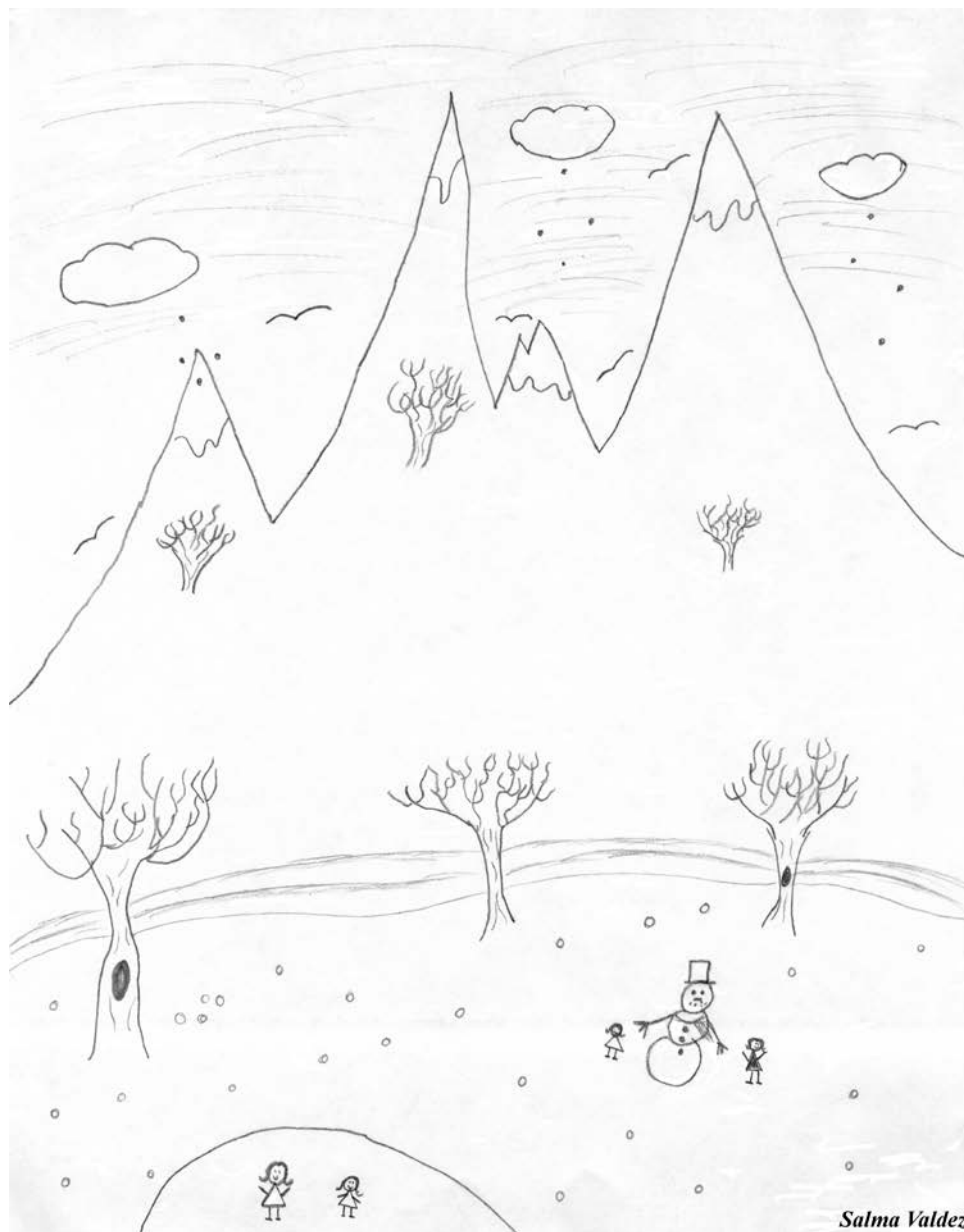

TEXAS REGISTER

Volume 38 Number 4

January 25, 2013

Pages 331 - 442



Salma Valdez

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, (ISSN 0362-4781, USPS 120-090), is published weekly (52 times per year) for \$211.00 (\$311.00 for first class mail delivery) by LexisNexis Matthew Bender & Co., Inc., 1275 Broadway, Albany, N.Y. 12204-2694.

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The ***Texas Register*** is published under the Government Code, Title 10, Chapter 2002. Periodicals Postage Paid at Albany, N.Y. and at additional mailing offices.

POSTMASTER: Send address changes to the ***Texas Register***, 136 Carlin Rd., Conklin, N.Y. 13748-1531.

TEXAS REGISTER

a section of the
Office of the Secretary of State
P.O. Box 13824
Austin, TX 78711-3824
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THE ATTORNEY GENERAL

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

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

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

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

Requests for Opinions

RQ-1104-GA

Requestor:

Ms. Mari Robinson

Executive Director

Texas Medical Board

Post Office Box 2018

Austin, Texas 78768

Re: Whether the Texas Medical Board may allow its investigators to carry concealed handguns while on duty with the Board without subjecting the Board to liability (RQ-1103-GA)

Briefs requested by February 13, 2013

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

TRD-201300127

Katherine Cary

General Counsel

Office of the Attorney General

Filed: January 16, 2013



TEXAS ETHICS COMMISSION

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

Advisory Opinion Requests

AOR-577. The Texas Ethics Commission has been asked to consider whether a candidate for a statewide judicial office may, during the period in which a judicial candidate may not accept political contributions, accept signatures for a petition that is required for a place on the ballot.

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-201300100

Natalia Luna Ashley

Special Counsel

Texas Ethics Commission

Filed: January 15, 2013



PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER D. TEXAS HEALTHCARE TRANSFORMATION AND QUALITY IMPROVEMENT PROGRAM

DIVISION 4. DSRIP

1 TAC §354.1634

The Texas Health and Human Services Commission (HHSC) proposes to amend §354.1634, concerning Waiver Pool Allocation and Valuation.

Background and Justification

On December 12, 2011, the Centers for Medicare and Medicaid Services (CMS) approved HHSC's application for a waiver under Section 1115 of the federal Social Security Act (42 U.S.C. §1315). The Texas Healthcare Transformation and Quality Improvement Program Waiver is composed of three main parts: expansion of Medicaid managed care, creation of an Uncompensated Care supplemental funding pool, and creation of the Delivery System Reform Incentive Payment (DSRIP) program.

HHSC and CMS negotiated for many months after the approval of the waiver application to develop the specifics of the DSRIP program. In order to receive DSRIP funds to improve quality, health status, patient experience, coordination, and cost-effectiveness, hospitals and other healthcare providers must participate in a Regional Healthcare Partnership (RHP). Each RHP must have one anchoring entity.

On October 31, 2012, the program rules governing the RHP and DSRIP process of the 1115 Waiver became effective. These rules largely reflect agreements with CMS regarding the details of the DSRIP program. Within those rules, the anchor of an RHP could receive a DSRIP payment in the first demonstration year in recognition of the services it provides. That payment could equal 20 percent of the first year DSRIP allocation for the RHP.

However, as of the effective date of the program rules, only Medicaid providers could receive such a payment. Given this caveat, an anchor that is not a Medicaid provider would not receive the first demonstration year DSRIP payment even though it does similar work to an anchor that is a Medicaid provider. After discussions with CMS, HHSC and CMS agreed to allow non-Medicaid provider anchors to receive the one-time DSRIP payment

for the first demonstration year. HHSC proposes to amend the rule to reflect this change.

Section-by-Section Summary

The proposed amendment removes language in subsection (c)(1) and (2)(B) which relates to the first demonstration year DSRIP. The deleted language removes the prohibition on a non-Medicaid provider receiving the first demonstration year payment if it is an anchor.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that for each year of the first five years the amended rule will be in effect, enforcing or administering the rule will not have foreseeable implications relating to costs or revenues of state government. Ms. Rymal has determined that there will be additional costs to local governments that will be offset by federal dollars. The non-federal portion of the Medicaid payments will be paid by local governments through intergovernmental transfers in the amount of \$8,076,420. The federal share of the Medicaid payments will equal \$11,723,580.

Ms. Rymal also determined that there are no anticipated economic costs to persons who are required to comply with the proposed rule and that there is no anticipated negative impact on local economies.

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 rule, because participation in the program is entirely voluntary and therefore no small business or micro-business will be required to alter its business practices.

Public Benefit

Chris Traylor, Chief Deputy Commissioner for HHSC, has determined that, for each year of the first five years the rule will be in effect, the public benefit expected as a result of adopting the proposed amendment is that HHSC's current expectations and requirements of RHPs and anchors will be clearly stated in rule. Certain anchors that could not previously access DSRIP funding will benefit in that they now have access to funding.

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 real property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Texas Government Code.

Public Comment

Written comments on the proposal may be submitted to Charles Greenberg, Health and Human Services Commission, Office of the General Counsel, MC-1070, 4900 N. Lamar Blvd., Austin, TX 78705; by fax to (512) 424-6586; or by e-mail to charles.greenberg@hhsc.state.tx.us within 30 days after publication of this proposal in the *Texas Register*.

Public Hearing

A public hearing is scheduled for February 22, 2013 from 1:00 p.m. to 2:00 p.m. (central time) in the Health and Human Services Braker Center, Lone Star Conference Room, located at 11209 Metric Boulevard, Building H, Austin, Texas. Persons requiring further information, special assistance or accommodations should contact Leigh A. Van Kirk at (512) 491-2813.

Statutory Authority

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

The rule affects the Texas Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531.

§354.1634. Waiver Pool Allocation and Valuation.

(a) Purpose. In an effort to provide certainty to waiver participants, HHSC will provide performer specific allocations. This process requires that certain individual entities receive an allocation based upon a Regional Healthcare Partnership (RHP) specific allocation.

(b) RHP allocation. All available DSRIP funds are allocated among the RHPs for each demonstration year. The share of the DSRIP pool allocated to an RHP will be calculated using the formula: RHP Share of DSRIP Pool = $(200\%FPL + \%MedicaidAcute + 2011UPL)/3$, where:

(1) "200%FPL" is the region's share of the state's population with income below 200% of the federal poverty level as determined by the 2006-2010 American Community Survey for Texas;

(2) "%MedicaidAcute" is the region's share of all Texas Medicaid acute care payments in state fiscal year (SFY) 2011. Texas Medicaid acute care payments consist of the sum of Medicaid fee-for-service, Medicaid managed care, Vendor Drug Program, and Primary Care Case Management payments; and

(3) "2011UPL" is the region's share of the state's Medicaid supplemental payments through the former Upper Payment Limit program made to providers in the RHP for SFY 2011.

(c) DSRIP allocation among performers for the first demonstration year. Anchors and performers may receive a DSRIP for the first demonstration year after review and approval of the RHP plan by HHSC.

(1) An anchor [that is also a Medicaid provider] is allocated 20% of the RHP allocation for the first demonstration year. An anchor may also receive a portion of the allocation in paragraph (2) of this subsection if it independently qualifies under that paragraph.

(2) The amount of the RHP allocation for the first demonstration year not allocated to the anchor as described in paragraph (1) of this subsection is allocated to performers as follows:

(A) First, divide the value of all of a performer's DSRIP projects by the total value of all DSRIP projects in an RHP.

(B) Second, multiply the result in subparagraph (A) of this paragraph by 80% of the RHP allocation for the first demonstration year for that RHP; or 100% if the anchor is not a Medicaid provider]. The result is the first demonstration year DSRIP to the performer.

(3) In the event that the RHP plan is not approved by the Centers for Medicare and Medicaid Services or an RHP deletes a DSRIP project without a replacement, HHSC may recoup the DSRIP for the first demonstration year.

(d) Two-pass process for allocating DSRIP. The DSRIP pool is allocated to performers for the second through fifth demonstration years through a two-stage process.

(1) The first stage (Pass One) sets an initial allocation to each potential performer, described further in subsection (e) of this section.

(2) Any unused DSRIP funds allocated in Pass One remain in the RHP for the second stage (Pass Two). An RHP may begin Pass Two if:

(A) the RHP funds the minimum number of Category 1 and Category 2 projects in accordance with §354.1632 of this subchapter (relating to DSRIP Requirements for Regional Healthcare Partnerships);

(B) each performer meets the allocation requirements among the four DSRIP categories as described in subsection (h) of this section;

(C) the minimum percentage of the Pass One allocation to non-profit and other private hospitals is met as follows:

(i) A Tier 1 RHP must fund 30% of the Pass One allocation to non-profit and other private hospitals.

