *Files and Records Required.*

Each licensee must maintain records with respect to each property tax loan made under Texas Finance Code, Chapter 351 and Texas Tax Code, §32.06 and §32.065, and make those records available for examination under Texas Finance Code, §351.008. The records required by this section may be maintained by using either a paper or manual recordkeeping system, electronic recordkeeping system, optically imaged recordkeeping system, or a combination of the preceding types of systems, unless otherwise specified by statute or regulation. If federal law requirements for record retention are different from the provisions contained in this section, the federal law requirements prevail only to the extent of the conflict with the provisions of this section.

(1) Required records. A licensee must maintain the following items:

(A) A loan register, containing the date of the property tax loan, the last name of the borrower, the "total tax lien payment amount" as defined in §89.601 of this title (relating to Fees for Closing Costs), and the loan number;

(B) General business and accounting records, including receipts, documents, canceled checks, or other records for each disbursement made at the borrower's direction or request, or made on his behalf or for his benefit, including foreclosure or legal fees applied to the borrower's account;

(C) Advertising records, including examples of all written and electronic communications soliciting loans (including scripts of radio and television broadcasts, and reproductions of billboards and signs not at the licensed place of business) for a period of not less than one year from the date of use or until the next examination by OCCC staff, in order to show compliance with Texas Finance Code, §341.403;

(D) Adverse action records regarding all applications relating to Texas Finance Code, Chapter 351 property tax loans maintained for 25 months for consumer credit and 12 months for business credit; and

(E) An official correspondence file, including all communications from the OCCC, copies of correspondence and reports addressed to the OCCC, and examination reports issued by the OCCC.

(2) Record of individual borrower's account. A separate record must be maintained for the account of each borrower and the record must contain at least the following information on each loan:

(A) Loan number as recorded on loan register;

(B) Loan schedule and terms itemized to show:

- (i) date of loan;
- (ii) number of installments;
- (iii) due date of installments;
- (iv) amount of each installment; and
- (v) maturity date;

(C) Name, address, and telephone number of borrower;

(D) Names and addresses of co-borrowers, if any;

(E) Legal description of real property;

(F) Principal amount;

(G) Total interest charges, including the scheduled base finance charge, points (i.e., prepaid finance charge), and per diem interest;

(H) Amount of official fees for recording, amending, or continuing a notice of security interest that are collected at the time the loan is made;

(I) Individual payment entries itemized to show:

(i) date payment received (dual postings are acceptable if date of posting is other than date of receipt);

(ii) actual amounts received for application to principal and interest; and

(iii) actual amounts paid for default, deferment, or other authorized charges;

(J) Any refunds of unearned charges that are required in the event a loan is prepaid in full, including records of final entries, and entries to substantiate that refunds due were paid to borrowers, with refund amounts itemized to show interest charges refunded, including the refund of any unearned points;

(K) Collection contact history, including a written or electronic record of each contact made by a licensee with the borrower or any other person and each contact made by the borrower with the licensee, in connection with amounts due, with each record including the date, method of contact, contacted party, person initiating the contact, and a summary of the contact.

(3) Property tax loan transaction file. A licensee must maintain a paper or imaged copy of a property tax loan transaction file for each individual property tax loan or be able to produce the same information within a reasonable amount of time. The property tax loan transaction file must contain documents that show the licensee's compliance with applicable law, including Texas Finance Code, Chapter 351; Texas Tax Code, §32.06 and §32.065, and any applicable state and federal statutes and regulations. If a substantially equivalent electronic record for any of the following documents exists, a paper copy of the record does not have to be included in the property tax loan transaction file if the electronic record can be accessed upon request. The property tax loan transaction file must include copies of the following records or documents, unless otherwise specified:

(A) For all property tax loan transactions:

(i) the promissory note or loan agreement signed by the borrower as required by Texas Tax Code, §32.06(e) and §32.06(e-1);

(ii) the deed of trust, contract, security deed, or other security instrument signed by the borrowers, if any, as provided for by Texas Finance Code, §351.002(2)(C) and Texas Tax Code, §32.06;

(iii) the credit application and any other written or recorded information used in evaluating the application;

(iv) the disclosure statement to property owner as required by Texas Tax Code, §32.06(a-4)(1) and §89.504 of this title (relating to Requirements for Disclosure Statement to Property Owner) and §89.506 of this title (relating to Disclosures), including verification of delivery of the statement;

(v) the sworn document authorizing transfer of tax lien as required by Texas Tax Code, §32.06(a-1) and §89.701 of this title (relating to Sworn Document Authorizing Transfer of Tax Lien), including written documentation to support that the sworn document was sent by certified mail to any mortgage servicer and to each holder of a recorded first lien encumbering the property;

(vi) the certified statement of transfer of tax lien as required by Texas Tax Code, §32.06(b) and §89.702 of this title (relating to Certified Statement of Transfer of Tax Lien), including information verifying the date that the certified statement was received by the property tax lender from the taxing authority;

(vii) a final itemization of the actual fees, points, interest, costs, and charges that were charged at closing and to whom the charges were paid as specified by Texas Tax Code, §32.06(e);

(viii) if available, any tax certificate or other similar record used to determine the status of a tax account for the property subject to the tax lien as required by Texas Tax Code, §32.06(a-2) or authorization by property owner to pay the taxes;

(ix) copies of any other agreements or disclosures signed by the borrower applicable to the property tax loan;

(B) If the property is residential property owned and used by the property owner for personal, family, or household use, the right of rescission as specified by Texas Tax Code, §32.06(d-1) and Truth in Lending (Regulation Z), 12 C.F.R. §226.23;

(C) If requested, copies of any payoff statements issued by the property tax lender or its agent as required by Texas Tax Code, §32.06(f-3) and §89.603 of this title (relating to Fee for Payoff Statement or for Information on Current Balance Owed);

(D) If the property tax loan is delinquent for 90 consecutive days, a notice of delinquency as required by Texas Tax Code, §32.06(f) including evidence that the notice was sent by certified mail;

(E) If received by the property tax lender, a copy of the notice of delinquency to the property tax lender from the mortgage servicer or holder of the first lien as specified by Texas Tax Code, §32.06(f-1) and §89.505 (relating to Requirements for Notice of Delinquency to Transferee) and §89.506 of this title;

(F) If the property tax loan is paid off or otherwise satisfied, a copy of the release of lien as required by Texas Tax Code, §32.06(b);

(G) If fees are assessed, charged, or collected after closing, copies of the receipts, invoices, checks or other records substantiating the fees as authorized by Texas Finance Code, §351.0021 and Texas Tax Code, §32.06(e-1) including the following:

(i) if the property tax lender acquires collateral protection insurance, a copy of the insurance policy or certificate of insurance and the notice required by Texas Finance Code, §307.052; and

(ii) receipts or invoices along with proof of payment for attorney's fees assessed, charged, and collected under Texas Finance Code, §351.0021(a)(4) and §351.0021(a)(5);

(H) Copies of any collection letters or notices sent by the property tax lender or its agent to the borrower;

(I) For a property tax loan where any separate disclosures or notices have been given, copies of the disclosures and notices sent (e.g., a copy of the Truth in Lending statement if the credit was not extended for commercial purposes; a copy of the notice to cosigner in a transaction involving a cosigner; a copy of the privacy notice);

(J) For property tax loan transactions involving a foreclosure or attempted foreclosure, the following records required by Texas Tax Code, Chapters 32 and 33:

(i) For transactions involving judicial foreclosures:

(I) any records pertaining to a judicial foreclosure under Texas Tax Code, §32.06(c)(1) including records from the property tax lender's attorneys, the court, or the borrower or borrower's agent;

(II) the notice to cure the default sent to the property owner and each holder of a recorded first lien on the property as required by Texas Tax Code, §32.06(c-1)(1)(C) and Texas Property Code, §51.002(d) including verification of delivery of the notice;

(III) the notice to intent to accelerate sent to the property owner and each holder of a recorded first lien on the property as required by Texas Tax Code, §32.06(c-1)(1)(C) including verification of delivery of the notice;

(IV) the notice of acceleration sent to the property owner and each holder of a recorded first lien on the property as required by Texas Tax Code, §32.06(c-1)(1)(C);

(V) any written documentation that confirms that the borrower has deferred their property tax on the property subject to the property tax loan as permitted under Texas Tax Code, §33.06, such as the Tax Deferral Affidavit for 65 or Over or Disabled Homeowner, Form 50-126 filed with the appraisal district, attorney, or court;

(VI) records relating to the distribution of excess proceeds as required by Texas Tax Code, §34.021;

(VII) the foreclosure deed upon sale of the property;

(VIII) if the property is purchased at the foreclosure sale by the property tax lender, copies of receipts or invoices substantiating any amounts reasonably spent by the purchaser in connection with the property as costs within the meaning of Texas Tax Code, §34.21(g);

(ii) For transactions involving non-judicial foreclosures:

(I) the notice to cure the default sent to the property owner and each holder of a recorded first lien on the property as required by Texas Tax Code, §32.06(c-1)(1)(C) and Texas Property Code, §51.002(d) including verification of delivery of the notice;

(II) the notice to intent to accelerate sent to the property owner and each holder of a recorded first lien on the property as required by Texas Tax Code, §32.06(c-1)(1)(C) including verification of delivery of the notice;

(III) the notice of acceleration sent to the property owner and each holder of a recorded first lien on the property as required by Texas Tax Code, §32.06(c-1)(1)(C);

(IV) the notice provided to the recorded preexisting lienholder, at least, 60 days before the date of the proposed foreclosure as required by Texas Tax Code, §32.06(c-1)(2);

(V) any written documentation that confirms that the borrower has deferred their property tax on the property subject to the property tax loan as permitted under Texas Tax Code, §33.06, such as the Tax Deferral Affidavit for 65 or Over or Disabled Homeowner, Form 50-126 filed with the appraisal district, attorney, or court;

(VI) the Application for Order for Foreclosure under Texas Rules of Civil Procedure, Rule 736.1;

(VII) copies of any returns of citations issued under Texas Rules of Civil Procedure, Rule 736.3, showing the date and time the citation was placed in the custody of the U.S. Postal Service;

(VIII) copies of any responses filed contesting the Application for Order for Foreclosure as described in Texas Rules of Civil Procedure, Rule 736.5;

(IX) the motion and proposed order to obtain a default order, if any, under Texas Rules of Civil Procedure, Rule 736.7;

(X) the order granting or denying the application for foreclosure as specified under Texas Rules of Civil Procedure, Rule 736.8;

(XI) the notice of sale as required by Texas Property Code, §51.002(b) including verification of delivery of the notice;

(XII) records relating to the distribution of excess proceeds as required by Texas Tax Code, §34.021;

(XIII) the foreclosure deed upon sale of the property;

(XIV) if the property is purchased at the foreclosure sale by the property tax lender, copies of receipts or invoices substantiating any amounts reasonably spent by the purchaser in connection with the property as costs within the meaning of Texas Tax Code, §34.21(g);

(K) Any other documents necessary to establish the licensee's compliance with the law.

(4) Corrective entries to the borrower's account record, if justified, including the reason and supporting documentation for each corrective entry and any supporting documentation justifying the corrective entry, maintained under the following documentation guidelines:

(A) Dual recording in collection contact history permissible. The reason for the corrective entry may also be recorded in the collection contact history of the borrower's account record.

(B) Supporting documentation. The supporting documentation justifying the corrective entry may be maintained in the individual borrower's account file or properly stored and indexed in a licensee's optically imaged recordkeeping system.

(C) Manual recordkeeping systems. If a licensee manually maintains the borrower's account record, the licensee must properly correct an improper entry by drawing a single line through the improper entry and entering the correct information above or below the improper entry. No erasures or other obliterations may be made on the payments received or collection contact history section of the manual borrower's account record.

(5) Record of loans in litigation and foreclosure.

(A) An index of each foreclosure as it occurs and each legal action by or against the licensee as it is initiated must be recorded. The index must show the borrower's name, account number, and date of action.

(B) All loan records, correspondence, and any other information pertinent to the litigation or foreclosure must be maintained in the borrower's account folders or files.

(6) Disaster recovery plan. A property tax lender must maintain a sufficient disaster recovery plan to ensure that property tax loan transaction information is not destroyed, lost, or damaged.

(7) Retention and availability of records. All books and records required by this subsection must be available for inspection at any time by Office of Consumer Credit Commissioner staff, and must be retained for a period of four years from the date of the contract, two years from the date of the final entry made thereon by the licensee, whichever is later, or a different period of time if required by federal law. The records required by this subsection must be available or accessible at an office in the state designated by the licensee except when the property tax loan transactions are transferred under an agreement which gives the commissioner access to the documents. Documents may be maintained out of state if the licensee has in writing acknowledged responsibility for either making the records available within the state for examination or by acknowledging responsibility for additional examination costs associated with examinations conducted out of state.

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 April 20, 2012.

TRD-201201998

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Earliest possible date of adoption: June 3, 2012

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



## SUBCHAPTER C. APPLICATION PROCEDURES

### 7 TAC §§89.301 - 89.304, 89.306 - 89.310, 89.312

These amendments and new section are proposed under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §351.007 grants the Finance Commission the authority to ensure compliance with the property tax lender chapter (Chapter 351) and Texas Tax Code, §32.06 and §32.065.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 351, and Texas Tax Code, §32.06 and §32.065.

#### §89.301. Definitions.

Words and terms used in this chapter that are defined in Texas Finance Code, Chapter 351[; ~~Property Tax Lenders, known as the "Property Tax Lender License Act" (Acts 2007, 80th Leg., ch. 1220);~~] have the same meanings as defined in Chapter 351. The following words and terms, when used in this chapter, will [sh#] have the following meanings, unless the context clearly indicates otherwise.

(1) (No change.)

(2) Principal party--An adult individual with a substantial relationship to the proposed lending business of the applicant. The following individuals are [~~considered to be~~] principal parties:

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

(C) officers of privately held [privately-held] corporations, to include the chief executive officer or president, the chief operating officer or vice president of operations, the chief financial officer or treasurer, and those with substantial responsibility for lending operations or compliance with Texas Finance Code, Chapter 351;

(D) directors of privately held [privately-held] corporations;

(E) individuals associated with publicly held [publicly-held] corporations designated by the applicant as follows:

(i) officers as provided by subparagraph (C) of this paragraph (as if the corporation was privately held [privately-held]); or

(ii) three officers or similar employees with significant involvement in the corporation's activities governed by Texas Finance Code, Chapter 351. One of the persons designated must [sh#] be responsible for assembling and providing the information required on behalf of the applicant and must [sh#] sign the application for the applicant;

(F) voting members of a limited liability company [corporation];

(G) (No change.)

(H) individuals designated as [a] principal parties [~~party~~] where necessary to fairly assess the applicant's financial responsibility, experience, character, general fitness, and sufficiency to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly as required by the commissioner.

#### §89.302. Filing of New Application.

An application for issuance of a new property tax lender license must be submitted in a format prescribed by the commissioner at the date of filing and in accordance with the commissioner's instructions. The commissioner may accept the use of prescribed alternative formats in order to accept approved electronic submissions. Appropriate fees must be filed with the application, and the application must include the following:

(1) Required application information. All questions must be answered.

(A) Application for license [Property Tax lender License].

(i) Location information. A physical street address must be listed for the applicant's proposed lending address, or if the applicant will have no such location, a statement to that effect must be provided. For applicants with a proposed location in Texas, a [A] post office box or a mail box location at a private mail-receiving service generally may not be used. If the address has not yet been determined or if the application is for an inactive license, then the application must so indicate.

(ii) (No change.)

(iii) Registered agent. The registered agent must be provided by each applicant. The registered agent is the person or entity to whom any legal notice may be delivered. The agent must be a Texas resident and list an address for legal service. If the registered agent is a natural person, the address must be a different address than the licensed location address. If the applicant is a corporation or a limited liability company, the registered agent should be the one on file with the Office of the Texas Secretary of State. If the registered agent is not the same as the agent filed with the Office of the Texas Secretary of State, then the

applicant must submit a certification from the secretary of the company identifying the registered agent.

~~{(iii) Signature(s). Electronic signatures will be accepted in a manner approved by the commissioner.}~~

~~{(t) If the applicant is a proprietor, each owner must sign.}~~

~~{(H) If the applicant is a partnership, each general partner must sign.}~~

~~{(HH) If the applicant is a corporation, an authorized officer must sign.}~~

~~{(HV) If the applicant is a limited liability company, an authorized member or manager must sign.}~~

~~{(I) If the applicant is a trust or estate, the trustee or executor, as appropriate, must sign.}~~

~~{(iv) [(B)] [Disclosure of] Owners and principal parties [Principal Parties].}~~

~~(I) [(i)] Proprietorships. The applicant must disclose who owns and who is responsible for operating the business. All community property interests [interest] must also be disclosed. If the business interest is owned by a married individual as separate property, documentation establishing or confirming separate property status must be provided.~~

~~(II) [(ii)] General partnerships. Each partner must be listed and the percentage of ownership stated. If a general partner is wholly or partially owned by a legal entity and not a natural person, a narrative or diagram must be included that lists the names and titles of all meeting the definition of "managerial official," as contained in Texas Business Organizations Code, §1.002, and a description of the ownership of each legal entity must be provided. General partnerships that register as limited liability partnerships should provide the same information as that required for general partnerships.~~

~~(III) [(iii)] Limited partnerships. Each partner, general and limited, fulfilling the requirements of items (-a-) - (-c-) of this subclause must be listed and the percentage of ownership stated.~~

~~(-a-) [(H)] General partners. The applicant should provide the complete ownership, regardless of percentage owned, for all general partners. If a general partner is wholly or partially owned by a legal entity and not a natural person, a narrative or diagram must be included that lists the names and titles of all meeting the definition of "managerial official," as contained in Texas Business Organizations Code, §1.002, and a description of the ownership of each legal entity must be provided.~~

~~(-b-) [(H)] Limited partners. The applicant should provide a complete list of all limited partners owning 10% [5%] or more of the partnership.~~

~~(-c-) [(HH)] Limited partnerships that register as limited liability partnerships. The applicant should provide the same information as that required for limited partnerships.~~

~~(IV) [(iv)] Corporations. Each officer and director must be named. Each shareholder holding 10% [5%] or more of the voting stock must be named if the corporation is privately held [privately held]. If a parent corporation is the sole or part owner of the proposed business, a narrative or diagram must be included that describes each level of ownership of 10% [5%] or greater.~~

~~(V) [(v)] Limited liability companies. Each "manager," "officer," and "member" owning 10% [5%] or more of the company, as those terms are defined in Texas Business Organizations Code, §1.002, and each agent owning 10% [5%] or more of the~~

company must be listed. If a member is a legal entity and not a natural person, a narrative or diagram must be included that describes each level of ownership of 10% [5%] or greater.

~~(VI) [(vi)] Trusts or estates. Each trustee or executor, as appropriate, must be listed.~~

~~(VII) [(vii)] All entity types. If a parent entity is a different type of legal business entity than the applicant, the parent entity's owners and principal parties should be disclosed according to the parent's entity type.~~

~~(B) [(C)] Disclosure questions [Application Questionnaire]. All applicable questions must be answered. Questions requiring a "yes" answer must be accompanied by an explanatory statement and any appropriate documentation requested.~~

~~{(D) Appointment of Statutory Agent and Consent to Service. The appointment of statutory agent and consent to service must be provided by each applicant. The statutory agent is the person or entity to whom any legal notice may be delivered. The agent must be a Texas resident and list an address for legal service. If the statutory agent is a natural person, the address must be a physical residential address. If the applicant is a corporation or a limited liability company, the statutory agent should be the registered agent on file with the Texas Secretary of State. If the statutory agent is not the same as the registered agent filed with the Secretary of State, then the applicant must submit certified minutes appointing the new agent.}~~

#### (C) Personal information.

~~(i) [(E)] Personal affidavit [Affidavit]. Each individual meeting the definition of "principal party" as defined in §89.301 of this title (relating to Definitions) or who is a person responsible for day-to-day operations must provide a personal affidavit. All requested information must be provided.~~

~~(ii) [(F)] Personal questionnaire [Questionnaire]. Each individual meeting the definition of "principal party" as defined in §89.301 of this title or who is a person responsible for day-to-day operations must provide a personal questionnaire. Each question must be answered. If any question, except question 1, is answered "yes," an explanation must be provided.~~

~~(iii) [(G)] Employment history [History]. Each individual meeting the definition of "principal party" as defined in §89.301 of this title or who is a person responsible for day-to-day operations must provide an employment history. Each principal party should provide a continuous 10-year history, [with no gaps,] accounting for time spent as a student, unemployed, or retired. The employment history must also include the individual's association with the entity applying for the license.~~

#### (D) Additional requirements.

~~(i) [(H)] Statement of experience [Experience]. Each applicant should provide a statement setting forth the details of the applicant's prior experience in the lending or credit granting business. If the applicant or its principal parties do not have significant experience in the same type of credit business as planned for the prospective licensee, the applicant must provide a written statement explaining the applicant's relevant business experience or education, why the commissioner should find that the applicant has the requisite experience, and how the applicant plans to obtain the necessary knowledge to operate lawfully and fairly.~~

~~(ii) [(H)] Business operating plan [Operation Plan]. Each applicant must provide a brief narrative explaining the type of lending operation that is planned. This narrative should discuss each of the following topics:~~

(I) [(i)] the source of customers;  
(II) [(ii)] the purpose(s) of loans;  
(III) [(iii)] the size of loans;  
(IV) [(iv)] the source of working capital for planned operations;

(V) [(v)] whether the applicant will only be arranging or negotiating loans for another lender or financing entity;

(VI) [(vi)] if the applicant will only be arranging or negotiating loans for another lender or financing entity, the lender must also provide:

(-a-) [(H)] a list of the lenders for whom the applicant will be arranging or negotiating loans;

(-b-) [(H)] whether the loans will be collected at the location where the loans are made; and [ø]

(-c-) [(HH)] if the loans will not be collected at the location where the loans are made, the identification of the person or firm that will be servicing the loans, including the location at which the loans will be serviced, and a detailed description of the process to be utilized in collections.

(iii) Statement of records. Each applicant must provide a statement of where records of Texas transactions will be maintained. If these records will be maintained at a location outside of Texas, the applicant must acknowledge responsibility for the travel cost associated with examinations in addition to the assessment fees or agree to make all records available for examination in Texas.

(E) Consent form. Each applicant must submit a consent form signed by an authorized individual. Electronic signatures will be accepted in a manner approved by the commissioner. The following are authorized individuals:

(i) If the applicant is a proprietor, each owner must sign.

(ii) If the applicant is a partnership, each general partner must sign.

(iii) If the applicant is a corporation, an authorized officer must sign.

(iv) If the applicant is a limited liability company, an authorized member or manager must sign.

(v) If the applicant is a trust or estate, the trustee or executor, as appropriate, must sign.

[(J) Financial Statement and Supporting Financial Information.]

(i) All entity types. The financial statement must be dated no earlier than 60 days prior to the date of application. Applicants may also submit audited financial statements dated within one year prior to the application date in lieu of completing the Supporting Financial Information. All financial statements must be certified as true, correct, and complete.]

(ii) Sole proprietorships. Sole proprietors must complete all sections of the Personal Financial Statement and the Supporting Financial Information, or provide a personal financial statement that contains all of the same information requested by the Personal Financial Statement and the Supporting Financial Information. The Personal Financial Statement and Supporting Financial Information must be as of the same date.]

(iii) Partnerships. A balance sheet for the partnership itself as well as each general partner must be submitted. In addition,

the information requested in the Supporting Financial Information must be submitted for the partnership itself and each general partner. All of the balance sheets and Supporting Financial Information documents for the partnership and all general partners must be as of the same date.]

(iv) Corporations and limited liability companies. Corporations and limited liability companies must file a balance sheet that complies with generally accepted accounting principles (GAAP). The information requested in the Supporting Financial Information must be submitted. The balance sheet and Supporting Financial Information must be as of the same date. Financial statements are generally not required of related parties, but may be required by the commissioner if the commissioner believes they are relevant. The financial information for the corporation or limited liability company applicant should contain no personal financial information.]

(v) Trusts and estates. Trusts and estates must file a balance sheet that complies with generally accepted accounting principles (GAAP). The information requested in the Supporting Financial Information must be submitted. The balance sheet and Supporting Financial Information must be as of the same date. Financial statements are generally not required of related parties, but may be required by the commissioner if the commissioner believes they are relevant. The financial information for the trust or estate applicant should contain no personal financial information.]

[(K) Assumed Name Certificates. For any applicant that does business under an "assumed name" as that term is defined in Texas Business & Commerce Code, §36.02(7), as amended, an Assumed Name Certificate must be filed as provided in this subparagraph.]

(i) Unincorporated applicants. Unincorporated applicants using or planning to use an assumed name must file an assumed name certificate with the county clerk of the county where the proposed business is located in compliance with Texas Business & Commerce Code, §36.02(7), as amended. An applicant must provide a copy of the assumed name certificate that shows the filing stamp of the county clerk or, alternatively, a certified copy.]

(ii) Incorporated applicants. Incorporated applicants using or planning to use an assumed name must file an assumed name certificate in compliance with Texas Business & Commerce Code, §36.02(7), as amended. Evidence of the filing bearing the filing stamp of the Texas Secretary of State must be submitted or, alternatively, a certified copy.]

(2) Other required filings.

(A) Fingerprints.

(i) (No change.)

(ii) For limited partnerships, if the owners and principal parties [Disclosure of Owners and Principal Parties] under paragraph (1)(A)(iv)(III)(-a-) [(1)(B)(iii)(H)] of this section does not produce a natural person, the applicant must provide a complete set of legible fingerprints for individuals who are associated with the general partner as principal parties.

(iii) (No change.)

(iv) For individuals who have previously been licensed by the OCCC and principal parties of entities currently licensed, fingerprints are generally not required if the fingerprints are on record with the OCCC, are less than 10 years old, and have been processed by both the Texas Department of Public Safety and the Federal Bureau of Investigation. Upon request, individuals and principal parties previously licensed by the OCCC may be required



to submit a new set of fingerprints in order to complete the OCCC's records.

(v) For individuals who have previously submitted fingerprints to another state agency (e.g., Texas Department of Savings and Mortgage Lending), fingerprints are still required to be submitted to the OCCC, as per Texas Finance Code, §14.152. Fingerprints cannot be disclosed to others, except as authorized by Texas Government Code, §560.002[; as amended].

(B) (No change.)

(C) Entity documents.

(i) (No change.)

(ii) Corporations. A corporate applicant, domestic or foreign, must provide the following documents:

(I) a complete copy of the certificate of formation or articles of incorporation, with [articles of incorporation and] any amendments;

~~[(II) a copy of the relevant portions of the bylaws addressing the required number of directors and the required officer positions for the corporation;]~~

(II) [(III)] [a copy of the minutes of corporate meetings that record the election of all current officers and directors as listed on the Disclosure of Owners and Principal Parties; or] a certification from the secretary of the corporation identifying the current officers and directors as listed in the owners and principal parties section of the application for license form [on the Disclosure of Owners and Principal Parties];

(III) [(IV)] if the registered [statutory] agent is not the same as the one on file [registered agent filed] with the Office of the Texas Secretary of State.[:]

~~[(a-) a copy of the minutes of corporate meetings that record the election of the statutory agent; or]~~

~~[(b-)] a certification from the secretary of the corporation identifying the registered [statutory] agent; [and]~~

(IV) if requested, a copy of the relevant portions of the bylaws addressing the required number of directors and the required officer positions for the corporation;

(V) if requested, a copy of the minutes of corporate meetings that record the election of all current officers and directors as listed in the owners and principal parties section of the application for license form;

(VI) [(V)] if requested, a certificate of good standing from the Texas Comptroller of Public Accounts.

(iii) Publicly held [Publicly-held] corporations. In addition to the items required for corporations, a publicly held [publicly-held] must file the most recent 10K or 10Q for the applicant or for the parent company.

(iv) Limited liability companies. A limited liability company applicant, domestic or foreign, must provide the following documents:

(I) (No change.)

~~[(II) a copy of the relevant portions of the operating agreement or regulations addressing responsibility for operations;]~~

(II) [(III)] [a copy of the minutes of company meetings that record the election of all current officers and directors as listed on the Disclosure of Owners and Principal Parties; or] a certification from the secretary of the company identifying the current

officers and directors as listed in the owners and principal parties section of the application for license form [on the Disclosure of Owners and Principal Parties];

(III) [(IV)] if the registered [statutory] agent is not the same as the one on file [registered agent filed] with the Office of the Texas Secretary of State.[:]

~~[(a-) a copy of the minutes of company meetings that record the election of the statutory agent; or]~~

~~[(b-)] a certification from the secretary of the company identifying the registered [statutory] agent; [and]~~

(IV) if requested, a copy of the relevant portions of the operating agreement or regulations addressing responsibility for operations;

(V) if requested, a copy of the minutes of company meetings that record the election of all current officers and directors as listed in the owners and principal parties section of the application for license form;

(VI) [(V)] if requested, a certificate of good standing from the Texas Comptroller of Public Accounts.

(v) - (vi) (No change.)

(vii) Foreign entities. In addition to the items required by this section, a foreign entity must provide[:]

~~[(I)] a certificate of authority to do business in Texas, if applicable.[:] and]~~

~~[(II) a statement of where records of Texas loan transactions will be kept. If these records will be maintained at a location outside of Texas, the applicant must acknowledge responsibility for the travel costs associated with examinations in addition to the usual assessment fee or agree to make all the records available for examination in Texas.]~~

(viii) (No change.)

(D) Financial statement and supporting financial information.

(i) All entity types. The financial statement must be dated no earlier than 90 days prior to the date of application. Applicants may also submit audited financial statements dated within one year prior to the application date in lieu of completing the supporting financial information. All financial statements must be certified as true, correct, and complete, and must comply with generally accepted accounting principles (GAAP).

(ii) Sole proprietorships. Sole proprietors must complete all sections of the personal financial statement and the supporting financial information, or provide a personal financial statement that contains all of the same information requested by the personal financial statement and the supporting financial information. The personal financial statement and supporting financial information must be as of the same date.

(iii) Partnerships. A balance sheet for the partnership itself as well as each general partner must be submitted. In addition, the information requested in the supporting financial information must be submitted for the partnership itself and each general partner. All of the balance sheets and supporting financial information documents for the partnership and all general partners must be as of the same date.

(iv) Corporations and limited liability companies. Corporations and limited liability companies must file a balance sheet. The information requested in the supporting financial information must

be submitted. The balance sheet and supporting financial information must be as of the same date. Financial statements are generally not required of related parties, but may be required if the commissioner believes they are relevant. The financial information for the corporate or limited liability company applicant should contain no personal financial information.

(v) Trusts and estates. Trusts and estates must file a balance sheet. The information requested in the supporting financial information must be submitted. The balance sheet and supporting financial information must be as of the same date. Financial statements are generally not required of related parties, but may be required if the commissioner believes they are relevant. The financial information for the trust or estate applicant should contain no personal financial information.

(E) Assumed name certificates. For any applicant that does business under an "assumed name" as that term is defined in Texas Business and Commerce Code, §71.002, an assumed name certificate must be filed as provided in this subparagraph.

(i) Unincorporated applicants. Unincorporated applicants using or planning to use an assumed name must file an assumed name certificate with the county clerk of the county where the proposed business is located in compliance with Texas Business and Commerce Code, Chapter 71, as amended. An applicant must provide a copy of the assumed name certificate that shows the filing stamp of the county clerk or, alternatively, a certified copy.

(ii) Incorporated applicants. Incorporated applicants using or planning to use an assumed name must file an assumed name certificate in compliance with Texas Business and Commerce Code, Chapter 71, as amended. Evidence of the filing bearing the filing stamp of the Office of the Texas Secretary of State must be submitted or, alternatively, a certified copy.

(E) ~~(D)~~ Bond. The commissioner may require a bond under Texas Finance Code, §351.102 [~~(Acts 2007, 80th Leg., ch. 1220),~~] when the commissioner finds that it would serve the public interest. When a bond is required, the commissioner will ~~[shall]~~ give written notice to the applicant. Should a bond not be submitted within 40 calendar days of the date of the commissioner's notice, any pending application may be denied.

(3) Subsequent applications (branch offices). If the applicant is currently licensed and filing an application for a new office, the applicant must provide the information that is unique to the new location, including the application for license, disclosure questions, owners and principal parties, and a new financial statement [~~Application for Property Tax lender License, Application Questionnaire, Disclosure of Owners and Principal Parties, and a new Financial Statement~~] as provided in paragraph ~~(2)(D)~~ ~~[(4)(A)]~~ of this section. The person responsible for the day-to-day operations of the applicant's proposed new location must file a personal affidavit, personal questionnaire, and employment history [~~Personal Affidavit, Personal Questionnaire, and Employment History~~], if not previously filed. Other information required by this section need not be filed if the information on file with the OCCC is current and valid.

### §89.303. *Transfer of License.*

(a) Definition. As used in this chapter, a "transfer of ownership" does not include a change in proportionate ownership as defined in §89.304 of this title (relating to Change in Form or Proportionate Ownership). Transfer of ownership includes the following:

- (1) - (3) (No change.)
- (4) any change in ownership of a licensed corporation:

(A) in which a new stockholder obtains 10% or more of the outstanding voting stock in a privately held [~~privately-held~~] corporation;

(B) in which an existing stockholder owning 10% or more relinquishes that owner's entire interest in a privately held [~~privately-held~~] corporation;

(C) any purchase or acquisition of control of 51% or more of a company which is the parent or controlling stockholder of a licensed privately held [~~privately-held~~] corporation; or

(D) any stock ownership changes that result in a change of control (i.e., 51% or more) for a licensed publicly held [~~publicly-held~~] corporation;

(5) any change in the membership interest of a licensed limited liability company:

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

(C) in which a purchase or acquisition of control of 51% or more of any company that [~~which~~] is the parent or controlling member of a licensed limited liability company occurs;

(6) (No change.)

(7) any purchase or acquisition of control of a licensed entity whereby a substantial change in management or control of the business occurs, despite not fulfilling the requirements of paragraphs (1) - (6) of this subsection [~~subsection (a)(1) - (6) of this section~~], and the commissioner has reason to believe that proper regulation of the licensee dictates that a transfer must be processed.

(b) (No change.)

(c) Filing requirements. An application for transfer of a property tax lender license must be submitted in a format prescribed by the commissioner at the date of filing and in accordance with the rules and instructions. The commissioner may accept the use of prescribed alternative formats in order to accept approved electronic submissions. Appropriate fees must be filed with the transfer application, and the application for transfer must include the following:

(1) Required application information.

(A) New licensees filing transfers. The information required for new license applications under §89.302 of this title (relating to Filing of New Application) must be submitted by new licensees filing transfers. The instructions in §89.302 of this title are applicable to these filings. In addition, evidence of transfer of ownership as described in paragraph (2) of this subsection [~~subsection (e)(2) of this section~~] must also be submitted.

(B) Existing licensees filing transfers. If the applicant is currently licensed and filing a transfer, the applicant must provide the information that is unique to the transfer event, including the application for license, disclosure questions, owners and principal parties, and a new financial statement [~~Application for Property Tax lender License, Application Questionnaire, Disclosure of Owners and Principal Parties, and a new Financial Statement~~], as provided in [~~paragraph (1)(A)]~~ of §89.302 of this title. The instructions in §89.302 of this title are applicable to these filings. The person responsible for the day-to-day operations listed on the application for license [~~Application for Property Tax lender License~~] for the transfer event must file a personal affidavit, personal questionnaire, and employment history [~~Personal Affidavit, Personal Questionnaire, and Employment History~~], if not previously filed. Other information required by §89.302 of this title need not be filed if the information on file with the OCCC is current and valid. In addition, evidence of transfer of

ownership as described in paragraph (2) of this subsection [subsection (e)(2) of this section] must also be submitted.

(2) (No change.)

(d) Permission to operate. No business under the license may [shall] be conducted by any license transferee until the application has been received, all applicable fees have been paid, and a request for permission to operate has been approved. In order to be considered, a permission to operate must be in writing. Additionally, the transferor must grant the license transferee the authority to operate under the transferor's license pending approval of the license transferee's new license application. The transferor must accept full responsibility to any customer and to the OCCC for the licensed business for any acts of the license transferee in connection with the operation of the lending business. The permission to operate must be submitted before the license transferee takes control of the licensed operation. The agreement must [shall] set a definite period of time for the license transferee to operate under the transferor's license. A request for permission to operate may be denied even if it contains all of the required information. Two companies may not simultaneously operate under a single license. If the OCCC grants a permission to operate, the transferor must cease operating under the authority of the license.

(e) (No change.)

§89.304. *Change in Form or Proportionate Ownership.*

(a) Organizational form. When any licensee or parent of a licensee desires to change the organizational form of its business (e.g., from corporation to limited partnership), the licensee must advise the commissioner in writing of the change within 14 [10] calendar days by filing a license amendment and paying the required fees [the appropriate transfer application documents] as provided in §89.310 [§89.303] of this title (relating to Fees [Transfer of License]). In addition, the licensee must submit a copy of the relevant portions of the organizational document for the new entity (e.g., articles of conversion and partnership agreement) addressing the ownership and management of the new entity.

(b) Merger. A merger of a licensee is a change of ownership that results in a new or different surviving entity and requires the filing of a transfer application pursuant to §89.303 of this title (relating to Transfer of License). If the [A] merger of the parent entity of a licensee that leads to the creation of a new entity or results in a different surviving parent entity, the licensee must advise the commissioner of the change in writing within 14 calendar days after the change, by filing a license amendment and paying the required fees as provided in §89.310 [requires a transfer application pursuant to §89.303] of this title. Mergers or transfers of other entities with a beneficial interest beyond the parent entity level only require notification within 14 [10] calendar days.

(c) Proportionate ownership.

(1) A change in proportionate ownership that results in the exact same owners still owning the business, and does not meet the requirements described in paragraph (2) of this subsection, does not require a transfer. Such a proportionate change in ownership does not require the filing of a transfer application, but does require notification when the cumulative ownership change to a single entity or individual amounts to 10% [5%] or greater. No later than 14 [10] calendar days following the actual change, the licensee is required to notify the commissioner in writing of the change in proportionate ownership by filing a license amendment and paying the required fees as provided in §89.310 of this title. This subsection does not apply to a publicly held [publicly-held] corporation that has filed with the OCCC the most recent 10K or 10Q filing of the licensee or the publicly held

[publicly-held] parent corporation, although a transfer application may be required under §89.303 of this title.

(2) (No change.)

§89.306. *Reportable Actions After Application.*

Any action, fact, or information that would require a materially different answer than that given in the original license application and that [which] relates to the qualifications for license, must be reported within 14 [10] calendar days after the person has knowledge of the action, fact or information.

§89.307. *Processing of Application.*

(a) Initial review. A response to an incomplete application will ordinarily be made within 14 calendar days of receipt stating that [the application is complete and accepted for filing or stating that] the application is incomplete and specifying the information required for acceptance.

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

(d) Hearing. Whenever an application is denied, the affected applicant has 30 calendar days from the date the application was denied to request in writing a hearing to contest the denial. This hearing will [shall] be conducted pursuant to the Administrative Procedure Act, Texas Government Code, Chapter 2001, and Chapter 9 [§9.1 et seq.] of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings), before an administrative law judge who will recommend a decision to the commissioner. The commissioner will then issue a final decision after review of the recommended decision.

(e) Denial. If an application has been denied, the assessment fee will [shall] be refunded to the applicant. The investigation fee and the fingerprint processing fee in §89.310 of this title (relating to Fees) will [shall] be forfeited.

(f) Processing time.

(1) (No change.)

(2) When a hearing is requested following an initial license application denial, the hearing will [shall] be held within 60 calendar days after a request for a hearing is made unless the parties agree to an extension of time. A final decision approving or denying the license application will [shall] be made after receipt of the proposal for decision from the administrative law judge.

(3) (No change.)

§89.308. *Relocation of Licensed Offices.*

(a) Notice to commissioner. A licensee may move the licensed office from the licensed location to any other location by paying the appropriate fees and giving notice of intended relocation to the commissioner not less than 30 calendar days prior to the anticipated moving date. Notification must be provided by filing a license amendment [filed on the Amendment to Property Tax lender License] or an approved electronic submission as prescribed by the commissioner. The notice must include the contemplated new address of the licensed office, the approximate date of relocation, a copy of the notice to debtors, and the applicable fee as outlined in §89.310 of this title (relating to Fees).

(b) Notice to debtors. Written notice of a relocation of an office must be mailed to all debtors of record at least five calendar days prior to the date of relocation. Any licensee failing to give the required notice must [shall] waive all default charges on payments coming due from the date of relocation to 15 calendar days subsequent to the mailing of notices to debtors. Notices must [shall] identify the licensee,

provide both old and new addresses, provide both old and new telephone numbers, and state the date relocation is effective. The notice to debtors can be waived or modified by the commissioner when it is in the public interest. A request for waiver or modification must be submitted in writing for approval. The commissioner may approve notification to debtors by signs in lieu of notification by mail, if in the commissioner's opinion, no debtors will be adversely affected.

§89.309. *License Status.*

(a) Inactivation of active license. A licensee may cease operating under a property tax lender license and choose to inactivate the license. A license may be inactivated by giving notice of the cessation of operations not less than 30 calendar days prior to the anticipated inactivation date. Notification must be provided by filing a license amendment [~~filed on the Amendment to Property Tax Lender License~~] or an approved electronic submission as prescribed by the commissioner. The notice must include the new mailing address for the license, the effective date of the inactivation, and the fee for amending the license. A licensee must continue to pay the yearly renewal fees for an inactive license as outlined in §89.310 of this title (relating to Fees), or the license will expire.

(b) Activation of inactive license. A licensee may activate an inactive license by giving notice of the intended activation not less than 30 calendar days prior to the anticipated activation date. Notification must be provided by filing a license amendment [~~filed on the Amendment to Property Tax Lender License~~] or an approved electronic submission as prescribed by the commissioner. The notice must include the contemplated new address of the licensed office, the approximate date of activation, and the fee for amending the license as outlined in §89.310 of this title.

(c) (No change.)

(d) Expiration. A license will expire on the later of December 31 of each year or the 16th day after the written notice of delinquency is given unless the annual assessment fees have been [a fee is] paid by the due date for license renewal. A licensee that pays the annual assessment fees [fee] will automatically be renewed even though a new license may not be issued.

§89.310. *Fees.*

(a) New licenses.

(1) Investigation fees. A \$200 nonrefundable [~~non-refundable~~] investigation fee is assessed each time an application for a new license is filed.

(2) (No change.)

(b) License transfers. An applicant must pay a \$200 nonrefundable [~~non-refundable~~] investigation fee for each license transfer.

(c) Fingerprint processing. A nonrefundable [~~non-refundable~~] fee as prescribed by the commissioner will be charged to recover the [~~to~~] costs of investigating each principal party's fingerprint record.

(d) License amendments. A fee of \$25 must be paid each time a licensee amends a license by inactivating a license, activating an inactive license, changing the assumed name of the licensee, changing the organizational form or proportionate ownership, providing notification of a new parent entity, or relocating an office.

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

(g) Annual renewal and assessment fees.

(1) An annual assessment fee is required for each active license consisting of:

(A) a fixed fee not to exceed [of] \$600; and

(B) a volume fee based upon the lending activity conducted and the volume of business that consists of an amount not to exceed [that is] \$0.03 per each \$1,000 advanced for license holders whose regulated operations occur within Texas Finance Code, Chapter 351 [(Acts 2007, 80th Leg., ch. 1220),] in accordance with the most recent annual report filing required by Texas Finance Code, §351.164 [(Acts 2007, 80th Leg., ch. 1220)].

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

§89.312. *Property Tax Employee License Under Nationwide Mortgage Licensing System and Registry.*

As required by Texas Finance Code, §351.0515, a property tax lender's individual employees who, for actual or expected compensation or gain, act as residential mortgage loan originators in the making, transacting, or negotiating of a property tax loan for a principal dwelling, are required to obtain a license through the Nationwide Mortgage Licensing System and Registry.

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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Leslie L. Pettijohn

Commissioner

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## SUBCHAPTER D. LICENSE

### 7 TAC §§89.405 - 89.407, 89.409

These amendments are proposed under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §351.007 grants the Finance Commission the authority to ensure compliance with the property tax lender chapter (Chapter 351) and Texas Tax Code, §32.06 and §32.065.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 351, and Texas Tax Code, §32.06 and §32.065.

§89.405. *Effect of Criminal History Information on Applicants and Licensees.*

(a) Criminal history information. Upon submission of an application for a license, a principal party of an applicant for a license is investigated by the commissioner. In submitting an application for a license, a principal party of an applicant for a license is required to provide fingerprint information to the commissioner. Fingerprint information is forwarded to the Texas Department of Public Safety and to the Federal Bureau of Investigation to obtain criminal history record information. The commissioner will continue to receive information on new criminal activity reported after the fingerprints have been processed. In the case of a new application or if the commissioner finds a fact or condition that existed or, had it existed the license would have been refused, the commissioner may use the criminal history record information obtained from law enforcement agencies, or other criminal history information provided by the applicant or other sources, to issue

a denial or initiate an enforcement action. Criminal history information relates to the OCCC's assessment of good moral character, and the information gathered is relevant to the licensing or enforcement action decision as described in subsections (b) - (d) of this section [below].

(b) (No change.)

(c) Factors in determining whether conviction relates to occupation of property tax lender. In determining whether a criminal offense directly relates to the duties and responsibilities of holding a license, the commissioner will [shall] consider the following factors, as specified in Texas Occupations Code, §53.022:

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

(d) Effect of criminal convictions [conviction] on applicant or licensee.

(1) Effect of criminal convictions involving moral character. The commissioner may deny an application for a license, or suspend or revoke a license, if the applicant or licensee has a principal party who has been convicted of any felony or of a crime involving moral character that is reasonably related to the applicant's or licensee's fitness to hold a license or to operate lawfully and fairly within Texas Finance Code, Chapter 351, [Property Tax Lenders, known as the "Property Tax Lender License Act" (Acts 2007, 80th Leg., ch. 1220)]. For purposes of this section, the crimes listed in subparagraphs (A) - (H) of this paragraph [below] are considered to be crimes involving moral character:

(A) - (H) (No change.)

(2) Effect of other criminal convictions. The commissioner may deny an application for a license[;] or revoke an existing license, if a principal party of the applicant or licensee has been convicted of a crime that directly relates to the duties and responsibilities of a property tax lender that [who] originates or obtains loans [written] under Texas Finance Code, Chapter 351. Adverse action by the commissioner in response to a crime specified in this section is subject to mitigating factors and rights of the applicant or licensee, as found in §89.406 of this title (relating to Crimes Directly Related to Fitness for License; Mitigating Factors).

§89.406. *Crimes Directly Related to Fitness for License; Mitigating Factors.*

(a) Crimes directly related to fitness for license. Originating or obtaining loans made under Texas Finance Code, Chapter 351[; Property Tax Lenders, known as the "Property Tax Lender License Act" (Acts 2007, 80th Leg., ch. 1220);] involves or may involve making representations to borrowers regarding the terms of the loan, maintaining loan accounts, collecting due amounts in a legal manner, and foreclosing on real property in compliance with state and federal law. Consequently, crimes [a crime] involving the misrepresentation of costs or benefits of a product or service, the improper handling of money or property entrusted to the individual, [a crime involving] failure to file a governmental report or filing a false report, or [a crime involving] the use or threat of force against another person are[; is a crime] directly related to the duties and responsibilities of a license holder and may be grounds for denial, suspension, or revocation.

(b) Mitigating factors. In determining whether a conviction for a crime renders an applicant or a licensee unfit to be a license holder, the commissioner will [shall] consider, in addition to the factors listed in §89.405 of this title (relating to Effect of Criminal History Information on Applicants and Licensees), the [following] factors listed in paragraphs (1) - (6) of this subsection, as specified in Texas Occupations Code, §53.023:

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

(5) the principal party's rehabilitation or rehabilitative effort while incarcerated or after release, or following the criminal activity if no time was served; and

(6) the principal party's current circumstances relating to the present fitness of the applicant or licensee, evidence of which may include letters of recommendation from prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the principal party[;] the sheriff or chief of police in the community where the principal party resides[;] and other persons in contact with the convicted principal party.

§89.407. *Effect of Revocation, Suspension, or Surrender of License.*

(a) Effect on existing contracts. Revocation, suspension, or surrender of a license does not affect a preexisting contract between a lender and a borrower, except no interest may be charged or received by the lender following the revocation, suspension, or surrender of its license. Alternatively, a lender whose license is revoked or suspended may transfer or sell its accounts to a licensed property tax lender, which [who] may continue to charge or receive the contracted rate of interest within the authority of Texas Finance Code, Chapter 351 [§351.001, et seq. (Acts 2007, 80th Leg., ch. 1220)].

(b) (No change.)

§89.409. *License Reissuance.*

In the event of reissuance of a license for any reason, the licensee must [shall] return to the OCCC the license certificate that was held prior to the reissuance. Should the licensee be unable to return the license certificate to the OCCC, the licensee must provide a written statement to that effect, including the reason for inability to return it (e.g., lost, destroyed).

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

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## SUBCHAPTER E. DISCLOSURES

### 7 TAC §89.504

These amendments are proposed under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §351.007 grants the Finance Commission the authority to ensure compliance with the property tax lender chapter (Chapter 351) and Texas Tax Code, §32.06 and §32.065.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 351, and Texas Tax Code, §32.06 and §32.065.

§89.504. *Requirements for Disclosure Statement to Property Owner.*

(a) Required elements. A disclosure statement under Texas Tax Code, §32.06(a-4)(1) to be provided to a property owner before the execution of a tax lien transfer must contain the following required elements:

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

(6) a statement that the property tax loan may include unpaid property taxes, penalties, ~~and~~ interest, and collection costs paid as shown on the tax receipt;

(7) - (16) (No change.)

(b) (No change.)

(c) Delivery.

(1) (No change.)

(2) No face-to-face interview. If there is no face-to-face interview, a property tax lender must deliver a disclosure statement containing all of the elements outlined by subsection (a) of this section, as prescribed by Figure: 7 TAC §89.506(a) of this title, to the owner of the property.

(A) Method of delivery. The disclosure statement may be delivered by U.S. mail, with prepaid first-class postage, or via facsimile or email if the property owner consents [~~available to the property owner~~]. Alternatively, property tax lenders may deliver the disclosure statement by certified mail with return receipt requested, by using a commercial delivery service with tracking abilities, or by using a courier service.

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

(d) Verification of delivery.

(1) (No change.)

(2) No face-to-face interview. If there is no face-to-face interview, the property tax lender must deliver the disclosure statement to the property owner as prescribed in subsection (c)(2) of this section.

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

(F) Verification of delivery by email. For disclosures delivered via email, a dated reply email indicating that the disclosure statement was successfully delivered to the property owner will constitute verification of delivery. Alternatively, a property owner's affirmative consent to electronic delivery of the disclosure in accordance with §101(c) of the Electronic Signatures in Global and National Commerce Act will constitute a rebuttable presumption for sufficient delivery.

(e) (No change.)

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

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## SUBCHAPTER F. COSTS AND FEES

### 7 TAC §89.602

These amendments are proposed under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §351.007 grants the Finance Com-

mission the authority to ensure compliance with the property tax lender chapter (Chapter 351) and Texas Tax Code, §32.06 and §32.065.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 351, and Texas Tax Code, §32.06 and §32.065.

§89.602. *Fee for Filing Release.*

(a) Allowable fee components. Under Texas Tax Code, §32.06(b), a property tax lender may charge [a ~~property owner~~] the following for filing the release:

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

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

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

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## SUBCHAPTER G. TRANSFER OF TAX LIEN

### 7 TAC §89.701, §89.702

These amendments are proposed under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §351.007 grants the Finance Commission the authority to ensure compliance with the property tax lender chapter (Chapter 351) and Texas Tax Code, §32.06 and §32.065.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 351, and Texas Tax Code, §32.06 and §32.065.

§89.701. *Sworn Document Authorizing Transfer of Tax Lien.*

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

(d) Permissible changes.

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

(3) Title. The title of the sworn document may be relocated to the top of the form.

§89.702. *Certified Statement of Transfer of Tax Lien.*

(a) (No change.)

(b) Optional information. A tax assessor-collector may only include the optional information contained in this subsection or attach information as provided in subsection (d) of this section. Any other information included on or added to the standard form may invalidate the satisfaction of Texas Tax Code, §32.06(b). The tax assessor-collector may require that the following information be added to the certified statement:

(1) (No change.)

(2) a statement that the tax assessor-collector's certification of the amounts paid and that the transfer occurred does not constitute the rendering of legal advice;[=]

(3) after identifying the county/taxing unit(s) transferring a lien or liens as provided under subsection (a)(4) of this section, the following phrase: "and all political subdivisions and districts for which it collects ad valorem taxes."

(c) (No change.)

(d) Permissible changes.

(1) Multiple account transfers. In the case of multiple account transfers, the information required by subsection (a)(3), (4), (5), and (6) of this section may be provided in table or list format as an attachment to the standard form.

(2) Title. The title of the certified statement may be relocated to the top of the form.

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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Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

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## TITLE 13. CULTURAL RESOURCES

### PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

#### CHAPTER 6. STATE RECORDS

##### SUBCHAPTER A. RECORDS RETENTION SCHEDULING

###### 13 TAC §6.10

*(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 13 TAC §6.10 is not included in the print version of the Texas Register. The figure is available in the on-line version of the May 4, 2012, issue of the Texas Register.)*

The Texas State Library and Archives Commission proposes to amend 13 TAC §6.10, regarding the Texas State Records Retention Schedule (RRS) pursuant to the Government Code §441.185(f). The amendment is being proposed to revise records series 1.1.007 (Correspondence - Administrative) and 1.1.008 (Correspondence - General). The amendment proposes to extend the retention period for 1.1.007 to 4 years and to extend the retention period for 1.1.008 to 2 years. The amendments can be found on page 2 in the graphic of Texas State Records Retention Schedule.

Sarah Jacobson, Manager, Records Management Assistance, has determined that for each year of the first five years the amendment is in effect, there may be fiscal implications for

state government as a result of administering or enforcing the amendment. Because of the many variables in the many state agencies, it is not possible to estimate the total fiscal impact of this proposal. Ms. Jacobson does not anticipate either a loss of, or an increase in, revenue to state or local governments as a result of the proposed amendment.

Ms. Jacobson has also determined that for each year of the first five years the amendment is in effect the public benefit will be that the amended schedules will help to provide better management of records by improving retention of public records. In addition, lengthening the retention period will provide sufficient time for the public to request and review this record series and to meet the statutes of limitation to initiate legal action they deem necessary.

There will be no impact on small businesses, micro-businesses, or individuals as a result of enforcing the amendment as proposed.

Written comments on the proposal may be submitted to Sarah Jacobson, Manager, Records Management Assistance, Box 12927, Austin, Texas 78711; by fax to (512) 936-2306.

The amended section is proposed under Government Code §441.185(f) which grants authority to the Texas State Library and Archives Commission to prescribe a minimum retention period for any state record unless a minimum retention period for the record is prescribed by another federal or state law, regulation, or rule of court.

The proposed section affects Government Code §441.185(f).

§6.10. *Texas State Records Retention Schedule.*

A record listed in the Texas State Records Retention Schedule (Revised 4th Edition) must be retained for the minimum retention period indicated by any state agency that maintains a record of the type described. Figure: 13 TAC §6.10

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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Edward Seidenberg

Deputy Director

Texas State Library and Archives Commission

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For further information, please call: (512) 463-5459



## CHAPTER 7. LOCAL RECORDS

### SUBCHAPTER D. RECORDS RETENTION SCHEDULES

###### 13 TAC §7.125

*(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figures in 13 TAC §7.125 are not included in the print version of the Texas Register. The figures are available in the on-line version of the May 4, 2012, issue of the Texas Register.)*

The Texas State Library and Archives Commission proposes to amend 13 TAC §7.125(a)(1), regarding local government retention schedule for the general records common to all local

governments (Schedule GR) pursuant to the Government Code §441.158(a). The amendment is being proposed to revise records series GR1000-26 (Correspondence, Internal Memoranda, and Subject Files). The amendment proposes to extend the retention period for GR1000-26a to 4 years and to extend the retention period for GR1000-26b to 2 years. The amendments can be found on page 11 of 62 in the graphic of Local Schedule GR: Records Common to All Local Governments. Due to an error in the rule adoption that appeared in the August 5, 2011, issue of the *Texas Register* (36 TexReg 4951), it is necessary to associate the Local Schedules in subsection (a)(8) - (12) with the correct paragraphs. There are no changes being proposed to the content of the Local Schedules in subsection (a)(2), (6), (8), (9), (10), (11) or (12).

Sarah Jacobson, Manager, Records Management Assistance, has determined that for each year of the first five years the amendment is in effect, there may be fiscal implications for local governments as a result of administering or enforcing the amendment. Because of the many variables in the many local governments, it is not possible to estimate the total fiscal impact of this proposal. Ms. Jacobson does not anticipate either a loss of, or an increase in, revenue to state or local governments as a result of the proposed amendment.

Ms. Jacobson has also determined that for each year of the first five years the amendment is in effect the public benefit will be that the amended schedules will help to provide better management of records by improving retention of public records. In addition, lengthening the retention period will provide sufficient time for the public to request and review this record series and to meet the statutes of limitation to initiate legal action they deem necessary.

There will be no impact on small businesses, micro-businesses, or individuals as a result of enforcing the amendment as proposed.

Written comments on the proposal may be submitted to Sarah Jacobson, Manager, Records Management Assistance, Box 12927, Austin, Texas 78711; by fax to (512) 936-2306.

The amended section is proposed under Government Code §441.158 that grants authority to the Texas State Library and Archives Commission to provide records retention schedules to local governments and §441.160 that allows the commission to revise the schedules.

The proposed section affects Government Code §441.158 and §441.160.

*§7.125. Records Retention Schedules.*

(a) The following records retention schedules, required to be adopted by rule under Government Code §441.158(a) are adopted.

(1) Local Schedule GR: Records Common to All Local Governments, Revised 4th Edition.  
Figure: 13 TAC §7.125(a)(1)

(2) Local Schedule PW: Records of Public Works and Other Government Services, 2nd Edition.  
Figure: 13 TAC §7.125(a)(2) (No change.)

(3) Local Schedule CC: Records of County Clerks, 3rd Edition.  
Figure: 13 TAC §7.125(a)(3) (No change.)

(4) Local Schedule DC: Records of District Clerks, 3rd Edition.  
Figure: 13 TAC §7.125(a)(4) (No change.)

(5) Local Schedule PS: Records of Public Safety Agencies, 3rd Edition.

Figure: 13 TAC §7.125(a)(5) (No change.)

(6) Local Schedule SD: Records of Public School Districts, Revised 2nd Edition.

Figure: 13 TAC §7.125(a)(6) (No change.)

(7) Local Schedule JC: Records of Public Junior Colleges, 2nd Edition.

Figure: 13 TAC §7.125(a)(7) (No change.)

(8) Local Schedule LC: Records of Justice and Municipal Courts, 2nd Edition.

Figure: 13 TAC §7.125(a)(8)

(9) Local Schedule TX: Records of Property Taxation, 3rd Edition.

Figure: 13 TAC §7.125(a)(9)

(10) Local Schedule EL: Records of Elections and Voter Registration, 2nd Edition.

Figure: 13 TAC §7.125(a)(10)

(11) Local Schedule HR: Records of Public Health Agencies, 2nd Edition.

Figure: 13 TAC §7.125(a)(11)

(12) Local Schedule UT: Records of Utility Services, 2nd Edition.

Figure: 13 TAC §7.125(a)(12)

(b) The retention periods in the records retention schedules adopted under subsection (a) of this section serve to amend and replace the retention periods in all editions of the county records manual published by the commission between 1978 and 1988. The retention periods in the manual, which were validated and continued in effect by Government Code §441.159, until amended, are now without effect.

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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Edward Seidenberg

Deputy Director

Texas State Library and Archives Commission

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For further information, please call: (512) 463-5459



## TITLE 22. EXAMINING BOARDS

### PART 9. TEXAS MEDICAL BOARD

#### CHAPTER 163. LICENSURE

##### 22 TAC §§163.2, 163.4, 163.5

The Texas Medical Board (Board) proposes amendments to §§163.2, 163.4 and 163.5, concerning Licensure.

The amendment to §163.2, relating to Full Texas Medical License, sets out medical graduation requirements for 5th pathway applicants to be consistent with rules relating to other types of applicants for full licensure.



The amendment to §163.4, relating to Procedural Rules for Licensure Applicants, provides that if an applicant for licensure has violated §170.002 or Chapter 171, Texas Health and Safety Code, the applicant will be considered ineligible for licensure.

The amendment to §163.5, relating to Licensure Documentation, amends the clinical clerkship affidavit regarding US clinical clerkships so that language is consistent with the Board's processes; and provides a remedy for licensure to applicants for licensure who are otherwise ineligible for licensure due to a deficient medical clerkship obtained while in medical school.

Nancy Leshikar, General Counsel for the Board, has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing this proposal will be to have consistency within the rules; to have rules consistent with statutory provisions and to provide applicants to remedy a single deficient clerkship taken while in medical school that otherwise prevents the applicant from becoming licensed.

Mrs. Leshikar has also determined that for the first five-year period the sections are in effect there will be no fiscal implication to state or local government as a result of enforcing the sections as proposed. The effect to individuals required to comply with the rules as proposed is undetermined but individuals who seek to remedy deficient clerkships will incur costs in obtaining additional required education. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Jennifer Kaufman, P.O. Box 2018, Austin, Texas 78768-2018, or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

The amendments are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendments are also authorized by §155.005, Texas Occupations Code.

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

§163.2. *Full Texas Medical License.*

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

(c) Fifth Pathway Program. To be eligible for licensure, an applicant who has completed a Fifth Pathway Program must:

(1) be at least 21 years of age;

(2) be of good professional character as defined under §163.1(8) of this title;

(3) have completed 60 semester hours of college courses as defined under §163.1(10) of this title;

(4) hold a certificate from:

(A) an acceptable unapproved medical school as defined under §163.1(2) of this title; or

(B) any medical school and hold a certificate from a specialty board that is a member of the American Board of Medical Specialties or the Bureau of Osteopathic Specialists.

~~{(4) have completed all of the didactic work, but not graduated from a foreign medical school and meet the requirements subparagraph (A) or (B) of this paragraph.}~~

~~{(A) The medical school's curriculum meets the requirements for an acceptable unapproved medical school as determined by a committee of experts selected by the Texas Higher Education Coordinating Board; or}~~

~~{(B) Either:}~~

~~{(i) the medical school's curriculum is substantially equivalent to a Texas medical school as defined under §163.1(11) of this title and has not been disapproved by another state physician licensing agency unless the applicant can provide evidence that the disapproval was unfounded; or}~~

~~{(ii) the applicant must:}~~

~~{(i) have passed the basic sciences portion of an acceptable examination listed in §163-6(a) of this title within two attempts;}~~

~~{(ii) have not been the subject of disciplinary action by any other state, the uniformed services of the United States, or the applicant's peers in a local, regional, state, or national professional medical association or staff of a hospital;}~~

~~{(iii) have, on a full-time basis, actively diagnosed or treated persons or have been on the active teaching faculty of an acceptable approved medical school for three of the last four years preceding receipt of an Application for licensure, which may include post-graduate training (The term "full-time basis" shall have the same meaning provided in §163.11(b) of this title (relating to Active Practice of Medicine)); and}~~

~~{(iv) hold a certificate from a specialty board that is a member of the American Board of Medical Specialties or the Bureau of Osteopathic Specialists.}~~

(5) have successfully completed a two-year training program of graduate medical education in the United States or Canada as defined under §163.1(13) of this title;

(6) submit evidence of passing an examination, that is acceptable to the board for licensure;

(7) pass the Texas Medical Jurisprudence Examination;

(8) submit a sworn affidavit that no proceedings, past or current, have been instituted against the applicant before any state medical board, provincial medical board, in any military jurisdiction or federal facility;

(9) have attained a passing score on the ECFMG examination;

(10) have the ability to communicate in the English language;

(11) have attained a satisfactory score on a qualifying examination and have completed one academic year of supervised clinical training for foreign medical students as defined by the American Medical Association Council on Medical Education (Fifth Pathway Program) in a United States medical school; and

(12) have supplied all additional information that the board may require, concerning the applicant's medical school, before approving the applicant.

(d) (No change.)

§163.4. *Procedural Rules for Licensure Applicants.*

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

(c) An applicant is not eligible for a license if:

(1) the applicant holds a medical license that is currently restricted for cause, canceled for cause, suspended for cause, or revoked by a state of the United States, a province of Canada, or a uniformed service of the United States;

(2) an investigation or a proceeding is instituted against the applicant for the restriction, cancellation, suspension, or revocation of the applicant's medical license in a state of the United States, a province of Canada, or a uniformed service of the United States; [or]

(3) a prosecution is pending against the applicant in any state, federal, or Canadian court for any offense that under the laws of this state is a felony or a misdemeanor that involves moral turpitude; or[-]

(4) the applicant has violated §170.002 or Chapter 171, Texas Health and Safety Code.

(d) - (f) (No change.)

§163.5. *Licensure Documentation.*

(a) (No change.)

(b) Documentation required of all applicants for licensure.

(1) - (10) (No change.)

(11) U.S. medical education. Applicants must demonstrate that any medical school education that was completed in the United States in satisfaction of their core basic and clinical science courses as established by the Texas Higher Education Coordinating Board, the Liaison Council on Medical Education, and/or the American Osteopathic Association, and in satisfaction of the 130 weeks of required medical education was accredited by an accrediting body officially recognized by the United States Department of Education as the accrediting body for medical education leading to the doctor of medicine degree or the doctor of osteopathy degree. An applicant who is unable to comply with these requirements may in the alternative demonstrate that the applicant:

(A) received such medical education in a hospital or teaching institution sponsoring or participating in a program of graduate medical education accredited by the Accrediting Council for Graduate Medical Education, the American Osteopathic Association, or approved by the board under §171.4 of this title (relating to Board-Approved Postgraduate Fellowship Training Programs) in the same subject as the medical or osteopathic medical education if the hospital or teaching institution has an agreement with the applicant's school; [or]

(B) is specialty board certified by a board approved by the Bureau of Osteopathic Specialists or the American Board of Medical Specialties; or[-]

(C) for the purpose of remedying a single deficient U.S. clerkship that was obtained while enrolled in medical school, the applicant may subsequent to graduation from medical school:

(i) complete a clerkship in the United States in satisfaction of core basic and clinical science courses as established by the Texas Higher Education Coordinating Board, the Liaison Committee on Medical Education, and/or the American Osteopathic Association and in a hospital or teaching institution sponsoring or participating in a program of graduate medical education accredited by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association; or

(ii) re-enroll in a medical school accredited by the Liaison Council on Medical Education, and/or the American Osteo-

pathic Association as a visiting student and satisfactorily complete necessary coursework in the appropriate subject.

(c) Applicants for licensure who are graduates of medical schools outside the United States or Canada must furnish all appropriate documentation listed in this subsection, as well as that listed in subsections (a) and (b) of this section.

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

(3) Clinical Clerkship Affidavit. A form, supplied by the board, to be completed by the applicant, is required listing each clinical clerkship that was completed as part of an applicant's medical education in the United States. The form will require the name of the clerkship, where the clerkship was located (name and location of hospital) and dates of the clerkship.

(4) - (5) (No change.)

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

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

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Mari Robinson, J.D.

Executive Director

Texas Medical Board

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For further information, please call: (512) 305-7016



## CHAPTER 166. PHYSICIAN REGISTRATION

### 22 TAC §166.1, §166.3

The Texas Medical Board (Board) proposes amendments to §166.1, concerning Physician Registration, and §166.3, concerning Retired Physician Exception.

The amendment to §166.1 provides that a physician will not be eligible for a registration permit if the physician has violated §170.002 or Chapter 171, Texas Health and Safety Code, consistent with HB15 that was passed during the 82nd Legislative Session.

The amendment to §166.3 provides that in order for a physician to return to active status from retired status, the physician may have to prove competency or otherwise remediate and deficiencies in ways consistent with §163.11 of the Board's rules related to the active practice of medicine.

Nancy Leshikar, General Counsel for the Board, has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing this proposal will be to have rules consistent with statutory law and to ensure that retired physicians who wish to return to the active practice of medicine after a significant time away from clinical practice are competent to do so.

Mrs. Leshikar has also determined that for the first five-year period the sections are in effect there will be no fiscal implication to state or local government as a result of enforcing the sections as proposed. The effect to individuals required to comply with the rules as proposed is undetermined but would be for any costs required for testing or retraining to establish competence to re-

turn to the active practice of medicine. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Jennifer Kaufman, P.O. Box 2018, Austin, Texas 78768-2018, or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

The amendments are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendments are also authorized by §156.001, Texas Occupations Code.

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

§166.1. *Physician Registration.*

(a) - (f) (No change.)

(g) A physician may not obtain a registration permit if the physician has violated §170.002 or Chapter 171, Texas Health and Safety Code.

§166.3. *Retired Physician Exception.*

The registration fee shall apply to all physicians licensed by the board, whether or not they are practicing within the borders of this state, except retired physicians.

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

(4) The request of a physician seeking a return to active status whose license has been placed on official retired status for two years or longer shall be submitted to the Licensure Committee of the board for consideration and a recommendation to the full board for approval or denial of the request. After consideration of the request and the recommendation of the Licensure Committee, the board shall grant or deny the request. If the request is granted, it may be granted without conditions or subject to such conditions which the board determines are necessary to adequately protect the public including but not limited to: [passage of the Special Purpose Examination (SPEX); passage of the Medical Jurisprudence Examination; and/or passage of a specialty board certification examination.]

(A) current certification by a member board of the American Board of Medical Specialties, Bureau of Osteopathic Specialists, or the American Board of Oral and Maxillofacial Surgery obtained by passing within the two years prior to date request to return to active status, a monitored:

- (i) specialty certification examination;
- (ii) maintenance of certification examination; or
- (iii) continuous certification examination;

(B) limitation of the practice of the requestor to specified activities of medicine and/or exclusion of specified activities of medicine;

(C) passage of the Special Purpose Examination (SPEX);

(D) remedial education, including but not limited to a mini-residency, fellowship or other structured program;

(E) passage of the Medical Jurisprudence Examination;  
and/or

(F) such other remedial or restrictive conditions or requirements that, in the discretion of the board are necessary to ensure protection of the public and minimal competency of the applicant to safely practice medicine.

(5) The request of a physician seeking a return to active status whose license has been placed on official retired status for less than two years may be approved by the executive director of the board or submitted by the executive director to the Licensure Committee for consideration and a recommendation to the full board for approval or denial of the request. In those instances in which the executive director submits the request to the Licensure Committee of the board, the Licensure Committee shall make a recommendation to the full board for approval or denial. After consideration of the request and the recommendation of the Licensure Committee, the board shall grant or deny the request subject to such conditions which the board determines are necessary to adequately protect the public including but not limited to those options provided in paragraph (4)(A) - (F) of this subsection. [passage of the Special Purpose Examination (SPEX); passage of the Medical Jurisprudence Examination; and/or passage of a specialty board certification examination.]

(6) (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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Mari Robinson, J.D.

Executive Director

Texas Medical Board

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## CHAPTER 172. TEMPORARY AND LIMITED LICENSES

The Texas Medical Board (Board) proposes amendments to §§172.8, 172.15, and 172.16, concerning Temporary and Limited Licenses.

The amendment to §172.8, relating to Faculty Temporary License, provides that applicants for Faculty Temporary Licenses (FTLs) shall be determined ineligible for FTLs based on the same reasons for ineligibility for full licensure.

The amendment to §172.15, relating to Public Health License, provides that any clinical medicine performed under public health license may not count toward active practice requirements for full licensure.

The amendment to §172.16, relating to Provisional Licenses for Medically Underserved Areas, provides that in addition to other reasons already provided by rule, a provisional license will be terminated upon determination of statutory ineligibility by the Executive Director.

Nancy Leshikar, General Counsel for the Board, has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing this proposal will be to ensure that physicians that practice medicine are held to similar standards; to ensure that physicians have appropriate clinical experience for a full licensure and to

have provisional licenses timely terminated for individuals who are not eligible to practice medicine in Texas.

Mrs. Leshikar has also determined that for the first five-year period the sections are in effect there will be no fiscal implication to state or local government as a result of enforcing the sections as proposed. There will be no effect to individuals required to comply with the rules as proposed. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Jennifer Kaufman, P.O. Box 2018, Austin, Texas 78768-2018, or e-mail comments to: [rules.development@tmb.state.tx.us](mailto:rules.development@tmb.state.tx.us). A public hearing will be held at a later date.

## SUBCHAPTER B. TEMPORARY LICENSES

### 22 TAC §172.8

The amendments are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendments are also authorized by §155.101 and §155.104, Texas Occupations Code.

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

#### §172.8. *Faculty Temporary License.*

(a) The board may issue a faculty temporary license to practice medicine to a physician in accordance with §155.104, Texas Occupations Code. "Physician," as used in that statute and in this section, is interpreted to mean a person who holds an M.D., D.O., or equivalent degree and who is licensed to practice medicine in another state or a Canadian province or has completed at least three years of postgraduate residency, but does not hold a license to practice medicine in this state.

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

(3) "Institution," as used in this section, shall mean any of the following:

(A) a school of medicine in this state accredited by the Liaison Committee on Medical Education or the American Osteopathic Association Bureau of Professional Education;

(B) The University of Texas Health Science Center at Tyler;

(C) The University of Texas M.D. Anderson Cancer Center;

(D) an institutional sponsor of a graduate medical education program accredited by the Accreditation Council for Graduate Medical Education or;

(E) a nonprofit health corporation certified under §162.00, Medical Practice Act, and affiliated with a program as described in subparagraph (D) of this paragraph.

(4) - (5) (No change.)

(b) - (i) (No change.)

(j) An applicant is not eligible for a faculty temporary license if:

(1) the applicant holds a medical license that is currently restricted for cause, canceled for cause, suspended for cause, or revoked

by a state of the United States, a province of Canada, or a uniformed service of the United States;

(2) an investigation or a proceeding is instituted against the applicant for the restriction, cancellation, suspension, or revocation of the applicant's medical license in a state of the United States, a province of Canada, or a uniformed service of the United States; or

(3) a prosecution is pending against the applicant in any state, federal, or Canadian court for any offense that under the laws of this state is a felony or a misdemeanor that involves moral turpitude.

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

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## SUBCHAPTER C. LIMITED LICENSES

### 22 TAC §172.15, §172.16

The amendments are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendments are also authorized by §155.101 and §155.104, Texas Occupations Code.

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

#### §172.15. *Public Health License.*

(a) The board may issue a license that is limited to public health medicine to an applicant pursuant to the authority of §155.009, Texas Occupations [Tex: Oee-] Code, authorizing the board to issue a limited license for the practice of administrative medicine.

(b) - (g) (No change.)

(h) Any clinical medicine performed under a public health license may not be used to satisfy the active practice of medicine requirements for full licensure under §163.11 of this title (relating to Active Practice of Medicine).

#### §172.16. *Provisional Licenses for Medically Underserved Areas.*

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

(d) A provisional license expires on the earlier of:

(1) the date the board issues the provisional license holder a full Texas medical license or denies the provisional license holder's application for a license; ~~or~~

(2) the 270th day after the date the provisional license was issued; ~~or~~

(3) upon determination by the Executive Director that the provisional license holder is ineligible for licensure pursuant to §155.003(e) of the Act.

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

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

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## CHAPTER 177. BUSINESS ORGANIZATIONS SUBCHAPTER B. NON-PROFIT HEALTH ORGANIZATIONS

### 22 TAC §177.5

The Texas Medical Board (Board) proposes amendments to §177.5, concerning Special Requirements for 162.001(b) Health Organizations.

The amendment provides changes consistent with SB1661 passed during the 82nd Regular Session. Changes include requiring non-profit health organizations to adopt and enforce policies to ensure that physicians employed by the organization exercise independent medical judgment when providing care to patients.

Nancy Leshikar, General Counsel for the Board, has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing this proposal will be to have rules consistent with statutory law.

Mrs. Leshikar has also determined that for the first five-year period the section is in effect there will be no fiscal implication to state or local government as a result of enforcing the section as proposed. There will be no effect to individuals required to comply with the rule as proposed. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Jennifer Kaufman, P.O. Box 2018, Austin, Texas 78768-2018, or e-mail comments to: [rules.development@tmb.state.tx.us](mailto:rules.development@tmb.state.tx.us). A public hearing will be held at a later date.

The amendments are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendments are also authorized by §162.0022, Texas Occupations Code.

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

*§177.5. Special Requirements for 162.001(b) Health Organizations.*

(a) In addition to the general by-law requirements set forth herein for health organizations seeking certification under §162.001(b) of the Act, any health organization in which a member is either a person who is not a physician actively engaged in the practice of medicine or an entity or organization that is not wholly owned and controlled by physicians actively engaged in the practice of medicine must comply with the following requirement:

(1) All credentialing, quality assurance, utilization review and peer review policies shall be made exclusively by the board of directors; however, following consultation with the board of directors, the member(s) may retain the right to approve, or in the case of a health organization seeking to obtain or maintain tax exempt status the right to make, any financial decision of the health organization including, but not limited to, decisions regarding capital and operating budgets, physician compensation and benefits, expenditures of monies, and managed care contracts in which the health organization is at financial risk, the substance of which requirements shall be provided for in the by-laws of the health organization.

(2) Subsequent to the appointment of the initial board of directors, a member may not appoint or elect any director without the approval of at least a majority of the board of directors unless required by law including requirements to obtain or maintain tax exemption.

(3) Without the approval of at least a majority of the board of directors, the member may not unilaterally amend the bylaws of the health organization unless required by law including requirements to obtain or maintain tax exemption.

(b) The board of directors for the organization must develop policies and the organization must adopt, maintain, and enforce policies to ensure that physicians employed by the organization exercise independent medical judgment when providing care to patients. The policies must include policies relating to:

- (1) credentialing and privileging;
- (2) quality assurance;
- (3) utilization review; and
- (4) peer review.

(c) A health organization may not interfere with, control, or otherwise direct a physician's professional judgment in violation of the Act, Board rules, or any other provision of law. The health organization's policies must reserve the sole authority to engage in the practice of medicine to a physician participating in the health organization, regardless of the physician's employment status with the health organization. A physician retains independent medical judgment and discretion in providing and supervising care to patients. A health organization may not discipline a physician for reasonably advocating for patient care.

(d) The requirements set out in Texas Occupations Code, Chapter 162, Subchapter A, may not be voided or waived by contract. However, a member of a health organization may establish ethical and religious directives and a physician may contractually agree to comply with those directives.

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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## CHAPTER 190. DISCIPLINARY GUIDELINES

## SUBCHAPTER B. VIOLATION GUIDELINES

### 22 TAC §190.8

The Texas Medical Board (Board) proposes amendments to §190.8, concerning Violation Guidelines.

The amendment adds that the Board will take disciplinary action if the physician is in violation of §170.002 or Chapter 171, Texas Health and Safety Code.

Nancy Leshikar, General Counsel for the Board, has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing this proposal will be to have rules consistent with statutory law.

Mrs. Leshikar has also determined that for the first five-year period the section is in effect there will be no fiscal implication to state or local government as a result of enforcing the section as proposed. There will be no effect to individuals required to comply with the rule as proposed. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Jennifer Kaufman, P.O. Box 2018, Austin, Texas 78768-2018, or e-mail comments to: [rules.development@tmb.state.tx.us](mailto:rules.development@tmb.state.tx.us). A public hearing will be held at a later date.

The amendments are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendments are also authorized by §170.002 and Chapter 171, Health and Safety Code.

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

#### *§190.8. Violation Guidelines.*

When substantiated by credible evidence, the following acts, practices, and conduct are considered to be violations of the Act. The following shall not be considered an exhaustive or exclusive listing.

(1) - (6) (No change.)

(7) Violations of the Health and Safety Code. In accordance with §164.055 of the Act, the Board shall take appropriate disciplinary action against a physician who violates §170.002 or Chapter 171, Texas Health and Safety Code.

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

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Texas Medical Board

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## TITLE 25. HEALTH SERVICES

### PART 1. DEPARTMENT OF STATE HEALTH SERVICES

## CHAPTER 14. COUNTY INDIGENT HEALTH CARE PROGRAM

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes amendments to §§14.104, 14.105 and 14.201, concerning the County Indigent Health Care Program.

#### BACKGROUND AND PURPOSE

The department provides technical assistance to counties, hospital districts, and public hospitals that provide health care services to eligible residents who are unable to access the same care through other funding sources or programs in accordance with the Indigent Health Care and Treatment Act, Health and Safety Code, Chapter 61.

Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by the agency pursuant to Government Code, Chapter 2001 (Administrative Procedure Act). Sections 14.104, 14.105, and 14.201 have been reviewed, and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed. The department, contemporaneously with this proposal, provides a rule review notice for all sections of Chapter 14 of this title in the same issue of the *Texas Register* located in the "Agency Review of Rules Section."

The amendments to §14.104 and §14.105 are pursuant to the Senate Bill 420, 82nd Legislature, Regular Session, 2011, which amended Health and Safety Code, §61.008, requiring provision that by rule a county may include in the income and resources of an applicant for health care services the income and resources of a person who executed an affidavit of support on behalf of the applicant and the income and resources of the spouse of a person who executed an affidavit of support on behalf of the applicant, if applicable.

The amendment to §14.201, in accordance with Health and Safety Code, §61.006(c), defines optional health care services listed in Health and Safety Code, §61.0285, that counties may provide if cost-effective. Health and Safety Code, §61.0285(a), as amended by the 82nd Texas Legislature, 2011, authorizes counties to provide physical and occupational therapy services to eligible residents if determined to be cost-effective.

#### SECTION-BY-SECTION SUMMARY

Amendments to §14.104 add a new definition of "sponsored alien"; authorize counties to include the income of a person who executed an affidavit of support on behalf of the applicant for health care services and the income of the person's spouse; and require that if a county chooses to include the income of a person who has executed an affidavit of support on behalf of an applicant, the county must adopt written procedures for processing the incomes of the sponsor and the sponsor's spouse when determining the applicant's eligibility for health care services.

Amendments to §14.105 authorize counties to include the resources of a person who executed an affidavit of support on behalf of the applicant for health care services and the income of the person's spouse; require that if a county chooses to include the resources of a person who has executed an affidavit of support on behalf of an applicant, the county must adopt written procedures for processing the resources of the sponsor and the sponsor's spouse when determining the applicant's eligibility

for health care services; and reword subsection (d)(4) and (5) to reflect the addition of new subsection (d)(6).

Amendments to §14.201 add physical and occupational therapy services as optional services counties may provide if found to be cost-efficient. Subsection (b)(13) has been renumbered to subsection (b)(15) with the addition of new subsection (b)(13) and (14).

#### FISCAL NOTE

Jan Maberry, Program Manager, 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 administering the proposed amendments because counties are authorized, but not required, to consider the income and resources of a person who executed an affidavit of support on behalf of an applicant for health care services and the income and resources of the sponsor's spouse. The proposed amendments do not mandate changes in current program structure and implementation.

#### SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Jan Maberry has also determined that there will be no adverse economic impact on small businesses or micro-businesses required to comply with the sections as proposed, because neither small businesses nor micro-businesses participate in, or are affected by, the County Indigent Health Care Program. Small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections.

#### 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 fiscal impact on local employment.

#### PUBLIC BENEFIT

Jan Maberry has also determined that for each year of the first five years that the sections will be in effect, the public benefit anticipated as a result of the proposed amendments will be that counties will have a clearer and more concise understanding of the rules which will further enhance the proper implementation of the County Indigent Health Care Program rules in order to determine eligibility for program services and provide services to their eligible residents.

#### 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 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 amendments 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 Carolyn Wachel, County Indigent Health Care Program, Mail Code 2831, Department of State Health Services, P.O. Box 149347, Austin, Texas 78714-9347 or by email to Carolyn.Wachel@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.

### SUBCHAPTER B. DETERMINING ELIGIBILITY

#### 25 TAC §14.104, §14.105

##### STATUTORY AUTHORITY

The amendments are authorized by Health and Safety Code, §61.006, which directs the Executive Commissioner of the Health and Human Services Commission to establish minimum eligibility standards and to define optional health care services counties may provide if cost-effective; and Government Code, §531.0055(e), and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the sections implements Government Code, §2001.039.

The amendments affect Government Code, Chapters 531 and 2001; and Health and Safety Code, Chapters 61 and 1001.

##### §14.104. *Income.*

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

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

(4) Sponsored alien--A person who has been lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act (8 U.S.C. §1101 et seq.) and who, as a condition of admission, was sponsored by a person who executed an affidavit of support on behalf of the person.

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

(d) Income from non-household members and/or disqualified household members is excluded, unless a county chooses to include the income of a person who executed an affidavit of support on behalf of the applicant and the income of the person's spouse, as authorized by Health and Safety Code, §61.008(a)(6).

(e) If a county chooses to include the income of a person who executed an affidavit of support on behalf of a sponsored alien and the income of the person's spouse, the county shall adopt written procedures for processing the incomes of the sponsor and the sponsor's spouse.

##### §14.105. *Resources.*

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

(d) In determining eligibility:

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

(4) a county must consider as a resource real property other than a homestead and must count that property in determining eligibility; [and]

(5) a county may disregard the applicant's real property if the applicant agrees to the terms of an enforceable obligation negotiated with the county to reimburse the county for all or part of the benefits received under the County Indigent Health Care Program; and [- The county and the applicant may negotiate the terms of the obligation.]

(6) resources from non-household members and/or disqualified household members are excluded, unless a county chooses to include the resources of a person who executed an affidavit of support on behalf of a sponsored alien, as defined at §14.104(a)(4) of this title, and the resources of the person's spouse, as authorized by Health and Safety Code, §61.008(a)(6).

(e) If a county chooses to include the resources of a person who executed an affidavit of support on behalf of a sponsored alien and the resources of the person's spouse, the county shall adopt written procedures for processing the resources of the sponsor and the sponsor's spouse.

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 April 19, 2012.

TRD-201201968

Lisa Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: June 3, 2012

For further information, please call: (512) 776-6972



## SUBCHAPTER C. PROVIDING SERVICES

### 25 TAC §14.201

#### STATUTORY AUTHORITY

The amendment is authorized by Health and Safety Code, §61.006, which directs the Executive Commissioner of the Health and Human Services Commission to establish minimum eligibility standards and to define optional health care services counties may provide if cost-effective; and Government Code, §531.0055(e), and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the section implements Government Code, §2001.039.

The amendment affects Government Code, Chapters 531 and 2001; and Health and Safety Code, Chapters 61 and 1001.

§14.201. *Basic and Optional Services.*

(a) (No change.)

(b) The following services are optional health care services.

(1) - (12) (No change.)

(13) Physical therapy services. These services must be medically necessary and may be covered if provided in a physician's

office, a therapist's office, in an outpatient rehabilitation or freestanding rehabilitation facility, or in a licensed hospital. Services must be within the provider's scope of practice, as defined by Occupations Code, Chapter 453.

(14) Occupational therapy services. These services must be medically necessary and may be covered if provided in a physician's office, a therapist's office, in an outpatient rehabilitation or freestanding rehabilitation facility, or in a licensed hospital. Services must be within the provider's scope of practice, as defined by Occupations Code, Chapter 454.

(15) [(43)] Other medically necessary services or supplies that the local governmental municipality/entity determines to be cost effective.

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 April 19, 2012.

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Lisa Hernandez

General Counsel

Department of State Health Services

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## CHAPTER 133. HOSPITAL LICENSING

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes amendments to §133.2 and §133.41, concerning the regulation of hospitals.

### BACKGROUND AND PURPOSE

Proposed amendments to the hospital licensing rules require hospitals to comply with four pieces of legislation passed during the 82nd Legislature, Regular Session, 2011: House Bill 1481, House Bill 411, House Bill 1983, and House Bill 118.

House Bill 1481 added Chapter 392 as well as Government Code, §531.0227, to require the use of "Person First Respectful Language" when referring to individuals with disabilities in agency rules, reference materials, publications, and electronic media.

House Bill 411, which amended and added several provisions to Health and Safety Code, Chapter 47 (Hearing Loss in Newborns), requires all hospitals that provide obstetrical services to perform, either directly or through a transfer agreement, audio-logical screenings on all newborns or infants born at the facility for the identification of hearing loss prior to discharge. The screenings are required unless a parent or legal guardian of the infant declines the screening or the newborn is transferred to another facility before the screening is performed.

House Bill 1983, Section 2, added Health and Safety Code, §241.007, to require hospitals that provide obstetrical services to collaborate with their physicians to develop quality initiatives to reduce the number of elective or nonmedically indicated induced deliveries or cesarean sections performed at the hospital on a woman before the 39th week of gestation.



House Bill 118 added subsection (d) to Health and Safety Code, §241.103 (Preservation of Records), to require hospitals to provide written notice to a patient, on the date the patient is treated or as soon as reasonably practicable following emergency treatment, that the hospital may authorize disposal of medical records relating to the patient on or after the time periods specified in §241.103(a) and (b).

#### SECTION-BY-SECTION SUMMARY

Amendments to §133.2 and §133.41 replace the terms "mental retardation" with "intellectual disability" to comply with House Bill 1481.

Two new provisions are being added to §133.41(f), the Governing Body rule for hospitals, to comply with the new mandates of House Bill 1983, Section 2, and House Bill 411 which are applicable to hospitals that provide obstetrical services.

In particular, under §133.41(f)(4) regarding "Responsibilities relating to the medical staff," new language is being added at subparagraph (C) which requires the governing bodies at hospitals that provide obstetrical services to collaborate with their physicians to develop quality initiatives to reduce the number of elective or nonmedically indicated induced deliveries or cesarean sections performed at the hospital on a woman before the 39th week of gestation. This provision is being added to comply with House Bill 1983.

New language also is being added to subparagraph (D) of §133.41(f)(4) to require the governing bodies at hospitals that provide obstetrical services to ensure that a newborn audiological screening program, consistent with the requirements of Health and Safety Code, Chapter 47 (Hearing Loss in Newborns), performs, either directly or through a transfer agreement, audiological screenings for the identification of hearing loss on each newborn or infant born at the facility before the newborn or infant is discharged. This provision is being added to comply with House Bill 411.

An amendment to §133.41(j) which adds a new paragraph (11), requires hospitals to provide written notice to a patient that the hospital may authorize disposal of medical records relating to the patient on or after the required retention period set forth in Health and Safety Code, §241.103(a) and (b), or other provisions of §133.41(j), to comply with House Bill 118.

#### FISCAL NOTE

Renee Clack, Section Director, Health Care Quality Section, has determined that for each year of the first five years that the sections will be in effect, there will not be fiscal implications to state or local governments as a result of enforcing and administering the sections as proposed.

#### SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Clack also has determined that there will not be an adverse economic impact on small businesses or micro-businesses required to comply with the sections as proposed because this was determined by interpretation of the rules that small business and micro-businesses will not be required to alter their business practices in order to comply with the sections.

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

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

#### PUBLIC BENEFIT

Ms. Clack also 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. Specifically, the rules are expected to (1) better ensure healthy outcomes for newborn children through the reduction in the number of elective or nonmedically indicated induced deliveries or cesarean sections performed at hospitals; (2) increase the early detection of hearing loss in newborns delivered at health care facilities; (3) encourage the use of person first respectful language when addressing people with disabilities; and (4) provide notice to patients regarding the time periods for disposal of their medical records.

#### 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. 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 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 Government Code, §2007.043.

#### PUBLIC COMMENT

Comments on the proposal may be submitted to Ellen Cooper, Manager, Facility Licensing Group, Regulatory Licensing Unit, Division of Regulatory Services, Department of State Health Services, P.O. Box 149347, Mail Code 2835, Austin, Texas 78714-9347, (512) 834-6639 or by email to [ellen.cooper@dshs.state.tx.us](mailto:ellen.cooper@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.

#### SUBCHAPTER A. GENERAL PROVISIONS

##### 25 TAC §133.2

#### STATUTORY AUTHORITY

The amendment is authorized by Health and Safety Code, §241.026, concerning rules and minimum standards for the licensing and regulation of hospitals required to obtain a license under this chapter; 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 amendment affects Government Code, Chapter 531; and Health and Safety Code, Chapters 241, 47, and 1001.

§133.2. *Definitions.*

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

(1) - (24) (No change.)

(25) Intellectual Disability--Significantly sub-average general intellectual functioning that is concurrent with deficits in adaptive behavior and originates during the developmental period.

(26) [(25)] Licensed vocational nurse (LVN)--A person who is currently licensed under the Nursing Practice Act by the Board of Nurse Examiners for the State of Texas as a licensed vocational nurse or who holds a valid vocational nursing license with multi-state licensure privilege from another compact state.

(27) [(26)] Licensee--The person or governmental unit named in the application for issuance of a hospital license.

(28) [(27)] Medical staff--A physician or group of physicians and a podiatrist or group of podiatrists who by action of the governing body of a hospital are privileged to work in and use the facilities of a hospital for or in connection with the observation, care, diagnosis, or treatment of an individual who is, or may be, suffering from a mental or physical disease or disorder or a physical deformity or injury.

(29) [(28)] Mental health services--All services concerned with research, prevention, and detection of mental disorders and disabilities and all services necessary to treat, care for, supervise, and rehabilitate persons who have a mental disorder or disability, including persons whose mental disorders or disabilities result from alcoholism or drug addiction.

[(29) Mental retardation--Significantly subaverage general intellectual functioning that is concurrent with deficits in adaptive behavior and originates during the developmental period.]

(30) - (52) (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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Lisa Hernandez

General Counsel

Department of State Health Services

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For further information, please call: (512) 776-6990



## SUBCHAPTER C. OPERATIONAL REQUIREMENTS

### 25 TAC §133.41

#### STATUTORY AUTHORITY

The amendment is authorized by Health and Safety Code, §241.026, concerning rules and minimum standards for the licensing and regulation of hospitals required to obtain a license under this chapter; 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 amendment affects Government Code, Chapter 531; and Health and Safety Code, Chapters 241, 47, and 1001.

§133.41. *Hospital Functions and Services.*

(a) (No change.)

(b) Chemical dependency services.

(1) (No change.)

(2) Admission criteria. A hospital providing chemical dependency services shall have written admission criteria that are applied uniformly to all patients who are admitted to the chemical dependency unit.

(A) The hospital's admission criteria shall include procedures to prevent the admission of minors for a condition which is not generally recognized as responsive to treatment in an inpatient setting for chemical dependency services.

(i) The following conditions are not generally recognized as responsive to treatment in a treatment facility for chemical dependency unless the minor to be admitted is qualified because of other disabilities, such as:

(I) cognitive disabilities due to intellectual disability [~~mental retardation~~];

(II) - (III) (No change.)

(ii) - (iii) (No change.)

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

(3) (No change.)

(c) Comprehensive medical rehabilitation services.

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

(6) Admission criteria. A hospital providing comprehensive medical rehabilitation services shall have written admission criteria that are applied uniformly to all patients who are admitted to the comprehensive medical rehabilitation unit.

(A) The hospital's admission criteria shall include procedures to prevent the admission of a minor for a condition which is not generally recognized as responsive to treatment in an inpatient setting for comprehensive medical rehabilitation services.

(i) The following conditions are not generally recognized as responsive to treatment in an inpatient setting for comprehensive medical rehabilitation services unless the minor to be admitted is qualified because of other disabilities, such as:

(I) cognitive disabilities due to intellectual disability [~~mental retardation~~];

(II) - (III) (No change.)

(ii) (No change.)

(B) (No change.)

(7) - (8) (No change.)

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

(f) Governing body.

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

(4) Responsibilities relating to the medical staff.

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

(C) In hospitals that provide obstetrical services, the governing body shall collaborate with physicians providing services at the hospital to develop quality initiatives, through the adoption, implementation, and enforcement of appropriate hospital policies and procedures, to reduce the number of elective or nonmedically indicated induced deliveries or cesarean sections performed at the hospital on a woman before the 39th week of gestation.

(D) In hospitals that provide obstetrical services, the governing body shall ensure that a newborn audiological screening program, consistent with the requirements of Health and Safety Code, Chapter 47 (Hearing Loss in Newborns), performs, either directly or through a transfer agreement, audiological screenings for the identification of hearing loss on each newborn or infant born at the facility before the newborn or infant is discharged. These audiological screenings are required to be performed on all newborns or infants before discharge from the facility unless:

(i) a parent or legal guardian of the newborn or infant declines the screening;

(ii) the newborn or infant requires emergency transfer to a tertiary care facility prior to the completion of the screening; or

(iii) the screening previously has been completed.

(E) [(C)] The governing body shall determine, in accordance with state law and with the advice of the medical staff, which categories of practitioners are eligible candidates for appointment to the medical staff.

(i) In considering applications for medical staff membership and privileges or the renewal, modification, or revocation of medical staff membership and privileges, the governing body must ensure that each physician, podiatrist, and dentist is afforded procedural due process.

(I) If a hospital's credentials committee has failed to take action on a completed application as required by subclause (VIII) of this clause, or a physician, podiatrist, or dentist is subject to a professional review action that may adversely affect his medical staff membership or privileges, and the physician, podiatrist, or dentist believes that mediation of the dispute is desirable, the physician, podiatrist, or dentist may require the hospital to participate in mediation as provided in Civil Practice and Remedies Code (CPRC), Chapter 154. The mediation shall be conducted by a person meeting the qualifications required by CPRC §154.052 and within a reasonable period of time.

(II) Subclause (I) of this clause does not authorize a cause of action by a physician, podiatrist, or dentist against the hospital other than an action to require a hospital to participate in mediation.

(III) An applicant for medical staff membership or privileges may not be denied membership or privileges on any ground that is otherwise prohibited by law.

(IV) A hospital's bylaw requirements for staff privileges may require a physician, podiatrist, or dentist to document the person's current clinical competency and professional training and experience in the medical procedures for which privileges are requested.

(V) In granting or refusing medical staff membership or privileges, a hospital may not differentiate on the basis of the academic medical degree held by a physician.

(VI) Graduate medical education may be used as a standard or qualification for medical staff membership or privileges for a physician, provided that equal recognition is given to training programs accredited by the Accreditation Council for Graduate Medical Education and by the American Osteopathic Association.

(VII) Board certification may be used as a standard or qualification for medical staff membership or privileges for a physician, provided that equal recognition is given to certification programs approved by the American Board of Medical Specialties and the Bureau of Osteopathic Specialists.

(VIII) A hospital's credentials committee shall act expeditiously and without unnecessary delay when a licensed physician, podiatrist, or dentist submits a completed application for medical staff membership or privileges. The hospital's credentials committee shall take action on the completed application not later than the 90th day after the date on which the application is received. The governing body of the hospital shall take final action on the application for medical staff membership or privileges not later than the 60th day after the date on which the recommendation of the credentials committee is received. The hospital must notify the applicant in writing of the hospital's final action, including a reason for denial or restriction of privileges, not later than the 20th day after the date on which final action is taken.

(ii) The governing body is authorized to adopt, implement and enforce policies concerning the granting of clinical privileges to advanced practice nurses and physician assistants, including policies relating to the application process, reasonable qualifications for privileges, and the process for renewal, modification, or revocation of privileges.

(I) If the governing body of a hospital has adopted, implemented and enforced a policy of granting clinical privileges to advanced practice nurses or physician assistants, an individual advanced practice nurse or physician assistant who qualifies for privileges under that policy shall be entitled to certain procedural rights to provide fairness of process, as determined by the governing body of the hospital, when an application for privileges is submitted to the hospital. At a minimum, any policy adopted shall specify a reasonable period for the processing and consideration of the application and shall provide for written notification to the applicant of any final action on the application by the hospital, including any reason for denial or restriction of the privileges requested.

(II) If an advanced practice nurse or physician assistant has been granted clinical privileges by a hospital, the hospital may not modify or revoke those privileges without providing certain procedural rights to provide fairness of process, as determined by the governing body of the hospital, to the advanced practice nurse or physician assistant. At a minimum, the hospital shall provide the advanced practice nurse or physician assistant written reasons for the modification or revocation of privileges and a mechanism for appeal to the appropriate committee or body within the hospital, as determined by the governing body of the hospital.

(III) If a hospital extends clinical privileges to an advanced practice nurse or physician assistant conditioned on the advanced practice nurse or physician assistant having a sponsoring or collaborating relationship with a physician and that relationship ceases to exist, the advanced practice nurse or physician assistant and the physician shall provide written notification to the hospital that the relationship no longer exists. Once the hospital receives such notice from an advanced practice nurse or physician assistant and the physician, the hospital shall be deemed to have met its obligations under this section by notifying the advanced practice nurse or physician assistant in writ-

ing that the advanced practice nurse's or physician assistant's clinical privileges no longer exist at that hospital.

(IV) Nothing in this clause shall be construed as modifying Subtitle B, Title 3, Occupations Code, Chapter 204 or 301, or any other law relating to the scope of practice of physicians, advanced practice nurses, or physician assistants.

(V) This clause does not apply to an employer-employee relationship between an advanced practice nurse or physician assistant and a hospital.

(F) ~~[(D)]~~ The governing body shall ensure that the hospital complies with the requirements concerning physician communication and contracts as set out in Health and Safety Code ~~[(HSC)]~~, §241.1015 (Physician Communication and Contracts); ~~[and]~~

(G) ~~[(E)]~~ The governing body shall ensure the hospital complies with the requirements for reporting to the Texas Medical Board the results and circumstances of any professional review action in accordance with the Medical Practice Act, ~~[Texas]~~ Occupations Code, §160.002 and §160.003; ~~and[-]~~

(H) ~~[(F)]~~ The governing body shall be responsible for and ensure that any policies and procedures adopted by the governing body to implement the requirements of this chapter shall be implemented and enforced.

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

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

(j) Medical record services. The hospital shall have a medical record service that has administrative responsibility for medical records. A medical record shall be maintained for every individual who presents to the hospital for evaluation or treatment.

(1) - (10) (No change.)

(11) The hospital shall provide written notice to a patient, or a patient's legally authorized representative, that the hospital may authorize the disposal of medical records relating to the patient on or after the periods specified in this section. The notice shall be provided to the patient or the patient's legally authorized representative not later than the date on which the patient who is or will be the subject of a medical record is treated, except in an emergency treatment situation. In an emergency treatment situation, the notice shall be provided to the patient or the patient's legally authorized representative as soon as is reasonably practicable following the emergency treatment situation.

(12) ~~[(11)]~~ If a licensed hospital should close, the hospital shall notify the department at the time of closure the disposition of the medical records, including the location of where the medical records will be stored and the identity and telephone number of the custodian of the records.

(k) (No change.)

(l) Mental health services.

(1) (No change.)

(2) Admission criteria. A hospital providing mental health services shall have written admission criteria that are applied uniformly to all patients who are admitted to the service.

(A) The hospital's admission criteria shall include procedures to prevent the admission of minors for a condition which is not generally recognized as responsive to treatment in an inpatient setting for mental health services.

(i) The following conditions are not generally recognized as responsive to treatment in a hospital unless the minor to be admitted is qualified because of other disabilities, such as:

(I) cognitive disabilities due to intellectual disability ~~[mental retardation]~~; or

(II) (No change.)

(ii) (No change.)

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

(3) (No change.)

(m) - (y) (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 April 23, 2012.

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Lisa Hernandez

General Counsel

Department of State Health Services

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For further information, please call: (512) 776-6990



## CHAPTER 157. EMERGENCY MEDICAL CARE

### SUBCHAPTER C. EMERGENCY MEDICAL SERVICES TRAINING AND COURSE APPROVAL

#### 25 TAC §157.32

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes an amendment to §157.32, concerning Emergency Medical Services (EMS) training and course approval.

#### BACKGROUND AND PURPOSE

The amendments to §157.32 are necessary to incorporate terminology changes brought about by the 2004 department reorganization, and the National EMS Education Standards terminology changes that renamed EMS levels of practice: Emergency Medical Responder (EMR) and Advanced Emergency Medical Technician (AEMT). The most significant rule revision is a requirement for all paramedic training programs to be accredited by a national EMS accrediting agency or in active pursuit of accreditation before January 1, 2013.

The primary issue of the rule addresses paramedic training program accreditation by the Commission on Accreditation of Allied Health Education Programs (CAAHEP) through its EMS training program accrediting body, the Committee on Accreditation of Educational Programs for the EMS Professions (CoAEMSP). In 2009, the National Registry of Emergency Medical Technicians (NREMT) announced a decision to examine only paramedics who graduate from accredited programs or programs in active pursuit of accreditation, beginning on January 1, 2013. Because of this decision the department was faced with either reestablishing an exam development group or finding another agency

that could develop and administer exams. Further, the NREMT exam is considered to be the nationally preeminent EMS exam.

Accreditation contributes toward nationwide consistency and enhances the EMS profession in Texas. EMS is one of the few, if not the only licensed healthcare field that does not currently require graduation from an accredited training program. Currently, 56 of 72 state-approved paramedic training programs are either accredited or pursuing accreditation.

Paramedic training program accreditation is supported by the National Organization of State EMS Officials (NAEMSO) and the National Association of EMS Educators (NAEMSE). Accreditation was first recommended in the "National EMS Education Agenda for the Future," a 1996 document written by a national task force representing the full range of professions involved in EMS education, including EMS administrators, physicians, regulators, educators, and providers, with the support of the National Highway Traffic Safety Administration (NHTSA).

Over the past decade, there has been significant discussion of these issues by the Governor's EMS Trauma Advisory Council (GETAC) and its committees. There has been some evolution of concerns, with recent discussion and recommendations supportive of the accreditation proposal. In May of 2008, GETAC unanimously passed a motion to support the adoption of national accreditation of paramedic EMS programs by 2013. Several GETAC committees provided written input for this rule in September, 2011. This proposal is the result of committee input, the 2008 advisory council motion, the NREMT decision to test only graduates of accredited training programs, and the routine four-year review of rules to consider re-adoption. This proposal was discussed at the November 2011 quarterly Governor's EMS Trauma Advisory Council (GETAC).

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). The rule was most recently reviewed and revised in 2004. Section 157.32 has been reviewed and the department has determined that reasons for adopting the section continue to exist because a rule on this subject is needed.

#### SECTION-BY-SECTION SUMMARY

Amendments to §157.32(a) and (b) update terminology such as "referral to the Texas Department of Health" with the corrected reorganization language. The curriculum terms describing the new national education standards for EMS First Responder, Emergency Medical Technician Basic (EMT-B), Emergency Medical Technician - Intermediate (EMT-I) were changed to Emergency Medical Responder (EMR), Emergency Medical Technician (EMT) and Advanced Emergency Medical Technician (AEMT), respectively.

Section 157.32(f) was amended to mandate a December 31, 2012, deadline for all paramedic training programs to become accredited and provide proof of accreditation or the pursuit of accreditation by the Commission on Accreditation of Allied Health Education Programs (CAAHEP) through its training program accrediting body, the Committee on Accreditation of Educational Programs (CoAEMSP), or through another national accrediting organization recognized by the department. (No other accrediting bodies currently exist.)

Subsections (c), (m), (n), (o), (p), and (t) in §157.32 were revised to include and address paramedic accreditation requirements as

they relate to the national accreditation documentation, denial of program approval, program responsibilities, program re-approval, course approval and disciplinary actions, respectively.

Section 157.32(u) was revised to delete the reference "or the board", because the "Texas Board of Health" no longer exists, and also to update the website for application processing to [texas.gov](http://texas.gov).

#### FISCAL NOTE

Renee Clack, Section Director, Health Care Quality Section, has determined that for each year of the first five years the section is in effect, there will be no fiscal implications to the state or local governments as a result of enforcing or administering the section as proposed.

#### SMALL BUSINESSES AND MICRO-BUSINESSES IMPACT

Ms. Clack determined that for each year of the first five years the section is in effect, there will be some fiscal implications to training programs that qualify as small or micro-businesses, or persons as a result of enforcing or administering the section as proposed. Based on the number of currently unaccredited paramedic training programs, a few small or micro-businesses will incur increased costs associated with achieving national accreditation. Fees for initial accreditation include a \$1,200 initial fee, \$500 for a self-study report evaluation, a \$250 technology fee, and \$1,000 for a site-visit. Each of these fees (except for the technology fee) is required annually for re-accreditation.

Currently, 56 of 72 state-approved paramedic training programs are either accredited or pursuing accreditation. The fees outlined above would be new and additional for the remaining 16 programs and/or any new programs seeking to teach paramedic courses.

When comparing the cost of compliance for small businesses and micro-businesses to the cost of compliance for the largest business, the cost for each \$100 charge for student tuition and fees will likely have a proportional impact. The cost-per-student ratio would increase proportionally to the number of students enrolled to absorb the additional costs of accreditation. If the number of students enrolled is proportionally more the larger the business/training program, the cost-per-student for the largest programs is least and highest for micro-business. For example, the \$2,950 accreditation fee costs for a micro-business training program enrolling 10 students annually would be \$295 per student, a small business training program enrolling 50 students would be \$59 per student and a large program enrolling 100 students would be \$29.50. Each program might have to increase student tuition and fees to offset the additional cost.

#### IMPACT ON LOCAL EMPLOYMENT

There is no negative anticipated impact on local employment.

#### 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. 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 amendment 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 BENEFIT

Ms. Clack has also determined that for each year of the first five years the section is in effect, the public will benefit from adoption and enforcement of this section. The public benefit anticipated is that it defrays a significant cost for reestablishing an exam development group or paying another agency to develop and administer paramedic exams.

Since 2002, the department has utilized the NREMT as the qualifying examination for EMS personnel. The NREMT exam is administered statewide through Pearson VUE computerized test centers. In 2009, the NREMT announced a decision to examine only paramedics who graduate from accredited programs or programs in active pursuit of accreditation, beginning on January 1, 2013. Because of this decision the department was faced with either reestablishing an exam development group or finding another agency that could develop and administer exams. It is our decision to continue utilizing the NREMT exam. The NREMT exam was chosen because the department could no longer afford the costs incurred to administer or develop valid and reliable examinations.

Additional public benefits include nationwide consistency and EMS profession enhancement. EMS is one of the few, if not the only licensed healthcare field that does not currently require graduation from an accredited training program. The public will benefit from the continuous quality improvement component of accreditation that will be accomplished without increases in department labor and staff.

## PUBLIC COMMENT

Comments on the proposal may be submitted to Jane Guerrero, Office of EMS/Trauma Systems Coordination, Health Care and Quality Section, Division of Regulatory Services, Department of State Health Services, Mail Code 1876, P.O. Box 149347, Austin, Texas 78714-9347, (512) 834-6700, or by email to Jane.Guerrero@dshs.state.tx.us. Comments will be accepted for 30 days following the publication of the proposal to the *Texas Register*.

## 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 amendment is authorized by the Health and Safety Code, §773.050, which authorizes the Executive Commissioner to establish rules for emergency medical services personnel certification; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the rule implements Government Code, §2001.039.

The amendment affects Government Code, Chapter 531; and Health and Safety Code, Chapters 773 and 1001.

§157.32. *Emergency Medical Services Education Program and Course Approval.*

(a) Emergency medical services (EMS) Education Program Standards. The Texas Department of State Health Services (department) [~~Bureau of Emergency Management (bureau)~~] shall develop and publish an EMS Education and Training Manual (manual) outlining standards for EMS education that address at least the following areas:

(1) - (11) (No change.)

(b) Consideration of training standards.

(1) The department [~~Texas Department of Health (department)~~] shall base the manual on applicable standards and guidelines for evaluation and approval of EMS education programs adopted by national accrediting organizations.

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

(c) Curriculum.

(1) Emergency Care Attendant (ECA)

(A) The minimum curriculum shall include all content required by the current national Emergency Medical Responder (EMR) [~~EMS First Responder~~] educational standards and competencies as defined in the National EMS Education Standards by the United States Department of Transportation (DOT).

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

(2) Emergency Medical Technician (EMT) [~~Technician-Basic (EMT-B)~~].

(A) The minimum curriculum shall include all content required by the current national EMT [~~EMT-B~~] educational standards and competencies as defined in the National EMS Education Standards by DOT.

(B) (No change.)

(3) Emergency Medical Technician-Intermediate (EMT-I).

(A) The minimum curriculum shall include all content required by the [~~portions of the~~] current national Advanced Emergency Medical Technician (AEMT) [~~paramedic education~~] standards and competencies as defined in the National EMS Education Standards by DOT. The following areas must be addressed as outlined in the AEMT national educational standards and the Health and Safety Code, §773.048 [~~which address the following areas~~]:

(i) - (xiii) (No change.)

(B) The course shall include a minimum of 160 clock hours of classroom, laboratory, clinical, and field instruction which shall include supervised experiences in the emergency department with a licensed EMS provider and in other settings as needed to develop the competencies defined in the AEMT national educational standards [~~minimum curriculum~~].

(C) A student shall have a current EMT certification from the department or National Registry prior to beginning and throughout field and clinical rotations in an EMT-I course.

~~[(C) Certification as an EMT-Basic shall be required prior to beginning field and clinical rotations in an EMT-I course.]~~

(4) Emergency Medical Technician-Paramedic (EMT-P).

(A) The minimum curriculum shall include all content required by the current national paramedic education standards and

competencies in the National EMS Education Standards as defined by DOT.

(B) (No change.)

(C) A student shall have a current EMT or EMT-I certification from the department or current EMT, EMT-I or AEMT certification from the National Registry prior to beginning and throughout field and clinical rotations in an EMT-P course.

~~[(C) Certification as an EMT-Basic shall be required prior to beginning field and clinical rotations in an EMT-P course.]~~

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

(f) Currently approved programs. Programs that have obtained approval as of the effective date of this rule shall be considered to have met the requirements of subsections (g) or (h) of this section appropriate to their current level of approval. Paramedic programs must become accredited by December 31, 2012, and provide proof of accreditation by the Commission on Accreditation of Allied Health Education Programs (CAAHEP)/Committee on Accreditation of Educational Programs (CoAEMSP), or a national accrediting organization recognized by the department. Alternatively, the program may provide a letter from CAAHEP/ CoAEMSP or a national accrediting organization recognized by the department stating the education program has submitted the appropriate documentation that indicates it being in pursuit of accreditation as defined by that organization.

(g) - (l) (No change.)

(m) National accreditation for paramedic education/training programs.

(1) In addition to the requirements listed in subsection (h) of this section, all EMS education/training programs currently conducting paramedic education and training must meet the following requirements to receive approval as a paramedic education and training program:

(A) on or before December 31, 2012, become accredited and provide proof of accreditation by the CAAHEP/CoAEMSP, or a national accrediting organization recognized by the department; or

(B) provide documentation from CAAHEP/CoAEMSP or a national accrediting organization recognized by the department stating the education program has submitted the appropriate documentation that indicates it being in pursuit of accreditation as defined by the CAAHEP/CoAEMSP or a national accrediting organization recognized by the department on or before December 31, 2012. The education/training program that is deemed as pursuing accreditation may be temporarily approved by the department. In order to receive program approval, the education/training program must be accredited and provide proof of their accreditation by the national accrediting organization to the department.

(2) If the education/training program does not become accredited or has their accreditation revoked by the national accrediting organization the program will not be allowed to conduct a paramedic education or training course until the program becomes accredited or the program is recognized by the national accrediting organization as being in pursuit of accreditation.

(3) Initial or current education programs that are not accredited and would like to offer paramedic education and training on or after January 1, 2013 must:

(A) be approved by the department as an EMS basic education program, according to subsection (g) of this section;

(B) submit the appropriate application and fees to the department;

(C) meet the accreditation standards set by CAAHEP/CoAEMSP or another department approved national accrediting organization in order for the department to issue the applicant a temporary approval to conduct paramedic education or training courses;

(D) provide proof of accreditation by CAAHEP/CoAEMSP or another national accrediting organization recognized by the department. If the training program does not become accredited the program will not be allowed to conduct another paramedic education or training course until the program becomes accredited or the department receives notification from the accrediting organization that the program is recognized as being in pursuit of accreditation as defined by the accrediting organization.

(4) If a program has been accredited by CAAHEP/CoAEMSP or a national accrediting organization recognized by the department, the department may exempt the program from the program approval or re-approval process.

(5) Programs accredited by CAAHEP/CoAEMSP or another national accrediting organization recognized by the department shall provide the department with copies of:

(A) the accreditation self study;

(B) the accreditation letter or certificate; and

(C) any correspondence or updates to or from the national accrediting organization that impact the program's status.

(6) On request of the department, programs shall permit the department's representatives to participate in site visits performed by national accrediting organizations.

(7) If the department takes disciplinary action against a nationally accredited program for violations that could indicate substantial noncompliance with a national accrediting organization's essentials or standards, the department shall advise the national accrediting organization of the action and the evidence on which the action was based.

(8) If a program's national accreditation lapses or is withdrawn, the program shall meet all requirements of this subsection or subsections (g) or (h) of this section within a reasonable period of time as determined by the department.

~~[(1) If a program has been accredited through a national accrediting organization recognized by the department, the department may exempt the program from the program approval or re-approval process. If a program is denied, the program has an opportunity to request a hearing in accordance with §§1.21-1.34 of this title (relating to Formal Hearing Procedures).]~~

~~[(2) Nationally accredited programs shall provide the department with copies of:]~~

~~[(A) the accreditation self study;]~~

~~[(B) the accreditation letter or certificate; and]~~

~~[(C) any correspondence or updates to or from the accrediting organization that impact the program's status.]~~

~~[(3) On request of the department, programs shall permit the department's representatives to participate in site visits performed by national accrediting organizations.]~~

~~[(4) If the department takes disciplinary action against a nationally accredited program for violations that could indicate substantial noncompliance with a national accrediting organization's essentials~~

or standards, the department shall advise the national accrediting organization of the action and the evidence on which the action was based.]

~~{(5) If a program's national accreditation lapses or is withdrawn, the program shall meet all requirements of subsection (g) or (h) of this section within a reasonable period of time as determined by the department.}~~

(n) Denial of program approval. A program may be denied approval, provisional approval, or re-approval for, but not limited to, the following reasons:

(1) failure to meet the requirements established in subsection (g), ~~{or}~~ (h) or (m) of this section;

(2) - (9) (No change.)

(10) having disciplinary action imposed by the department on the provider license, personnel certification or licensure, or program for violation of any provision of Health and Safety Code, Chapter 773 or 25 Texas Administrative Code, Chapter 157; ~~or~~[-]

(11) failure of a paramedic program to become accredited or maintain their accreditation by CAAHEP/CoAEMSP or another national accrediting organization recognized by the department.

(o) Responsibilities. A program shall be responsible to:

(1) - (18) (No change.)

(19) provide the department with information and reports necessary for planning, administrative, regulatory, or investigative purposes; ~~and~~

(20) provide the department with any information that will effect the program's interaction with the department, ~~including~~ but not limited to changes in:

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

(F) program's physical and mailing address; ~~and~~[-]

(21) provide proof of accreditation by CAAHEP/CoAEMSP or another national accrediting organization recognized by the department.

(p) Program Re-approval.

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

(4) To be eligible for re-approval, the program shall meet all the requirements in subsections (g), ~~{or}~~ (h) or (m) of this section as appropriate to the level of approval requested; and

(A) (No change.)

(B) document progress toward correction of any deficiencies identified by the program or the department through the self-study and on-site review process; ~~and~~

(C) host an on-site review if one is deemed necessary by the department or requested by the program; ~~and~~[-]

(D) a paramedic program must provide documentation of current accreditation from CoAEMSP or another national accrediting organization recognized by the department.

(q) - (s) (No change.)

(t) Disciplinary actions.

(1) (No change.)

(2) Non-emergency suspension or revocation. A program's approval may be suspended or revoked for, but not limited to, the following reasons:

(A) - (U) (No change.)

(V) committing a violation within 24 months of being placed on probation; ~~and/or~~

(W) offering or attempting to offer courses during a period when the program's approval is suspended; ~~and/or~~[-]

(X) a paramedic program receiving revocation of their accreditation by CAAHEP/CoAEMSP.

(3) - (6) (No change.)

(u) For all applications and renewal applications, the department ~~{or the board}~~ is authorized to collect subscription and convenience fees, in amounts determined by the Texas Online Authority, to recover costs associated with application and renewal application processing through [texas.gov](http://texas.gov) [~~Texas Online~~].

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 April 23, 2012.

TRD-201202066

Lisa Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: June 3, 2012

For further information, please call: (512) 776-6990



## CHAPTER 229. FOOD AND DRUG SUBCHAPTER L. LICENSURE OF FOOD MANUFACTURERS, FOOD WHOLESALERS, AND WAREHOUSE OPERATORS

### 25 TAC §229.182

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes an amendment to §229.182, concerning the licensure of food manufacturers, food wholesalers, and warehouse operators.

#### BACKGROUND AND PURPOSE

This proposal is necessary to comply with Senate Bill (SB) 81, 82nd Legislature, Regular Session, 2011, which enacted an amendment to Health and Safety Code, §431.2211, to state that a person is not required to license if that person harvests, packages, or washes raw fruits or vegetables for shipment at the location of harvest. Whole produce distributors previously exempt from licensing will be required to license if they harvest, package or wash whole fruits and vegetables outside of the location of harvest. Grammatical corrections and department contact information are also being updated.

#### SECTION-BY-SECTION SUMMARY

The amendment to §229.182 brings the rule into compliance with SB 81, which amended Health and Safety Code, §431.2211, revising the licensing exemption of whole produce distributors.

Section 229.182(b)(3) revises the rule reference for the licensing of wholesale distributor of drugs from "§229.252(a)(1)" to "§229.249(a)."



Section 229.182(b)(7) reflects the name change of the application processing Internet website from "Texas Online" to "texas.gov."

Section 229.182(c) deletes the website address "www.tdh.state.tx.us/bfds/lic/apps.html" and provides the current website address "www.dshs.state.tx.us/fdlicense/apps.shtm" to update the location where a license/registration form can be obtained on the Internet.

Section 229.182(h)(2)(C) deletes the mailing address "1100 West 49th Street, Austin, Texas 78756-3182" and provides the current mailing address "Regulatory Licensing Unit, Food and Drug Licensing Group, Mail Code 2835, P.O. Box 149347, Austin, Texas 78714-9347."

Section 229.182(i)(1) deletes the word "or ships" and adds the words "or" and "for shipment at the location of harvest" to update the licensing exemption of whole produce distributors.

#### FISCAL NOTE

Susan E. Tennyson, Section Director, Environmental and Consumer Safety Section, has determined that for each year of the first five years the section is in effect, there will be fiscal implications to the state as a result of enforcing or administering the section as proposed. The effect on state government will be an increase in revenue to the state of \$500,500 each year due to fees received from firms previously exempt from licensing and the two-year license requirement. Implementation of the proposed section will not result in any fiscal implications for local governments.

#### SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Tennyson has also determined that there are anticipated economic costs to small businesses, persons, or micro-businesses required to comply with the sections as proposed. Whole produce distributors previously exempt from licensing will be required to license. The probable economic cost to businesses or persons required to comply will be \$129 - \$232 every year.

#### IMPACT ON LOCAL EMPLOYMENT

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 section is in effect, the public will benefit from adoption of the section. The public benefit anticipated as a result of enforcing or administering the section is the identification of whole produce firms and the products they distribute through the licensing process. Licensing these businesses or persons will assist the department in tracing the origination on suspect product back or forward to the source of a food-borne illness outbreak. The identification of the produce firms and the types of product stored will not only assist the department in locating possible points of contamination during an illness, it will also assist industry with more timely and efficient information sharing during an outbreak. The success of the amendment will be measured by the increase in produce firms in the licensing database and the speed in which food-borne illnesses are resolved.

#### 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. 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 amendment 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 Lewis Ressler, Environmental and Consumer Safety Section, Division of Regulatory Services, Mail Code 1982, Department of State Health Services, P.O. Box 149347, Austin, Texas 78714-9347, (512) 834-6670 or by email to lewis.ressler@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 rule has been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

#### STATUTORY AUTHORITY

The amendment is authorized by Health and Safety Code, §12.0111, which requires the department to charge fees for issuing or renewing a license; §12.0112, which requires the term of each license issued to be two years; 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 amendment affects the Health and Safety Code, Chapters 12 and 1001; and Government Code, Chapter 531.

§229.182. *Licensing/Registration Fee and Procedures.*

(a) (No change.)

(b) Licensing and registration fees.

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

(3) Wholesaler with combination products. A person who is required to be licensed as a food wholesaler under this section and who is also required to be licensed as a wholesale distributor of drugs under §229.249(a) [~~§229.252(a)(1)~~] of this title (relating to License Fees) or as a device distributor under §229.439(a)(1) of this title (relating to Licensure Fees) shall pay a combined licensure fee for each place of business. The licensure fee shall be based on the combined gross annual sales of these regulated products (foods, drugs, and/or devices).

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

(4) - (6) (No change.)

(7) For all applications and renewal applications, the department is authorized to collect subscription and convenience fees,

in amounts determined by [texas.gov](http://texas.gov) [the Texas Online Authority], to recover costs associated with application and renewal application processing [through Texas Online].

(8) - (9) (No change.)

(c) License/registration forms. License/registration forms may be obtained from the department, located at 1100 West 49th Street, Austin, Texas 78756-3182, or from the website at [www.dshs.state.tx.us/fdllicense/apps.shtm](http://www.dshs.state.tx.us/fdllicense/apps.shtm) [[www.tdh.state.tx.us/bfds/lic/apps.html](http://www.tdh.state.tx.us/bfds/lic/apps.html)].

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

(h) Amendment of license/registration.

(1) (No change.)

(2) Change in name, ownership, status, or location of business.

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

(C) Notice is considered adequate if the licensee or registrant provides the intent and verification notices to the department by certified mail, return receipt requested, mailed to the department at Regulatory Licensing Unit, Food and Drug Licensing Group, Mail Code 2835, P.O. Box 149347, Austin, Texas 78714-9347 [4100 West 49th Street, Austin, Texas 78756-3182].

(i) This section does not apply to:

(1) a person, firm, or corporation that harvests, packages, or washes[; or ships] raw fruits or vegetables for shipment at the location of harvest;

(2) - (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 April 23, 2012.

TRD-201202057

Lisa Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: June 3, 2012

For further information, please call: (512) 776-6990



## TITLE 28. INSURANCE

### PART 1. TEXAS DEPARTMENT OF INSURANCE

#### CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

##### SUBCHAPTER W. CONSUMER PROTECTION REQUIREMENTS CONSUMER BILL OF RIGHTS

###### 28 TAC §5.9970

*(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figures in 28 TAC*

*§5.9970 are not included in the print version of the Texas Register. The figures are available in the on-line version of the May 4, 2012, issue of the Texas Register.)*

The Texas Department of Insurance (TDI) proposes amendments to Subchapter W, §5.9970, concerning the Consumer Bills of Rights. TDI received petitions from the Office of Public Insurance Counsel (OPIC), requesting the adoption of revised Consumer Bills of Rights for Personal Automobile Insurance (BRPA) and Homeowners, Dwelling, and Renters Insurance (BRHO). Insurance Code §501.156 requires OPIC to submit to TDI for adoption a consumer bill of rights appropriate to each personal line of insurance TDI regulates. An insurer must distribute the appropriate bill of rights to each policyholder upon issuance of a policy under TDI rules.

The revised BRPA and BRHO are necessary to ensure that insurers distribute up-to-date consumer rights information to current and future policyholders. The Spanish language translations of the revised BRPA and BRHO ensure that the information is available to policyholders whose primary language is Spanish. The revised bills of rights are set forth in Figure 1: 28 TAC §5.9970(b), Figure 2: 28 TAC §5.9970(b), Figure 1: 28 TAC §5.9970(d), and Figure 2: 28 TAC §5.9970(d) of this proposal. TDI adopted the current versions of the BRPA and BRHO on April 19, 2005. The revisions contain changes due to legislative acts and regulatory actions that affect the rights of insurance consumers. The proposal also incorporates nonsubstantive editorial changes.

You may review copies of the petitions at the Office of the Chief Clerk, Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104. OPIC filed the final amended petitions on August 14, 2009, under file number A-0308-06 for BRPA and file number P-0808-14 for BRHO. After amending the figures at TDI's request, OPIC submitted the final figures on April 10, 2012. OPIC completed its review of the Spanish translations of the final figures on April 17, 2012. To request copies of the petitions, please contact the Office of the Chief Clerk.

**FISCAL NOTE.** Marilyn Hamilton, Director of the Personal and Commercial Lines Office for the Property and Casualty Section, has determined that, for each year of the first five years the proposed section is in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of this proposal. Ms. Hamilton does not anticipate any measurable effect on local employment or the local economy as a result of the proposal.

**PUBLIC BENEFIT/COST NOTE.** Ms. Hamilton has also determined that, for each year of the first five years the proposed amendments are in effect, there will be significant public benefits as a result of enforcing or administering the proposed amendments. The expected benefits include the provision of an accurate summary of current and future policyholders' rights with regard to their personal automobile insurance and homeowners, dwelling, and renters insurance policies; and the facilitation of public awareness of insurance consumer rights.

Insurers are required to comply with the proposal and deliver the BRPA and BRHO to current and future policyholders. Because the proposed amendments update existing documents already required to be provided with insurance policies, they do not impose any new duties with regard to new policies. If an insurer has an existing stock of the previously adopted versions of the BRPA and BRHO, TDI expects the cost to replace the existing stock to be between \$0.06 and \$0.08 per page for printing and paper.

The total cost to insurers will depend on the amount of existing stock. TDI expects that the insurer will have the information necessary to determine its individual cost, including the number of pages to be printed, in-house printing costs, and out-of-house printing costs.

Insurers must provide policyholders with copies of the updated BRPA and BRHO at the first renewal after the proposal goes into effect. Because the BRPA and BRHO are each about 10 pages long, TDI estimates that the cost per renewal will be between \$0.60 and \$0.80 plus any marginal increase in postage. An insurer's cost of complying with this requirement will vary depending on the number of renewals that the insurer provides.

#### ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES.

As stated in the cost note, TDI has determined that the proposed amendments to §5.9970 will result in minimal additional costs per policy. TDI estimates that there are approximately 25-50 affected small or micro businesses. The total cost to an insurer in providing the updated BRPA and BRHO to its policyholders is not wholly dependent on the size of the insurer. Instead, it depends on the insurer's number of current and future policyholders.

In accordance with Government Code §2006.002(c-1), TDI has determined that even though the proposal may have an adverse economic effect on small or micro businesses that are required to comply with the proposal, the proposal does not require a regulatory flexibility analysis under §2006.002(c)(2). Section 2006.002(c-1) requires that an agency consider alternative regulatory methods only if the alternative methods would be consistent with the health, safety, and environmental and economic welfare of the state.

Insurance Code §501.156 requires OPIC to submit to TDI for adoption a consumer bill of rights appropriate to each personal line of insurance TDI regulates, and it requires that the bills of rights be distributed on issuance of a policy by an insurer under TDI rules. Therefore, it is neither legal nor feasible to exempt small or micro businesses or to waive their compliance with §5.9970. Additionally, the purpose of the consumer bills of rights is to notify each policyholder of the rights applicable to each personal line of insurance. Any variance from the statutory purpose of informing policyholders of their rights would not be consistent with the health, safety, and environmental and economic welfare of the state, and TDI has not considered alternative regulatory methods.

**TAKINGS IMPACT ASSESSMENT.** TDI 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. Therefore, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

**REQUEST FOR PUBLIC COMMENT.** If you wish to comment on the proposal, or to request a public hearing, you must do so in writing no later than 5:00 p.m. on June 4, 2012. A hearing request must be on a separate page from any written comments. TDI requires two copies of your comments or hearing request. Send one copy to the Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Send the other copy to Marilyn Hamilton, Director, Personal and Commercial Lines Office, Property and Casualty Section, Mail Code 104-PC, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

**STATUTORY AUTHORITY.** TDI proposes the amendments pursuant to Insurance Code §§501.156, 2301.052, 2301.055, and 36.001. Section 501.156 requires OPIC to submit to TDI for adoption a consumer bill of rights appropriate to each personal line of insurance TDI regulates. These bills of rights are to be distributed on issuance of a policy by an insurer to each policyholder under TDI rules. Section 2301.052(a) states that, notwithstanding any other provision of the Insurance Code and except under specific circumstances, Chapter 2301, Subchapter A applies to an insurer with respect to insurance policy forms and endorsements for personal automobile insurance and residential property insurance. Section 2301.055 grants the Commissioner the authority to adopt reasonable and necessary rules to implement Subchapter A. Section 36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

**CROSS REFERENCE TO STATUTE.** The proposal relates to the following statutes: Insurance Code §§501.156, 2301.052, 2301.055, and 36.001.

§5.9970. *Responsibility and Obligation of Insurers To Provide Copies of the Consumer Bills of Rights to Each Insured for Personal Automobile Insurance and for Homeowners, Dwelling and Renters Insurance.*

(a) For purposes of this section, insurer(s) means an insurance company, reciprocal or interinsurance exchange, mutual insurance company, capital stock company, county mutual insurance company, Lloyd's plan, or other legal entity authorized to write personal automobile insurance or residential property insurance in this state. The term includes an affiliate, as described by §823.003(a) of the Insurance Code, if that affiliate is authorized to write and is writing personal automobile insurance or residential property insurance in this state.

(b) The Texas Department of Insurance adopts the "Consumer Bill of Rights Personal Automobile Insurance" (BRPA - Revised 2012 [2005]), and the Spanish language translation:[:]

Figure 1: 28 TAC §5.9970(b)

Figure 2: 28 TAC §5.9970(b)

[Figure 1: 28 TAC §5.9970(b)]

[Figure 2: 28 TAC §5.9970(b)]

(c) All insurers writing personal automobile insurance policies must provide with each new policy of personal automobile insurance a copy of the BRPA - Revised 2012. The insurer must provide the BRPA - Revised 2012 with ["Consumer Bill of Rights Personal Automobile Insurance." The Consumer Bill of Rights shall accompany] each renewal notice for personal automobile insurance unless the insurer has previously provided the insured with the BRPA - Revised 2012 [the adopted version of the Consumer Bill of Rights as set forth in subsection (b) of this section has been previously provided to the insured by the insurer]. The BRPA - Revised 2012 [Consumer Bill of Rights] must appear in no less than 10 point type and be on separate pages with no other text on those pages. The insurer must provide the Spanish language version of the BRPA - Revised 2012 [Consumer Bill of Rights Personal Automobile Insurance must be provided] to any consumer who requests it from the insurer. You may request a [A] copy of the BRPA - Revised 2012 [Consumer Bill of Rights Personal Automobile Insurance can be obtained] from the Texas Department of Insurance, Mail Code [MC] 104-1A, P.O. Box 149104, Austin, Texas 78714-9104 or from the Texas Department of Insurance website at [www.tdi.texas.gov](http://www.tdi.texas.gov) [[www.tdi.state.tx.us](http://www.tdi.state.tx.us)].

(d) The Texas Department of Insurance adopts the "Consumer Bill of Rights Homeowners, Dwelling and Renters Insurance" (BRHO - Revised 2012 [2005]), and the Spanish language translation:

Figure 1: 28 TAC §5.9970(d)

Figure 2: 28 TAC §5.9970(d)

[Figure 1: 28 TAC §5.9970(d)]

[Figure 2: 28 TAC §5.9970(d)]

(e) All insurers writing homeowners, renters, or dwelling insurance must provide with each new policy of any such insurance a copy of the BRHO - Revised 2012. The insurer must provide the BRHO - Revised 2012 with ["Consumer Bill of Rights Homeowners, Dwelling and Renters Insurance." The Consumer Bill of Rights shall accompany] each renewal notice for any such insurance unless the insurer has previously provided the insured with the BRHO - Revised 2012 [the adopted version of the Consumer Bill of Rights as set forth in subsection (d) of this section has been previously provided to the insured by the insurer]. The BRHO - Revised 2012 [Consumer Bill of Rights] must appear in no less than 10 point type and be on separate pages with no other text on those pages. The insurer must provide the Spanish language version of the BRHO - Revised 2012 [Consumer Bill of Rights Homeowners, Dwelling and Renters Insurance must be provided] to any consumer who requests it from the insurer. You may request a [A] copy of the BRHO - Revised 2012 [Consumer Bill of Rights Homeowners, Dwelling and Renters Insurance can be obtained] from the Texas Department of Insurance, Mail Code [MC] 104-1A, P.O. Box 149104, Austin, Texas 78714-9104 or from the Texas Department of Insurance website at [www.tdi.texas.gov](http://www.tdi.texas.gov) [[www.tdi.state.tx.us](http://www.tdi.state.tx.us)].

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

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

TRD-201202090

Sara Waitt

General Counsel

Texas Department of Insurance

Earliest possible date of adoption: June 3, 2012

For further information, please call: (512) 463-6327



## CHAPTER 34. STATE FIRE MARSHAL

### SUBCHAPTER C. STANDARDS AND FEES

#### FOR STATE FIRE MARSHAL INSPECTIONS

The Texas Department of Insurance (TDI) proposes amendments to §§34.301, 34.303, and 34.304 and new §34.320 and §34.340, concerning inspection guidelines and fees for requested inspections by the State Fire Marshal. TDI is also making other changes to update and reorganize the subchapter.

The amendments and new sections are necessary to implement House Bill (HB) 1951, enacted by the 82nd Legislature, Regular Session, effective September 1, 2011. HB 1951 amends Government Code §417.008 and §417.0081 to modify the fire safety inspection duties of the State Fire Marshal and to address the fee for an inspection performed by the State Fire Marshal that may be charged to a property owner or occupant who requests the inspection. Additional proposed amendments include updating the purpose of the subchapter; reorganizing the subchapter; and adopting the updated National Fire Protection Association (NFPA) Life Safety Code. Finally, the proposed amendments update obsolete severability language.

1. HB 1951--Guidelines For Assigning Potential Fire Safety Risk.

Chapter 417, Government Code, addresses certain powers and duties of TDI and the State Fire Marshal. HB 1951 adds new Government Code §417.0081(b) to require the Commissioner of Insurance (Commissioner) to adopt guidelines for assigning potential fire safety risk to state-owned and state-leased buildings to determine a schedule for the inspection of the buildings. TDI proposes new §34.320 to implement this requirement.

The State Fire Marshal's Office (SFMO) already inspects state-owned buildings, including the capitol complex, hospitals, correctional facilities, and universities. The addition of leased properties to the inspection schedule will add more than 1,000 buildings and more than 10 million square feet to these inspection responsibilities.

The two primary sources of input information currently available for use in calculating the relative risk level of a particular state-owned building are general building information obtained from Texas Facilities Commission files and previous SFMO inspection reports. Because the SFMO did not previously inspect leased facilities, information regarding state-leased buildings is limited to that possessed by the Texas Facilities Commission. Unfortunately, that information is frequently limited to location and square footage of leased space. Information gathered in prior SFMO inspection reports will modify a building's risk factor. In October 2011, the SFMO began inspecting leased properties around the state to start accumulating risk factor data on the properties.

The proposed assessment model identifies risk factors that can affect both the occurrence (frequency and number) of fire and the loss (casualties and dollar loss) from fire. A fire safety inspection uses these considerations or features. The actual inspection categorizes the risk factors into more subjective detail. An inspection reveals what is adequate; what meets minimal standards; what is non-compliant; and what constitutes severe danger. Because information concerning every characteristic is not currently available for use in prioritizing inspections, the SFMO will use available information to make a good faith estimate for prioritization purposes. The SFMO will then reprioritize inspections using the proposed guidelines after more risk criteria information is available.

Proposed §34.320 establishes the guidelines for prioritizing the inspection of state-owned and state-leased buildings. The nine factors that are proposed for adoption are: (1) gross square feet; (2) occupancy classification; (3) occupant load; (4) fire protection features; (5) fire protection systems; (6) stories/height; (7) maintenance/management issues; (8) replacement cost/building value; and (9) critical nature of facility. These risk factors are described in proposed §34.320.

The SFMO will use these nine factors to prioritize fire safety inspections for state-owned and state-leased buildings by reviewing all available information regarding the building's risk factors to identify those buildings that evidence the highest risk.

2. HB 1951--Fees For Requested Inspections.

HB 1951 also adds new Government Code §417.008(f) to require the Commissioner to prescribe a reasonable fee for an inspection performed by the SFMO that may be charged to a private property owner or occupant who requests an inspection, as the Commissioner considers appropriate. Section 417.008(f) requires the Commissioner to consider in prescribing the fee the overall cost to the SFMO to perform the inspections, including the approximate amount of time the SFMO staff needs to perform an inspection, travel costs, and other expenses.

The Sunset Advisory Commission "Texas Department of Insurance Report to the 82nd Legislature" recommends authorizing the SFMO to charge a fee for inspections of privately owned buildings. The Sunset Advisory Commission's July 2011 "Final Report to the Legislature on the Texas Department of Insurance and Office of Public Insurance Council" states that "the inability to charge an inspection fee continues to contribute to the SFMO's inappropriate involvement in private building inspections. Further, the July 2011 report states that "the 2008 Sunset review found that although the SFMO has limited resources to effectively perform fire safety inspections of privately owned buildings, it is often the inspector of choice because it cannot charge a fee, unlike local county and city fire marshals. Inspections of private buildings continue to represent almost 40 percent of the SFMO's inspection workload. As a result of these findings, the Sunset Commission recommended that the Legislature authorize the SFMO to charge a fee for inspections of privately owned buildings. This recommendation remains appropriate as the Office still needs statutory authority to charge inspection fees."

Proposed §34.340 states the fee schedule that the SFMO will use for requested inspections. The fees vary based on: (1) the use of the facility; (2) the number of buildings; and (3) whether the inspection is done on an expedited basis. The section also requires the use of Form No. SF259 (Inspection Request Form) to request an inspection and prescribes the form of payment required. Finally, the section requires the submission of Form No. SF259 as specified on the form.

In determining the fee schedule, TDI considered the overall cost to the SFMO to perform the inspections, including the approximate amount of time the staff of the SFMO needs to perform an inspection, travel costs, and other expenses. There are 13 trained professional inspectors stationed throughout the state employed by the SFMO. However, requested inspections of privately owned buildings are not the only responsibility of the SFMO's inspectors. They are also charged with inspecting state-owned and state-leased facilities, including all state health institutions, prisons, educational institutions, office space, and warehouses.

TDI also considered that different uses of a building may involve the application of additional fire codes or may indicate certain activities that require more extensive fire protection devices. The fee schedule reflects the additional time required to inspect certain types of buildings.

SFMO inspectors often schedule inspections based on a circuit of their general area of responsibility, inspecting facilities in close proximity at the same time to minimize travel. The doubled fee that applies to expedited inspections reflects the additional travel that may be required to perform those inspections. Additionally, expedited inspections may require the rescheduling of other inspections, creating further burdens on the inspector's time. The SFMO will not always be able to act on expedited requests within seven days.

TDI proposes Form No. SF259 (Inspection Request Form) for adoption by reference in §34.340. The form requires the submission of contact information for the requester and the property owner. The form also requires the submission of the property address and disclosure of the use of the building, the number of buildings, and whether the requester is seeking an expedited request.

### 3. General Updates.

The proposed amendments to §34.301 clarify the purpose of the subchapter to reflect the amendments in HB 1951 that expand the duties of the SFMO. The proposed amendments clarify that the subchapter now applies to the inspections of both public and private buildings.

Implementing the changes to SFMO inspections in HB 1951 requires the expansion of rules regarding inspections in Subchapter C of 28 Texas Administrative Code Chapter 34. The proposed amendments revise the title of the subchapter to reflect its revised content as including the fee that will be charged for inspections. Proposed new divisions improve the organization of the subchapter. TDI is proposing new Division 1, entitled General Provisions, that will include existing §§34.301 - 34.304. Proposed new Division 2, entitled Inspection Guidelines, contains §34.320 and concerns guidelines for assigning the potential fire safety risk of state-owned and state-leased buildings. Proposed new Division 3, entitled Inspection Fees, contains §34.340 and concerns procedures and fees for SFMO inspections.

The proposed amendment to §34.304 modifies the severability language to reflect TDI's current standardized language.

### 4. Update Minimum Standards.

Proposed amendments to §34.303 adopt the most recent version of the National Fire Protection Association (NFPA) Life Safety Code 101 for inspections performed under Government Code §417.008. Government Code §417.008(e) provides that the Commissioner may adopt by rule any appropriate standard developed by a nationally recognized standards-making association for this purpose. The NFPA Life Safety Code 101 addresses those construction, protection, and occupancy features necessary to minimize danger to life from the effects of fire, including smoke, heat, and toxic gases created during a fire.

The Life Safety Code addresses life safety standards in both new and existing structures and includes standards concerning exits, sprinklers, alarms, emergency lighting, smoke barriers, and special hazard protection. The 2012 revision of the Life Safety Code amends definitions and provides clarification in consensus with associated codes and standards. In addition, the proposed code requires fire sprinklers on covered balconies, porches, and attics for certain residential board and care facilities. Modified healthcare occupancy requirements allow the healthcare setting to be more homelike by permitting features such as fireplaces and food warming equipment. The 2012 revision also provides that building services areas that are not normally occupied have new alternate provisions for means of egress. The proposed revised code also requires carbon monoxide detection for new residential occupancies where fuel fired equipment or attached garages are present.

A copy of the standard is available for public inspection in the State Fire Marshal's Office. The NFPA also makes available codes for read-only inspection online through their website at [www.nfpa.org](http://www.nfpa.org). To view the NFPA codes on the NFPA website, users must create a free account and agree to certain terms and conditions.

FISCAL NOTE. Mark Lockerman, Acting State Fire Marshal, has determined that for each year of the first five years the proposed sections will be in effect, there will no measurable fiscal impact to state government and no measurable impact to local governments as a result of the enforcement or administration of the proposal. There will be no measurable effect on local employment or the local economy as a result of the proposal.

The May 27, 2011, Fiscal Note to HB 1951 states that there would be no measurable fiscal impact on the state. The fiscal note analysis assumes that costs related to implementing an inspection fee provision will be revenue neutral. It also assumes that authorizing the SFMO to institute a fee for conducting inspections of privately owned buildings will result in a gain in revenue that will offset the SFMO's costs in providing the inspections and that the revenue will be redirected to those functions. The analysis provides that the financial gain could not be estimated. The gain is dependent upon the fee level determined by the SFMO and the number of requests that are realized once the SFMO charges for this service. Government Code §417.008 is silent as to where to deposit the fee; therefore, the inspection fees are deposited to the General Revenue fund.

**PUBLIC BENEFIT/COST NOTE.** Mr. Lockerman also has determined that for each year of the first five years the proposal is in effect, there is an anticipated public benefit of reduction in the risk of harm to life and property in state-leased and state-owned buildings as a result of the rule. Additionally, the anticipated public benefit includes preserving state resources by pricing SFMO inspections to better reflect their true costs, as well as potential costs for persons required to comply with the proposal.

TDI drafted the proposed rules to maximize public benefits while mitigating costs. The inspection guidelines for state-owned and state-leased buildings in proposed §34.320 will have no expected financial impact on the public. The new fee for requested inspections may have a financial impact.

The cost to persons required to comply with the proposal are the costs to submit an inspection request, the costs established by the proposed fee schedule, and the costs to comply with the updated Life Safety Code. The costs for compliance will vary between the smallest and largest businesses because the fees reflect the use, number, and size of the buildings inspected. TDI does not believe that the proposed section will have an adverse effect on small and micro businesses. However, TDI has considered the purpose of HB 1951, which is to establish a reasonable fee for performing private building inspections, and has determined that it is neither legal nor feasible to waive the provisions of the proposed amendments for small or micro businesses.

Estimated Costs for Persons Required to Comply with the Proposal.

*Requirements that do not result in any additional costs under this proposal.* TDI has determined that proposed provisions relating to inspection guidelines for state-owned and state-leased buildings under the charge and control of the Texas Facilities Commission do not result in any costs in addition to those resulting from the HB 1951 amendments to Government Code §417.008 and §417.0081 and existing statutory or rule requirements. The proposed amendments to update the purpose and organization of the subchapter and to update obsolete severability language also will not result in any costs.

*Costs related to submitting inspection requests and fees.* TDI estimates that the proposal's requirement that a requester use Form No. SF259 to request an inspection may result in costs to the requester. These costs result from the time it takes to complete and submit the form and the method of submitting the form.

Each inspection request made under proposed §34.340 will be a separate, non-recurring expense. TDI estimates that each request for inspection submitted to the SFMO as specified in proposed §34.340 will cost between \$14 and \$16. This cost esti-

mate includes an estimate of 30 minutes of the property owner's or occupant's time to retrieve and print or copy the form. Materials costs include between \$.08 and \$1.20 for printing or copying the form, costs of \$.44 to \$1.22 for first class postage using the United States Post Office, and costs of \$.05 to \$.16 for an appropriately sized envelope. Total annual costs to a requester resulting from §34.340 will vary based on the number of requested inspections that the requester submits.

The rule also specifies the inspection fees, which range from \$75 to \$300 depending on the type of building being inspected. The fee for each additional building inspection beyond the first is \$25. Requests for an expedited inspection double the fee.

*Costs related to adoption of updated standard.* The proposal adopts NFPA Life Safety Code 101-2012 as the standard for inspections performed under Government Code §417.008. Because of revisions in the updated Life Safety Code, building owners may be required to meet more stringent or altered code requirements, and building owners and operators may have higher costs to comply with the more recent version of the Life Safety Code. However, these costs will be individualized based on the existing condition of the building and the number of buildings affected by the updated standards. Additionally, the Life Safety Code distinguishes between existing and new construction.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES.** Government Code §2006.002(c) requires that if a proposed rule may have an economic impact on small businesses, state agencies must prepare as part of the rulemaking process an economic impact statement that assesses the potential impact of the proposed rule on small businesses and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule. Government Code §2006.001(2) defines "small business" as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit, is independently owned and operated, and has fewer than 100 employees or less than \$6 million in annual gross receipts. Government Code §2006.001(1) defines "micro business" similarly to "small business" but specifies that such a business may not have more than 20 employees. Government Code §2006.002(f) requires a state agency to adopt provisions concerning micro businesses that are uniform with those provisions outlined in Government Code §2006.002(b) - (d) for small businesses.