(ii) A Tier 2 RHP must fund 30% of the Pass One allocation to non-profit and other private hospitals.

(iii) A Tier 3 RHP must fund 15% of the Pass One allocation to non-profit and other private hospitals.

(iv) A Tier 4 RHP must fund 5% of the Pass One allocation to non-profit and other private hospitals; and

(D) the minimum number of safety net hospitals in an RHP perform DSRIP projects. If there are fewer safety net hospitals in an RHP than are required to perform as follows, then all safety net hospitals in that RHP must perform DSRIP projects.

(i) At least five safety net hospitals in a Tier 1 RHP must perform DSRIP projects.

(ii) At least four safety net hospitals in a Tier 2 RHP must perform DSRIP projects.

(iii) At least two safety net hospitals in a Tier 3 RHP must perform DSRIP projects.

(iv) At least one safety net hospital in a Tier 4 RHP must perform DSRIP projects.

(3) For purposes of this subsection, a safety net hospital is any hospital that, as described in subsection (e) of this section:

(A) participated in the Disproportionate Share Hospital (DSH) program and:

(i) received at least 15% of the RHP's Medicaid acute care payments in SFY 2011 for all hospitals that receive a Pass One allocation; or

(ii) has a trended 2012 hospital-specific limit (HSL) that represents at least 15% of the RHP's total HSL; or

(B) has a Pass One allocation for demonstration years two through five of greater than \$60 million.

(e) Pass One DSRIP allocation among performers. Entities within an RHP may be allocated an amount from the RHP allocation described in subsection (b) of this section.

(1) The RHP allocation is divided among certain classes of providers within the RHP as follows:

(A) hospitals are allocated 75%;

(B) community mental health centers are allocated 10%;

(C) academic health science centers are allocated 10%; and

(D) local health departments are allocated 5%.

(2) A hospital may receive a Pass One allocation only if the hospital participated in FFY 2012 Disproportionate Share Hospital program or the former Upper Payment Limit program in Federal Fiscal Year (FFY) 2011.

(3) The share of the RHP allocation that is allocated to hospitals is further divided among the hospitals according to the following formula: $\text{Hospital Share of RHP Allocation} = (.25 \times 2011\text{UPL}) + (.25 \times \text{MedicaidAcute}) + (.50 \times \text{HSLCharity})$, where:

(A) "HSLCharity" is the hospital's share of the total hospital specific limit (HSL) for all hospitals in the RHP that receive a Pass One allocation. If a hospital eligible for a Pass One allocation does not have a FFY 2012 HSL, "HSLCharity" is measured by that hospital's charity care costs as reported in the 2010 Annual Hospital Survey trended to 2012 by a 4% total trend over the two-year period;

(B) "MedicaidAcute" is the hospital's share of all Medicaid acute care payments in SFY 2011 to hospitals in the RHP that receive a Pass One allocation. Texas Medicaid acute care payments consist of the sum of Medicaid fee-for-service, Medicaid managed care, and Primary Care Case Management payments; and

(C) "2011UPL" is the hospital's share of the Medicaid supplemental payments through the former Upper Payment Limit program made to hospitals that received a Pass One allocation in the RHP for SFY 2011.

(4) Option for collaboration. Certain entities may combine their Pass One allocation to create one or more DSRIP projects that further the goal of regional transformation.

(A) A hospital in an RHP may combine its Pass One allocation with other hospitals in the same RHP if all of the entities have a Pass One allocation at or below \$2 million for the second demonstration year.

(B) An entity in a Tier 3 or 4 RHP as described by §354.1611(f) of this subchapter (relating to Organization) may combine its Pass One allocation with other entities in the same RHP.

(C) All entities involved in such collaboration must state in the RHP plan that they are collaborating freely.

(D) Any DSRIP projects created under this paragraph must still have only one performer, and that performer must follow all other restrictions on performers.

(f) Pass Two DSRIP process. An RHP's unused DSRIP funds from Pass One are reallocated within the RHP.

(1) Hospitals that are ineligible to participate in Pass One that are interested in becoming performers are allocated equal shares totaling 15% of their RHP's unused Pass One allocation.

(2) Physician group practices not affiliated with academic health science centers that are interested in becoming performers are allocated equal shares totaling 10% of their RHP's unused Pass One allocation.

(3) Performers that participated in Pass One are allocated 75% of the unused Pass One allocation.

(A) To calculate an individual performer's Pass Two allocation:

(i) First, determine each performer's percent of the total Pass One funding used for demonstration years two through five; and

(ii) Second, multiply the result in clause (i) of this subparagraph by 75% of the RHP's unused Pass One allocation.

(B) Performers must work cooperatively to implement complementary DSRIP projects and address outstanding community needs.

(4) Within an RHP, performers may collaborate using individual Pass Two allocations to fund a DSRIP project that is a priority for the RHP in a manner similar to subsection (e)(4) of this section.

(g) Anchor directed use of remaining RHP allocation. If there are unused funds after Pass Two, the anchor may collaborate with performers in the RHP to determine which additional DSRIP projects to include in the RHP plan.

(h) Valuation of individual DSRIP projects. Each individual DSRIP project and domain must include a rational monetary value. That value is determined by the performer within the strictures described in this subsection.

(1) Except as described in paragraph (2) of this subsection, a hospital performer must ensure that project values comport with the following funding distribution:
Figure: 1 TAC §354.1634(h)(1) (No change.)

(2) A hospital that is exempted from Category 4 reporting may allocate the Category 4 funding to Categories 1, 2, or 3.

(3) A non-hospital performer must ensure that the project values comport with the following funding distribution:
Figure: 1 TAC §354.1634(h)(3) (No change.)

(4) A Category 1 or 2 DSRIP project may be valued at no more than the greater of 10% of a performer's Pass One allocation or \$20 million in total for demonstration years two through five. For DSRIP projects conducted under the collaboration options, the project may be valued at no more than the greater of the sum of 10% of each collaborator's Pass One allocation or \$20 million in total for demonstration years two through five.

(5) Milestones for a Category 1 or 2 DSRIP project must be valued equally within a demonstration year.

(6) The minimum Category 3 funding percentages for the fourth and fifth demonstration years as identified in this subsection must be reserved for outcome improvement targets.

(7) For the third, fourth, and fifth demonstration years, 5% of the possible Category 4 funding is only available to performers that report on the optional domain as it is described in the RHP Planning Protocol.

(i) One time reassessment of RHP allocation. If, upon final submission to HHSC, an RHP plan does not include the entire RHP allocation, the RHP will have one opportunity to use the remaining RHP allocation for demonstration years three through five. If the RHP does not use the remaining RHP allocation, the unused portion will be redistributed across regions in a manner prescribed by HHSC. These unused DSRIP funds may be used to fund new DSRIP projects for demonstration years three through five. To receive redistributed funds, an RHP must meet the broad hospital and minimal safety net hospital participation as described in subsection (d)(2)(C) and (D) of this section.

(j) DSRIP performance. Payment for DSRIP project performance is based on achievement of a milestone bundle, outcome, or domain.

(1) A milestone bundle is the compilation of milestones and related metrics associated with a project in a given demonstration year.

(2) The amount of the DSRIP to the performer is determined by the value assigned for the DSRIP project for that demonstration year and the progress made within the milestone bundle.

(3) To calculate the payment for Categories 1 and 2:

(A) First, a performer must complete the actions associated with a metric to include that metric in the DSRIP payment calculation.

(B) Second, a milestone is assigned an achievement value of:

- (i) 1.0 if all metrics are met;
- (ii) 0.75 if at least 75% of the metrics are met;
- (iii) 0.5 if at least 50% of the metrics are met;
- (iv) 0.25 if at least 25% of the metrics are met; and
- (v) zero if less than 25% of the metrics are met.

(C) Third, the achievement values for each milestone are summed.

(D) Fourth, the result of subparagraph (C) of this paragraph is divided by the total possible achievement value of the milestone bundle.

(E) Fifth, the value of the DSRIP project for that demonstration year, as determined under subsection (h) of this section, is multiplied by the result of subparagraph (D) of this paragraph.

(4) Although DSRIP project performance is reported twice a year, once the action associated with a metric is reported as complete, that metric may not be counted again toward DSRIP payment calculations.

(5) Eligibility for payment for Category 4 performance is based on the following:

(A) For a payment of up to 5% of its allocation for the second demonstration year, a performer must submit a status report to HHSC that describes system changes put in place to prepare for Category 4 reporting for the duration of the waiver.

(B) For a payment for a domain in the third, fourth, or fifth demonstration years, a performer must report on all Category 4 measures included in the domain as described in the RHP Planning Protocol.

(6) A performer may assign different values to Category 3 outcomes, including both process milestones and outcome improvement targets.

(A) A performer must fully achieve metrics associated with process milestones to receive DSRIP related to those milestones.

(B) To calculate a payment for an outcome improvement target:

(i) First, an outcome improvement target is assigned an achievement value of:

(I) 1.0 if the outcome improvement target is achieved;

(II) 0.75 if the outcome improvement target is at least 75% achieved;

(III) 0.5 if the outcome improvement target is at least 50% achieved;

(IV) 0.25 if the outcome improvement target is at least 25% achieved; or

(V) zero if the outcome improvement target is less than 25% achieved.

(ii) Second, the result in clause (i) of this subparagraph is multiplied by the value listed in the RHP plan for that particular outcome improvement target.

(7) If a performer does not complete all milestones as specified in its RHP plan for a particular demonstration year, the performer may carry forward the available DSRIP funding associated with that milestone bundle until the end of the following demonstration year.

(A) The performer must complete the remaining milestones during the following demonstration year to receive full payment for those milestones.

(B) A performer must provide a narrative description on the status of the missed milestones and outcome improvement targets and outline the performer's plan to achieve the missed milestones or targets by the end of the following demonstration year.

(C) This provision does not apply to Category 4.

(8) If a performer does not complete the remaining milestones as described in paragraph (7) of this subsection or the Category 4 reporting in its particular year, the associated DSRIP funding is forfeited.

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

Filed with the Office of the Secretary of State on January 14, 2013.

TRD-201300081

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: February 24, 2013

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

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TITLE 16. ECONOMIC REGULATION
PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION
CHAPTER 89. VEHICLE BOOTING AND IMMOBILIZATION

16 TAC §§89.70, 89.78, 89.79, 89.103

The Texas Department of Licensing and Regulation (Department) proposes amendments to existing rules at 16 TAC Chapter 89, §§89.70, 89.78, 89.79, and 89.103, concerning the vehicle booting and immobilization program.

These proposed amendments are necessary to allow booting companies to provide signs for parking facilities in the same manner that towing companies are authorized to provide signage under Texas Occupations Code, Chapter 2308. The amendments are also necessary to eliminate unnecessary requirements on booting operators and booting companies while engaged in booting operations.

The proposed amendments to §89.70 and §89.79 eliminate the requirement that a vehicle may not be booted and towed within 24 hours of installation of the immobilization device. The time period is reduced to eight (8) hours between the boot and the tow.

The proposed amendments to §89.78 authorize booting companies to provide the signs for parking facility owners in the same manner allowed by Texas Occupations Code, Chapter 2308 regarding towing companies.

The proposed amendments to §89.103 eliminate the requirements that booting operators wear uniforms, protective clothing, and fluorescent vests while engaged in booting operations.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the proposed amendments are in effect there will be no direct cost to state or local government as a result of enforcing or administering the proposed rules.

Mr. Kuntz has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be clarity in what is required by the law of a booting company and booting operators. There will be no adverse economic effect on small or micro-businesses or to persons who are required to comply with the rules as proposed.

Since the agency has determined that the proposed rules will have no adverse economic effect on small businesses preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, is not required.

Comments on the proposal may be submitted by mail to Shanna Dawson, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or by facsimile to (512) 475-3032, or electronically to erule@tdlr.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The rule amendments are proposed under Texas Occupations Code, Chapters 51 and 2308, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chap-

ters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapter 51. No other statutes, articles, or codes are affected by the proposal.

§89.70. Responsibilities of Licensee--Conspicuous Notice of Booting.

(a) A booting operator that installs a boot on a vehicle must affix a conspicuous notice to the vehicle's front windshield or driver's side window stating:

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

(6) that the vehicle may be towed if the boot is not removed within 8 [24] hours; and

(7) (No change.)