The SFMO and TDI do not directly regulate the building owners or occupants who request an inspection from the SFMO. Requesters may be any property owner or occupant, including small or micro businesses, that requests an inspection. Because of the broad scope of potential requesters, it is impossible to determine what effects the rule will have on small or micro businesses. In calendar year 2011 the SFMO performed 1,234 inspections. Inspections of day cares, foster homes, group homes, nursing homes, children's homes, personal care home treatment centers or residential board and care facilities made up 468, or about 38 percent, of all SFMO inspections. These are the types of private buildings that the SFMO inspects due to a request. Some of the 468 inspections occurred in response to complaints or to follow up on past inspections. According to the State Comptroller, 91.6 percent of all businesses are small or micro businesses (<https://fm.xcpa.state.tx.us/fmx/legis/effect/>). Therefore, TDI estimates that 400 or more inspections each year may involve small or micro businesses that may be required to pay the inspection fee under the proposed rules. The proposed fees

may reduce the number of requested private building inspections that the SFMO performs as those building owners and operators use alternate inspection providers.

The cost of compliance with the proposal will not vary between large businesses and small or micro businesses, and TDI's cost analysis and resulting estimated costs for building owners or occupants requesting an inspection in the Public Benefit/Cost Note portion of this proposal is equally applicable to small or micro businesses. However, because the costs attributable to the rule vary with the use, size, and number of buildings, TDI anticipates that the proposal is likely to have a smaller cost impact on small or micro businesses because such businesses are less likely to request inspection of multiple properties or properties with multiple buildings.

The intent of the proposed fees is to offset the costs to the SFMO to perform an inspection. TDI and SFMO also examined the fee schedules that several local jurisdictions charge for similar inspections, including the fee schedules for the City of El Paso, the City of Dallas, Harris County, and Travis County. These fee schedules indicate a wide range of methodology. TDI's proposed fee schedule is less complex and features fewer discrete categories than some local jurisdictions have adopted. The simplicity will help all requesters in estimating the cost of inspections.

TDI considered proposing a discounted fee rate for small and micro businesses based on self-reporting. However, according to the July 2011 "Sunset Final Report on The Texas Department of Insurance, Office of Public Insurance Counsel," the stated legislative purpose of the fee is to offset the overall cost to the State Fire Marshal to perform the inspections, including the approximate amount of time the staff of the State Fire Marshal needs to perform an inspection, travel costs, and other expenses. Modifying the scheduled fee for small and micro businesses would contradict the intended purpose of the statute. For that reason, the use of a discounted fee rate would not be consistent with the health, safety, and environmental and economic welfare of the state.

For all inspection requesters, including small and micro businesses, requesting a SFMO inspection is a business decision. The costs of the inspection are determined by the proposed rule. Each individual requester may determine for himself or herself whether the cost burden of the inspection is necessary. Additionally, a property owner or occupant may instead use a private fire inspector to inspect the property for a fee.

The proposal adopts NFPA Life Safety Code 101-2012 as the standard for inspections performed under Government Code §417.008. The updated standard is necessary to better protect the health and safety of the public. TDI has determined in accordance with Government Code §2006.002(c-1) that, the proposal substantially contributes to the health and safety of Texas citizens by incorporating more current life safety standards. Therefore, there are no regulatory alternatives to the adoption of the updated standard in this proposal that will sufficiently protect the health and safety of Texas citizens who are affected by a SFMO inspection.

**TAKINGS IMPACT ASSESSMENT.** TDI 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 June 4, 2012, to Sara Waitt, General Counsel, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment must be simultaneously submitted to Mark Lockerman, Acting State Fire Marshal, Mail Code 112-FM, 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.

## DIVISION 1. GENERAL PROVISIONS

### 28 TAC §§34.301, 34.303, 34.304

**STATUTORY AUTHORITY.** The amendments are proposed pursuant to Government Code §§417.005, 417.008, and 417.0081 and Insurance Code §36.001. Government Code §417.005 states that the Commissioner, after consulting with the State Fire Marshal, may adopt rules necessary to guide the State Fire Marshal and fire and arson investigations commissioned by the State Fire Marshal and in the performance of other duties for the Commissioner. Government Code §417.008 provides that the Commissioner by rule shall prescribe a reasonable fee for an inspection performed by the State Fire Marshal that may be charged to a property owner or occupant who requests the inspection, as the Commissioner considers appropriate. Government Code §417.008(e) provides that the Commissioner may adopt by rule any appropriate standard related to fire danger developed by a nationally recognized standards-making association. Government Code §417.0081 provides that the Commissioner by rule shall adopt guidelines for assigning potential fire safety risk to state-owned and state-leased buildings and providing for the inspection of each building to which this section applies. 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: Government Code §417.008 and §417.008.

#### §34.301. Purpose.

The purpose of this subchapter is to administer the law set forth in Government Code §417.008 and §417.0081, regarding right of entry and the inspection of public and private buildings [~~examination and correction of dangerous conditions~~].

#### §34.303. Adopted Standards.

The commissioner [~~Commissioner~~] adopts by reference: NFPA Life Safety Code 101-2012 [~~101-2009~~]. These copyrighted standards and recommendations are adopted for inspections performed under Government Code §417.008, except to the extent they are in conflict with sections of this chapter or any Texas statutes or federal law. The standards are published by and are available from the National Fire Protection Association, Quincy, Massachusetts. A copy of the standard is available for public inspection in the State Fire Marshal's Office.

#### §34.304. Severability.

If a court of competent jurisdiction holds that any provision of this subchapter or its [~~the~~] application [~~thereof~~] to any person or circumstance is [~~held~~] invalid for any reason, the invalidity does [~~shall~~] not

affect [the] other provisions or applications [any other application] of this subchapter that [these rules which] can be given effect without the invalid provision [provisions] or application. To this end, the [aH] provisions of this subchapter are [declared to be] severable.

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 April 19, 2012.

TRD-201201973

Sara Waitt

General Counsel

Texas Department of Insurance

Earliest possible date of adoption: June 3, 2012

For further information, please call: (512) 463-6327



## DIVISION 2. INSPECTION GUIDELINES

### 28 TAC §34.320

STATUTORY AUTHORITY. The new section is proposed pursuant to Government Code §§417.005, 417.008, and 417.0081 and Insurance Code §36.001. Government Code §417.005 states that the Commissioner, after consulting with the State Fire Marshal, may adopt rules necessary to guide the State Fire Marshal and fire and arson investigations commissioned by the State Fire Marshal and in the performance of other duties for the Commissioner. Government Code §417.008 provides that the Commissioner by rule shall prescribe a reasonable fee for an inspection performed by the State Fire Marshal that may be charged to a property owner or occupant who requests the inspection, as the Commissioner considers appropriate. Government Code §417.008(e) provides that the Commissioner may adopt by rule any appropriate standard related to fire danger developed by a nationally recognized standards-making association. Government Code §417.0081 provides that the Commissioner by rule shall adopt guidelines for assigning potential fire safety risk to state-owned and state-leased buildings and providing for the inspection of each building to which this section applies. 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: Government Code §417.008 and §417.0081.

#### §34.320. Guidelines for Assigning Potential Fire Safety Risk.

(a) The commissioner adopts the following "Guidelines For Assigning Potential Fire Safety Risk", for use by the state fire marshal in the inspection of state-owned and state-leased buildings.

(b) The state fire marshal will review all available information regarding the potential risk factors stated in paragraphs (1) - (9) of this subsection for a building to determine its inspection priority. The scheduling of inspections will prioritize those buildings that evidence the highest potential risk.

(1) Gross square feet--the total area reported for the building in square feet;

(2) Occupancy classification--the purpose and intended use of a building or portion of the building;

(3) Occupant load--the total number of persons that might occupy a building or portion of the building at any point in time, equal to the usable square footage divided by an occupant load factor. Occupant load factors are commonly assigned for each type of building use under the NFPA 101, "Life Safety Code," or under the International Building Code. The occupant load factors from these sources are typically the same, but where they differ, this assessment uses the factor from the International Building Code;

(4) Fire protection features--includes the type of building construction, use of compartmentalization, use of fire-resistive and -rated materials and components, smoke control, and adequacy of means of exit;

(5) Fire protection systems--fire alarm, extinguisher, and sprinkler systems, communications systems, and fire fighter emergency operations equipment;

(6) Stories/Height--the reported height of the building in stories above grade;

(7) Maintenance/Management issues--the building environment, including staff availability and responsiveness, sanitation, deferred maintenance, security, and occupancy;

(8) Replacement cost/Building value; and

(9) Critical nature of facility--the specific use and occupancy of a building that warrants additional consideration because of historical value, the building contents, or the function or operations carried on in the building that are vital to the public health, safety, or general welfare.

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

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

TRD-201201972

Sara Waitt

General Counsel

Texas Department of Insurance

Earliest possible date of adoption: June 3, 2012

For further information, please call: (512) 463-6327



## DIVISION 3. INSPECTION FEES

### 28 TAC §34.340

STATUTORY AUTHORITY. The new section is proposed pursuant to Government Code §§417.005, 417.008, and 417.0081 and Insurance Code §36.001. Government Code §417.005 states that the Commissioner, after consulting with the State Fire Marshal, may adopt rules necessary to guide the State Fire Marshal and fire and arson investigations commissioned by the State Fire Marshal and in the performance of other duties for the Commissioner. Government Code §417.008 provides that the Commissioner by rule shall prescribe a reasonable fee for an inspection performed by the State Fire Marshal that may be charged to a property owner or occupant who requests the inspection, as the Commissioner considers appropriate. Government Code §417.008(e) provides that the Commissioner may adopt by rule any appropriate standard related to fire danger developed by a nationally recognized standards-making association. Government Code §417.0081 provides that the Commissioner by rule shall adopt guidelines for assigning po-



tential fire safety risk to state-owned and state-leased buildings and providing for the inspection of each building to which this section applies. 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: Government Code §417.008 and §417.008.

§34.340. Inspection Fees for Requested Inspections.

(a) The commissioner adopts by reference Form No. SF259 (Inspection Request Form) for use to request a fire safety inspection by the State Fire Marshal's Office. This form is published by and available from the State Fire Marshal's Office.

(b) The amount of money a person requesting an inspection must pay to the department for a state fire marshal fire safety inspection is listed in paragraphs (1) - (7) of this subsection. If the building includes more than one building type as listed in paragraphs (1) - (7) of this subsection, then the requester must pay for the most expensive building type that the building includes, plus the amount of money specified in paragraph (8) of this subsection.

(1) Licensed adult or child day care facility or foster home--\$75;

(2) Licensed nursing home, assisted living or board and care facility, or school--\$100;

(3) Apartment building, hotel, motel, lodge, or rooming house--\$150;

(4) Assembly occupancy, restaurant, or other commercial facility--\$150;

(5) Industrial facility or warehouse--\$200;

(6) Private prison or jail--\$200;

(7) Other building not listed in paragraphs (1) - (6) of this subsection:

(A) less than 25,000 square feet--\$100;

(B) 25,000 square feet to less than 100,000 square feet--\$200; and

(C) 100,000 square feet or greater--\$300.

(8) Each additional building after the first--\$25.

(c) To obtain an inspection, a person requesting an inspection must submit Form No. SF259 (Inspection Request Form) to the State Fire Marshal's Office. The form must be submitted as specified in Form No. SF259.

(1) A person requesting an inspection may request the date of the inspection; however, if the requested inspection date is within seven days of the request, the fee will be double the amount specified under subsection (b) of this section.

(2) The State Fire Marshal's Office will determine the actual inspection date and is not obligated to complete any inspection within a requested time period.

(3) Except for additional fees submitted pursuant paragraph (1) of this subsection, all payments are nonrefundable.

(d) A person submitting an inspection request must pay the inspection fee by cashier's check or money order made payable to the

Texas Department of Insurance at the time Form No. SF259 (Inspection Request Form) is submitted to the State Fire Marshal's Office.

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

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

TRD-201201974

Sara Waitt

General Counsel

Texas Department of Insurance

Earliest possible date of adoption: June 3, 2012

For further information, please call: (512) 463-6327

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**TITLE 31. NATURAL RESOURCES AND CONSERVATION**

**PART 10. TEXAS WATER DEVELOPMENT BOARD**

**CHAPTER 355. RESEARCH AND PLANNING FUND**

**SUBCHAPTER C. REGIONAL WATER PLANNING GRANTS**

**31 TAC §§355.90 - 355.100**

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

The Texas Water Development Board (board) proposes the repeal of 31 TAC Chapter 355, Subchapter C, §§355.90 - 355.100, relating to Regional Water Planning Grants. Subchapter C is proposed for repeal because the board is proposing for adoption a new Subchapter C elsewhere in this issue of the *Texas Register*.

**BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE REPEAL**

Current Subchapter C requires updating to achieve a more streamlined process and to maintain consistency with new substantive rules relating to regional water planning. In addition to a new Subchapter C being proposed elsewhere in this issue of the *Texas Register*, new Chapter 357, relating to Regional Water Planning, and new Chapter 358, relating to State Water Planning Guidelines, are also proposed. Additionally, current Subchapter C is repetitive and will be more user friendly when revised and reorganized.

Chapter 355, Subchapter C contains procedural requirements for the regional water planning groups to apply for grants, made available through legislative appropriation, for regional water planning activities. These funds are appropriated to the board's research and planning fund. The subchapter also delineates allowable uses of the grant funds.

**FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS**

Carolyn Brittin, Deputy Executive Administrator, has determined that there is no fiscal impact to state or local governments as a

result of this proposed repeal particularly since these rules will be revised and proposed for adoption simultaneously with this repeal.

#### PUBLIC BENEFITS AND COSTS

Ms. Brittin has determined that there are public benefits to repealing this subchapter because the proposed new subchapter will be more streamlined and reduce the time needed by eligible applicants and the public to understand and use the rules. Ms. Brittin has also determined there are no increased costs to the public or the eligible applicants resulting from the repeal of this subchapter. Additionally, Ms. Brittin has determined that there are not economic costs to persons required to comply with the repeal since the rules are not mandatory.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

The board has determined that a local employment impact statement is not required because the proposed repeal does not adversely affect a local economy in a material way for the first five years that the proposed repeal is in effect because it will impose no new requirements on local economies.

The board has determined that there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this repeal.

#### REGULATORY IMPACT ANALYSIS

The board has determined that the proposed repeal is not subject to Texas Government Code §2001.0225 because it is not a major environmental rule under that section.

#### TAKINGS IMPACT ASSESSMENT

The board has determined that the proposed repeal will constitute neither a statutory nor a constitutional taking of private real property. The proposed repeal does not adversely affect a landowner's rights in private real property, in whole or in part, temporarily or permanently, because the proposed repeal does not burden nor restrict or limit the owner's right to property. Therefore, the proposed repeal does not constitute a taking under Texas Government Code Chapter 2007.

#### SUBMITTAL OF COMMENTS

Comments on the proposed repeal will be accepted for 30 days following publication in the *Texas Register* and may be submitted to Legal Services, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, [rulescomments@twdb.texas.gov](mailto:rulescomments@twdb.texas.gov), or by fax at (512) 475-2053.

#### STATUTORY AUTHORITY

The repeal is proposed under the authority of Texas Water Code §6.101 which authorizes the board to adopt rules necessary to carry out the powers and duties of the board and Texas Water Code §16.053 relating to regional water plans.

The proposed repeal affects Texas Water Code §16.053 relating to regional water plans.

§355.90. *General.*

§355.91. *Definitions.*

§355.92. *Notice of Funds, Submission of Applications.*

§355.93. *Eligibility.*

§355.94. *Criteria.*

§355.95. *Board Consideration of Applications.*

§355.96. *Action of the Board on Applications.*

§355.97. *Notice Requirements.*

§355.98. *Contracts.*

§355.99. *Funding Limitations.*

§355.100. *Availability of Reports and Planning Documents.*

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 April 23, 2012.

TRD-201202071

Kenneth L. Petersen

General Counsel

Texas Water Development Board

Earliest possible date of adoption: June 3, 2012

For further information, please call: (512) 463-8061



#### 31 TAC §§355.90 - 355.93

The Texas Water Development Board (board) proposes new Chapter 355, Subchapter C, §§355.90 - 355.93, relating to Regional Water Planning Grants. The board has substantially revised this proposed new subchapter primarily to eliminate redundant or unneeded sections and to reorganize the subchapter for clarity and ease of use. The board is proposing the repeal of current Subchapter C, §§355.90 - 355.100, elsewhere in this issue of the *Texas Register*.

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED NEW RULES

The proposed new subchapter governs the procedures for applications for and uses of grant funds for regional water planning. This subchapter is based on the authority granted in Texas Water Code §15.4061, relating to Funding for Regional Water Plans. That section authorizes the board to adopt rules establishing criteria for eligibility for regional water planning money from the research and planning fund. These rules describe the criteria for eligibility and provide notice to eligible applicants about the procedures for applying for and receiving money.

#### DISCUSSION OF PROPOSED NEW RULES

Proposed new §355.90, relating to Applicability and Definitions, limits the applicability of the subchapter to development and revision of regional water plans in proposed subsection (a). Proposed subsection (b) contains definitions used in the subchapter, and there are no substantive changes from the previous definitions. Pursuant to Texas Water Code §15.4061(a), the board may contract only with a political subdivision to provide funds for regional planning so political subdivision is defined in proposed subsection (b)(5).

Proposed new §355.91, relating to Notice of Funds and Submission and Review of Applications, describes the board's procedures for providing public notice of the availability of regional planning funds in proposed subsection (a). Proposed subsection (b) requires the regional water planning groups to provide a written designation of a political subdivision authorized to apply for and administer the grant funds for the planning group. This designation is a prerequisite to applying for funds as is filing a copy of the planning group's by-laws with the board pursuant to proposed subsections (a) and (b). Proposed subsection (c) requires the regional water planning groups to provide public notice about the request for board funds. Proposed subsection (d) states that

the board may request clarifications from the regional water planning groups and also provides notice to the planning groups that the board may reject incomplete applications and that, depending on availability of funds, a group may re-apply after the initial funding for more money for unfunded tasks. Proposed subsection (e) contains the evaluation criteria that the board will use to judge the merits of the applications for funding. Proposed subsection (e) is required by Texas Water Code §15.4061(f) which requires the board to adopt rules establishing criteria for eligibility for regional water planning grants.

Proposed new §355.92, relating to Use of Funds, provides notice that funding decisions are solely within the board's discretion in proposed subsection (a) and also states that the items listed in proposed subsection (a)(1) - (5) are not eligible for funding. Proposed subsection (b) allows funding for the certain administrative costs listed in subsection (b)(1) - (4). The tasks and activities not eligible for funding are based upon statutory prohibitions in Texas Water Code §15.4061(g). Proposed subsection (c) clarifies that the planning groups may contract for professional services, but only through the procedures in Texas Government Code Chapter 2254. Proposed subsection (d) discusses funding for analyses of the costs and benefits of water management strategies and remains unchanged from the current subchapter.

Proposed new §355.93, relating to Board Consideration of Applications; Applicant's Responsibilities; and Contract describes the manner in which the board will receive information about the applications and explains that the board will provide the applicants with notice of the time and place the applications will be considered and provides the board's Web site address in proposed subsection (a). Proposed subsection (b) notes the board's broad discretion in deciding to fund the applications and provides notice to the applicants that the board's approval contains a deadline for contracting with the board. Proposed subsection (c) provides that the board may provide up to 100% of the costs to develop or revise a regional water plan. Finally, subsection (d) contains the minimum requirements of a contract for planning funds.

#### FISCAL NOTE: COST TO STATE AND LOCAL GOVERNMENTS

Carolyn Brittin, Deputy Executive Administrator, has determined that there will not be any additional estimated costs to state and local governments as a result of enforcing or administering these rules for the first five years these rules will be in effect. Although eligible applicants must be political subdivisions, no political subdivision is required to apply on behalf of a regional water planning group. The political subdivision in the role of eligible applicants have consented to assist the regional water planning groups in applying for and administering regional planning funds.

Ms. Brittin has also determined that there are no estimated reductions in costs to state or local governments as a result of enforcing or administering these rules for the first five years these rules will be in effect. These rules require political subdivisions that voluntarily choose to assist regional water planning groups to perform certain administrative tasks, not all of which are reimbursable. The minor added costs of performing these functions will not reduce costs to the local governments.

Additionally, Ms. Brittin has determined that there will not be any loss of or increase to revenue to state or local governments as a result of enforcing or administering these rules for the first five years that these rules will be in effect. These proposed rules do not affect the revenues of state or local governments.

#### PUBLIC BENEFITS AND COSTS

Ms. Brittin has determined that these rules do not impose costs to the public as the political subdivisions who are eligible applicants already perform similar functions, i.e., contract management and procurement activities, as part of their regular business. The benefit to the public is that regional water planning groups do not have to spend state grant funds to administer the state grants. Additionally, these rules provide a public benefit through improved clarity and elimination of unnecessary rules that will assist the public in understanding the funding of regional water planning activities throughout the state. These public benefits will be effective for the first five years the rules are in effect.

Ms. Brittin has also determined that there are no probable economic costs to persons required to comply with these rules. The regional water planning groups are not required to apply for funds for planning and the political subdivisions who act on behalf of the planning groups are not required to accept a designation to perform the administrative functions required by these rules.

#### LOCAL EMPLOYMENT ECONOMIC IMPACT STATEMENT

The board has determined that a local employment impact statement is not required because the proposed rulemaking does not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect because they will impose no new requirements on local economies. The board also has determined that there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this rulemaking because the rules are not regulatory and are not directed at private small or micro-businesses. The proposed new rules streamline and reorganize the requirements for receipt of funding for regional water planning groups. These proposed rules have no effect on the local economy or small or micro businesses because the rules apply only to regional water planning groups.

#### REGULATORY ANALYSIS

The board has determined that these rules do not constitute a major environmental rule because they are not based on a standard set by federal law, do not exceed an express requirement of state law or of a delegation agreement between the state and the federal government and are adopted pursuant to express state laws under Texas Water Code Chapter 15.

#### TAKINGS IMPACT ASSESSMENT

The board has determined that these rules do not impact private property because these rules are directed to regional water planning groups and the political subdivision that acts as the administrator of grant funds from the board and is not directed to private landowners. The rules do not affect private property because it does not authorize any governmental entity to regulate or affect the status of private property. The rules regulate only the distribution of funds from the board's research and planning fund.

#### SUBMITTAL OF COMMENTS

Comments on the proposed new rules will be accepted for 30 days following publication in the *Texas Register* and may be submitted to Legal Services, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, [rulescomments@twdb.texas.gov](mailto:rulescomments@twdb.texas.gov), or by fax at (512) 475-2053.

#### STATUTORY AUTHORITY

The new rules are proposed under the authority of Texas Water Code §6.101 which authorizes the board to adopt rules neces-

sary to carry out the powers and duties of the board and Texas Water Code §15.4061(f).

The proposed new rules affect Texas Water Code §15.4061.

§355.90. Applicability and Definitions.

(a) This subchapter applies to grant funds for the development and revision of regional water plans.

(b) The following words and acronyms, used in this subchapter, have the following meanings:

(1) Board--The Texas Water Development Board.

(2) Commission--The Texas Commission on Environmental Quality.

(3) Eligible applicant--A political subdivision designated by the regional water planning group and authorized to receive funds for developing or revising regional water plans.

(4) Executive administrator (EA)--The executive administrator of the Board or a designated representative.

(5) Political subdivision--A city, county, district or authority created under the Texas Constitution, Article III, §52, or Article XVI, §59, any other political subdivision of the state, any interstate compact commission to which the state is a party, and any nonprofit water supply corporation created and operating under Texas Water Code Chapter 67 (relating to Nonprofit Water Supply or Sewer Service Corporations).

(6) Regional water plan--A plan or an amendment to an adopted regional water plan developed by a regional water planning group for a regional water planning area pursuant to the Texas Water Code §16.053 (relating to Regional Water Plans).

(7) Regional water planning area--A geographical area designated and defined by the Board pursuant to the Texas Water Code §16.053.

(8) Regional water planning group (RWPG)--A group designated by the Board that develops a regional water plan, pursuant to the Texas Water Code §16.053.

(9) State environmental planning criteria--Criteria adopted by the Board for inclusion in the state water plan; the criteria are developed through coordination with the Commission and the Texas Parks and Wildlife Department and are used for evaluating the feasibility of water management strategies in a regional water plan when the RWPG lacks information from site specific studies. The environmental planning criteria are listed in Chapter 357 of this title (relating to Regional Water Planning) and also include the Commission's environmental flows standards at 30 TAC Chapter 298 (relating to Environmental Flow Standards for Surface Water).

(10) State population and demand projections--Population and water demand projections contained in the state water plan or adopted by the Board after consultation with the Commission, the Texas Department of Agriculture, the Texas Parks and Wildlife Department, and RWPGs in preparation for revision of the state water plan.

(11) State water plan--The most recent state water plan adopted by the Board under the Texas Water Code §16.051 (relating to State Water Plan).

§355.91. Notice of Funds and Submission and Review of Applications.

(a) The EA will publish notice in the Texas Register advising RWPGs that funds are available and that applications will be accepted from eligible applicants for grants to develop a scope of work or to

develop or revise regional water plans. The notice will describe the form and manner for applications. A RWPG may not receive grant funds unless the RWPG has provided the EA with a copy of the RWPG's adopted by-laws.

(b) The RWPG shall provide a written designation to the EA naming the political subdivision that is authorized to apply for grant funds on behalf of the RWPG. The RWPG shall ensure that the designated political subdivision has the legal authority to conduct the procurement and enter into the contracts necessary for regional planning.

(c) The RWPG shall provide notice that an application for funding is being submitted in accordance with §357.21(d) of this title (relating to Notice and Public Participation).

(d) The EA may request clarification from the RWPG if necessary to evaluate the application. Incomplete application may be rejected and returned to the applicant. After the initial round of planning grant funds, an eligible applicant may submit additional applications for tasks not previously funded. The EA may fund additional applications under this subchapter, but is not required to provide such additional funding.

(e) The applications shall be evaluated by the following criteria:

(1) degree to which proposed planning does not duplicate previous or ongoing planning;

(2) project organization and budget;

(3) scope of work of project;

(4) eligibility of tasks for funding under this subchapter;

(5) the relative need of the political subdivision for the money based upon an assessment of the necessary scope of work and cost to develop the regional water plan as compared to statewide needs for development of all regional water plans;

(6) the legal authority of the political subdivision to participate in the development and implementation of a regional water plan; and

(7) the degree to which regional water planning by the political subdivision will address the water supply needs in the regional water planning area.

§355.92. Use of Funds.

(a) Limitations of Funding. The Board has sole discretion in determining which activities are necessary for the development or revision of regional water plans. However, no funds will be provided for the following:

(1) activities for which the Board determines existing information or data is sufficient for the planning effort including:

(A) detailed evaluations of cost of water management strategies where recent information for planning is available to evaluate the cost associated with the strategy;

(B) evaluations of groundwater resources for which a desired future condition has been submitted to the Board pursuant to Texas Water Code §36.108(d) (relating to Joint Planning in a Management Area);

(C) evaluations of groundwater resources for which current information is available from the Board or other entity sufficient for evaluation of the resource;

(D) determination of water savings resulting from standard conservation practices for which current information is available from the Board;

(E) revision of the adopted state population and demand projections;

(F) revision of state environmental planning criteria for new surface water supply projects; and

(G) collection of data describing groundwater or surface water resources where information for evaluation of the resource is currently available;

(2) activities directly related to the preparation of applications for state or federal permits or other approvals, activities associated with administrative or legal proceedings by regulatory agencies, and preparation of engineering plans and specifications;

(3) activities related to planning for individual system facility needs other than identification of those facilities necessary to transport water from the source of supply to a regional water treatment plant or to a local distribution system;

(4) costs associated with administration of the plan's development, including but not limited to:

(A) compensation for the time or expenses of RWPGs members' service on or for the RWPG;

(B) costs of administering the RWPGs;

(C) costs of public notice and meetings, including time and expenses for attendance at such meetings;

(D) costs for training;

(E) costs of reviewing products developed due to this grant; and

(F) costs of administering the regional water planning grant and associated contracts; and

(5) analyses of benefits and costs of water management strategies unless the water management strategy requires a state or federal permit and the RWPG has completed the analysis required by §357.34 of this title (relating to Identification and Evaluation of Potentially Feasible Water Management Strategies), and the RWPG demonstrates to the satisfaction of the executive administrator that these analyses are needed to determine the selection of the water management strategy.

(b) Funding Administrative Costs. The following administrative costs are eligible for funding if the RWPG or its chairperson certifies, during a public meeting, that the expenses are eligible for reimbursement and are correct and necessary:

(1) travel expenses, as authorized by the General Appropriations Act, for RWPG voting members who certify that they are not eligible for reimbursement from their employer; travel expenses are available only for attendance at a posted meeting of the RWPG unless the travel is specifically authorized by the EA;

(2) costs associated with providing translators and accommodations for persons with disabilities for public meetings when required by law or deemed necessary by the RWPGs and certified by the chairperson;

(3) direct costs, not including personnel costs, for placing public notices in newspapers for the legally required public hearings and of providing copies of information for members of the RWPGs as needed for the efficient performance of their work; and

(4) the cost of postage for mailing notices of public hearings and other actions to persons and entities listed in Chapter 357 of this title (relating to Regional Water Planning).

(c) Subcontracting. A RWPG through the eligible applicant's contractor or subcontractor may obtain professional services, including the services of a planner, land surveyor, licensed engineer, or attorney, for development or revision of a regional water plan only if such services are procured on the basis of demonstrated competence and qualifications through a request for qualifications process in accordance with Texas Government Code Chapter 2254.

(d) Notwithstanding limitations on funding described in this section, the EA may, in his sole discretion, authorize funding for a cost benefit analysis of water management strategies. The EA shall consider funding such an analysis when the strategies serve the same demand, but the costs and benefits differ significantly among the strategies. The EA shall consider the overarching benefits to the state when determining whether to provide such funding. The EA may provide cost benefit analysis in other situations, as he deems necessary and appropriate.

§355.93. Board Consideration of Applications; Applicant's Responsibilities; and Contract.

(a) The EA shall submit a summary of applications with recommendations for approval to the Board for consideration at a regularly scheduled public meeting of the Board. The EA shall notify the applicant and other persons who have provided comments of the time and place of such meeting. The Board agenda is published on the Web site at [www.twdb.texas.gov](http://www.twdb.texas.gov).

(b) Board Review. The Board has discretion to approve, disapprove, amend, or continue consideration of an application. If the Board approves the application, then the eligible applicant will be notified of the amount of funds available and about the deadline for executing a contract with the Board. If the applicant does not enter into a contract by the specified deadline, then the Board's approval expires and no funds will be provided. The applicant may request an extension of time for good cause shown prior to the contract execution deadline.

(c) Eligible Applicant's Responsibility. The eligible applicant must demonstrate the availability of matching funds when applicable. However, the Board may in its discretion award up to 100% of the necessary and direct costs of the development or revision of a plan.

(d) A contract for regional planning funds shall include:

(1) a detailed statement of the purpose for which the money is to be used;

(2) the total amount of money to be paid from the research and planning fund under the contract;

(3) the time for completion; and

(4) any other terms and conditions required by the EA or agreed to by the contracting parties.

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 April 23, 2012.

TRD-201202072

Kenneth L. Petersen

General Counsel

Texas Water Development Board

Earliest possible date of adoption: June 3, 2012

For further information, please call: (512) 463-8061



## CHAPTER 357. REGIONAL WATER PLANNING GUIDELINES

### 31 TAC §§357.1 - 357.16

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

The Texas Water Development Board (board) proposes the repeal of Chapter 357, §§357.1 - 357.16, relating to Regional Water Planning Guidelines. This chapter is proposed for repeal because a new Chapter 357 is being proposed elsewhere in this issue of the *Texas Register*.

The board determined that due to the extensive reorganization of proposed new Chapter 357 it is more efficient to repeal the entire chapter than to propose amendments for the changes. The revision of Chapter 357 results from statutory changes and the board's required five-year review of regional planning areas, regional water planning groups and the guiding principles of the state water plan.

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE REPEAL

The repeal of Chapter 357 in its entirety provides the public with an opportunity to more clearly understand the proposed new Chapter 357 without the confusion of extensive amendments. The current Chapter 357 contains sixteen sections, §§357.1 - 357.16. These sections affect the work of the state's regional water planning groups and direct that certain analyses occur to determine the state's water supplies, water needs and water management strategies. Chapter 357 is based on Texas Water Code §16.053(f) which requires that the board adopt rules to provide for procedures for adoption of the regional water plans by the regional water planning groups and for approval of same by the board. That statute also requires the board to adopt rules governing procedures for carrying out the responsibilities of regional water planning. Further requirements for rulemaking relevant to this chapter are Texas Water Code §16.053(h)(11) requiring rules relating to minor amendments to regional water plans and Texas Water Code §16.053(r) requiring rules that provide reasonable flexibility for timely amendment of a regional water plan to facilitate planning for water supplies needed for a clean coal project. All of these required rules are in Chapter 357 proposed for repeal herein and in the proposed new Chapter 357.

#### FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS.

Carolyn Brittin, Deputy Executive Administrator, has determined that there is no fiscal impact to state or local governments as a result of this proposed repeal particularly since rules governing the same subject matter will be revised and proposed for adoption simultaneously with this repeal.

#### PUBLIC BENEFITS AND COSTS.

Ms. Brittin has determined that there are public benefits to repealing this chapter because the proposed new chapter will be more streamlined and will clarify the regional water planning process. Ms. Brittin has also determined there are no increased costs to the public applicants resulting from the repeal of this chapter. Additionally, Ms. Brittin has determined that there are no economic costs to persons required to comply with the rules since the rules do not impose mandates on the public, but provide statutorily required guidance to the regional planning

groups and provide notice to the public regarding the process for development and the content of the regional water plans.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

The board has determined that a local employment impact statement is not required because the proposed repeal does not adversely affect a local economy in a material way for the first five years that the proposed repeal is in effect because it will impose no new requirements on local economies. The board has determined that there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this repeal.

#### REGULATORY IMPACT ANALYSIS

The board has determined that the proposed repeal is not subject to Texas Government Code §2001.0225 because it is not a major environmental rule under that section.

#### TAKINGS IMPACT ASSESSMENT

The board has determined that the proposed repeal will constitute neither a statutory nor a constitutional taking of private real property. The proposed repeal does not adversely affect a landowner's rights in private real property, in whole or in part, temporarily or permanently, because the proposed repeal does not burden nor restrict or limit the owner's right to property. Therefore, the proposed repeal does not constitute a taking under Texas Government Code Chapter 2007.

#### SUBMITTAL OF COMMENTS

Comments on the proposed repeal will be accepted for 30 days following publication in the *Texas Register* and may be submitted to Legal Services, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, [rulescomments@twdb.texas.gov](mailto:rulescomments@twdb.texas.gov), or by fax at (512) 475-2053.

#### STATUTORY AUTHORITY

The repeal is proposed under the authority of Texas Water Code §6.101 which authorizes the Board to adopt rules necessary to carry out the powers and duties of the Board; and Texas Water Code §16.053 which requires that the board adopt rules to provide for procedures for adoption of the regional water plans by the regional water planning groups and for approval of same by the board.

The repeal affects Texas Water Code §16.053 relating to regional water plans.

§357.1. *General.*

§357.2. *Definitions.*

§357.3. *Designation of Regional Water Planning Areas.*

§357.4. *Designation of Regional Water Planning Groups.*

§357.5. *Guidelines for Development of Regional Water Plans.*

§357.6. *Preplanning.*

§357.7. *Regional Water Plan Development.*

§357.8. *Ecologically Unique River and Stream Segments.*

§357.9. *Unique Sites for Reservoir Construction.*

§357.10. *Format and Content of Regional Water Plan Information Submitted to the Board.*

§357.11. *Adoption of Regional Water Plans by Regional Water Planning Groups.*

§357.12. *Notice and Public Participation.*

§357.13. *Consistency with Regional Water Plan.*

§357.14. *Approval of Regional Water Plans by the Board.*

§357.15. *Interaction with Groundwater Conservation District Management Plans.*

§357.16. *Minor Amendments and Clean Coal Project Amendments to Regional Water Plans and State Water Plan.*

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 April 23, 2012.

TRD-201202073

Kenneth L. Petersen

General Counsel

Texas Water Development Board

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For further information, please call: (512) 463-8061



## CHAPTER 357. REGIONAL WATER PLANNING

The Texas Water Development Board (board) proposes new Chapter 357, §§357.10 - 357.12, 357.20 - 357.22, 357.30 - 357.35, 357.40 - 357.45, 357.50, 357.51, and 357.60 - 357.64, relating to Regional Water Planning. This proposed new chapter replaces current Chapter 357 in its entirety. Current Chapter 357 is proposed for repeal elsewhere in this issue of the *Texas Register*.

### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSAL

This proposed new chapter contains the substantive changes discussed below in each section. The proposed new chapter is prompted, in part, by statutory changes. The board was subject to Sunset Commission review resulting in the enactment of the board's reauthorization bill, Senate Bill 660. Rules changes arising out of enactments from the 82nd Legislature include: (1) a requirement that regional water planning groups have a member representing groundwater conservation districts through the selection of one representative of a district located in the groundwater management area of the regional water planning area. Texas Water Code §16.053(c) and §357.11(d)(12); (2) a requirement that the regional water plan to be consistent with the desired future conditions adopted for the relevant aquifers in the planning area. Texas Water Code §16.053(e)(2-a) and §357.10(7). This requirement acknowledges the time lag between the adoption of the regional water plans and the desired future conditions and authorizes, but does not require, the planning group to select a date for consistency with the desired future conditions subsequent to the adoption of the most recent state water plan. Another legislative requirement is that planning groups must evaluate the state's progress in meeting future water needs. Texas Water Code §16.051(a-1), (a-2).

This proposed new chapter reorganizes the materials so that rules are arranged to reflect the sequential steps in the planning process. Thus the planning process is more transparent as the regional water planning groups conduct their work in generally the order reflected by the rules and the rules are more logical as they follow the order of work by the planning groups, including the necessary steps for development, adoption and amendment of a plan. Another benefit of reorganizing the rules is the consolidation of the public hearing and notice requirements in

§357.21; in the current chapter these requirements are intermingled with substantive rules and are now in one place. Finally, the proposed new chapter contains a new directive relating to the format of the regional water plans including requiring each topic be presented as a separate chapter in the regional water plan (§357.22(b)). This format requirement and other format requirements, discussed in the section descriptions below, make the regional water plans easier to use and to evaluate.

### SECTION BY SECTION DISCUSSION OF THE PROPOSED RULES

#### Subchapter A. General Information

Proposed new §357.10, relating to Definitions and Acronyms, contains definitions not previously part of Chapter 357, for the following terms: alternative water management strategy, availability, collective reporting unit, commission, conflict between regional water plan and a groundwater management plan, consistency between a regional water plan and a desired future condition, county-other, drought contingency plan, drought management measures, existing water supply, firm yield, interbasin transfer of surface water, interregional conflict, intraregional conflict, initially prepared plan, regional water planning area (RWPA), regional water planning group (RWPG), safe yield, state drought preparedness plan, state drought response plan, water conservation measures, water conservation plan, water management strategy, and water user group (WUG). Many of these terms were defined in other portions of the current chapter and were consolidated under definitions for ease of use. This proposed new section also contains acronyms which are used through-out the chapter.

Proposed new §357.11, relating to Designations, mirrors the statutory requirements relating to designation of RWPAs which are reviewed every five years as described in subsection (a). Proposed subsection (b) identifies the factors to be used in delineating the RWPA. Proposed subsection (c) describes the procedures required for formation of a RWPG including adoption of bylaws with certain required contents. Proposed subsection (d) lists the membership requirements for each RWPG, including new subsection (d)(12) relating to a representative from a groundwater management area. Proposed subsection (e) lists the non-voting members and subsection (f) requires the RWPG to submit the membership list to the board's Executive Administrator (EA). Proposed subsection (g) provides the RWPG with the discretion to add to the voting and non-voting members to ensure that relevant interests in the RWPA are represented in the planning process. Proposed subsection (h) allows the RWPG discretion in removing members from the RWPG. Proposed subsection (i) authorizes the RWPG to enter into any type of agreement necessary to facilitate and expedite the planning process. Proposed subsection (j) provides notice that the EA will provide technical assistance to the RWPGs.

Proposed new §357.12, relating to General Regional Water Planning Group Responsibilities and Procedures, includes subsection (a) which references the public participation requirements of proposed new §357.21 prior to preparation of regional water plans and also describes the essential pre-planning tasks. Proposed new subsection (b) requires RWPGs to document the processes used in identifying potentially feasible water management strategies, and to develop those strategies pursuant to that process, which includes holding a public meeting on the proposed process. Proposed subsection (c) allows certain groups that meet the criteria identified in that subsection to engage in simplified planning.

## Subchapter B. Guidance Principles and Notice Requirements

Proposed new §357.20 is a reference to the guidance principles for state and regional water planning set forth in proposed new §358.3, also proposed elsewhere in this issue of the *Texas Register*. The guidance principles are required to be adopted as rules pursuant to Texas Water Code §16.051(d).

Proposed new §357.21, relating to Notice and Public Participation, describes all required public participation and notices relating to the regional water planning process according to the various statutory requirements in Texas Water Code Chapter 16 relating to public participation in the regional water planning process and also includes public notice relating to applications for planning grants pursuant to Texas Water Code §15.4061 and the proposed new 31 TAC Chapter 355, Subchapter C. This section delineates the various requirements for notice, method of providing notice, persons who must receive notice, and the types of actions requiring public notice. Proposed subsection (a) requires RWPGs to conduct all business in meetings pursuant to the Texas Open Meeting Act, Texas Government Code Chapter 551. The purpose of these requirements are to ensure the public has sufficient time to review and comment on documents that may be lengthy or complicated. Proposed subsection (b) describes the minimum requirements for public notices from the RWPGs including seventy-two hours notice, the contents of the notice, the entities to be specifically notified, posting of the notice and agenda and other methods for making the notice and agenda accessible. Proposed subsection (c) describes the notice requirements for specified action, i.e. requests to the board to revise population or water demand projections, substitution of alternative water management strategies and minor amendments to regional water plans (RWPGs). This proposed subsection contains the same types of information regarding notice, contents of notice, entities to be identified and other items contained in subsection (b).

Each subsection in §357.21 contains the similar information specific to the pending action that is the subject of the notice. Thus, proposed subsection (d) contains all requirements for notices and public participation relating to a preplanning meeting, major amendments to a RWP, hearings on an initially prepared plan, and requests to the board for research and planning funds pursuant to 31 TAC Chapter 355, Subchapter C which is also proposed elsewhere in this issue of the *Texas Register*. The public participation requirements of this proposed §357.21 describe the public comment periods for certain documents and actions and also provide the RWPGs with the alternative of increasing the use of electronic communications to disseminate the information to the public. Finally, the requirements of this section are the same as the Open Meetings Act because the Legislature prescribed the public notice requirements in Texas Water Code §16.053(h)(8) and (9) specifically for the regional water planning process.

Proposed new §357.22, relating to General Considerations for Development of Regional Water Plans, requires the planning groups to consider existing information, which is specifically listed, in developing regional water plans under proposed subsection (a). Proposed subsection (b) describes the required format of RWPGs and lists the sections of this proposed chapter which must be reported in a RWP as a separate chapter. This format clarification makes the RWPGs more accessible for the public as each regional water plan will have the enumerated topics presented separately.

## Subchapter C. Planning Activities for Needs Analysis and Strategy Recommendations

Proposed new §357.30, relating to Description of the Regional Water Planning Area, lists the basic descriptions required in the RWP. Proposed paragraph (9) requires that each planning group identify the historic drought of record within the planning area, a task not previously required. This requirement provides more region specific information as there may be some significant differences from one part of the state to another relating to past droughts of record.

Proposed new §357.31, relating to Projected Population and Water Demands, contains subsection (a) requiring that population and water demands be reported by water user groups (WUG) which are defined in proposed new §357.10. Proposed new subsection (b) requires that the RWP present projected water demands by wholesale water providers (WWP) and by category of water use including municipal, irrigation and manufacturing among others. Proposed subsection (c) requires reporting of current contractual obligations of both WUGs and WWPs and any other projected demands for water; the goal is determining the net existing water supplies available for each WUG. Proposed subsection (d) relates to municipal water demands and requires that the demand calculation be adjusted to reflect water savings gained through plumbing fixture requirements identified in the Texas Health and Safety Code. Proposed subsection (e) describes the method for developing population projections and water demand projections; these projections are calculated by the board and disseminated to the RWPGs. Subsection (e)(2) provides a mechanism for revising other population and water demand data through a request to the board. Proposed subsection (f) requires reporting of the population and demand projections for each planning decade.

Proposed new §357.32, relating to Water Supply Analysis, requires RWPGs to evaluate source water availability during drought of record conditions and the physically and legally available existing water supplies in proposed subsection (a). Proposed subsection (b) details the considerations used to conduct evaluations of surface and groundwater data. Proposed subsection (c) requires the use of firm yield analysis of surface water, which may be modified with the approval of the executive administrator, while proposed subsection (d) requires use of modeled available groundwater volumes for analysis of groundwater availability. The groundwater availability analysis must be consistent with the desired future conditions as they were determined on the date of the adoption of the state water plan or as established by the RWPG subsequent to the adoption of the state water plan. The RWPGs have the discretion to determine the applicable date.

Proposed subsection (e) of §357.32 requires an evaluation of the existing water supplies for each WUG and for each WWP. Proposed subsection (f) describes how the RWPGs report water supply through analyzing existing contracts and subsection (g) describes the format for reporting water supply by WUG and by WWP.

Proposed §357.33, relating to Needs Analysis: Comparison of Water Supplies and Demands, requires the RWPGs to include comparisons of existing supplies and projected demands for water to determine current and future needs for water in the RWPA in proposed subsection (a). Proposed subsection (b) states that RWPGs will determine future needs through the analysis of supplies and the projections of demand for each of the user groups listed in proposed §357.10(31). Proposed



subsection (c) requires evaluation of the social and economic impacts of not meeting water needs in the future. Proposed subsection (d) describes how the results of the needs analysis will be reported. Proposed subsection (e) is a new requirement under which RWPGs shall perform a secondary water needs analysis for all user groups and wholesale water providers when conservation and direct reuse are recommended water management strategies.

Proposed §357.34, relating to Identification and Evaluation of Potentially Feasible Water Management Strategies, requires strategies to meet the supply needs for each water user group in proposed subsection (a). Proposed new subsection (b) requests identification of potentially feasible water management strategies for each WUG and WWP that must meet new supply obligations including a plan for supply in a drought of record. Proposed subsection (c) provides examples of potentially feasible water management strategies as guidance for the RWPGs. A new provision in proposed subsection (c) notes the use of demand management through conservation and drought management measures. Proposed subsection (d) describes the method for analyzing potentially feasible strategies and describes which matters require quantitative reporting. Proposed new subsection (e) requires the RWPGs to evaluate water management strategies with enough specificity to allow state agencies to make financial or regulatory decisions to determine whether a particular policy, permit or project is consistent with the state water plan. Proposed subsection (f) describes the new requirements for conservation, drought management measures and drought contingency plans and requires the consideration of the development of drought management measures for each identified future water supply need in proposed subsection (f)(1). Proposed subsection (f)(2) describes how the RWPG considers water conservation practices and also discusses interbasin transfers as prescribed in the Texas Water Code §11.085. All recommendations relating to water conservation, including model water conservation plans, will be reported in a separate subchapter of a RWP pursuant to proposed subsection (g).

Proposed new §357.35(a), relating to Recommended and Alternative Water Management Strategies, requires the identification of the strategies that are recommended after review and analysis of those that are potentially feasible. Proposed subsection (b) requires that the recommended strategies be cost effective and environmentally sensitive and references proposed §357.34 for further information about cost effectiveness and environmental sensitivity review. Proposed subsection (c) emphasizes that the cost effective water management strategies shall be consistent with long term protection of agricultural, water and natural resources. Proposed subsection (d) provides two exceptions from the requirement to identify and recommend water management strategies for drought of record; those are when no strategy is feasible and where a political subdivision has needs within its boundary, but does not participate in the planning process. Proposed subsection (e) allows political subdivisions to object to the inclusion of a particular strategy and the objection may result in removal of that strategy as a method of identifying a need in the political subdivision. However, the strategy can be used to address other needs. Proposed subsection (f) contains other constraints on the substance of recommended strategies; those are protection of existing water rights and other contracts relating to water rights. Proposed subsection (g) contains a summary of the reporting requirements for water management strategies in subsection (g)(1) and also describes the method of calculated planning safety factors which are newly designed

to show the extent that recommended water management strategies meet or exceed the identified needs for each WUG and WWP when all strategies are implemented pursuant to subsection (g)(2). Proposed subsection (g)(3) requires fully evaluated alternative strategies to be located in one place within the RWP.

#### Subchapter D. Impacts, Drought Response, Policy Recommendations, and Implementation

Proposed §357.40, relating to Impacts of Regional Water Plan, describes the types of impacts that shall be analyzed and the necessarily included considerations. Proposed subsection (a) requires a quantitative description of the socioeconomic impacts of not meeting future water needs; proposed subsection (b) lists specific types of impacts for description including the effects on agricultural resources and threats to agricultural and natural resources in subsection (b)(1) and (3), other water resources in subsection (b)(2), third party socioeconomic impacts resulting from voluntary redistributions of water in subsection (b)(4), impacts on key water quality parameters in proposed subsection (b)(5), and impacts on navigation in proposed subsection (b)(6). Proposed subsection (c) requires a summary of unmet identified water needs.

Proposed new §357.41 relating to Consistency with Long-Term Protection of Water Resources, Agricultural Resources and Natural Resources, requires a discussion of how the entire RWP meets the goals of the protections of these resources as they are described in the guidance principles of 31 TAC Chapter 358.

Proposed new §357.42, relating to Drought Response Information, Activities, and Recommendations, is a new section that provides specificity in drought management considerations and addresses the inclusion of drought management strategies. Proposed subsection (a) requires the consolidation of current information on preparations for and responses to drought within the RWPA. Proposed subsection (b) requires a description of methods for water suppliers to respond to drought. Proposed subsection (c) requires the development of drought response recommendations for existing surface and groundwater supplies, including recommended drought triggers, response actions and use of existing drought contingency plans in proposed subsection (c)(1), (2) and (3).

Proposed subsection (d), based on the language of Texas Water Code §16.053(r), provides a mechanism for protecting sensitive information regarding interconnections in the event of emergency water shortages; this information is confidential by statute and this proposed subsection directs the RWPGs to discuss this information only in closed sessions and to provide the information to the EA. Any discussion of a drought contingency plan that relies on emergency interconnections shall also be kept confidential pursuant to proposed subsection (e). Proposed subsection (f) explains the way RWPGs shall present their recommended and alternative drought management water management strategies. Proposed subsection (g) requires an evaluation of potential emergency responses to drought or to loss of existing supplies for municipal WUGs, for WUGs that rely on a sole source of supply, and all county-other WUGs. Proposed subsection (h) requires consideration of recommendations from the Texas Drought Preparedness Council and proposed subsection (i) requires a list of the preparation and response recommendations of the RWPGs. Proposed subsection (j) requires the development of regional model drought contingency plans.

Proposed §357.43, relating to Regulatory, Administrative, or Legislative Recommendations, requires a description of these recommendations in the regional water plan in proposed subsection (a). Proposed subsection (b) contains the criteria for ecologically unique river and stream segments in proposed subsection (b)(1) by reference to the criteria defined in §358.2 of this title, while proposed subsection (b)(2) requires the RWPGs to periodically assess the impact of the RWP on the designated segments. Proposed subsection (c) describes the criteria for designation of a unique site for reservoir construction by reference to the criteria defined in §358.2 of this title. Proposed subsection (d) allows the RWPGs to provide other recommendations that would facilitate water planning and conservation of water resources. Proposed subsection (e) notes that the RWPGs may continually develop information regarding impacts of any changes to the laws relating to RWPs and proposed subsection (f) requests the RWPGs to consider recommending legislation to facilitate voluntary water transfers.

Proposed §357.44, relating to Infrastructure Financing Analysis, requires RWPGs to assess and report on how entities in the planning area propose to finance recommended water management strategies. This new section is based on Texas Water Code §16.053(q).

Proposed new §357.45, relating to Implementation and Comparison to Previous Regional Water Plan, requires that the RWP provide a description of implementation of previously recommended water management strategies in proposed subsection (a). This subsection corresponds to changes in Texas Water Code §16.051(a-1), the result of Sunset review of the board; it requires an analysis of how the state is meeting water needs through the implementation of projects. Proposed subsection (b) describes the factors to be used in describing changes from previous RWPs.

#### Subchapter E. Adoption, Submittal, and Amendments to Regional Water Plans

Proposed new §357.50, relating to Adoption, Submittal, and Approval of Regional Water Plans, prescribes the procedures for submitting adopted RWPs to the board including the schedule in subsection (a). Proposed subsection (b) also requires submission of an initially prepared plan to the board at the same time the initially prepared plan is made available for public comment. Proposed subsection (c) reminds the RWPGs about the public notice requirements of proposed §357.21 relating to initially prepared plans; proposed subsection (d) contains some of the content of proposed §357.21 in detailing the time for receipt of comments on the adoption of a RWP. Proposed subsection (e) relating to submittal of initially prepared plans, adopted RWPs and amendments to RWPs describes the procedures for doing each of the preceding including contents, schedules for submissions, means of transfers of data. Proposed subsection (f) requires the submission of information relating to an interregional conflict; proposed subsection (g) requires modification of the RWPs to conform to board resolution of such conflicts; proposed subsection (h) encourages RWPs to resolve such conflicts; and proposed subsection (i) states that the RWP must comply with statute and rules to gain board approval, the criteria for which are detailed in proposed subsection (j) based on Texas Water Code §16.053(h)(7). Proposed subsection (k) provides notice that an approved RWP shall be incorporated into the state water plan.

Proposed §357.51, relating to Amendments to Regional Water Plans, contains information relating to requests for amendment in proposed subsection (a) which allows requests to amend by

political subdivisions and describes the required procedures, including contents of a required petition and the role of the EA and the board. Proposed subsection (b) describes the procedures for amendments to the RWPs and the state water plan. Proposed subsection (c) relating to minor amendment to RWPs and the state water plan are essentially unchanged from current §357.16 relating to minor amendments and clean coal project amendments. Proposed subsection (d) describes the requirements for amendments relating to a clean coal project which provides an expedited process to facilitate such projects. Proposed subsection (e) describes the procedure required for substitution of alternative water management strategies and proposed subsection (f) explains that the board amends the state water plan after the regional water plans are amended.

#### Subchapter F. Consistency and Conflicts in Regional Water Plans

Proposed §357.60(a), relating to Consistency of Regional Water Plans, states that the plans must be consistent with the guidance principles in Chapter 358 of this title (relating to State Water Planning Guidelines). Proposed subsection (b) discusses the requirement in Texas Water Code §16.053(j) that board funded projects must be consistent with the regional water plans; the subsection states that the project must meet a need identified in the RWP and where the project is an enhancement of a current water supply, involves a minor modification to an existing surface water right, or meets the need in a manner consistent with recommended strategies, then the project is considered consistent with the RWP. Additionally proposed subsection (b) requires board funded projects to be consistent with the identified need in a RWP. Subsection (b)(1) describes that a project is consistent, even if not a recommended strategy, where the project enhances a current supply. Proposed subsection (b)(2) deems that a project that makes a minor modification to an existing surface water right is not in conflict with the RWP. Proposed subsection (b)(3) provides that any project that meets a need in a manner consistent with the RWP will be considered consistent for funding purposes. Proposed subsection (b)(4) states that where there is no recommended water management strategy for a need, then a project proposed to meet the need will not be consistent and therefore not eligible for board funding. The proposed subsection also discusses the board's authority to waive the consistency requirement based on changed conditions in proposed subsection (b)(5). Finally, subsection (c) requires that RWPs be consistent with board rules, and to consider the state and local water plans.

Proposed §357.61, relating to Intraregional Conflicts in Development of Regional Water Plans, provides that the board will provide assistance in resolving such conflicts pursuant to this section.

Proposed §357.62, relating to Interregional Conflicts, describes the process for resolution of an interregional conflict in proposed subsection (a). Proposed subsection (b) describes the procedures when negotiations to resolve the conflict are not successful. Ultimately, pursuant to proposed subsections (c) and (d) the board makes the decision resolving the conflict and the affected RWPGs make the changes required by the board.

Proposed §357.63(a), relating to Failure of a Regional Water Plan to Meet Regional Water Planning Requirements, describes the statutory authority of the board to direct changes in RWPs to ensure compliance with statutes and this chapter and proposed subsection (b) allows the RWPGs a reasonable time to complete any required changes.

Proposed §357.64, relating to Conflicts Between Regional Water Plans and Groundwater Management Plans, describes the process for a groundwater conservation district to petition the board about a perceived conflict between the district's approved management plan and the approved state water plan pursuant to subsection (a) which also describes the required contents of the petition. Proposed subsection (b) describes the role of the board in resolving the conflict, including coordinating formal mediation session. In proposed subsection (c), the board resolves the conflict where the parties cannot agree during mediation; the board may revise the RWP and the district management plan to achieve consistency. Proposed subsections (d) and (e) describe the public hearing and required revisions to either plan and proposed subsection (f) notes the board may, but is not required to discuss the conflict in the state water plan.

In summary, the entirely new requirements in proposed new Chapter 357 are: (1) added definitions in proposed §357.10; (2) streamlining of the board's administrative responsibilities relating to the formation of regional water planning groups and addition of a groundwater management area voting interest category in proposed §357.11; (3) the removal of requirements relating to special water resources as the regional water planning groups did not utilize that category; (4) the consolidation of notice requirements and other Open Meeting Act issues in proposed §357.21; (5) the renewed emphasis on planning for drought management, response and recommended drought management strategies are consolidated into proposed Subchapter D; (6) the integration of the consideration of environmental flow standards in proposed §357.34(d)(3)(B); (7) the consolidation of all relevant guidance principles, now located in proposed new 31 TAC Chapter 358; (8) the calculation of a secondary needs analysis in proposed §357.33(e); and (9) the calculation of a planning safety factor in §357.35(g)(2). Finally, in response to the board's Sunset legislation, Senate Bill 660 the following changes have been made: proposed §357.10(7) dealing with consistency between regional water plans and desired future conditions; and proposed §357.45 relating to a description of implemented previous water management strategies.

#### FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS

Carolyn Brittin, Deputy Executive Administrator, has determined that there will not be any additional estimated costs to state and local governments as a result of enforcing or administering these rules for the first five years these rules will be in effect. These rules contain procedural and substantive directives to the regional water planning groups who are required to comply with the directives. There are no estimated additional costs because the funding for regional water planning is from the board's research and planning funds. Additionally, there are no changes to these rules that affect the costs to the representative political subdivisions that administer the funds for the regional water planning groups.

Ms. Brittin has also determined that there are no estimated reductions in costs to state or local governments as a result of enforcing or administering these rules for the first five years these rules will be in effect because the funding for planning comes from the board's research and planning fund and because the rules do not significantly increase the administration of the planning process.

Additionally, Ms. Brittin has determined that there will not be any loss of or increase to revenue to state or local governments as a result of enforcing or administering these rules for the first five

years that these rules will be in effect. These proposed rules do not affect the revenues of state or local governments.

#### PUBLIC BENEFITS AND COSTS.

Ms. Brittin has determined that these rules do not impose costs to the public as the rules are not directed to members of the public. The rules do not impose any additional costs on the political subdivisions that administer grant funds on behalf of the regional water planning groups because the rules do not contain any additional administrative requirements. Additionally, these rules provide a public benefit through improved clarity and elimination of unnecessary rules that will assist the public in understanding the funding of regional water planning activities throughout the state. These public benefits will be effective for the first five years these rules are in effect.

Ms. Brittin has also determined that there are no probable economic costs to persons required to comply with these rules. The regional water planning groups already use the board's rules in developing the regional water plans. The costs are funded by state planning grants and these proposed rules do not significantly increase the costs of regional planning.

#### LOCAL EMPLOYMENT ECONOMIC IMPACT STATEMENT

The board has determined that a local employment impact statement is not required because the proposed rulemaking does not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect because it will impose no new requirements on local economies. The board also has determined that there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this rulemaking because the rules are not regulatory and are not directed at private small or micro-businesses. The proposed new rules reorganize the regional water planning requirements and affect only the regional water planning groups who are funded primarily through grants from the board.

#### REGULATORY ANALYSIS

The board has determined that these rules do not constitute a major environmental rule because they are not based on a standard set by federal law, do not exceed an express requirement of state law or of a delegation agreement between the state and the federal government and are adopted pursuant to express state laws under Texas Water Code Chapter 15.

#### TAKINGS IMPACT ASSESSMENT

The board has determined that these rules do not impact private property because the rules are directed to regional water planning groups and the political subdivision that acts as the administrator of grant funds from the board and is not directed to private landowners. The rules do not affect private property because they do not authorize any governmental entity to regulate or affect the status of private property. The rules regulate only the distribution of funds from the board's research and planning fund.

#### SUBMITTAL OF COMMENTS

Comments on the proposed rulemaking will be accepted for 30 days following publication in the *Texas Register* and may be submitted to Legal Services, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, [rulescomments@twdb.texas.gov](mailto:rulescomments@twdb.texas.gov), or by fax at (512) 475-2053.

#### SUBCHAPTER A. GENERAL INFORMATION

#### 31 TAC §§357.10 - 357.12

## STATUTORY AUTHORITY.

These new rules are proposed under the authority of Texas Water Code §6.101 which authorizes the board to adopt rules necessary to carry out the powers and duties of the board.

Texas Water Code §16.051(c) and (d); and §16.053(f), (h-1)(11), and (r) are affected by these proposed rules.

### §357.10. Definitions and Acronyms.

The following words, used in this chapter, have the following meanings.

(1) Alternative water management strategy--A fully evaluated water management strategy that may be substituted into a regional water plan in the event that a recommended water management strategy is no longer recommended.

(2) Availability--Maximum amount of water available from a source during the drought of record, regardless of whether the supply is physically or legally available to water user groups.

(3) Board--The Texas Water Development Board.

(4) Collective Reporting Unit--A grouping of utilities located in the Regional Water Planning Area. Utilities within a Collective Reporting Unit must have a logical relationship, such as being served by common wholesale water providers, having common sources, or other appropriate associations.

(5) Commission--The Texas Commission on Environmental Quality.

(6) Conflict between a regional water plan and a groundwater management plan--A regional water plan is in conflict with a groundwater management plan if the groundwater availability amount in the regional water plan exceeds the modeled available groundwater amount included in the groundwater management plan for the relevant aquifers in the regional water planning area. The modeled available groundwater amount must be associated with a desired future condition adopted as of the date the Board most recently adopted a state water plan or, at the option of the regional water planning group, a desired future condition adopted on a subsequent date.

(7) Consistency between a regional water plan and a desired future condition--A regional water plan is consistent with a desired future condition if the groundwater availability amount in the regional water plan does not exceed the modeled available groundwater amount associated with the desired future condition for the relevant aquifers located in the regional water planning area. The desired future condition must be either the desired future condition adopted as of the date the Board most recently adopted a state water plan or, at the option of the regional water planning group, a desired future condition adopted on a subsequent date.

(8) County-other--An aggregation of residential, commercial, and institutional water users in cities with less than 500 people or utilities that provide less than an average of 250,000 gallons per day, as well as unincorporated rural areas in a given county.

(9) Drought contingency plan--A plan required from wholesale and retail public water suppliers and irrigation districts pursuant to Texas Water Code §11.1272 (relating to Drought Contingency Plans for Certain Applicants and Water Right Holders). The plan may consist of one or more strategies for temporary supply and demand management and demand management responses to temporary and potentially recurring water supply shortages and other water supply emergencies as required by the Commission.

(10) Drought management measures--Demand management activities to be implemented during drought that may be evaluated and included as water management strategies.

(11) Drought of record--The period of time when natural hydrological conditions provided the least amount of water supply.

(12) Executive administrator (EA)--The executive administrator of the Board or a designated representative.

(13) Existing water supply--Maximum amount of water available from existing sources for use during drought of record conditions that is physically and legally available for use by a water user group.

(14) Firm yield--Maximum water volume a reservoir can provide each year under a repeat of the drought of record using reasonable sedimentation rates and assuming that all senior water rights will be totally utilized.

(15) Interbasin transfer of surface water--Defined and governed in Texas Water Code §11.085 (relating to Interbasin Transfers) as the diverting of any state water from a river basin and transfer of that water to any other river basin.

(16) Interregional conflict--An interregional conflict exists when more than one regional water plan relies upon the same water source, so that there is not sufficient water available to fully implement both plans and would create an over-allocation of that source.

(17) Intra-regional conflict--A conflict between two identified, quantified, and recommended water management strategies in the same adopted regional water plan that rely upon the same water source, so that there is not sufficient water available to fully implement both water management strategies and thereby creating an over-allocation of that source.

(18) Initially Prepared Plan (IPP)--Draft regional water plans that are presented at a public hearing in accordance with §357.21(d) of this title (relating to Notice and Public Participation) and submitted for Board review and comment.

(19) Political subdivision--City, county, district, or authority created under the Texas Constitution, Article III, §52, or Article XVI, §59, any other political subdivision of the state, any interstate compact commission to which the state is a party, and any nonprofit water supply corporation created and operating Texas Water Code Chapter 67 (relating to Nonprofit Water Supply or Sewer Service Corporations).

(20) Regional water plan (RWP)--The plan adopted or amended by a regional water planning group pursuant to Texas Water Code §16.053 (relating to Regional Water Plans) and this chapter.

(21) Regional water planning area (RWPA)--Area designated pursuant to Texas Water Code §16.053.

(22) Regional water planning group (RWPG)--Group designated pursuant to Texas Water Code §16.053.

(23) Retail public utility--Defined in Texas Water Code §13.002 (relating to Water Rates and Services) as "any person, corporation, public utility, water supply or sewer service corporation, municipality, political subdivision or agency operating, maintaining, or controlling in this state facilities for providing potable water service or sewer service, or both, for compensation."

(24) Safe yield--The annual amount of firm water that can be withdrawn from a reservoir such that a reserve exists for conditions more severe than the drought of record.

(25) State Drought Preparedness Plan--A plan, separate from the state water plan, that is developed by the Drought Prepared-

ness Council for the purpose of mitigating the effects of drought pursuant to Texas Water Code §16.0551 (relating to State Drought Preparedness Plan).

(26) State Drought Response Plan--A plan prepared and directed by the chief of the Texas Division of Emergency Management for the purpose of managing and coordinating the drought response component of the State Water Plan and the State Drought Preparedness Plan pursuant to Texas Water Code §16.055 (relating to Drought Response Plan).

(27) State Water Plan--The most recent state water plan adopted by the Board under the Texas Water Code §16.051 (relating to State Water Plan).

(28) Water conservation measures--Practices, techniques, and technologies that will reduce the consumption of water, reduce the loss or waste of water, or improve the efficiency in the use of water that may be presented as water management strategies.

(29) Water Conservation Plan--A plan required by Texas Water Code §11.1271 (relating to Water Conservation Plans) from an applicant for a new or amended water rights permit and from any holder of a permit, certificate, etc. who is authorized to appropriate more than 1,000 acre-feet per year or more for municipal, industrial, and other uses and for those who irrigate more than 10,000 acre-feet per year. These plans must include specific, quantified 5-year and 10-year targets for water savings.

(30) Water Management Strategy--A plan or specific project to meet a need for additional water by a discrete user group, which can mean increasing the total water supply or maximizing an existing supply.

(31) Water User Group (WUG)--Identified user or group of users for which water demands and water supplies have been identified and analyzed and plans developed to meet water needs. These include:

(A) Incorporated Census places of a population greater than 500, including select Census Designated Places, such as significant military bases or cases in which the Census Designated Place is the only Census place in the county;

(B) Retail public utilities providing more than 280 acre-feet per year for municipal use;

(C) Collective Reporting Units, or groups of retail public utilities that have a common association;

(D) Municipal and domestic water use, referred to as county-other, not included in subparagraphs (A) - (C) of this paragraph; and

(E) Non-municipal water use including manufacturing, irrigation, steam electric power generation, mining, and livestock watering for each county or portion of a county in a RWPA.

(32) Wholesale Water Provider (WWP)--Any person or entity, including river authorities and irrigation districts, that has contracts to sell more than 1,000 acre-feet of water wholesale in any one year during the five years immediately preceding the adoption of the last regional water plan. The regional water planning groups shall include as wholesale water providers other persons and entities that enter or that the regional water planning group expects or recommends to enter contracts to sell more than 1,000 acre-feet of water wholesale during the period covered by the plan.

#### §357.11. Designations.

(a) The Board shall review and update the designations of RW-PAs as necessary but at least every five years, on its own initiative or

upon recommendation of the executive administrator. The Board shall provide 30 days notice of its intent to amend the designations of RW-PAs by publication of the proposed change in the *Texas Register* and by mailing the notice to each mayor of a municipality with a population of 1,000 or more or which is a county seat that is located in whole or in part in the RW-PAs proposed to be impacted, to each water district or river authority located in whole or in part in the RWPA based upon lists of such water districts and river authorities obtained from the Commission, and to each county judge of a county located in whole or in part in the RW-PAs proposed to be impacted. After the 30 day notice period, the Board shall hold a public hearing at a location to be determined by the Board before making any changes to the designation of a RWPA.

(b) If upon boundary review the Board determines that revisions to the boundaries are necessary, the Board shall designate areas for which regional water plans shall be developed, taking into consideration factors such as:

(1) River basin and aquifer delineations;

(2) Water utility development patterns;

(3) Socioeconomic characteristics;

(4) Existing regional water planning areas;

(5) Political subdivision boundaries;

(6) Public comment; and

(7) Other factors the Board deems relevant.

(c) After an initial coordinating body for a regional water planning group is named by the Board, the RWPGs shall adopt, by two-thirds vote, bylaws that are consistent with provisions of this chapter. Within 30 days after the Board names members of the initial coordinating body, the executive administrator shall provide to each member of the initial coordinating body a set of model bylaws which the RWPG shall consider. The RWPG shall provide copies of its bylaws and any revisions thereto to the executive administrator. The bylaws adopted by the RWPG shall at a minimum address the following elements:

(1) definition of a quorum necessary to conduct business;

(2) method to be used to approve items of business including adoption of regional water plans or amendments thereto;

(3) methods to be used to name additional members;

(4) terms and conditions of membership;

(5) methods to record minutes and where minutes will be archived as part of the public record; and

(6) methods to resolve disputes between RWPG members on matters coming before the RWPG.

(d) RWPGs shall maintain at least one of the following representatives as voting members of the RWPG. If a RWPA does not have an interest category below, then the RWPG shall so advise the EA and no membership designation is required.

(1) Public, defined as those persons or entities having no economic interest in the interests represented by paragraphs (2) - (12) of this subsection other than as a normal consumer;

(2) Counties, defined as the county governments for the 254 counties in Texas;

(3) Municipalities, defined as governments of cities created or organized under the general, home-rule, or special laws of the state;

(4) Industries, defined as corporations, partnerships, sole proprietorships, or other legal entities that are formed for the purpose

of making a profit and which produce or manufacture goods or services and which are not small businesses;

(5) Agricultural interests, defined as those persons or entities associated with production or processing of plant or animal products;

(6) Environmental interests, defined as those persons or groups advocating the conservation of the state's natural resources, including but not limited to soil, water, air, and living resources;

(7) Small businesses, defined as corporations, partnerships, sole proprietorships, or other legal entities that are formed for the purpose of making a profit, are independently owned and operated, and have fewer than 100 employees or less than \$1 million in gross annual receipts;

(8) Electric generating utilities, defined as any persons, corporations, cooperative corporations, or any combination thereof, meeting each of the following three criteria: own or operate for compensation equipment or facilities which produce or generate electricity; produce or generate electricity for either wholesale or retail sale to others; and are neither a municipal corporation nor a river authority;

(9) River authorities, defined as any districts or authorities created by the legislature which contain areas within their boundaries of one or more counties and which are governed by boards of directors appointed or designated in whole or part by the governor or board, including, without limitation, San Antonio River Authority and Palo Duro River Authority;

(10) Water districts, defined as any districts or authorities, created under authority of either Texas Constitution, Article III, §52(b)(1) and (2), or Article XVI, §59 including districts having the authority to regulate the spacing of or production from water wells, but not including river authorities;

(11) Water utilities, defined as any persons, corporations, cooperative corporations, or any combination thereof that provide water supplies for compensation except for municipalities, river authorities, or water districts; and

(12) Groundwater management areas, defined as a single representative for each groundwater management area that is at least partially located within a RWPA. Defined as a representative from a groundwater conservation district that is appointed by the groundwater conservation districts within the associated groundwater management area.

(e) The RWPGs shall add the following non-voting members, who shall receive meeting notifications and information in the same manner as voting members:

(1) Staff member of the Board to be designated by the EA;

(2) Staff member of the Texas Parks and Wildlife Department designated by its executive director;

(3) Member designated by each adjacent RWPG to serve as a liaison;

(4) One or more persons to represent those entities with headquarters located in another RWPA and which holds surface water rights authorizing a diversion of 1,000 acre-feet a year or more in the RWPA, which supplies water under contract in the amount of 1,000 acre-feet a year or more to entities in the RWPA, or which receives water under contract in the amount of 1,000 acre-feet a year or more from the RWPA; and

(5) Staff member of the Texas Department of Agriculture designated by its commissioner.

(f) Each RWPG shall provide a current list of its members to the EA; the list shall identify the interest represented by each member including interests required in subsection (d) of this section.

(g) Each RWPG, at its discretion, may at any time add additional voting and or non-voting representatives to serve on the RWPG for any new interest category, including additional representatives of those interests already listed in subsection (d) of this section that the RWPG considers appropriate for water planning.

(h) Each RWPG, at its discretion may remove individual voting or non-voting members or eliminate RWPG representative positions in accordance with the RWPG bylaws as long as minimum requirements of RWPG membership are maintained in accordance with subsection (d) of this section.

(i) RWPGs may enter into formal and or informal agreements to coordinate, avoid conflicts, and or share information with other RWPGs or any other interests within any RWPA for any purpose the RWPGs consider appropriate including expediting or making more efficient water planning efforts. These efforts may involve any portion of the RWPG membership. Any plans or information developed through these efforts by RWPGs or by committees may be included in a RWP only upon approval of the RWPG.

(j) Upon request, the EA will provide technical assistance to RWPGs, including on water supply and demand analysis, methods to evaluate the social and economic impacts of not meeting needs, and regarding drought management measures and water conservation practices.

§357.12. General Regional Water Planning Group Responsibilities and Procedures.

(a) Prior to the preparation of the RWPs. In accordance with the public participation requirements in §357.21 of this title (relating to Notice and Public Participation), the RWPGs shall:

(1) hold at least one public meeting to gather suggestions and recommendations from the public as to issues that should be addressed or provisions that should be included in the next regional or state water plan;

(2) prepare a scope of work that includes a detailed description of tasks to be performed, identifies responsible parties for task execution, a task schedule, task and expense budgets, and describes interim products, draft reports, and final reports for the planning process;

(3) approve any amendments to the scope of work only in an open meeting of the RWPG where notice of the proposed action was provided in accordance with §357.21 of this title; and

(4) designate a political subdivision or political subdivisions as a representative of the RWPG eligible to apply for financial assistance for scope of work and RWP development pursuant to Chapter 355, Subchapter C of this title (relating to Regional Water Planning Grants).

(b) A RWPG shall hold a public meeting to determine the process for identifying potentially feasible water management strategies; the process shall be documented and shall include input received at the public meeting; after reviewing the potentially feasible strategies using the documented process, then the RWPG shall list all possible water management strategies that are potentially feasible for meeting a need in the region. The public meeting under this subsection shall be in accordance with the requirements of §357.21(b) of this title.

(c) If applicable, and approved by the EA, implement simplified planning in accordance with guidance to be provided by the EA. If a RWPG determines in its analysis of water needs that it has sufficient supplies in the RWPA to meet water needs for the 50-year planning period, RWPGs may conduct simplified regional water planning as follows:

(1) identify water supplies that are available for voluntary redistribution in a RWPA or to other RWPGs;

(2) where appropriate, adopt previous RWP and state water plan information, updated as necessary, as the RWP; and

(3) other activities upon approval of the EA necessary to complete a RWP that meets rule and statute requirements.

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

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

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General Counsel

Texas Water Development Board

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For further information, please call: (512) 463-8061



## SUBCHAPTER B. GUIDANCE PRINCIPLES AND NOTICE REQUIREMENTS

### 31 TAC §§357.20 - 357.22

#### STATUTORY AUTHORITY

These new rules are proposed under the authority of Texas Water Code §6.101 which authorizes the board to adopt rules necessary to carry out the powers and duties of the board.

Texas Water Code §16.051(c) and (d); and §16.053(f), (h-1)(11), and (r) are affected by these rules.

#### §357.20. Guidance Principles for State and Regional Water Planning.

Development of the state water plan and of RWPGs shall be guided by the principles stated in §358.3 of this title (relating to Guidance Principles).

#### §357.21. Notice and Public Participation.

(a) RWPGs shall conduct all business in meetings posted and held in accordance with the Texas Open Meetings Act, Texas Government Code Chapter 551, with a copy of all materials presented or discussed available for public inspection prior to and following the meetings and shall meet the additional notice requirements when specifically referenced as required under other subsections.

(b) All public notices required by this subsection shall comply with this section and shall meet the following requirements:

(1) These notice requirements apply to the following RWPG actions: regular RWPG meetings; amendments to the regional water planning scope of work or budget; process of identifying potentially feasible water management strategies; Executive Committee meetings; subcommittee or subgroup meetings; meetings to replace RWPG members or addition of new RWPG members; and adoption of regional water plans.

(2) Published 72 hours prior to the meeting.

(3) Notice shall include:

(A) a date, time, and location of the meeting;

(B) a summary of the proposed action to be taken; and

(C) the name, telephone number, and address of the person to whom questions or requests for additional information may be submitted.

(4) Entities to be notified include:

(A) all voting and non-voting RWPG members;

(B) any person or entity who has requested notice or RWPG activities either in writing or email, as requested by the person or entity; and

(C) each County Clerk, in writing, within the RWPA.

(5) Notice and agenda to be posted:

(A) On the website of the host political subdivision and on the Board website if requested by the RWPG; and

(B) Texas Secretary of State website.

(6) Documents to be made available on the internet or in hard copy for public inspection prior to and following meeting include:

(A) Agenda of meeting; and

(B) Copies of all materials presented or discussed at the meeting.

(c) Notice under this subsection shall meet the following requirements:

(1) These notice requirements apply to the following RWPG actions: population projection and or water demand projection revision requests to officially adopted Board projections; substitution of alternative water management strategies; and minor amendments to RWPGs.

(2) Notice of meetings under this subsection shall be published/postmarked on the internet, emailed, and mailed to the public before the 14th day preceding the date of the meeting.

(3) Notice shall include:

(A) a date, time, and location of the meeting;

(B) a summary of the proposed action to be taken;

(C) the name, telephone number, and address of the person to whom questions or requests for additional information may be submitted; and

(D) information that the RWPG will accept written and oral comments at the meetings and information on how the public may submit written comments separate from such meetings. The RWPG shall specify a deadline for submission of public written comments of not earlier than 14 days after the meeting.

(4) Entities to be notified include:

(A) all voting and non-voting RWPG members;

(B) any person or entity who has requested notice or RWPG activities either in writing or email, as requested by the person or entity;

(C) each County Clerk, in writing, within the RWPA;  
and

(D) each County Clerk in counties outside the RWPA where a recommended or alternative water management strategy being considered would be located.

(5) Notice and associated meeting agenda to be posted:

(A) On the website of the host political subdivision and or on the Board website if requested by the RWPG; and

(B) Texas Secretary of State website.

(6) Documents to be made available on the internet or in hard copy for public inspection prior to and following meeting include:

(A) Agenda of meeting; and

(B) Copies of all materials, reports, plans presented or discussed at the meeting.

(7) Public comments to be accepted as follows:

(A) Written comments for 14 days prior to meeting with comments considered by RWPG members prior to action;

(B) Oral and written public comment during meeting;  
and

(C) Written comments must also be accepted for 14 days following the meeting and all comments received during the comment period must be submitted to the Board by the RWPG.

(d) Notice under this subsection shall meet the following requirements:

(1) These notice requirements apply to the following RWPG actions: holding a preplanning public meeting to obtain public input on development of the next RWP; major amendments to RWPs; holding hearings for IPPs; and requesting research and planning funds from the Board.

(2) Notice shall be published in a newspaper of general circulation in each county located in whole or in part in the RWPA as follows:

(A) before the 30th day preceding the date of the public meeting or hearing; and

(B) when applying for Board funding, at least 30 days prior to Board consideration of funding applications.

(3) Notice of the public meetings and public hearings shall include:

(A) a date, time, and location of the public meeting or hearing;

(B) a summary of the proposed action to be taken;

(C) the name, telephone number, and address of the person to whom questions or requests for additional information may be submitted; and

(D) information that the RWPG will accept written and oral comments at the hearings and information on how the public may submit written comments separate from such hearings. The RWPG shall specify a deadline for submission of public written comments as specified in paragraph (8)(A) of this subsection.

(4) If applying for Board funding, the notice shall include the name and address of the eligible applicant and the name of the applicant's manager or official representative; a brief description of the regional water planning area; the purposes of the planning project; the Board's name, address, and the name of a contact person with the Board; a statement that any comments must be filed with the EA and

the applicant within 30 days of the date on which the notice is mailed or published. Prior to action by the Board, the applicant must provide one copy of the notice sent, a list of those to which the notice was sent, the date on which the notice was sent, copies of all notices as published showing name of the newspaper and the date on which the notice was published.

(5) RWPGs shall make copies of the IPP available for public inspection at least 30 days before a public hearing required or held by providing a copy of the IPP in at least one public library in each county and either the county courthouse's law library, the county clerk's office, or some other accessible place within the county courthouse of each county having land in the RWPA and include locations of such copies in the notice for public hearing. For distribution of the IPP and adopted RWP, the RWPG may consult and coordinate with county and local officials in determining the most appropriate location in the county courthouse to ensure maximum accessibility to the public during business hours. Additionally, the RWPG may consult with local and county officials in determining which public library in the county can provide maximum accessibility to the public. According to the capabilities of the facility, the RWPG may provide the copy electronically, on an electronic disc or drive, or in hard copy. The RWPG shall make an effort to ensure ease of access to the public, including where feasible, posting the IPP on websites and providing notice of such posting.

(6) Notice shall be mailed to, at a minimum, the following:

(A) notification of all entities that are to be notified under subsection (c)(4) of this section;

(B) each mayor of a municipality with a population of 1,000 or more or which is a county seat that is located in whole or in part in the RWPA;

(C) each county judge of a county located in whole or in part in the RWPA;

(D) each special or general law district or river authority with responsibility to manage or supply water in the RWPA based upon lists of such water districts and river authorities obtained from the Commission;

(E) Additionally, for public hearings or meetings to obtain input on development of a future RWP or a meeting or hearing associated with IPPs or major RWP amendments:

(i) each retail public utility, defined as a community water system, that serves any part of the RWPA or receives water from the RWPA based upon lists of such entities obtained from the Commission; and

(ii) each holder of record of a water right for the use of surface water the diversion of which occurs in the RWPA based upon lists of such water rights holders obtained from the Commission; and

(F) Additionally, a RWPG that intends to request Board funds for regional water planning must provide written notice to all other RWPGs.

(7) Notice and associated hearing and meeting agenda shall also be posted:

(A) On the website of the host political subdivision and or on the Board website if requested by the RWPG;

(B) Texas Secretary of State website; and

(C) In the *Texas Register*.

(8) Public comments to be accepted as follows:



(A) Written comments submitted immediately following 30-day public notice posting and prior to and during meeting or hearing; and

(i) Until not earlier than 30-days following the date of the public hearing on a major amendment to a RWP.

(ii) Until not earlier than 60 days following the date of the public hearing on an IPP.

(B) Verbal public comments at the noticed meeting or hearing;

(C) Comments received must be considered as follows:

(i) Comments associated with hearings must be considered by RWPG members when adopting a RWP or adopting a major amendment to a RWP.

(ii) Comments associated with a preplanning meeting, scope of work development, and/or an application for funding to the Board must be considered prior to taking RWPG action.

§357.22. General Considerations for Development of Regional Water Plans.

(a) RWPGs shall consider existing local, regional, and state water planning efforts, including water plans, information and relevant local, regional, state and federal programs and goals when developing the regional water plan. The RWPGs shall also consider:

(1) water conservation plans;

(2) drought management and drought contingency plans;

(3) information compiled by the Board from water loss audits performed by retail public utilities pursuant to §358.6 of this title (relating to Water Loss Audits);

(4) publicly available plans for major agricultural, municipal, manufacturing and commercial water users;

(5) local and regional water management plans;

(6) water availability requirements promulgated by a county commissioners court in accordance with Texas Water Code §35.019 (relating to Priority Groundwater Management Areas);

(7) the Texas Clean Rivers Program;

(8) the U.S. Clean Water Act;

(9) water management plans;

(10) other planning goals including, but not limited to, regionalization of water and wastewater services where appropriate;

(11) approved groundwater conservation district management plans and other plans submitted under Texas Water Code §16.054 (relating to Local Water Planning);

(12) approved groundwater regulatory plans; and

(13) any other information available from existing local or regional water planning studies.

(b) The required content of §§357.30 - 357.35, 357.40 - 357.45 and 357.50 of this title shall be reported separately as chapters in the RWP.

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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Kenneth L. Petersen

General Counsel

Texas Water Development Board

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For further information, please call: (512) 463-8061

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## SUBCHAPTER C. PLANNING ACTIVITIES FOR NEEDS ANALYSIS AND STRATEGY RECOMMENDATIONS

### 31 TAC §§357.30 - 357.35

#### STATUTORY AUTHORITY

These new rules are proposed under the authority of Texas Water Code §6.101 which authorizes the board to adopt rules necessary to carry out the powers and duties of the board.

Texas Water Code §16.051(c) and (d); and §16.053(f), (h-1)(11), and (r) are affected by these rules.

§357.30. Description of the Regional Water Planning Area.

RWPGs shall describe their regional water planning area including the following:

(1) social and economic aspects of a region such as information on current population, economic activity and economic sectors heavily dependent on water resources;

(2) current water use and major water demand centers;

(3) current groundwater, surface water, and reuse supplies including major springs that are important for water supply or protection of natural resources;

(4) wholesale water providers;

(5) agricultural and natural resources;

(6) identified water quality problems;

(7) identified threats to agricultural and natural resources due to water quantity problems or water quality problems related to water supply;

(8) summary of existing local and regional water plans;

(9) the identified historic drought(s) of record within the planning area;

(10) current preparations for drought within the RWPA;

(11) information compiled by the Board from water loss audits performed by retail public utilities pursuant to §358.6 of this title (relating to Water Loss Audits); and

(12) an identification of each threat to agricultural and natural resources and a discussion of how that threat will be addressed or affected by the water management strategies evaluated in the plan.

§357.31. Projected Population and Water Demands.

(a) RWPs shall present projected population and water demands by WUG as defined in §357.10 of this title (relating to Definitions and Acronyms). If a WUG lies in one or more counties and or RWPA and or river basins, data shall be reported for each river basin, RWPA, and county split.

(b) RWPs shall present projected water demands associated with WUGs by category of water use, including municipal, manufacturing, irrigation, steam electric power generation, mining, and livestock for each county or portion of a county in the RWPA. If a county

or portion of a county is in more than one river basin, data shall be reported for each river basin.

(c) RWPGs shall report the current contractual obligations of WUG and WWP to supply water in addition to any demands projected for the WUG or WWP. Information regarding obligations to supply water to other users must also be incorporated into the water supply analysis in §357.32 of this title (relating to Water Supply Analysis) in order to determine net existing water supplies available for each WUG's own use.

(d) Municipal demands shall be adjusted to reflect water savings due to plumbing fixture requirements identified in the Texas Health and Safety Code, Chapter 372. RWPGs will determine and report how changes in plumbing fixtures would affect projected municipal water demands using projections with plumbing code savings provided by the Board or by methods approved by the EA.

(e) Source of population and water demands. In developing RWPGs, RWPGs shall use:

(1) Population and water demand projections developed by the EA that will be contained in the next state water plan and adopted by the Board after consultation with the RWPGs, Commission, Texas Department of Agriculture, and the Texas Parks and Wildlife Department.

(2) RWPGs may request revisions of Board adopted population and or water demand projections if the request demonstrates that population and or water demand projections no longer represents a reasonable estimate of anticipated conditions based on changed conditions and or new information. Before requesting a revision to population and water demand projections, the RWPG shall discuss the proposed revisions at a public meeting for which notice has been posted in accordance with §357.21(c) of this title (relating to Notice and Public Participation). The RWPG shall summarize public comments received on the proposed request for projection revisions. The EA shall consult with the requesting RWPG and respond to their request within 45 days after receipt of a request from a RWPG for revision of population or water demand projections.

(f) Population and water demand projections shall be presented for each planning decade for each of the above reporting categories.

§357.32. Water Supply Analysis.

(a) RWPGs shall evaluate:

(1) source water availability during drought of record conditions; and

(2) existing water supplies that are legally and physically available to WUGs and wholesale water suppliers within the RWPA for use during the drought of record.

(b) Evaluations shall consider surface water and groundwater data from the state water plan, existing water rights, contracts and option agreements relating to water rights, other planning and water supply studies, and analysis of water supplies existing in and available to the RWPA during drought of record conditions.

(c) Evaluation of the existing surface water available during drought of record shall be based on firm yield. The analysis may be based on justified operational procedures other than firm yield. The EA shall consider a written request from a RWPG to use procedures other than firm yield. For surface water supply analysis, RWPGs will use most current Water Availability Models from the Commission to evaluate the adequacy of surface water supplies. RWPGs will assume full utilization of existing water rights and no return flows when using Water Availability Models. RWPGs may use other water availabil-

ity modeling assumptions or better site-specific information with written approval from the EA. Information available from the Commission shall be incorporated by RWPGs unless better site-specific information is available.

(d) RWPGs shall use modeled available groundwater volumes for groundwater availability, as issued by the Board, and incorporate such information in its RWP unless no modeled available groundwater volumes are provided. Groundwater availability used in the RWP must be consistent with the desired future conditions as of the date the Board most recently adopted a state water plan or, at the discretion of the RWPG, established subsequent to the adoption of the most recent state water plan.

(e) RWPGs shall evaluate the existing water supplies for each WUG and WWP.

(f) Water supplies based on contracted agreements will be based on the terms of the contract, which may be assumed to renew upon contract termination if the contract contemplates renewal or extensions.

(g) Evaluation results shall be reported by WUG in accordance with §357.31(a) of this title (relating to Projected Population and Water Demands) and WWP in accordance with §357.31(b) of this title.

§357.33. Needs Analysis: Comparison of Water Supplies and Demands.

(a) RWPGs shall include comparisons of existing water supplies and projected water demands to identify water needs.

(b) RWPGs shall compare projected water demands, developed in accordance with §357.31 of this title (relating to Projected Population and Water Demands), with existing water supplies available to WUGs and WWP in a planning area, as developed in accordance with §357.32 of this title (relating to Water Supply Analysis), to determine whether WUGs will experience water surpluses or needs for additional supplies. Results will be reported for WUGs and for WWP by categories of use including municipal, manufacturing, irrigation, steam electric, mining, and livestock watering for each county or portion of a county in a RWPA.

(c) The social and economic impacts of not meeting water needs will be evaluated by RWPGs and reported for each RWPA.

(d) Results of evaluations will be reported by WUG in accordance with §357.31(a) of this title and WWP in accordance with §357.31(b) of this title.

(e) RWPGs shall perform a secondary water needs analysis for all WUGs and WWP for which conservation water management strategies and or direct reuse water management strategies are recommended. This secondary water needs analysis will calculate the water needs that would remain after assuming all recommended conservation and direct reuse water management strategies are fully implemented. The resulting secondary water needs volumes shall be presented in the RWP by WUG and WWP and decade.

§357.34. Identification and Evaluation of Potentially Feasible Water Management Strategies.

(a) RWPGs shall identify and evaluate potentially feasible water management strategies for all WUGs and WWP with identified water needs.

(b) RWPGs shall identify potentially feasible water management strategies to meet water supply needs identified in §357.33 of this title (relating to Needs Analysis: Comparison of Water Supplies and Demands) in accordance with the process in §357.12(b) of this title (relating to General Regional Water Planning Group Responsibilities

and Procedures). Strategies shall be developed for WUGs and WWP. The strategies shall meet new water supply obligations necessary to implement recommended water management strategies of WWP and WUGs. RWPGs shall plan for water supply during Drought of Record conditions. In developing RWPGs, RWPGs shall provide WMSs to be used during a drought of record.

(c) Potentially feasible water management strategies may include, but are not limited to:

(1) Expanded use of existing supplies including system optimization and conjunctive use of water resources, reallocation of reservoir storage to new uses, voluntary redistribution of water resources including contracts, water marketing, regional water banks, sales, leases, options, subordination agreements, and financing agreements, subordination of existing water rights through voluntary agreements, enhancements of yields of existing sources, and improvement of water quality including control of naturally occurring chlorides.

(2) New supply development including construction and improvement of surface water and groundwater resources, brush control, precipitation enhancement, desalination, water supply that could be made available by cancellation of water rights based on data provided by the Commission, rainwater harvesting, and aquifer storage and recovery.

(3) Conservation and drought management measures including demand management.

(4) Reuse of wastewater.

(5) Interbasin transfers of surface water.

(6) Emergency transfers of surface water including a determination of the part of each water right for non-municipal use in the RWPA that may be transferred without causing unreasonable damage to the property of the non-municipal water rights holder in accordance with Texas Water Code §11.139 (relating to Emergency Authorizations).

(d) Evaluations of potentially feasible water management strategies shall include the following analyses:

(1) For the purpose of evaluating potentially feasible water management strategies, the Commission's most current Water Availability Model with assumptions of no return flows and full utilization of senior water rights, is to be used. Alternative assumptions may be used with written approval from the EA who will consider a written request from a RWPG to use assumptions other than no return flows and full utilization of senior water rights.

(2) An equitable comparison between and consistent evaluation and application of all water management strategies the RWPGs determine to be potentially feasible for each water supply need.

(3) A quantitative reporting of:

(A) The net quantity, reliability, and cost of water delivered and treated for the end user's requirements during drought of record conditions, taking into account and reporting anticipated strategy water losses, incorporating factors used calculating infrastructure debt payments and may include present costs and discounted present value costs. Costs do not include distribution of water within a WUG after treatment.

(B) Environmental factors including effects on environmental water needs, wildlife habitat, cultural resources, and effect of upstream development on bays, estuaries, and arms of the Gulf of Mexico. Evaluations will be in accordance with the Commission's adopted environmental flow standards under 30 TAC Chapter 298 (relating to Environmental Flow Standards for Surface Water) or, if unavailable,

information from environmental information from existing site-specific studies, or in the absence of such information, state environmental planning criteria adopted by the Board for inclusion in the state water plan after coordinating with staff of the Commission and the Texas Parks and Wildlife Department to ensure that water management strategies are adjusted to provide for appropriate environmental water needs including instream flows and bays and estuaries inflows.

(C) Impacts to agricultural resources.

(4) Discussion of the plan's impact on other water resources of the state including other water management strategies and groundwater and surface water interrelationships.

(5) A discussion of each threat to agricultural or natural resources identified pursuant to §357.30(7) of this title (relating to Description of the Regional Water Planning Area) including how that threat will be addressed or affected by the water management strategies evaluated.

(6) If applicable, consideration and discussion of the provisions in Texas Water Code §11.085(k)(1) for interbasin transfers of surface water. At minimum, this consideration will include a summation of water needs in the basin of origin and in the receiving basin.

(7) Consideration of third-party social and economic impacts resulting from voluntary redistributions of water including analysis of third-party impacts of moving water from rural and agricultural areas.

(8) A description of the major impacts of recommended water management strategies on key parameters of water quality identified by RWPGs as important to the use of a water resource and comparing conditions with the recommended water management strategies to current conditions using best available data.

(9) Consideration of water pipelines and other facilities that are currently used for water conveyance as described in §357.22(a)(3) of this title (relating to General Considerations for Development of Regional Water Plans).

(10) Other factors as deemed relevant by the RWPG including recreational impacts.

(e) RWPGs shall evaluate and present potentially feasible water management strategies with sufficient specificity to allow state agencies to make financial or regulatory decisions to determine consistency of the proposed action before the state agency with an approved RWP.

(f) Conservation, Drought Management Measures, and Drought Contingency Plans shall be considered by RWPGs when developing the regional plans, particularly during the process of identifying, evaluating, and recommending water management strategies. RWPGs shall incorporate water conservation planning and drought contingency planning in the regional water planning area.

(1) Drought management measures including water demand management. RWPGs shall consider drought management measures for each need identified in §357.33 of this title and shall include such measures for each user group to which Texas Water Code §11.1272 (relating to Drought Contingency Plans for Certain Applicants and Water Right Holders) applies. Impacts of the drought management measures on water needs must be consistent with guidance provided by the Commission in its administrative rules implementing Texas Water Code §11.1272. If a RWPG does not adopt a drought management strategy for a need it must document the reason in the RWP. Nothing in this paragraph shall be construed as limiting the use of voluntary arrangements by water users to forgo water usage during drought periods.

(2) Water conservation practices. RWPGs must consider water conservation practices for each identified water need.

(A) RWPGs shall include water conservation practices for each user group to which Texas Water Code §11.1271 (relating to Water Conservation Plans) applies. The impact of these water conservation practices on water needs must be consistent with requirements in appropriate Commission administrative rules related to Texas Water Code §11.1271.

(B) RWPGs shall consider water conservation practices for each WUG beyond the minimum requirements of subparagraph (A) of this paragraph, whether or not the WUG is subject to Texas Water Code §11.1271. If RWPGs do not adopt a water conservation strategy to meet an identified need, they shall document the reason in the RWP.

(C) For each WUG or WWP that is to obtain water from a proposed interbasin transfer to which Texas Water Code §11.085 (relating to Interbasin Transfers) applies, RWPGs will include a water conservation strategy, pursuant to §11.085(1), that will result in the highest practicable level of water conservation and efficiency achievable. For these strategies, RWPGs will determine and report projected water use savings in gallons per capita per day based on its determination of the highest practicable level of water conservation and efficiency achievable. RWPGs will develop conservation strategies based on this determination. In preparing this evaluation, RWPGs will seek the input of WUGs and WWPs as to what is the highest practicable level of conservation and efficiency achievable, in their opinion, and take that input into consideration. RWPGs will develop water conservation strategies consistent with guidance provided by the Commission in its administrative rules that implement Texas Water Code §11.085. Strategy evaluation in accordance with this section will include a quantitative description of the quantity, cost, and reliability of the water estimated to be conserved under the highest practicable level of water conservation and efficiency achievable.

(D) RWPGs shall consider strategies to address any issues identified in the information compiled by the Board from the water loss audits performed by retail public utilities pursuant to §358.6 of this title (relating to Water Loss Audits).

(g) RWPGs shall include a subchapter consolidating the RWPG's recommendations regarding water conservation. RWPGs shall include in the RWPGs model water conservation plans pursuant to Texas Water Code §11.1271.

§357.35. Recommended and Alternative Water Management Strategies.

(a) RWPGs shall recommend water management strategies to be used during a drought of record based on the potentially feasible water management strategies evaluated under §357.34 of this title (relating to Identification and Evaluation of Potentially Feasible Water Management Strategies).

(b) RWPGs shall recommend specific water management strategies based upon the identification, analysis, and comparison of water management strategies by the RWPG that the RWPG determines are potentially feasible so that the cost effective water management strategies that are environmentally sensitive are considered and adopted unless a RWPG demonstrates that adoption of such strategies is inappropriate. To determine cost-effectiveness and environmental sensitivity, RWPGs will follow processes described in §357.34 of this title. The RWP may include alternative water management strategies evaluated by the processes described in §357.34 of this title.

(c) Strategies will be selected by the RWPGs so that cost effective water management strategies, which are consistent with long-term

protection of the state's water resources, agricultural resources, and natural resources are adopted.

(d) RWPGs shall identify and recommend water management strategies for all WUGs and WWPs with identified water needs and that meet all water needs during the drought of record except in cases where:

(1) no water management strategy is feasible. In such cases, RWPGs must explain why no management strategies are feasible; or

(2) a political subdivision that provides water supply other than water supply corporations, counties, or river authorities explicitly does not participate in the regional water planning process for needs located within its boundaries or extraterritorial jurisdiction.

(e) Specific recommendations of water management strategies to meet an identified need will not be shown as meeting a need for a political subdivision if the political subdivision in question objects to inclusion of the strategy for the political subdivision and specifies its reasons for such objection. This does not prevent the inclusion of the strategy to meet other needs.

(f) Recommended strategies shall protect existing water rights, water contracts, and option agreements, but may consider potential amendments of water rights, contracts and agreements, which would require the eventual consent of the owner.

(g) RWPGs shall report the following:

(1) Recommended water management strategies and the associated results of all the potentially feasible water management strategy evaluations by WUG and WWP. If a WUG or WWP lies in one or more counties and or RWPGAs and or river basins, data will be reported for each river basin, RWPA, and county.

(2) Calculated planning safety factors for each WUG and WWP included in the RWP assuming all recommended water management strategies are implemented. This calculation shall be based on the sum of: the total existing water supplies, plus all water supplies from recommended water management strategies for each entity; divided by that entity's total projected water demand, within the planning decade. The resulting calculated safety factor shall be presented in the plan by entity and decade for every WUG and WWP.

(3) Fully evaluated Alternative Water Management Strategies included in the adopted RWP shall be presented together in one place in the RWP.

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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Kenneth L. Petersen

General Counsel

Texas Water Development Board

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For further information, please call: (512) 463-8061

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SUBCHAPTER D. IMPACTS, DROUGHT  
RESPONSE, POLICY RECOMMENDATIONS,  
AND IMPLEMENTATION

## 31 TAC §§357.40 - 357.45

### STATUTORY AUTHORITY

These new rules are proposed under the authority of Texas Water Code §6.101 which authorizes the board to adopt rules necessary to carry out the powers and duties of the board.

Texas Water Code §16.051(c) and (d); and 16.053(f), (h-1)(11), and (r) are affected by these rules.

#### §357.40. Impacts of Regional Water Plan.

(a) RWPs shall include a quantitative description of the socio-economic impacts of not meeting the identified water needs pursuant to §357.33(c) of this title (relating to Needs Analysis: Comparison of Water Supplies and Demands).

(b) RWPs shall include a description of the impacts of the RWP regarding:

(1) Agricultural resources pursuant to §357.34(d)(3)(C) of this title (relating to Identification and Evaluation of Potentially Feasible Water Management Strategies);

(2) Other water resources of the state including other water management strategies and groundwater and surface water interrelationships pursuant to §357.34(d)(4) of this title;

(3) Threats to agricultural and or natural resources identified pursuant to §357.34(d)(5) of this title;

(4) Third-party social and economic impacts resulting from voluntary redistributions of water including analysis of third-party impacts of moving water from rural and agricultural areas pursuant to §357.34(d)(7) of this title;

(5) Major impacts of recommended water management strategies on key parameters of water quality pursuant to §357.34(d)(8) of this title; and

(6) Effects on navigation.

(c) RWPs shall include a summary of the identified water needs that remain unmet by the RWP.

#### §357.41. Consistency with Long-Term Protection of Water Resources, Agricultural Resources, and Natural Resources.

RWPGs shall describe how RWPs are consistent with the long-term protection of the state's water resources, agricultural resources, and natural resources as embodied in the guidance principles in §358.3(4) and (8) of this title (relating to Guidance Principles).

#### §357.42. Drought Response Information, Activities, and Recommendations.

(a) RWPs shall consolidate and present information on current and planned preparations for, and responses to, drought conditions in the region including, but not limited to, drought of record conditions based on the following subsections.

(b) RWPGs shall conduct an overall assessment of current preparations for drought within the RWPA including a description of how water suppliers in the RWPA identify and respond to the onset of drought. This may include information from local drought contingency plans.

(c) RWPGs shall develop drought response recommendations regarding the management of existing groundwater and surface water sources in the RWPA designated in accordance with §357.32 of this title (relating to Water Supply Analysis), including:

(1) Factors specific to each source of water supply to be considered in determining whether to initiate a drought response for

each water source including specific recommended drought response triggers;

(2) Actions to be taken as part of the drought response by the manager of each water source and the entities relying on each source, including the number of drought stages; and

(3) Triggers and actions developed in paragraphs (1) and (2) of this subsection may consider existing triggers and actions associated with existing drought contingency plans.

(d) RWPGs will collect information on existing major water infrastructure facilities that may be used for interconnections in event of an emergency shortage of water. In accordance with Texas Water Code §16.053(r), this information is CONFIDENTIAL INFORMATION and cannot be disseminated to the public. The associated information is to be collected by a subgroup of RWPG members in a closed meeting and submitted separately to the EA in accordance with guidance to be provided by EA.

(e) RWPGs will provide general descriptions of local drought contingency plans that involve making emergency connections between water systems and or WWP systems that do not include locations or descriptions of facilities that are disallowed under subsection (d) of this section.

(f) RWPGs may designate recommended and alternative drought management water management strategies and other recommended drought measures in the RWP including:

(1) List and description of the recommended drought management water management strategies and associated WUGs and WWPs, if any, that are recommended by the RWPG. Information to include associated triggers to initiate each of the recommended drought management water management strategies;

(2) List and description of alternative drought management water management strategies and associated WUGs and WWPs, if any, that are included in the plan. Information to include associated triggers to initiate each of the alternative drought management water management strategies;

(3) List of all potentially feasible drought management water management strategies that were considered and or evaluated by the RWPG but not recommended; and

(4) List and summary of any other recommended drought management measures, if any, that are included in the RWP, including associated triggers if applicable.

(g) The RWPGs shall evaluate potential emergency responses to local drought conditions or loss of existing water supplies; the evaluation shall include identification of potential alternative water sources that may be considered for temporary emergency use by WUGs and WWPs in the event that the existing water supply sources become temporarily unavailable to the WUGs and WWPs due to unforeseeable hydrologic conditions such as emergency water right curtailment, unanticipated loss of reservoir conservation storage, or other localized drought impacts. RWPGs shall evaluate, at a minimum, municipal WUGs that:

(1) have existing populations less than 7,500;

(2) rely on a sole source for its water supply regardless of whether the water is provided by a WWP; and

(3) all county-other WUGs.

(h) RWPGs shall consider any relevant recommendations from the Drought Preparedness Council.

(i) RWPGs shall make drought preparation and response recommendations regarding:

(1) Development of, content contained within, and implementation of local drought contingency plans required by the Commission;

(2) Current drought management preparations in the RWPA including:

(A) drought response triggers; and

(B) responses to drought conditions;

(3) The Drought Preparedness Council and the State Drought Preparedness Plan; and

(4) Any other general recommendations regarding drought management in the region or state.

(j) The RWPGs shall develop region-specific model drought contingency plans.

§357.43. Regulatory, Administrative, or Legislative Recommendations.

(a) The RWPGs shall contain any regulatory, administrative, or legislative recommendations developed by the RWPGs.

(b) Ecologically Unique River and Stream Segments. RWPGs may include in adopted RWP recommendations for all or parts of river and stream segments of unique ecological value located within the RWPA by preparing a recommendation package consisting of a physical description giving the location of the stream segment, maps, and photographs of the stream segment and a site characterization of the stream segment documented by supporting literature and data. The recommendation package shall address each of the criteria for designation of river and stream segments of ecological value found in this subsection. The RWPG shall forward the recommendation package to the Texas Parks and Wildlife Department and allow the Texas Parks and Wildlife Department 30 days for its written evaluation of the recommendation. The adopted RWP shall include, if available, Texas Parks and Wildlife Department's written evaluation of each river and stream segment recommended as a river or stream segment of unique ecological value.

(1) A RWPG may recommend a river or stream segment as being of unique ecological value based upon the criteria set forth in §358.2 of this title (relating to Definitions).

(2) For every river or stream segment that has been designated as a unique river or stream segment by the legislature, during a session that ends not less than one year before the required date of submittal of an adopted RWP to the Board, or recommended as a unique river or stream segment in the RWP, the RWPG shall assess the impact of the RWP on these segments. The assessment shall be a quantitative analysis of the impact of the plan on the flows important to the river or stream segment, as determined by the RWPG, comparing current conditions to conditions with implementation of all recommended water management strategies. The assessment shall also describe the impact of the plan on the unique features cited in the region's recommendation of that segment.

(c) Unique Sites for Reservoir Construction. A RWPG may recommend sites of unique value for construction of reservoirs by including descriptions of the sites, reasons for the unique designation and expected beneficiaries of the water supply to be developed at the site. The criteria at §358.2 of this title shall be used to determine if a site is unique for reservoir construction.

(d) Any other recommendations that the RWPG believes are needed and desirable to achieve the stated goals of state and regional

water planning including to facilitate the orderly development, management, and conservation of water resources and prepare for and respond to drought conditions.

(e) RWPGs may develop information as to the potential impacts of any proposed changes in law prior to or after changes are enacted.

(f) RWPGs should consider making legislative recommendations to facilitate more voluntary water transfers in the region.

§357.44. Infrastructure Financing Analysis.

RWPGs shall assess and quantitatively report on how individual local governments, regional authorities, and other political subdivisions in their RWPA propose to finance recommended water management strategies.

§357.45. Implementation and Comparison to Previous Regional Water Plan.

(a) RWPGs shall describe the level of implementation of previously recommended water management strategies. Information on the progress of implementation of all water management strategies that were recommended in the previous RWP, including conservation and drought management water management strategies; and the implementation of projects that have affected progress in meeting the state's future water needs.

(b) RWPGs shall provide a brief summary of how the RWP differs from the previously adopted RWP with regards to:

(1) Water demand projections;

(2) Drought of record and hydrologic and modeling assumptions used in planning for the region;

(3) Groundwater and surface water availability, existing water supplies, and identified water needs for WUGs and WWP; and

(4) Recommended and alternative water management strategies.

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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Texas Water Development Board

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## SUBCHAPTER E. ADOPTION, SUBMITTAL, AND AMENDMENTS TO REGIONAL WATER PLANS

### 31 TAC §357.50, §357.51

#### STATUTORY AUTHORITY

These new rules are proposed under the authority of Texas Water Code §6.101 which authorizes the board to adopt rules necessary to carry out the powers and duties of the board.

Texas Water Code §16.051(c) and (d); and §16.053(f), (h-1)(11), and (r) are affected by these rules.

§357.50. Adoption, Submittal, and Approval of Regional Water Plans.

(a) The RWPGs shall submit their adopted RWPs to the Board every five years on a date to be disseminated by the EA, as modified by subsection (e)(2) of this section, for approval and inclusion in the state water plan.

(b) Prior to the adoption of the RWP, the RWPGs shall submit concurrently to the EA and the public an IPP. The IPP submitted to the EA must be in the electronic and paper format specified by the EA. Each RWPG must certify that the IPP is complete and adopted by the RWPG.

(c) The RWPGs shall distribute the IPP in accordance with §357.21(d)(5) of this title (relating to Notice and Public Participation).

(d) The RWPGs shall solicit, and consider the following comments when adopting a RWP:

(1) the EA's written comments, which shall be provided to the RWPG within 120 days of receipt of the IPP;

(2) written comments received from any federal agency or Texas state agency, which the RWPGs shall accept after the first public hearing notice is published pursuant to §357.21(d) of this title until at least 90 days after the public hearing is held pursuant to §357.21(d) of this title; and

(3) any written or oral comments received from the public after the first public hearing notice is published pursuant to §357.21(d) of this title until at least 60 days after the public hearing is held pursuant to §357.21(d) of this title.

(e) Submittal of RWPs. RWPGs shall submit the IPP and the adopted RWPs and amendments to approved RWPs to the EA in conformance with this section.

(1) RWPs shall include:

(A) The technical report and data prepared in accordance with this chapter and the EA's specifications;

(B) An executive summary that documents key RWP findings and recommendations; and

(C) Summaries of all written and oral comments received pursuant to subsection (d) of this section, with a response by the RWPG explaining how the plan was revised or why changes were not warranted in response to written comments received under subsection (d) of this section.

(2) RWPGs shall submit regional plans to the EA according to the following schedule:

(A) Initially prepared plans are due every five years on a date disseminated by the EA unless an extension is approved, in writing, by the EA.

(B) Prior to submission of the IPP, the RWPGs shall upload the data, metadata and all other relevant digital information supporting the plan to the Board's planning database system. All changes and corrections to this information must be entered into the Board's database prior to submittal of an adopted plan.

(C) The RWPG will transfer copies of all data, models, and reports generated by the planning process and used in developing the RWP to the EA. To the maximum extent possible, data shall be transferred in digital form according to specifications provided by the EA. One copy of all reports prepared by the RWPG shall be provided in digital format according to specifications provided by the EA. All digital mapping shall use a geographic information system according to specifications provided by the EA. The EA shall seek the input from

the State Geographic Information Officer regarding specifications mentioned in this section.

(D) Adopted RWPs are due to the EA every five years on a date disseminated by the EA unless, at the discretion of the EA, a time extension is granted consistent with the timelines in Texas Water Code §16.053(i).

(E) Once approved by the Board, RWPs will be made available on the Board website.

(f) The RWPGs shall submit in a timely manner to the EA information on any known interregional conflict between RWPs.

(g) The RWPGs shall modify the RWP to incorporate Board resolutions of interregional conflicts.

(h) The RWPGs shall seek to resolve conflicts with other RWPGs and shall participate in any Board sponsored efforts to resolve interregional conflicts.

(i) Approval of RWPs by the Board. The Board may approve a RWP only after it has determined that the RWP complies with statute and rules.

(j) Upon receipt of a RWP adopted by the RWPG, the Board will consider approval of such plan based on the following criteria:

(1) The Board shall verify adoption of the RWP by the RWPG.

(2) The Board shall approve the plan only after it considers any information from RWPGs of the existence of an interregional conflict and finds that no interregional conflict exists. The Board shall not consider approval of a RWP unless all RWPs which could contain conflicts have also been submitted to the Board for approval, or the Board determines that such plans are not likely to be submitted.

(k) Board Adoption of State Water Plan. RWPs approved by the Board pursuant to this chapter shall be incorporated into the state water plan as outlined in §358.4 of this title (relating to Guidelines).

§357.51. Amendments to Regional Water Plans.

(a) Local Water Planning Amendment Requests. A political subdivision in the RWPA may request a RWPG to consider specific changes to an adopted RWP based on changed conditions or new information. A RWPG must formally consider such request within 180 days after its receipt and shall amend its adopted RWP if it determines an amendment is warranted. If the political subdivision is not satisfied with the RWPG's decision on the issue, it may file a petition with the EA to request Board review the decision and consider changing the approved RWP. The political subdivision shall send a copy of the petition to the chair of the affected RWPG.

(1) The petition must state:

(A) the changed condition or new information that affects the approved RWP;

(B) the specific sections and provisions of the approved RWP that are affected by the changed condition or new information;

(C) the efforts made by the political subdivision to work with the RWPG to obtain an amendment; and

(D) the proposed amendment to the approved RWP.

(2) If the EA determines that the changed condition or new information warrants a change in the approved RWP, the EA shall request the RWPG to consider making the appropriate change and provide the reason in writing. The political subdivision that submitted the petition will receive notice of any action requested of the RWPG by the EA. If the RWPG does not amend its plan consistent with the request

within 90 days, the EA will present the issue to the Board for consideration at a public meeting. Before presenting the issue to the Board, the EA will provide the RWPG, the political subdivision submitting the petition, and any political subdivision determined by the EA to be affected by the issue 30 days notice.

(b) Major Amendments to RWPs and State Water Plan. A RWPG may amend an adopted RWP at any meeting, after giving notice for a major amendment and holding a hearing according to §357.21(d) of this title (relating to Notice and Public Participation). An amendment is major if it does not meet the criteria of subsection (c), (d) or (e) of this section. A RWPG may propose amendments to an approved RWP by submitting proposed amendments to the Board for its consideration and possible approval under the standards and procedures of this section.

(1) Initiation of a Major Amendment. An entity may request a RWPG amend its adopted RWP. A RWPG's consideration for action to initiate an amendment may occur at a regularly scheduled meeting.

(2) RWPG Public Hearing. The RWPG shall hold a public hearing on the amendment as defined in §357.21(d) of this title. The amendment shall be available for agency and public comment at least 30 days prior to the public hearing and 30 days following the public hearing as defined in §357.21(d) of this title.

(3) The proposed major amendment:

(A) Shall not result in an over-allocation of an existing or planned source of water;

(B) Shall not produce unmet needs new to the adopted RWP; and

(C) Shall conform with rules applicable to RWP development as defined in Subchapters C and D of this chapter.

(4) RWPG Major Amendment Adoption. The RWPG may adopt the amendment at a regularly scheduled RWPG meeting held in accordance with §357.21(b) of this title following the 30-day public comment period held in accordance with §357.21(d) of this title. The amendment shall include response to comments received.

(5) Board Approval of Major Amendment. After adoption of the major amendment, the RWPG shall submit the amendment to the Board which shall consider approval of the amendment at its next regularly scheduled meeting following EA review of the amendment.

(c) Minor Amendments to RWPs and State Water Plan.

(1) Minor Amendment to RWP. A RWPG may amend its RWP by first providing a copy of the proposed amendment to the EA for a determination as to whether the amendment would be minor.

(2) EA Pre-Adoption Review. The EA shall evaluate the proposed minor amendment prior to the RWPG's vote to adopt the amendment. An amendment is minor if it meets the following criteria:

(A) does not result in over-allocation of an existing or planned source of water;

(B) does not relate to a new reservoir;

(C) does not have a significant effect on instream flows, environmental flows or freshwater flows to bays and estuaries;

(D) does not have a significant substantive impact on water planning or previously adopted management strategies; and

(E) does not delete or change any legal requirements of the plan.

(3) Determination by EA. If the EA determines that the proposed amendment is minor, EA shall notify, in writing, the RWPG as soon as practicable.

(4) RWPG Public Meeting. After receipt of the written determination from the EA, the RWPG shall conduct a public meeting in accordance with §357.21(c) of this title. The public shall have an opportunity to comment and the RWPG shall amend the proposed minor amendment based on public comments, as appropriate, and to comply with existing statutes and rules related to regional water planning.

(5) Board Approval of Minor Amendment. After adoption of the minor amendment, the RWPG shall submit the amendment to the Board which shall approve the amendment at its next regularly scheduled meeting unless the amendment contradicts or is in substantial conflict with statutes and rules relating to regional water planning.

(d) Amendment for Water Planning for a Clean Coal Project. An amendment to a RWP or the state water plan to facilitate planning for water supplies reasonably required for a clean coal project, as defined by Texas Water Code §5.001, relating to the Texas Commission on Environmental Quality, shall be adopted by the process described in this section. However, a RWPG may amend the RWP to accommodate planning for a clean coal project without a public meeting or hearing if the EA determines that:

(1) the amendment does not significantly change the RWP;  
or

(2) the amendment does not adversely affect other water management strategies in the RWP.

(e) Substitution of Alternative Water Management Strategies. After notice is provided in accordance with §357.21(c) of this title, RWPGs may substitute one or more evaluated alternative water management strategies for a recommended strategy if the strategy originally recommended is no longer recommended and the substitution of the alternative water management strategy is capable of meeting the same water need. Proposed substitutions must receive written approval from the EA prior to substitution by the RWPG.

(f) Amending the State Water Plan. Following amendments of RWPs, including substitutions of alternative water management strategies, the Board shall make any necessary amendments to the state water plan as outlined in §358.4 of this title (relating to Guidelines).

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

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## SUBCHAPTER F. CONSISTENCY AND CONFLICTS IN REGIONAL WATER PLANS

31 TAC §§357.60 - 357.64

STATUTORY AUTHORITY



These new rules are proposed under the authority of Texas Water Code §6.101 which authorizes the board to adopt rules necessary to carry out the powers and duties of the board.

Texas Water Code §16.051(c) and (d); and §16.053(f), (h-1)(11), and (r) are affected by these rules.

§357.60. Consistency of Regional Water Plans.

(a) RWPGs shall submit to the development Board a RWP that is consistent with the guidance principles and guidelines outlined in §357.20 of this title (relating to Guidance Principles for State and Regional Water Planning). Information provided shall be based on data provided or approved by the Board in a format consistent with the guidelines of Subchapters C and D of this chapter and guidance by the EA.

(b) For the purposes of the Texas Water Code §16.053(j) (relating to Board Financial Assistance) projects proposed to the Board for funding will be considered to meet any need identified in an approved RWP in a manner consistent with the RWP if the project:

(1) Is an enhancement of a current water supply identified in the analysis developed under §357.32 of this title (relating to Water Supply Analysis) as meeting a demand, even though the project is not specifically recommended in the RWP;

(2) Involves a minor modification to an existing surface water right that is not in conflict with the RWP; and

(3) Is meeting a need in a manner consistent with the plan developed under Subchapters C and D of this chapter.

(4) For the purposes of the Texas Water Code §16.053(j), projects proposed to the Board for funding to meet any need identified in an approved RWP for which there is not a recommended water management strategy in such plan will be considered by the Board not to be consistent with the approved RWP.

(5) For the purposes of the Texas Water Code §16.053(k) (relating to Board Waivers), the Board may consider, among other factors, changed conditions if a political subdivision requests a waiver of the Texas Water Code §16.053(j) for a project proposed to the Board for funding to meet a need in a manner that is not consistent with the manner the need is addressed in an approved RWP. The Board shall request the members of any affected RWPG to provide input on the request for waiver of the Texas Water Code §16.053(j).

(c) Relation to state and local plans. RWPs shall be consistent with Chapter 358 of this title (relating to State Water Planning Guidelines) and this chapter. RWPGs shall consider and use as a guide the state water plan and local water plans provided for in the Texas Water Code §16.054 (relating to Local Water Planning).

§357.61. Intraregional Conflicts in Development of Regional Water Plans.

The EA shall provide technical assistance within available resources to the RWPGs requesting such assistance in performing regional water planning activities and if requested, may facilitate resolution of conflicts within RWPGs.

§357.62. Interregional Conflicts.

(a) In the event the Board finds that an interregional conflict exists between adopted RWPGs, the EA may use the following process:

(1) notify the affected RWPGs of the nature of the interregional conflict;

(2) request affected RWPGs assistance in resolving the conflict; and

(3) negotiate resolutions of conflicts with RWPGs as determined by the EA.

(b) In the event the negotiation is unsuccessful, the EA may:

(1) determine a proposed recommendation for resolution of the conflict;

(2) provide notice of its intent to hold a public hearing on proposed recommendations for resolution of the conflict by publishing notice of the proposed change in the *Texas Register* and in a newspaper of general circulation in each county located in whole or in part in the RWPGs involved in the dispute 30 days before the public hearing and by mailing notice of the public hearing 30 days before public hearing to those persons or entities listed in §357.21(d) of this title (relating to Notice and Public Participation) in the RWPGs proposed to be impacted, and to each county judge of a county located in whole or in part in the RWPGs proposed to be impacted and to each affected RWPG;

(3) hold a public hearing on the proposed recommendation for resolution of the conflict at a time and place determined by the EA. At the hearing, the EA shall take comments from the RWPGs, political subdivisions, and members of the public on the issues identified by the Board as unresolved problems; and

(4) make a recommendation to the Board for resolution of the conflict.

(c) The Board shall consider the EA's recommendation and any written statements by a representative for each affected RWPG and determine the resolution of the conflict. The Board's decision is final and not appealable.

(d) The EA shall notify affected RWPGs of Board's decision and shall direct changes to the affected RWPGs.

§357.63. Failure of a Regional Water Plan to Meet Regional Water Planning Requirements.

(a) In the event the Board finds that the RWP does not meet the requirements of the Texas Water Code §16.053, this chapter, and Chapter 358 of this title (relating to State Water Planning Guidelines), the Board shall direct the RWPG to make changes necessary for compliance with legal requirements.

(b) In the event the Board directs the RWPG to make changes to its RWP, the RWPG may request a reasonable amount of time, within any statutory deadlines, to complete the required changes.

§357.64. Conflicts Between Regional Water Plans and Groundwater Management Plans.

(a) A groundwater conservation district may file a written petition with the EA stating that a potential conflict exists between the district's approved management plan developed under Texas Water Code §36.1071 (relating to Management Plans) and the approved state water plan. A copy of the petition shall be provided to the affected RWPG. The petition must state:

(1) the specific nature of the conflict;

(2) the specific sections and provisions of the approved management plan and approved state water plan that are in conflict; and

(3) the proposed resolution to the conflict.

(b) If the EA determines a conflict exists, the EA will provide technical assistance to and coordinate with the groundwater conservation district and the affected RWPG to resolve the conflict. Coordination may include any of the following processes:

(1) requiring the RWPG to respond to the petition in writing;

(2) meeting with representatives from the groundwater conservation district and the RWPG to informally mediate the conflict; and/or

(3) coordinating a formal mediation session between representatives of the groundwater conservation district and the RWPG.

(c) If the parties do not reach resolution, the EA will recommend a resolution to the conflict to the Board within 60 days of the date the mediation is completed. Notice shall be provided at least 15 days prior to the date of the Board meeting to discuss the proposed resolution. The Board may:

(1) revise an approved RWP; and

(2) revise a district's approved management plan.

(d) If the Board requires a revision to the groundwater conservation district's approved management plan, the Board shall provide information to the groundwater conservation district on what revisions are required and why. The groundwater conservation district shall prepare any revisions to its plan based on the information provided by the Board and hold, after notice, at least one public hearing. The groundwater conservation district shall consider all public and Board comments, prepare, revise, and adopt its plan, and submit the revised plan to the Board pursuant to Chapter 356 of this title (relating to Groundwater Management). If the groundwater conservation district disagrees with the decision of the Board, the district may appeal the decision to a district court in Travis County, Texas.

(e) If the Board requires a revision to the approved RWP, the Board shall provide information to the RWPG on what revisions are required and why. The RWPG shall prepare the revisions as a major amendment to their approved RWP pursuant to §357.51(b) of this title.

(f) At the Board's discretion, the Board shall include in the state water plan a discussion of the conflict and its resolution.

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 April 23, 2012.

TRD-201202079

Kenneth L. Petersen

General Counsel

Texas Water Development Board

Earliest possible date of adoption: June 3, 2012

For further information, please call: (512) 463-8061



## CHAPTER 358. STATE WATER PLANNING GUIDELINES SUBCHAPTER A. STATE WATER PLAN DEVELOPMENT

### 31 TAC §§358.1 - 358.4

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

The Texas Water Development Board (board) proposes the repeal of Chapter 358, Subchapter A, §§358.1 - 358.4, relating to State Water Plan Development. A proposed new Subchapter A is published elsewhere in this issue of the *Texas Register*.

The board determined that the revisions being proposed to this subchapter and to Chapter 357 found elsewhere in this issue of the *Texas Register* will be more clear if this subchapter is repealed instead of amended.

### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE REPEAL

Chapter 358, Subchapter A is based on rulemaking authority in Texas Water Code §16.051 and §16.053. Section 16.051(c) requires the board to define and designate river basins and watersheds by rule and §16.051(d) requires the board to adopt guidance principles for water planning as a rule.

Texas Water Code §16.051(d) requires the board to update the guidance principles in conjunction with the Texas Commission on Environmental Quality, the Texas Parks and Wildlife Department and the Texas Department of Agriculture. This requirement is another reason for repeal of the entire subchapter. The guidance principles were last updated more than five years ago and due to legislative changes, it is more efficient to repeal Subchapter A and to propose a new Subchapter A.

### FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS

Carolyn Brittin, Deputy Executive Administrator, has determined that there is no fiscal impact to state or local governments as a result of this proposed repeal particularly since these rules will be revised and proposed for adoption simultaneously with this repeal.

### PUBLIC BENEFITS AND COSTS

Ms. Brittin has determined that there are public benefits to repealing this subchapter because the proposed new subchapter will be more streamlined and reduce the time needed by eligible applicants and the public to understand and use the rules. Ms. Brittin has also determined there are no increased costs to the public or the eligible applicants resulting from the repeal of this subchapter. Additionally, Ms. Brittin has determined that there are not economic costs to persons required to comply with the repeal since the rules are not mandatory.

### LOCAL EMPLOYMENT IMPACT STATEMENT

The board has determined that a local employment impact statement is not required because the proposed repeal does not adversely affect a local economy in a material way for the first five years that the proposed repeal is in effect because it will impose no new requirements on local economies.

The board has determined that there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this repeal. The board has also determined that there is no anticipated economic cost to persons who are required to comply with the repeal as proposed. Therefore, no regulatory flexibility analysis is necessary.

### REGULATORY IMPACT ANALYSIS

The board has determined that the proposed repeal is not subject to Texas Government Code §2001.0225 because it is not a major environmental rule under that section.

### TAKINGS IMPACT ASSESSMENT

The board has determined that the proposed repeal will constitute neither a statutory nor a constitutional taking of private real property. The proposed repeal does not adversely affect a landowner's rights in private real property, in whole or in part,

temporarily or permanently, because the proposed repeal does not burden nor restrict or limit the owner's right to property. Therefore, the proposed repeal does not constitute a taking under Texas Government Code Chapter 2007.

#### SUBMITTAL OF COMMENTS

Comments on the proposed repeal will be accepted for 30 days following publication in the *Texas Register* and may be submitted to Legal Services, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, [rulescomments@twdb.texas.gov](mailto:rulescomments@twdb.texas.gov), or by fax at (512) 475-2053.

#### STATUTORY AUTHORITY

The repeal is proposed under the authority of Texas Water Code §6.101 which authorizes the board to adopt rules necessary to carry out the powers and duties of the board; and Texas Water Code §16.051.

The proposed repeal affects Texas Water Code §16.051, relating to State Water Plan: Drought, Conservation, Development, and Management: Effect of Plan.

§358.1. *General.*

§358.2. *Definitions.*

§358.3. *Guidelines.*

§358.4. *State Water Plan.*

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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Kenneth L. Petersen

General Counsel

Texas Water Development Board

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For further information, please call: (512) 463-8061



#### 31 TAC §§358.1 - 358.4

The Texas Water Development Board (board) proposes new Chapter 358, Subchapter A, §§358.1 - 358.4, relating to State Water Plan Development. This subchapter is being proposed simultaneously with a proposal for repeal of current Subchapter A elsewhere in this issue of the *Texas Register*.

The board has determined that the changes in this subchapter are necessary to improve clarity, eliminate redundancy and address statutory changes not currently reflected in Subchapter A.

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

Proposed new Subchapter A is based on the statutory commands in Texas Water Code §16.051(d) which requires the board to adopt guidance principles as a rule and to review and update those principles every five years. The board has reviewed the principles in conjunction with the Texas Department of Agriculture, Texas Commission on Environmental Quality and Texas Parks and Wildlife Department and provides updated guidance principles in this proposed new subchapter.

#### SECTION BY SECTION DISCUSSION OF THE PROPOSED RULES

Proposed new §358.1, relating to Applicability, states that this subchapter governs the board's preparation, development, formulation and adoption of the state water plan.

Proposed new §358.2, relating to Definitions, also provides acronyms for commonly used phrases in the planning process.

Proposed new §358.3, relating to Guidance Principles, is required by Texas Water Code §16.051(d) as discussed above; the board has reviewed and updated the principles with input from the aforementioned agencies and therefore proposes new §358.3. There are twenty-seven guidance principles in this proposed new section. New principles include a priority on preparation for and response to drought conditions in proposed paragraph (1) and water supply plans in a drought of record in proposed paragraph (2). Although considerations relating to drought have been part of the state water plan in the past, these principles place an increased emphasis on planning for water shortages resulting from drought conditions. Similarly, proposed paragraph (8) requires water management strategies to respond to droughts. A renewed focus on environmental water needs and use of environmental information is stated in proposed paragraphs (21) and (22); these changes result from the development of the environmental flows rules by the Texas Commission on Environmental Quality. This proposed new §358.3 contains principles directed to regional water planning groups because the regional water plans are an integral part of the state water plan.

Proposed new §358.4, relating to Guidelines, describes the process within the board for development of the state water plan; the purpose is to inform the public about the process for adoption of the plan in proposed subsection (a); and the minimum contents of the plan in proposed subsection (b). Proposed subsection (a) describes the incorporation of the regional water plans into the state water plan and the board's notice of intent to adopt the plan and to hold a public hearing on the proposed plan. Proposed subsection (b) lists the topics that are discussed in the state and regional water plans which includes a description of future conditions in proposed subsection (b)(4); recommendations from the regional water planning groups in proposed subsection (b)(5) and (6); proposed subsection (b)(7) relates to prior implementation of water management projects and a discussion of which projects were funded by the board; and an increased emphasis on preparations for and responses to drought conditions in proposed subsection (b)(8).

#### FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS

Carolyn Brittin, Deputy Executive Administrator, has determined that there will not be any additional estimated costs to state and local governments as a result of enforcing or administering these rules for the first five years these rules will be in effect. The guidelines and guidance do not impose new costs on the public or on the regional water planning groups as the principles and guidelines are similar to the current principles and guidelines and the new requirements will not cause significant cost increases in development of plans.

Ms. Brittin has also determined that there are no estimated reductions in costs to state or local governments as a result of enforcing or administering these rules for the first five years these rules will be in effect. These rules provide notice to the public and to the regional water planning groups about the principles used in developing the state water plan and provide guidance to assist regional water planning groups, whose workload will be

significantly increased in the event the performance of additional tasks is deemed necessary. Further, the political subdivisions applying for funds to cover the cost of regional planning generally receive grants from the board for this purpose. There is no expected reduction in the costs to the local governments.

Additionally, Ms. Brittin has determined that there will not be any loss of or increase to revenue to state or local governments as a result of enforcing or administering these rules for the first five years that these rules will be in effect. These proposed rules do not affect the revenues of state or local governments.

#### PUBLIC BENEFITS AND COSTS

Ms. Brittin has determined that these rules do not impose costs to the public as the political subdivisions who are eligible applicants for regional water planning already perform similar functions if they have voluntarily assist the regional water planning groups. The benefit to the public is clearer descriptions of the process and the principles guiding the development of the state water plan. Additionally, these rules provide a public benefit through improved clarity and elimination of unnecessary rules that will assist the public in understanding development and purposes of water planning throughout the state. These public benefits will be effective for the first five years the rules are in effect.

Ms. Brittin has also determined that there are no probable economic costs to persons required to comply with these rules. These rules do not require any individuals to perform any particular functions. The regional water planning groups are established by statute and also benefit from a funding source at the board.

#### LOCAL EMPLOYMENT ECONOMIC IMPACT STATEMENT

The board has determined that a local employment impact statement is not required because the proposed rulemaking does not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect because they will impose no new requirements on local economies. The board also has determined that there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this rulemaking because the rules are not regulatory and are not directed at private small or micro-businesses. The proposed new rules streamline and reorganize the guidance principles for the state water plan and expand the defined terms to improve clarity. These proposed rules have no effect on the local economy or small or micro businesses because the rules apply only to regional water planning groups and provide notice to the public about the applicable guidance principles.

#### REGULATORY ANALYSIS

The board has determined that these rules do not constitute a major environmental rule because they are not based on a standard set by federal law, do not exceed an express requirement of state law or of a delegation agreement between the state and the federal government and are adopted pursuant to express state laws under Texas Water Code, Chapter 15.

#### TAKINGS IMPACT ASSESSMENT

The board has determined that these rules do not impact private property because the rules are directed to regional water planning groups and the political subdivision that acts as the administrator of grant funds from the board and is not directed to private landowners. The rules do not affect private property because it does not authorize any governmental entity to regulate or affect the status of private property. The rules regulate only

the distribution of funds from the board's research and planning fund.

#### SUBMITTAL OF COMMENTS

Comments on the proposed new rules will be accepted for 30 days following publication in the *Texas Register* and may be submitted to Legal Services, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, [rulescomments@twdb.texas.gov](mailto:rulescomments@twdb.texas.gov), or by fax at (512) 475-2053.

#### STATUTORY AUTHORITY

The new rules are proposed under the authority of Texas Water Code §6.101 which authorizes the board to adopt rules necessary to carry out the powers and duties of the board and Texas Water Code §16.051.

Texas Water Code §16.051(d) is affected by these proposed rules.

##### §358.1. Applicability.

This subchapter governs the Board's preparation, development, formulation, and adoption of the state water plan.

##### §358.2. Definitions.

The following words and acronyms, used in this chapter, have the following meanings.

- (1) Board--The Texas Water Development Board.
- (2) Commission--The Texas Commission on Environmental Quality.
- (3) Regional water plan (RWP)--The plan adopted or amended by a regional water planning group pursuant to Texas Water Code §16.053 (relating to Regional Water Plans) and Chapter 357 of this title (relating to Regional Water Planning).
- (4) Regional water planning area--Area designated pursuant to Texas Water Code §16.053 and Chapter 357 of this title.
- (5) Regional water planning group (RWPG)--Group designated pursuant to Texas Water Code §16.053 and Chapter 357 of this title.
- (6) River and stream segments of unique ecological value--Those river or stream segments that may be identified by the Board in coordination with the Texas Parks and Wildlife Department and the Commission or identified in an approved regional water plan based on the following criteria:
  - (A) Biological function--stream segments which display significant overall habitat value including both quantity and quality considering the degree of biodiversity, age, and uniqueness observed and including terrestrial, wetland, aquatic, or estuarine habitats;
  - (B) Hydrologic function--stream segments which are fringed by habitats that perform valuable hydrologic functions relating to water quality, flood attenuation, flow stabilization, or groundwater recharge and discharge;
  - (C) Riparian conservation areas--stream segments which are fringed by significant areas in public ownership including state and federal refuges, wildlife management areas, preserves, parks, mitigation areas, or other areas held by governmental organizations for conservation purposes, or stream segments which are fringed by other areas managed for conservation purposes under a governmentally approved conservation plan;
  - (D) High water quality/exceptional aquatic life/high aesthetic value--stream segments and spring resources that are signifi-

cant due to unique or critical habitats and exceptional aquatic life uses dependent on or associated with high water quality; or

(E) Threatened or endangered species/unique communities--sites along stream where water development projects would have significant detrimental effects on state or federally listed threatened and endangered species; and sites along streams significant due to the presence of unique, exemplary, or unusually extensive natural communities.

(7) Site of unique value for construction of reservoirs--Those sites identified by the Board in coordination with the Texas Parks and Wildlife Department and the Commission or identified in an approved regional water plan where:

(A) Site--specific reservoir development is recommended as a specific water management strategy or in an alternative long-term scenario in an adopted regional water plan; or

(B) The location, hydrologic, geologic, topographic, water availability, water quality, environmental, cultural, and current development characteristics, or other pertinent factors make the site uniquely suited for reservoir development to provide water supply for:

(i) The current planning period; or

(ii) Where it might reasonably be needed to meet needs beyond the 50-year planning period.

(8) State drought preparedness plan--A plan, separate from the state water plan, that is developed by the Drought Preparedness Council for the purpose of mitigating the effects of drought pursuant to Texas Water Code §16.0551 (relating to State Drought Preparedness Plan).

(9) State drought response plan--A plan prepared and directed by the chief of the Texas Division of Emergency Management for the purpose of managing and coordinating the drought response component of the state water plan and the state drought preparedness plan pursuant to Texas Water Code §16.055 (relating to Drought Response Plan).

(10) State water plan--The most recent comprehensive statewide water plan adopted by the Board under Texas Water Code §16.051 (relating to State Water Plan).

(11) Water management strategy--A plan or specific project to meet a need for additional water by a discrete user group, which can mean increasing the total water supply or maximizing an existing supply.

### §358.3. Guidance Principles.

Development of the state water plan shall be guided by the following principles.

(1) The state water plan shall provide for the preparation for and response to drought conditions.

(2) The regional water plans and state water plan shall serve as water supply plans under drought of record conditions.

(3) Consideration shall be given to the construction and improvement of surface water resources and the application of principles that result in voluntary redistribution of water resources.

(4) Regional water plans shall provide for the orderly development, management, and conservation of water resources and preparation for and response to drought conditions so that sufficient water will be available at a reasonable cost to satisfy a reasonable projected use of water to ensure public health, safety, and welfare; further economic development; and protect the agricultural and natural

resources of the regional water planning area and state including identification of those policies and actions that may be needed to meet Texas' water supply needs and preparation for and response to drought conditions.

(5) RWPG decision-making shall be open to and accountable to the public with decisions based on accurate, objective and reliable information with full dissemination of planning results except for those matters made confidential by law.

(6) The RWPG shall establish terms of participation in its water planning efforts that shall be equitable and shall not unduly hinder participation.

(7) Consideration of the effect of policies or water management strategies on the public interest of the state, water supply, and those entities involved in providing this supply throughout the entire state.

(8) Consideration of all water management strategies the regional water plan determines to be potentially feasible when developing plans to meet future water needs and to respond to drought so that cost effective water management strategies which are consistent with long-term protection of the state's water resources, agricultural resources, and natural resources are considered and approved.

(9) Consideration of opportunities that encourage and result in voluntary transfers of water resources, including but not limited to regional water banks, sales, leases, options, subordination agreements, and financing agreements.

(10) Consideration of a balance of economic, social, aesthetic, and ecological viability.

(11) For regional water planning areas without approved regional water plans or water providers for which revised plans are not developed through the regional water planning process, the use of information from the adopted state water plan and other completed studies that are sufficient for water planning shall represent the water supply plan for that area or water provider.

(12) All surface waters are held in trust by the state, their use is subject to rights granted and administered by the Commission, and the use of surface water is governed by the prior appropriation doctrine, unless adjudicated otherwise.

(13) Existing water rights, water contracts, and option agreements shall be protected. However, potential amendments of water rights, contracts and agreements may be considered and evaluated. Any amendments will require the eventual consent of the owner.

(14) The production and use of groundwater in Texas is governed by the rule of capture doctrine unless and to the extent that such production and use is regulated by a groundwater conservation district, as codified by the legislature at Texas Water Code §36.002 (relating to Ownership of Groundwater).

(15) Consideration of recommendations of river and stream segments of unique ecological value to the legislature for potential protection.

(16) Consideration of recommendation of sites of unique value for the construction of reservoirs to the legislature for potential protection.

(17) Consideration of water planning and management activities of local, regional, state, and federal agencies, along with existing local, regional, and state water plans and information and existing state and federal programs and goals.

(18) Designated water quality and related water uses as shown in the state water quality management plan shall be improved or maintained.

(19) Coordination of water planning and management activities of RWPGs to identify common needs and issues and achieve efficient use of water supplies, including the Board and other relevant RWPGs, working together to identify common needs, issues, and challenges while working together to resolve conflicts in a fair, equitable, and efficient manner.

(20) The water management strategies identified in approved RWPs to meet needs shall be described in sufficient detail to allow a state agency making a financial or regulatory decision to determine if a proposed action before the state agency is consistent with an approved RWP.

(21) The evaluation of water management strategies shall use environmental information in accordance with the Commission's adopted environmental flow standards under 30 TAC Chapter 298 (relating to Environmental Flow Standards for Surface Water) or, in basins where standards have not been adopted, information from existing site-specific studies or state consensus environmental planning criteria.

(22) Consideration of environmental water needs including instream flows and bay and estuary inflows, including adjustments to water management strategies to provide for appropriate, environmental water needs including instream flows and bay and estuary needs. Consideration shall be consistent with the Commission's adopted environmental flow standards under 30 TAC Chapter 298 in basins where standards have been adopted.

(23) Planning shall be consistent with all laws applicable to water use for the state and regional water planning area.

(24) The inclusion of ongoing water development projects that have been permitted by the Commission or a predecessor agency.

(25) Specific recommendations of water management strategies shall be based upon identification, analysis, and comparison of all water management strategies the RWPG determines to be potentially feasible so that the cost effective water management strategies which are environmentally sensitive are considered and adopted unless the RWPG demonstrates that adoption of such strategies is not appropriate. To determine cost-effectiveness, the RWPGs will use the process described in §357.34(c) of this title (relating to Identification and Evaluation of Potentially Feasible Water Management Strategies) and, to determine environmental sensitivity, the RWPGs shall use the process described in §357.34(c) of this title.

(26) RWPGs shall conduct their planning to achieve efficient use of existing water supplies, explore opportunities for and the benefits of developing regional water supply facilities or providing regional management of water facilities, coordinate the actions of local and regional water resource management agencies, provide substantial involvement by the public in the decision-making process, and provide full dissemination of planning results.

(27) RWPGs must consider existing regional water planning efforts when developing their plans.

#### §358.4. Guidelines.

(a) The executive administrator shall prepare, develop, and formulate the state water plan and the Board shall adopt a state water plan pursuant to the schedule in Texas Water Code §16.051. The executive administrator shall identify the beginning of the 50-year planning period for the state and regional water plans. The executive administrator shall incorporate into the state water plan presented to the Board those regional water plans approved by the Board pursuant to Texas

Water Code §16.053 and Chapter 357 of this title (relating to Regional Water Planning). The Board shall, not less than 30 days before adoption or amendment of the state water plan, publish notice in the *Texas Register* of its intent to adopt a state water plan and shall mail notice to each regional water planning group. The Board shall hold a hearing, after which it may adopt a water plan or amendments thereto.

(b) The state water plan shall include summaries for the state and from approved regional water plans, when available, which shall address, at a minimum, the following topics:

(1) Basis for planning, including sections on planning history, Texas water statutes, rules, regulations, and Texas' water supply institutions;

(2) Description of methods used for projecting future water demands which shall include methods for projecting future population and water demands for municipal and associated commercial and institutional uses, manufacturing, irrigation, steam electric power generation, mining, and livestock watering;

(3) Description of methods to address water quality problems related to water supply, to ensure public health, safety and welfare, to further economic growth, to protect agricultural and natural resources, to determine water supply availability, and to address drought response planning;

(4) Description of future conditions which shall, at a minimum, include:

(A) Demands for water;

(B) Supplies currently available;

(C) Comparison of water demand and supply to identify surpluses or needs of water;

(D) Social and economic impact of not meeting needs;

(E) Recommended solutions to meet needs;

(F) Needs for which no feasible water management strategy exists; and

(G) descriptions in subparagraphs (A) - (F) of this paragraph shall be presented for each county and basin by the major providers of water for municipal uses and for the following water use categories: municipal and associated commercial and institutional uses; manufacturing; irrigation; steam electric power generation; mining; and livestock watering;

(5) Consideration of recommendations of river and stream segments of unique ecological value and sites of unique value for construction of reservoirs to the legislature for potential protection;

(6) Regulatory, administrative, and legislative recommendations that the Board believes are needed and desirable to facilitate the orderly development, management, and conservation of water resources, to facilitate more voluntary water transfers, and the preparation for and response to drought conditions in order that sufficient water will be available at a reasonable cost to ensure public health, safety and welfare, further economic development, and protect the agricultural and natural resources of the entire state;

(7) The progress in meeting future water needs, including an evaluation of implementation of all water management strategies that were recommended in the previous state water plan and projects funded by the Board; and

(8) Current and planned preparations for, and responses to, drought conditions in the state to be used in the development of the

state's drought preparedness plan by the Drought Preparedness Council.

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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Kenneth L. Petersen

General Counsel

Texas Water Development Board

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For further information, please call: (512) 463-8061



## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

#### CHAPTER 151. GENERAL PROVISIONS

##### 37 TAC §151.52

The Texas Board of Criminal Justice proposes amendments to §151.52, concerning the Sick Leave Pool. The proposed amendments are necessary to clarify that there is no limit on the frequency of donations to the sick leave pool.

Jerry McGinty, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for each year of the first five years the rule will be in effect, enforcing or administering the rule will not have foreseeable implications related to costs or revenues for state or local government.

Mr. McGinty has also determined that for each year of the first five-year period, there will not be an economic impact on persons required to comply with the rule. There will not be an adverse economic impact on small or micro businesses. Therefore, no regulatory flexibility analysis is required. The anticipated public benefit, as a result of enforcing the rule, will be to prescribe procedures for the operation of the sick leave pool.

Comments should be directed to Melinda Hoyle Bozarth, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Melinda.Bozarth@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this rule.

The revisions are proposed under Texas Government Code §§661.008 - 661.201.

Cross Reference to Statutes: Texas Government Code §492.013.

§151.52. *Sick Leave Pool.*

(a) Definitions. Sick Leave Pool Administrator ~~is the~~ [The] ~~director~~ [Director] for the Human Resources Division or designee.

(b) Procedures.

(1) All contributions to the Texas Department of Criminal Justice (TDCJ) sick leave pool are voluntary. Employees who contribute accrued sick leave hours to the TDCJ sick leave pool may not designate the contributed hours for use by a specific employee. An employee who contributes accrued sick leave hours to the sick leave pool

may not withdraw the contributed hours of sick leave [unless the employee meets the eligibility criteria for sick leave pool withdrawals]. There is no limitation for frequency of donations.

(2) An employee may not withdraw time from the sick leave pool except in the case of catastrophic illness or injury of the employee or the employee's immediate family. The pool administrator shall determine the amount of time that an employee may withdraw from the sick leave pool. An employee absent on time withdrawn from the sick leave pool shall be treated for all purposes as if the employee were absent on earned sick leave.

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 April 20, 2012.

TRD-201201989

Melinda Hoyle Bozarth

General Counsel

Texas Department of Criminal Justice

Earliest possible date of adoption: June 3, 2012

For further information, please call: (512) 463-9693



## CHAPTER 155. REPORTS AND INFORMATION GATHERING

### SUBCHAPTER B. SITE SELECTION AND FACILITY NAMES

##### 37 TAC §155.23

The Texas Board of Criminal Justice proposes amendments to §155.23, concerning the Site Selection Process for the Location of Additional Facilities. The proposed amendments are necessary to conform the rule to state law and add clarity.

Jerry McGinty, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for each year of the first five years the rule will be in effect, enforcing or administering the rule will not have foreseeable implications related to costs or revenues for state or local government.

Mr. McGinty has also determined that for each year of the first five-year period, there will not be an economic impact on persons required to comply with the rule. There will not be an adverse economic impact on small or micro businesses. Therefore, no regulatory flexibility analysis is required. The anticipated public benefit, as a result of enforcing the rule, will be to provide the public notice of the process for choosing sites for the location of additional facilities.