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

§89.78. Responsibilities of Licensee--Prohibited Financial Benefits.

(a) Except for signs required by Texas Occupations Code §2308.301, a [A] booting company in connection with booting of a vehicle in a parking facility may not directly or indirectly give anything of value to a parking facility owner.

(b) (No change.)

§89.79. Responsibilities of Licensee--Prohibitions Against Booting and Towing the Same Vehicle.

(a) A vehicle may not be booted and towed from a parking facility before the expiration of 8 [24]-hours after the initial installation of the boot.

(b) After the initial 8- [24] hour prohibition against booting and towing in subsection (a), booted vehicles may not be towed unless the booting company or booting operator placed a conspicuous notice on the vehicle informing the vehicle operator that:

(1) unless the boot [booted] is removed within 8 [24]-hours, the vehicle may also be towed; and

(2) additional charges may be incurred for the tow and storage of the vehicle.

(c) This section is applicable to vehicles that remain booted and have not been removed from the parking facility for a continuous 8 [24]-hour period.

§89.103. Technical Requirements--Booting Operator [Safety Clothing and] Identification.

[(a) Booting operators, as a condition of their license must comply with the protective clothing and identification policy.]

[(b) Booting operators must wear at all times when installing or assisting in the installation or removal of a boot:]

[(1) a uniform, clearly marked with the booting company name as it appears on booting company license; and]

[(2) a reflective vest, shirt, or reflective jacket at all times while installing or removing boots; the reflective vest, shirt, or reflective jacket must meet the ANSI/ISEA requirements for high visibility safety apparel.]

[(c) During daylight hours, a fluorescent shirt may be worn instead of the reflective vest or jacket; the fluorescent shirt must meet the ANSI/ISEA requirements for high visibility safety apparel.]

[(4)] When performing booting operations, all booting operators must carry and openly display the TDLR issued original booting operator license.

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

Filed with the Office of the Secretary of State on January 14, 2013.

TRD-201300079

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: February 24, 2013

For further information, please call: (512) 475-4879



PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 401. ADMINISTRATION OF STATE LOTTERY ACT

SUBCHAPTER A. PROCUREMENT

16 TAC §§401.101 - 401.104

The Texas Lottery Commission (Commission) proposes amendments to 16 TAC §§401.101 - 401.104, concerning Procurement. Proposed amendments to these sections seek to update the rules to conform to applicable statutes and regulations, as well as to make grammatical changes to improve clarity of language within these sections.

Proposed amendments to §401.101(a), Definitions, remove the definition of the terms "emergency" and "emergency purchase," combining these concepts into the definition of the term "emergency procurement" to provide added clarity. Additional proposed amendments to this subsection include a revision of the terms "nonresident bidder or proposer" and "proprietary product" to clarify those definitions.

Proposed amendments to §401.101(c), Procurement method, seek to suggest changes to "printing services", "emergency purchase" and "proprietary purchase" to improve clarity regarding the applicable procedures followed by the Commission relating to those purchase categories.

Proposed amendments to §401.101(e), Formal competitive solicitations, provide additional clarity regarding the choice of solicitation process and the potential for negotiations between the commission and a proposer. The proposed amendments to §401.101(e) also add the ability of the agency to make notification of contract award by email and eliminate the requirement that certified mail notification have a return receipt requested. Confirmation of delivery to a designated facsimile number or email address for the receipt of such correspondence will constitute conclusive proof that delivery was made.

Proposed amendments to §401.101(f), RFP, add new paragraph (5), clarifying the agency may award a contract to multiple vendors selected using a single solicitation where necessary to meet the agency's needs for a particular item or service. The remaining proposed amendments to §401.101 are general grammatical changes to improve clarity.

Proposed amendments to §401.102(b), concerning Protests of the Terms of a Formal Competitive Solicitation, clarify that some-

one who files a timely protest to a solicitation may have 10 calendar days to supplement that protest. Proposed amendments to §401.102(d) clarify the language regarding agency procedure when it receives a timely filed protest. Also, proposed amendments to §401.102(e), (f), and new (i) allow the agency to serve notice of agency determinations regarding a protest to a solicitation to be made by email. Other proposed amendments to §401.102 contain general grammatical changes intended to improve the clarity and readability of this section.

Proposed amendments to §401.103(b), concerning Protests of a Contract Award, add a clarification that someone who files a timely protest to a contract award has 10 calendar days to supplement that protest. Proposed amendments to §401.103(f) and (h) allow the agency to serve notice of agency determinations involving the protest of a contract award to be made by email. Other proposed changes improve clarity within this section.

Additionally, proposed amendments to §401.104, concerning Contract Monitoring Roles and Responsibilities, make general grammatical changes intended to improve clarity and readability of this section.

Kathy Pyka, Controller, has determined that for each year of the first five years the amendments will be in effect, there will be no fiscal impact for state or local governments as a result of the proposed amendments. There will be no adverse effects on small businesses, micro businesses, or local or state employment. There will be no additional economic cost to persons required to comply with the amendments as proposed. Furthermore, an Economic Impact Statement and Regulatory Flexibility Analysis are not required because the proposed amendments will not have an economic effect on small businesses as defined in Texas Government Code §2006.021.

Mike Fernandez, Director of Administration, has determined that for each year of the first five years the proposed amendments will be in effect the public benefit anticipated from these changes will be greater clarity regarding the agency procedures governing procurement.

The Commission requests comments on the proposed amendments from any interested person. Comments on the proposed amendments may be submitted to Lea Burnett, Assistant General Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at www.legal.input@lottery.state.tx.us. Comments must be received within 30 days after publication of this proposal in order to be considered.

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

This proposal is intended to implement Texas Government Code, Chapter 466, Subchapter C.

The following statute is affected by this proposal: Texas Government Code, §466.101.

§401.101. Lottery Procurement Procedures.

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

- (1) Act--The State Lottery Act.
- (2) Agency--For the purposes of this subchapter that deals [these rules dealing] with procurements for the administration of the lottery, the term "agency" refers to the commission as defined in paragraph (5) of this subsection.
- (3) Best and Final Offer (BAFO)--A revised final bid or proposal submitted after all clarifications, discussions, and negotiations with the agency.
- (4) Executive director--The executive director of the Commission.
- (5) Commission--The state agency established under Chapter 466 and Chapter 467, Government Code. However, this subchapter applies [these rules apply] only to the procurement of goods and services for the administration of the lottery authorized by the State Lottery Act. For the sake of clarity, this subchapter [these procurement rules] will refer to the commission as "agency" and to the appointed board as the "Texas Lottery Commission".
- (6) Cost--The price at which the agency can purchase goods and/or services.
- (7) Electronic State Business Daily or Business Daily--The website administered by the Comptroller of Public Accounts, or its successor, on which procurement opportunities exceeding \$25,000 are advertised in electronic format.
- (8) Emergency procurement--A situation requiring the state agency to make the procurement more quickly to prevent a hazard to life, health, safety, welfare, or property or to avoid undue additional cost to the state.
- ~~[(8) Emergency--Unforeseeable circumstances that may require an immediate response to avert an actual or potential public threat, or serious operational or financial loss to the agency, and in which compliance with normal procurement practice is impracticable or contrary to the public interest.]~~
- ~~[(9) Emergency purchase--Immediate procurements to meet an emergency.]~~
- (9) [(40)] Goods--Supplies, materials, and equipment.
- (10) [(41)] IFB--A written invitation for bids.
- (11) [(42)] Lottery--The procedures and operations of the agency [Texas Lottery Commission] under the State Lottery Act through which prizes are awarded or distributed by chance among persons who have paid, or unconditionally agreed to pay, for a chance or other opportunity to receive a prize.
- (12) [(43)] Nonresident bidder or proposer--A ["Nonresident bidder or proposer" refers to a] person whose principal place of business is not in Texas, but does not include a bidder whose majority owner or parent company has its principal place of business in Texas [who is not a "resident bidder or proposer"].
- (13) [(44)] Principal place of business--The state in which the head office of a business is located, and[;] generally, where the executive management is located and the business records are maintained.
- (14) [(45)] Produced in Texas--Those goods that are manufactured in Texas, excluding the sole process of packaging or repackaging. Packaging or repackaging does not constitute being manufactured in Texas.
- (15) [(46)] Proprietary product--A product or service that is unique to a single vendor or manufacturer and is not available from other sources.

(16) [(47)] Resident bidder or proposer--A ["Resident bidder or proposer" refers to a] person whose principal place of business is in this state, including a contractor whose ultimate parent company or majority owner has its principal place of business in this state.

(17) [(48)] RFP--A written request for proposals.

(18) [(49)] RFQ--A written request for qualifications.

(19) [(20)] Services--Fungible services, specialized services, or unique services, including, by way or example, but not limitation: facility services (i.e., the lease of real property, including utility and custodial service), telecommunications services, advertising services, consultant services, personal services and professional services.

(20) [(21)] State or statewide contract--A contract for goods or services established and administered by another state agency (e.g., Texas Comptroller of Public Accounts, Texas Department of Information Resources) for use by all state agencies.

(21) [(22)] Texas Lottery Commission--The appointive board or commission established in Chapter 467, Government Code.

(b) Use and Effect [of Rules]. This subchapter is [These rules are] prescribed for the performance of the statutory powers and functions vested in the agency [Commission]. In no event shall they, or any of them, be construed as a limitation or restriction upon the exercise of any discretion authorized to be exercised by the Texas Lottery Commission.

(c) Procurement method.

(1) For the purchase or lease of goods and services not expected to exceed \$5,000, or for the purchase or lease of goods and services available under a state contract, a competitive solicitation, whether formal or informal, may be conducted, but is not required.

(2) For the purchase or lease of goods and services not expected to exceed \$25,000, the agency, at a minimum, will conduct an informal competitive solicitation in an attempt to obtain at least three competitive bids.

(3) For the purchase or lease of goods and services expected to exceed \$25,000, the agency will conduct a formal competitive solicitation in an attempt to obtain at least three competitive bids or proposals.

(4) Printing services. For the purchase of printing services over \$1,000, the agency will submit print job specifications and bid requests to the State Print Shops. If no responsive bids are received from a State Print Shop or, after the results of the bid evaluation, the agency determines that best value would be achieved through a private sector vendor, the agency may perform a competitive solicitation outlined in paragraph (2) or (3) of this subsection. [follow the appropriate procurement method outlined in paragraphs (1) - (3) of this subsection.]

(5) Emergency procurement [purchase]. Notwithstanding paragraphs (1) - (4) of this subsection, the agency may make an emergency purchase or lease of goods or services. Prior to making an emergency purchase or lease of goods or services, the existence of an emergency should be documented. For emergency purchases in excess of \$5,000 [\$25,000], the agency may conduct an informal competitive solicitation in an attempt to obtain at least three competitive bids, when ever possible. For emergency purchases in excess of \$25,000, the procurement will be posted on the Electronic State Business Daily; however, the minimum posting requirements do not apply. Posting of the advertisement and/or the award notice satisfies this requirement. In response to an emergency, the agency may procure goods or services in the most expeditious manner deemed appropriate, including from a

sole source. Whenever possible, contacts will be made with multiple sources in order to receive as much competition [~~competitive benefit~~] as possible.

(6) Proprietary purchase. When the agency believes that a purchase of goods or services over \$5,000 is [~~are~~] proprietary to one vendor or one manufacturer, a written proprietary purchase justification will be included in the procurement file. If the estimated purchase price exceeds \$25,000 for commodities or \$100,000 for services, the procurement will be posted on the Electronic State Business Daily prior to a purchase order or contract being issued.

(7) Notwithstanding paragraphs (1) - (4) of this subsection, the agency may make a purchase or lease of goods or services under any other procedure not otherwise prohibited by law.

(d) Informal competitive solicitations.

(1) An informal competitive solicitation is a process conducted in an effort to receive at least three competitive bids for a specifically identified good or service, without the advertisement and issuance of an IFB or RFP. The bids may be solicited by letter, electronic mail, facsimile, or telephone call. The following information will be recorded by the agency in the procurement [~~solicitation~~] file:

(A) the name and telephone number of each person or company to which the solicitation was provided;

(B) the name and telephone number of the person or company submitting the [~~price~~] bid;

(C) the date the bid was received;

(D) the amount of the bid;

(E) bidder's Historically Underutilized Business [~~HUB~~] status; and

(F) the name and telephone number of the person receiving the bid for the agency.