Comments should be directed to Melinda Hoyle Bozarth, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Melinda.Bozarth@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this rule.

The amendments are proposed under Texas Government Code §492.013 and §496.007.

Cross Reference to Statutes: Texas Government Code §§493.009, 508.118, 508.119, 508.320, 509.001; Chapter 495, Subchapter A; Chapter 499, Subchapters B, E, and G; and Chapter 507.

§155.23. *Site Selection Process for the Location of Additional Facilities.*

(a) Purpose. This section [rule] establishes policy for determining the location of new Texas Department of Criminal Justice (TDCJ) facilities in a manner that is fair and open, is [and that results in facility sites that are] cost-effective for construction and operations, and sensitive to the ultimate mission of the facilities sited. Determining the location of a new facility designed to house [and support] offenders is a process entailing [requiring the review and analysis of] a number of factors, including cost-effectiveness, logistical support requirements, operational concerns, and legal mandates. [Generally, funding priorities shall dictate that such facilities be located on State-owned property, or on land acquired at no cost to the State. Additions to existing facilities subject to Board decision under this subsection are not governed by the procedures in this rule for new facilities. For additions to existing facilities, see Chapter 152, Subchapter B, of this title.]

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

{(1) Agency or TDCJ--The Texas Department of Criminal Justice.}

{(2) Board or TBCJ--The Texas Board of Criminal Justice.}

(1) [(3)] Facility is a [--A] substantially self-contained, permanently constructed correctional facility for housing offenders. This includes prison units, state jails, transfer facilities, and Substance Abuse Felony Punishment (SAFP) facilities, but does not include community corrections facilities, as defined by Texas Government Code[<sub>5</sub>] §509.001, or parole facilities defined in Texas Government Code §§508.118, 508.119, or 508.320[<sub>5</sub>] of the Texas Government Code.

(2) [(4)] Prison Unit includes [--Includes] a private prison under Texas Government Code[<sub>5</sub>] Chapter 495, Subchapter A, a psychiatric unit, and a unit whose capacity is determined [under, and regulated] by Texas Government Code[<sub>5</sub>] Chapter 499, Subchapters B (Population Management), and E (Unit and System Capacity).

(3) [(5)] SAFP Facility is a [--A] Substance Abuse Felony Punishment facility authorized by Texas Government Code[<sub>5</sub>] §493.009.

(4) [(6)] State Jail is a [--A] state jail felony facility authorized by Texas Government Code[<sub>5</sub>] Chapter 507.

(5) [(7)] Transfer Facility is a [--A] facility authorized by Texas Government Code[<sub>5</sub>] Chapter 499, Subchapter G.

(c) Procedures.

(1) The Legislative Budget Board is responsible for projecting the demand for prison unit, state jail, SAFP facility, and transfer facility beds. Based on these projections, a plan shall be developed by the TDCJ staff and adopted by the Texas Board of Criminal Justice (board) [Board] that details how any additional bed needs shall be met. This plan shall be presented to the legislature with a request for appropriations. With respect to new facilities requiring the selection of a site, the plan adopted by the board [Board] shall include:

(A) Recommendations for specific types of facilities needed by the TDCJ, the approximate size of each facility, and the regional distribution by facility type [that is needed];

(B) A description of each facility's [the] mission [of the recommended facilities];

(C) A description of the type of offenders to be housed in each facility and the programming requirements for that population; and

(D) Any recommendations for redesignation and renovation of existing facilities.

(2) Site selections shall be made in accordance with and through a Request for Proposals (RFP) process, unless the board [Board] determines that land currently owned by the state [State] shall be used as the site for the location of additional facilities, in which case a RFP process shall not be required. The RFP shall be based on the array of facilities authorized [and appropriated for] by the legislature. For each round of site selections, the RFP shall specify:

(A) Types of facilities needed;

(B) Minimum acreage and site characteristics required for each facility type;

(C) Requirements for geotechnical information based on drilling matrix and site preparation requirements;

(D) Requirements for verified documentation of the absence of any environmental problems and historical preservation conditions;

(E) Requirements for supporting information such as easement, utility, and topographical maps;

(F) Requirements for description of land values, transferability of mineral rights, surface leases, easements, title report, warranty deed, aerial photographs, and other issues affecting the timely transferability of a site;

(G) Transportation and utility requirements; and

(H) Requirements for soliciting citizen input[<sub>5</sub>] and state and local elected official input regarding a specific site.

(3) Under the direction of the TDCJ executive director [Executive Director], the Facilities Division shall [have the responsibility to] coordinate the site selection process. In accordance with the board [Board] approved criteria and process, the TDCJ staff shall be responsible for the development of the RFP, devising and completing scoring instruments as well as cost analysis for board [Board] review and action. Information presented to the board [Board] shall:

(A) Be structured in a uniform format as illustrated in the Facilities Division policies and procedures;

(B) Include data from a weighted scoring evaluation system[<sub>5</sub>] that objectively assesses each site based on the proposal requirements, the site visit, and [the] supporting information [that was] developed before any review, [and was] based on the Facilities Division policies and procedures and on the requirements outlined in the RFP;

(C) Include life-cycle cost calculations for a specific time period for each responsive proposal;

(D) Include information relating to the workforce available in the area surrounding each proposed site from which the TDCJ [Agency] would recruit correctional staff; and

(E) Identify and explain any deviations from the board approved process.

(4) Any selection process shall take into consideration the intent of the legislature to locate each facility:



(A) In close proximity to a county with 100,000 or more inhabitants to provide services and other resources provided in such a county;

(B) Cost-effectively with respect to its proximity to other facilities in the TDCJ;

(C) In close proximity to an area that would facilitate release of offenders or persons to their area of residence; and

(D) In close proximity to an area that provides adequate educational opportunities and medical care.[:]

~~[(E) In close proximity to an area that would be capable of providing hospital and specialty clinic medical services, as well as a sufficient pool of medical personnel from which to recruit and contract;]~~

~~[(F) On State-owned or donated land; and]~~

~~[(G) In close proximity to an area that provides adequate utility infrastructure and services at competitive prices to include electricity, natural gas, water, sewer and solid waste for full requirements and expansion possibilities.]~~

(5) The board [Board] shall be responsible for site selection, but may request that [the] TDCJ staff provide a short list of recommended sites or a preference ranking of sites with an explanation for the recommendation or ranking. Staff recommendations shall be determined through the scoring of information contained in each submitted proposal based on RFP requirements, actual site assessment and information obtained from external and internal sources for each site. Staff recommendations may include, and the board [Board] may select, a site other than one contained in the submitted proposals if the site is on state-owned [State-owned] land.

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 April 20, 2012.

TRD-201201988

Melinda Hoyle Bozarth

General Counsel

Texas Department of Criminal Justice

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For further information, please call: (512) 463-9693



## CHAPTER 163. COMMUNITY JUSTICE ASSISTANCE DIVISION STANDARDS

### 37 TAC §163.25

The Texas Board of Criminal Justice proposes amendments to §163.25, concerning the Community Justice Councils, Task Forces and Plans. The proposed amendments are necessary to incorporate revisions to state law passed in the 82nd legislative session.

Jerry McGinty, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for each year of the first five years the rule will be in effect, enforcing or administering the rule will not have foreseeable implications related to costs or revenues for state or local government.

Mr. McGinty has also determined that for each year of the first five-year period, there will not be an economic impact on persons

required to comply with the rule. There will not be an adverse economic impact on small or micro businesses. Therefore, no regulatory flexibility analysis is required. The anticipated public benefit, as a result of enforcing the rule, will be to provide guidance to community justice councils on the development of community justice plans.

Comments should be directed to Melinda Hoyle Bozarth, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Melinda.Bozarth@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this rule.

The revisions are proposed under Texas Government Code §509.003 and §509.007.

Cross Reference to Statutes: Texas Government Code §492.013.

§163.25. Community Justice Council [~~Councils, Task Forces~~] and Plans.

(a) Purpose. In order for a jurisdiction to receive any state aid, [a ~~community justice council, task force, and~~] the community justice plan shall conform to applicable law and Texas Department of Criminal Justice (TDCJ)[-]Community Justice Assistance Division (CJAD) standards and policy.

(b) Council's role. The local community justice council shall provide guidance and direction, in accordance with law, for the development of community justice plans.

(c) Plan development.

(1) The community justice plan shall include:

(A) a statement of goals and priorities and of commitment by the community justice council, the judges as defined in statute responsible for the establishment of [who established] the community supervision and corrections department (CSCD), and the CSCD director [~~community supervision and corrections department (CSCD)] to achieve a targeted level of alternative sanctions; [and]~~

(B) a description of methods for measuring the success of programs provided by the CSCD or provided by an entity served by the CSCD;[:]

(C) a description of the programs and services the CSCD provides or intends to provide, including a separate description of any programs or services the CSCD intends to provide to enhance public safety, reduce recidivism, strengthen the investigation and prosecution of criminal offenses, improve programs and services available to victims of crime, and increase the amount of restitution collected from persons supervised by the CSCD; and

(D) an outline of the CSCD's projected programmatic and budgetary needs, based on the programs and services the CSCD both provides and intends to provide.

(2) All community justice plans shall be approved by the judge(s) as defined in statute responsible for the establishment of [who established] the CSCD. Unless otherwise specified by the judge(s), the CSCD director [~~Director~~] or designee shall serve as the primary manager of the planning process, coordinating council activities, data collection, plan composition, and plan drafting. The community justice council, after judicial approval, shall submit the plan to the CJAD director [~~Director~~].

(d) Community justice plan acceptance and modification.

(1) Final acceptance of a community justice plan, for purposes of state aid eligibility is [~~may be~~] conditioned upon review and

evaluation by the CJAD staff. [Final acceptance of plans, without conditions, shall be received for purposes of CJAD grant funding.]

(2) A plan may be modified or amended through an addendum or amendment process as defined by the CJAD.

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 April 20, 2012.

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Melinda Hoyle Bozarth

General Counsel

Texas Department of Criminal Justice

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For further information, please call: (512) 463-9693



### 37 TAC §163.42

The Texas Board of Criminal Justice proposes amendments to §163.42, concerning Substantial Noncompliance. The proposed amendments are not substantive.

Jerry McGinty, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for each year of the first five years the rule will be in effect, enforcing or administering the rule will not have foreseeable implications related to costs or revenues for state or local government.

Mr. McGinty has also determined that for each year of the first five-year period, there will not be an economic impact on persons required to comply with the rule. There will not be an adverse economic impact on small or micro businesses. Therefore, no regulatory flexibility analysis is required. The anticipated public benefit, as a result of enforcing the rule, will be to provide notice to community supervision and corrections departments of the criteria to be used to determine whether state aid should be refused or suspended.

Comments should be directed to Melinda Hoyle Bozarth, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Melinda.Bozarth@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this rule.

The revisions are proposed under Texas Government Code §§509.003 - 509.006 and §509.011 and §509.012.

Cross Reference to Statutes: Texas Government Code §492.013.

### §163.42. Substantial Noncompliance.

(a) Definition. Substantial noncompliance with the Texas Department of Criminal Justice[-]Community Justice Assistance Division (TDCJ[-]CJAD) standards, for purposes of Texas Government Code §509.012, is defined as:

(1) intentional diversion, theft<sub>2</sub> or misapplication of TDCJ[-]CJAD funding or grants for purposes other than the state funding award or allocation;

(2) violations of laws, regulations<sub>2</sub> or official manuals specific to the operations of the community supervision and corrections departments [Community Supervision and Corrections Departments] (CSCDs);

(3) intentional refusal to implement a TDCJ[-]CJAD approved action plan that is a result of audits, reviews<sub>2</sub> or inspections;

(4) for purposes of qualifying for state aid under 37 Texas Administrative Code §163.43(a)(1)(F)<sub>2</sub> [of this title (-)]relating to Funding and Financial Management<sub>2</sub> [3] failure [by failing] to hold the meeting to finalize the CSCD budget as required by Texas Local Government Code §140.004 and the *Texas Open Meetings Act*; and

(5) interference, obstruction<sub>2</sub> or hindrance with any efforts by the Texas [State] Comptroller of Public Accounts, county auditor [County Auditor] of the county that manages the CSCD's funds, TDCJ[-]CJAD, TDCJ[-]Internal Audit Division, Legislative Budget Board, Texas State Auditors Office<sub>2</sub> or Texas Sunset Advisory Commission, to examine or audit the records, transactions<sub>2</sub> and performance of the CSCD or facilities.

(b) Imposing Sanctions. Sanctions imposed for substantial noncompliance shall be in accordance with provisions outlined in 37 Texas Administrative Code §163.47<sub>2</sub> [of this title (-)]relating to Contested Matters[)].

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 April 20, 2012.

TRD-201201991

Melinda Hoyle Bozarth

General Counsel

Texas Department of Criminal Justice

Earliest possible date of adoption: June 3, 2012

For further information, please call: (512) 463-9693



# 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 4. AGRICULTURE

### PART 1. TEXAS DEPARTMENT OF AGRICULTURE

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

##### SUBCHAPTER V. MEXICAN FRUIT FLY QUARANTINE

###### 4 TAC §§19.500 - 19.508

The Texas Department of Agriculture withdraws the emergency new §§19.500 - 19.508 which appeared in the April 27, 2012, issue of the *Texas Register* (37 TexReg 2917).

Filed with the Office of the Secretary of State on April 18, 2012.

TRD-201201953

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Effective date: April 18, 2012

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



## TITLE 22. EXAMINING BOARDS

### PART 9. TEXAS MEDICAL BOARD

#### CHAPTER 163. LICENSURE

###### 22 TAC §163.2, §163.5

The Texas Medical Board withdraws the proposed amendments to §163.2 and §163.5, which appeared in the March 9, 2012, issue of the *Texas Register* (37 TexReg 1637).

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

TRD-201202043

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Effective date: April 23, 2012

For further information, please call: (512) 305-7016



## TITLE 28. INSURANCE

### PART 1. TEXAS DEPARTMENT OF INSURANCE

#### CHAPTER 1. GENERAL ADMINISTRATION

##### SUBCHAPTER A. RULES OF PRACTICE AND PROCEDURE

##### DIVISION 2. RULE MAKING PROCEDURES

###### 28 TAC §1.207

The Texas Department of Insurance withdraws the proposed repeal of §1.207 which appeared in the February 24, 2012, issue of the *Texas Register* (37 TexReg 1129).

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

TRD-201201976

Sara Waitt

General Counsel

Texas Department of Insurance

Effective date: April 19, 2012

For further information, please call: (512) 463-6327



# ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

## TITLE 1. ADMINISTRATION

### PART 1. OFFICE OF THE GOVERNOR

#### CHAPTER 3. CRIMINAL JUSTICE DIVISION

The Office of the Governor, Criminal Justice Division (CJD), adopts amendments to Subchapter A, §§3.3, 3.7, and 3.11; Subchapter B, §3.75 and §3.81; Subchapter E, §3.2501; Subchapter F, §3.2601 and §3.2603; and Subchapter G, §§3.8100, 3.8105, 3.8120, 3.8200, 3.8205, 3.8210, and 3.8220; new Subchapter G, §§3.8300, 3.8305, and 3.8315; and the repeal of Subchapter B, §3.51; Subchapter G, §3.8110; and Subchapter J, §§3.9400, 3.9405, 3.9410, 3.9415, 3.9420, 3.9425, 3.9430, and 3.9435; without change to the proposed text as published in the March 9, 2012, issue of the *Texas Register* (37 TexReg 1573).

The adopted amendment of §3.3 adds a definition of the Compliance and Oversight Division (COD), which is a new division within the Office of the Governor; corrects typographical errors in current §3.3(k) and current §3.3(o); and removes language from current §3.3(p) indicating that the Office of the Governor promulgates the Uniform Grant Management Standards (UGMS) because the Office of the Governor no longer promulgates UGMS.

The adopted amendment of §3.7 ensures that the governing body of a Regional Planning Commission considers identified state priorities when making final decisions on priority listings and removes the capitalization of the term "Governor's" to ensure the uniform usage of term throughout the chapter.

The adopted amendment of §3.11 clarifies the language of the rule.

The adopted amendment of §3.75 changes the spelling of the term "grant-funded" to ensure the uniform usage of the term throughout the chapter.

The adopted amendment of §3.81 clarifies the language of the rule.

The adopted amendment of §3.2501 clarifies the language of the rule to ensure the uniform usage of terms throughout the chapter.

The adopted amendment of §3.2601 clarifies that, along with CJD, the COD monitors the activities of grantees.

The adopted amendment of §3.2603 clarifies that copies of the results of single audits must be submitted to the COD.

The adopted amendment of §3.8100 removes the reference to a statute that has been repealed.

The adopted amendment of §3.8105 and §3.8120 changes the capitalization of the term "Council" to ensure the uniform usage of the term throughout the chapter.

The adopted amendment of §§3.8200, 3.8205, 3.8210, and 3.8220 changes the capitalization of the term "Board" to ensure the uniform usage of term throughout the chapter. The adopted amendment of §3.8205 and §3.8220 simplifies the references to the Board to ensure the uniform usage of term throughout the chapter.

The adopted addition of §§3.8300, 3.8305, and 3.8315 sets forth the rules for the Specialty Courts Advisory Council, which was created within CJD by HB 1771 during the 82nd Regular Legislative Session. In connection with the addition of these rules, the title to Division 3 of Subchapter G is changed from "Governor's S.T.O.P. Violence Against Women Planning Council" to "Specialty Courts Advisory Council".

The adopted repeal of §3.51 removes the requirement that each community file with a COG a community plan that addresses criminal justice priorities because this is no longer a requirement to be eligible to receive CJD funds. Since §3.51 is the only rule in Division 1, the repeal of §3.51 repeals the entire division. Therefore, the titles to Divisions 1 and 2 are removed and the title to Subchapter B is changed from "General Grant Program Policies" to "Grant Budget Requirements" to more accurately describe the content of the subchapter.

The adopted repeal of §3.8110 removes unnecessary language that is currently set forth in Chapter 414 of the Texas Government Code.

The adopted repeal of §§3.9400, 3.9405, 3.9410, 3.9415, 3.9420, 3.9425, 3.9430, and 3.9435 removes the rules regarding State Planning Assistance Grants because the legislature did not appropriate any funds for such grants. The repeal of these sections repeals all of Subchapter J.

The title of Subchapter G is changed from "Criminal Justice Division Advisory Boards" to "Criminal Justice Division Boards" because not all boards in this subchapter are advisory.

No comments were received regarding adoption of these amended, new and repealed rules.

#### SUBCHAPTER A. GENERAL GRANT PROGRAM PROVISIONS

##### 1 TAC §§3.3, 3.7, 3.11

The amendment of these rules is adopted under §414.006, Texas Government Code, which authorizes the Council to adopt rules to carry out its functions.

The amended rules implement §414.005, Texas Government Code, which sets forth the duties of the Council.

No other statutes, articles, or codes are affected by the amendment of these rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-201201955

David Zimmerman

Assistant General Counsel

Office of the Governor

Effective date: May 9, 2012

Proposal publication date: March 9, 2012

For further information, please call: (512) 463-1919



## SUBCHAPTER B. GENERAL GRANT PROGRAM POLICIES

### DIVISION 1. ELIGIBILITY REQUIREMENTS

#### 1 TAC §3.51

The repeal of this rule is adopted under §414.006, Texas Government Code, which authorizes the Council to adopt rules to carry out its functions.

The repealed rule implements §414.005, Texas Government Code, which sets forth the duties of the Council.

No other statutes, articles, or codes are affected by the repeal of this 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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For further information, please call: (512) 463-1919



## SUBCHAPTER B. GRANT BUDGET REQUIREMENTS

#### 1 TAC §3.75, §3.81

The amendment of these rules is adopted under §414.006, Texas Government Code, which authorizes the Council to adopt rules to carry out its functions.

The amended rules implement §414.005, Texas Government Code, which sets forth the duties of the Council.

No other statutes, articles, or codes are affected by the amendment of these rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 463-1919



## SUBCHAPTER E. ADMINISTERING GRANTS

#### 1 TAC §3.2501

The amendment of this rule is adopted under §414.006, Texas Government Code, which authorizes the Council to adopt rules to carry out its functions.

The amended rule implements §414.005, Texas Government Code, which sets forth the duties of the Council.

No other statutes, articles, or codes are affected by the amendment of this 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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David Zimmerman

Assistant General Counsel

Office of the Governor

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For further information, please call: (512) 463-1919



## SUBCHAPTER F. PROGRAM MONITORING AND AUDITS

#### 1 TAC §3.2601, §3.2603

The amendment of these rules is adopted under §414.006, Texas Government Code, which authorizes the Council to adopt rules to carry out its functions.

The amended rules implement §414.005, Texas Government Code, which sets forth the duties of the Council.

No other statutes, articles, or codes are affected by the amendment of these rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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David Zimmerman

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Office of the Governor

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For further information, please call: (512) 463-1919

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SUBCHAPTER G. CRIMINAL JUSTICE  
DIVISION BOARDS  
DIVISION 1. TEXAS CRIME STOPPERS  
COUNCIL

**1 TAC §§3.8100, 3.8105, 3.8120**

The amendment of these rules is adopted under §414.006, Texas Government Code, which authorizes the Council to adopt rules to carry out its functions.

The amended rules implement §414.005, Texas Government Code, which sets forth the duties of the Council.

No other statutes, articles, or codes are affected by the amendment of these rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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David Zimmerman  
Assistant General Counsel  
Office of the Governor  
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For further information, please call: (512) 463-1919

◆       ◆       ◆

**1 TAC §3.8110**

The repeal of this rule is adopted under §414.006, Texas Government Code, which authorizes the Council to adopt rules to carry out its functions.

The repealed rule implements §414.005, Texas Government Code, which sets forth the duties of the Council.

No other statutes, articles, or codes are affected by the repeal of this 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.

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

TRD-201201961  
David Zimmerman  
Assistant General Counsel  
Office of the Governor  
Effective date: May 9, 2012  
Proposal publication date: March 9, 2012  
For further information, please call: (512) 463-1919

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DIVISION 2. GOVERNOR'S JUVENILE  
JUSTICE ADVISORY BOARD

**1 TAC §§3.8200, 3.8205, 3.8210, 3.8220**

The amendment of these rules is adopted under §414.006, Texas Government Code, which authorizes the Council to adopt rules to carry out its functions.

The amended rules implement §414.005, Texas Government Code, which sets forth the duties of the Council.

No other statutes, articles, or codes are affected by the amendment of these rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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David Zimmerman  
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For further information, please call: (512) 463-1919

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DIVISION 3. SPECIALTY COURTS ADVISORY  
COUNCIL

**1 TAC §§3.8300, 3.8305, 3.8315**

The new rules are adopted under §414.006, Texas Government Code, which authorizes the Council to adopt rules to carry out its functions.

The new rules implement §414.005, Texas Government Code, which sets forth the duties of the Council.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 463-1919

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SUBCHAPTER J. STATE PLANNING  
ASSISTANCE GRANTS

**1 TAC §§3.9400, 3.9405, 3.9410, 3.9415, 3.9420, 3.9425,  
3.9430, 3.9435**

The repeal of these rules is adopted under §414.006, Texas Government Code, which authorizes the Council to adopt rules to carry out its functions.

The repealed rules implement §414.005, Texas Government Code, which sets forth the duties of the Council.

No other statutes, articles, or codes are affected by the repeal of these rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

### CHAPTER 354. MEDICAID HEALTH SERVICES

#### SUBCHAPTER F. PHARMACY SERVICES

#### DIVISION 3. MEDICATIONS

##### 1 TAC §354.1853

The Texas Health and Human Services Commission (HHSC) adopts new §354.1853, concerning Specialty Drugs. The rule is adopted with changes to the proposed text as published in the January 27, 2012, issue of the *Texas Register* (37 TexReg 253) and will be republished.

##### Background and Justification

Texas Government Code §533.005(a)(23)(G), as added by Section 1.02(d), Senate Bill 7, 82nd Legislature, First Called Session, 2011, requires Medicaid managed care organizations (MCOs) and subcontracted pharmacy benefit managers (PBMs) to adopt policies and procedures for reclassifying prescription drugs from retail to specialty drugs that are consistent with rules adopted by the Executive Commissioner. MCOs and subcontracted PBMs cannot individually determine which retail drugs to reclassify as specialty drugs, but will instead be required to follow HHSC's specialty drugs list, as described in the new rule.

##### Comments

The 30-day comment period ended February 26, 2012. During this period, which included a public hearing on February 21, 2012, HHSC received comments from the following: National Association of Chain Drug Stores; Texas Pharmacy Business Council; H.E.B.; Texas Association of Health Plans; Clifford Gay; Navitus PBM Consortium; Texas Pharmacy Association; Molina Healthcare of Texas; General Counsel for American Pharmacies; Aetna Better Health; National Hemophilia Foundation; Bravo Health; Amerigroup; Baxter BioScience; United-Healthcare Community Plan; Superior; Texas Council of Community Centers; Dyax; Maxor National Pharmacy Services Corporation; Walgreens; EMD Serono, Inc.; BioRx Hemophilia Division; Novo Nordisk Inc.; Biotechnology Industry Organization; and Plasma Protein Therapeutics Association. A summary of the comments and HHSC's responses follow.

Comment: Three commenters suggested that subsection (b)(2) be changed to "the drug is not available at a majority of community retail pharmacies." The rule as proposed states, "The drug is not stocked at a majority of community retail pharmacies."

HHSC Response: HHSC acknowledges the comment but believes "not available" is less clear than "not stocked." No changes were made to the rule language based on this comment.

Comment: One commenter recommended that HHSC add "routinely" in subsection (b)(2) as follows: "The drug is not routinely stocked at a majority of community retail pharmacies."

HHSC Response: HHSC agrees with this comment and added the word "routinely" as suggested.

Comment: One commenter recommended that subsection (b)(1) be changed to "Examples of such conditions include *but are not limited to*, multiple sclerosis, hepatitis c, cystic fibrosis, hemophilia, and rheumatoid arthritis." The proposed rule states, "Examples of such conditions include multiple sclerosis, hepatitis c, cystic fibrosis, hemophilia, and rheumatoid arthritis."

HHSC Response: HHSC acknowledges the comment but no changes were made to the rule language based on this comment.

Comment: One commenter recommended that before finalizing the rule, HHSC ensure that children with serious emotional disturbance (SED) and children in foster care are not over medicated with psychotropic drugs.

HHSC Response: It is outside the scope of this rule to regulate the usage of psychotropic medications. HHSC has processes in place outside of this rule to monitor the use of psychotropic medications prescribed to children in foster care. No changes were made to the rule language based on this comment.

Comment: One commenter asked whether any provider willing to provide drugs on the specialty drug list should be allowed to participate in the MCOs' limited specialty pharmacy network.

HHSC Response: Texas Government Code §533.005(a)(23)(G) allows MCOs to enter into selective contracts with pharmacy providers for services related to specialty drugs; therefore, the MCO is not required to allow any willing pharmacy into its specialty pharmacy network.

However, an MCO must contract with any pharmacy willing to agree to the MCO's contract terms and conditions for its primary pharmacy network. If that pharmacy also provides specialty drugs that are on HHSC's specialty drug list, that pharmacy may only be reimbursed for a specialty drug if the pharmacy is also in the MCO's specialty pharmacy network.

Comment: Two commenters requested that HHSC ensure that drugs placed on the specialty drug list meet all of the requirements in the proposed rule.

HHSC Response: HHSC will ensure that a specialty drug meets all the criteria in the adopted rule.

Comment: One commenter requested that HHSC consider the specialty drug list definition utilized by the Texas Health Insurance Pool, which they believe closely mirrors most definitions of specialty drugs they have observed in other compendia.

HHSC Response: HHSC acknowledges the comment but no changes were made to the rule language based on this comment.

Comment: One commenter asked if a drug defined as a specialty drug can be removed from the specialty drug list at a later date based upon changing distribution requirements.

HHSC Response: It is possible that HHSC will remove a specialty drug from the list at a later date. Updates to the list will be made on a quarterly basis. Stakeholders can provide comments on whether a particular drug should be removed or added to the list for future quarterly updates.

Comment: One commenter asked which list will be governed by the rule.

HHSC Response: HHSC drafted two lists to show stakeholders which specialty drugs are on the Vendor Drug Program formulary and which are part of the medical benefit. Once the lists are finalized, HHSC will consolidate them into one list. This list will be governed by the rule.

Comment: One commenter asked if an advisory panel will be involved in deciding which drugs will be included on the specialty drug lists.

HHSC Response: An advisory panel will not be involved. Experts on staff at HHSC, primarily consisting of pharmacists, will decide which drugs will be included on the specialty drug list.

Comment: One commenter asked if providers will be able to appeal the addition of a new drug on the specialty drug list before the specialty classification goes into effect.

HHSC Response: HHSC does not have an appeals process for adding or deleting drugs to the specialty drug list; however, stakeholders can provide comments and suggestions for future quarterly updates. These comments and suggestions will be taken into consideration when HHSC updates the specialty drug list on a quarterly basis.

Comment: One commenter asked how HHSC will communicate additions to and deletions from the specialty drug list.

HHSC Response: HHSC will communicate the quarterly updates to the list using the Vendor Drug Program newsletter ("Rx Update") and website (<http://www.txvendordrug.com/>). Notices about updates to the list will also be sent via HHSC's email update subscription service (click on "Sign Up for E-mail Updates" link on the HHSC website: <http://www.hhsc.state.tx.us/>).

Comment: One commenter asked if an MCO or PBM can mandate that members receive their prescription drugs by mail order from a specific mail order pharmacy.

HHSC Response: While Texas Government Code §533.005(a)(22)(I) allows MCOs to contract exclusively with specialty drug providers for services related to specialty drugs, it prohibits MCOs from mandating members to use mail-order pharmacies. HHSC's Texas Administrative Code rule at 1 TAC §353.905(e) specifies the requirements MCOs must follow to enter into an exclusive contract with a specialty drug provider. As a result, members cannot be required to obtain specialty drugs from mail-order pharmacies; instead, if more convenient, members can acquire specialty drugs from non-specialty pharmacies if those pharmacies are contracted with a member's PBM. By contract, these requirements also apply to the PBMs subcontracted with the MCOs.

To summarize, MCOs are allowed to develop limited networks of specialty pharmacies, but because those pharmacies are mail-order pharmacies, the MCOs must offer an exception to allow clients to use a non-specialty pharmacy.

Comment: One commenter asked if members with bleeding disorders will have adequate and appropriate access to drugs under managed care.

HHSC Response: This question is outside the scope of the specialty drug rule; however, HHSC understands this critical need. HHSC will take the necessary precautions to ensure that all eligible Medicaid and CHIP members have adequate and appropriate access to drugs under managed care.

Comment: One commenter asked if patients who require drugs to prevent respiratory syncytial virus (RSV) will be able to remain with their current pharmacy provider for the rest of this treatment season.

HHSC Response: Some of these patients may have been enrolled with an MCO beginning March 1, 2012. MCOs must honor all existing Vendor Drug Program prior authorizations (PA), including PAs for Synagis. However, physicians working with a pharmacy to obtain Synagis for a client may need to transfer the prescription to a different pharmacy in the MCO's network.

Comment: One commenter asked if MCOs will be allowed to apply clinical PA/precertification requirements on the specialty drugs.

HHSC Response: The 2012-13 General Appropriations Act (Article II, H.B. 1, 82nd Legislature, Regular Session, 2011), Rider 81, prohibits MCOs from applying PA processes that are more stringent than those currently applied by HHSC.

Comment: One commenter asked what the difference is between the Medicaid preferred drug list (PDL) and the specialty drug list.

HHSC Response: The Preferred Drug List (PDL) includes the list of covered outpatient drugs reviewed by the Pharmaceutical and Therapeutics (P & T) Committee. Reviewed drugs are recommended by the P & T Committee as either preferred or non-preferred and HHSC establishes the final designation. The PDL is a subset of the formulary. Drugs on the specialty drug list may be designated as preferred or non-preferred. Preferred drugs will be available without prior authorization, while non-preferred drugs require prior authorization.

The specialty drug list includes specialty drugs that may be dispensed by pharmacies in the MCO's specialty pharmacy network. If a drug is on the specialty list, then only a specialty pharmacy that is in an MCO's specialty pharmacy network may provide the drug. Exception: If an MCO has only mail-order pharmacies in its specialty pharmacy network and does not have a walk-up specialty pharmacy, then the MCO member may choose to receive the specialty drug at any pharmacy, specialty or retail, in the MCO's network.

Comment: One commenter asked what impact the specialty drug rule would have on community centers that regularly prescribe behavioral drugs to a population with serious and persistent mental illness.

HHSC Response: There are few, if any, behavioral health drugs on the specialty drug list; therefore, those who take behavioral drugs are not likely to be impacted by the specialty drug rule/list.

Comment: One commenter asked whether HHSC or the MCO is responsible for the risk associated with covering pharmacy benefits, including catastrophically expensive medications.

HHSC Response: Under the managed care expansion, which was effective March 1, 2012, pharmacy services are covered by



Medicaid and CHIP MCOs on a capitated basis. This means the state pays a fixed monthly fee per member (with rates varying depending upon the risk group that a beneficiary is classified under), irrespective of the usage or needs of the specific individual beneficiary. Thus, the MCO carries the risk. The MCO takes full risk for all pharmacy costs, including expensive medications.

Comment: One commenter asked whether the state has a stop-loss/reinsurance for drug spending in place for health plans (e.g., All claims over \$100,000 per unique member are borne by the state).

HHSC Response: HHSC does not provide stop-loss or reinsurance for drug spending by the MCOs. However, many MCOs have acquired their own reinsurance for medical expenses and may have it for prescription expenses.

Comment: One commenter asked if the MCOs will set drug reimbursement prices based on their own pricing parameters (e.g., market rates) or if the state will dictate the pricing methodology that the managed care plans administer.

HHSC Response: MCOs/PBMs set their own pharmacy reimbursement rates.

Comment: Several commenters suggested additions or deletions to the specialty drug list.

HHSC Response: HHSC considered all of the suggested changes to the specialty drug list and revised the list. The second version of the draft list was sent to stakeholders for comment on February 28, 2012. HHSC will take the second round of comments into consideration before finalizing the list.

In addition to the change to the rule language resulting from the comments, staff removed hepatitis C from the rule's list of conditions that require specialty drugs because drugs used to treat hepatitis C may be stocked by community retail pharmacies.

#### Statutory Authority

The new rule is adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; 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 §533.005(a)(23)(G), which requires HHSC to define specialty drugs.

#### §354.1853. *Specialty Drugs.*

(a) The Health and Human Services Commissions (HHSC) will develop, maintain, and publish a list of specialty drugs on the Texas Medicaid Vendor Drug Program website.

(b) HHSC will include a drug on the specialty drug list if HHSC determines that the drug meets all of the following criteria:

(1) The drug is used to treat and is prescribed for a person with a complex, chronic, or rare medical condition that is progressive, can be debilitating or fatal if left untreated or undertreated, or for which there is no known cure. Examples of such conditions include multiple sclerosis, cystic fibrosis, hemophilia, and rheumatoid arthritis.

(2) The drug is not routinely stocked at a majority of community retail pharmacies.

(3) The drug has special handling, storage, inventory, or distribution requirements.

(4) Patients receiving the drug require complex education and treatment maintenance, such as complex dosing, intensive monitoring, or clinical oversight.

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 April 19, 2012.

TRD-201201971

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

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Proposal publication date: January 27, 2012

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



## CHAPTER 355. REIMBURSEMENT RATES

### SUBCHAPTER A. COST DETERMINATION PROCESS

#### 1 TAC §355.101, §355.107

The Texas Health and Human Services Commission (HHSC) adopts amendments to §355.101, concerning Introduction, and §355.107, concerning Notification of Exclusions and Adjustments. The amendments are adopted without changes to the proposed text as published in the February 3, 2012, issue of the *Texas Register* (37 TexReg 435) and will not be republished.

#### Background and Justification

Section 355.101 and §355.107 establish cost reporting requirements for various long-term services and supports programs administered by the Department of Aging and Disability Services (DADS). HHSC, under its authority and responsibility to administer and implement rates, is adopting 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.

#### Comments

The 30-day comment period ended March 4, 2012. During this period, HHSC received no comments regarding the proposed amendments to these rules.

The amendments are adopted 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(a), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Texas Human Resources Code, Chapter 32.

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 April 18, 2012.

TRD-201201937

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## TITLE 7. BANKING AND SECURITIES

### PART 2. TEXAS DEPARTMENT OF BANKING

#### CHAPTER 12. LOANS AND INVESTMENTS

##### SUBCHAPTER A. LENDING LIMITS

###### 7 TAC §§12.7, 12.9, 12.10

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts amendments to §12.7, concerning lease financing; §12.9, concerning aggregation and attribution; and §12.10, concerning nonconforming loans, without changes to the proposed text as published in the March 2, 2012, issue of the *Texas Register* (37 TexReg 1446).

Chapter 12, Subchapter A (§§12.1 - 12.11) implements Finance Code, §34.201, by providing detailed standards for calculating and applying a bank's legal lending limit.

The amendment to §12.7(b) clarifies when leases purchased by a state bank from a leasing company will be considered to be loans to the lessee for legal lending limit purposes. The amendment explicitly applies the existing requirements of §12.7(b) to leases purchased by a state bank. The amendment to the rule notifies state banks considering the purchase of leases of circumstances that will cause purchased leases to be loans to the leasing company for legal lending limit purposes. Under §12.7(b), as amended, a lease purchased by a state bank from a leasing company must meet the rule's six requirements to be considered a loan to the lessee. In addition, the amendment to §12.7(b) substitutes "company" for "corporation" in §12.7(b)(1), (2) and (4) to correct internal inconsistencies in references to leasing companies.

Section 12.9 governs when loans or extensions of credit to one borrower will be attributed to another person. The amendment to §12.9(e) reduces the aggregate legal lending limit for loans or extensions of credit by a bank to affiliated borrowers within a "corporate group" from 75% to 60% of Tier 1 capital. The limit ap-

plies only to loans subject to the general lending limit and only if one of the three tests set forth in §12.9 applies to such loans. The rule also defines a corporate group. The remainder of §12.9(e) remains unchanged.

The commission previously amended §12.9(e) and other legal lending limit rules in Chapter 12 in 2007, in part to implement certain statutory provisions enacted by the 80th Texas Legislature. That statutory change deleted the concept of "certified surplus" in state law and required the state legal lending limit to be calculated based on "unimpaired capital and surplus" instead of "capital and certified surplus." In revising the legal lending limit rules in Chapter 12, the commission defined "unimpaired capital and surplus" as equivalent to "Tier 1 capital" in §12.2(1), and substituted "Tier 1 capital" for "capital and certified surplus," in §12.9(e). Although the 2007 amendment to §12.9(e) did not alter the 75% limit, it effectively increased the lending limit by expanding the capital base against which the lending limit is measured.

The prolonged stress in the commercial real estate market has increased the department's concerns about high concentrations at certain state banks of real estate loans to affiliated borrowers. The amendment to §12.9(e) lowers the potential risk of loss to state banks making loans or extensions of credit to affiliated borrowers by reducing the aggregate legal lending limit for loans to affiliated borrowers within a corporate group from 75% to 60% of Tier 1 capital.

Section 12.10 specifies circumstances under which certain loans or extensions of credit that currently exceed the legal lending limit may be cited as nonconforming rather than as a violation.

The amendment to §12.10 adds new subsection (a)(3) to permit a loan to be treated as nonconforming rather than a violation if the loan exceeds the lending limit as a result of the bank's merger with another depository institution or purchase of all or substantially all of the assets of a failed depository institution from the Federal Deposit Insurance Corporation as receiver of such institution, on or shortly after the date of its closing.

Previous §12.10(a)(3) was renumbered as §12.10(a)(4) and amended to clarify that if the change in lending limit or capital definitions occurred after the date the loan or extension of credit was originated the loan will be considered nonconforming.

The amendment renumbers the remaining subsections and revises the internal cross-references.

The Department received no comments regarding the proposed amendments.

The amendments are adopted pursuant to Finance Code, §31.003, which authorizes the commission to adopt rules necessary or reasonable to implement and clarify applicable law; and under Finance Code, §34.201(b), which authorizes the commission to adopt rules regarding legal lending limits, including rules to define or further define terms used in the statute, establish limits, requirements, or exemptions other than specified by the statute for particular classes or categories of loans or extensions of credit, and establish collective lending limits.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-201201986

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**PART 5. OFFICE OF CONSUMER  
CREDIT COMMISSIONER**

**CHAPTER 83. REGULATED LENDERS AND  
CREDIT ACCESS BUSINESSES**

**SUBCHAPTER B. RULES FOR CREDIT  
ACCESS BUSINESSES**

**DIVISION 6. CONSUMER DISCLOSURES  
AND NOTICES**

**7 TAC §83.6007**

The Finance Commission of Texas (commission) adopts amendments to §83.6007, concerning consumer disclosures for credit access businesses. The commission adopts the amendments to §83.6007 with changes to the proposed text as published in the March 2, 2012, issue of the *Texas Register* (37 TexReg 1448).

The commission received two written comments on the proposal: one from Texas Appleseed, a consumer group; and one from the Consumer Service Alliance of Texas (CSAT), an industry trade association. The comment from Texas Appleseed is generally opposed to the amendments, whereas the CSAT comment fully supports the amendments as proposed. The responses to the issues raised by the opposing comment follow the description of the amendments.

The purpose of the amendments to §83.6007 is to clarify the rule's application to an existing business practice for payday and auto title loans transacted by credit access businesses via the Internet. The amendments also provide guidance to the industry as to when and how the consumer disclosures should be provided under this business model.

As a note of background, during the 2011 legislative session, the 82nd Texas Legislature enacted House Bill 2592, which requires the commission to prescribe a consumer disclosure to be used by credit access businesses that engage in payday or auto title loans. The bill also requires credit access businesses to post certain fee information and notices. In December 2011, the commission adopted rules providing the content of the consumer disclosures, related procedural rules, and rules concerning the posting of fee schedules and notices.

During the agency's ongoing collaboration with stakeholders, the agency was made aware of an Internet business practice not contemplated by the language of the rule. In this business practice, a commercial entity that is neither a credit access business nor a third-party lender obtains information from consumers via the Internet in the regular course of business. The commercial entity is sometimes referred to as a "lead generator" or "third-party marketer." The third-party marketer then supplies the consumer information to providers of loan products that have the ability to select particular consumers to explore a potential lending relationship.

The adopted amendments add new subsection (f) to §83.6007 regarding Internet sales. The new subsection states that a credit access business must provide the required disclosure to the consumer immediately upon arrival at the credit access business's website that includes information about a payday or auto title loan as defined by Texas Finance Code, §393.221. If a consumer is directed to the credit access business's website by a third-party marketer, then the website to which the consumer is first directed must contain a direct link to the appropriate disclosure required by §83.6007. This direct link must be provided before the consumer is required to verify previously provided information and before the consumer is required to provide additional information.

One commenter has "two areas of concern with this new language." The commenter states that the phrase "expression of the consumer's interest in obtaining a payday or auto title loan" is "unclear" and should be defined "[i]n order to protect personal and sensitive customer information." The commenter continues by stating: "Requiring customers to share personal information before gaining access to the required disclosures undermines the purpose of disclosing information about loan terms and could lead to identity theft, problems with spam e-mails, or other violations of personal information."

Further explanation concerning the third-party marketer model will provide the necessary background information related to the commission's response to this comment.

When a consumer goes online and performs a search looking for information about obtaining a payday or auto title loan, that search will often link to the website of a lead generator or third-party marketer. The consumer will then input information on the third-party marketer's website. The third-party marketer then forwards the consumer's information to a variety of potential providers of loan products. The providers literally have seconds to decide whether to "accept the lead," i.e. select to contact the consumer to pursue a possible lending relationship.

During this rapid process, the third-party marketer does not know which provider will accept the lead, or if the lead will be accepted at all. This uncertainty puts the third-party marketer in a situation where it would be impossible to comply with providing the disclosure under Texas Finance Code, §393.223. Without knowing which provider, including any credit access business, will accept the lead, the third-party marketer does not know "the interest, fees, and annual percentage rates, as applicable, to be charged on a deferred presentment transaction or on a motor vehicle title loan" under §393.223(a)(1) and has no knowledge of "the amount of accumulated fees a consumer would incur by renewing or refinancing a deferred presentment transaction or motor vehicle title loan that remains outstanding for" the specified periods of time under §393.223(a)(2). Similarly, the third-party marketer would also not be aware of "the three to five examples of the most common loans transacted by [the] credit access business" that accepts the lead, as outlined by §83.6007(e).

The third-party marketers as described in this business model maintain websites that are used as mere conduits, passing information through to the businesses that can potentially provide the services sought by consumers. The third-party marketers contemplated by the amendments do not take a credit application or perform a financial evaluation as provided under the rule. However, the agency acknowledges that third-party marketers could engage in activities that would require a credit access business license and credit services organization registration. Consequently, third-party marketers who by their conduct become

subject to Texas Finance Code, Chapter 393 would be required to comply with the statute and rules, including the regulations concerning consumer disclosures. If the agency were to receive information concerning a third-party marketer engaging in business under Chapter 393, the agency would address that situation through the enforcement process.

Subsection (f) applies to credit access businesses regulated under Texas Finance Code, Chapter 393, as those businesses are the parties obtaining or assisting the consumer in obtaining a payday or auto title loan. Moreover, only the particular credit access business that accepts a lead will have the information necessary to comply with the disclosure requirements under the statute and rule. Hence, the amendments specifically provide that "immediately upon the consumer's arrival at the credit access business's website," that "website to which the consumer is first directed must contain a direct link to the appropriate consumer disclosure" provided under §83.6007.

The commenter suggests that the beginning of §83.6007(f) could better read as follows: "A credit access business must provide the required disclosure to a consumer immediately upon the consumer's arrival at the credit access business's website with information about covered loan options under §393.601. The required disclosure must be clearly visible and provided prior to the exchange of any personal or identifying information." The commenter's suggestion would replace the "expression of the consumer's interest" phrase with alternate language and would add a new sentence.

The commission shares the commenter's concerns about identity theft and the protection of personal information. In fact, the information collected by third-party marketers often serves as a means to prevent fraud and verify the identity of the consumer. The commission also agrees that the "expression of the consumer's interest" phrase is unclear and has removed it for this adoption. However, as outlined in the discussion of the third-party marketer model, the commission does not agree that the disclosure must be "provided prior to the exchange of any personal identifying information." As stated by the supportive commenter: "[I]n an internet context, the disclosure often cannot be provided before the consumer supplies 'any' information--such as their state of residence." Therefore, aside from the latter phrase included in the first commenter's suggestion, the commission accepts the remaining concepts in the suggested language for the beginning of subsection (f).

Accordingly, the commission adopts the first two sentences of §83.6007(f) revised as follows: "A credit access business must provide the required disclosure to a consumer immediately upon the consumer's arrival at the credit access business's website that includes information about a payday or auto title loan as defined by Texas Finance Code, §393.221. Access to the required disclosure must be clearly visible upon the consumer's arrival at the website."

The commenter outlines its second area of concern, stating: "The language of subsection (f) under §83.6007, as related to a 'lead generator' is problematic when taken together with §393.001, §393.002, and §393.601. The proposed language assumes that a lead generator is not required to register as a Credit Services Organization nor be licensed under the Credit Access Business licensing provision. Lead generators for payday and auto title loans generally assist a consumer in obtaining a payday or auto title loan." The commenter suggests that the introductory phrase of the third sentence of subsection (f) be revised by removing the term "lead generator" and instead

referring to an entity not requiring a license. The commenter recommends that the phrase be revised to read: "If a consumer is directed to a credit access business's website by another commercial entity that is not required to be licensed as a credit access business...."

As delineated in the discussion of the third-party marketer model, the agency disagrees with the commenter's premise regarding the role of third-party marketers in payday and auto title loans. Most third-party marketers contemplated by the amendments serve as conduits for passing information to credit access businesses and do not perform services for the consumer to obtain these loans. Although the commission disagrees with the commenter's conceptual theory, the commission believes that the commenter's suggested language provides better clarity as to which parties are subject to the rule. Thus, the commission has incorporated the commenter's phrase (quoted at the end of the preceding paragraph) into the beginning of the third sentence of §83.6007(f) for this adoption.

The commenter continues by suggesting that two new sentences be added to the end of subsection (f) concerning potential licensure and disclosure requirements for lead generators or third-party marketers. As stated earlier, the agency recognizes that there may be certain situations where a third-party marketer's actions would need to be addressed through enforcement procedures. However, these situations are highly fact-specific and must be determined on a case-by-case basis. Thus, the commission declines the last two suggested sentences by the commenter, as this issue is more appropriately handled through enforcement as opposed to the rulemaking process.

The amendments are adopted under Texas Finance Code, §393.223, which requires the Finance Commission to adopt by rule a consumer disclosure including the statutory information in a form prescribed by the commission.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 393.

*§83.6007. Consumer Disclosures.*

(a) Consumer disclosure for single payment payday loan. The required disclosure under Texas Finance Code, §393.223 to be provided to a consumer before a credit application is provided or before a financial evaluation occurs in conjunction with a single payment payday loan is presented in the following figure.  
Figure: 7 TAC §83.6007(a) (No change.)

(b) Consumer disclosure for multiple payment payday loan. The required disclosure under Texas Finance Code, §393.223 to be provided to a consumer before a credit application is provided or before a financial evaluation occurs in conjunction with a multiple payment payday loan is presented in the following figure.  
Figure: 7 TAC §83.6007(b) (No change.)

(c) Consumer disclosure for single payment auto title loan. The required disclosure under Texas Finance Code, §393.223 to be provided to a consumer before a credit application is provided or before a financial evaluation occurs in conjunction with a single payment auto title loan is presented in the following figure.  
Figure: 7 TAC §83.6007(c) (No change.)

(d) Consumer disclosure for multiple payment auto title loan. The required disclosure under Texas Finance Code, §393.223 to be provided to a consumer before a credit application is provided or before a financial evaluation occurs in conjunction with a multiple payment auto title loan is presented in the following figure.  
Figure: 7 TAC §83.6007(d) (No change.)

(e) Consumer disclosures required for three to five common examples. For the three to five examples of the most common loans transacted by a credit access business as utilized under §83.6004 of this title (relating to Fee Schedule Content), the business must develop a consumer disclosure for those loan amounts, including appropriate fee information. Three to five examples must be developed for each payday or auto title product sold by the business (e.g., three single payment payday examples of \$300, \$500, and \$700; three multiple payment auto title examples of \$1,000, \$1,500, and \$2,500). The credit access business should provide the consumer with the example form for the product and amount that most closely relates to the consumer's loan request.

(f) Internet sales. A credit access business must provide the required disclosure to a consumer immediately upon the consumer's arrival at the credit access business's website that includes information about a payday or auto title loan as defined by Texas Finance Code, §393.221. Access to the required disclosure must be clearly visible upon the consumer's arrival at the website. If a consumer is directed to a credit access business's website by another commercial entity that is not required to be licensed as a credit access business, then the credit access business's website to which the consumer is first directed must contain a direct link to the appropriate consumer disclosure as outlined in subsections (a) - (d) of this section. The direct link to the consumer disclosure must be provided before the consumer is required to verify previously provided information, and before the consumer is required to provide additional information.

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 April 20, 2012.

TRD-201201995

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Effective date: May 10, 2012

Proposal publication date: March 2, 2012

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



## TITLE 10. COMMUNITY DEVELOPMENT

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

#### CHAPTER 1. ADMINISTRATION

##### SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

###### 10 TAC §1.24

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal of 10 TAC Chapter 1, §1.24, concerning Foreclosure Data Collection, without changes to the proposal as published in the March 2, 2012, issue of the *Texas Register* (37 TexReg 1450) and will not be republished.

REASONED JUSTIFICATION. This repeal is adopted in order to adopt a new section to simplify the existing rules to be more conducive to obtaining, in a timely manner, the information sought by the legislature concerning foreclosures.

No comments were received concerning the proposed repeal.

The Board approved the final order adopting this repeal on April 12, 2012.

The repeal is adopted pursuant to the authority of Chapter 2306 of the Texas Government Code, which provides the Department with the authority to adopt rules governing the administration of the Department and its programs, and pursuant to §51.0022 of the Texas Property Code, which requires that the Department promulgate forms, by rule, for collecting certain data regarding residential foreclosure notices and sales and to establish, by rule, the format for reporting the information to the Legislature.

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 April 16, 2012.

TRD-201201911

Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

Effective date: May 6, 2012

Proposal publication date: March 2, 2012

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



###### 10 TAC §1.24

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC Chapter 1, §1.24, concerning Foreclosure Data Collection with changes to the proposed text as published in the March 2, 2012, issue of the *Texas Register* (37 TexReg 1450).

The new section is adopted in order to simplify the existing rules to be more conducive to obtaining, in a timely manner, the information sought by the legislature concerning foreclosures.

REASONED JUSTIFICATION. The purpose of this rule is to implement the requirements of Senate Bill (SB) 1233 which amended Chapter 51 of the Texas Property Code by adding §51.0022, requiring the collection of certain data regarding foreclosures of residential property across the state. The law requires the Department to promulgate forms to be used by lien holders across the state when filing foreclosure notices against residential properties and by sheriffs and trustees conducting foreclosure sales of residential properties. The statute provides that the only information to be collected is the nature of the property as residential and the ZIP code of the property. The forms are to be filed with the clerk's office in the county where the notice was filed or the foreclosure was conducted. This information is, in turn, transmitted to the Department, and the Department is required to report the information to the legislature on a quarterly basis. The purpose of this rule is to promulgate the forms to be used and to establish the format of the report to be submitted to the legislature. When adopted, the new rule will apply only to notices of sale filed on or after January 1, 2012.

Written comments were accepted through March 26, 2012, with comments received in writing by email from: (1) Tammy Biggar, Fannin County, (2) Jannett Pieper, Kerr County, (3) Larry Beville, Taylor County, (4) Joy Streater, Comal County, (5) Kelly Pinen, Lubbock County, (6) Cynthia Mitchel, Denton County, (7) Nancy Rister, Williamson County, (8) Diane Gonzales, Atas-

cosa County, (9) Diane Wilson, Fort Bend County and (10) Anna Schielack, Bureson County.

SUMMARY OF PUBLIC COMMENT, REASONED RESPONSE, AND STAFF RECOMMENDATIONS.

GENERAL COMMENT: COOPERATION.

COMMENT SUMMARY (4, 5): Commenter's thanked the Department for revising the rule from the version published in the December 2011 issue of the *Texas Register*. The revised new rule is more acceptable than the previous rule and promoted cooperation.

STAFF RESPONSE: Staff appreciated this feedback. Part of the reason staff created the new rule was to bring more cooperation between the state and the county governments. No changes were recommended based on this comment.

GENERAL COMMENT: UNFUNDED MANDATE

COMMENT SUMMARY (3, 6, 7, 9, 10). Commenter's specifically called this rule an unfunded mandate that increases labor costs for reporting and possibly postage costs if sending in forms by mail.

STAFF RESPONSE: SB 1233 does not authorize the Department to empower counties to charge a fee; in fact, SB 1233 does not address fees at all. In addition, the Department did not receive authority to charge a fee to implement SB 1233 and is currently absorbing the cost of administration, estimated to cost \$155,000 in direct and indirect staffing costs over five (5) years. No changes were recommended based on this comment.

§1.24(c) Reporting to County Clerks - Submission of foreclosure forms to county clerks.

COMMENT SUMMARY (4): Commenter suggested that the foreclosure forms be sent directly to the Department rather than submitted to the county clerks, who then send the foreclosure forms to the Department.

STAFF RESPONSE: Staff disagreed with this comment in that SB 1233 identifies the county clerks as the responsible party for submitting the information to the Department. No changes were recommended based on this comment.

§1.24(c)(1) Reporting to County Clerks - Enforcement of submission of foreclosure forms.

COMMENT SUMMARY (10): Commenter stated that their county will not "police" the foreclosure forms; if a filer wants to file a notice of foreclosure or convey a title out of foreclosure, the county clerk will not require the filer to also submit the appropriate foreclosure form.

STAFF RESPONSE: Staff disagreed with this comment in that SB 1233 requires collection of this information. While §1.24 does not address enforcement of the data collection, Staff recommends that county clerks have Notice of Sale Foreclosure Forms and Completed Sale Foreclosure Forms on hand in the office for use by filers. In addition, SB 1233 identifies the county clerks as the responsible party for submitting the foreclosure information to the Department. No changes were recommended based on this comment.

§1.24(d) Reporting to TDHCA - Scanned copies.

COMMENT SUMMARY (1, 2, 3, 6, 7, 8): Commenter's requested that scanned copies of the foreclosure forms be sent to the Department instead of the original forms or copies of the originals. Commenter's objected to the restriction of just

submitting paper copies and cited high postage costs, including printed envelopes and cover sheets.

STAFF RESPONSE: Staff agreed with the commenter's regarding scanned copies and made amendments to §1.24(d)(1) - (2). Due to standard email limits for state government, the Department cannot accept scanned copies by emails that are over 7 megabytes. Counties may either email the scanned foreclosure forms that are less than 7 megabytes or mail a compact disc (CD) of the scanned foreclosure forms to the Department. Staff agreed with the general sentiment that electronic submission is a more efficient reporting mechanism than hard-copy reporting, which is why the Department developed the electronic summary forms which are submitted directly into the Department's internal database. When submitting the summary forms, counties incur no postage, printing or cover sheet costs. In addition, the Department estimates that the labor needed to scan the foreclosure forms would approximately equal the labor needed to complete the summary forms, imposing no extra burden on the counties and saving the Department time and effort.

§1.24(d) Reporting to TDHCA - Electronic submission.

COMMENT SUMMARY (3, 7): Commenter's 3 and 7 would prefer electronic submission of the foreclosure forms. Commenter 3 suggested that electronic copies, such as scanned copies, would be easier for the Department to store and manipulate. Commenter 7 requested a form-fillable version of the foreclosure forms, so that the forms could be more easily converted to electronic format without the scanning process.

STAFF RESPONSE: Staff disagreed with the comment that scanned copies would be easier to manipulate. However, Staff agreed that scanned copies are easier to store and that the foreclosure forms be form-fillable. Scanned copies of foreclosure forms would not be easier to manipulate than paper copies because scanned copies are essentially pictures of the forms; the information on the forms is not easily electronically accessible. If the scanned copy has not been created using a scanner with Optical Character Recognition software, then the data will not be able to be manipulated accurately. The Department prefers to receive paper foreclosure forms because the paper forms are easier to track and key into the Department's internal database. However, Staff agreed that scanned copies can be stored electronically which will save space. Regarding form-fillable foreclosure forms; the foreclosure forms are already form-fillable and have been posted on the Department's website since December 2011. Again, the Department agreed that electronic submission is a more efficient reporting mechanism than hard copy reporting, which is why the Department encourages the use of the electronic summary forms.

§1.24(d)(2) Reporting to TDHCA - Legibility.

COMMENT SUMMARY (7): Commenter objected to the word "legible" in §1.24(d)(2) "If a county clerk transmits originals or copies of the Notice of Sale Foreclosure Forms and/or Completed Sale Foreclosure Forms, these forms must be in legible hard copy format..." Commenter does not want to "police" the forms to ensure they are legible.

STAFF RESPONSE: Staff disagreed with this comment as legibility is of the essence in order to compile accurate data. No changes were recommended based on this comment.

§1.24(d)(1) Reporting to TDHCA - First business day reporting.

COMMENT SUMMARY (10): Commenter noted that many reports are due on the first business day of the month and counties

may not be able to meet the Department's deadline to report on the first day of the month.

**STAFF RESPONSE:** Staff disagreed with this comment. Pursuant to SB 1233, the Department will transmit reports to the legislature quarterly; these quarterly reports will consist of information that the Department receives monthly from the counties. In order to fulfill its statutory obligation, the Department must receive the data from the clerks in a timely manner. If forms are not received from the counties before the Department's quarterly report is prepared, the Department's quarterly report will note that no data was received from certain counties in time for the report. No changes were recommended based on this comment.

§1.24(d)(3) Reporting to TDHCA - Summary forms.

**COMMENT SUMMARY (5, 9, 10):** Commenter 5 stated that their county would need another employee in order to utilize the summary form. Commenter 9 suggested that the summary forms be removed from the rule. Commenter 9 stated that mailing thousands of forms is costly and time-consuming, but not as time consuming as summarizing the data; their county has not had an increase in staff and would need such to handle the volume of foreclosure forms if required to use the summary forms. Commenter 10 stated that will not use the summary form.

**STAFF RESPONSE:** Staff disagreed with the comment concerning the removal of the summary form. Approximately 50 counties are using the summary form to submit, saving postage and copying or scanning time. The Department recognizes that there is a cost in mailing which is why the Department created the summary form and electronic upload option. In addition, the Department estimates that the labor needed to scan the forms would approximately equal the labor needed to complete the summary forms. While forwarding the paper versions of the foreclosure forms may save counties staff time, if counties are scanning and sending the foreclosure forms electronically, the Department encourages the consideration of the use of the summary forms to save on labor and costs. No changes were recommended based on this comment.

The Board approved the final order adopting the new section as amended, as well as administrative changes as needed for consistency within this chapter, on April 12, 2012.

The new section is adopted pursuant to the authority of Chapter 2306 of the Texas Government Code, which provides the Department with the authority to adopt rules governing the administration of the Department and its programs, and pursuant to §51.0022 of the Texas Property Code which requires that the Department promulgate forms, by rule, for collecting certain data regarding residential foreclosure notices and sales and to establish, by rule, the format for reporting the information to the Legislature.

§1.24. *Foreclosure Data Collection.*

(a) Senate Bill 1233 of the 82nd Legislative Session. The amendment requires the Texas Department of Housing and Community Affairs (the "Department") to prescribe forms for the collection of foreclosure data from the county clerks and to establish the format for reporting the information to the legislature.

(b) Definitions.

(1) Completed Sale Foreclosure Form--A form submitted to the county clerk when residential real property has been sold through a foreclosure and the substitute trustee's deed, sheriff's deed or other valid conveyance out of foreclosure is filed with the county clerk.

(2) Notice of Sale Foreclosure Form--A form submitted to the county clerk when a notice of sale of residential real property is filed with the county clerk.

(3) Summary Form for Completed Sales--A form submitted by the county clerk with the Department that lists the Completion of Sale Foreclosure Forms received during the previous month (approximately thirty (30) days) by the county clerk.

(4) Summary Form for Notices of Sale--A form submitted by the county clerk with the Department that lists the Notice of Sale Foreclosure Forms received during the previous month (approximately thirty (30) days) by the county clerk.

(5) Residential property--A residential property is a one-to-four-unit dwelling.

(c) Reporting to County Clerks.

(1) When a person files a notice of sale of residential property under §51.0022(b) of the Texas Property Code, that person must also submit to the county clerk a Notice of Sale Foreclosure Form that includes at least the information described in subparagraphs (A) - (D) of this paragraph:

(A) a yes or no question as to whether the property is residential;

(B) a statement that a notice of sale is being filed on this property;

(C) the ZIP code of the residential real property; and

(D) the date of submission of the Notice of Sale Foreclosure Form.

(2) When a person files a substitute trustee's deed, sheriff's deed or other valid conveyance out of foreclosure, that person must also submit to the county clerk a Completed Sale Foreclosure Form that includes at least the information described in subparagraphs (A) - (D) of this paragraph:

(A) a yes or no question as to whether the property is residential;

(B) a statement that the property has been sold as a result of foreclosure;

(C) the ZIP code of the residential real property; and

(D) the date of submission of the Completed Sale Foreclosure Form.

(d) Reporting to the Department.

(1) On the first business day of each month, the county clerk shall transmit to the Department the Notice of Sale Foreclosure Forms and Completed Sale Foreclosure Forms described in this rule that have been submitted to the county clerk during the previous month. These forms may be transmitted by either sending the Department the original forms, copies of the original forms, scanned copies of the forms by Compact Disc (CD) or scanned copies by email if under 7 megabytes, faxed copies of the forms, or by transmitting the substance of the forms to the Department in the form of a properly-completed Summary Form for Completed Sales and/or a properly-completed Summary Form of Notices of Sale.

(2) If a county clerk transmits originals, or copies, scans or faxes of the Notice of Sale Foreclosure Forms and/or Completed Sale Foreclosure Forms, these forms must be sent in legible format via U.S. Mail to: Texas Department of Housing and Community Affairs, Housing Resource Center, P.O. Box 13941, Austin, Texas 78711-3941,

via email, if under 7 megabytes, to [countyclerkdatacollection@tdhca.state.tx.us](mailto:countyclerkdatacollection@tdhca.state.tx.us), or by fax to the Housing Resource Center.

(3) The executed Summary Form for Notices of Sale and Summary Form for Completed Sales may be submitted by the county clerks' offices via an online Web interface. A username and password will be required to submit via the Web interface. As an alternative method of submittal, the completed Summary Form for Notices of Sale and Summary Form for Completed Sales may also be downloaded and submitted via email as an attachment to [countyclerkdatacollection@tdhca.state.tx.us](mailto:countyclerkdatacollection@tdhca.state.tx.us) or mailed to the Department at the address in paragraph (2) of this subsection. The Summary Form for Notices of Sale and Summary Form for Completed Sales shall include at least the information described in subparagraphs (A) and (B) of this paragraph:

(A) A list of dates on which the Notice of Sale Foreclosure Forms and/or Completed Sale Foreclosure Forms were submitted to the county clerk during the previous month;

(B) A list of ZIP codes of the properties that are listed on the Notice of Sale Foreclosure Forms and/or the Completed Sale Foreclosure Forms collected during the previous month.

(e) Location of forms.

(1) The Notice of Sale Foreclosure Forms and/or Completed Sale Foreclosure Forms may be obtained online on the Department's website. This will be a downloadable form that can be printed. If the county clerk is unable to download the form, he or she may call the Housing Resource Center at the Department to request a form be mailed via United States Postal Service (USPS). Persons shall use these foreclosure forms to report only those notices of sale and completed sales submitted to the county clerk on or after January 1, 2012.

(2) The Summary Form for Notices of Sale and Summary Form for Completed Sales may be obtained or accessed online on the Department's website. This will include a Web interface for online submission to the Department. As an alternative, a downloadable Summary Form for Notices of Sale and Summary Form that can be printed will also be available. If the county clerk is unable to download the forms, he or she may call the Housing Resource Center at the Department to request a form be mailed via USPS. County clerks shall use these summary forms to report only those notices of sale and completed sales submitted to the county clerk on or after January 1, 2012.

(f) Format for quarterly reporting to the Legislature. The information obtained from the forms described in this section will be compiled and summarized by the Department by ZIP code and by county, and submitted quarterly to the Texas Legislature.

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 April 16, 2012.

TRD-201201912

Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

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



## TITLE 16. ECONOMIC REGULATION

## PART 8. TEXAS RACING COMMISSION

### CHAPTER 307. PROCEEDINGS BEFORE THE COMMISSION

#### SUBCHAPTER C. PROCEEDINGS BY STEWARDS AND RACING JUDGES

##### 16 TAC §307.67

The Texas Racing Commission adopts an amendment to 16 TAC §307.67, Appeal to the Commission, concerning appeals from decisions of the boards of stewards and judges to the Commission. The rule amendment is adopted without changes to the proposed text as published in the February 24, 2012, issue of the *Texas Register* (37 TexReg 1048) and will not be republished.

The adopted change implements House Bill 2271, 82nd Legislature, Regular Session, which in part provides new authority to the executive secretary to review a decision of the stewards or judges and modify the penalty. The amendment specifies that an appeal from a modification by the executive secretary must be filed not later than 5:00 p.m. of the fifth calendar day after the person is informed of the penalty modification.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under the Texas Revised Civil Statutes Annotated Article 179e, §3.02, which authorizes the Commission to make rules relating exclusively to horse and greyhound racing; and §3.07, which authorizes the executive secretary to review and modify decisions of the stewards and judges.

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-201201914

Mark Fenner

General Counsel

Texas Racing Commission

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Proposal publication date: February 24, 2012

For further information, please call: (512) 833-6699



##### 16 TAC §307.69

The Texas Racing Commission adopts an amendment to 16 TAC §307.69, Action by Commission, concerning the authority of the Commission to take action on a decision of the board of stewards or judges without an appeal having been filed. The rule amendment is adopted without changes to the proposed text as published in the February 24, 2012, issue of the *Texas Register* (37 TexReg 1049) and will not be republished. The amendment changes the name from "Action by Commission" to "Review by Executive Secretary".

The adopted change implements House Bill 2271, 82nd Legislature, Regular Session, which transferred the authority to take direct action on a decision of the board of stewards or judges from the Commission to the executive secretary.



No comments were received regarding the adoption of the amendment.

The amendment is adopted under the Texas Revised Civil Statutes Annotated Article 179e, §3.02, which authorizes the Commission to make rules relating exclusively to horse and greyhound racing; and §3.07, which authorizes the executive secretary to review and modify decisions of the stewards and judges.

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-201201915

Mark Fenner

General Counsel

Texas Racing Commission

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For further information, please call: (512) 833-6699



## CHAPTER 311. OTHER LICENSES

### SUBCHAPTER A. LICENSING PROVISIONS

#### DIVISION 1. OCCUPATIONAL LICENSES

##### 16 TAC §311.3

The Texas Racing Commission adopts an amendment to 16 TAC §311.3, Information for Background Investigation, concerning requirements and procedures for checking criminal history records. The rule amendment is adopted without changes to the proposed text as published in the February 24, 2012, issue of the *Texas Register* (37 TexReg 1050) and will not be republished.

The adopted change allows applicants who desire to renew an occupational license to utilize a new process whereby the Department of Public Safety may resubmit an applicant's original fingerprints on file instead of requiring the applicant to provide new fingerprints.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under the Texas Revised Civil Statutes Annotated Article 179e, §3.02, which authorizes the Commission to make rules relating exclusively to horse and greyhound racing; and §5.03, which requires license applicants to submit fingerprints to the Commission.

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 April 16, 2012.

TRD-201201916

Mark Fenner

General Counsel

Texas Racing Commission

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For further information, please call: (512) 833-6699



## SUBCHAPTER B. SPECIFIC LICENSES

##### 16 TAC §311.103

The Texas Racing Commission adopts an amendment to 16 TAC §311.103, Kennel Owners, concerning the requirements and qualifications to be licensed as a Kennel Owner. The rule amendment is adopted without changes to the proposed text as published in the February 24, 2012, issue of the *Texas Register* (37 TexReg 1051) and will not be republished.

The adopted change would clarify the intent of the rule by prohibiting ownership of multiple kennels by persons who are residentially domiciled together.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under the Texas Revised Civil Statutes Annotated Article 179e, §3.02, which authorizes the Commission to make rules relating exclusively to horse and greyhound racing; and §7.01, which requires all persons who participate in racing with pari-mutuel wagering to be licensed by the Commission.

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-201201917

Mark Fenner

General Counsel

Texas Racing Commission

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For further information, please call: (512) 833-6699



## TITLE 19. EDUCATION

### PART 2. TEXAS EDUCATION AGENCY

#### CHAPTER 102. EDUCATIONAL PROGRAMS

##### SUBCHAPTER II. COMMISSIONER'S RULES CONCERNING TEXAS HIGH PERFORMANCE SCHOOLS CONSORTIUM

##### 19 TAC §102.1201

The Texas Education Agency (TEA) adopts new §102.1201, concerning the Texas High Performance Schools Consortium. The new section is adopted with changes to the proposed text as published in the January 27, 2012, issue of the *Texas Register* (37 TexReg 254). The adopted new rule establishes the procedures for school district and eligible charter school participation in the Texas High Performance Schools Consortium required under the Texas Education Code (TEC), §7.0561, as added by Senate Bill (SB) 1557, 82nd Texas Legislature, 2011.

SB 1557, 82nd Texas Legislature, 2011, added the TEC, §7.0561, which created a Texas High Performance Schools Consortium. The TEC, §7.0561, authorizes the commissioner of education to adopt rules applicable to the consortium, including

the establishment of the application process for school districts and eligible open-enrollment charter schools to participate in the consortium. Based on an application process, the consortium will be comprised of up to 20 school districts and eligible open-enrollment charter schools. The consortium, under the leadership of the commissioner, is to convene periodically to prepare for the governor and legislature a plan to improve learning standards and assessment and accountability systems that the consortium proposes to implement. The consortium's plan is to emphasize digital learning, high-priority learning standards, and an accountability system that relies on multiple assessments and allows for greater parent and community involvement. The commissioner shall recommend to the legislature the waiver of any prohibitions, requirements, or restrictions necessary to enable consortium participants to implement the proposed plan.

Adopted new 19 TAC §102.1201 establishes in rule the requirements necessary for school districts and eligible open-enrollment charter schools to participate in the Texas High Performance Schools Consortium. The adopted new rule includes definitions and provisions relating to eligibility, application, criteria and methodology for selecting consortium participants, notification, and financing of the consortium.

In response to public comment, the following change has been made at adoption. Eligibility is no longer limited to districts and campuses receiving an exemplary rating in the most recent state accountability system. Language in subsection (b)(1) has been modified to establish that an eligible school district and its participating campus(es) "must not have been awarded the lowest performance rating as its most recent state academic accountability rating under §97.1001 of this title (relating to Accountability Rating System)." Additionally, new subsection (b)(2) has been added to establish that either a school district or its participating campus(es) "must have received either national, statewide, or regional public acknowledgment, from an organization relying on expertise in the field of education, for district-wide or campus-wide excellence in academic performance or innovative practices in one of the areas described by the consortium principles in subsection (a)(2) of this section." Subsequent paragraphs in subsection (b) have been renumbered accordingly.

School districts and eligible open-enrollment charter schools interested in participating in the consortium must submit an application in compliance with the TEC, §7.0561(e), and semi-annual progress reports indicating the extent to which they have implemented their proposed plan as set forth in the TEA request for applications. Any locally maintained paperwork requirements resulting from the adopted new rule correspond with and support the stated procedural and reporting implications.

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

The public comment period on the proposal began January 27, 2012, and ended February 27, 2012. Following is a summary of the public comments received and corresponding agency responses regarding proposed new 19 TAC Chapter 102, Educational Programs, Subchapter II, Commissioner's Rules Concerning Texas High Performance Schools Consortium, §102.1201, Texas High Performance Schools Consortium.

Comment: Concerning proposed new 19 TAC §102.1201(b)(1), comments were received from the Texas Association of School Administrators (TASA), co-signed by the presidents of eight

other education associations and more than 150 superintendents or interim superintendents of Texas school districts listed at the end of this comment summary; the superintendent of Crowley Independent School District (ISD); the president and chief executive officer of the Fort Worth Chamber of Commerce; the superintendent of Guthrie ISD; the director of public relations for Lytle ISD; the superintendent of McKinney ISD; the superintendent of Perrin-Whitt Consolidated ISD (CISD); and the deputy superintendent of Richardson ISD.

All commenters requested that the agency eliminate the requirement that a district and its participating campus(es) be rated exemplary in order to apply to participate in the consortium. The commenters recommended eliminating this restriction in order to allow broad participation from school districts across the state, thereby reflecting the diversity of the state's students and learning environments where excellent instruction is provided. In addition, the commenters suggested that an accountability system developed only by exemplary districts might fail to address the challenges faced by more diverse districts, thus rendering the new system incompatible with the rest of the state and jeopardizing the ability of the majority of the state to replicate the new system.

The Fort Worth Chamber of Commerce expressed concern that limiting participation to only districts and campuses awarded exemplary ratings may run counter to the statute and its requirement that the consortium reflect a range of district types, sizes, and diverse student populations. Richardson ISD and Crowley ISD noted that this requirement would result in few, if any, large, diverse districts participating in the consortium. Guthrie ISD expressed concern that limiting participation to districts rated exemplary would result in a very narrow band of applicants, thus effectively eliminating a large pool of the state's most innovative schools. Guthrie ISD also commented that it is important not to stifle innovation and entrepreneurial inclinations by defining too tightly the requirements for participation in the consortium.

The TASA and co-signers commented that many Texas school districts excel in successfully educating diverse student populations, including schools that have earned Gold Performance Acknowledgments and Blue Ribbon school nominations, as well as schools that excel through innovative digital learning and other methods for engaging students in meaningful learning experiences.

The presidents of the following education associations were co-signers on the comments submitted by the TASA: Texas Association of Mid-size Schools, Texas School Alliance, Texas Association of Community Schools, Texas Rural Education Association, Texas Elementary Principals and Supervisors Association, Fast Growth School Coalition, Texas Association of School Boards, and Texas Association of Secondary School Principals.

The superintendents or interim superintendents of the following school districts were co-signers on the comments submitted by the TASA: Abilene ISD, Alamo Heights ISD, Albany ISD, Aldine ISD, Alief ISD, Allen ISD, Alvin ISD, Amarillo ISD, Arlington ISD, Banquete ISD, Birdville ISD, Bloomington ISD, Booker ISD, Bosqueville ISD, Brazosport ISD, Bridgeport ISD, Brownsville ISD, Brownwood ISD, Bryan ISD, Bullard ISD, Buna ISD, Burkburnett ISD, Carroll ISD, Carrollton-Farmers Branch ISD, Carthage ISD, Chisum ISD, Clear Creek ISD, Cleburne ISD, Clint ISD, College Station ISD, Conroe ISD, Coppell ISD, Corpus Christi ISD, Corsicana ISD, Crowley ISD, Cypress-Fairbanks ISD, Decatur ISD, Deer Park ISD, Denton ISD, Duncanville ISD,

Eagle Mt.-Saginaw ISD, Eanes ISD, Ector County ISD, Edna ISD, El Campo ISD, Eustace ISD, Floresville ISD, Flour Bluff ISD, Fort Worth ISD, Friendswood ISD, Frisco ISD, Garland ISD, Garner ISD, Georgetown ISD, Glen Rose ISD, Goodrich ISD, Goose Creek CISD, Grapevine-Colleyville ISD, Greenville ISD, Gregory-Portland ISD, Groesbeck ISD, Groom ISD, Hamilton ISD, Hardin-Jefferson ISD, Harlandale ISD, Harleton ISD, Harlingen CISD, Hays CISD, Hereford ISD, Highland Park ISD, Hillsboro ISD, Houston ISD, Hudson ISD, Huffman ISD, Humble ISD, Huntsville ISD, Iraan-Sheffield ISD, Johnson City ISD, Katy ISD, Kaufman ISD, Keller ISD, Kerens ISD, Kerrville ISD, Killeen ISD, Klein ISD, La Feria ISD, La Joya ISD, La Vega ISD, Lake Travis ISD, Lamar CISD, Laredo ISD, Leander ISD, Lewisville ISD, Little Cypress-Mauriceville CISD, Longview ISD, Lovejoy ISD, Lubbock ISD, Lytle ISD, Magnolia ISD, Manor ISD, Mansfield ISD, McAllen ISD, McGregor ISD, McKinney ISD, Mesquite ISD, Midland ISD, Midlothian ISD, Midway ISD, Mission CISD, Montgomery ISD, Muleshoe ISD, Nacogdoches ISD, Navasota ISD, North East ISD, Northside ISD, Northwest ISD, Nueces Canyon CISD, Orangefield ISD, Palacios ISD, Pampa ISD, Pasadena ISD, Pearland ISD, Pflugerville ISD, Pine Tree ISD, Plano ISD, Pleasanton ISD, Ralls ISD, Richardson ISD, Rockdale ISD, Rockwall ISD, Round Rock ISD, Royse City ISD, San Angelo ISD, San Antonio ISD, San Benito CISD, San Felipe-Del Rio CISD, San Saba ISD, Schertz-Cibolo-Universal City ISD, Socorro ISD, Southwest ISD, Spring Branch ISD, Spring ISD, Stephenville ISD, Sundown ISD, Trinity ISD, Tyler ISD, Vernon ISD, Victoria ISD, Waco ISD, Weslaco ISD, White Settlement ISD, Wichita Falls ISD, Wimberley ISD, Wylie ISD, and Zavalla ISD.

Agency Response: The agency agrees that limiting participation to districts and campuses rated exemplary may compromise the agency's ability to ensure that the consortium represents a full range of district types, sizes, and diverse student populations. However, in order to ensure that participating districts have the necessary experience and expertise to undertake the challenging work assigned to the consortium, the agency will limit eligibility to those districts and their participating campus(es) that have been acknowledged or honored for their work in the areas targeted by the consortium. Specifically, §102.1201(b)(1) has been modified to state that a school district and its participating campus(es) "must not have been awarded the lowest performance rating as its most recent state academic accountability rating under §97.1001 of this title (relating to Accountability Rating System)." Additionally, new subsection (b)(2) has been added to establish that either a school district or its participating campus(es) "must have received either national, statewide, or regional public acknowledgment, from an organization relying on expertise in the field of education, for district-wide or campus-wide excellence in academic performance or innovative practices in one of the areas described by the consortium principles in subsection (a)(2) of this section." Subsequent paragraphs in subsection (b) have been renumbered accordingly.

Comment: Concerning proposed new 19 TAC §102.1201, the superintendent of Perrin-Whitt CISD expressed concern that the consortium may be comprised of a disproportionate number of restrictive-enrollment charter schools. The commenter urged the TEA to be aware during the selection process that if too many charters are chosen to participate, the consortium's work may be questioned or dismissed because of heavy involvement by schools that can be selective about which students they enroll and retain.

Agency Response: The agency disagrees. The authorizing statute places no limits on charter participation other than the requirement that the charter be rated exemplary under the TEC, Chapter 39, Subchapter G, during the preceding school year. The rule specifies that applications will be selected based on quality of the application and the extent to which the district's participation contributes to diverse district representation to transform learning opportunities for all students, as required by the authorizing statute.

Comment: Concerning the application process for the consortium, the assistant superintendent for curriculum and instruction at Lake Travis ISD requested guidance on how a district would determine which campus(es) to include in its application.

Agency Response: The agency is unable to respond because inclusion of campuses in a district's application is a local decision. The statute permits districts to designate specific campuses for participation, but does not offer further guidance.

The new section is adopted under the TEC, §7.0561, which authorizes the commissioner of education to adopt rules applicable to the Texas High Performance Schools Consortium, including the establishment of the application process for school districts and eligible open-enrollment charter schools to participate in the consortium.

The new section implements the TEC, §7.0561.

§102.1201. *Texas High Performance Schools Consortium.*

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

(1) Consortium--A group of school districts selected to participate in the Texas High Performance Schools Consortium as established under the Texas Education Code (TEC), §7.0561, for the purpose of informing the governor, legislature, and commissioner of education concerning methods for transforming public schools in Texas by improving student learning through the development of innovative, next-generation learning standards and assessment and accountability systems.

(2) Consortium principles--The following four principles shall be addressed by the consortium as mandated by the TEC, §7.0561:

(A) digital learning--engagement of students in digital learning, including, but not limited to, engagement through the use of electronic textbooks and instructional materials adopted under the TEC, Chapter 31, Subchapters B and B-1, and courses offered through the state virtual school network under the TEC, Subchapter 30A;

(B) learning standards--emphasis on learning standards that focus on high-priority learning standards identified in coordination with school districts and open-enrollment charter schools participating in the consortium;

(C) multiple assessments--use of multiple assessments of learning capable of being used to inform students, parents, school districts, and open-enrollment charter schools on an ongoing basis concerning the extent to which learning is occurring and the actions consortium participants are taking to improve learning; and

(D) local control--reliance on local control that enables communities and parents to be involved in the important decisions regarding the education of their children.

(3) Curricular goal--A measurable learning outcome expected as a result of student participation in instruction covering a specific portion of the curriculum.

(4) High-priority learning standards--Learning standards that are manageable in number and of high importance in student learning such as those that have been identified by the Texas Education Agency (TEA) as "readiness standards." Additional high-priority learning standards will be identified no earlier than the 2013-2014 school year in coordination with school districts and open-enrollment charter schools participating in the consortium.

(5) Learning standards--Standards that a student must master to be successful in a competitive, postsecondary environment, including standards approved by the State Board of Education as part of the Texas Essential Knowledge and Skills.

(6) School district--For the purposes of this section, the definition of school district includes an open-enrollment charter school unless otherwise specified.

(b) Eligibility. To be eligible to apply for participation in the consortium, the following criteria must be met, as applicable.

(1) A school district and its participating campus(es) must not have been awarded the lowest performance rating as its most recent state academic accountability rating under §97.1001 of this title (relating to Accountability Rating System).

(2) Either a school district or its participating campus(es) must have received either national, statewide, or regional public acknowledgment, from an organization relying on expertise in the field of education, for district-wide or campus-wide excellence in academic performance or innovative practices in one of the areas described by the consortium principles in subsection (a)(2) of this section.

(3) In accordance with the TEC, §7.0561(c), an open-enrollment charter school must have been awarded an exemplary rating as its most recent state academic accountability rating under §97.1001 of this title.

(4) A school district and an open-enrollment charter school must be in compliance with the TEA audit requirements determined under §109.41 of this title (relating to Financial Accountability System Resource Guide).

(5) A school district and an open-enrollment charter school shall also meet other criteria determined by the commissioner and specified in the request for application (RFA).

(c) Application.

(1) An eligible school district must apply through the RFA process to be considered as a participant in the consortium.

(2) An eligible school district must submit an application fee not to exceed \$500 to cover the costs of the application review process.

(3) In the application, a school district must:

(A) identify the individual who will serve as the school district's coordinator for consortium activities and point of contact for participation in the consortium;

(B) designate which campus or campuses will participate in the consortium;

(C) provide a detailed action plan to support improved instruction of and learning by students that includes the following features:

(i) a description of how the school district and its campuses currently are addressing or plan to address the four consortium principles specified in subsection (a)(2) of this section;

(ii) a detailed description of the curricular goals to be addressed in the action plan;

(iii) a description of how resources will be acquired to support teachers in improving student learning;

(iv) an analysis of evidence that demonstrates the accuracy of any assessment(s) used or planned to be used in the school district to measure the quality of learning, including the methodology and metrics employed; and

(v) a description of any waiver(s) for a prohibition, requirement, or restriction for which the school district wishes to apply;

(D) provide evidence that school district stakeholders, including parents, teachers, students, and community members, have participated in the development and/or review and approval of the action plan;

(E) provide evidence that the application and action plan have been considered and approved by the school district's board of trustees;

(F) include assurances that the school district and its board of trustees will conform to the policies and procedures governing the operation of the consortium, as established by the commissioner, addressing such issues as attendance, reporting, financial support, and mentoring; and

(G) meet any additional requirements specified in the RFA.

(d) Criteria and methodology for selecting participants in the consortium.

(1) Applications will be selected based on quality of the application and the extent to which the district's participation ensures representation in the following categories in compliance with the TEC, §7.0561(c).

(A) Type. Using definitions of type as set forth in the TEA's District Type Data for 2009-10, the commissioner shall select at least one district in each of the following categories:

(i) urban, as represented by categories titled Major Urban and Other Central City;

(ii) suburban, as represented by categories titled Major Suburban and Other Central City Suburban;

(iii) non-metropolitan, as represented by categories titled Independent Town, Non-Metropolitan: Fast-Growing, Non-Metropolitan: Stable; and

(iv) rural, as represented by the category titled Rural.

(B) Size. Using student enrollment figures reported to the TEA for the previous school year, the commissioner shall select at least one district in each of the following categories:

(i) large district: district with a student population of 10,000 or more students;

(ii) mid-size district: district with a student population between 1,000 and 9,999; and

(iii) small district: district with a student population of 999 or fewer.

(C) Student demographics. Using the most recent available data in the TEA's Public Education Information Management System, the commissioner shall select districts whose student demographics, when aggregated with other consortium participants, will result in

a diverse student population that is representative of the state's overall public school student population in the following categories:

- (i) ethnicity and race;
- (ii) economically disadvantaged;
- (iii) English language learners;
- (iv) students identified to receive special education services; and
- (v) students identified as gifted and talented.

(2) In selecting school districts, the commissioner shall ensure, in accordance with the TEC, §7.0561(d), that the aggregate number of students enrolled in campuses participating in the consortium does not exceed 5.0% of the total number of students enrolled in Texas public schools based on student enrollment figures reported to the TEA for the previous school year. In order to ensure compliance with this statutory requirement:

(A) a school district may designate in its application the entire district or only one or more campus(es) to participate in the consortium; and

(B) the commissioner may require a school district to reduce the number of campuses designated in the school district's application as a condition for participation in the consortium.

(3) The commissioner may select no more than 20 school districts to participate in the consortium.

(e) Notification. The TEA will notify each applicant in writing of its selection or non-selection for participation in the consortium.

(f) Financing of consortium.

(1) For the purpose of implementing this section, the commissioner or a school district participating in the consortium may accept gifts, grants, or donations from any source, including a private entity or governmental entity.

(2) To recover TEA costs, the commissioner may charge a participation fee of at least \$2,500 annually and not to exceed \$10,000 annually to each school district selected to participate in the consortium. The commissioner may adjust the fee proportionate to the number of campuses the district has designated to participate in the consortium. Each school district's participation fee shall be reduced by the application fee amount paid in accordance with subsection (c)(2) of this section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 16, 2012.

TRD-201201918

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: May 6, 2012

Proposal publication date: January 27, 2012

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



## PART 8. WINDHAM SCHOOL DISTRICT

## CHAPTER 300. GENERAL PROVISIONS

### 19 TAC §300.1

The Windham School District (WSD) Board of Trustees adopts amendments to §300.1, concerning Public Presentations and Comments to the Windham School District Board of Trustees, with three changes to the proposed text as published in the February 24, 2012, issue of the *Texas Register* (37 TexReg 1112).

The amendments are adopted to clarify existing procedures.

Comments were received. It was suggested that the word "where" be changed to "when" in subsection (c)(5), (d)(3), and (7).

The WSD hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the WSD's legal authority.

The amendments are adopted under Texas Government Code Chapter 2001.

§300.1. *Public Presentations and Comments to the Windham School District Board of Trustees.*

(a) Policy. The Windham School District (WSD) Board of Trustees (board) is committed to providing access and opportunity for public presentations and comments as provided for in this section. Persons not employed by or under contract with the WSD who wish to have items placed on the board's posted agenda, shall follow the procedures set forth in subsection (h) of this section. Public presentations and comments shall be:

(1) subject to the requirements and restrictions of subsections (b), (c), (d), (e), (f), and (g) of this section;

(2) pertinent to issues under the jurisdiction of the board, as determined by the board chairman and the WSD superintendent; and

(3) pertinent to policies, procedures, standards, and rules of the WSD. Disputes that are appropriately the subject of the appeals process for contract non-renewal or employee termination, the employee grievance system, the employee disciplinary system, or comments regarding pending litigation shall be addressed through those processes.

(b) Definitions.

(1) Public presentations are presentations made by the public to the board regarding topics posted on the board meeting agenda that has been filed with and published by the *Texas Register* and as provided for in subsection (c) of this section.

(2) Public comments are comments made by the public on non-posted board agenda topics and as provided for in subsection (d) of this section.

(c) Public presentations. Persons who desire to make public presentations to the board on posted agenda topics shall provide, on the date of the meeting, a completed registration card to onsite board office staff at least 10 minutes prior to the meeting's posted start time. Registration cards shall be made available at the entry to the room where the board's scheduled meeting is held.

(1) Pre-registration is available for public presentations through first class mail at P.O. Box 13084, Austin, Texas 78711 or e-mail at [tbcj@tdcj.state.tx.us](mailto:tbcj@tdcj.state.tx.us). Pre-registration shall be received by the board office staff no later than four calendar days prior to the posted meeting date of the presentation. In addition to the information required in subsection (c)(2) of this section, pre-registration submissions shall include appropriate contact information, such as a daytime

phone number or e-mail address, for the individual who is registering to speak.

(2) Registration cards and pre-registration submissions shall disclose:

(A) the name of the person who will make the presentation;

(B) a statement as to whether the person is being remunerated for the presentation and if so, by whom; and if applicable, the name of the person or entity on whose behalf the presentation will be made;

(C) a statement as to whether the presenter has registered as a lobbyist in relation to the agenda topic being addressed;

(D) a reference to the agenda topic on which the person wants to present;

(E) an indication as to whether the presenter will speak for or against the proposed agenda topic; and

(F) a statement verifying that all information that will be presented is factual, true, and correct to the best of the speaker's knowledge.

(3) The board chairman shall have discretion in setting reasonable limits on the time allocated for public presentations on posted agenda topics. If several persons have registered to address the board on the same agenda topic, it shall be within the discretion of the board chairman to request that those persons select a representative amongst themselves to express such remarks or limit their presentations to an expression of support for views previously articulated.

(4) The board chairman shall provide an opportunity for public presentations to occur prior to the board taking action on the topic denoted on the presenter's registration card. If a person who is registered to speak on a posted agenda item is not present when called upon, that person's opportunity to speak prior to action being taken on that topic shall be forfeited.

(5) A presenter may submit documentation pertaining to the public presentation to the board office staff. Documents shall be submitted no later than three calendar days prior to the posted meeting date when the presentation is to occur. Such documentation shall then be distributed to the board. Any documentation submitted after the above-referenced date will not be distributed to the board until after the presentation. A minimum of 12 copies of any such documentation shall be submitted to the board office staff or distribution may not occur.

(d) Public comments.

(1) Twice a year, at the second and fourth regular called meetings of the board, an opportunity shall be provided for public comment on issues that are not part of the board's posted agenda but are within the board's jurisdiction. Special called meetings are not counted toward the requirement of this subsection.

(2) Persons who desire to make public comments to the board at these meetings shall provide, on the date of the meeting, a completed registration card to onsite board office staff at least 10 minutes prior to the meeting's posted start time. Registration cards shall be made available at the entry to the room where the board's scheduled meeting is held.

(3) Pre-registration is available for public comments through first class mail at P.O. Box 13084, Austin, Texas 78711 or e-mail at [tbj@tdcj.state.tx.us](mailto:tbj@tdcj.state.tx.us). Pre-registration shall be received by the board office staff no earlier than the first day of the month preceding the board meeting for which the registration is intended and

no later than four calendar days prior to the posted meeting date when the comments are to occur. In addition to the information required in subsection (d)(4) of this section, pre-registration submissions shall include appropriate contact information, such as a daytime phone number or e-mail address, for the individual who is registering to speak.

(4) Registration cards and pre-registration submissions shall disclose:

(A) the name of the person who will make the comments;

(B) a statement as to whether the person is being remunerated for the comments and if so, by whom; and, if applicable, the name of the person or entity on whose behalf the comments will be made;

(C) a statement as to whether the presenter has registered as a lobbyist in relation to the topic being addressed;

(D) the topic on which the person shall speak and whether the person will speak for or against the topic; and

(E) a statement verifying that all information that will be presented is factual, true, and correct to the best of the speaker's knowledge.

(5) The board chairman shall have discretion in setting reasonable limits on the time allocated for public comments. If several persons have registered to address the board on the same topic, it shall be within the discretion of the board chairman to request that those persons select a representative amongst themselves to express such comments, or limit their comments to an expression of support for views previously articulated.

(6) Public comments shall be heard just prior to the conclusion of the board meeting, with deviation from this practice within the discretion of the board chairman. If a person who is registered to speak on a non-posted topic is not present when called upon, that person shall be called once more following all other registered speakers. If that person is not present at that time, their opportunity to speak at that meeting shall be forfeited.

(7) A presenter may submit documentation pertaining to the public comments to the board office staff. Documentation shall be submitted no later than three calendar days prior to the posted meeting date when the comments are to occur. Such documentation shall then be distributed to the board. Any documentation submitted after the above-referenced date will not be distributed to the board until after the comments. A minimum of 12 copies of any such documentation shall be submitted to the board office staff or distribution may not occur.

(e) Disability accommodations. Persons with disabilities who have special communication or accommodation needs and who plan to attend a meeting may contact the board office at 512-475-3250. Requests for accommodations shall be made at least two calendar days prior to a posted meeting. The board shall make every reasonable effort to accommodate these needs.

(f) Conduct and decorum. The board shall receive public presentations and comments as authorized by this section, subject to the following additional guidelines:

(1) Due to requirements of the *Open Meetings Act*, questions shall only occur on public presentations as defined in subsection (b) of this section as they are associated with posted agenda topics. Questions shall be reserved for board members and staff recognized by the board chairman.

(2) Presentations and comments shall remain pertinent to the issues denoted on the registration cards.

(3) A presenter who is determined by the board chairman to be disrupting a meeting shall immediately cease the disruptive activity or leave the meeting room if ordered to do so by the board chairman.

(4) A presenter may not assign a portion of his or her allotted presentation time to another speaker.

(5) Signs and placards shall not be carried or displayed in the meeting room.

(g) A presenter may not carry or possess a prohibited weapon, as defined in Texas Penal Code §46.05, an illegal knife, a club, or a handgun, to include a licensed concealed handgun, during any meeting of the board.

(h) Requests for issues to be placed on an agenda. Persons not employed by or under contract with the WSD who wish to propose an agenda item for discussion at a board meeting shall address the request in writing to the chairman, Windham School District Board of Trustees, P.O. Box 13084, Austin, Texas 78711. Such requests shall be titled, "Proposed Agenda Topic" and shall be submitted no later than the first day of the month preceding the board meeting for which the request is intended. Such requests are subject to the requirements of the registration card in subsection (c) of this section. The decision as to whether to calendar a matter for discussion before the board, a board committee, a board liaison, or with a designated staff member shall be within the discretion of the board chairman. Public presentations on topics placed on a board agenda, at the request of an individual, shall be in accordance with subsection (c) of this section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-201202053

Michael Mondville

General Counsel

Windham School District

Effective date: May 13, 2012

Proposal publication date: February 24, 2012

For further information, please call: (512) 463-9693

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**19 TAC §300.2**

The Windham School District (WSD) adopts amendments to §300.2, concerning the Windham School District Board of Trustees Operating Procedures, with no change to the proposed text as published in the February 24, 2012, issue of the *Texas Register* (37 TexReg 1114).

The amendments are necessary to clarify existing procedures.

No comments were received regarding the amendments.

The WSD hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the WSD's legal authority.

The amendments are adopted under Texas Government Code Chapter 2001.

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 April 23, 2012.

TRD-201202056

Michael Mondville

General Counsel

Windham School District

Effective date: May 13, 2012

Proposal publication date: February 24, 2012

For further information, please call: (512) 463-9693

◆ ◆ ◆  
**TITLE 22. EXAMINING BOARDS**

**PART 9. TEXAS MEDICAL BOARD**

**CHAPTER 166. PHYSICIAN REGISTRATION**

**22 TAC §166.2**

The Texas Medical Board (Board) adopts an amendment to §166.2, concerning Continuing Medical Education, without changes to the proposed text as published in the March 9, 2012, issue of the *Texas Register* (37 TexReg 1638) and will not be republished.

The amendment to §166.2 provides that physicians that treat tick-borne diseases should complete relevant CME as required by Senate Bill 1360.

Elsewhere in this issue of the *Texas Register*, the Board contemporaneously adopts the rule review for Chapter 166.

No comments were received regarding adoption of the rule.

The amendment is adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendment is also authorized by §156.059, Texas Occupations Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-201202044

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Effective date: May 13, 2012

Proposal publication date: March 9, 2012

For further information, please call: (512) 305-7016

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**CHAPTER 175. FEES AND PENALTIES**

**22 TAC §175.5**

The Texas Medical Board (Board) adopts an amendment to §175.5, concerning Payment of Fees or Penalties, without changes to the proposed text as published in the March 9, 2012, issue of the *Texas Register* (37 TexReg 1640) and will not be republished.

The amendment clarifies that additional fees for hard-copy registrations are only for renewal purposes and not initial applications for licensure.

No comments were received regarding adoption of the rule.

The amendment is adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendment is also authorized by §156.001, Texas Occupations Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-201202045

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Effective date: May 13, 2012

Proposal publication date: March 9, 2012

For further information, please call: (512) 305-7016



## CHAPTER 178. COMPLAINTS

### 22 TAC §178.3

The Texas Medical Board (Board) adopts an amendment to §178.3, concerning Complaint Procedure Notification, without changes to the proposed text as published in the March 9, 2012, issue of the *Texas Register* (37 TexReg 1640) and will not be republished.

The amendment changes language regarding required notice posting by autopsy facilities to refer to "persons" rather than "physicians" and adds two new figures to subsection (d).

No comments were received regarding adoption of the rule.

The amendment is adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendment is also authorized by Chapter 49, Subchapter C, Texas Code of Criminal Procedure.

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 April 23, 2012.

TRD-201202046

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Effective date: May 13, 2012

Proposal publication date: March 9, 2012

For further information, please call: (512) 305-7016



## CHAPTER 185. PHYSICIAN ASSISTANTS

### 22 TAC §185.4

The Texas Medical Board (Board) adopts an amendment to §185.4, concerning Procedural Rules for Licensure Applicants, without changes to the proposed text as published in the January 13, 2012, issue of the *Texas Register* (37 TexReg 105) and will not be republished.

The amendment provides grounds for the extension of licensure applications that have been on file with the Board for over one year and allows for an alternative licensure process for military spouses.

Elsewhere in this issue of the *Texas Register*, the Board contemporaneously adopts the rule review of Chapter 185.

No comments were received regarding adoption of the rule.

The amendment is adopted under the authority of the Texas Occupations Code Annotated, §204.101, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendment is also authorized by §55.004, Texas Occupations Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Mari Robinson, J.D.

Executive Director

Texas Medical Board

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For further information, please call: (512) 305-7016



## CHAPTER 187. PROCEDURAL RULES SUBCHAPTER B. INFORMAL BOARD PROCEEDINGS

### 22 TAC §187.13

The Texas Medical Board (Board) adopts an amendment to §187.13, concerning Informal Board Proceedings Relating to Licensure Eligibility, with changes to the proposed text as published in the March 9, 2012, issue of the *Texas Register* (37 TexReg 1641). The text of the rule will be republished.

The amendment changes the appeal process for licensure applicants who are denied licensure or approved for licensure under



an agreed order or remedial plan. The amendment provides that all appeals must be referred to SOAH and eliminates the ability of applicants to request rehearings before the Licensure Committee. In addition, an applicant may not withdraw an application for licensure once the matter has been referred to SOAH.

No comments were received regarding adoption of the rule.

The amendment is adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendment is also authorized by §155.007, Texas Occupations Code.

§187.13. *Informal Board Proceedings Relating to Licensure Eligibility.*

(a) Recommendations by the Executive Director.

(1) The executive director shall review applications for licensure and may determine whether an applicant is eligible for licensure or refer an application to a committee of the board for review. If an applicant is determined to be ineligible for a license by the executive director pursuant to §§155.001 - 155.152 of the Act, Chapter 163 of this title (relating to Licensure), Chapter 171 of this title (relating to Postgraduate Training Permits), or Chapter 172 of this title (relating to Temporary and Limited Licenses) the applicant may request review of that determination by a committee of the board. The applicant must request the review not later than the 20th day after the date the applicant receives notice of the determination.

(2) To promote the expeditious resolution of any licensure matter, the executive director with the approval of the board, may recommend that an applicant be eligible for a license, but only under certain terms and conditions and present a proposed agreed order or remedial plan to the applicant.

(A) If the proposed agreed order or remedial plan is acceptable to the applicant, the applicant shall sign the order/remedial plan and the order/remedial plan shall be presented to the board for consideration and acceptance without conducting an informal board proceeding relating to licensure eligibility.

(B) If the proposed agreed order or remedial plan is not acceptable to the applicant, the applicant may request review of the executive director's recommendation by a committee of the board. The applicant must request review not later than the 20th day after the date the applicant receives notice of the executive director's recommendation.

(b) Determination by a Committee of the Board. Upon review of an application for licensure, a committee of the board may determine that the applicant is ineligible for licensure or is eligible for licensure with or without restrictions, eligible for licensure under a remedial plan, or defer its decision pending further information.

(1) Licensure with Terms and Conditions.

(A) If the committee determines that the applicant should be granted a license under certain terms and conditions based on the applicant's commission of a prohibited act or failure to demonstrate compliance with provisions under the Act or board rules, the committee, as the board's representatives, shall propose an agreed order or a remedial plan. The terms and conditions of the proposed agreed order or remedial plan shall be submitted to the board for approval.

(B) Upon an affirmative majority vote of members present, the board may approve the agreed order or remedial plan with or without modifications, and direct staff to present the order to the applicant.

(i) If the applicant agrees to the terms of the proposed agreed order or remedial plan, the applicant may be licensed upon the signing of the order or remedial plan by the applicant and the president of the board or the president's designee, and passage of the medical jurisprudence examination, if applicable.

(ii) If the applicant does not agree to the terms of the proposed agreed order or remedial plan, the applicant is considered ineligible for licensure.

(C) If the board does not approve the proposed agreed order or remedial plan and by majority vote determines the applicant ineligible for licensure, the applicant shall be so informed. The board must specify their rationale for the rejection of the proposed agreed order or remedial plan that shall be referenced in the minutes of the board.

(2) Ineligibility Determination.

(A) If a committee of the board or the full board determines that an applicant is ineligible for licensure either outright or due to the applicant's failure to comply with a Board determination, the applicant shall be notified of the committee's determination and given the option to:

(i) appeal the determination to State Office of Administrative Hearings (SOAH);

(ii) accept the determination of ineligibility that will be reported to the appropriate entities and national databanks; or

(iii) withdraw the application.

(B) An applicant has 20 days from the date the applicant receives notice of the committee's determination to submit a written response to the Board electing one of the three options listed in subparagraph (A)(i) - (iii) of this paragraph.

(C) If the applicant timely requests a SOAH hearing, the applicant must file a petition with SOAH appealing the determination and shall comply with all other provisions relating to formal proceedings as set out in Subchapter C of this chapter (relating to Formal Board Proceedings at SOAH). An applicant may not request withdrawal of an application once the applicant has requested that the matter be referred to SOAH. If an applicant subsequently withdraws the appeal, the matter shall be referred to the full board to render a final determination on the application. An application for licensure shall not expire while the application is the subject of a contested case, however, applicants shall be required to update any information that is a part of their applications.

(D) If the applicant does not timely take action as required in subparagraph (A) of this paragraph, the committee's determination shall be submitted to the full board and shall become administratively final at the next scheduled board meeting.

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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Mari Robinson, J.D.  
Executive Director  
Texas Medical Board  
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For further information, please call: (512) 305-7016

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**CHAPTER 190. DISCIPLINARY GUIDELINES**  
**SUBCHAPTER C. SANCTION GUIDELINES**

**22 TAC §190.15**

The Texas Medical Board (Board) adopts an amendment to §190.15, concerning Aggravating and Mitigating Factors, without changes to the proposed text as published in the March 9, 2012, issue of the *Texas Register* (37 TexReg 1642) and will not be republished.

The amendment provides that mitigating factors in a matter before the Board where a licensee is in violation of the Medical Practice Act do not require that the Board dismiss the case. In cases relating to violations of treatment of tick-borne diseases, a mitigating factor to be considered by the Board is if the licensee completed CME on the topic within two years prior to the opening of the Board investigation.

No comments were received regarding adoption of the rule.

The amendment is adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendment is also authorized by §156.059, Texas Occupations Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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**TITLE 28. INSURANCE**

**PART 1. TEXAS DEPARTMENT OF INSURANCE**

**CHAPTER 1. GENERAL ADMINISTRATION**

The Commissioner of Insurance (Commissioner) adopts the repeal of §1.208, concerning rule making procedures; §1.415, concerning assessment of maintenance taxes and fees; and Subchapter L, §§1.1301 - 1.1306, concerning rules of practice and procedure for industry-wide benchmark rate proceedings. The

repeal of §§1.208, 1.415, and 1.1301 - 1.1306 are adopted without change to the proposal published in the February 24, 2012, issue of the *Texas Register* (37 TexReg 1129). The repeal of §1.207 is being withdrawn elsewhere in this issue.

**REASONED JUSTIFICATION.** Government Code §2001.004(1) specifies that, in addition to other requirements under law, a state agency shall adopt rules of practice stating the nature and requirements of all available formal and informal procedures. The Department proposed to repeal §1.207, concerning posting and updating a list of public petitions for rulemaking, because the Department does not receive such petitions with frequency and because the information is otherwise available. However, based upon a comment that the posting and updating of this list continues to serve a valuable public participation and transparency purpose, the Department has decided not to repeal §1.207 at this time. This change does not materially alter issues raised in the proposal, introduce new subject matter, or affect persons other than those previously on notice. The Department received no other comments on the proposed repeals.

The repeal of §1.208, related to regular meetings of the Commissioner, is necessary because the public has multiple ways of contacting the Commissioner without a need for bi-weekly public meetings solely to allow persons to speak to the Commissioner on issues within the Commissioner's jurisdiction. The public regularly uses mail and e-mail to bring issues to the attention of the Commissioner or the Commissioner's Ombudsman. Additionally, the repeal of §1.208 will free the Department's staff and facility resources for more efficient use.

The repeal of §1.415 is necessary because the maintenance tax surcharge levied under this section only applies for 1999 and supports bonds that have been paid. Also, §1.415 implements Insurance Code art. 5.76-5, which was repealed under House Bill 2017, SECTION 18, 79th Regular Legislative Session, effective April 1, 2007. Currently applicable maintenance taxes are addressed in other sections of the Insurance Code.

The repeal of Subchapter L, §§1.1301 - 1.1306, is necessary because these sections implement Insurance Code art. 5.101(a) and (d), and art. 5.101 expired on December 1, 2004, pursuant to §7 of the article.

**HOW THE SECTIONS WILL FUNCTION.** The adoption of the repeal will result in the removal of obsolete provisions from the Texas Administrative Code.

The repeal of §1.208 results in the removal of an outdated requirement concerning regular Commissioner meetings in recognition of more common practices used by the public to bring issues to the attention of the Commissioner.

The repeal of §1.415 results in the removal of an obsolete requirement concerning a maintenance tax surcharge levy.

The repeal of Subchapter L, §§1.1301 - 1.1306, results in the removal of obsolete requirements concerning rules of practice and procedure for industry-wide benchmark rate proceedings.

**SUMMARY OF COMMENTS AND AGENCY RESPONSE.**

*Section 1.207*

Comment: A commenter states its opposition to the repeal of §1.207 because the commenter asserts that public notice of issues under consideration for rulemaking promotes transparency and public understanding of the regulatory process. The commenter states that repeal would frustrate the public's ability to participate in this process. Instead, the commenter asks the De-

partment to consider modernizing the rule to allow the Department to maintain the list of petitions on the Department website. The commenter asserts that such revision would be easier to administer and permit more efficient use of Department resources. The commenter also asserts that the revision would improve transparency and understanding of the regulatory process and improve public access to the information.

Agency Response: The Department agrees that posting and maintaining a list of public petitions for rulemaking may continue to serve public participation and transparency purposes. In response to this comment, the Department has decided not to repeal §1.207 at this time. The Department agrees that modernizing the requirement to provide for maintaining the list on the Department's website could be beneficial, and the Department will consider this option for future rulemaking to permit additional opportunity for public comment on the concept.

#### NAMES OF THOSE COMMENTING FOR AND AGAINST THE PROPOSAL

For: None.

Against: Office of Public Insurance Counsel.

### SUBCHAPTER A. RULES OF PRACTICE AND PROCEDURE

#### DIVISION 2. RULE MAKING PROCEDURES

##### 28 TAC §1.208

STATUTORY AUTHORITY. The repeal of §1.208 is adopted pursuant to Insurance Code §2054.006 and §36.001 and Government Code §2001.004(1).

Section 2054.006 authorizes the Commissioner to regulate the Texas Mutual Insurance Company, previously referred to as the Texas Workers' Compensation Insurance Fund, to the same extent that the Commissioner may regulate a mutual insurance company.

Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

Government Code §2001.004(1) specifies that, in addition to other requirements under law, a state agency shall adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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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Sara Waitt

General Counsel

Texas Department of Insurance

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For further information, please call: (512) 463-6327



### SUBCHAPTER C. ASSESSMENT OF MAINTENANCE TAXES AND FEES

##### 28 TAC §1.415

STATUTORY AUTHORITY. The repeal of §1.415 is adopted pursuant to Insurance Code §2054.006 and §36.001 and Government Code §2001.004(1).

Section 2054.006 authorizes the Commissioner to regulate the Texas Mutual Insurance Company, previously referred to as the Texas Workers' Compensation Insurance Fund, to the same extent that the Commissioner may regulate a mutual insurance company.

Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

Government Code §2001.004(1) specifies that, in addition to other requirements under law, a state agency shall adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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 Department of Insurance

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### SUBCHAPTER L. RULES OF PRACTICE AND PROCEDURE FOR INDUSTRY-WIDE BENCHMARK RATE PROCEEDINGS

##### 28 TAC §§1.1301 - 1.1306

STATUTORY AUTHORITY. The repeal of §§1.1301 - 1.1306 is adopted pursuant to Insurance Code §2054.006 and §36.001 and Government Code §2001.004(1).

Section 2054.006 authorizes the Commissioner to regulate the Texas Mutual Insurance Company, previously referred to as the Texas Workers' Compensation Insurance Fund, to the same extent that the Commissioner may regulate a mutual insurance company.

Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

Government Code §2001.004(1) specifies that, in addition to other requirements under law, a state agency shall adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## CHAPTER 3. LIFE, ACCIDENT AND HEALTH INSURANCE AND ANNUITIES

### SUBCHAPTER II. INSURANCE SOLD IN CONNECTION WITH PREPAID FUNERAL CONTRACTS

#### **28 TAC §3.9001, §3.9002**

The Commissioner of Insurance adopts amendments to Subchapter II, §3.9001 and §3.9002, concerning the joint memorandum of understanding (JMOU) between the Texas Funeral Service Commission, the Texas Department of Banking, and the Texas Department of Insurance (Department), relating to prepaid funeral services and transactions (also referred to as "prepaid funeral benefits"). Section 3.9001 is adopted without changes to the proposed text published in the March 2, 2012, issue of the *Texas Register* (37 TexReg 1465). Section 3.9002 is adopted with nonsubstantive changes and will be republished.

**REASONED JUSTIFICATION.** The amendments are necessary to update the JMOU to reflect current practices and make the rule consistent with the rules of the Texas Funeral Service Commission and the Texas Department of Banking, which have recently adopted changes to the JMOU.

Occupations Code §651.159 requires the Texas Funeral Service Commission, the Texas Department of Banking, and the Department to adopt a JMOU by rule. The purpose of the JMOU is to outline the respective responsibilities of each agency, establish procedures regarding complaint handling, coordinate identification of deceptive trade practices and distribution of customer information, and coordinate the setting of administrative penalties. The Texas Department of Banking adopted revisions to the JMOU on September 8, 2011, and the Texas Funeral Service Commission adopted revisions on October 6, 2011.

The amendments to §3.9001 and §3.9002 update and clarify the language throughout the JMOU. These amendments are necessary to reflect changes in the procedures among the agencies and to comply with Occupations Code §651.159. Amendments to §3.9002(b) amend the responsibilities of the Texas Funeral Service Commission, the Texas Department of Banking, and the Department. Amendments to §3.9002(b)(1) update the section to reflect the current responsibilities of the Texas Funeral Service Commission. Since the JMOU's adoption, House Bill 3067, enacted by the 77th Legislature, Regular Session, amended Occupations Code Chapter 651 by adding Subchapter N, regarding crematory services. Amendments to §3.9002(b)(2) update the responsibilities of the Texas Department of Banking. Changes to subsection (b)(2) simplify and clarify the description of the Texas Department of Banking's responsibilities by stating that all actions under Chapter 154 of the Finance Code and related agency rules are the Department's responsibility. The Department's responsibilities are clarified in changes to subsection (b)(3).

Section 3.9002(c)(3) is deleted because each agency has developed procedures for resolving complaints, and it is no longer necessary for the agencies to coordinate the establishment of such procedures. Amendments to §3.9002(d) clarify each agency's procedures for resolving complaints, making §3.9002(c)(3) unnecessary.

Since the adoption of the current JMOU, each agency that is party to the memorandum has developed and adopted internal complaint procedures for violations related to prepaid funeral benefits. The agencies have developed procedures for investigating, sharing, and referring complaints. With the passage of time, these procedures have evolved, and the detailed requirements previously set out in §3.9002(d) for investigating complaints were no longer relevant. Therefore, amendments to subsection (d) delete outdated and unnecessary requirements and add language that updates and reflects the current policies and practices regarding investigation of complaints.

Amendments to §3.9002(f) update the provisions related to providing information to consumers by including language referring to websites and toll-free numbers.

Amendments to §3.9002(g) update the provisions related to administrative penalties with language reflecting the agencies' current practices. The amendments also delete the working group on enforcement recommendations. Improved interagency communication has made a formal working group unnecessary.

Section 3.9002(h) describes mandatory meetings held to develop cooperative regulation. Over time, the agencies have developed procedures which adequately coordinate each agency's responsibilities in regulating prepaid funeral benefits. Communications are ongoing and continuous, so §3.9002(h) is deleted.

Nonsubstantive changes to §3.9001 and §3.9002 replace outdated references to statutory citations.

The Department has also made a nonsubstantive change to proposed 3.9002(b)(3)(B) for a minor editorial correction. Section 3.9002(b)(3)(B) as adopted reads: "regulating any person performing the acts of an insurance agent as defined in Insurance Code Chapter 4001 and Insurance Code Chapter 101." The change made to the proposed text does not materially alter issues raised in the proposal, introduce new subject matter, or affect persons other than those previously on notice.

#### **HOW THE SECTIONS WILL FUNCTION.**

Section 3.9001 describes the requirements under Occupations Code §651.159 for the Department, the Texas Funeral Service Commission, and the Texas Department of Banking to adopt by rule of JMOU of understanding relating to the regulation of prepaid funeral services and transactions.

Section 3.9002 is the JMOU. Subsection 3.9002(a) explains the purpose of the JMOU. Subsection 3.9002(b) describes the responsibilities of each agency. Subsection 3.9002(c) sets forth the procedures used by each agency for exchanging information or referring complaints. Subsection 3.9002(d) provides the complaint procedures used by each agency in investigating a complaint. Subsection 3.9002(e) describes the actions the agencies regard as deceptive trade practices. Subsection 3.9002(f) sets forth the information the agencies will provide consumers and when that information is to be provided. Subsection 3.9002(g) describes the administrative penalties each agency imposes for violations.

SUMMARY OF COMMENTS AND AGENCY RESPONSE. The Department did not receive any comments on the published proposal.

STATUTORY AUTHORITY. The amendments are adopted under Occupations Code §651.159 and Insurance Code §36.001. Occupations Code §651.159 requires the Texas Funeral Service Commission, the Texas Department of Insurance, and the Texas Department of Banking to adopt by rule a JMOU relating to prepaid benefits. Insurance Code §36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

§3.9002. *Joint Memorandum of Understanding.*

(a) Pursuant to Occupations Code §651.159 the Texas Funeral Service Commission (TFSC), the Texas Department of Insurance (TDI), and the Texas Department of Banking (DOB) adopt the following joint memorandum of understanding (JMOU) relating to prepaid funeral benefits as defined in Finance Code Chapter 154. The TFSC, TDI, and DOB intend this memorandum of understanding to assist the three agencies in their regulatory activities, and to make it as easy as possible for a consumer with a complaint to have the complaint acted upon by all three agencies, where appropriate. To accomplish this, where not statutorily prohibited, the three agencies will share information among the agencies that may not be available to the public generally under the Public Information Act, Government Code Chapter 552. Such information will be transmitted among agencies with the understanding that it is considered confidential, is being furnished to the other agencies in furtherance of their joint responsibilities as state agencies in enforcing their respective statutes, and that it may not be disseminated to others except as required.

(b) Responsibilities of each agency in regulating prepaid funeral benefits.

(1) The Texas Funeral Service Commission is responsible for the following:

(A) licensing funeral directors, embalmers, provisional funeral directors, provisional embalmers, crematory, and funeral establishments. The TFSC may refuse to license a person or establishment that violates Finance Code Chapter 154, under Occupations Code §651.460(b)(3);

(B) taking action under Occupations Code §651.460(b)(3) against any licensee violating Finance Code Chapter 154; and

(C) taking action under Occupations Code §651.460(b)(3) against any funeral director in charge, crematory owner, and/or funeral establishment owner for violations of Finance Code Chapter 154 by persons directly or indirectly connected to the crematory or funeral establishment.

(2) The Texas Department of Banking is responsible for administering Finance Code Chapter 154 and 7 Texas Administrative Code (TAC) Chapter 25, including, but not limited to, the following:

(A) bringing enforcement actions against any person, including licensees of TFSC and TDI, who violates Finance Code Chapter 154 and/or 7 TAC Chapter 25; and

(B) all other actions authorized by Finance Code Chapter 154 and 7 TAC Chapter 25.

(3) The Texas Department of Insurance is responsible for the following:

(A) regulating insurers that issue or propose to issue life insurance policies or annuity contracts that may fund prepaid funeral contracts;

(B) regulating any person performing the acts of an insurance agent as defined in Insurance Code Chapter 4001 and Insurance Code Chapter 101;

(C) regulating insurance policies and annuity contracts that may fund prepaid funeral contracts;

(D) regulating unfair trade practices relating to the insurance policies and annuity contracts that may fund prepaid funeral contracts pursuant to Insurance Code Chapter 542; and

(E) regulating unfair claims settlement practices by insurance companies pursuant to the Insurance Code Chapter 542.

(c) Procedures used by each agency in exchanging information with or referring complaints to one of the other agencies.

(1) Exchanging information. If, upon receipt of a complaint, or during the course of an investigation, an agency (referred to as the receiving agency) receives any information that might be deemed of value to another of the agencies (referred to as the reviewing agency), the receiving agency will contact the reviewing agency and will forward the relevant information to the reviewing agency at its request.

(2) Referral of complaints for handling. When an agency receiving a complaint refers the complaint to another agency for handling, the receiving agency will contact the complainant in writing informing him or her of the referral, provide the complainant contact information for the reviewing agency, and encourage the complainant to re-contact the receiving agency concerning the reviewing agency's processing of the complaint.

(d) Procedures to be used by each agency in investigating a complaint.

(1) All agencies.

(A) Each agency will develop internal complaint procedures for violations relating to prepaid funeral benefits. The procedures should at a minimum provide for:

(i) identification of necessary data and documents to be obtained from the complainant; and

(ii) such other steps deemed necessary for the agency to perform an adequate and appropriate investigation.

(B) Each agency may assist either of the other agencies with investigations relating to prepaid funeral benefits.

(2) The Texas Funeral Service Commission.

(A) The TFSC will log in and investigate complaints received as required under Occupations Code Chapter 651. A complaint about violations of Finance Code Chapter 154 and/or 7 TAC Chapter 25 will be referred to the DOB.

(B) If disciplinary action against a licensee of the TFSC is appropriate, the matter will be referred to the Administrator of Consumer Affairs and Compliance Division of TFSC.

(C) If the complaint involves a matter handled by either the DOB or TDI, as well as a violation of the TFSC statutes or regulations, it will be referred to the appropriate agency for further action. The DOB will be primarily responsible for enforcing violations of Finance Code Chapter 154 or 7 TAC Chapter 25. The agencies will coordinate their investigations to avoid duplication of effort.

(D) If the TFSC issues an order against a person or entity that also sells or provides prepaid funeral benefits or is a licensee under the jurisdiction of TDI, the TFSC will send the DOB and the TDI a copy of the order.

(3) Texas Department of Banking.

(A) Complaints received by the Special Audit Division will be entered into a complaint log and assigned a reference number. If, after agency notice to the subject of the complaint, the complaint is not resolved, the DOB will investigate.

(B) If disciplinary action against a person who violated Finance Code Chapter 154 or 7 TAC Chapter 25 is appropriate, the matter will be referred to the agency's legal staff.

(C) If the complaint involves a matter handled by either the TDI or TFSC, as well as a violation of the Finance Code Chapter 154 or 7 TAC Chapter 25, the DOB will coordinate with those agencies. The DOB will be primarily responsible for enforcing violations of the Finance Code Chapter 154 or 7 TAC Chapter 25.

(D) If the DOB issues an order against a person or entity that is a licensee under the jurisdiction of the TFSC or the TDI, the DOB will send the TFSC and the TDI a copy of the order.

(4) Texas Department of Insurance.

(A) The Consumer Protection Section of the TDI will log in and investigate complaints received, except that if a complaint is solely about violations of Finance Code Chapter 154 and/or 7 TAC Chapter 25, the complaint will be referred to the DOB. Other areas of the TDI may provide assistance in the investigation of the complaint where appropriate.

(B) If disciplinary or other regulatory action against a licensee of the TDI is appropriate, the matter will be referred to the Compliance Intake Unit of TDI.

(C) If the complaint involves a matter handled by either the DOB or TFSC, as well as a violation of the TDI statutes or regulations, it will be referred to the appropriate agency for further action. The DOB will be primarily responsible for enforcing violations of the Finance Code Chapter 154 or 7 TAC Chapter 25. The agencies will coordinate their investigations to avoid duplication of effort.

(D) If the commissioner issues an order against a person that also sells, funds, or provides prepaid funeral benefits, or is subject to the jurisdiction of the DOB or the TFSC, the TDI will send the DOB and the TFSC a copy of the order.

(e) Actions the agencies regard as deceptive trade practices.

(1) The TFSC, the DOB, and the TDI regard as deceptive trade practices those actions found under the Business and Commerce Code §17.46.

(2) With respect to trade practices within the business of insurance, the TDI regards as deceptive trade practices those actions found under Insurance Code Chapter 541, other chapters of the Code, and the rules adopted by the TDI to implement those laws.

(f) Information the agencies will provide consumers and when that information is to be provided.

(1) The TFSC, DOB, and TDI will continue to provide consumers with the brochure entitled "Facts About Funerals" developed by TFSC (in Spanish and in English). The DOB will continue to provide consumers with information on its website in accordance with Finance Code §154.132, including the informational brochure developed in accordance with Finance Code §154.131.

(2) The DOB, TDI, and TFSC will maintain their toll-free numbers.

(3) The TFSC, DOB, and TDI, as state agencies, are subject to the Public Information Act, Government Code Chapter 552. Upon written request, the three agencies will provide consumers with public information that is not exempt from disclosure under that Act. As noted in the preamble to this JMOU, the agencies may, where not statutorily prohibited, exchange information necessary to fulfill their statutory responsibilities among each other, without making such information public information under the Public Information Act.

(g) Administrative penalties each agency imposes for violations.

(1) Texas Funeral Service Commission. The TFSC may impose an administrative penalty, issue a reprimand, or revoke, suspend, or place on probation any licensee who violates Finance Code Chapter 154. TFSC administrative penalties vary based on the violation; TFSC sanctions are imposed under Occupations Code Chapter 651.

(2) Texas Department of Banking. DOB administrative penalties vary based on the violation; DOB sanctions are imposed under the Finance Code Chapter 154.

(3) Texas Department of Insurance. TDI administrative penalties vary based on the violation; TDI sanctions are imposed under Insurance Code Chapter 82.

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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Sara Waitt

General Counsel

Texas Department of Insurance

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◆ ◆ ◆  
CHAPTER 26. SMALL EMPLOYER HEALTH  
INSURANCE REGULATIONS  
SUBCHAPTER A. SMALL EMPLOYER  
HEALTH INSURANCE PORTABILITY AND  
AVAILABILITY ACT REGULATIONS

**28 TAC §26.8**

The Commissioner of Insurance (Commissioner) adopts amendments to §26.8, concerning contribution and participation requirements for guaranteed issue small employer health benefit plans. The amendments are adopted with non-substantive changes to the proposed text published in the February 3, 2012, issue of the *Texas Register* (37 TexReg 474).

**REASONED JUSTIFICATION.** The amendments are necessary to reflect changes in the law as a result of Senate Bill (SB) 80, enacted by the 81st Legislature, Regular Session. Senate Bill 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. Senate Bill 80, §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 requirement 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 amendments to §26.8 conform the section's requirements for consistency with Insurance Code §1501.153(a-1).

The 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.

The Department has made non-substantive changes to correct format errors. However, none of the revisions changes the meaning of the text as proposed, introduces new subject matter, or affects persons other than those previously on notice of the published proposal.

The Department made a non-substantive change to §26.8(c)(2), (c)(4), and (h), deleting *the* prior to *Insurance*. Additionally, the Department made a non-substantive change to §26.8(i), deleting *therefore*, and adding *, and*.

HOW THE SECTION WILL FUNCTION. The amendments to §26.8 provide that a small employer carrier may simultaneously offer to each small employer a plan that requires the small employer to contribute 100 percent of the premium paid for each eligible participating employee when the small employer carrier offers a plan that requires a lower percentage of the premium paid to be contributed by the small employer.

SUMMARY OF COMMENTS. The Department did not receive any comments on the published proposal.

STATUTORY AUTHORITY. The amendments are adopted 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.

§26.8. *Guaranteed Issue; Contribution and Participation Requirements.*

(a) A small employer carrier shall issue a health benefit plan to any small employer that elects to be covered under the plan and agrees to satisfy other requirements of the plan. A small employer carrier shall provide health benefit plans to small employers without regard to health status related factors.

(b) Health carriers may require small employers to answer questions designed to determine the level of contribution by the small employer, the number of employees and eligible employees of the small employer, and the percentage of participation of eligible employees of the small employer.

(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 Insurance Code §1501.056, the carrier may use the contribution requirement established by the purchasing cooperative for policies marketed by the cooperative.

(3) A health carrier shall treat all similarly situated small employer groups in a consistent and uniform manner when terminating health benefit plans due to failure of the small employer to meet a contribution requirement.

(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 Insurance Code §§1501.108, 1501.109, and 1501.110.

(d) Coverage under a small employer health benefit plan is available if at least 75 percent of the eligible employees of a small employer elect to be covered, as provided in Insurance Code §1501.154. This 75 percent 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 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 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 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 of the eligible employees of that employer elect to be covered if the small employer carrier permits the same percentage of participation as a qual-

ifying 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 (relating to Requirement to 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 apply and may not use this subsection to circumvent the guaranteed issue and other requirements of Insurance Code Chapter 1501 or this subchapter.

(g) A health carrier shall treat all similarly situated small employer groups in a consistent and uniform manner when terminating health benefit plans due to a participation level of less than the qualifying participation level or group size.

(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 Insurance Code §§1501.108, 1501.109, and 1501.110 and §26.15 of this subchapter (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 of 5 employees is 3.75, so 3.75 would be rounded down to 3, and 75 percent participation by a five employee group will be achieved if three 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 (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 and §26.15 of this subchapter.

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 April 23, 2012.

TRD-201202065

Sara Waitt  
General Counsel  
Texas Department of Insurance  
Effective date: May 13, 2012  
Proposal publication date: February 3, 2012  
For further information, please call: (512) 463-6327

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**TITLE 34. PUBLIC FINANCE**

**PART 1. COMPTROLLER OF PUBLIC ACCOUNTS**

**CHAPTER 9. PROPERTY TAX ADMINISTRATION**

**SUBCHAPTER A. PRACTICE AND PROCEDURE**

**34 TAC §9.100**

The Comptroller of Public Accounts adopts new §9.100, concerning the property value study advisory committee created by House Bill 8, 81st Legislature, 2009, effective January 1, 2010, without changes to the proposed text as published in the March 16, 2012, issue of the *Texas Register* (37 TexReg 1898)

The section sets forth the purpose and tasks of the Property Value Study Advisory Committee and describes the manner in which the committee will report to the agency.

No comments were received regarding adoption of the new section.

This new section is adopted under House Bill 8 amendments to Government Code, §403.302(m), which creates the Property Value Study Advisory Committee.

This new section implements Government Code, §2110.005.

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 April 23, 2012.

TRD-201202052  
Ashley Harden  
General Counsel  
Comptroller of Public Accounts  
Effective date: May 13, 2012  
Proposal publication date: March 16, 2012  
For further information, please call: (512) 475-0387

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**SUBCHAPTER I. VALIDATION PROCEDURES**

**34 TAC §9.4035**

The Comptroller of Public Accounts adopts an amendment to §9.4035, concerning special types of personal property inventory, with a change to the wording of the definition of "Unit Property Tax Factor" in the Dealer's Heavy Equipment Inventory Tax Statement form (Form 50-266) adopted by reference. Section 9.4035 was proposed in the March 9, 2012, issue of the *Texas Register* (37 TexReg 1681). This section is being amended to



update the forms pertaining to heavy equipment inventory to reflect statutory amendments included in House Bill 2476, 82nd Legislature, 2011, effective January 1, 2012. The forms are also being updated to incorporate general improvements to content.

The agency changed the wording in the definition of "Unit Property Tax Factor" in the Dealer's Heavy Equipment Inventory Tax Statement form (Form 50-266) to clarify that division by \$100 is only applicable in circumstances in which the aggregate tax rate is expressed per \$100 of value.

No comments were received regarding adoption of the amendment.

This amendment is adopted pursuant to Tax Code, §23.1241(f) and §23.1242(e), which provide for the comptroller to adopt a dealer's heavy equipment inventory declaration form and a dealer's heavy equipment inventory tax statement form.

This amendment implements Tax Code, §23.1241(f) and §23.1242(e).

*§9.4035. Special Types of Personal Property Inventory.*

(a) Except as provided in this section, a property owner subject to Tax Code, §§23.121, 23.122, 23.124, 23.1241, 23.1242, 23.125, 23.127, and 23.128 shall use the comptroller's model forms to file declarations and statements pursuant to Tax Code, §§23.121, 23.122, 23.124, 23.1241, 23.1242, 23.125, 23.127, and 23.128.

(b) If not otherwise prohibited by law, with prior, written approval by the comptroller, a property owner may use customized forms to file declarations applicable to this section that set forth the information in the same language and sequence as the comptroller's model forms.

(c) A chief appraiser shall make available to a property owner the comptroller's model forms to file declarations applicable to this section. If not otherwise prohibited by law, with prior, written approval by the comptroller, a chief appraiser may make available different forms to file declarations applicable to this section that set forth the information in the same language and sequence as the comptroller's model forms.

(d) If not otherwise prohibited by law and with prior, written approval by the comptroller, in special circumstances, the chief appraiser may use declaration forms that provide additional information, delete information required by this section, or set out the required information in different language or sequence than that required by this section.

(e) Notwithstanding subsections (b) - (d) of this section, as provided by Tax Code, §§23.122, 23.1242, 23.125, and 23.128, only the comptroller's model forms may be used to comply with Tax Code, §§23.122, 23.1242, 23.125, and 23.128.

(f) Forms adopted by reference. The Comptroller of Public Accounts adopts by reference the Retail Manufactured Housing Inventory Declaration form (Form 50-267), the Retail Manufactured Housing Inventory Tax Statement form (Form 50-268), the Dealer's Heavy Equipment Inventory Declaration form (Form 50-265), and the Dealer's Heavy Equipment Inventory Tax Statement form (Form 50-266). Copies of these forms can be obtained from the Comptroller of Public Accounts, Property Tax Assistance Division, P.O. Box 13528, Austin, Texas 78711-3528.

(g) Other Forms. The following comptroller-prescribed, model forms are not adopted by reference herein and may be revised at the discretion of the comptroller. The comptroller may also prescribe additional forms applicable to this section. Such forms are also not adopted by reference herein and may be revised at the discretion of

the comptroller. Current forms can be obtained from the Comptroller of Public Accounts' Property Tax Assistance Division.

(1) Dealer's Motor Vehicle Inventory Declaration (Form 50-244);

(2) Dealer's Motor Vehicle Inventory Tax Statement (Form 50-246);

(3) Dealer's Vessel and Outboard Motor Inventory Declaration (Form 50-259); and

(4) Dealer's Vessel and Outboard Motor Inventory Tax Statement (Form 50-260).

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 April 18, 2012.

TRD-201201942

Ashley Harden

General Counsel

Comptroller of Public Accounts

Effective date: May 8, 2012

Proposal publication date: March 9, 2012

For further information, please call: (512) 475-0387

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**TITLE 37. PUBLIC SAFETY AND CORRECTIONS**

**PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE**

**CHAPTER 151. GENERAL PROVISIONS**

**37 TAC §151.3**

The Texas Board of Criminal Justice adopts amendments to §151.3, concerning the Texas Board of Criminal Justice Operating Procedures without changes to the proposed text as published in the February 24, 2012, issue of the *Texas Register* (37 TexReg 1234).

The amendments are necessary to clarify existing procedures.

No comments were received regarding the amendments.

The amendments are adopted under Texas Government Code §492.013.

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 April 20, 2012.

TRD-201202004

Melinda Hoyle Bozarth

General Counsel

Texas Department of Criminal Justice

Effective date: May 10, 2012

Proposal publication date: February 24, 2012

For further information, please call: (512) 463-9693

### 37 TAC §151.4

The Texas Board of Criminal Justice adopts amendments to §151.4, concerning Public Presentations and Comments to the Texas Board of Criminal Justice, with three changes to the proposed text as published in the February 24, 2012, issue of the *Texas Register* (37 TexReg 1235).

The amendments are adopted to clarify existing procedures.

Comments were received. It was suggested that the word "where" be changed to "when" in subsections (c)(5), (d)(3), and (7).

The amendments are adopted under Texas Government Code §492.007, §492.013, and Chapter 551.

*§151.4. Public Presentations and Comments to the Texas Board of Criminal Justice.*

(a) Policy. The Texas Board of Criminal Justice (TBCJ or board) is committed to providing access and opportunity for public presentations and comments as provided for in this section. Persons not employed by or under contract with the Texas Department of Criminal Justice (TDCJ), who wish to have items placed on the board's posted agenda, shall follow the procedures set forth in subsection (h) of this section. Public presentations and comments shall be:

(1) subject to the requirements and restrictions of subsections (b), (c), (d), (e), (f), and (g) of this section;

(2) pertinent to issues under the jurisdiction of the board, as determined by the board chairman and the TDCJ general counsel; and

(3) pertinent to policies, procedures, standards, and rules of the TDCJ. Disputes that are appropriately the subject of the employee grievance system, the employee disciplinary system, the offender grievance system, the offender disciplinary system, or comments regarding pending litigation shall be addressed through those processes.

(b) Definitions.

(1) Public presentations are presentations made by the public to the TBCJ regarding topics posted on a board meeting agenda that has been filed with and published by the *Texas Register* and as provided for in subsection (c) of this section.

(2) Public comments are comments made by the public on non-posted agenda topics and as provided for in subsection (d) of this section.

(c) Public presentations. Persons who desire to make public presentations to the TBCJ on posted agenda topics shall provide, on the date of the meeting, a completed registration card to onsite board office staff at least 10 minutes prior to the meeting's posted start time. Registration cards shall be made available at the entry to the room where the board's scheduled meeting is held.

(1) Pre-registration is available for public presentations through first class mail at P.O. Box 13084, Austin, Texas 78711, or e-mail at [tbcj@tdcj.state.tx.us](mailto:tbcj@tdcj.state.tx.us). Pre-registration shall be received by the board office staff no later than four calendar days prior to the posted meeting date of the presentation. In addition to the information required in subsection (c)(2) of this section, pre-registration submissions shall include appropriate contact information, such as a daytime phone number or e-mail address, for the individual who is registering to speak.

(2) Registration cards and pre-registration submissions shall disclose:

(A) the name of the person who will make the presentation;

(B) a statement as to whether the person is being remunerated for the presentation and if so, by whom; and if applicable, the name of the person or entity on whose behalf the presentation will be made;

(C) a statement as to whether the presenter has registered as a lobbyist in relation to the agenda topic being addressed;

(D) a reference to the agenda topic on which the person wants to present;

(E) an indication as to whether the presenter will speak for or against the proposed agenda topic; and

(F) a statement verifying that all information that will be presented is factual, true, and correct to the best of the speaker's knowledge.

(3) The TBCJ chairman shall have discretion in setting reasonable limits on the time allocated for public presentations on posted agenda topics. If several persons have registered to address the board on the same agenda topic, it shall be within the discretion of the board chairman to request that those persons select a representative amongst themselves to express such remarks or limit their presentations to an expression of support for views previously articulated.

(4) The TBCJ chairman shall provide an opportunity for public presentations to occur prior to the board taking action on the topic denoted on the presenter's registration card. If a person who is registered to speak on a posted agenda item is not present when called upon, that person's opportunity to speak prior to action being taken on that topic shall be forfeited.

(5) A presenter may submit documentation pertaining to the public presentation to the board office staff. Documents shall be submitted no later than three calendar days prior to the posted meeting date when the presentation is to occur. Such documentation shall then be distributed to the board. Any documentation submitted after the above-referenced date will not be distributed to the board until after the presentation. A minimum of 12 copies of any such documentation shall be submitted to the board office staff or distribution may not occur.

(d) Public comments.

(1) Twice a year, at the second and fourth regular called meetings of the board, an opportunity shall be provided for public comment on issues that are not part of the TBCJ's posted agenda but are within the board's jurisdiction. Special called meetings are not counted toward the requirement of this subsection.

(2) Persons who desire to make public comments to the TBCJ at these meetings shall provide, on the date of the meeting, a completed registration card to onsite board office staff at least 10 minutes prior to the meeting's posted start time. Registration cards shall be made available at the entry to the room where the board's scheduled meeting is held.

(3) Pre-registration is available for public comments through first class mail at P.O. Box 13084, Austin, Texas 78711, or e-mail at [tbcj@tdcj.state.tx.us](mailto:tbcj@tdcj.state.tx.us). Pre-registration shall be received by board office staff no earlier than the first day of the month preceding the board meeting for which the registration is intended and no later than four calendar days prior to the posted meeting date when the comments are to occur. In addition to the information required in subsection (d)(4) of this section, pre-registration submissions shall include appropriate contact information, such as a daytime phone

number or e-mail address, for the individual who is registering to speak.

(4) Registration cards and pre-registration submissions shall disclose:

(A) the name of the person who will make the comments;

(B) a statement as to whether the person is being remunerated for the comments and if so, by whom; and, if applicable, the name of the person or entity on whose behalf the comments will be made;

(C) a statement as to whether the presenter has registered as a lobbyist in relation to the topic being addressed;

(D) the topic on which the person shall speak and whether the person will speak for or against the topic; and

(E) a statement verifying that all information that will be presented is factual, true, and correct to the best of the speaker's knowledge.

(5) The TBCJ chairman shall have discretion in setting reasonable limits on the time allocated for public comments. If several persons have registered to address the board on the same topic, it shall be within the discretion of the board chairman to request that those persons select a representative amongst themselves to express such comments, or limit their comments to an expression of support for views previously articulated.

(6) Public comments shall be heard just prior to the conclusion of the board meeting, with deviation from this practice within the discretion of the board chairman. If a person who is registered to speak on a non-posted topic is not present when called upon, that person shall be called once more following all other registered speakers. If that person is not present at that time, their opportunity to speak at that meeting shall be forfeited.

(7) A presenter may submit documentation pertaining to the public comments to the board office staff. Documentation shall be submitted no later than three calendar days prior to the posted meeting date when the comments are to occur. Such documentation shall then be distributed to the board. Any documentation submitted after the above-referenced date will not be distributed to the board until after the comments. A minimum of 12 copies of any such documentation shall be submitted to the board office staff or distribution may not occur.

(e) Disability accommodations. Persons with disabilities who have special communication or accommodation needs and who plan to attend a meeting may contact the board office at 512-475-3250. Requests for accommodation shall be made at least two days prior to a posted meeting. The TBCJ shall make every reasonable effort to accommodate these needs.

(f) Conduct and decorum. The TBCJ shall receive public presentations and comments as authorized by this section, subject to the following additional guidelines:

(1) Due to requirements of the *Open Meetings Act*, questions shall only occur on public presentations as defined in subsection (b) of this section as they are associated with posted agenda topics. Questions shall be reserved for board members and staff recognized by the board chairman.

(2) Presentations and comments shall remain pertinent to the issues denoted on the registration cards.

(3) A presenter who is determined by the board chairman to be disrupting a meeting shall immediately cease the disruptive activity or leave the meeting room if ordered to do so by the board chairman.

(4) A presenter may not assign a portion of his or her allotted presentation time to another speaker.

(5) Signs and placards shall not be carried or displayed in the meeting room.

(g) A presenter may not carry or possess a prohibited weapon, as defined in §46.05, Texas Penal Code, an illegal knife, a club, or a handgun, to include a licensed concealed handgun, during any meeting of the board.

(h) Requests for issues to be placed on an agenda. Persons not employed by or under contract with the TDCJ who wish to propose an agenda item for discussion at a TBCJ meeting shall address the request in writing to the chairman, Texas Board of Criminal Justice, P.O. Box 13084, Austin, Texas 78711. Such requests shall be titled, "Proposed Agenda Topic" and shall be submitted no later than the first day of the month preceding the board meeting for which the request is intended. Such requests are subject to the requirements of the registration card in subsection (c) of this section. The decision as to whether to calendar a matter for discussion before the TBCJ, a board committee, a board liaison, or with a designated staff member shall be within the discretion of the board chairman. Public presentations on topics placed on a board agenda, at the request of an individual, shall be in accordance with subsection (c) of this section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-201202037

Melinda Hoyle Bozarth

General Counsel

Texas Department of Criminal Justice

Effective date: May 10, 2012

Proposal publication date: February 24, 2012

For further information, please call: (512) 463-9693



## CHAPTER 155. REPORTS AND INFORMATION GATHERING

### SUBCHAPTER C. PROCEDURES FOR RESOLVING CONTRACT CLAIMS AND DISPUTES

#### 37 TAC §155.31

The Texas Board of Criminal Justice adopts amendments to §155.31, concerning Establishing Procedures for Resolving Contract Claims and Disputes with the Texas Department of Criminal Justice, without changes to the proposed text as published in the February 24, 2012, issue of the *Texas Register* (37 TexReg 1237).

The amendments are adopted and are non-substantive.

No comments were received regarding the amendments.

The amendments are adopted under Texas Government Code §495.008(e) and Chapter 2260.

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 April 20, 2012.

TRD-201202040

Melinda Hoyle Bozarth

General Counsel

Texas Department of Criminal Justice

Effective date: May 10, 2012

Proposal publication date: February 24, 2012

For further information, please call: (512) 463-9693



## **TITLE 40. SOCIAL SERVICES AND ASSISTANCE**

### **PART 2. DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES**

#### **CHAPTER 109. OFFICE FOR DEAF AND HARD OF HEARING SERVICES**

##### **SUBCHAPTER B. BOARD FOR EVALUATION OF INTERPRETERS (BEI) GENERAL CERTIFICATE**

###### **40 TAC §109.228**

The Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of Assistive and Rehabilitative Services (DARS), adopts the amendment to §109.228, concerning Qualification and Requirements for Board for Evaluation of Interpreters (BEI) General Certificate or Certification, as amended, in Title 40, Part 2, Chapter 109, Office for Deaf and Hard of Hearing Services, Subchapter B, Board for Evaluation of Interpreters (BEI) General Certificate or Certification; and

changes the title of Subchapter B, to "Board for Evaluation of Interpreters (BEI) General Certificate". The rule, as amended, is adopted without changes to the proposed text as published in the February 24, 2012, issue of the *Texas Register* (37 TexReg 1279) and will not be republished.

DARS adopts the rule, as amended, to further clarify and expand the qualifications and requirements an individual must have to take a BEI interpreter certification examination and to hold a BEI certification. The rule, as amended, also adds college or university education requirements and provides for exemptions from those requirements for current BEI certificate holders. DARS is also changing the title of the subchapter to reflect the name of the certificate that is issued.

No comments were received regarding adoption of the rule, as amended.

The rule, as amended, is adopted and the subchapter title is changed pursuant to HHSC's statutory rulemaking authority under Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 17, 2012.

TRD-201201920

Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

Effective date: May 7, 2012

Proposal publication date: February 24, 2012

For further information, please call: (512) 424-4050



# 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

Texas Department of Criminal Justice

### Title 37, Part 6

The Texas Board of Criminal Justice files this notice of intent to review §151.52, concerning the Sick Leave Pool.

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, [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 notice.

TRD-201201993  
Melinda Hoyle Bozarth  
General Counsel  
Texas Department of Criminal Justice  
Filed: April 20, 2012



The Texas Board of Criminal Justice files this notice of intent to review §155.23, concerning the Site Selection Process for the Location of Additional Facilities.

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, [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 notice.

TRD-201201992  
Melinda Hoyle Bozarth  
General Counsel  
Texas Department of Criminal Justice  
Filed: April 20, 2012



The Texas Board of Criminal Justice files this notice of intent to review §163.25, concerning the Community Justice Councils, Task Forces and Plans.

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, [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 notice.

TRD-201201994  
Melinda Hoyle Bozarth  
General Counsel  
Texas Department of Criminal Justice  
Filed: April 20, 2012



The Texas Board of Criminal Justice files this notice of intent to review §163.42, concerning Substantial Noncompliance.

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, [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 notice.

TRD-201201997  
Melinda Hoyle Bozarth  
General Counsel  
Texas Department of Criminal Justice  
Filed: April 20, 2012



## Employees Retirement System of Texas

### Title 34, Part 4

The Employees Retirement System of Texas (ERS) will review and consider whether to re-adopt, re-adopt with amendments, or repeal 34 Texas Administrative Code Chapter 71, Creditable Service. This review is being conducted pursuant to Texas Government Code §2001.039.

The ERS will assess whether the reasons for adopting or re-adopting this chapter continue to exist. Each section of the chapter will be reviewed to determine whether it is obsolete, reflects current legal and policy considerations, reflects current general provisions in the governance of the ERS, and/or whether it is in compliance with Chapter 2001 of the Texas Government Code (Administrative Procedure Act).

Comments on the review may be submitted in writing within 30 days following the publication of this rule review in the *Texas*

Register to Paula A. Jones, General Counsel and Chief Compliance Officer, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207 or you may email Ms. Jones at paula.jones@ers.state.tx.us. The deadline for receiving comments is Monday, June 11, 2012, at 10:00 a.m. Any proposed changes to the sections of this 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 of any repeal, amendment, or re-adoption.

TRD-201202113

Paula A. Jones  
General Counsel and Chief Compliance Officer  
Employees Retirement System of Texas  
Filed: April 24, 2012



Department of State Health Services

### **Title 25, Part 1**

The Executive Commissioner of the Health and Human Services Commission (Executive Commissioner), on behalf of the Department of State Health Services (department), will review and consider for re-adoption, revision, or repeal all sections of 25 Texas Administrative Code Chapter 14, County Indigent Health Care Program, in accordance with Government Code, §2001.039, as follows:

Subchapter A. Program Administration.