(2) The agency will award a contract to the qualified bidder submitting the lowest and best bid, except that the agency may reject all bids if it is determined to be in the best interest of the state.

(3) The contract will be awarded by the issuance of a written purchase order.

(e) Formal competitive solicitations.

(1) A formal competitive solicitation is a process conducted in order to receive at least three sealed competitive bids or proposals pursuant to the issuance of an IFB, RFP, [~~or~~] RFQ, or another statewide contract process, respectively.

(A) An IFB will be used when the agency is able to describe, by way of established specifications, exactly what it wishes to procure, and wants bidders to offer such at a specific price.

(B) An RFP will be used when the agency knows generally what it wishes to procure in order to accomplish a certain goal(s) or objective(s); requirements cannot be completely and accurately described; requirements can be satisfied in a number of ways, all of which could be acceptable; or, where oral or written communications with proposers may be necessary in order to effectively communicate requirements and/or assess proposals, and the agency wants proposers to offer a solution(s) to address such need(s) at a specific price(s). The RFP process allows for negotiations between a proposer and the issuing agency.

(C) An RFQ will be used when the agency wants to procure professional services and evaluate proposers solely on their qualifications.

(2) Where appropriate [~~time and circumstances permit~~], the agency will advertise formal competitive solicitations, whether by IFB, RFP, or RFQ on the Electronic State Business Daily. The agency may advertise such solicitations in other media determined appropriate by the agency.

(3) For all formal competitive solicitations, the agency will award a contract to the most qualified bidder or proposer as determined during the evaluation of the bids or proposals. The agency may reject all bids or proposals if it is determined to be in the best interest of the agency [~~lottery~~]. At the time a purchase order is issued or a contract is executed, the agency will notify, in writing, all other bidders or proposers of the contract award by facsimile, email or by certified [~~mail, return receipt requested, or by overnight~~] mail. Any information relating to the solicitation not made privileged from disclosure by law will be made available for public disclosure, after award of a contract, pursuant to the Texas Public Information Act.

(4) For those formal competitive solicitations where less than three bids or proposals are received, the agency will document the reasons, if known, for the lack of three bids or proposals. If less than three bids or proposals are received, the agency may cancel the solicitation and conduct another solicitation, or it may award a contract if one acceptable bid or proposal is received.

(5) For formal competitive solicitations where an IFB is used, the agency will award a contract to the qualified bidder submitting the lowest and best bid, as determined during the evaluation of the bids.

(f) RFP.

(1) Submission. When an RFP is used by the agency, the RFP will contain, at a minimum, the following:

(A) a general description of the goods and/or services to be provided, and a specific identification of the goals or objectives to be achieved;

(B) a description of the format proposals must follow and the elements they must contain;

(C) the time and date proposals are due, and the location and person to whom they are to be submitted;

(D) an identification of the process to be utilized in evaluating proposals; and

(E) a listing of the factors to be utilized in evaluating proposals and awarding a contract. At a minimum, the factors should include:

(i) the proposer's price to provide the goods or services;

(ii) the probable quality of the offered goods or services;

(iii) the [~~The~~] agency's evaluation of the likelihood of the proposal to produce the desired outcome for the agency, considering, among other criteria:

(I) the quality of the proposer's past performance in contracting with the agency, with other state entities, or with private sector entities;

(II) the qualifications of the proposer's personnel;

(III) the experience of the proposer in providing the requested goods or services;

(IV) the financial status of the proposer; and

(iv) whether the proposer performed the good faith effort required by the HUB subcontracting plan, when the agency has determined that subcontracting is probable.

(2) Evaluation Process. The agency will, prior to the deadline for receipt of proposals, develop and establish comprehensive evaluation criteria to be utilized by an evaluation committee in evaluating the proposals. All proposals that are responsive to the RFP will be reviewed by the evaluation committee. As part of the initial evaluation process, proposers may be requested to make an oral presentation to the committee, which may include an inspection trip to the proposer's facilities. The evaluation committee may seek advice from consultants. If consultants are employed, they may be provided all information provided by the proposers. The evaluation committee will evaluate and rank all proposals in accordance with the evaluation criteria.

(3) Best and Final Offers (BAFO). The agency may select top proposers, which may each be given an opportunity to discuss, clarify, and negotiate with the agency, and submit revisions to their respective proposals to the agency through a BAFO process. During discussions between the proposers and the agency, no information from a competing proposal may be revealed by the agency to another competitor. Any type of auction practice or allowing the transfer of technical information is specifically prohibited. At the conclusion of the discussions, BAFOs may be formally requested from the proposers and a deadline will be set for submission. BAFOs will be submitted by supplemental pages and not a complete resubmission of the proposal. All BAFOs will be reviewed by the evaluation committee. The evaluation committee will evaluate and rank the BAFO response together with the original proposal in accordance with the evaluation criteria.

(4) Negotiation. If a BAFO process is not used, the agency will attempt to negotiate a contract with the selected proposer. If a contract cannot be negotiated with the selected proposer on terms the agency determines reasonable, negotiations with that proposer will be terminated, and negotiations will be undertaken with the next highest ranked proposer. This process will be continued until a contract is executed by a proposer and the agency, or negotiations with all qualified proposers are terminated. If no contract is executed, the agency may ~~[attempt to negotiate a contract with any of the other proposers or]~~ cancel the solicitation. ~~[Negotiations will continue until a contract is executed or all proposals are rejected, or the solicitation is canceled.]~~

(5) Multiple Award. The agency may award a contract to two or more vendors or contractors using a single solicitation to furnish the same or similar supplies or services, where more than one vendor or contractor is needed to meet the agency's requirements for quantity, delivery, or service.

(g) RFQ.

(1) Submission. When an RFQ is used by the agency, the RFQ will contain, at a minimum, the following:

(A) a general description of the professional services to be performed, and a specific identification of the goals or objectives to be achieved;

(B) a description of the format proposals must follow and the elements they must contain;

(C) the time and date proposals are due, and the location and person to whom they are to be submitted;

(D) an identification of the process to be utilized in evaluating proposals and awarding a contract; and

(E) a listing of the factors to be utilized in evaluating proposals and awarding a contract. At a minimum, the factors should include:

(i) the demonstrated competence and qualifications to perform the services;

(ii) the quality of the proposer's past performance in contracting with the agency, with other state entities, or with private sector entities;

(iii) the financial status of the proposer;

(iv) the qualifications of the proposer's personnel;

(v) the experience of the proposer in providing the requested services; and

(vi) whether the proposer performed the good faith effort required by the HUB subcontracting plan, when the agency has determined that subcontracting is probable.

(2) Evaluation Process. The agency will, prior to the deadline for receipt of proposals, develop and establish comprehensive evaluation criteria to be utilized by an evaluation committee in evaluating the proposals. All proposals that are responsive to the RFQ will be reviewed by the evaluation committee. The evaluation committee will evaluate and rank all proposals in accordance with the evaluation criteria.

(3) Negotiation. The agency will then attempt to negotiate a contract, for a fair and reasonable price, with the selected proposer; or, the agency may engage in simultaneous negotiations with multiple proposers. If a contract cannot be negotiated with the selected proposer on terms the agency determines reasonable, negotiations with that proposer will be terminated, and negotiations will be undertaken with the next highest ranked proposer. This process will continue until a contract is executed by a proposer and the agency, or negotiations with all qualified proposers are terminated. If no contract is executed, the agency may cancel the solicitation. ~~[attempt to negotiate a contract with any of the other proposers. Negotiations will continue until a contract is executed or all proposals are rejected.]~~

(h) Preferences.

(1) If, after application of the preferences required by Texas law, a tie continues, the contract award will be made by the drawing of lots.

(2) A bidder or proposer entitled to a preference(s) under Texas law shall claim the preference(s) in its bid or proposal.

(i) Contract terms. A contract for the purchase or lease of goods or services relating to the implementation, operation, or administration of the lottery will provide that the executive director may terminate the contract, without penalty, if an investigation made pursuant to the Act reveals that the person to whom the contract was awarded would not be eligible to receive a sales agent license under the State Lottery Act, Texas Government Code, §466.155. An IFB, RFP or RFQ may require that bidders or proposers provide in their bids or proposals sufficient information to allow the agency to determine whether the bidder or proposer meets the eligibility requirements for a sales agent license.

§401.102. *Protests of the Terms of a Formal Competitive Solicitation.*

(a) Any person aggrieved by the terms of any formal solicitation may protest the agency's action to the director of administration. If the director of administration cannot resolve the protest, the aggrieved party may appeal the director of administration's decision to the executive director. If the executive director cannot resolve the protest,

the aggrieved party may appeal the executive director's decision to the Texas Lottery Commission. ~~At [I]rrespective of the foregoing provision and the following processes, at~~ any time, the executive director may refer a protest directly to the Texas Lottery Commission for determination. The procedures applicable to an appeal to the commission will then apply.

(b) A protest of the terms of any formal solicitation must be filed, in writing, with the commission's general counsel within 72 hours after issuance of the formal competitive solicitation. The stamp affixed by the office of the general counsel shall determine the time and date of filing. If the protest is filed by facsimile transmission, the quality of the original hard copy shall be clear and dark enough to transmit legibly and it shall be the sender's sole responsibility to ensure complete, timely, and legible delivery to the office of the general counsel. A protest not filed timely will not be considered, and the protestant will be so notified in writing by the commission's general counsel. A protestant may supplement its timely filed protest. The deadline to supplement is 5 p.m. central time, 10 calendar days after the formal solicitation is issued.

(c) To be considered, a protest must contain:

- (1) a specific identification of the statutory provision, rule provision, or procurement procedure allegedly violated;
- (2) a brief statement of the relevant facts;
- (3) an identification of the issue or issues to be resolved;
- (4) arguments and authorities in support of the protest; and
- (5) an affidavit that the contents of the protest are true and correct.

(d) In the event of a timely filed protest of a formal competitive solicitation, the agency will suspend the solicitation pending resolution of the protest [not proceed with issuance of a purchase order or execution of a contract] unless the agency determines, in writing, that such action is necessary to protect the interests of the lottery.

(e) The director of administration will review the protest, and the solicitation file, and will make a written determination of the protest, ~~which~~ The written determination of the protest may include ~~a determination~~ canceling the solicitation. The director of administration's written determination will be served, by facsimile or by email, on the protestant. Confirmation of delivery to the designated facsimile machine, or confirmation that the notice was sent to an email address designated for the receipt of correspondence, will be conclusive proof that delivery was made. ~~The [An appeal of the]~~ decision of the director of administration may be appealed to the executive director. The appeal [of any protest] must be filed, in writing, with the commission's general counsel by 5 p.m. [of] the next business day after issuance of the written determination. The stamp affixed by the office of the general counsel shall determine the time and date of filing.

(f) On appeal of the director of administration's determination, the executive director will review the protest, ~~and~~ the solicitation file, any responses, and the director of administration's determination, including any reasoning that supports the [his] determination. The executive director [and] will then make a written determination of the appeal, which ~~The written determination on the protest~~ may include ~~a determination~~ canceling the solicitation. The executive director's written determination will be served, by facsimile or by email, on the protestant. Confirmation of delivery to the designated facsimile machine, or confirmation that the notice was sent to an email address designated for the receipt of correspondence, will be conclusive proof that delivery was made. An appeal to the Texas Lottery Commission of the determination of the executive director must be filed, in writing, with

the commission's general counsel by 5 p.m. [of] the next business day after issuance of the written determination. The stamp affixed by the office of the general counsel shall determine the time and date of filing.

(g) On timely receipt of the notice of appeal to the Texas Lottery Commission, the general counsel will appoint a staff attorney who ~~did [has] not participate [participated]~~ in ~~the~~ drafting [of] the solicitation and ~~did not render [or rendered]~~ legal advice with respect to the solicitation to evaluate the protest. The staff attorney will make a written recommendation to the Texas Lottery Commission, including proposed findings of fact and conclusions of law.

(h) The Texas Lottery Commission, at its discretion, may allow oral argument by the protestant and any necessary agency staff. The Texas Lottery Commission may limit the time for oral argument. Oral argument must be based solely on the written protest. The executive director may be present to respond to questions and will have the opportunity to make a presentation to the Texas Lottery Commission regarding the protest of the terms of the formal competitive solicitation. The staff attorney who made the written recommendation to the Texas Lottery Commission may also be present to respond to any questions.