§14.1. State Assistance Fund.

§14.2. Eligibility Dispute.

Subchapter B. Determining Eligibility.

§14.101. Application Processing.

§14.102. Residence.

§14.103. Household.

§14.104. Income.

§14.105. Resources.

Subchapter C. Providing Services.

§14.201. Basic and Optional Services.

The Executive Commissioner will consider whether the reasons for adopting these rules continue to exist and whether these rules should be repealed, re-adopted, or re-adopted with amendments. Any repeals or necessary amendments identified during the review of these rules will be proposed and published in the *Texas Register* in accordance with the Administrative Procedure Act, Government Code, Chapter 2001.

The Executive Commissioner proposes re-adoption of §14.1 because Health and Safety Code, §61.0395(b), authorizes the department to adopt rules for the distribution of state assistance to counties, and rules are needed to enable the department to continue to do so.

The Executive Commissioner proposes re-adoption of §14.2 because rules are needed to enable the department to efficiently and effectively decide residency or eligibility disputes between providers of assistance and governmental entities or hospital districts as mandated by Health and Safety Code, §61.004.

The Executive Commissioner proposes re-adoption of §§14.101 - 14.105 because rules are needed to establish and implement minimum eligibility standards and application, documentation, and verification procedures for counties, as mandated by Health and Safety Code, §61.006.

In the Proposed Rules Section in this issue of the *Texas Register*, the Executive Commissioner contemporaneously proposes re-adoption of §§14.104, 14.105, and 14.201 with amendments for consistency with Health and Safety Code, §61.008 and §61.0285(a), which were amended by the 82nd Texas Legislature, 2011.

To be considered, written comments concerning whether these rules should be repealed, re-adopted, or re-adopted with amendments must be submitted within 30 days following the publication of this notice in the *Texas Register* to Carolyn Wachel, County Indigent Health Care Program, Mail Code 2831, Department of State Health Services, P.O. Box 149347, Austin, Texas 78714-9347, or by email to Carolyn.Wachel@dshs.state.tx.us.

TRD-201201970

Lisa Hernandez  
General Counsel  
Department of State Health Services  
Filed: April 19, 2012



Texas State Library and Archives Commission

### **Title 13, Part 1**

The Texas State Library and Archives Commission (commission) proposes to review its rules in 13 TAC Chapter 1, concerning library development, pursuant to the requirements of Government Code §2001.039.

The rules were adopted pursuant to Government Code §441.136 that requires the commission to adopt rules regarding the administration of the program of state grants, including qualifications for library system membership. The rules are necessary to carry out the statutory obligations of the commission to administer grant programs.

Written comments on the commission's review of Chapter 1 may be directed to Deborah Littrell, Director, Library Development Division, Box 12927, Austin, Texas 78711-2927 or by fax (512) 463-8800.

TRD-201202058

Edward Seidenberg  
Deputy Director  
Texas State Library and Archives Commission  
Filed: April 23, 2012



The Texas State Library and Archives Commission (commission) proposes to review 13 TAC Chapter 4, concerning school library programs, pursuant to the requirements of the Government Code §2001.039.

The rule was adopted pursuant to the Education Code §33.021 that requires the commission to adopt standards regarding school library programs. The rule is necessary to carry out the statutory obligations of the commission for the establishment of standards for school library programs.

Written comments on the commission's review of Chapter 4 may be directed to Deborah Littrell, Director, Library Development Division, Box 12927, Austin, Texas 78711-2927 or by fax (512) 463-8800.

TRD-201202139

Edward Seidenberg  
Deputy Director  
Texas State Library and Archives Commission  
Filed: April 26, 2012



## **Adopted Rule Reviews**

Office of Consumer Credit Commissioner

**Title 7, Part 5**

The Finance Commission of Texas (commission) has completed the review of Texas Administrative Code, Title 7, Part 5, Chapter 89, concerning Property Tax Lenders. Chapter 89 contains Subchapter A, concerning General Provisions (§§89.101 - 89.102); Subchapter B, concerning Authorized Activities (§§89.201 - 89.206); Subchapter C, concerning Application Procedures (§§89.301 - 89.311); Subchapter D, concerning License (§§89.401 - 89.409); Subchapter E, concerning Disclosures (§§89.501 - 89.507); Subchapter F, concerning Costs and Fees (§§89.601 - 89.603); and Subchapter G, concerning Transfer of Tax Lien (§§89.701 - 89.702). The rule review was conducted pursuant to Texas Government Code, §2001.039.

Notice of the review of 7 TAC Part 5, Chapter 89 was published in the March 16, 2012, issue of the *Texas Register* (37 TexReg 1917). The commission received no comments in response to that notice. The commission believes that the reasons for initially adopting the rules contained in this chapter continue to exist.

As a result of internal review by the agency, the commission has determined that certain revisions are appropriate and necessary. The commission is concurrently proposing amendments and new rules to 7 TAC Chapter 89 published elsewhere in this issue of the *Texas Register*.

Subject to the proposed amendments and new rules to Chapter 89, the commission finds that the reasons for initially adopting these rules continue to exist and re-adopts this chapter in accordance with the requirements of Texas Government Code, §2001.039.

This concludes the review of 7 TAC Part 5, Chapter 89.

TRD-201201996

Leslie L. Pettijohn  
Commissioner

Office of Consumer Credit Commissioner  
Filed: April 20, 2012



Texas Department of Criminal Justice

**Title 37, Part 6**

The Texas Board of Criminal Justice adopts the review of §151.3, concerning the Texas Board of Criminal Justice Operating Procedures, pursuant to the Texas Government Code, §2001.039.

The proposed rule review was published in the February 24, 2012, issue of the *Texas Register* (37 TexReg 1365).

Elsewhere in this issue of the *Texas Register*, the Texas Board of Criminal Justice contemporaneously adopts amendments to §151.3.

No comments were received regarding the rule review.

The agency's reason for adopting the rule continues to exist.

TRD-201202101

Melinda Hoyle Bozarth  
General Counsel

Texas Department of Criminal Justice  
Filed: April 24, 2012



The Texas Board of Criminal Justice adopts the review of §151.4, concerning Public Presentations and Comments to the Texas Board of Criminal Justice, pursuant to the Texas Government Code, §2001.039.

The proposed rule review was published in the February 24, 2012, issue of the *Texas Register* (37 TexReg 1365).

Elsewhere in this issue of the *Texas Register*, the Texas Board of Criminal Justice contemporaneously adopts amendments to §151.4.

No comments were received regarding the rule review.

The agency's reason for adopting the rule continues to exist.

TRD-201202102

Melinda Hoyle Bozarth  
General Counsel

Texas Department of Criminal Justice  
Filed: April 24, 2012



The Texas Board of Criminal Justice (TBCJ) has completed its review of §151.25, concerning the Texas Department of Criminal Justice Tobacco Policy, in accordance with the requirements of Texas Government Code §2001.039. The TBCJ has determined the reason for initially adopting §151.25 continues to exist, which is to ensure that employees of the department are permitted to use tobacco products during work hours at times and locations as designated by the TBCJ pursuant to Texas Government Code §494.010.

Notice of the review was published in the February 3, 2012, issue of the *Texas Register* (37 TexReg 503). No comments were received as a result of that notice.

TRD-201202096

Melinda Hoyle Bozarth  
General Counsel

Texas Department of Criminal Justice  
Filed: April 23, 2012



The Texas Board of Criminal Justice adopts the review of §155.31, concerning Establishing Procedures for Resolving Contract Claims and Disputes with the Texas Department of Criminal Justice, pursuant to the Texas Government Code, §2001.039.

The proposed rule review was published in the February 24, 2012, issue of the *Texas Register* (37 TexReg 1365).

Elsewhere in this issue of the *Texas Register*, the Texas Board of Criminal Justice contemporaneously adopts amendments to §155.31.

No comments were received regarding the rule review.

The agency's reason for adopting the rule continues to exist.

TRD-201202103

Melinda Hoyle Bozarth  
General Counsel

Texas Department of Criminal Justice  
Filed: April 24, 2012



Texas Medical Board

**Title 22, Part 9**

The Texas Medical Board adopts the review of Chapter 166, Physician Registration, §§166.1 - 166.7, pursuant to the Texas Government Code, §2001.039.

The proposed rule review was published in the March 9, 2012, issue of the *Texas Register* (37 TexReg 1788).

Elsewhere in this issue of the *Texas Register*; the Texas Medical Board contemporaneously adopts amendments to §166.2.

No comments were received regarding the rule review.

The agency's reason for adopting the rules contained in this chapter continues to exist.

This concludes the review of Chapter 166, Physician Registration.

TRD-201202050  
Mari Robinson, J.D.  
Executive Director  
Texas Medical Board  
Filed: April 23, 2012



The Texas Medical Board adopts the review of Chapter 185, Physician Assistants, §§185.1 - 185.27, pursuant to the Texas Government Code, §2001.039.

The proposed rule review was published in the January 13, 2012, issue of the *Texas Register* (37 TexReg 129).

Elsewhere in this issue of the *Texas Register*; the Texas Medical Board contemporaneously adopts amendments to §185.4.

No comments were received regarding the rule review.

The agency's reason for adopting the rules contained in this chapter continues to exist.

This concludes the review of Chapter 185, Physician Assistants.

TRD-201202051  
Mari Robinson, J.D.  
Executive Director  
Texas Medical Board  
Filed: April 23, 2012



Texas Department of Savings and Mortgage Lending

#### **Title 7, Part 4**

The Finance Commission of Texas (the "Commission") re-adopts Texas Administrative Code, Title 7, Part 4, Chapter 80, Texas Residential Mortgage Loan Originator Regulations: Subchapter B (§§80.8 - 80.11), relating to Professional Conduct; Subchapter C (§§80.12 - 80.14), relating to Administration and Records; Subchapter D (§80.15), relating to Complaints and Investigations; Subchapter E (§80.16), relating to Hearings and Appeals; Subchapter F (§80.17), relating to Interpretations; Subchapter G (§80.18), relating to Enforcement of Liens; Subchapter H (§80.19), relating to Savings Clause; Subchapter I (§80.20 and §80.21), relating to Inspections and Investigations; Subchapter J (§80.22), relating to Forms; Subchapter K (§80.23), relating to Mortgage Call Reports; and Subchapter L (§§80.301 - 80.307), relating to Licensing; and Chapter 81, Mortgage Banker Registration and Residential Mortgage Loan Officer Licensing: Subchapter A (§§81.1 - 81.6), relating to Licensing; Subchapter B (§§81.7 - 81.9), relating to Professional Conduct; Subchapter C (§81.10), relating to Administration and Records; Subchapter D (§81.11), relating to Complaints and Investigations; Subchapter E (§81.12 and §81.13), relating to Examinations and Investigations; Subchapter F (§81.14), relating to Hearings and Appeals; Subchapter G (§81.15), relating to Mortgage Call Reports; Subchapter H (§81.16), relating to Recovery Fund; Subchapter I (§81.17), relating to Interpretations; Subchapter J

(§81.18), relating to Enforcement of Liens; Subchapter K (§81.19), relating to Savings Clause; and Subchapter L (§81.20), relating to Sponsorship and Termination Thereof.

Notice of the review of Chapters 80 and 81 was published in the December 23, 2011, issue of the *Texas Register* (36 TexReg 9017) as required. No comments were received in response to the notice.

Accordingly, the Commission finds that the reasons for initially adopting these chapters continue to exist and readopts Chapters 80 and 81 in accordance with the requirements of the Texas Government Code, §2001.039.

In this issue of the *Texas Register*; the Texas Department of Savings and Mortgage Lending proposes the repeal of and new Chapters 80 and 81. The purpose of the proposal is to enhance the clarity of existing language, to repeal language that unnecessarily duplicates existing statutes, to enhance structural organization, and to reflect current practice.

TRD-201202005  
Caroline C. Jones  
General Counsel  
Texas Department of Savings and Mortgage Lending  
Filed: April 20, 2012



Windham School District

#### **Title 19, Part 8**

The Windham School District (WSD) Board of Trustees adopts the review of §300.1, concerning Public Presentations and Comments to the Windham School District Board of Trustees, pursuant to the Texas Government Code, §2001.039.

The proposed rule review was published in the February 24, 2012, issue of the *Texas Register* (37 TexReg 1368).

Elsewhere in this issue of the *Texas Register*; the WSD contemporaneously adopts amendments to §300.1.

No comments were received regarding the rule review.

The agency's reason for adopting the rule continues to exist.

TRD-201202104  
Michael Mondville  
General Counsel  
Windham School District  
Filed: April 24, 2012



The Windham School District (WSD) Board of Trustees adopts the review of §300.2, concerning Windham School District Board of Trustees Operating Procedures, pursuant to the Texas Government Code, §2001.039.

The proposed rule review was published in the February 24, 2012, issue of the *Texas Register* (37 TexReg 1368).

Elsewhere in this issue of the *Texas Register*; the WSD contemporaneously adopts amendments to §300.2.

No comments were received regarding the rule review.

The agency's reason for adopting the rule continues to exist.

TRD-201202105



Michael Mondville  
General Counsel  
Windham School District  
Filed: April 24, 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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**TEXAS MORTGAGE COMPANY DISCLOSURE**

**Residential Mortgage Loan Originator:** \_\_\_\_\_

**NMLS ID:** \_\_\_\_\_

*Check ALL that apply*

**Duties and Nature of Relationship**

We will submit your loan application to a participating lender which we may from time to time contract upon such terms as you may request or a lender may require. In connection with this mortgage loan, we are acting as an independent contractor and not as your agent

We will make your loan ourselves. In connection with this mortgage loan, we are acting as an independent contractor and not as your agent.

We will be acting as follows:

**How we will be compensated**

The retail price we offer you - your interest rate, total points, and fees - will include our compensation. In some cases we may be paid all of our compensation by you or by the lender or investor

Our pricing for your loan is based upon:

---

CONSUMERS WISHING TO FILE A COMPLAINT AGAINST A COMPANY OR A RESIDENTIAL MORTGAGE LOAN ORIGINATOR SHOULD COMPLETE AND SEND A COMPLAINT FORM TO THE TEXAS DEPARTMENT OF SAVINGS AND MORTGAGE LENDING 2601 NORTH LAMAR, SUITE 201, AUSTIN, TEXAS 78705. COMPLAINT FORMS AND INSTRUCTIONS MAY BE OBTAINED FROM THE DEPARTMENTS WEBSITE AT WWW.SML.TEXAS.GOV. A TOLL-FREE CONSUMER HOTLINE IS AVAILABLE AT 1-877-276-5550.

THE DEPARTMENT MAINTAINS A RECOVERY FUND TO MAKE PAYMENTS OF CERTAIN ACTUAL OUT OF POCKET DAMAGES SUSTAINED BY BORROWERS CAUSED BY ACTS OF LICENSED RESIDENTIAL MORTGAGE LOAN ORIGINATORS. A WRITTEN APPLICATION FOR REIMBURSEMENT FROM THE RECOVERY FUND MUST BE FILED WITH AND INVESTIGATED BY THE DEPARTMENT PRIOR TO THE PAYMENT OF A CLAIM. FOR MORE INFORMATION ABOUT THE RECOVERY FUND, PLEASE CONSULT THE DEPARTMENT'S WEB SITE AT WWW.SML.TEXAS.GOV.

**Applicant(s)**

**Residential Mortgage Loan Originator**

Signed: \_\_\_\_\_  
Name: \_\_\_\_\_  
Date: \_\_\_\_\_

Signed: \_\_\_\_\_  
Name: \_\_\_\_\_  
Date: \_\_\_\_\_

Signed: \_\_\_\_\_  
Name: \_\_\_\_\_  
Date: \_\_\_\_\_

**Form A**  
**Conditional Qualification Letter**

**Date:**

**Prospective Applicant:**

**Residential Mortgage Loan Originator:**

License Number \_\_\_\_\_

Address \_\_\_\_\_

Phone # \_\_\_\_\_

**Loan** (describe as follows):

Loan Amount:

Qualifying Interest Rate:

Term:

Maximum Loan-to-Value Ratio:

Loan Type and Description:

Residential mortgage loan originator has has not received a signed application for the Loan from the prospective applicant

Residential mortgage loan originator has has not reviewed the prospective applicant's credit report

Residential mortgage loan originator has has not reviewed the prospective applicant's credit score

Residential mortgage loan originator has reviewed the following additional items (list):

The prospective applicant has provided the residential mortgage loan originator verbally in writing with information about the prospective applicant:

Income \_\_\_ Yes \_\_\_ No \_\_\_ Not applicable

Available cash \_\_\_ Yes \_\_\_ No \_\_\_ Not applicable for down payment and payment of closing costs

Debts \_\_\_ Yes \_\_\_ No \_\_\_ Not applicable

Assets \_\_\_ Yes \_\_\_ No \_\_\_ Not applicable

Based on the information that the prospective applicant has provided to the residential mortgage loan originator as described above, the residential mortgage loan originator has determined that the prospective applicant is eligible and qualified to meet the financial requirements of the loan.

**This is not an approval for the Loan.** Approval of the Loan requires: (1) the residential mortgage loan originator to verify the information that the prospective applicant has provided; (2) the prospective applicant's financial status and credit report to remain substantially the same until the loan closes; (3) the collateral for the loan (the subject property) to satisfy the lender's requirements (for example, appraisal, title, survey, condition, and insurance); (4) the loan, as described, to remain available in the market; (5) the prospective applicant to execute loan documents the lender requires, and (6) the following additional items (list):

---

Residential Mortgage Loan Originator

**Form B**  
**Conditional Approval Letter**

**Date:**

**Applicant:**

Residential mortgage loan originator: License Number \_\_\_\_\_

Address \_\_\_\_\_

Phone # \_\_\_\_\_

**Loan (describe as follows):**

Loan Amount:

Interest Rate:

Interest Rate Lock Expires (if applicable):

Maximum Loan-to-Value Ratio:

Loan Type and Program:

Secondary financing terms (if applicable):

*Optional Information: Points: Origination: \_\_\_\_\_ Discount: \_\_\_\_\_*

*Commitment: \_\_\_\_\_ Other (describe): \_\_\_\_\_*

**Subject Property:**

Residential mortgage loan originator: has received a signed application from the applicant.

Residential mortgage loan originator: has:

Reviewed applicant's \_\_\_ Yes \_\_\_ Not applicable credit report and credit score

Verified applicant's \_\_\_ Yes \_\_\_ Not applicable income

Verified applicant's \_\_\_ Yes \_\_\_ Not applicable available cash for down payment and closing costs

Reviewed applicant's \_\_\_ Yes \_\_\_ Not applicable debts and other assets

Applicant is approved for the loan provided that the applicant's creditworthiness and financial position do not materially change prior to closing and provided that:

1. The subject property is appraised for an amount not less than \$ \_\_\_\_\_
2. The lender does not object to encumbrances to title shown in the title commitment or survey;
3. The subject property's condition meets lender's requirements
4. The subject property is insured in accordance with lender's requirements;
5. The applicant executes the loan documents lender requires; and
6. The following additional conditions are complied with (list):

This conditional approval expires on \_\_\_\_\_.

\_\_\_\_\_  
Residential Mortgage Loan Originator:

**TEXAS MORTGAGE BANKER DISCLOSURE**

Residential Mortgage Loan Originator: \_\_\_\_\_

NMLS ID: \_\_\_\_\_

Pursuant to the requirements of Section 157.007 of the Mortgage Banker Registration and Residential Mortgage Loan Originator License Act, Chapter 157, Texas Finance Code, you are hereby notified of the following:

**CONSUMERS WISHING TO FILE A COMPLAINT AGAINST A MORTGAGE BANKER OR A LICENSED MORTGAGE BANKER RESIDENTIAL MORTGAGE LOAN ORIGINATOR SHOULD COMPLETE AND SEND A COMPLAINT FORM TO THE TEXAS DEPARTMENT OF SAVINGS AND MORTGAGE LENDING, 2601 NORTH LAMAR, SUITE 201, AUSTIN, TEXAS 78705. COMPLAINT FORMS AND INSTRUCTIONS MAY BE OBTAINED FROM THE DEPARTMENT'S WEBSITE AT WWW.SML.TEXAS.GOV. A TOLL-FREE CONSUMER HOTLINE IS AVAILABLE AT 1-877-276-5550.**

**THE DEPARTMENT MAINTAINS A RECOVERY FUND TO MAKE PAYMENTS OF CERTAIN ACTUAL OUT OF POCKET DAMAGES SUSTAINED BY BORROWERS CAUSED BY ACTS OF LICENSED MORTGAGE BANKER RESIDENTIAL MORTGAGE LOAN ORIGINATORS. A WRITTEN APPLICATION FOR REIMBURSEMENT FROM THE RECOVERY FUND MUST BE FILED WITH AND INVESTIGATED BY THE DEPARTMENT PRIOR TO THE PAYMENT OF A CLAIM. FOR MORE INFORMATION ABOUT THE RECOVERY FUND, PLEASE CONSULT THE DEPARTMENT'S WEB SITE AT WWW.SML.TEXAS.GOV.**

THIS DISCLOSURE WAS DELIVERED TO THE CONSUMER:

- IN PERSON
- BY FAX
- BY E-MAIL
- OTHER \_\_\_\_\_

DATE DELIVERY INITIATED: \_\_\_\_\_



**Form A**  
Conditional Qualification Letter

**Date:**

**Prospective Applicant:**

**Mortgage Banker:**

Registration Number \_\_\_\_\_

Address \_\_\_\_\_

Phone # \_\_\_\_\_

**Loan (describe as follows):**

Loan Amount:

Qualifying Interest Rate:

Term:

Maximum Loan-to-Value Ratio:

Loan Type and Description:

Mortgage banker \_\_\_ has \_\_\_ has not received a signed application for the loan from the prospective applicant

Mortgage banker \_\_\_ has \_\_\_ has not reviewed the prospective applicant's credit report

Mortgage banker \_\_\_ has \_\_\_ has not reviewed the prospective applicant's credit score

Mortgage banker has reviewed the following additional items (list):

The prospective applicant has provided the mortgage banker \_\_\_ verbally \_\_\_ in writing with the following information about the prospective applicant:

Income \_\_\_\_\_ Yes \_\_\_\_\_ No \_\_\_\_\_ Not applicable

Available cash for down payment and payment of closing costs \_\_\_\_\_ Yes \_\_\_\_\_ No \_\_\_\_\_ Not applicable

Debts \_\_\_\_\_ Yes \_\_\_\_\_ No \_\_\_\_\_ Not applicable

Other Assets \_\_\_\_\_ Yes \_\_\_\_\_ No \_\_\_\_\_ Not applicable

Based on the information that the prospective applicant has provided to the mortgage banker, as described above, the mortgage banker has determined that the prospective applicant is eligible and qualified to meet the financial requirements of the Loan.

**This is not an approval for the loan.** Approval of the loan requires: (1) the mortgage banker to verify the information that the prospective applicant has provided; (2) the prospective applicant's financial status and credit report to remain substantially the same until the loan closes; (3) the collateral for the loan (the subject property) to satisfy the lender's requirements (for example, appraisal, title, survey, condition, and insurance); (4) the loan type and terms, as described, to remain available in the market; (5) the prospective applicant to execute loan documents the lender requires, and (6) the following additional items (list):

---

Mortgage Banker or Loan Officer

**Form B**  
Conditional Approval Letter

**Date:**

**Applicant:**

**Mortgage Banker:**

Registration Number \_\_\_\_\_

Address \_\_\_\_\_

Phone # \_\_\_\_\_

**Loan** (describe as follows):

1. Loan Amount:

2. Interest Rate:

3. Interest Rate Lock Expires (if applicable):

4. Maximum Loan-to-Value Ratio:

5. Loan Type and Program:

Secondary financing terms (if applicable):

*Optional Information: Points:*

*Origination:*

*Discount:*

*Commitment:*

*Other (describe):*

**Subject Property:**

Mortgage banker has received a signed application from the applicant.

Mortgage banker has:

Reviewed applicant credit report and credit score: \_\_\_\_ Yes \_\_\_\_ Not applicable

Verified applicant's income : \_\_\_\_ Yes \_\_\_\_ Not applicable

Verified applicant's available cash for down payment and closing costs: \_\_\_\_ Yes \_\_\_\_ Not applicable

Reviewed applicant's debts and other assets: \_\_\_\_ Yes \_\_\_\_ Not applicable

Applicant is approved for the loan provided that the applicant's creditworthiness and financial position do not materially change prior to closing and provided that the following additional conditions are fully satisfied:

1. The subject property is appraised for an amount not less than \$\_\_\_\_\_:
2. The mortgage banker does not object to encumbrances to title shown in the title commitment or survey;
3. The subject property's condition meets mortgage banker's requirements;
4. The subject property is insured in accordance with the mortgage banker's requirements;
5. The applicant executes the loan documents the mortgage banker requires and abides by closing instructions; and
6. The following additional conditions are complied with (list):

This conditional approval expires on \_\_\_\_\_.

\_\_\_\_\_  
Mortgage Banker

# IN

# ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

## 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 Health and Safety Code and the Texas Water Code. Before the State may settle a judicial enforcement action under the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Texas Water Code.

Case Title and Court: *State of Texas v. El Paso Natural Gas Company*, Cause No. D-1-GV-11-001563, in the 201st Judicial District Court, Travis County, Texas.

Nature of Defendant's Operations: Defendant operates a natural gas pipeline system in Texas and several other western states. On November 5, 2009, a failure in the pipeline near Bushland, Texas, caused the release of natural gas, which then ignited and burned for about six hours. Claims settled include allegations that El Paso Natural Gas Company discharged air contaminants during the pipeline failure and subsequent explosion and fire without authorization.

Proposed Agreed Judgment: The Agreed Final Judgment orders El Paso Natural Gas Company to pay \$120,000 in civil penalties to the State of Texas. In addition, the Defendant will pay \$8,000 in attorney's fees to the State of Texas.

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 Anthony W. Benedict, 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-201201980

Jay Dyer

Deputy Attorney General

Office of the Attorney General

Filed: April 19, 2012

## Capital Area Rural Transportation System

Request for Qualifications - Public Engagement

The Capital Area Rural Transportation System (CARTS) is a Rural Transit District serving a nine-county district consisting of Bastrop, Blanco, Burnet, Caldwell, Fayette, Lee, and the non-urbanized areas of Hays, Travis, and Williamson counties. CARTS is planning to secure

professional assistance to assist it in the development and execution of a community engagement and outreach plan in its district.

Firms wishing to respond to the Request for Qualifications (RFQ) for these services should send a request to [RFQ@RideCARTS.com](mailto:RFQ@RideCARTS.com). The RFQ package will be available beginning on April 27, 2012. Submittals are due at 2:00 p.m., May 28, 2012.

TRD-201201985

Dave Marsh

General Manager

Capital Area Rural Transportation System

Filed: April 20, 2012

## Comptroller of Public Accounts

Notice of Request for Proposals

Pursuant to Chapters 403 and 2156, §2156.121; and Chapter 2305, §2305.037, Texas Government Code, the Comptroller of Public Accounts (Comptroller), State Energy Conservation Office (SECO) announces its Request for Proposals (RFP #203g) and invites proposals from Public Higher Education Institutions (PHEIs) for the creation and/or expansion of Clean Energy Incubators (CEI) for the Emerging Clean Energy Technology Program (Program). The Comptroller reserves the right to award more than one contract under the RFP. If a contract award is made under the terms of this RFP, Contractor will be expected to begin performance of the contract on or about September 1, 2012, or as soon thereafter as practical.

Contact: Parties interested in submitting a proposal should contact William Clay Harris, Assistant General Counsel, Contracts, Comptroller of Public Accounts, in the Issuing Office at: 111 E. 17th St., Room 201, Austin, Texas 78774, (512) 305-8673, to obtain a complete copy of the RFP. The Comptroller will mail copies of the RFP only to those parties specifically requesting a copy. The RFP will be available for pick-up at the above referenced address on Friday, May 4, 2012, after 10:00 a.m. Central Time (CT) and during normal business hours thereafter. The Comptroller will also make the entire RFP available electronically on the Electronic State Business Daily (ESBD) at: <http://esbd.cpa.state.tx.us> after 10:00 a.m. CT on Friday, May 4, 2012.

Questions and Non-Mandatory Letters of Intent: All written inquiries, questions, and Non-mandatory Letters of Intent to propose must be received at the above-referenced address not later than 2:00 p.m. CT on Friday, May 11, 2012. Prospective proposers are encouraged to fax non-mandatory Letters of Intent and Questions to (512) 463-3669 to ensure timely receipt. Non-mandatory Letters of Intent must be addressed to William Clay Harris, Assistant General Counsel, Contracts, and must contain the information as stated in the corresponding Section of the RFP and be signed by an official of that entity. On or about Friday, May 18, 2012, the Comptroller expects to post responses to questions on the ESBD. Late Non-mandatory Letters of Intent and Questions will not be considered under any circumstances. Respondents shall be solely responsible for verifying timely receipt of Non-Mandatory Letters of Intent and Questions in the Issuing Office.

Closing Date: Proposals must be delivered in the Issuing Office to the attention of the Assistant General Counsel, Contracts, no later than 2:00 p.m. CT, on Friday, June 8, 2012. Late Proposals will not be considered under any circumstances. Respondents shall be solely responsible for verifying time receipt of Proposals in the Issuing Office.

Evaluation Criteria: Proposals will be evaluated under the evaluation criteria outlined in the RFP. The Comptroller will make the final decision. The Comptroller reserves the right to accept or reject any or all proposals submitted. The Comptroller is not obligated to execute a contract on the basis of this notice or the distribution of any RFP. The Comptroller shall not pay for any costs incurred by any entity in responding to this Notice or to the RFP.

The anticipated schedule of events pertaining to this solicitation is as follows: Issuance of RFP - May 4, 2012, after 10:00 a.m. CT; Non-Mandatory Letters of Intent and Questions Due - May 11, 2012, 2:00 p.m. CT; Official Responses to Questions posted - May 18, 2012; Proposals Due - June 8, 2012, 2:00 p.m. CT; Contract Execution - September 1, 2012, or as soon thereafter as practical; Commencement of Services - September 1, 2012.

TRD-201202111

William Clay Harris

Assistant General Counsel, Contracts

Comptroller of Public Accounts

Filed: April 24, 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 04/30/12 - 05/06/12 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 04/30/12 - 05/06/12 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-201202094

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: April 23, 2012

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**Education Service Center Region 10**

**Request for Proposal - Program Management for McKinney-Vento Education of Homeless Youth**

The Education Service Center Region 10 (Center) is soliciting proposals for Program Management Services for the Texas Education for Homeless Children and Youth Program using funds authorized by the McKinney-Vento Homeless Education Assistance Improvements Act of 2001, Public Law 107-110. This project seeks to fund a program management staff that will assist the Center, acting as fiscal agent for the state of Texas, in carrying out the goals of the state's homeless student education plan. Managed activities include coordination of the competitive grant application process for Texas school districts to re-

ceive funding assistance for homeless youth, site visits to grantees to ensure compliance with program rules, collaboration with grantees to improve student outcomes, technical assistance to all Texas school districts in serving the education needs of homeless youth, and the dissemination of information statewide regarding homeless education.

Vendors wishing to receive a complete copy of the Request for Proposal should write or call Sue Hayes, Chief Financial Officer, Education Service Center Region 10, 400 E. Spring Valley Road, Richardson, Texas 75081, (972) 348-1112. Please refer to RFP #2012-07 in your request.

All proposals must be received at the above address by 4:00 p.m., Thursday, May 31, 2012.

The award winning vendor will be selected based on their qualifications and ability to carry out all requirements contained in the RFP. The Region 10 ESC reserves the right to select the vendor that represents the best value to the Center.

TRD-201202123

Sandy Maddox

Deputy Executive Director

Education Service Center Region 10

Filed: April 25, 2012

◆ ◆ ◆  
**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 June 4, 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 June 4, 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: 2100 Ross Realty LP; DOCKET NUMBER: 2011-2351-IWD-E; IDENTIFIER: RN104464383; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: groundwater treatment; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit

Number WQ0004927000, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with the permitted effluent limits for tetrachloroethylene; and 30 TAC §305.125(1) and (17) and TPDES Permit Number WQ0004927000, Monitoring and Reporting Requirements Number 1, by failing to timely submit the discharge monitoring report for the monitoring period ending November 30, 2010; PENALTY: \$1,050; ENFORCEMENT COORDINATOR: Lanae Foard, (512) 239-2554; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: ALLIED TRADING CORPORATION dba A & Q Chevron Food Mart; DOCKET NUMBER: 2011-1429-PST-E; IDENTIFIER: RN101434629; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$2,250; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: Ana Holdings, Incorporated dba Happy Days Grocery; DOCKET NUMBER: 2011-2350-PST-E; IDENTIFIER: RN102047495; LOCATION: Malakoff, Henderson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$2,500; ENFORCEMENT COORDINATOR: Jill Russell, (512) 239-4564; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(4) COMPANY: ASB ENTERPRISES, INCORPORATED dba Billee's Car Care; DOCKET NUMBER: 2011-2130-PST-E; IDENTIFIER: RN101817757; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: gasoline dispensing; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks (USTs); 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 by failing to provide release detection for the piping associated with the USTs; 30 TAC §115.246(7)(A) and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain Stage II records at the station and making them immediately available for inspection upon request by agency personnel; 30 TAC §115.242(1)(C) and THSC, §382.085(b), by failing to upgrade the Stage II equipment to onboard refueling vapor recovery compatible systems; 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a) by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; and 30 TAC §115.245(2) and THSC, §382.085(b) by failing to verify proper operation of the Stage II equipment at least once every 12 months and the Stage II vapor space manifolding and dynamic back pressure at least once every 36 months; PENALTY: \$18,213; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5825; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(5) COMPANY: BAY AREA HEALTHCARE GROUP, LTD. dba Corpus Christi Medical Center Northwest; DOCKET NUMBER: 2011-1857-PST-E; IDENTIFIER: RN102978160; LOCATION: Corpus Christi, Nueces County; TYPE OF FACILITY: generator; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 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; 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); and 30 TAC §334.10(b), by failing to maintain the UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: \$7,576; ENFORCEMENT COORDINATOR: Wallace Myers, (512) 239-6580; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(6) COMPANY: Bradley Sessums dba Sessums Service Station; DOCKET NUMBER: 2012-0037-PST-E; IDENTIFIER: RN101791788; LOCATION: Blossom, Lamar 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 suction piping associated with the underground storage tanks (USTs); and 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the UST system; PENALTY: \$5,150; ENFORCEMENT COORDINATOR: Mike Pace, (817) 588-5933; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(7) COMPANY: Cameron Technologies US, Incorporated; DOCKET NUMBER: 2012-0011-AIR-E; IDENTIFIER: RN102172749; LOCATION: Odessa, Midland County; TYPE OF FACILITY: equipment manufacturing site; RULE VIOLATED: 30 TAC §106.433(8) and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain sufficient records in order to demonstrate compliance with the Permit by Rule (PBR) for Surface Coating; 30 TAC §106.452(2)(C) and THSC, §382.085(b), by failing to maintain sufficient records in order to demonstrate compliance with the PBR for Dry Abrasive Cleaning; 30 TAC §106.433(2)(C) and THSC, §382.085(b), by failing to store all new and used coatings and solvents in closed containers; 30 TAC §106.433(7)(C) and THSC, §382.085(b), by failing to conduct surface coating operations at least 50 feet from the property line; and 30 TAC §106.452(2)(B) and THSC, §382.085(b), by failing to conduct dry abrasive cleaning operations at least 500 feet from any structure not occupied or used solely by the owner of the site; PENALTY: \$5,250; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 9900 West IH 20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(8) COMPANY: Cimarron Municipal Utility District; DOCKET NUMBER: 2012-0305-PWS-E; IDENTIFIER: RN102693421; LOCATION: Houston, Harris County; TYPE OF FACILITY: public water system; RULE VIOLATED: 30 TAC §290.45(b)(1)(D)(iv) and Texas Health and Safety Code, §341.0315(c), by failing to provide an elevated storage capacity of 100 gallons per connection; PENALTY: \$1,500; ENFORCEMENT COORDINATOR: Bridgett Lee, (512) 239-2565; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(9) COMPANY: City of Goldthwaite; DOCKET NUMBER: 2012-0240-PWS-E; IDENTIFIER: RN101409134; LOCATION: Goldthwaite, Mills County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4) and Texas

Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes based on the running annual average; PENALTY: \$172; ENFORCEMENT COORDINATOR: Katy Schumann, (512) 239-2602; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(10) COMPANY: David Maddox dba M M Food Mart 1; DOCKET NUMBER: 2011-2183-PST-E; IDENTIFIER: RN102284387; LOCATION: Seven Points, Henderson 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 proper release detection for the product piping associated with the underground storage tank system; PENALTY: \$2,004; ENFORCEMENT COORDINATOR: Philip Aldridge, (512) 239-0855; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(11) COMPANY: Davis Gas Processing, Incorporated; DOCKET NUMBER: 2011-2008-AIR-E; IDENTIFIER: RN100217686; LOCATION: Big Lake, Reagan County; TYPE OF FACILITY: natural gas compression and treatment plant; RULE VIOLATED: 30 TAC §116.115(c) and §122.143(4); Permit Number 48944, Special Conditions (SC) Number 1; Federal Operating Permit (FOP) Number O3060, Special Terms and Conditions (STC) Number 5 and General Terms and Conditions (GTC); and Texas Health and Safety (THSC), by failing to prevent unauthorized emissions, during an emissions event (Incident Number 155062) that began on May 24, 2011. Since this emissions event was reported late, the Respondent is precluded from asserting an affirmative defense under 30 TAC §101.222; 30 TAC §101.201(a) and THSC, §382.085(b), by failing to submit an initial notification for Incident Number 155062 within 24 hours after discovery of the emissions event; and 30 TAC §116.115(c) and §122.143(4); Permit Number 48944, SC Number 1; FOP Number O3060, STC Number 5 and GTC; and THSC, §382.085(b), by failing to prevent unauthorized emissions; 30 TAC §101.201(a) and THSC, §382.085(b), by failing to submit an initial notification for Incident Number 156106 within 24 hours after discovery of the emissions event; and 30 TAC §101.201(a) and THSC, §382.085(b), by failing to submit an initial notification for Incident Number 157881 within 24 hours after discovery of the emissions event; PENALTY: \$14,161; ENFORCEMENT COORDINATOR: Kimberly Morales, (713) 422-8938; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (325) 655-9479.

(12) COMPANY: Ellis County; DOCKET NUMBER: 2012-0201-PST-E; IDENTIFIER: RN101552016; LOCATION: Midlothian, Ellis 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: Jorge Ibarra, P.E., (817) 588-5890; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(13) COMPANY: Haider Corporation; DOCKET NUMBER: 2012-0268-PST-E; IDENTIFIER: RN102718491; LOCATION: Wichita Falls, Wichita County; TYPE OF FACILITY: convenience store with retail sales of gasoline products; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank system; PENALTY: \$2,250; ENFORCEMENT COORDINATOR: Jorge Ibarra, P.E., (817) 588-5890; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(14) COMPANY: I R Enterprises, Incorporated dba Stop N In; DOCKET NUMBER: 2011-2075-PST-E; IDENTIFIER: RN100879634; LOCATION: Houston, Harris County; TYPE OF

FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.42(i), by failing to inspect all sumps, manways, overspill containers or catchment basins associated with a underground storage tank (UST) system at least once every 60 days to assure that their sides, bottoms, and any penetration points are maintained liquid-tight and free of liquid and debris; and 30 TAC §334.49(a)(1), (c)(2)(C), and (4), and TWC, §26.3475(d), by failing to ensure corrosion protection is provided for the UST system, by failing to inspect the impressed current cathodic protection system at least once every three years, and also by failing to test the corrosion protection system for operability and adequacy of protection at a frequency of at least three years; PENALTY: \$4,451; ENFORCEMENT COORDINATOR: Bridgett Lee, (512) 239-2565; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(15) COMPANY: J & M TRUCK TIRE SHOP, INCORPORATED; DOCKET NUMBER: 2011-2101-MSW-E; IDENTIFIER: RN103177051; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: used tire wholesale; RULE VIOLATED: 30 TAC §328.56(d)(2) and §328.60(a), by failing to obtain a scrap tire storage site registration prior to storing more than 500 used or scrap tires on the ground or 2,000 used or scrap tires in containers; and 30 TAC §330.15(c), by failing to prevent the unauthorized discharge of municipal solid waste; PENALTY: \$10,000; ENFORCEMENT COORDINATOR: Philip Aldridge, (512) 239-0855; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(16) COMPANY: LANE PLATING WORKS, INCORPORATED dba Lane Plating; DOCKET NUMBER: 2011-0662-IHW-E; IDENTIFIER: RN100597707; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: electroplating processing; RULE VIOLATED: 30 TAC §335.2(a), by failing to prevent the unauthorized disposal of hazardous waste; 30 TAC §335.69(a) and 40 Code of Federal Regulations (CFR) §262.34(a), by failing to transfer hazardous waste off-site within the allotted accumulation time limit for small quantity generators; 30 TAC §335.69(f) and 40 CFR §262.34(a), by failing to submit annual waste summaries for the calendar years 2008 and 2009; 30 TAC §335.4, by failing to prevent the unauthorized discharge of an industrial solid waste; and 30 TAC §335.9(a)(1), by failing to maintain records of all hazardous and industrial solid waste activities; PENALTY: \$28,350; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5825; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(17) COMPANY: Larry J. Appelt; DOCKET NUMBER: 2011-2345-MSW-E; IDENTIFIER: RN106002389; LOCATION: Hallettsville, Lavaca County; TYPE OF FACILITY: unauthorized disposal of municipal solid waste (MSW); RULE VIOLATED: 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of MSW; PENALTY: \$1,050; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(18) COMPANY: Mark Stowe and Shirley Stowe; DOCKET NUMBER: 2012-0375-PST-E; IDENTIFIER: RN106317365; LOCATION: Zavalla, Angelina County; TYPE OF FACILITY: land clearing and road maintenance operations; 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: \$1,876; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512)



239-0577; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(19) COMPANY: Motiva Enterprises LLC; DOCKET NUMBER: 2011-2212-AIR-E; IDENTIFIER: RN100209451; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: petroleum manufacturing; RULE VIOLATED: 30 TAC §§101.20(3), 116.715(a) and (c)(7), and 122.143(4), Texas Health and Safety Code (THSC), §382.085(b), Flexible Permit Numbers 8404 and PSDTX1062M1, Special Conditions Numbers 1 and 5, and Federal Operating Permit (FOP) Number O1386, Special Terms and Conditions (STC) Number 16A and General Terms and Conditions (GTCs), by failing to prevent unauthorized emissions. Since the emissions event was reported late, the Respondent is precluded from asserting an affirmative defense under 30 TAC §101.222; and 30 TAC §101.201(a)(1)(A) and (B), and §122.143(4), THSC, §382.085(b), FOP Number O1386, STC Number 2F, and GTCs, by failing to submit the initial notification for a reportable emissions event within 24 hours of discovery; PENALTY: \$10,062; ENFORCEMENT COORDINATOR: Roshondra Lowe, (713) 767-3553; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(20) COMPANY: Naomi Hagerman dba 100th Meridian Stop; DOCKET NUMBER: 2011-2153-PST-E; IDENTIFIER: RN102274958; LOCATION: Wheeler, Wheeler County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (C) and (5)(B)(ii), by failing to timely renew a previously issued TCEQ delivery certificate by submitting a properly completed underground storage tank (UST) registration and self-certification form within 30 days of the ownership change; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; 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: \$6,230; ENFORCEMENT COORDINATOR: Clinton Sims, (512) 239-6933; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(21) COMPANY: Rhodia Incorporated; DOCKET NUMBER: 2012-0279-IWD-E; IDENTIFIER: RN100219773; LOCATION: Vernon, Wilberger County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: Texas Pollutant Discharge Elimination System Permit Number WQ0002537000, 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: \$6,128; ENFORCEMENT COORDINATOR: Jorge Ibarra, P.E., (817) 588-5890; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(22) COMPANY: Shahzab & Sara, Incorporated dba Hopcus Mini Mart; DOCKET NUMBER: 2011-0849-PST-E; IDENTIFIER: RN100910397; LOCATION: Houston, Harris 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 for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$2,550; ENFORCEMENT COORDINATOR: Audra Benoit, (409) 899-8799; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(23) COMPANY: SHARDA CONVENIENCE STORE, INCORPORATED dba Cracker Barrel 5; DOCKET NUMBER: 2012-0319-PST-E; IDENTIFIER: RN103019832; LOCATION: Rockport, Aransas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A)

and (2), and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide release detection for the piping associated with the USTs; PENALTY: \$2,635; ENFORCEMENT COORDINATOR: Jeremy Escobar, (361) 825-3422; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(24) COMPANY: Sophorn Hem dba Kong Food Mart; DOCKET NUMBER: 2012-0233-PST-E; IDENTIFIER: RN102046091; LOCATION: Powderly, Lamar County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the underground storage tank (UST) system; and 30 TAC §334.10(b)(1)(B), by failing to maintain legible copies of all required records for the UST system; PENALTY: \$3,500; ENFORCEMENT COORDINATOR: Roshondra Lowe, (713) 767-3553; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(25) COMPANY: STAG MANAGEMENT INCORPORATED; DOCKET NUMBER: 2011-0663-IHW-E; IDENTIFIER: RN100597707; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: electroplating processing; RULE VIOLATED: 30 TAC §335.2(a), by failing to prevent the unauthorized disposal of hazardous waste; and 30 TAC §335.4, by failing to prevent the unauthorized discharge of an industrial solid waste; PENALTY: \$14,000; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5825; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(26) COMPANY: Stephen Craig Claybourn dba Pirates Cove; DOCKET NUMBER: 2011-2328-PST-E; IDENTIFIER: RN104315189; LOCATION: Perrin, Jack County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; 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: \$5,626; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(27) COMPANY: TA Operating LLC; DOCKET NUMBER: 2012-0133-MWD-E; IDENTIFIER: RN105137020; LOCATION: Carl's Corner, Hill County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0014769001, Effluent Limitations and Monitoring Requirements Numbers 1 and 6, by failing to comply with permitted effluent limits; PENALTY: \$35,875; ENFORCEMENT COORDINATOR: Lanae Foard, (512) 239-2554; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(28) COMPANY: Texas Airstream Harbor, Incorporated; DOCKET NUMBER: 2012-0246-MWD-E; IDENTIFIER: RN103014445; LOCATION: Zavalla, Angelina County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: Texas Pollutant Discharge Elimination System Permit Number WQ0011895001, 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: \$3,982; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5886; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(29) COMPANY: Thomas Excavating, Incorporated; DOCKET NUMBER: 2012-0211-WQ-E; IDENTIFIER: RN106310451; LOCATION: Aledo, Parker County; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge storm water associated with construction activities; PENALTY: \$938; ENFORCEMENT COORDINATOR: Jill Russell, (512)239-4564; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(30) COMPANY: VST Enterprises Incorporated dba Sunny's Food Mart 4; DOCKET NUMBER: 2012-0372-PST-E; IDENTIFIER: RN102055621; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; and 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the UST system; PENALTY: \$1,300; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201202100

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: April 24, 2012



#### April 2012 Draft Water Quality Management Plan Update

The Texas Commission on Environmental Quality (TCEQ or commission) announces the availability of the draft April 2012 Update to the Water Quality Management Plan for the State of Texas (draft WQMP update).

The Water Quality Management Plan (WQMP) is developed and promulgated in accordance with the requirements of federal Clean Water Act, §208. The draft WQMP update includes projected effluent limits of indicated domestic dischargers useful for water quality management planning in future permit actions. Once the commission certifies a WQMP update, the update is submitted to the United States Environmental Protection Agency (EPA) for approval. For some Texas Pollutant Discharge Elimination System (TPDES) permits, the EPA's approval of a corresponding WQMP update is a necessary precondition to TPDES permit issuance by the commission. The draft WQMP update may contain service area populations for listed wastewater treatment facilities, designated management agency information, and total maximum daily load (TMDL) updates.

A copy of the draft April 2012 WQMP update may be found on the commission's Web site located at [http://www.tceq.texas.gov/waterquality/assessment/WQmanagement\\_updates.html](http://www.tceq.texas.gov/waterquality/assessment/WQmanagement_updates.html). A copy of the draft may also be viewed at the TCEQ Library, Building A, 12100 Park 35 Circle, Austin, Texas.

Written comments on the draft WQMP update may be submitted to Nancy Vignali, Texas Commission on Environmental Quality, Water Quality Division, MC 150, P.O. Box 13087, Austin, Texas 78711-3087.

Comments may also be faxed to (512) 239-4420, but must be followed up with the submission and receipt of the written comments within three working days of when they were faxed. Written comments must be submitted no later than 5:00 p.m. on June 4, 2012. For further information, or questions, please contact Ms. Vignali at (512) 239-1303 or by email at [Nancy.Vignali@tceq.texas.gov](mailto:Nancy.Vignali@tceq.texas.gov).

TRD-201202097

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: April 24, 2012



#### Enforcement Orders

An agreed order was entered regarding Elena Hernandez, Docket No. 2011-0410-PST-E on March 27, 2012 assessing \$5,250 in administrative penalties with \$1,050 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 WILLIAMS CONCRETE PRODUCTS, INC., Docket No. 2011-0629-IWD-E on March 27, 2012 assessing \$1,260 in administrative penalties with \$252 deferred.

Information concerning any aspect of this order may be obtained by contacting Steve Villatoro, Enforcement Coordinator at (512) 239-4930, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Donald Mayo, Sr. dba Donald Mayo Texaco, Docket No. 2011-0706-PST-E on March 27, 2012 assessing \$6,629 in administrative penalties with \$1,325 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding FARHAT BROTHERS, INC. dba Magic Mikes 6, Docket No. 2011-0802-PST-E on March 27, 2012 assessing \$5,100 in administrative penalties with \$1,020 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 Kouros K Babaahmadi dba KKS Auto Sales, Docket No. 2011-0805-AIR-E on March 27, 2012 assessing \$1,675 in administrative penalties with \$335 deferred.

Information concerning any aspect of this order may be obtained by contacting Nadia Hameed, Enforcement Coordinator at (713) 767-3629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BORDER STOP, INC., Docket No. 2011-0872-PST-E on March 27, 2012 assessing \$2,379 in administrative penalties with \$475 deferred.

Information concerning any aspect of this order may be obtained by contacting Bridget Lee, Enforcement Coordinator at (512) 239-2565, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding KNA Business, Inc. dba Hardy Food Store, Docket No. 2011-1006-PST-E on March 27, 2012 assessing \$2,250 in administrative penalties with \$450 deferred.

Information concerning any aspect of this order may be obtained by contacting Jeremy Escobar, Enforcement Coordinator at (361) 825-3422, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mohammad Saleem dba Cleburne Stop, Docket No. 2011-1234-PST-E on March 27, 2012 assessing \$2,250 in administrative penalties with \$450 deferred.

Information concerning any aspect of this order may be obtained by contacting Jill Russell, Enforcement Coordinator at (512) 239-4564, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Cisco, Docket No. 2011-1248-MWD-E on March 27, 2012 assessing \$7,320 in administrative penalties with \$1,464 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 AMEJ Corporation dba Bridgeport Truck Stop, Docket No. 2011-1297-PST-E on March 27, 2012 assessing \$3,879 in administrative penalties with \$775 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Town of Woodloch, Docket No. 2011-1326-MWD-E on March 27, 2012 assessing \$5,100 in administrative penalties with \$1,020 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 Ian L. Whitehead and Melissa Duvall, Docket No. 2011-1327-MLM-E on March 27, 2012 assessing \$7,200 in administrative penalties with \$1,440 deferred.

Information concerning any aspect of this order may be obtained by contacting Steve Villatoro, Enforcement Coordinator at (512) 239-4930, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jack White Enterprises, Inc., Docket No. 2011-1340-PST-E on March 27, 2012 assessing \$5,250 in administrative penalties with \$1,050 deferred.

Information concerning any aspect of this order may be obtained by contacting Jennifer Graves, Enforcement Coordinator at (956) 430-6023, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PVSS ENTERPRISES, INC. dba Citgo Kwik Mart, Docket No. 2011-1342-PST-E on March 27, 2012 assessing \$6,500 in administrative penalties with \$1,300 deferred.

Information concerning any aspect of this order may be obtained by contacting Steve Villatoro, Enforcement Coordinator at (512) 239-4930, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding T'S EXPRESS, INC. dba Express Food Mart, Docket No. 2011-1343-PST-E on March 27, 2012 assessing \$2,730 in administrative penalties with \$546 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 Clean Harbors Deer Park, LLC, Docket No. 2011-1348-IHW-E on March 27, 2012 assessing \$5,450 in administrative penalties with \$1,090 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 MAHEK & MALIKA, Inc dba W & W Grocery, Docket No. 2011-1365-PST-E on March 27, 2012 assessing \$2,500 in administrative penalties with \$500 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 El Paso County Water Control and Improvement District No. 4, Docket No. 2011-1367-MWD-E on March 27, 2012 assessing \$6,250 in administrative penalties with \$1,250 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kohinoor Business, Inc. dba Chevron Food Mart, Docket No. 2011-1375-PST-E on March 27, 2012 assessing \$5,129 in administrative penalties with \$1,025 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding APPLETREE, INC. dba Mr. D'S No. 2, Docket No. 2011-1386-PST-E on March 27, 2012 assessing \$3,880 in administrative penalties with \$776 deferred.

Information concerning any aspect of this order may be obtained by contacting Michaelle Sherlock, Enforcement Coordinator at (210) 403-4076, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Houston, Docket No. 2011-1394-PST-E on March 27, 2012 assessing \$900 in administrative penalties with \$180 deferred.

Information concerning any aspect of this order may be obtained by contacting Wallace Myers, Enforcement Coordinator at (512) 239-6580, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding NEW WEST AMERICAN INCORPORATED dba Circle A Food Mart, Docket No. 2011-1398-PST-E on March 27, 2012 assessing \$4,610 in administrative penalties with \$922 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Greimel, Enforcement Coordinator at (512) 239-

5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CODY COMPANY, INC., Docket No. 2011-1413-PST-E on March 27, 2012 assessing \$2,005 in administrative penalties with \$401 deferred.

Information concerning any aspect of this order may be obtained by contacting Clinton Sims, Enforcement Coordinator at (512) 239-6933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding INVISTA S.a.r.l., Docket No. 2011-1420-AIR-E on March 27, 2012 assessing \$4,725 in administrative penalties with \$945 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Boling Municipal Water District, Docket No. 2011-1422-MWD-E on March 27, 2012 assessing \$2,520 in administrative penalties with \$504 deferred.

Information concerning any aspect of this order may be obtained by contacting Jeremy Escobar, Enforcement Coordinator at (361) 825-3422, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Wilbarger Creek Municipal Utility District No. 2, Docket No. 2011-1423-MWD-E on March 27, 2012 assessing \$3,585 in administrative penalties with \$717 deferred.

Information concerning any aspect of this order may be obtained by contacting Jeremy Escobar, Enforcement Coordinator at (361) 825-3422, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ROBANA, INC. dba All Seasons Food Mart, Docket No. 2011-1425-PST-E on March 27, 2012 assessing \$5,100 in administrative penalties with \$1,020 deferred.

Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (713) 767-3682, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kaufman County Fresh Water Supply District No. 1A, Docket No. 2011-1427-MWD-E on March 27, 2012 assessing \$5,550 in administrative penalties with \$1,110 deferred.

Information concerning any aspect of this order may be obtained by contacting Stephen Thompson, Enforcement Coordinator at (512) 239-2558, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding James L. MacGinnis, Docket No. 2011-1445-WOC-E on March 27, 2012 assessing \$1,688 in administrative penalties with \$337 deferred.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (361) 825-3425, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding S. W. Greer Company, Inc., Docket No. 2011-1447-PST-E on March 27, 2012 assessing \$2,500 in administrative penalties with \$500 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 JAE'S ALL SEASONS MARKET, INC. dba Jae's All Season Market 1, Docket No. 2011-1448-PST-E on March 27, 2012 assessing \$5,000 in administrative penalties with \$1,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrea Park, Enforcement Coordinator at (512) 239-4575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding KING FUELS, INC. dba Noorans Diamond, Docket No. 2011-1456-PST-E on March 27, 2012 assessing \$4,500 in administrative penalties with \$900 deferred.

Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Avali Enterprise, Inc. dba Super Food Mart, Docket No. 2011-1458-PST-E on March 27, 2012 assessing \$2,750 in administrative penalties with \$550 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 Aldine Independent School District, Docket No. 2011-1484-MWD-E on March 27, 2012 assessing \$5,760 in administrative penalties with \$1,152 deferred.

Information concerning any aspect of this order may be obtained by contacting Jennifer Graves, Enforcement Coordinator at (956) 430-6023, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Tom Durant dba Classic Clean Fuels, Docket No. 2011-1485-PST-E on March 27, 2012 assessing \$4,129 in administrative penalties with \$825 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jamal Jafari dba J & K Food Mart, Docket No. 2011-1493-PST-E on March 27, 2012 assessing \$2,350 in administrative penalties with \$470 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 LANCASTER EXPRESS, INC., Docket No. 2011-1494-PST-E on March 27, 2012 assessing \$4,590 in administrative penalties with \$918 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Pace, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CDK INVESTMENTS, INC. dba Mr. D's Diamond Shamrock 1, Docket No. 2011-1495-PST-E on March 27, 2012 assessing \$3,880 in administrative penalties with \$776 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 Arari 1 Enterprise dba MPA Kwik Stop, Docket No. 2011-1497-PST-E on March 27, 2012 assessing \$2,629 in administrative penalties with \$525 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 The Boeing Company, Docket No. 2011-1503-AIR-E on March 27, 2012 assessing \$2,050 in administrative penalties with \$410 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 WEST END INTEREST, INC. dba West End Food Mart, Docket No. 2011-1513-PST-E on March 27, 2012 assessing \$2,837 in administrative penalties with \$567 deferred.

Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Thomas Mike Macon dba Charlie's Exxon & Grocery, Docket No. 2011-1527-PST-E on March 27, 2012 assessing \$5,129 in administrative penalties with \$1,025 deferred.

Information concerning any aspect of this order may be obtained by contacting Jill Russell, Enforcement Coordinator at (512) 239-4564, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding KISMAT, Inc. dba ANV Quick Stop, Docket No. 2011-1535-PST-E on March 27, 2012 assessing \$2,550 in administrative penalties with \$510 deferred.

Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (713) 767-3682, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding David Maddox dba M & M Food Mart, Docket No. 2011-1553-PST-E on March 27, 2012 assessing \$2,004 in administrative penalties with \$400 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bahig Adib dba Bonnieview Mobil, Docket No. 2011-1554-PST-E on March 27, 2012 assessing \$2,250 in administrative penalties with \$450 deferred.

Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mosheim Water Supply Corporation, Docket No. 2011-1571-PWS-E on March 27, 2012 assessing \$360 in administrative penalties with \$72 deferred.

Information concerning any aspect of this order may be obtained by contacting Michaelle Sherlock, Enforcement Coordinator at (210) 403-4076, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ambassador Jet Center, Ltd. dba Ambassador Aviation, Docket No. 2011-1573-PST-E on March 27, 2012 assessing \$1,733 in administrative penalties with \$346 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Morton Valley Water Supply Corporation, Docket No. 2011-1588-PWS-E on March 27, 2012 assessing \$265 in administrative penalties with \$53 deferred.

Information concerning any aspect of this order may be obtained by contacting Katy Schumann, Enforcement Coordinator at (512) 239-2602, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Meghna Enterprise, Inc. dba Four Corners Exxon, Docket No. 2011-1591-PST-E on March 27, 2012 assessing \$4,500 in administrative penalties with \$900 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding I.L.F. Enterprises, Inc. dba Mario Food Mart, Docket No. 2011-1613-PST-E on March 27, 2012 assessing \$2,550 in administrative penalties with \$510 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kashmir Singh dba City Mart, Docket No. 2011-1651-PST-E on March 27, 2012 assessing \$2,505 in administrative penalties with \$501 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Johnny C. Brewer, Jr. dba Brewers Exxon, Docket No. 2011-1656-PST-E on March 27, 2012 assessing \$2,379 in administrative penalties with \$475 deferred.

Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-2554, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ARIJA & ALISHAN INVESTMENT, INC. dba El Amigo, Docket No. 2011-1657-PST-E on March 27, 2012 assessing \$2,550 in administrative penalties with \$510 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3034, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Navasota Independent School District, Docket No. 2011-1662-PST-E on March 27, 2012 assessing \$1,125 in administrative penalties with \$225 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 HAIQA, INC. dba Haiqa Fuels, Docket No. 2011-1675-PST-E on March 27, 2012 assessing \$2,525 in administrative penalties with \$505 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding STEPHENVILLE MOBILE HOME PARK, LTD., Docket No. 2011-1677-MWD-E on March 27, 2012 assessing \$3,380 in administrative penalties with \$676 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3034, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ralph West dba Precision Irrigation Systems, Docket No. 2011-1710-LII-E on March 27, 2012 assessing \$188 in administrative penalties with \$37 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 KM Liquids Terminals LLC, Docket No. 2011-1726-AIR-E on March 27, 2012 assessing \$224 in administrative penalties with \$44 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Phi Dinh Nguyen dba Aldine Food Store, Docket No. 2011-1733-PST-E on March 27, 2012 assessing \$2,350 in administrative penalties with \$470 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Fallbrook Business Inc dba POWER MART #16, Docket No. 2011-1734-PST-E on March 27, 2012 assessing \$4,500 in administrative penalties with \$900 deferred.

Information concerning any aspect of this order may be obtained by contacting Jennifer Graves, Enforcement Coordinator at (956) 430-6023, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Carrizo Springs, Docket No. 2011-1736-MWD-E on March 27, 2012 assessing \$4,410 in administrative penalties with \$882 deferred.

Information concerning any aspect of this order may be obtained by contacting Jennifer Graves, Enforcement Coordinator at (956) 430-6023, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Harris County Municipal Utility District No. 189, Docket No. 2011-1755-MWD-E on March 27, 2012 assessing \$5,190 in administrative penalties with \$1,038 deferred.

Information concerning any aspect of this order may be obtained by contacting Lanae Foard, Enforcement Coordinator at (512) 239-2554, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SHANAR BROS. ENTERPRISES, INC. dba WEST RD. VALERO, Docket No. 2011-1759-PST-E on March 27, 2012 assessing \$2,250 in administrative penalties with \$450 deferred.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (361) 825-3425, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jena Business, Inc. dba The Store of Florence, Docket No. 2011-1772-PST-E on March 27, 2012 assessing \$2,629 in administrative penalties with \$525 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding San Antonio Water System, Docket No. 2011-1774-EAQ-E on March 27, 2012 assessing \$1,500 in administrative penalties with \$300 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 White River Development Co., Inc. dba Rio Blanca Estates, Docket No. 2011-1778-PWS-E on March 27, 2012 assessing \$250 in administrative penalties with \$50 deferred.

Information concerning any aspect of this order may be obtained by contacting Katy Schumann, Enforcement Coordinator at (512) 239-2602, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Cottonwood Shores, Docket No. 2011-1779-PWS-E on March 27, 2012 assessing \$654 in administrative penalties with \$130 deferred.

Information concerning any aspect of this order may be obtained by contacting Michaelle Sherlock, Enforcement Coordinator at (210) 403-4076, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding WOLFENSON ELECTRIC, INC., Docket No. 2011-1802-PST-E on March 27, 2012 assessing \$2,500 in administrative penalties with \$500 deferred.

Information concerning any aspect of this order may be obtained by contacting Jill Russell, Enforcement Coordinator at (512) 239-4564, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Larry W. Whiteside, Docket No. 2011-1811-LII-E on March 27, 2012 assessing \$225 in administrative penalties with \$45 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 CMH Parks, Inc., Docket No. 2011-1820-MWD-E on March 27, 2012 assessing \$1,070 in administrative penalties with \$214 deferred.

Information concerning any aspect of this order may be obtained by contacting Jennifer Graves, Enforcement Coordinator at (956) 430-6023, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Laguna Tres, Inc., Docket No. 2011-1845-PWS-E on March 27, 2012 assessing \$310 in administrative penalties with \$62 deferred.

Information concerning any aspect of this order may be obtained by contacting Katy Schumann, Enforcement Coordinator at (512) 239-2602, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Silverton Oil Co., Inc., Docket No. 2011-1860-PST-E on March 27, 2012 assessing \$2,629 in administrative penalties with \$525 deferred.

Information concerning any aspect of this order may be obtained by contacting Katy Schumann, Enforcement Coordinator at (512) 239-2602, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding N & S TRADING LLC dba N & S Food Mart, Docket No. 2011-1877-PST-E on March 27, 2012 assessing \$2,500 in administrative penalties with \$500 deferred.

Information concerning any aspect of this order may be obtained by contacting Theresa Stephens, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding HOULETTE PETROLEUM, INC., Docket No. 2011-1888-PST-E on March 27, 2012 assessing \$1,988 in administrative penalties with \$397 deferred.

Information concerning any aspect of this order may be obtained by contacting Jeremy Escobar, Enforcement Coordinator at (361) 825-3422, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Hewitt, Docket No. 2011-1923-PWS-E on March 27, 2012 assessing \$630 in administrative penalties with \$126 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrea Linson-Mgbeoduru, Enforcement Coordinator at (512) 239-1482, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MLLCA INC dba Kathy's Shell, Docket No. 2011-1953-PST-E on March 27, 2012 assessing \$3,986 in administrative penalties with \$797 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding PARK AVENUE CONSTRUCTION LTD, Docket No. 2011-2009-WQ-E on March 27, 2012 assessing \$700 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Miguel A. Garcia, Docket No. 2011-2071-WOC-E on March 27, 2012 assessing \$210 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.

A field citation was entered regarding Robert Lopez, Docket No. 2011-2072-WOC-E on March 27, 2012 assessing \$210 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.

TRD-201202128

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: April 25, 2012



#### Enforcement Orders

An agreed order was entered regarding Monticello Drive Estates, Inc., Docket No. 2011-0554-PWS-E on April 4, 2012 assessing \$1,570 in administrative penalties with \$314 deferred.

Information concerning any aspect of this order may be obtained by contacting Bridget Lee, Enforcement Coordinator at (512) 239-2565, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding AASIF CORPORATION dba Delaware Food Mart, Docket No. 2011-1051-PST-E on April 4, 2012 assessing \$2,625 in administrative penalties with \$525 deferred.

Information concerning any aspect of this order may be obtained by contacting Elvia Maske, Enforcement Coordinator at (512) 239-0789, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Walia Ventures Inc dba Express Food Mart, Docket No. 2011-1096-PST-E on April 4, 2012 assessing \$2,500 in administrative penalties with \$500 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 Park Hills Baptist Church of Austin, Texas, Docket No. 2011-1205-PWS-E on April 4, 2012 assessing \$1,210 in administrative penalties with \$242 deferred.

Information concerning any aspect of this order may be obtained by contacting Bridget Lee, Enforcement Coordinator at (512) 239-2565, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Young G. Kim dba Kim's Service Center, Docket No. 2011-1399-PST-E on April 4, 2012 assessing \$2,679 in administrative penalties with \$535 deferred.

Information concerning any aspect of this order may be obtained by contacting Stephen Thompson, Enforcement Coordinator at (512) 239-2558, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Carroll Water Supply Corporation, Docket No. 2011-1446-PWS-E on April 4, 2012 assessing \$570 in administrative penalties with \$114 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrea Linson-Mgbeoduru, Enforcement Coordinator at (512) 239-1482, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Coastal Investment Group, LLC dba Super Stop Discount Beer & Wine, Docket No. 2011-1454-PST-E on April 4, 2012 assessing \$2,004 in administrative penalties with \$400 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 City of Runaway Bay, Docket No. 2011-1487-PWS-E on April 4, 2012 assessing \$377 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Bridget Lee, Enforcement Coordinator at (512) 239-2565, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BOH Indian Springs TX, L.P., Docket No. 2011-1499-EAQ-E on April 4, 2012 assessing \$1,875 in administrative penalties with \$375 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Bardwell, Docket No. 2011-1530-MWD-E on April 4, 2012 assessing \$4,110 in administrative penalties with \$822 deferred.

Information concerning any aspect of this order may be obtained by contacting Merilee 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 RAAA, Inc. dba Quick Way 2, Docket No. 2011-1541-PST-E on April 4, 2012 assessing \$2,600 in administrative penalties with \$520 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 PALO DURO SERVICE COMPANY, INC. dba Glider Base Estates PWS, Docket No. 2011-1582-MLM-E on April 4, 2012 assessing \$939 in administrative penalties with \$187 deferred.

Information concerning any aspect of this order may be obtained by contacting Bridget Lee, Enforcement Coordinator at (512) 239-2565, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding A R ENTERPRISES, INC. dba Sunny Food Store, Docket No. 2011-1614-PST-E on April 4, 2012 assessing \$2,300 in administrative penalties with \$460 deferred.

Information concerning any aspect of this order may be obtained by contacting Merilee 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 IDEAL BUSINESS, INC. dba QUICK MART, Docket No. 2011-1615-PST-E on April 4, 2012 assessing \$2,129 in administrative penalties with \$425 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 City of Streetman, Docket No. 2011-1624-MWD-E on April 4, 2012 assessing \$5,844 in administrative penalties with \$1,168 deferred.

Information concerning any aspect of this order may be obtained by contacting Jill Russell, Enforcement Coordinator at (512) 239-4564, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding KOTRIWALLA, L.L.C. dba ZS Corner Food Mart, Docket No. 2011-1655-PST-E on April 4, 2012 assessing \$2,250 in administrative penalties with \$450 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding N H A J, L.C. dba Bestop 4, Docket No. 2011-1658-PST-E on April 4, 2012 assessing \$6,229 in administrative penalties with \$1,245 deferred.

Information concerning any aspect of this order may be obtained by contacting Thane Barkley, Enforcement Coordinator at (512) 239-2552, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Upham Oil & Gas Company, L.P., Docket No. 2011-1660-AIR-E on April 4, 2012 assessing \$1,875 in administrative penalties with \$375 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.

An agreed order was entered regarding City of Bellevue, Docket No. 2011-1673-PWS-E on April 4, 2012 assessing \$1,143 in administrative penalties with \$228 deferred.

Information concerning any aspect of this order may be obtained by contacting Michaelle Sherlock, Enforcement Coordinator at (210) 403-4076, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SPILLANE & ASSOCIATES, INC., Docket No. 2011-1682-EAQ-E on April 4, 2012 assessing \$1,500 in administrative penalties with \$300 deferred.

Information concerning any aspect of this order may be obtained by contacting Jeremy Escobar, Enforcement Coordinator at (361) 825-3422, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SUN SHINE STAR CORPORATION dba Sunrise Super Stop, Docket No. 2011-1687-PST-E on April 4, 2012 assessing \$2,300 in administrative penalties with \$460 deferred.



Information concerning any aspect of this order may be obtained by contacting Wallace Myers, Enforcement Coordinator at (512) 239-6580, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Luna Bell dba Express Food Mart, Docket No. 2011-1688-PST-E on April 4, 2012 assessing \$2,379 in administrative penalties with \$475 deferred.

Information concerning any aspect of this order may be obtained by contacting Tom Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding National Retail Properties, Inc. dba NNN National Retail Properties, Inc., Docket No. 2011-1694-PWS-E on April 4, 2012 assessing \$4,263 in administrative penalties with \$852 deferred.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (361) 825-3425, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bravo Aviation, L.L.C., Docket No. 2011-1704-PST-E on April 4, 2012 assessing \$1,500 in administrative penalties with \$300 deferred.

Information concerning any aspect of this order may be obtained by contacting Wallace Myers, Enforcement Coordinator at (512) 239-6580, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding NEW MART CORPORATION dba Go 4 It Food Store, Docket No. 2011-1705-PST-E on April 4, 2012 assessing \$2,424 in administrative penalties with \$484 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 South Houston Green Power, LLC, Docket No. 2011-1729-AIR-E on April 4, 2012 assessing \$2,175 in administrative penalties with \$435 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 National Oilwell Varco, L.P., Docket No. 2011-1739-AIR-E on April 4, 2012 assessing \$6,650 in administrative penalties with \$1,330 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Benoit, Enforcement Coordinator at (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ANA, INC. dba Ana Facility, Docket No. 2011-1751-PST-E on April 4, 2012 assessing \$5,300 in administrative penalties with \$1,060 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Acton Municipal Utility District, Docket No. 2011-1780-PWS-E on April 4, 2012 assessing \$1,430 in administrative penalties with \$286 deferred.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (361) 825-3425, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kaneka Texas Corporation, Docket No. 2011-1787-AIR-E on April 4, 2012 assessing \$1,400 in administrative penalties with \$280 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 DIXIE IN INC. dba Dixie Drive In, Docket No. 2011-1818-PST-E on April 4, 2012 assessing \$3,920 in administrative penalties with \$784 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 Hays-Porter Oil Co. LLC, Docket No. 2011-1871-PST-E on April 4, 2012 assessing \$2,379 in administrative penalties with \$475 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jee Sung Oh dba RCP Quick Stop, Docket No. 2011-1872-PST-E on April 4, 2012 assessing \$770 in administrative penalties with \$154 deferred.

Information concerning any aspect of this order may be obtained by contacting Katy Schumann, Enforcement Coordinator at (512) 239-2602, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Horizon Retail LLC dba MJs All Season Food Store, Docket No. 2011-1897-PST-E on April 4, 2012 assessing \$2,425 in administrative penalties with \$485 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Roosevelt Independent School District, Docket No. 2011-2031-PWS-E on April 4, 2012 assessing \$100 in administrative penalties with \$20 deferred.

Information concerning any aspect of this order may be obtained by contacting Katy Schumann, Enforcement Coordinator at (512) 239-2602, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Robinson, Docket No. 2011-2077-PWS-E on April 4, 2012 assessing \$768 in administrative penalties with \$153 deferred.

Information concerning any aspect of this order may be obtained by contacting Michaelle Sherlock, Enforcement Coordinator at (210) 403-4076, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hidalgo County Municipal Utility District No. 1, Docket No. 2011-2087-PWS-E on April 4, 2012 assessing \$1,160 in administrative penalties with \$232 deferred.

Information concerning any aspect of this order may be obtained by contacting Michaelle Sherlock, Enforcement Coordinator at (210) 403-4076, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Caldwell Tanks Inc, Docket No. 2011-2233-WQ-E on April 4, 2012 assessing \$700 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding, Mark T Foust, Docket No. 2011-2355-WOC-E on April 4, 2012 assessing \$210 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.

A field citation was entered regarding Juan Rios, Docket No. 2012-0019-WOC-E on April 4, 2012 assessing \$210 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.