(i) The Texas Lottery Commission will make a written determination of the protest. To make its determination, the Commission will review:

- (1) The protest;
- (2) The solicitation file;
- (3) The oral argument, and executive director's presentation, if any;
- (4) The executive director's determination, including any reasoning that supports the determination; and

(5) The staff attorney's recommendation. The written determination on the protest may include a determination canceling the solicitation. The Texas Lottery Commission's written determination will be served, by facsimile or by email, on the protestant. Confirmation of delivery to the designated facsimile machine, or confirmation that the notice was sent to an email address designated for the receipt of correspondence, will be conclusive proof that delivery was made. The Texas Lottery Commission's determination shall be administratively final when issued.

~~{(h) The Texas Lottery Commission, at its discretion, may allow oral argument by the protestant. The following procedure will be followed if the Texas Lottery Commission grants oral argument:}~~

~~{(1) Each oral argument may be limited in time as deemed appropriate by the Texas Lottery Commission.}~~

~~{(2) Each oral argument will be based solely on the written protest.}~~

~~{(3) The executive director may be present, have the opportunity to make a presentation to the Texas Lottery Commission regarding the protest of the terms of the formal competitive solicitation, and may be available to respond to questions by the Texas Lottery Commission.}~~

~~{(4) The staff attorney who made the written recommendation to the Texas Lottery Commission may also be present to respond to any questions by the Texas Lottery Commission.}~~

{(i) The Texas Lottery Commission will review the protest, the solicitation file, consider the oral argument, if any, the executive director's determination, including any reasoning that supports his determination, and his presentation, if any, the staff attorney's recommendation, and will make a written determination of the protest. The written

determination on the protest may include a determination canceling the solicitation. The Texas Lottery Commission's written determination will be served, by facsimile, on the protestant. Confirmation of delivery to the designated facsimile machine will be conclusive proof that delivery was made. The Texas Lottery Commission's determination shall be administratively final when issued.]

§401.103. *Protests of Contract Award.*

(a) Any bidder or proposer aggrieved by a contract award may protest the agency's action to the director of administration. If the director of administration cannot resolve the protest, the aggrieved party may appeal the director of administration's decision to the executive director. If the executive director cannot resolve the protest, the aggrieved party may appeal the executive director's decision to the Texas Lottery Commission. ~~At [Irrespective of the foregoing provision and the following processes, at]~~ any time, the executive director may refer the protest directly to the Texas Lottery Commission for determination. The procedures applicable to an appeal to the commission will then apply.

(b) A protest of any contract award must be filed, in writing, with the commission's general counsel within 72 hours after receipt of notice of contract award. A copy of the protest must be delivered to the successful bidder or proposer at the same time that the protest or supplement is delivered to the agency. The stamp affixed by the office of the general counsel shall determine the time and date of filing. If the protest is filed by facsimile transmission, the quality of the original hard copy shall be clear and dark enough to transmit legibly and it shall be the sender's sole responsibility to ensure complete, timely, and legible delivery to the office of the general counsel and to the successful bidder or proposer. A protest not filed timely will not be considered, and the protestant will be so notified in writing by the commission's general counsel. A protestant may supplement its timely filed protest. The deadline to supplement is 5 p.m. central time, 10 calendar days after notice of contract award.

(c) In the event of a protest of a contract award, the successful bidder(s) or proposer(s) may file a written response to the protest within 72 hours after the office of the general counsel's receipt of the protest or any supplemental filing. The stamp affixed by the office of the general counsel shall determine the time and date of filing. If the response is filed by facsimile transmission, the quality of the original hard copy shall be clear and dark enough to transmit legibly and it shall be the sender's sole responsibility to ensure complete, timely, and legible delivery to the office of the general counsel. Responses not filed timely will not be considered, and the successful bidder(s) or proposer(s) [respondent] will be so notified in writing by the commission's general counsel.

(d) To be considered, a protest must contain:

- (1) a specific identification of the statutory provision, rule provision, or procurement procedure allegedly violated;
- (2) a brief statement of the relevant facts;
- (3) an identification of the issue or issues to be resolved;
- (4) arguments and authorities in support of the protest;
- (5) an affidavit that the contents of the protest are true and correct; and
- (6) a certification that a copy of the protest has been served on the successful proposer(s).

(e) In the event of a timely filed protest of a contract award, the executive director will be notified and may abate the award of the contract until the protest is finally resolved.

(f) The director of administration will review the protest, ~~[and] the contract award file, [and] any responses,[:]~~ and will make a written determination of the protest, ~~which[-~~ The written determination ~~on the protest]~~ may include canceling ~~[a determination to cancel]~~ the award of the contract. The director of administration's written determination will be served, by facsimile or by email, on the protestant and the successful bidder(s) or proposer(s). Confirmation of delivery to the designated facsimile machine, or confirmation that the notice was sent to an email address designated for the receipt of correspondence, will be conclusive proof that delivery was made. ~~The decision [An appeal of the determination]~~ of the director of administration ~~may be appealed to the Executive Director.~~ The appeal ~~[of any protest]~~ must be filed, in writing, with the commission's general counsel by 5 p.m. of the next business day after issuance of the written determination. The stamp affixed by the office of the general counsel shall determine the time and date of filing.

(g) ~~The [In the event of an appeal of the director of administration's determination, or of the executive director's determination, the] successful bidder(s) or proposer(s) may file a written response to the appeal of a determination made by the director of administration or the Executive Director within 24 hours after notice of the commission's receipt of the appeal.~~ The stamp affixed by the office of the general counsel shall determine the time and date of filing. If the response is filed by facsimile transmission, the quality of the original hard copy shall be clear and dark enough to transmit legibly and it shall be the sender's sole responsibility to ensure complete, timely, and legible delivery to the office of the general counsel. Responses not filed timely will not be considered, and the respondent will be so notified in writing by the commission's general counsel.

(h) On appeal of the director of administration's determination, the executive director will review the protest, ~~[and] the contract award file[:]~~ and ~~[any] responses, and the director of administration's determination, including any reasoning that supports the [director of administration's] determination.~~ The Executive Director~~[: and]~~ will then make a written determination of the protest, ~~which[-~~ ~~The written determination on the protest]~~ may include [a determination] abating the award of the contract. The executive director's written determination will be served, by facsimile or by email, on the protestant. Confirmation of delivery to the designated facsimile machine, or confirmation that the notice was sent to an email address designated for the receipt of correspondence, will be conclusive proof that delivery was made. An appeal to the Texas Lottery Commission of the determination of the executive director ~~[of any protest]~~ must be filed, in writing, with the commission's general counsel by 5 p.m. of the next business day after issuance of the written determination. The stamp affixed by the office of the general counsel shall determine the time and date of filing.

(i) On timely receipt of the protest and any response, the general counsel will appoint a staff attorney who did [has] not participate [participated] in the decision to award the contract to evaluate the protest and any response. The staff attorney will make a written recommendation to the Texas Lottery Commission, including proposed findings of fact and conclusions of law.

(j) The Texas Lottery Commission, at its discretion, may allow oral argument by the protestant, the successful bidder or proposer, and any necessary agency staff. The Texas Lottery Commission may limit the time for oral argument. The executive director may be present to respond to questions and will have the opportunity to make a presentation to the Texas Lottery Commission regarding the protest of the contract award. The staff attorney who made the written recommendation to the Texas Lottery Commission may also be present to respond to any questions.

(k) The Texas Lottery Commission will make a written determination of the protest. To make its determination, the commission will review:

- (1) The protest;
- (2) The contract award file;
- (3) Any responses;
- (4) The oral argument, and Executive Director's presentation, if any;
- (5) The executive director's determination, including any reasoning that supports the determination; and

(6) The staff attorney's recommendation. The written determination of the protest will include findings of fact and conclusions of law, and may include a determination voiding or sustaining the contract. The Texas Lottery Commission's written determination will be served, by facsimile or by email, on the protestant and all parties to the protest proceedings. Confirmation of delivery to the designated facsimile machine, or confirmation that the notice was sent to an email address designated for the receipt of correspondence, will be conclusive proof that delivery was made. The Texas Lottery Commission's determination shall be administratively final when issued.

{(j) The Texas Lottery Commission, at its discretion, may allow oral argument by the protestant and the successful bidder or proposer. The following procedure will be followed if the Texas Lottery Commission grants oral argument:}

{(1) Each oral argument may be limited in time as deemed appropriate by the Texas Lottery Commission;}

{(2) Each oral argument will be based solely on the written protest;}

{(3) The executive director may be present, have the opportunity to make a presentation to the Texas Lottery Commission regarding the protest of the contract award, and may be available to respond to questions by the Texas Lottery Commission;}

{(4) The staff attorney who made the written recommendation to the Texas Lottery Commission may also be present to respond to any questions by the Texas Lottery Commission.}

{(k) The Texas Lottery Commission will review the protest, the contract award file, any responses, consider the oral argument, if any, the executive director's determination, including any reasoning that supports his determination, his presentation, and the staff attorney's recommendation. The Texas Lottery Commission will make a written determination of the protest, including findings of fact and conclusions of law. The written determination may include a determination voiding the contract or sustaining the contract. The Texas Lottery Commission's written determination will be served, by facsimile, on the protestant and all parties to the protest proceedings. Confirmation of delivery to the designated facsimile machine will be conclusive proof that delivery was made. The Texas Lottery Commission's determination shall be administratively final when issued.}

§401.104. Contract Monitoring Roles and Responsibilities.

The contract monitoring roles and responsibilities of agency internal audit staff and other inspection, investigative, or compliance staff are as follows:[-]

(1) A division within the agency will perform internal audit activities that may include providing audit services and/or rendering routine professional advice and answering technical questions to the commission and staff to assist them in contract monitoring and compliance.

(2) A division [unit] within the agency will seek to improve contract compliance by serving as a central repository for agency contracts so the agency can perform contract compliance reviews.

(3) A division within the agency will function as the agency's criminal enforcement unit. This unit will take action regarding criminal activity related to agency contracts.

(4) A division or divisions within the agency will monitor and report to other appropriate agency divisions or units regarding contract compliance.

(5) A division within the agency will assist the administering division or divisions and the contract management [and special projects] section in monitoring agency contracts [a contract] in connection with applicable historically underutilized and minority business contract 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 January 14, 2013.

TRD-201300086
Bob Biard
General Counsel
Texas Lottery Commission
Earliest possible date of adoption: February 24, 2013
For further information, please call: (512) 344-5275



TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 9. PROGRAM DEVELOPMENT IN PUBLIC TWO-YEAR COLLEGES

SUBCHAPTER D. TRANSFERABLE ACADEMIC COURSES

19 TAC §9.74

The Texas Higher Education Coordinating Board proposes amendments to §9.74, concerning Unique Need Courses. The intent of the amendments is to reduce the amount of time spent by community college personnel and Board staff in submitting, reviewing, and approving upper-division courses that are used in applied baccalaureate degrees. These amendments would streamline the applied baccalaureate course approval process found in Chapter 9, Subchapter D, and make those approvals good for as long as the requesting college has the related applied baccalaureate degree on its approved program inventory.

Dr. MacGregor M. Stephenson, Assistant Commissioner for Workforce, Academic Affairs and Research, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for state or local governments as a result of amending this section.

Dr. Stephenson has also determined that for each year of the first five years the amendments are in effect, the public benefits anticipated as a result of administering the section will be to re-

duce the amount of time spent by community college personnel and Board staff in submitting, reviewing, and approving upper-division courses that are used in applied baccalaureate degrees. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

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

The amendments are proposed under the Texas Education Code, Chapter 61, Subchapter C, §61.051(g), which provides the Coordinating Board with the authority to provide for the free transferability of lower division course credit among institutions of higher education.

The amendments affect the Texas Education Code, §61.051.

§9.74. *Unique Need Courses.*

(a) An academic course may be approved for unique need if it meets the following criteria:

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

(3) The course must be acceptable for transfer and apply toward [a] baccalaureate degree requirements at a minimum of three Texas public universities. If a university's degree program requirements could be satisfied by an existing course in the ACGM, then that university cannot count as one of the required three.

(4) (No change.)

(b) - (e) (No change.)

(f) Community Colleges that have been approved by the Board to offer one or more Applied Baccalaureate degree programs may request authorization to offer courses in support of those degrees under the following provisions:

(1) The course must be a degree program requirement of one or more Applied Baccalaureate degree programs approved by the Board for the requesting college.

(2) The course must be upper division.

(3) The request must include a completed "Applied Baccalaureate Course Proposal" form and must be submitted on a schedule set by the Board.

(4) Any college approved to offer an Applied Baccalaureate course must notify the Board of any significant changes to the course, including its semester credit hour value, contact hour value, title, or CIP code, prior to offering the revised course to students in order to continue to receive state funding for the course.

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

Filed with the Office of the Secretary of State on January 14, 2013.

TRD-201300080

Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: April 25, 2013
For further information, please call: (512) 427-6114

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TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 190. DISCIPLINARY GUIDELINES

SUBCHAPTER C. SANCTION GUIDELINES

22 TAC §190.14

The Texas Medical Board (Board) proposes amendments to §190.14, concerning Disciplinary Sanction Guidelines.

The amendments provide that the board may suspend or revoke a licensee's license for boundary violations with a patient.

Nancy Leshikar, General Counsel for the Board, has 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.

Mrs. Leshikar has also 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 ensure that the public is adequately protected and that licensees are appropriately disciplined for boundary violations.

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 §§164.051 - 164.053, Texas Occupations Code.

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

§190.14. *Disciplinary Sanction Guidelines.*

These disciplinary sanction guidelines are designed to provide guidance in assessing sanctions for violations of the Medical Practice Act. The ultimate purpose of disciplinary sanctions is to protect the public, deter future violations, offer opportunities for rehabilitation if appropriate, punish violators, and deter others from violations. These guidelines are intended to promote consistent sanctions for similar violations, facilitate timely resolution of cases, and encourage settlements.

(1) The standard sanctions outlined in paragraph (9) of this section [below] provide a range from "Low Sanction" to "High Sanction" based upon any aggravating or mitigating factors that are found to apply in a particular case. The board may impose more restrictive sanctions when there are multiple violations of the Act. The board may impose more or less severe or restrictive sanctions, based on any aggravating and/or mitigating factors listed in §190.15 of this chapter

(relating to Aggravating and Mitigating Factors) that are found to apply in a particular case.

(2) The minimum sanctions outlined in paragraph (9) of this section [below] are applicable to first time violators. In accordance with §164.001(g)(2) of the Act, the board shall consider revoking the person's license if the person is a repeat offender.

(3) The sanctions outlined in paragraph (9) of this section [below] are based on the conclusion stated in §164.001(j) of the Act that a violation related directly to patient care is more serious than one that involves only an administrative violation. An administrative violation may be handled informally in accordance with §187.14(7) of this title (relating to Informal Resolutions of Violations). Administrative violations may be more or less serious, depending on the nature of the violation. Administrative violations that are considered by the board to be more serious are designated as being an "aggravated administrative violation."

(4) The maximum sanction in all cases is revocation of the licensee's license, which may be accompanied by an administrative penalty of up to \$5,000 per violation. In accordance with §165.003 of the Act, each day the violation continues is a separate violation.

(5) Each statutory violation constitutes a separate offense, even if arising out of a single act.

(6) If the licensee acknowledges a violation and agrees to comply with terms and conditions of remedial action through an agreed order, the standard sanctions may be reduced.

(7) Any panel action that falls outside the guideline range shall be reviewed and voted on individually by the board [Board] at a regular meeting.

(8) For any violation of the Act that is not specifically mentioned in this rule, the board shall apply a sanction that generally follows the spirit and scheme of the sanctions outlined in this rule.

(9) The following standard sanctions shall apply to violations of the Act:

Figure: 22 TAC §190.14(9)

[Figure: 22 TAC §190.14(9)]

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

Filed with the Office of the Secretary of State on January 14, 2013.

TRD-201300075

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Earliest possible date of adoption: February 24, 2013

For further information, please call: (512) 305-7016



TITLE 25. HEALTH SERVICES

PART 7. TEXAS MEDICAL DISCLOSURE PANEL

CHAPTER 601. INFORMED CONSENT

25 TAC §601.2

The Texas Medical Disclosure Panel (panel) proposes an amendments to §601.2, concerning informed consent.

BACKGROUND AND PURPOSE

The amendment to §601.2 adds subsection (u) to the List A medical and surgical procedures requiring disclosure and identifies those dental surgery procedures, and the specific risks and hazards associated with each, which are to be disclosed to patients before consent is given to the procedure. This addition to the rule, subsection (u), is proposed in accordance with the Civil Practice and Remedies Code, §74.102, which requires the panel to determine which risks and hazards related to medical care and surgical procedures must be disclosed by health care providers or physicians to their patients or persons authorized to consent for their patients and to establish the general form and substance of such disclosure. In response to requests from the Texas Dental Association, the panel agreed to add new subsection (u) to §601.2 titled "Dental Surgery Procedures." This new subsection addresses four types of dental surgery procedures that require disclosure: (1) oral surgery; (2) endodontics (surgery to address diseases of the dental pulp); (3) periodontal surgery (surgery of the gums); and (4) implant procedures. Subsection (u) also identifies the specific risks and hazards associated with each of these four types of dental surgical procedures to be disclosed to patients.

SECTION-BY-SECTION SUMMARY

The amendment to §601.2 adds subsection (u), titled "Dental Surgery Procedures," that addresses four types of dental surgical procedures and the risks and hazards for these dental surgery procedures that are to be disclosed to patients.

FISCAL NOTE

Renee Clack, Section Director, Health Care Quality Section, has determined that for each year of the first five years that the section will be in effect, there will be no fiscal impact to state or local governments as a result of administering the section as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Clack also has determined that there are no anticipated economic costs to small businesses or micro-businesses that are required to comply with the amendment as proposed, because regulated facilities already have an obligation to disclose risks and hazards related to medical care and surgical procedures. The amendment will not add additional costs.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There will be no economic costs to persons required to comply with the section as proposed, and there will be no impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Clack also has determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing or administering the amended disclosure rule will be that patients are better informed about the risks and hazards related to dental surgical procedures they are considering in connection with deciding whether to consent to them.

REGULATORY ANALYSIS

The panel 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 panel 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 Pamela Adams, Program Specialist, Facility Licensing Group, Regulatory Licensing Unit, Division of Regulatory Services, Department of State Health Services, Mail Code 2835, P.O. Box 149347, Austin, Texas 78714-9347, (512) 834-6600, extension 2607, or by email to pamela.adams@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

STATUTORY AUTHORITY

The amendment is authorized under the Civil Practice and Remedies Code, §74.102, which provides the Texas Medical Disclosure Panel with the authority to prepare lists of medical treatments and surgical procedures that do and do not require disclosure by physicians and health care providers of the possible risks and hazards and to prepare the form(s) for the treatments and procedures which do require disclosure.

The amendment affects Civil Practice and Remedies Code, Chapter 74.

§601.2. Procedures Requiring Full Disclosure of Specific Risks and Hazards--List A.

(a) - (t) (No change.)

(u) Dental Surgery Procedures.

(1) Oral surgery.

(A) Extraction (removing teeth).

(i) Dry socket (inflammation in the socket of a tooth).

(ii) Permanent or temporary numbness or altered sensation.

(iii) Sinus communication (opening from tooth socket into the sinus cavity).

(iv) Fracture of alveolus and/or mandible (upper and/or lower jaw).

(B) Surgical exposure of tooth in order to facilitate orthodontics.

(i) Injury to tooth or to adjacent teeth and structures.

(ii) Failure to get proper attachment to tooth, requiring additional procedure.

(2) Endodontics (deals with diseases of the dental pulp).

(A) Apicoectomy (surgical removal of root tip or end of the tooth, with or without sealing it).

(i) Shrinkage of the gums and crown margin exposure.

(ii) Sinus communication (opening from tooth socket into the sinus cavity).

(iii) Displacement of teeth or foreign bodies into nearby tissues, spaces, and cavities.

(B) Root amputation (surgical removal of portion of one root of a multi-rooted tooth).

(i) Shrinkage of the gums and crown margin exposure.

(ii) Sinus communication (opening from tooth socket into the sinus cavity).

(iii) Displacement of teeth or foreign bodies into nearby tissues, spaces, and cavities.

(C) Root canal therapy (from an occlusal access in order to clean and fill the canal system).

(i) Instrument separation (tiny files which break within the tooth canal system).

(ii) Fenestration (penetration of walls of tooth into adjacent tissue).

(iii) Failure to find and/or adequately fill all canals.

(iv) Expression of irrigants or filling material past the apex of the tooth (chemicals used to clean, or materials used to fill, a root may go out the end of the root and cause pain or swelling).

(v) Damage to adjacent tissues from irrigants or clamps.

(vi) Fracture or loss of tooth.

(3) Periodontal surgery (surgery of the gums).

(A) Gingivectomy and gingivoplasty (involves the removal of soft tissue).

(i) Tooth sensitivity to hot, cold, sweet, or acid foods.

(ii) Shrinkage of the gums upon healing resulting in teeth appearing longer and greater spaces between some teeth.

(B) Anatomical crown exposure (removal of enlarged gingival tissue and supporting bone to provide an anatomically correct gingival relationship).

(i) Tooth sensitivity to hot, cold, sweet, or acid foods.

(ii) Shrinkage of the gums upon healing resulting in teeth appearing longer and greater spaces between some teeth.

(C) Gingival flap procedure, including root planing (soft tissue flap is laid back or removed to allow debridement (cleaning) of the root surface and the removal of granulation tissue (unhealthy soft tissue)).

(i) Permanent or temporary numbness or altered sensation.

(ii) Tooth sensitivity to hot, cold, sweet, or acid foods.

(iii) Shrinkage of the gums upon healing, resulting in teeth appearing longer and greater spaces between some teeth.

(D) Apically positioned flap (used to preserve keratinized gingival (attached gum tissue) in conjunction with osseous resection (removal) and second stage implant procedure).

(i) Permanent or temporary numbness or altered sensation.

(ii) Shrinkage of the gums upon healing, resulting in teeth appearing longer and greater spaces between some teeth.

(E) Clinical crown lengthening (removal of gum tissue and/or bone from around tooth).

(i) Permanent or temporary numbness or altered sensation.

(ii) Shrinkage of the gums upon healing, resulting in teeth appearing longer and greater spaces between some teeth.

(F) Osseous surgery - including flap entry and closure (modification of the bony support of the teeth).

(i) Permanent or temporary numbness or altered sensation.

(ii) Tooth sensitivity to hot, cold, sweet, or acid foods.

(iii) Loss of tooth.

(iv) Shrinkage of the gums upon healing, resulting in teeth appearing longer and greater spaces between some teeth.

(G) Guided tissue regeneration - resorbable barrier.

(i) Permanent or temporary numbness or altered sensation.

(ii) Accidental aspiration (into the lungs) of foreign matter.

(iii) Rejection of donor materials.

(H) Guided tissue regeneration - nonresorbable barrier (includes membrane removal).

(i) Permanent or temporary numbness or altered sensation.

(ii) Shrinkage of the gums upon healing, resulting in teeth appearing longer and greater spaces between some teeth.

(iii) Accidental aspiration (into the lungs) of foreign matter.

(iv) Rejection of donor materials.

(I) Pedicle soft tissue graft procedure.

(i) Permanent or temporary numbness or altered sensation.

(ii) Shrinkage of the gums upon healing, resulting in teeth appearing longer and greater spaces between some teeth.

(iii) Rejection of donor materials.

(J) Free soft tissue graft protection - including donor site surgery.

(i) Permanent or temporary numbness or altered sensation.

(ii) Shrinkage of the gums upon healing, resulting in teeth appearing longer and greater spaces between some teeth.

(iii) Rejection of graft.

(K) Sub epithelial connective tissue graft procedures.

(i) Permanent or temporary numbness or altered sensation.

(ii) Shrinkage of the gums upon healing, resulting in teeth appearing longer and greater spaces between some teeth.

(iii) Rejection of graft.

(L) Distal or proximal wedge procedure (taking off gum tissue from the very back of the last tooth or between teeth). Shrinkage of the gums upon healing, resulting in teeth appearing longer and greater spaces between some teeth.

(M) Soft tissue allograft and connective tissue double pedicle graft from below (creates or augments gum tissue).

(i) Permanent or temporary numbness or altered sensation.

(ii) Tooth sensitivity to hot, cold, sweet, or acid foods.

(iii) Shrinkage of the gums upon healing resulting in teeth appearing longer and greater spaces between some teeth.

(4) Implant procedures.

(A) Bone grafting (replacing missing bone).

(i) Permanent or temporary numbness or altered sensation.