TRD-201202129

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: April 25, 2012



#### Enforcement Orders

An order was entered regarding Edward Michael Ratliff, Docket No. 2010-1087-PST-E on April 16, 2012 assessing \$2,625 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 Teen Challenge of Texas, Docket No. 2010-1380-MWD-E on April 16, 2012 assessing \$23,595 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 CITGO Refining and Chemicals Company L.P., Docket No. 2010-1555-AIR-E on April 16, 2012 assessing \$11,653 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Anna M. Treadwell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding LAPORTE INDUSTRIES, L.L.C., Docket No. 2011-0298-PST-E on April 16, 2012 assessing \$4,550 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sharesa Y. Alexander, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Louis O'Connor, Docket No. 2011-0947-MLM-E on April 16, 2012 assessing \$3,192 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rudy Calderon, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding HIGH GABRIEL WATER SUPPLY CORPORATION, Docket No. 2011-1040-PWS-E on April 16, 2012 assessing \$3,841 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sharesa Y. Alexander, 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 Seaboard International Inc., Docket No. 2011-1173-PWS-E on April 16, 2012 assessing \$840 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Katy Schumann, Enforcement Coordinator at (512) 239-2602, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Guadalupe Rodriguez, Docket No. 2011-1206-PST-E on April 16, 2012 assessing \$5,250 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.

A default order was entered regarding Cecil D. Hutcheson dba Elm Grove Mobile Home Park, Docket No. 2011-1315-PWS-E on April 16, 2012 assessing \$21,030 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sharesa Y. Alexander, 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 Cargill Meat Solutions Corporation, Docket No. 2011-1347-IWD-E on April 16, 2012 assessing \$12,700 in administrative penalties with \$2,540 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 B. K. TRADING, INC. dba Speedy Stop 11, Docket No. 2011-1374-PST-E on April 16, 2012 assessing \$2,629 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Phillip 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 WALNUT HILL I-35 ENTERPRISES, L.L.C. dba Flash Mart, Docket No. 2011-1391-PST-E on April 16, 2012 assessing \$16,200 in administrative penalties with \$3,240 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Brazoria, Docket No. 2011-1529-MWD-E on April 16, 2012 assessing \$14,920 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 925-9336, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Flint Hills Resources Port Arthur, LLC, Docket No. 2011-1562-AIR-E on April 16, 2012 assessing \$46,450 in administrative penalties with \$9,290 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 Texas Tile Manufacturing LLC, Docket No. 2011-1583-IWD-E on April 16, 2012 assessing \$8,484 in administrative penalties with \$1,696 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.

A default order was entered regarding Carlos R. Lopez, Docket No. 2011-1652-WOC-E on April 16, 2012 assessing \$1,367 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sharesa Y. Alexander, 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 Roxton, Docket No. 2011-1679-MWD-E on April 16, 2012 assessing \$8,835 in administrative penalties with \$1,767 deferred.

Information concerning any aspect of this order may be obtained by contacting Jill Russell, Enforcement Coordinator at (512) 239-4564, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Lovelady, Docket No. 2011-1699-MWD-E on April 16, 2012 assessing \$10,200 in administrative penalties.

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 Triumph Structures - East Texas, Inc., Docket No. 2011-1713-IHW-E on April 16, 2012 assessing \$10,470 in administrative penalties with \$2,094 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 ONEOK Hydrocarbon Southwest, LLC, Docket No. 2011-1714-AIR-E on April 16, 2012 assessing \$9,650 in administrative penalties with \$1,930 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 Igloo Products Corp., Docket No. 2011-1806-IWD-E on April 16, 2012 assessing \$13,620 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ascend Performance Materials LLC, Docket No. 2011-1808-AIR-E on April 16, 2012 assessing \$10,000 in administrative penalties with \$2,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator at (512) 239-1044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Air Products LLC, Docket No. 2011-1886-AIR-E on April 16, 2012 assessing \$7,930 in administrative penalties with \$1,586 deferred.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator at (512) 239-1044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kinder Morgan Tejas Pipeline LLC, Docket No. 2011-1904-AIR-E on April 16, 2012 assessing \$12,650 in administrative penalties with \$2,530 deferred.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator at (512) 239-1044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Al's Investments, Inc. dba Al's North Texas Property Management, Inc., Docket No. 2011-1993-PWS-E on April 16, 2012 assessing \$6,220 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Katy Schumann, Enforcement Coordinator at (512) 239-2602, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201202130

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: April 25, 2012



Notice of Receipt of Application and Intent to Obtain Municipal Solid Waste Permit Amendment Proposed Permit No. 1038A

APPLICATION. City of Dalhart, P.O. Box 2005, Dalhart, Dallam County, Texas 79022-6005, has applied to the Texas Commission on Environmental Quality (TCEQ) for a Type IAE and Type IV AE MSW permit amendment to authorize operation of Type IVAE cells at a rate less than 20 tons per day. The major amendment is also requesting a fill height and volumetric waste increase to facilitate the construction of the final cover consistent with current requirements. The facility is located at Macky Road (Nortex Road) & US Hwy 87

North 3.9 miles Northwest of Dalhart, Dallam County, Texas 79022. The TCEQ received the application on February 21, 2012. The permit application is available for viewing and copying at the Dalhart City Hall, 205 Rock Island Avenue, Dalhart, Dallam County, Texas 79022-2637. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: <http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=36.11&lng=-102.59&zoom=13&type=r>. For exact location, refer to application.

**ADDITIONAL NOTICE.** TCEQ's Executive Director has determined the application is administratively complete and will conduct a technical review of the application. After technical review of the application is complete, the Executive Director may prepare a draft permit and will issue a preliminary decision on the application. Notice of the Application and Preliminary Decision will be published and mailed to those who are on the county-wide mailing list and to those who are on the mailing list for this application. That notice will contain the deadline for submitting public comments.

**PUBLIC COMMENT/PUBLIC MEETING.** You may submit public comments or request a public meeting on this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ will hold a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

**OPPORTUNITY FOR A CONTESTED CASE HEARING.** After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments. Unless the application is directly referred for a contested case hearing, the response to comments, and the Executive Director's decision on the application, will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting reconsideration of the Executive Director's decision and for requesting a contested case hearing. A person who may be affected by the facility is entitled to request a contested case hearing from the commission. A contested case hearing is a legal proceeding similar to a civil trial in state district court.

**TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST:** your name, address, phone number; applicant's name and permit number; the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; and the statement "[I/we] request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify an individual member of the group who would be adversely affected by the facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose. Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. The Commission will only grant a contested case hearing on disputed issues of fact that are relevant and material to the Commission's decision on the application. Further, the Commission will only grant a

hearing on issues that were raised in timely filed comments that were not subsequently withdrawn.

**MAILING LIST.** If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this 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 permit number; and/or (2) the mailing list for a specific county. 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.

**AGENCY CONTACTS AND INFORMATION** All public comments and requests must be submitted either electronically at [www.tceq.texas.gov/about/comments.html](http://www.tceq.texas.gov/about/comments.html) or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. If you choose to communicate with the TCEQ electronically, please be aware that your email address, like your physical mailing address, will become part of the agency's public record. For more information about this permit application or the permitting process, please call the TCEQ's Public Education Program, Toll Free, at 1-800-687-4040. Si desea información en español, puede llamar al 1-800-687-4040. Further information may also be obtained from the City of Dalhart, by calling Mr. James Stroud, Assistant City Manager, at (806) 244-5511.

TRD-201202125

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: April 25, 2012



#### Notice of Receipt of Application and Intent to Obtain Municipal Solid Waste Permit Amendment Proposed Permit No. 1312B

**APPLICATION.** City of Farmers Branch, 13000 William Dodson Parkway, Farmers Branch, Dallas County, Texas 75234, has applied to the Texas Commission on Environmental Quality (TCEQ) for a Type I MSW permit major amendment for authorization for a vertical and horizontal expansion of Camelot Landfill. The facility is located at 580 Huffines Boulevard, Lewisville, Denton County, Texas 75056. The TCEQ received the application on March 30, 2012. The permit application is available for viewing and copying at the Lewisville Public Library, 1197 West Main Street, Lewisville, Denton County, Texas 75067. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: <http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=33.043611&lng=-96.945&zoom=13&type=r>. For exact location, refer to application.

**ADDITIONAL NOTICE.** TCEQ's Executive Director has determined the application is administratively complete and will conduct a technical review of the application. After technical review of the application is complete, the Executive Director may prepare a draft permit and will issue a preliminary decision on the application. Notice of the Application and Preliminary Decision will be published and mailed to those who are on the county-wide mailing list and to those who are on the mailing list for this application. That notice will contain the deadline for submitting public comments.

**PUBLIC COMMENT/PUBLIC MEETING.** You may submit public comments or request a public meeting on this application. The purpose

of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ will hold a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

**OPPORTUNITY FOR A CONTESTED CASE HEARING.** After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments. Unless the application is directly referred for a contested case hearing, the response to comments, and the Executive Director's decision on the application, will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting reconsideration of the Executive Director's decision and for requesting a contested case hearing. A person who may be affected by the facility is entitled to request a contested case hearing from the commission. A contested case hearing is a legal proceeding similar to a civil trial in state district court.

**TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST:** your name, address, phone number; applicant's name and permit number; the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; and the statement "[I/we] request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify an individual member of the group who would be adversely affected by the facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose. Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. The Commission will only grant a contested case hearing on disputed issues of fact that are relevant and material to the Commission's decision on the application. Further, the Commission will only grant a hearing on issues that were raised in timely filed comments that were not subsequently withdrawn.

**MAILING LIST.** If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this 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 permit number; and/or (2) the mailing list for a specific county. 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.

**AGENCY CONTACTS AND INFORMATION** All public comments and requests must be submitted either electronically at [www.tceq.texas.gov/about/comments.html](http://www.tceq.texas.gov/about/comments.html) or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. If you choose to communicate with the TCEQ electronically, please be aware that your email address, like your physical mailing address, will become part of the agency's public record. For more information about this permit application or the permitting process, please call the TCEQ's Public Education Program, Toll Free, at 1-800-687-4040. Si desea

información en español, puede llamar al 1-800-687-4040. Further information may also be obtained from the City of Farmers Branch, by calling Mr. Shane Davis, Solid Waste Administrator, at (972) 919-2614.

TRD-201202126

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: April 25, 2012



## Notice of Water Quality Applications

The following notices were issued on April 13, 2012 through April 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

**CEDAR BAYOU PARK UTILITY DISTRICT** has applied for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0011713001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The facility is located at 6400 Bayou Boulevard, at the Southern Pacific Railroad crossing of McGee Gully, approximately 5,000 feet south of Interstate Highway 10, and approximately 5,000 feet southeast of the intersection of Interstate Highway 10 and Sjolander Road in Harris County, Texas 77521.

**TEXAS TILE MANUFACTURING LLC** which operates a floor tile manufacturing plant, has applied for a renewal of TPDES Permit No. WQ0000785000, which authorizes the discharge of process wastewater, utility wastewater, and storm water runoff on a flow variable basis via Outfall 001 and storm water runoff on an intermittent and flow variable basis via Outfall 002. The facility is located at 1705 Oliver Street in the City of Houston, Harris County, Texas 77007.

**ALLOY POLYMERS TEXAS LP** which operates the Crockett Plant, a plastic resin compounding plant, has applied for a renewal of TPDES Permit No. WQ0002207000, which authorizes the discharge of storm water and previously monitored effluents (treated contact cooling water, boiler blowdown, cooling tower blowdown water, process wash water from Outfall 101 and previously treated domestic wastewater from Outfall 201) on a flow variable basis via Outfall 001. The facility is located at 460 Farm-to-Market Road 2160, south of the intersection of State Highway 287 and Farm-to-Market Road 2160 and approximately three miles north of the City of Crockett, Houston County, Texas 75849.

**JIM WHITLOCK BROUMLEY AND KEITH SHERDON BROUMLEY** have applied for a Major Amendment of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0003395000 for a Concentrated Animal Feeding Operation (CAFO). The applicant is authorized to operate an existing dairy facility at a maximum capacity of 1499 head, of which 1100 head are milking cows. The applicant is proposing to land apply manure on-site, remove anaerobic digester system, add concrete settling basins, add land management unit, and increase land application acreages. The facility is located on the west side of County Road 240, approximately one mile south of the intersection of County Road 240 and State Highway 6, east of Hico, in Hamilton County, Texas.

CITGO REFINING AND CHEMICALS COMPANY LP which proposes to operate Citgo Corpus Christi Petroleum Coke Storage and Handling Facility, has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0004977000, to authorize the discharge of storm water runoff, dust suppression runoff from coke piles, and truck wash water on an intermittent and flow variable basis via Outfall 001. The facility is located on the north side of Tule Lake Channel, mile southwest of the intersection of Navigation Boulevard and County Road 55 B, on the north side of Bulk Dock Road, west of Navigation Boulevard. in Corpus Christi, Nueces County, Texas 78407.

TEXAS DEPARTMENT OF CRIMINAL JUSTICE has applied for a renewal of TPDES Permit No. WQ0010829001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 450,000 gallons per day. The facility is located at 6999 Retrieve Road, within the Texas Department of Criminal Justice W. Scott Prison Farm, approximately five miles west-southwest of the intersection of Highway 288 and County Road 290 (Retrieve Road), approximately seven miles west-southwest of the City of Angleton, and five miles northwest of the City of Lake Jackson in Brazoria County, Texas 77515.

WHITE OAK DEVELOPERS INC has applied for a renewal of TPDES Permit No. WQ0014083001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 750,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The facility will be located approximately 1,000 feet west of the confluence of Robinson Gully and White Oak Creek in Montgomery County, Texas 77357.

BFH MINING LTD has applied for a renewal of TPDES Permit No. WQ0014758001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 60,000 gallons per day. The facility will be located approximately 1.25 miles southwest of the intersection of Farm-to-Market Road 1463 and Fulshear Katy Road in Fort Bend County, Texas 77441.

TEXAS NEW COMMUNITY ALLIANCE has applied for a renewal of TPDES Permit No. WQ0014941001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 34,000 gallons per day. The facility will be located at 10951 Shepard Hill Road, approximately 400 feet south of the intersection of Shepard Branch and Shepard Hill Road in Montgomery County, Texas 77318.

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 ISSUED DATE OF THE NOTICE.

BLUE JAY DAIRY applied for a Minor Amendment of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0003439000, for a Concentrated Animal Feeding Operation (CAFO). The applicant is authorized to operate an existing dairy cattle facility at a maximum capacity of 1570 head of which 1500 head are milking cows. The applicant is proposing to reconfigure land management units (LMUs) and to add a center pivot to LMU #2. The facility is located on the east side of Farm-to-Market Road 219, approximately one mile south of the intersection of Farm-to-Market Road 219 and Farm-to-Market Road 8 in Erath County, Texas.

CITY OF DALHART has applied for a minor amendment to the Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0010099001 to authorize the use of an accredited laboratory that has obtained from EPA a variance from the maximum holding time for bacteria. The existing permit 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 approximately 0.5 mile west of U.S. Highway 87, approximately 2.5 miles southeast of the intersection of U.S. Highway 54 and U.S. Highway 87 in Hartley County, Texas 79022.

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.texas.gov](http://www.tceq.texas.gov). Si desea información en español, puede llamar al 1-800-687-4040.

TRD-201202124  
Bridget C. Bohac  
Chief Clerk  
Texas Commission on Environmental Quality  
Filed: April 25, 2012



### Revised Notice of Receipt of Application and Intent to Obtain Municipal Solid Waste Permit Amendment Proposed Permit No. 2234D

APPLICATION. Liquid Environmental Solutions of Texas, LLC, 7651 Esters Boulevard, Suite 200 Irving, Dallas County, Texas 75063, a liquid waste management company, has applied to the Texas Commission on Environmental Quality (TCEQ) for a permit amendment for their Houston facility, a Type V liquid waste processing facility that dewateres, recycles, and pre-treats non-hazardous liquid waste from municipal and industrial generators, to authorize an increase in the permitted liquid waste treatment capacity from 6 million gallons per month (200,000 gallons per day) to 354,500 gallons per day; the extension of waste acceptance hours from Monday through Friday 7:30 a.m. - 5:30 p.m., Saturday 7:30 a.m. - 12:30 p.m., and after hours by appointment to Monday through Friday 6:30 a.m. - 6:30 p.m., Saturday 7:30 a.m. - 12:30 p.m., and after hours by appointment; and a name change for the owner/operator from Liquid Environmental Solutions of Texas, L.P., to Liquid Environmental Solutions of Texas, LLC. The applicant withdrew its initial request for a variance from buffer zone requirements. The facility is located at 250 Gellhorn Drive, Houston, Texas 77013, in Harris County, Texas. The TCEQ received the application on August 16, 2011. The permit application is available for viewing and copying at the Galena Park Branch Library, 1500 Keene Street, Galena Park, Harris County, Texas 77547. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: <http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=29.78555&lng=-95.260833&zoom=13&type=r>. For exact location, refer to application.

ADDITIONAL NOTICE. TCEQ's Executive Director has determined the application is administratively complete and will conduct a technical review of the application. After technical review of the application is complete, the Executive Director may prepare a draft permit and will issue a preliminary decision on the application. Notice of the Application and Preliminary Decision will be published and mailed to those who are on the county-wide mailing list and to those who are on the mailing list for this application. That notice will contain the deadline for submitting public comments.

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments or request a public meeting on this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ will hold a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

OPPORTUNITY FOR A CONTESTED CASE HEARING. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments. Unless the application is directly referred for a contested case hearing, the response to comments, and the Executive Director's decision on the application, will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting reconsideration of the Executive Director's decision and for requesting a contested case hearing. A person who may be affected by the facility is entitled to request a contested case hearing from the commission. A contested case hearing is a legal proceeding similar to a civil trial in state district court.

TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST: your name, address, phone number; applicant's name and permit number; the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; and the statement "[I/we] request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify an individual member of the group who would be adversely affected by the facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose. Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. The Commission will only grant a contested case hearing on disputed issues of fact that are relevant and material to the Commission's decision on the application. Further, the Commission will only grant a hearing on issues that were raised in timely filed comments that were not subsequently withdrawn.

MAILING LIST. If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this 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 permit number; and/or (2) the mailing list for a specific county. 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.

AGENCY CONTACTS AND INFORMATION. Written public comments and requests must be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087 or electronically at [www.tceq.texas.gov/about/comments.html](http://www.tceq.texas.gov/about/comments.html). If you need more information about this permit application or the permitting process, please call the TCEQ's Public Education Program, Toll Free, at 1-800-687-4040. Si desea información en español, puede llamar al 1-800-687-4040. Further information may also be obtained from Liquid Environmental Solutions of Texas, LLC at the address stated above or by calling Mr. Bob Keplinger at (713) 671-4800.

TRD-201202127  
Bridget C. Bohac  
Chief Clerk  
Texas Commission on Environmental Quality  
Filed: April 25, 2012

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**Texas Facilities Commission**

**Request for Proposal #303-3-20323-A**

The Texas Facilities Commission (TFC), on behalf of the Department of Family and Protective Services (DFPS), announces the reissuance of Request for Proposals (RFP) #303-3-20323-A. TFC seeks a five (5) or ten (10) year lease of approximately 24,718 square feet of office space in El Paso, El Paso County, Texas.

The deadline for questions is May 14, 2012, and the deadline for proposals is May 29, 2012, at 3:00 p.m. The award date is July 1, 2012. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Regional Leasing Assistant, Evelyn Esquivel, at (512) 463-6494. A copy of the RFP may be downloaded from the Electronic State Business Daily at [http://esbd.cpa.state.tx.us/bid\\_show.cfm?bidid=99904](http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=99904).

TRD-201201981  
Kay Molina  
General Counsel  
Texas Facilities Commission  
Filed: April 19, 2012

◆ ◆ ◆  
**Department of State Health Services**

**Extension of Public Comment Period for Proposed Rules Concerning Life-Sustaining Treatment in State Hospitals**

The Department of State Health Services (department) is extending the public comment period for the proposed repeals in 25 Texas Administrative Code §§405.51 - 405.63, concerning life-sustaining treatment in state hospitals. The repeals were published in the April 6, 2012, issue of the *Texas Register* (37 TexReg 2342). The deadline for submission of comments is extended for 30 days from the original comment period ending May 6, 2012 to a new deadline of June 5, 2012, to accept additional stakeholder comments. Comments must be received at the department by 5:00 p.m. Daylight Savings Time on Tuesday, June 5, 2012.

Comments may be submitted to Nnenna Ezekoye, Mental Health and Substance Abuse Division, Department of State Health Services, Mail Code 2053, P.O. Box 149347, Austin, Texas 78714-9347, telephone (512) 206-5268, or by email to [nnenna.ezekoye@dshs.state.tx.us](mailto:nnenna.ezekoye@dshs.state.tx.us), stipulating in the subject line "Comments on proposed 'life sustaining treatment in state hospitals' rules."

TRD-201202092  
Lisa Hernandez  
General Counsel  
Department of State Health Services  
Filed: April 23, 2012

◆ ◆ ◆  
**Licensing Actions for Radioactive Materials**

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Throughout TX	S.K. Nelson Engineering, L.L.C.	L06463	Burnet	00	04/11/12

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Austin	Hospira, Inc.	L03340	Austin	19	04/03/12
Beaumont	Wayne S. Margolis, M.D., P.A.	L06049	Beaumont	05	04/02/12
Bellaire	Texas Nuclear Imaging, Inc. dba Excel Diagnostics Imaging	L05009	Bellaire	39	04/02/12
Brownsville	Columbia Valley Healthcare System, L.P. dba Valley Regional Medical Center	L02274	Brownsville	47	04/11/12
Carrollton	Trinity MC, L.L.C. dba Baylor Medical Center at Carrollton	L03765	Carrollton	67	04/11/12
Conroe	Montgomery County Management Company, L.L.C.	L04899	Conroe	34	04/06/12
Corpus Christi	Radiology & Imaging of South Texas, L.L.P. dba Alameda Imaging Center	L05182	Corpus Christi	32	04/11/12
Dallas	Terracon Consultants, Inc.	L05268	Dallas	37	04/11/12
Dallas	Presbyterian Cancer Center - Dallas, L.L.C.	L06056	Dallas	06	04/04/12
Denton	Texas Woman's University	L00304	Denton	61	04/03/12
Denton	Jagoe-Public Company	L05042	Denton	05	04/10/12
Houston	Halliburton Energy Services, Inc.	L00442	Houston	126	04/04/12
Houston	St. Luke's Episcopal Health System Corporation dba St. Luke's Episcopal Health System and Texas Heart Institute	L00581	Houston	94	04/11/12
Houston	Memorial Hermann Hospital System dba Memorial Hospital Memorial City	L01168	Houston	132	04/11/12
Houston	Wyle Laboratories, Inc.	L04813	Houston	11	04/10/12
Houston	South Texas Nuclear Pharmacy	L05304	Houston	11	04/02/12
Houston	Methodist Health Centers dba Methodist Willowbrook Hospital	L05472	Houston	43	04/10/12
Houston	The Methodist Hospital Research Institute	L06331	Houston	05	04/05/12
Houston	Oncology Consultants, P.A.	L06339	Houston	02	04/02/12
Houston	The Methodist Hospital Research Institute	L06383	Houston	03	04/02/12
Houston	Memorial Hermann Medical Group	L06430	Houston	03	04/09/12
Ingleside	E. I. Du Pont De Nemours & Company	L01753	Ingleside	44	04/05/12
La Porte	Akzo Nobel Polymer Chemicals, L.L.C.	L04372	La Porte	16	04/05/12
Longview	Texas Oncology, P.A. dba East Texas PET Imaging	L05489	Longview	21	04/10/12
Lubbock	University Medical Center	L04719	Lubbock	120	04/03/12
Odessa	Texas Oncology, P.A. dba West Texas Cancer Center	L05140	Odessa	14	03/30/12
Round Rock	Wind Consultants, L.L.C. dba Renewable Resource Consultants, L.L.C.	L06105	Round Rock	04	04/10/12
San Antonio	VHS San Antonio Partners, L.L.C. dba Baptist Health System	L00455	San Antonio	216	04/06/12
San Antonio	Methodist Healthcare System of San Antonio Ltd., L.L.P.	L00594	San Antonio	300	04/13/12



AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amendment #	Date of Action
San Antonio	The University of Texas Health Science Center at San Antonio	L01279	San Antonio	137	04/11/12
The Woodlands	Memorial Hermann Hospital System dba Memorial Hermann Hospital The Woodlands	L03772	The Woodlands	92	04/12/12
Throughout TX	Reed Engineering Group, Inc.	L04343	Dallas	18	04/11/12
Throughout TX	Professional Service Industries, Inc.	L04940	Dallas	13	04/05/12
Throughout TX	Mistras Group, Inc.	L06369	Deer Park	06	04/03/12
Throughout TX	D & S Engineering Labs, P.L.L.C.	L06353	Denton	05	04/11/12
Throughout TX	JV Industrial Companies, Ltd.	L06214	Freeport	01	04/05/12
Throughout TX	Ellerbe-Walczak, Inc.	L04440	Haltom City	17	04/05/12
Throughout TX	RLN Corporation	L06433	Hitchcock	03	04/09/12
Throughout TX	City of Houston	L00149	Houston	77	04/04/12
Throughout TX	Halliburton Energy Services, Inc.	L00442	Houston	125	04/12/12
Throughout TX	Halliburton Energy Services, Inc.	L03284	Houston	38	04/05/12
Throughout TX	Professional Service Industries, Inc.	L04942	Houston	24	04/05/12
Throughout TX	Mandes Inspection & Testing Services, Inc.	L05220	Houston	70	04/10/12
Throughout TX	IRISNDT Matrix Corporation	L06435	Houston	01	04/03/12
Throughout TX	QISI, Inc. dba Quality Inspection Services	L06219	La Porte	10	04/03/12
Throughout TX	J. Z. Russell Industries, Inc.	L06459	La Porte	01	04/03/12
Throughout TX	BASF Fina Petrochemicals, L.P.	L05914	Port Arthur	03	04/10/12
Tomball	Northwest Houston Heart Center	L05958	Tomball	13	04/11/12

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
El Paso	W. J. Strader, M.D. & Associates	L05617	El Paso	10	04/06/12
Throughout TX	L & G Engineering Laboratory, L.L.C.	L05647	Mercedes	10	04/11/12

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Buffalo	A. L. Helmcamp, Inc.	L06148	Buffalo	01	04/02/12
Houston	Advanced Cardiac Care Association	L04936	Houston	19	04/09/12
Houston	Go Imaging, L.L.P.	L06117	Houston	03	04/09/12

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of 25 Texas Administrative Code (TAC) Chapter 289 regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, Radiation Material Licensing - Mail Code 2835, P.O. Box 149347, Austin, Texas 78714-9347. For information call (512) 834-6688.

TRD-201201954  
Lisa Hernandez  
General Counsel  
Department of State Health Services  
Filed: April 19, 2012

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**Texas Department of Housing and Community Affairs**

2012 - 2013 Housing Trust Fund Program Amy Young Barrier Removal Program Notice of Funding Availability Amendment

**I. Source of Housing Trust Funds.**

The Housing Trust Fund was established by the 72nd Legislature, Senate Bill 546, §2306.201 of the Texas Government Code, to create affordable housing for low and very low income individuals and families. Funding sources consist of appropriations or transfers made to the fund, unencumbered fund balances, and public or private gifts, grants, or donations.

**II. Notice of Funding Availability (NOFA).**

The Texas Department of Housing and Community Affairs (the "Department") announces the availability of \$4,000,000 000 in funding from the Housing Trust Fund (HTF) for the Amy Young Barrier Removal Program (Program) through the Department's Reservation System. Approximately \$1,738,500 is available from the 2012-2013 HTF appropriation and \$2,261,500 in loan repayments, interest earnings and deobligations is available from prior years. The Program provides one-time grants of up to \$20,000 to Persons with Disabilities qualified as Low Income, for home modifications necessary for accessibility and the elimination of hazardous conditions. Program beneficiaries may be tenants or homeowners and their household members with disabilities.

The Program serves eligible Households with incomes of 80% or less of the Area Median Family Income (AMFI), or 80% of the State Median Family Income, adjusted for Household size, whichever is greater, utilizing a Department approved methodology.

**III. Amendment to the Notice of Funding Availability.**

The amount of active reserved funds that an organization may have at any given time has been amended to incentivize high producers by lifting the cap based on performance while lowering the cap for new organizations until they can demonstrate capacity.

**IV. Application Deadline and Availability.**

The HTF Amy Young Barrier Removal Amended Program NOFA is posted on the Department's website: <http://www.td-hca.state.tx.us/htf/index.htm> and organizations on the Department's list serve will receive an email notification that the NOFA is available on the Department's website.

**Questions.** Questions pertaining to the content of the HTF Amy Young Barrier Removal Program NOFA may only be directed to Mark Leonard at (512) 936-7799 ([htf@tdhca.state.tx.us](mailto:htf@tdhca.state.tx.us)) or Will Gudeman at (512) 475-4828.

TRD-201202112  
Timothy K. Irvine  
Executive Director  
Texas Department of Housing and Community Affairs  
Filed: April 24, 2012

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**Texas Department of Insurance**

**Notice of Application by a Small Employer Health Benefit Plan Issuer to be a Risk-Assuming Health Benefit Plan Issuer**

Notice is given to the public of the application of the listed small employer health benefit plan issuer to be a risk-assuming health benefit plan issuer under Insurance Code §1501.312. A small employer health benefit plan issuer is defined by Insurance Code §1501.002(16) as a health benefit plan issuer offering, delivering, issuing for delivery, or renewing health benefit plans subject to the Insurance Code, Chapter 1501, Subchapters C - H. A risk-assuming health benefit plan issuer is defined by Insurance Code §1501.301(4) as a small employer health benefit plan issuer that does not participate in the Texas Health Reinsurance System. The following small employer health benefit plan issuer has applied to be a risk-assuming health benefit plan issuer:

United Healthcare Insurance Company

The application is subject to public inspection at the offices of the Texas Department of Insurance, General Counsel Division, Legal Section - Nick Hoelscher, 333 Guadalupe, Tower I, Room 920, Austin, Texas.

If you wish to comment on the application of United Healthcare Insurance Company to be a risk-assuming health benefit plan issuer, you must submit your written comments within 60 days after publication of this notice in the *Texas Register* to Sara Waitt, General Counsel, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Upon consideration of the application and comments, if the Commissioner is satisfied that all requirements of law have been met, the Commissioner or his designee may take action to approve the applicant to be a risk-assuming health benefit plan issuer.

TRD-201201965  
Sara Waitt  
General Counsel  
Texas Department of Insurance  
Filed: April 19, 2012

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**Notice of Application by a Small Employer Health Benefit Plan Issuer to be a Risk-Assuming Health Benefit Plan Issuer**

Notice is given to the public of the application of the listed small employer health benefit plan issuer to be a risk-assuming health benefit plan issuer under Insurance Code §1501.312. A small employer health benefit plan issuer is defined by Insurance Code §1501.002(16) as a health benefit plan issuer offering, delivering, issuing for delivery, or renewing health benefit plans subject to the Insurance Code, Chapter 1501, Subchapters C - H. A risk-assuming health benefit plan issuer is defined by Insurance Code §1501.301(4) as a small employer health benefit plan issuer that does not participate in the Texas Health Reinsurance System. The following small employer health benefit plan issuer has applied to be a risk-assuming health benefit plan issuer:

United Healthcare of Texas, Inc.

The application is subject to public inspection at the offices of the Texas Department of Insurance, General Counsel Division, Legal Section - Nick Hoelscher, 333 Guadalupe, Tower I, Room 920, Austin, Texas.

If you wish to comment on the application of United Healthcare Insurance Company to be a risk-assuming health benefit plan issuer, you must submit your written comments within 60 days after publication of this notice in the *Texas Register* to Sara Waitt, General Counsel, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Upon consideration of the application and comments, if the Commissioner is satisfied that all requirements of law have been met, the Commissioner or his designee may take action to approve the applicant to be a risk-assuming health benefit plan issuer.

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**Texas Lottery Commission**

**Instant Game Number 1443 "\$250,000 Bingo"**

**1.0 Name and Style of Game.**

A. The name of Instant Game No. 1443 is "\$250,000 BINGO". The play style for the game SLOTS is "key symbol match". The play style for the game INSTANT BONUS is "auto win". The play style for the game BINGO is "bingo".

**1.1 Price of Instant Ticket.**

A. Tickets for Instant Game No. 1443 shall be \$10.00 per ticket.

**1.2 Definitions in Instant Game No. 1443.**

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: \$10.00, \$20.00, \$50.00, \$100, \$500, CHERRIES SYMBOL, LEMON SYMBOL, STACK OF BILLS SYMBOL, CROWN SYMBOL, SHAMROCK SYMBOL, POT OF GOLD SYMBOL, GOLD BAR SYMBOL, BELL SYMBOL, TEN SYMBOL, TWENTY SYMBOL, FIFTY SYMBOL, SVY FIV SYMBOL, ONE HUN SYMBOL, TWO FTY SYMBOL, FIV HUN SYMBOL, TRY AGAIN SYMBOL, MAYBE NEXT TIME SYMBOL, B01, B02, B03, B04, B05, B06, B07, B08, B09, B10, B11, B12, B13, B14, B15, I16, I17, I18, I19, I20, I21, I22, I23, I24, I25, I26, I27, I28, I29, I30, N31, N32, N33, N34, N35, N36, N37, N38, N39, N40, N41, N42, N43, N44, N45, G46, G47, G48, G49, G50, G51, G52, G53, G54, G55, G56, G57, G58, G59, G60, O61, O62, O63, O64, O65, O66, O67, O68, O69, O70, O71, O72, O73, O74, O75, 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75 and FREE.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. Crossword and Bingo style games do not typically have play symbol captions. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1443 - 1.2D

PLAY SYMBOL	CAPTION
B01	
B02	
B03	
B04	
B05	
B06	
B07	
B08	
B09	
B10	
B11	
B12	
B13	
B14	
B15	
I16	
I17	
I18	
I19	
I20	
I21	
I22	
I23	
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N38	
N39	
N40	
N41	
N42	
N43	
N44	
N45	
G46	

G47	
G48	
G49	
G50	
G51	
G52	
G53	
G54	
G55	
G56	
G57	
G58	
G59	
G60	
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62	
63	
64	
65	
66	
67	
68	
69	

70	
71	
72	
73	
74	
75	
FREE	
\$10.00	TEN\$
\$20.00	TWENTY
\$50.00	FIFTY
\$100	ONE HUN
\$500	FIV HUN
CHERRIES SYMBOL	CHERRY
LEMON SYMBOL	LEMON
STACK OF BILLS SYMBOL	BILLS
CROWN SYMBOL	CROWN
SHAMROCK SYMBOL	SHMRCK
POT OF GOLD SYMBOL	GOLD
GOLD BAR SYMBOL	BAR
BELL SYMBOL	BELL
TEN SYMBOL	DOLLARS
TWENTY SYMBOL	DOLLARS
FIFTY SYMBOL	DOLLARS
SVY FIV SYMBOL	DOLLARS
ONE HUN SYMBOL	DOLLARS
TWO FTY SYMBOL	DOLLARS
FIV HUN SYMBOL	DOLLARS
TRY SYMBOL	AGAIN
MAYBE SYMBOL	NEXT TIME

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 positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$30.00, \$50.00, \$75.00, \$100, \$125, \$175, \$250 or \$500.

H. High-Tier Prize - A prize of \$750, \$1,000, \$2,500, \$10,000 or \$250,000.

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 (1443), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 050 within each pack. The format will be: 1443-0000001-001.

K. Pack - A pack of "\$250,000 BINGO" Instant Game tickets contains 50 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket back 001 and 050 will both be exposed. All packs will be tightly shrink-wrapped. There will be no breaks between the tickets in a pack.

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 "\$250,000 BINGO" Instant Game No. 1443 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule, §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "\$250,000 BINGO" Instant Game is determined once the latex on the ticket is scratched off to expose 193 (one hundred ninety-three) play symbols. For the game SLOTS, if a player reveals 3 matching play symbols in any one PULL, the player wins PRIZE for that PULL. For the game INSTANT BONUS, if a player reveals a

prize amount play symbol, the player wins that amount instantly. For the game BINGO, the player must scratch off the CALLER'S CARD area to reveal 30 (thirty) BINGO Numbers. The player must scratch all the BINGO Numbers on CARDS 1 through 6 that match the BINGO Numbers on the CALLER'S CARD. Each CARD has a corresponding prize legend. Players win by matching those same numbers on the six Player's Cards. If the player finds a complete horizontal, vertical or diagonal line, the four corners of the playing card, or an X pattern, the player wins a prize according to the legend of the respective playing card. Examples of play: If a player matches all bingo numbers plus the FREE Space in a complete horizontal, vertical or diagonal line pattern in any one card, the player wins prize according to the legend of the respective playing card. If the player matches all bingo numbers in all four (4) corners pattern in any one card, the player wins prize according to the legend of the respective playing card. If the player matches all bingo numbers plus FREE Space to make a complete "X" pattern in any one card, the player wins prize according to the legend of the respective playing card. 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 193 (one hundred ninety-three) 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, and each Play Symbol must agree with its Play Symbol Caption; Crossword and Bingo style games do not typically have play symbol captions;
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 193 (one hundred ninety-three) 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 193 (one hundred ninety-three) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 193 (one hundred ninety-three) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

## 2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets within a pack will not have identical patterns.

B. A ticket will win as indicated by the prize structure.

C. A ticket can win up to three times.

D. BINGO: There will never be more than one win on a single BINGO CARD.

E. BINGO: The highest prize won per card will be paid.

F. BINGO: No duplicate numbers will appear on the CALLER'S CARD.

G. BINGO: No duplicate numbers will appear on each individual BINGO CARD.

H. BINGO: The number range used for each letter (B, I, N, G, O) will be as follows: B (01-15), I (16-30), N (31-45), G (46-60), O (61-75).

I. BINGO: Each BINGO CARD on the same ticket must be unique.

J. BINGO: The 30 CALLER'S CARD numbers will match 53 to 83 numbers per ticket.

K. BINGO: The majority of the tickets will have unique configurations.

L. BINGO: There will be at least one (1) 'near win' on each of the six (6) BINGO CARDS on each non-winning ticket.

M. BINGO: A 'near win' is one number short of a complete horizontal, vertical, diagonal line or 4 corners, except for the 'X' where there are two numbers less, one in each diagonal line (one of which must be a corner).



N. SLOTS: The Play area consists of nine (9) play symbols and three (3) PRIZE symbols.

O. SLOTS: There will never be three (3) identical symbols in a vertical or diagonal line.

P. SLOTS: No prize amount will appear more than once in this play area except as required on multiple win tickets.

Q. SLOTS: Non-winning tickets will never contain more than two (2) of the same play symbols over the entire play area.

R. SLOTS: Consecutive non-winning tickets within a pack will not have identical PULLS. For instance if the first ticket contains CHERRIES, CROWN, POT OF GOLD in any PULL then the next ticket may not contain CHERRIES, CROWN and POT OF GOLD in any row in any order.

S. SLOTS: Non-winning tickets will not have identical games. For example if PULL 1 is CHERRIES, CROWN, and POT OF GOLD then PULL 2 and PULL 3 will not contain CHERRIES, CROWN, and POT OF GOLD in any order.

T. SLOTS: Winning tickets will contain three (3) matching Play Symbols in a horizontal row.

U. SLOTS: On winning tickets, non-winning games will have different prize amounts from the winning prize amounts in this play area.

V. INSTANT BONUS: The Play area consists of one (1) Play Symbol.

W. INSTANT BONUS: Winning tickets will display a prize amount: TEN DOLLARS, TWENTY DOLLARS, FIFTY DOLLARS, SVY FIV DOLLARS, ONE HUN DOLLARS, TWO FTY DOLLARS OR FIV HUN DOLLARS.

### 2.3 Procedure for Claiming Prizes.

A. To claim a "\$250,000 BINGO" Instant Game prize of \$10.00, \$20.00, \$30.00, \$50.00, \$75.00, \$100, \$125, \$175, \$250 or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to pay a \$30.00, \$50.00, \$75.00, \$100, \$125, \$175, \$250 or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "\$250,000 BINGO" Instant Game prize of \$750, \$1,000, \$2,500, \$10,000 or \$250,000, 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 "\$250,000 BINGO" 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 of less than \$600 from the "\$250,000 BINGO" 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 "\$250,000 BINGO" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code, §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players

whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 6,000,000 tickets in the Instant Game No. 1443. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1443 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$10	1,320,000	4.55
\$20	360,000	16.67
\$30	25,000	240.00
\$50	130,000	46.15
\$75	15,000	400.00
\$100	25,100	239.04
\$125	10,050	597.01
\$175	10,050	597.01
\$250	9,050	662.98
\$500	6,000	1,000.00
\$750	400	15,000.00
\$1,000	30	200,000.00
\$2,500	12	500,000.00
\$10,000	8	750,000.00
\$250,000	8	750,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 3.14. The individual odds of winning for a particular prize level may vary based on sales, distribution, 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. 1443 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. 1443, 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-201202117

Kimberly L. Kiplin  
 General Counsel  
 Texas Lottery Commission  
 Filed: April 25, 2012

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### Public Utility Commission of Texas

#### Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on April 18, 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 Friendship Cable of Texas, Inc. d/b/a Suddenlink Communications to Amend its State-Issued Certificate of Franchise Authority; to add city limits of Cisco and Junction, Texas, Project Number 40324.

The requested amendment is to expand the service area footprint to include the municipalities of Cisco and Junction, 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 40324.

TRD-201202069  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: April 23, 2012



#### Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on April 23, 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 Sendero Networks, LLC to Amend its State-Issued Certificate of Franchise Authority; Change of Name, Project Number 40335.

The requested amendment is to change its name to Wilson County Networks, LLC.

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 40335.

TRD-201202110  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: April 24, 2012



#### Notice of Application for Service Area Boundary Change

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on April 19, 2012, for an amendment to certificated service area for a service area boundary change within Cameron County, Texas.

Docket Style and Number: Application of Public Utilities Board of the City of Brownsville to Amend a Certificate of Convenience and Necessity for Electric Service Area Exception within Cameron County. Docket Number 40331.

The Application: The Public Utilities Board of the City of Brownsville (BPUB) filed an application for a service area boundary change to allow BPUB to provide service to a 23.91 acre tract of land that is singly certificated to American Electric Power Company (AEP), formerly known as CP&L. BPUB and CP&L have entered into an agreement whereby CP&L agreed not to contest or oppose the application and if granted, the area will be dually certificated for electric service by BPUB and AEP.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than May 11, 2012 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 comments should reference Docket Number 40331.

TRD-201202070  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: April 23, 2012



#### Notice of Intent to Implement a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171

Notice is given to the public of Cap Rock Telephone Cooperative, Inc.'s (Cap Rock or the Applicant) application filed with the Public Utility Commission of Texas (commission) on April 17, 2012, for approval of a minor rate change pursuant to P.U.C. Substantive Rule §26.171.

Tariff Control Title and Number: Notice of Cap Rock Telephone Cooperative, Inc. to Implement a Minor Rate Change Pursuant to Substantive Rule §26.171, Tariff Control Number 40323.

The Application: Cap Rock filed an application to implement an increase the rates for residence and business customer access lines and other discretionary services in its exchange. The proposed effective date for the proposed rate changes is May 1, 2012. The estimated annual revenue increase recognized by Cap Rock is \$173,584 or less than 4.59% of Cap Rock's gross intrastate annual revenues. Cap Rock has 4,035 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by May 1, 2012, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by May 1, 2012. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326, or you may call the commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Tariff Control Number 40323.

TRD-201202067  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: April 23, 2012



#### Notice of Intent to Implement a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171

Notice is given to the public of West Plains Telecommunications, Inc.'s (West Plains) application filed with the Public Utility Commission of Texas (commission) on April 18, 2012, for approval of a minor rate change pursuant to P.U.C. Substantive Rule §26.171.

Tariff Control Title and Number: Notice of West Plains Telecommunications, Inc. to Implement a Minor Rate Change Pursuant to Substantive Rule §26.171, Tariff Control Number 40326.

The Application: West Plains filed an application for revisions to bundle the rates for Local Exchange Access Line Services (business and residential) and Tone Dialing Service. West Plains is also requesting to remove the residential Manual Trunk Service and the obsolete 2-Party and 4-Party Local Exchange Access Lines Services because the Applicant has no customers subscribing to these services. The proposed effective date for the proposed rate changes is May 1, 2012. The estimated annual revenue increase recognized by Applicant is \$414 or less than .02% of Applicant's gross annual intrastate revenues. Applicant has 3,686 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by May 1, 2012, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by May 1, 2012. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326, or you may call the commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Tariff Control Number 40326.

TRD-201202068

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: April 23, 2012



### Notice of Public Meeting

The Staff of the Public Utility Commission of Texas (PUC or commission) will hold a public meeting on Thursday, May 17, 2012, to discuss the 512 area code relief plan.

The meeting will begin at 9:30 a.m. in Hearing Room Gee, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Project Number 36899, *Numbering Plan Area Code Relief Planning for the 512 Area Code*, has been established for this proceeding. The PUC will review the all services overlay plan to introduce a new area code to the region.

Persons planning to attend this meeting who have disabilities requiring auxiliary aids or services should notify the commission as far in advance as possible so that appropriate arrangements can be made. Requests can be made by mail, telephone or in person to the commission's Office of Customer Protection, 1701 N. Congress Ave., Austin, Texas 78701, phone number (512) 936-7150 or (512) 936-7136 for the teletypewriter for the deaf.

Persons unable to attend the public meeting can contact the PUC by calling 1-888-782-8477 (1-888-PUC-TIPS) toll-free, by emailing the PUC at: [areacode@puc.state.tx.us](mailto:areacode@puc.state.tx.us) or by writing to the PUC at: PUC Office of Customer Protection, P.O. Box 13326, Austin, TX 78711-3326.

TRD-201202109

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: April 24, 2012



### Request for Comments - PUC Proceeding to Evaluate the Feasibility of Instituting a Smart Meter Opt-Out Program

The staff of the Public Utility Commission of Texas (commission) requests comments in Project No. 40190: PUC Proceeding to Evaluate the Feasibility of Instituting a Smart Meter Opt-Out Program. This project has been established to evaluate the feasibility of instituting a smart meter opt-out program. The questions below explore the feasibility and effects of offering a smart meter opt-out in the Texas electric market.

#### Legal and Policy Questions

*The following questions explore the legal and policy issues of a potential opt-out program.*

1. Does the Public Utility Commission of Texas (PUCT) currently have authority to require an opt-out program without further legislative action?
  2. If the PUCT does not have authority for a general rule creating an opt-out program, could an opt-out program be created through specific amendments to the smart meter settlement agreement with each utility deploying smart meters?
  3. If an opt-out program were adopted by the PUCT, what alternatives could be offered to customers that do not wish to have a standard smart meter installed? At minimum, please consider the following alternatives: (a) analog meter; (b) digital non-communicating meter; (c) digital meter with communication function turned off; (d) digital meter that communicates less frequently (e.g., hourly, daily, weekly, or monthly). Please discuss the costs and benefits of each alternative.
  4. Would it be possible for a customer to have a smart meter with one-way communications only, allowing the customer to take advantage of automated billing services without the ability for the Transmission and Distribution Utility (TDU) to communicate back to the meter? Please discuss the costs and benefits of this alternative.
  5. Rather than have a smart meter for each premises, is the technology available to collect aggregate usage information in a neighborhood or region? Please discuss the costs and benefits of this technology.
  6. While the feasibility of a potential opt-out program is being considered, should customers who do not want smart meters installed at their premises be able to defer installation until a decision on the opt-out program is made?
  7. Would an opt-out program affect resource adequacy in ERCOT?
  8. What other policy issues should the PUCT consider with respect to offering a smart meter opt-out program?
  9. Will any PUCT rules need to be amended if the PUCT offers a smarter meter opt-out program?
- #### TDU Deployment Plans
- The following questions explore the effects of an opt-out program on the TDU Deployment Plans.*
10. How would offering a smart meter opt-out program affect a TDU's smart meter deployment plan?

11. Would the TDU's smart meter deployment plan need to be amended pursuant to P.U.C. Substantive Rule §25.130(d)(10)? What are the legal implications associated with such an amendment?
12. What additional functionality or systems would a TDU need to deploy to support both smart meters and non-smart meters? Please discuss the costs associated with the additional functionality or systems?
13. Would federal funding granted to a TDU be put at risk as a result of an opt-out?

**Surcharge and Savings**

*The following questions explore the effects of an opt-out program on the TDU Surcharge and Savings calculations.*

14. Would overall TDU savings projected in the Advanced Metering System (AMS) deployment plan be reduced as a result of a smart meter opt-out program?
15. Would there be other reductions in savings as a result of an opt-out program? If so, please identify and quantify.
16. Should a TDU customer who opts-out of receiving a smart meter pay the AMS Surcharge? What if a customer had been paying the surcharge before opting-out?
17. With respect to the Discretionary Service Charges (DSCs) that have been lowered as a result of savings associated with AMS deployment, should customers pay the DSCs associated with the additional costs of providing those services to customers without smart meters, regardless of whether the customers have opted-out? What portion of those charges should the TDU's customers electing to opt out of receiving a smart meter pay?
18. What is the incremental cost to the TDU of each customer who opts-out of receiving a smart meter?
  - (a) How should customers who opt-out of receiving a smart meter pay for the incremental cost incurred by the TDU? Please discuss the possibility of: (i) a one-time fee; (ii) a monthly fee; (iii) an initial fee combined with a monthly fee.
  - (b) How should this initial fee be calculated?
  - (c) Should the cost of removing a smart meter be included in this initial fee?
  - (d) Should the cost of re-installing a non-smart meter be included in this initial fee?
  - (e) Should there be a different cost recovery method when a customer moves to a location with a smart meter and requests that it be removed?
  - (f) Who should pay the cost of re-installing a smart meter when a new customer moves in at the location and does not want the non-smart meter?
19. If the cost of removing the smart meter and re-installing the non-smart meter is too expensive to include in an initial fee, should these costs be incorporated into a monthly fee or allocated in some of other manner? If so, how?

**TDU Infrastructure**

*The following questions explore the effects of an opt-out program on the TDU infrastructure.*

20. What benefits associated with the AMS would a customer who opts-out of receiving a smart meter no longer enjoy, e.g., reduced outage time due to the TDU's ability to more quickly detect outages?
21. What adverse operational effects would a TDU experience as a result of an opt-out program?

22. What would be the additional cost to the TDU of providing separate meter reading and billing services to customer with smart meters and those without smart meters?
23. What would be the cost to the TDU for switching a customer without a smart meter compared to the cost for a customer with a smart meter?
24. Explain the impacts to outage restoration on both: (a) a per customer basis (an opt-out customer) and (b) a TDU-territory basis.
25. What would be the additional costs as a result of restoration for non-smart metered customers?
26. In what ways would meter accuracy be affected for a customer that has opted-out?

**Meter Reading Impacts**

*The following questions explore the effects of an opt-out program on the TDU meter reading functions.*

27. What would be the impacts to meter reading services? Please discuss the costs associated with having metering reading services for customers that opt-out.
28. Would there be any special impacts to the meter reading functions for a utility with an affiliated gas utility? Please discuss the costs associated with providing separate metering reading services for these customers.
29. How should the costs associated with providing meter readers to read the non-smart meters be recovered?

**Market Impacts**

*The following questions explore the effects of an opt-out program on the electric market.*

30. Explain all operational and financial impacts, including potential revisions to accommodate an opt out (operational and financial) on ER-COT systems.
31. How would 15-minute settlement and use of load profiles be impacted?
32. Explain all impacts to retail electric provider (REP) processes and systems as a result of having an opt-out. Please discuss the costs associated with any REP process or system changes that will be required to accommodate a customer that chooses to opt-out.

Comments may be filed by submitting 16 copies to the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. Initial comments are due by Monday, June 18, 2012 and reply comments are due by Thursday, June 28, 2012. All comments should reference Project Number 40190. The commission requests comments be limited to 35 pages. This notice is not a formal notice of proposed rulemaking; however, the parties' responses to the questions will assist the commission in developing a commission policy or determining the necessity for a related rulemaking.

TRD-201202093  
 Adriana A. Gonzales  
 Rules Coordinator  
 Public Utility Commission of Texas  
 Filed: April 23, 2012

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**Texas Department of Transportation**

## Aviation Division - Request for Proposal for Professional Services

The City of Denton, 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 Denton, Denton Municipal Airport.

TxDOT CSJ No.: 1218DENTN.

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, an analysis of the events prompting the assessment, identifying wildlife species observed and their numbers, locations, local movements, and daily and seasonal occurrences; identification and location of features on or near the airport that attract wildlife; a description of wildlife hazards to aircraft operations; and recommended actions for reducing wildlife hazards to aircraft operations.

There is no DBE goal. TxDOT Project Manager is Molly Lamrouex.

Interested firms shall utilize the Form AVN-551, titled "Aviation Planning Services Proposal." The form may be requested from TxDOT, Aviation Division, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT website 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:

Six 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 **May 29, 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 Edie Stimach.

The consultant selection committee will be composed of TxDOT Aviation Division staff and one local government member. 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 Edie Stimach, Grant Manager, or Molley Lamrouex, Project Manager for technical questions at 1-800-68-PILOT (74568).

TRD-201202098

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: April 24, 2012



## Aviation Division - Request for Proposal for Professional Services

The Town of Addison 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: Town of Addison.

Addison Municipal Airport, TxDOT CSJ No.: 1218ADISN.

Scope: The Addison Airport currently has approximately 75 existing vehicle and pedestrian access points. This project will analyze the access points and traffic patterns on a network level, and recommend specific improvements regarding gate location and type, control mechanisms, and monitoring systems, to provide secure and convenient airport access for tenants and clients, to reduce unauthorized entries, and to identify violations. The recommendations will provide the basis for a future design and construction project.

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 website 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 **May 29, 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 Edie Stimach.

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 com-

mittee will review all proposals and rate and rank each. The Town of Addison's evaluation criteria for this airport planning project is located 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 Edie Stimach, Grant Manager, or Daniel Benson, Project Manager for technical questions at 1-800-68-PILOT (74568).

#### Proposed Evaluation Criteria

##### Addison Airport Access Control Study - 1218ADISN

#### 1. Qualifications, Capabilities, and Recent Experience [total: **40 points**]

- a. Qualifications and experience of key personnel (**12 points**)
- b. Relevant aviation/access control system experience
  - i. Relevant GA airport experience demonstrating understanding of GA airport operations (pedestrian/ground vehicle/aircraft) and access control requirements and how those requirements differ from access control requirements at air carrier airports (**12 points**)
  - ii. Access controls experience at air carrier airports (**6 points**)
- c. Technical capabilities (**5 points**) - demonstrated capabilities and experience with various access control technologies; may include access controls in non-aviation applications
- d. Favorable references (**5 points**)

#### 2. Schedule [total: **15 points**]

- a. Does the proposed planning team have sufficient time to devote to this project in order to meet the schedule submitted in the proposal? (**5 points**)
- b. Is the proposed schedule realistic and appropriate to accomplish the project? (**10 points**)

#### 3. Proposed Technical Approach [total: **45 points**]

- a. Assessment of existing conditions and needs analysis (**15 points**)
- b. Technical evaluation
  - i. Consideration/selection of available technologies: assess existing/available access control technology and suitability for the present application (**10 points**)
  - ii. Address system installation issues, ability to expand/grow system, and compatibility with existing infrastructure (airport gates, gate operators, power sources, and Addison Police/Dispatch and IT capabilities) (**5 points**)
  - iii. Address system integration and communications (**10 points**)
  - iv. Address system maintenance and operations (**5 points**)

TRD-201202099

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: April 24, 2012



Public Hearing Notice - Texas Rural Transportation Plan

The Texas Department of Transportation (department) will hold a public hearing on Monday, May 21, 2012 at 10:00 a.m. at the Texas Department of Transportation, 200 East Riverside Drive, Room 1A-2, Austin, Texas to receive public comments on the Texas Rural Transportation Plan (TRTP). The TRTP is the rural component of the Statewide Long-Range Transportation Plan (SLRTP) a 24-year long-range multimodal plan for the state of Texas.

Transportation Code, §201.601, requires the department to develop a statewide transportation plan that contains all modes of transportation.

Title 23, United States Code, §135 requires the state to develop a long-range plan as a condition to securing federal funds for transportation projects under Title 23 or the Federal Transit Act (49 USC §5301, et seq.). Section 135(a) and (e) requires the state to develop its long-range plan to provide for the development and integrated management and operation of transportation systems and facilities (including accessible pedestrian walkways and bicycle transportation facilities) that will function as an intermodal transportation system for the state and an integral part of an intermodal transportation system for the United States, taking into consideration the concerns of affected local officials, Indian tribal governments, and Federal land management agencies. Section 135(f) requires the state to develop a SLRTP for all areas of the state in cooperation with the designated metropolitan planning organizations and, with respect to non-metropolitan areas, in consultation with affected local officials, and further requires an opportunity for participation by interested parties.

A copy of the proposed TRTP will be available for review, at the time the notice of hearing is published, at each of the department's district offices, at the department's Transportation Planning and Programming Division offices located in 118 East Riverside Drive, Building 118, Second Floor, Austin, Texas and on the department's website at:

[www.txdot.gov](http://www.txdot.gov)

Persons wishing to review the TRTP may do so online or contact the Transportation Planning and Programming Division at (512) 486-5036.

Persons wishing to speak at the hearing may register in advance by notifying Peggy Thurin, Transportation Planning and Programming Division, at (512) 486-5036 not later than Friday, May 18, 2012, or they may register at the hearing location beginning at 9:00 a.m. on the day of the hearing. Speakers will be taken in the order registered. Any interested person may appear and offer comments or testimony, either orally or in writing; however, questioning of witnesses will be reserved exclusively to the presiding authority as may be necessary to ensure a complete record. While any persons with pertinent comments or testimony will be granted an opportunity to present them during the course of the hearing, the presiding authority reserves the right to restrict testimony in terms of time or repetitive content. Groups, organizations, or associations should be represented by only one speaker. Speakers are requested to refrain from repeating previously presented testimony. Persons with disabilities who have special communication or accommodation needs or who plan to attend the hearing may contact the Transportation Planning and Programming Division, at 118 East Riverside Drive, Austin, Texas 78704, (512) 486-5038. Requests should be made no later than three days prior to the hearing. Every reasonable effort will be made to accommodate the needs.

Further information on the TRTP may be obtained from Peggy Thurin, Transportation Planning and Programming Division, 118 East Riverside Drive, Austin, Texas 78704, (512) 486-5036. Interested parties who are unable to attend the hearing may submit comments to James L. Randall, P.E., Director, Transportation Planning and Programming Division, 118 East Riverside Drive, Austin, Texas 78704. In order to be considered, all written comments must be received at the Transporta-

tion Planning and Programming office by Monday, June 4, 2012 at 4:00 p.m.

TRD-201202122

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: April 25, 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 website:

[http://www.txdot.gov/public\\_involvement/hearings\\_meetings/schedule.htm](http://www.txdot.gov/public_involvement/hearings_meetings/schedule.htm).

Or visit [www.txdot.gov](http://www.txdot.gov), click on Public Involvement, click on Hearings and Meetings, and then click on Hearings and Schedule.

Or contact Texas Department of Transportation, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4501 or 1-800-68-PI-LOT.

TRD-201202121

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: April 25, 2012



## Texas Water Development Board

### Request for Applications for Flood Protection Planning

The Texas Water Development Board (Board) requests, pursuant to 31 Texas Administrative Code (TAC) §355.3, the submission of applications leading to the possible award of contracts to develop flood protection plans for areas in Texas from political subdivisions with the legal authority to plan for and abate flooding and which participate in the National Flood Insurance Program. Flood protection planning applications may be submitted by eligible political subdivisions from any area of the State and will be considered and evaluated. In addition, applicants must supply a map of the geographical planning area to be studied.

**Description of Planning Purpose and Objectives.** The purpose of the flood protection planning grant program is for the State to assist local governments to develop flood protection plans for entire major or minor watersheds (as opposed to local drainage areas) that provide protection from flooding through structural and non-structural measures as described in 31 TAC §355.2. Planning for flood protection will include studies and analyses to determine and describe problems resulting from or relating to flooding and the views and needs of the affected public relating to flooding problems. Potential solutions to flooding problems will be identified, and the benefits and costs of these solutions will be estimated. From the planning analysis, feasible solutions to flooding problems will be recommended. The flood protection planning study should also include an assessment of the environmental and cultural resources of the planning area as necessary to evaluate the flood control alternatives being considered. Solutions for localized drainage problems are not eligible for grant funding.

**Description of Funding Consideration.** Up to \$1,000,000 was initially authorized for Fiscal Year 2012 assistance for flood protection planning from the Board's Research and Planning Fund. Funding in the amount of \$933,000 of the \$1,000,000 available has been approved for award by the Board, with the remaining \$67,000 now available. Up to fifty percent funding may be provided to individual applicants, with up to seventy-five percent funding available to areas identified in 31 TAC §355.10(a) as economically disadvantaged. In the event that acceptable applications are not submitted, the Board retains the right to not approve the award for these remaining funds.

**Deadline, Review Criteria, and Contact Person for Additional Information.** Six double-sided copies on recycled paper and one digital copy (CD) of a complete flood protection planning grant application including the required attachments must be filed with the Board prior to 5:00 p.m., June 5, 2012. Applications can be directed either in person to Mr. David Carter, Texas Water Development Board, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas or by mail to Mr. David Carter, Texas Water Development Board, P.O. Box 13231 - Capitol Station, Austin, Texas 78711-3231.

Applications will be evaluated according to 31 TAC §355.5. All potential applicants can contact the Board to obtain these rules and an application instruction sheet. Requests for information or the Board's rules and instruction sheet covering the research and planning fund may be directed to Mr. Gilbert Ward at the preceding mailing address, or by email at [gilbert.ward@twdb.texas.gov](mailto:gilbert.ward@twdb.texas.gov) or by calling (512) 463-6418. This information can also be found on the Internet at the following address: <http://www.twdb.texas.gov>.

TRD-201201982

Kenneth Petersen

General Counsel

Texas Water Development Board

Filed: April 19, 2012



### Requests for Statements of Qualifications for Water Research

Pursuant to 31 Texas Administrative Code §355.3, the Texas Water Development Board (TWDB) requests the submission of Statements of Qualifications leading to the possible award of contracts for groundwater related studies for two separate projects. We expect to get separate Statements of Qualifications specific for each project. The projects should take no more than three years to complete.

Details on the research projects and project requirements are available from the TWDB website [http://www.twdb.texas.gov/about/contract\\_admin/RFQ/](http://www.twdb.texas.gov/about/contract_admin/RFQ/). The TWDB website includes (1) guidelines for the Statements of Qualifications, (2) copies of the attachments, (3) a list of Statement of Qualifications Review Criteria, and (4) some supporting material.

**Background.** Groundwater availability models were an outgrowth of the regional water planning process created by Senate Bill 1, 75th Legislative Session. They were developed or obtained by the TWDB in response to groundwater conservation district and regional water planning group needs for better scientific tools to assist them in their management and planning efforts of the groundwater resources in their area. Because of the demonstrated value of these models, in 2001 the Texas Legislature mandated that the TWDB obtain or develop groundwater availability models for all major and minor aquifers in Texas in coordination with groundwater conservation districts and regional water planning groups (Texas Water Code, §16.012). When House Bill 1763, 79th Legislative Session, became effective on September 1, 2005, groundwater availability models became an even more important tool in managing the state's groundwater resources. This law man-



dated that groundwater conservation districts and regional water planning groups use values of managed available groundwater, based on the desired future conditions of aquifers determined for the 16 groundwater management areas, in their management and regional water plans. During the last regular legislative session in 2011, managed available groundwater was revised to modeled available groundwater. Groundwater availability models have been and will continue to be used as planning tools for our groundwater resources in Texas.

**Description of Research Objectives.** Since 1999, the Texas Legislature has approved funding for the Groundwater Availability Modeling Program. The purpose of the Groundwater Availability Modeling Program is to provide reliable and timely information on available groundwater to the citizens of Texas to ensure adequate supplies or recognize inadequate supplies over a 50-year planning period. Having the tools to explain the dynamics of groundwater flow in aquifers and to educate non-modelers on numerical groundwater flow models has increasingly been an area needing improvement. In addition, as part of the modeling program, we periodically reassess the existing models for updates as a result of the collection of new data that improves our understanding of the aquifer systems and/or how they respond to stresses upon the system, as well as to better address the needs and objectives of planning by groundwater conservation districts and regional water planning groups.

**High Plains Aquifer System Groundwater Availability Model.** The groundwater availability models in the Panhandle area of Texas have been reviewed and need improvements. The two current groundwater availability models for the northern portion of the Ogallala Aquifer (includes the Rita Blanca Aquifer) and the southern portion of the Ogallala Aquifer (includes the Edwards-Trinity [High Plains] Aquifer) assume no flow to the underlying hydrogeologic units, such as the Dockum Aquifer. On the other hand, the conceptualization of groundwater flow for the confined portions of the Dockum Aquifer depends on flow originating from the Ogallala Aquifer. This will become more of a concern as a result of the additional pumping projected to occur in the Ogallala Aquifer as part of the desired future condition adopted by the groundwater conservation districts in groundwater management areas 1 and 2.

It has also been a challenge understanding where the Ogallala Aquifer ends and where the Dockum Aquifer begins in the subsurface. In some areas of the aquifers, there is no clear demarcation - false red beds may appear in the Ogallala Aquifer, which may inaccurately be assumed to be the top of the Dockum Aquifer. In addition, as part of the brackish groundwater directive, staff in TWDB's Innovative Water Technologies Division acquired geophysical well logs of many wells across Texas that were not considered when the groundwater availability models were developed. A query of the BRACS database suggests around 7,700 wells with geophysical logs are located in the study area that should be reviewed to assist in this endeavor. Currently, the interface between the Ogallala and Dockum aquifers in the current versions of the groundwater availability models do not always match due to different approaches and datasets used to develop the boundary between the two aquifers.

In support of the Groundwater Availability Modeling Program, the TWDB is requesting Statements of Qualifications on developing a numerical groundwater flow model for the High Plains Aquifer System using the current models discussed above as a guide. Part of this project will be to re-evaluate the preferential flow between these aquifers and to re-evaluate their boundaries in the subsurface using the geophysical well logs compiled by TWDB's Innovative Water Technologies Division. Additional information from the groundwater conservation districts located in the study area should be requested, reviewed, and used, as applicable, to the modeling effort. As part of this project, we also want an evaluation of the location and volume of historical pumping (not limited to 1980 - 1999 and not restricted to the TWDB Water Use

Survey). At a minimum, we expect a comparison between TWDB's current approach and other techniques such as volume-based estimates (changes in water levels), metering data, and remote sensing. Pumping and the model calibration should be projected to the most recent time defensible with the approach used and approved by TWDB staff and also encapsulate historical periods of stresses upon the aquifers. This proposed groundwater availability modeling project shall (1) include stakeholder involvement; (2) use valid, defensible, and documented data and standard scientific modeling procedures; (3) follow all TWDB groundwater availability modeling protocol and standards, as applicable; and (4) update TWDB's BRACS database with all hydrostratigraphic picks from the geophysical logs used to re-evaluate the boundaries and aquifer characteristics.

Details on the modeling projects and project requirements are available from TWDB. The TWDB website site includes (1) guidelines for the Statements of Qualifications, (2) copies of the attachments, (3) a list of Statement of Qualifications Review Criteria, and (4) some supporting material ([http://www.twdb.texas.gov/about/contract\\_admin/RFQ/](http://www.twdb.texas.gov/about/contract_admin/RFQ/)).

The following issues need to be addressed in each Statement of Qualifications:

1. experience with hydrogeology, knowledge of the High Plains Aquifer System, and experience with MODFLOW and Groundwater Vistas;
2. communication between the contractor and the stakeholder advisory forum for the model including regional water planning groups and groundwater conservation districts;
3. hydrostratigraphy for the model including review and analysis of geophysical well logs compiled by TWDB's Innovative Water Technologies Division;
4. re-evaluation of the location and volume of historical pumping;
5. approach for calibrating the model;
6. approach for dealing with de-watered cells;
7. how the project will benefit statewide water planning and groundwater districts;
8. total budget and an itemized budget broken by tasks and personnel; and
9. project schedule grouped by tasks and projected expenditures.

In addition, we expect potential contractors to indicate their abilities in:

1. general hydrogeology;
2. hydrogeology of the modeled aquifers;
3. interpretation and use of geophysical well logs;
4. numerical groundwater flow modeling;
5. geographical information systems including geodatabase use and design;
6. communicating with the public;
7. technology transfer;
8. producing high-quality reports; and
9. meeting deadlines within budget. Note: contract time extensions will be granted only in extreme cases.

Interim deliverables shall include a draft geodatabase of all source data, an updated BRACS database documenting the hydrostratigraphic picks, and a conceptual model report. At the end of the project, draft and final deliverables will include the interim deliverables and a numer-

ical groundwater flow model (in MODFLOW and Groundwater Vistas format) as well as a model report describing the calibration portion of the project. Reports shall be delivered in Word and PDF formats. All information used in the modeling effort should be included and documented in sufficient detail so TWDB staff can duplicate the process from beginning to end.

At a minimum, TWDB staff expects to meet with the project team at the beginning of the project and at the midpoint of the project. Coordination with TWDB staff will be critical throughout the project as well as with the groundwater conservation districts within the study area. A formal presentation discussing and presenting the results shall be given to TWDB staff at the end of the project. Additional technical meetings shall be scheduled either in person or through a webinar venue to discuss modeling progress and issues. Formal stakeholder meetings shall be scheduled in the study area throughout the project. Monthly progress reports must be submitted to the TWDB outlining progress of the project and include the original schedule timeline and how the project is progressing relative to this standard. Project invoices cannot be processed without detailed description of the progress made by tasks. Each of the project tasks must be described in detail consistent with the budget description. We expect issues to be reported to the TWDB contract manager as they appear.

A detailed scope of work describing each task, a percent of effort per each task, a time schedule for each task, and the amount of time each team member will spend on the project shall not exceed 15 pages using Times Roman 12 font and the Statement of Qualifications shall not be more than 20 pages in length, excluding qualifications and experience of project staff and HUB plan. Applicants should be familiar with standards and requirements for the TWDB groundwater availability models. An updated guideline will be provided ([http://www.twdb.texas.gov/about/contract\\_admin/RFQ](http://www.twdb.texas.gov/about/contract_admin/RFQ)).

**Research Objectives for the Development of Educational Videos Representing Texas Aquifers and Numerical Groundwater Flow Models.** An important and essential component of the Groundwater Availability Modeling Program is to continually develop better tools to aid in the understanding and analyses of the aquifers in Texas. Therefore, the objective of this project is to create at least four (4) to five (5) short (5 to 10 minute) video modules using three-dimensional (3-D) visualization tools (note: a 3-D introduction was previously developed by C-Tech in MVS), as applicable, demonstrating the basic differences and similarities in aquifers across the state; how aquifers respond differently to stresses in the confined portion versus the unconfined portion of the aquifers; the concept of a water budget, especially as it relates to a numerical groundwater flow model; what is a regional scale numerical groundwater flow model (MODFLOW) such as those developed for the Groundwater Availability Modeling Program; and a brief overview of how groundwater availability models can be used (and not used) for planning purposes. We expect the deliverables to be equivalent to televised videos shown on the Discovery Channel or National Geographic. The outcome of the project, accessible to anyone through the TWDB website, is meant to educate and to promote the participation of stakeholders in the management of their groundwater resources. Accessibility requirements for the hearing and visual impaired shall be followed including closed captions and transcripts.

Monthly progress reports must be submitted to the TWDB outlining progress of the project and include the original schedule timeline and how the project is progressing relative to this standard. Project invoices cannot be processed without detailed description of the progress made by tasks. Each of the project tasks must be described in detail consistent with the budget description. We expect issues to be reported to the TWDB contract manager as they appear.

Draft and final deliverables shall include:

1. high definition videos (720p or 1080p) on FLASH/HDD/CD/DVD media (MP4, M4Vfiles using a high quality h264 or x264 codec);
2. at least one video should include a time series animation of water level fluctuations through time;
3. the videos must have closed captions (in the form of XML files) for the hearing impaired and transcripts for the visually challenged; and
4. a report on the project detailing approach, methods, issues; and recommendations for the future (hard copy and electronic versions in both Microsoft Word format and in Adobe Acrobat PDF compatible format).

The following issues need to be addressed in the Statement of Qualifications:

1. approach to translating a groundwater flow model to an animated 3D visual model;
2. approach to inclusion of reference data (administrative boundaries, hydrological features, wells, etc.) for spatial referencing of the three-dimensional model;
3. previous animations and/or interactive three-dimensional visualizations of natural phenomena or models of the natural world, delivered over the web; and
4. total budget broken down per video module.

In addition, we expect potential contractors to indicate their abilities in:

1. innovative and creative solutions;
2. technology transfer;
3. producing high-quality graphics, videos, and multi-media; and
4. meeting deadlines within budget. Note: contract time extensions will be granted only in extreme cases.

At a minimum, TWDB staff expects to meet with the project team at the beginning of the project and at the midpoint of the project. Coordination with TWDB staff will be critical throughout the project and should include various milestones meetings either in person or through a venue such as webinars to discuss storyboards, animations, transcripts, and video modules. A formal presentation discussing and presenting the results shall be given to TWDB staff at the end of the project as well as a public screening ([www.texasstateofwater.org/screening](http://www.texasstateofwater.org/screening)). The Statement of Qualifications shall not be more than 20 pages in length, excluding qualifications and experience of project staff and HUB plan. Applicants should be familiar with standards and requirements for the groundwater availability models associated with the Groundwater Availability Modeling Program.

**Description of Funding Consideration.** Up to \$900,000 has been identified for water research assistance from the Water Assistance Fund for research on these two projects with \$600,000 for the High Plains Aquifer System modeling project and \$300,000 for the educational videos project. Funding will be split between fiscal years 2012 and 2013. Funds allocated from fiscal year 2013 are contingent on agency funding. Following the receipt and evaluation of all Statements of Qualifications, the TWDB may adjust the amount of funding initially authorized. Oral presentations may be required as part of qualification review. However, an invitation for oral presentation is not an indication of probable selection. Up to 100 percent funding may be provided to individual applicants; however, applicants are encouraged to contribute matching funds or services, and funding will not include reimbursement for indirect expenses incurred by political subdivisions of the state or other state and federal agencies. In the event that acceptable Statements of Qualifications are not submitted, the TWDB retains the right to not award funds for the contracts.

**Deadline, Review Criteria, and Contact Person for Additional Information.** Six double-sided copies of a complete Statements of Qualifications, including the required attachments, must be filed with the TWDB prior to 12:00 noon, Thursday, May 31, 2012. Statements of Qualifications must be directed either in person to Mr. David Carter, Texas Water Development Board, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas 78701; or by mail to Mr. David Carter, Texas Water Development Board, P.O. Box 13231-Capitol Station, Austin, Texas 78711-3231. Statements of Qualifications will be evaluated according to 31 Texas Administrative Code §355.5 and the Statements of Qualifications Review Criteria rating form included in the TWDB's Guidelines for Water Research Grants. Research shall not duplicate work planned or underway by state agencies. All potential applicants must contact the TWDB to obtain these guidelines.

Requests for information, the TWDB's rules covering the Research and Planning Fund, detailed evaluation criteria, more detailed research topic information, and the guidelines may be directed to Mr. David Carter at the preceding address or by calling (512) 936-6079. All technical questions should be directed to Ms. Cindy Ridgeway at (512) 936-2386.

TRD-201202039  
Kenneth Petersen  
General Counsel  
Texas Water Development Board  
Filed: April 20, 2012



# 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>

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