(ii) Rejection of bone particles or graft from donor or recipient sites.

(iii) Damage to adjacent teeth or bone.

(B) Surgical placement of implant body.

(i) Blood vessel or nerve injury.

(ii) Damage to adjacent teeth or bone fracture.

(iii) Sinus communication (opening from tooth socket into the sinus cavity).

(iv) Failure of implant, requiring corrective surgery.

(v) Cyst formation, bone loss, or gum disease around the implant.

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

Filed with the Office of the Secretary of State on January 14, 2013.

TRD-201300082

Noah Appel, M.D.

Chairman

Texas Medical Disclosure Panel

Earliest possible date of adoption: February 24, 2013

For further information, please call: (512) 776-6972



TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION SUBCHAPTER A. GENERAL RULES

34 TAC §3.9

The Comptroller of Public Accounts proposes an amendment to §3.9, concerning electronic filing of returns and reports; electronic transfer of certain payments by certain taxpayers.

Subsection (a) is being revised to reflect more precisely the comptroller's current practices and procedures regarding voluntary electronic filing of returns and reports. Subsection (b), concerning the required electronic transfer of certain payments by certain taxpayers pursuant to Tax Code, §111.0625, is being revised to improve clarity, to delete a reference to assessments for the Telecommunications Infrastructure Fund, which was repealed effective September 1, 2008, and to make conforming changes required by revisions to Chapters 15 and 16 of this title.

A new subsection (c), concerning payment dates for electronic transfers of funds, is being added to explain the time limitation for taxpayers to submit payment information to the comptroller using the State of Texas Financial Network (TexNet), the electronic data interchange (EDI) system, or another approved means of electronic funds transfer, and to provide an updated reference to the comptroller's TexNet filing rules, found in 34 TAC §15.33. Subsection (d) is being amended to make conforming changes. No substantive changes to policy or procedure are intended as a result of new subsection (c) or the revisions to subsection (d).

Former subsection (c) is being relocated to subsection (e) and is being amended to improve clarity and to implement changes made to Tax Code, Chapter 151 by House Bill 11, 82nd Legislature, 2011. Tax Code, §§151.461 - 151.470 were enacted to require brewers, distributors, manufacturers, retailers, and wholesalers of alcoholic beverages to report electronically to the comptroller the monthly net sales made to each outlet or location of a retailer in this state.

Subsections (f), (g), (h), and (i), formerly subsections (e), (f), (g), and (h), are being amended to make conforming changes and to improve clarity.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by providing taxpayers with explanatory information regarding agency policies and procedures for electronically remitting tax payments and reports. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendment is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2, and §151.463, which provides the comptroller with the authority to adopt rules to implement Subchapter I-1.

The amendment implements Tax Code, §§111.0625, 111.0626, 112.051, 151.461 - 151.470, and 151.703.

§3.9. *Electronic Filing of Returns and Reports; Electronic Transfer of Certain Payments by Certain Taxpayers.*

(a) Voluntary electronic [Electronic] filing of returns and reports. The comptroller may authorize a taxpayer to file any report or return required to be filed with the comptroller under Tax Code, Title 2, by means of electronic transmission under the following circumstances:

(1) the taxpayer or its authorized agent has registered with the comptroller to use an approved reporting method, such as WebFile, or the taxpayer is filing a return or report other than a return showing a tax liability[; or has been authorized by the comptroller through the issuance of a password or personal identification number (PIN) to use an electronic method of filing returns and reports]; and

(2) the method of electronic transmission of each return or report complies with any requirements established by the comptroller and is [shall be made in a manner] compatible with the comptroller's equipment and facilities.

(b) Required electronic [Electronic] transfer of certain payments by certain taxpayers pursuant to Tax Code, §111.0625.

(1) Taxpayers [For payments that are due on or after January 1, 2002, the comptroller, pursuant to Tax Code, §111.0625, shall require taxpayers] who have paid the comptroller a total of \$100,000 or more in a single category of payments or taxes during the preceding state fiscal year, and who the comptroller reasonably anticipates will pay at least that amount during the current fiscal year, shall [to] transfer all payment amounts in that category of payments or taxes during the subsequent calendar year to the comptroller using the State of Texas Financial Network (TexNet), pursuant to Chapter 15 of this title (relating to Electronic Transfer of Certain Payments to State Agencies) [by means of electronic funds transfer].

(2) Taxpayers [Electronic transfer of amounts under \$100,000 in certain categories:]

[(-A)] [For payments that are due on or after May 1, 2008, the comptroller, pursuant to Tax Code, §111.0625, shall require taxpayers] who paid at least \$10,000, but less than \$100,000, in a single category of payments or taxes [described in this paragraph] during the preceding state fiscal year, and who the comptroller reasonably anticipates will pay at least that amount during the current state fiscal year, shall [to] transfer all payments in that category of payments or taxes to the comptroller by means of electronic funds transfer as set out in subparagraph (C) of this paragraph. [if the comptroller reasonably anticipates the taxpayer will pay at least that amount during the current fiscal year.]

(A) This paragraph applies only to:

- (i) state and local sales and use taxes;
- (ii) direct payment sales taxes;
- (iii) gas severance taxes;
- (iv) oil severance taxes;
- (v) franchise taxes;

- (vi) gasoline taxes;
- (vii) diesel fuel taxes;
- (viii) hotel occupancy taxes;
- (ix) insurance premium taxes;
- (x) mixed beverage gross receipts taxes; and
- (xi) motor vehicle rental taxes.]; and]
- ~~[(xii) telecommunications infrastructure fund assessments.]~~

(B) The comptroller may add or remove a category of payments or taxes to or from this paragraph if the comptroller determines that such action is necessary to protect the interests of the state or of taxpayers.

(C) Payments under this paragraph shall be made by those electronic funds transfer methods approved by the comptroller, which include, but are not limited to, TexNet [TEXNET], electronic check (WebEFT),₂ and the electronic transmission of credit card information. ~~[The comptroller may authorize additional methods as technology evolves.]~~ The comptroller may require payments in specific categories to be made by specific methods of electronic funds transfer.

(D) A taxpayer ~~[who is]~~ required under this paragraph to use ~~[pay by]~~ electronic funds transfer ~~[under this paragraph]~~ who cannot comply due to hardship, impracticality, or other valid reason may submit a written request to the comptroller for a waiver of the requirement.

~~[(E) Except as provided in subsection (d) of this section, for persons using TEXNET, a person making a payment by other electronic funds transfer methods approved by the comptroller must transmit payment information by 4:59 p.m. central time on the date payment is due.]~~

(c) Payment date for electronic transfer of funds.

(1) A taxpayer making payment using TexNet. Pursuant to §15.33 of this title (relating to Determination of Settlement Date), a person who enters payment information into TexNet may choose either to accept the settlement date that TexNet offers or enter a settlement date up to 30 days from the business day after payment is submitted. TexNet will offer the business day following the day on which payment information is entered into TexNet, provided that the information is entered by 6:00 p.m. central time on any business day.

(2) A taxpayer who files combined tax returns and makes payments through the electronic data interchange (EDI) system must submit the payment information to the comptroller by 2:30 p.m. central time to meet the 6:00 p.m. central time requirement that is noted in paragraph (1) of this subsection.

(3) A taxpayer who makes payment by an electronic funds transfer method approved by the comptroller other than TexNet or the EDI system must transmit payment information by 11:59 p.m. central time on the date payment is due.

(d) The administrative rules found in Chapter 15 of this title on electronic funds transfer under Government Code, §404.095 using TexNet apply to all such payments to the comptroller.

(e) ~~[(e)]~~ Required electronic ~~[Electronic]~~ filing of certain reports by certain taxpayers.

(1) Reports required by Tax Code, §111.0626.

(A) Pursuant to Tax Code, §111.0626(a), taxpayers who are required ~~[by Tax Code, §111.0625,]~~ to use electronic funds transfer

for [tax] payments of certain taxes [that are made under Tax Code, Chapters 151, 201, 202, and the International Fuel Tax Agreement] must also file report data electronically, including reports required by the International Fuel Tax Agreement. This requirement applies to: [report data that is due on or after January 1, 2002.]

- (i) state and local sales and use taxes;
- (ii) direct payment sales taxes;
- (iii) gas severance taxes;
- (iv) oil severance taxes; and
- (v) motor fuel taxes.

(B) Pursuant to Tax Code, §111.0626(b-1), for reports due on or after September 1, 2008, taxpayers who paid \$50,000 or more during the preceding fiscal year must file report data electronically. A taxpayer filing a report electronically may use an application provided by the comptroller, [or] software provided by the comptroller, or commercially available software that satisfies requirements prescribed by the comptroller. This subparagraph only applies ~~[to reports due on or after September 1, 2008, but only]~~ after issuance to the taxpayer of the 60 days notice required by subsection (f) ~~[(e)]~~ of this section.

(2) Reports by brewers, manufacturers, wholesalers, and distributors of alcoholic beverages required by Tax Code, Chapter 151, Subchapter 1-1 ~~[beer, wine, or malt liquor. Pursuant to Tax Code, §151.433, each wholesaler or distributor of beer, wine, or malt liquor shall electronically file on or before the 25th day of each month a report of sales to retailers in this state].~~

(A) For purposes of this paragraph, a "seller" means a person who is a brewer, manufacturer, wholesaler, winery, distributor, or package store local distributor, as described in Tax Code, §151.461(1)-(4) and (6); and a "retailer" means a person who holds one or more of the permits listed in Tax Code, §151.461(5).

(B) ~~[(A)]~~ On or before the 25th day of each month, each seller holding a comptroller-issued tax identification number must file a report of alcoholic beverage sales to retailers in this state. The report must be filed by a means of electronic transmission approved by the comptroller. The report must contain the following information ~~[for the preceding calendar month's sales in relation to each retailer]:~~

(i) each Texas Alcoholic Beverage Commission (TABC) permit or license associated with the seller's comptroller-issued tax identification number ~~[the name of the retailer and the address of the retailer's outlet location to which the wholesaler or distributor delivered beer, wine, or malt liquor, including the city and zip code];~~

(ii) the TABC permit or license number for each seller location from which a sale was made to a retailer during the preceding calendar month ~~[comptroller assigned taxpayer number of the retailer, if the wholesaler or distributor is in possession of the number];~~

(iii) the TABC permit or license number, comptroller-issued tax identification number, and TABC trade name and physical address (street name and number, city, state, and zip code) of each retail location to which the seller sold alcoholic beverages during the preceding calendar month ~~[assigned to the retailer by the Texas Alcoholic Beverage Commission];~~

(iv) the information required by Tax Code, §151.462(b) regarding the seller's monthly ~~[net] sales [made] to each [the] retailer holding a separate TABC permit or license [by outlet], including: [the quantity and units of beer, wine, and malt liquor sold to the retailer and the price charged to the retailer; and]~~

(I) the individual container size of each product, such as the individual bottle or can container size, sold to retailers;

(II) the brand name of the alcoholic beverage sold;

(III) the beverage class code for distilled spirits, wine, beer, or malt beverage;

(IV) the Universal Product Code (UPC) of the alcoholic beverage sold;

(V) the number of individual containers of alcoholic beverages sold for each brand, UPC, and container size. Multi-unit packages, such as cases, must be broken down into the number of individual bottles or cans;

(VI) the total selling price of the containers sold;
and

(v) any other information deemed necessary by the comptroller for the efficient administration of this subsection.

(C) ~~[(B)]~~ If a person fails to file a report required by subparagraph (B) of this paragraph, ~~[this subsection]~~ or fails to file a complete report, the comptroller may:

(i) suspend or cancel one or more permits issued to the person under Tax Code, §151.203; and may

(ii) impose a civil ~~[or criminal]~~ penalty; ~~[or both,]~~ under Tax Code, §151.703(d); ~~[\$151.703+ or §151.709-]~~

(iii) impose a criminal penalty under Tax Code, §151.709; and/or

(iv) notify the TABC of the failure and the TABC may take administrative action against the person for the failure under the Alcoholic Beverage Code.

(D) In addition to the penalties imposed under subparagraph (C) of this paragraph, if a person violates Tax Code, Chapter 151, Subchapter I-1, or this paragraph, the comptroller shall collect from the seller an additional civil penalty of not less than \$25 or more than \$2,000 for each day the violation continues.

~~[(C) If a person fails to file a report required by this subsection or fails to file a complete report, the comptroller may notify the Texas Alcoholic Beverage Commission of the failure and the commission may take administrative action against the person for the failure under the Alcoholic Beverage Code.]~~

(E) ~~[(D)]~~ The requirements of this paragraph apply ~~[This requirement applies]~~ to sales occurring on or after September 1, 2011 ~~[January 1, 2008]~~.

(F) The requirements of this paragraph do not apply to:

(i) manufacturers whose annual production of beer in Texas is greater than 75,000 barrels; or

(ii) brewers whose annual production of malt liquor in Texas, combined with the annual production of beer produced by a manufacturer at the same premises, is greater than 75,000 barrels.

~~[(E) A report required by paragraph (2) of this subsection, must be filed each month even if the wholesaler or distributor made no sales to retailers during the preceding month.]~~

(3) Reports by wholesalers and distributors of cigarettes. Pursuant to Tax Code, §154.212, on or before the 25th day of each month each wholesaler or distributor of cigarettes shall ~~[electronically]~~ file ~~[on or before the 25th day of each month]~~ a report of sales to re-

tailers in this state. The report must be filed by a means of electronic transmission approved by the comptroller.

(A) The report must contain the following information for the preceding calendar month's sales ~~made~~ ~~[in relation]~~ to each retailer:

(i) the name of the retailer and the address, including city and zip code, of the retailer's outlet location to which the wholesaler or distributor delivered cigarettes; ~~[including city and zip code];~~

(ii) the comptroller-assigned taxpayer number of the retailer, if the wholesaler or distributor is in possession of the number;

(iii) the cigarette permit number of the outlet location to which the wholesaler or distributor delivered cigarettes;

(iv) the monthly net sales made to the retailer, including the quantity and units of cigarettes in stamped packages sold to the retailer and the price charged to the retailer; and

(v) any other information deemed necessary by the comptroller for the efficient administration of this subsection.

(B) The requirements of this paragraph apply ~~[This requirement applies]~~ to sales occurring on or after January 1, 2008.

~~[(C) A report required by paragraph (3) of this subsection, must be filed each month even if the wholesaler or distributor made no sales to retailers during the preceding month.]~~

(4) Reports by wholesalers and distributors of cigars and tobacco products. Pursuant to Tax Code, §155.105, on or before the 25th day of each month each wholesaler or distributor of cigars or tobacco products shall ~~[electronically]~~ file ~~[on or before the 25th day of each month]~~ a report of sales to retailers in this state. The report must be filed by a means of electronic transmission approved by the comptroller.

(A) The report must contain the following information for the preceding calendar month's sales ~~made~~ ~~[in relation]~~ to each retailer:

(i) the name of the retailer and the address, including the city and zip code, of the retailer's outlet location to which the wholesaler or distributor delivered cigars or tobacco products; ~~[including the city and zip code];~~

(ii) the comptroller-assigned taxpayer number of the retailer, if the wholesaler or distributor is in possession of the number;

(iii) the tobacco permit number of the outlet location to which the wholesaler or distributor delivered cigars or tobacco products;

(iv) the monthly net sales made to the retailer, including the quantity and units of cigars and tobacco products sold to the retailer and the price charged to the retailer;

(v) the net weight as listed by the manufacturer for each unit of tobacco products other than cigars; and

(vi) any other information deemed necessary by the comptroller for the efficient administration of this subsection.

(B) The requirements of this paragraph apply ~~[This requirement applies]~~ to sales occurring on or after January 1, 2008, with the exception of subparagraph (A)(v) of this paragraph, which applies to sales occurring on or after September 1, ~~[2009]~~.

~~[(C) A report required by paragraph (4) of this subsection, must be filed each month even if the wholesaler or distributor made no sales to retailers during the preceding month.]~~

(5) Except as provided by Tax Code, §111.006, information contained in the reports required by paragraphs (2), (3), and (4) of this subsection is confidential and not subject to disclosure under Government Code, Chapter 552.

(6) The reports required by paragraphs (2), (3), and (4) of this subsection are required in addition to any other reports required by the comptroller.

(7) The reports required by paragraphs (2), (3), and (4) of this subsection must be filed each month even if no sales were made to retailers during the preceding month.

~~[(d) Applicability of other administrative rules. The administrative rules on electronic funds transfer found in Chapters 15 and 16 of this title shall be applicable to all such payments to the comptroller.]~~

~~[(1) Pursuant to §15.11 of this title (relating to Determination of Settlement Day); a person who enters payment information into the applicable electronic fund transfer (EFT) system may choose to either accept the settlement day that the EFT system offers or enter a settlement day up to 30 days in the future. The EFT system will offer the business day following the day on which payment information is entered into the EFT system, provided that the information is entered by 6:00 p.m. central time on any day other than a weekend or banking holiday.]~~

~~[(2) A person who files combined tax returns and makes payments through the electronic data interchange (EDI) system must enter the payment information into the EDI system by 2:30 p.m. central time to meet the 6:00 p.m. central time requirement that is noted in paragraph (1) of this subsection.]~~

~~[(e)] [(e)] Notification of affected persons. The [With the exception of persons affected by subsection (e)(2), (3) or (4) of this section, the] comptroller shall notify taxpayers who are affected by subsection (b) or (e)(1) of this section no less than 60 days before the first required electronic transmittal of report data or payment.~~

~~[(f)] [(f)] A taxpayer who is required to [electronically] file report data electronically under subsection (e)(1) [(e)(1)] of this section may submit a written request to the comptroller for a waiver of the requirement. A taxpayer who is required to electronically file a report under subsection (e) [(e)(2);] (3) or (4) of this section may submit a written request to the comptroller for a waiver of the requirement and authorization of an alternative filing method.~~

~~[(g)] [(g)] Pursuant to Tax Code, §111.063, the comptroller may impose separate penalties of 5.0% of the tax due for failure to pay the tax due by electronic funds transfer, as required by this section, or for failure to [electronically] file a report electronically, as required by [under] Tax Code, §111.0626.~~

~~[(h)] [(h)] Protest payments by electronic funds transfer. Protested tax payments made under Tax Code, §112.051, must be accompanied by a written statement that fully and in detail sets out each reason for recovery of the payment. Protested tax payments [and] are not required to be submitted by electronic funds transfer.~~

(1) A person who is otherwise required to pay taxes by means of electronic funds transfer may make protested payments by other means, including cash, check, or money order. A [This exception to the electronic funds transfer requirement is allowed if a] written statement of protest that fully and in detail sets out each reason for recovery of the payment must accompany [accompanies] the non-electronic payment.

(2) A person may submit a protested tax payment by means of electronic funds transfer if the written statement is submitted in com-

pliance with the requirements set out in subparagraph (A) of this paragraph.

(A) A person may submit a protest payment by means of electronic funds transfer only if:

(i) a written statement of protest is delivered by facsimile transmission or hand-delivery actually received at one of the comptroller's offices in Austin, Texas;

(ii) the written statement of protest is delivered to the comptroller within 24 hours before or after the electronic transfer of the payment;

(iii) the written statement of protest identifies the date of electronic payment, the taxpayer number under which the electronic payment was or will be submitted, and the amount paid under protest; and

(iv) the electronic payment is specifically identified as a protest payment by the method, if any (such as a special transaction code or accompanying electronic message), that the comptroller may designate as appropriate to the method by which the person transferred the funds electronically.

(B) The failure of a taxpayer to submit a written statement in compliance with subparagraph (A) of this paragraph means the tax payment that the taxpayer made is not considered to be a protest tax payment as provided by Tax Code, §112.051.

(C) If a person submits multiple written statements of protest that relate to the same electronic payment, then only the first statement that the comptroller actually receives is considered the written protest for purposes of Tax Code, §112.051.

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

Filed with the Office of the Secretary of State on January 10, 2013.

TRD-201300056

Ashley Harden

General Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: February 24, 2013

For further information, please call: (512) 475-0387



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 9. INTELLECTUAL DISABILITY SERVICES--MEDICAID STATE OPERATING AGENCY RESPONSIBILITIES

SUBCHAPTER D. HOME AND COMMUNITY-BASED SERVICES (HCS) PROGRAM

40 TAC §9.178

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability

Services (DADS), an amendment to §9.178, concerning certification principles: quality assurance, in Chapter 9, Subchapter D, Home and Community-Based Services (HCS) Program.

BACKGROUND AND PURPOSE

The purpose of the proposed amendment is to establish specific requirements regarding charges an HCS program provider makes against an individual's personal funds. These requirements help ensure that an individual's financial welfare is protected and minimizes the potential for financial exploitation of an individual.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §9.178 requires an HCS provider to collect an amount for room equal to an amount necessary to maintain a three-person or four-person residence and lists the specific costs that must be included in determining the room charge. The proposed amendment also requires an HCS provider to collect an amount for board for a three-person or four-person residence based on the costs of food and food supplies, unless collecting such an amount may make the individual ineligible for the Supplemental Nutrition Assistance Program operated by HHSC. These requirements establish a standard methodology for providers to determine a room and board charge and, therefore, help ensure that an individual is equitably contributing to the cost of the operation of a three-person or four-person residence.

The proposed amendment states that the cost for room must consist only of an amount equal to (1) rent of a comparable dwelling in the same geographical area that is unfurnished or the program provider's ownership expenses consisting of the interest portion of a mortgage payment, depreciation expense, related property taxes, neighborhood association fees, and property insurance and (2) the cost of various items to operate the residence including shared appliances, electronics, and housewares, monitoring for a security system and fire alarm system, property maintenance, and utilities.

Further, the proposed amendment states that the cost for board must consist only of the cost of food, including food purchased for an individual to consume while away from the residence as a replacement for food and snacks normally prepared in the residence, and of supplies used for cooking and serving, such as utensils and paper products. The proposed amendment states that to determine the maximum room and board charge for each individual, a program provider must divide the room cost by the number of residents receiving HCS Program services or similar services that the residence has been developed to support plus the number of service providers and other persons who also live in the residence and divide the board cost by the number of persons consuming the food. Further, the proposed amendment prohibits a program provider from increasing the charge for room and board because a resident moves from the residence and from charging an individual a room and board amount that exceeds an amount determined in accordance with §9.178(r). The proposed amendment also requires a program provider to provide the room and board charge, in writing, to the individual or LAR.

The proposed amendment prohibits a program provider charging or collecting payment from any person for room and board provided to an individual receiving foster/companion care unless a program provider makes a payment to an individual's foster/companion care provider while waiting for the individual's federal or state benefits to be approved. Further, the proposed amend-

ment requires a program provider who manages personal funds of an individual who receives foster/companion care to pay the foster/companion care provider directly from the individual's account. The proposed amendment also prohibits the provider from paying a foster/companion care provider a room and board charge that exceeds the foster/companion care provider's cost of room and board, as determined under §9.178(r), divided by the number of persons living in the foster/companion care provider's home.

The proposed amendment clarifies that a program provider must not charge an individual for managing the individual's personal funds entrusted to the program provider. Further, the proposed amendment requires the program provider to record specific information for all expenditures from the individual's account, including the amount and date of the expenditure, a written statement issued by the person to whom the expenditure was made that includes the date the statement was created and the cost of the item or service paid for and, if the expenditure is made to the individual for personal spending money, an acknowledgement signed by the individual indicating that the funds were received. The proposed amendment allows a program provider to accrue an expense for necessary items and services for which the individual's personal funds are not available for payment and, if such accrual is made, requires the provider to enter into a written payment plan with the individual or LAR for reimbursement of the funds.

FISCAL NOTE

David Cook, DADS Interim Chief Financial Officer, has determined that, for the first five years the proposed amendment is in effect, enforcing or administering the amendment does not have foreseeable implications relating to costs or revenues of state or local governments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendment will not have an adverse economic effect on small businesses or micro-businesses because it supports the ability of HCS program providers to collect room and board fees up to actual costs associated with providing room and board to an individual.

PUBLIC BENEFIT AND COSTS

Jon Weizenbaum, DADS Commissioner, has determined that, for each year of the first five years the amendment is in effect, the public benefit expected as a result of enforcing the amendment is greater protection of the financial welfare of individuals and a consistent method for providers to determine a room and board charge.

Mr. Weizenbaum anticipates that there will not be an economic cost to persons who are required to comply with the amendment. The amendment will not affect a local economy.

TAKINGS IMPACT ASSESSMENT

DADS 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 Texas Government Code, §2007.043.

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Becky Hubik at (512) 438-2339 in DADS Center for Policy and

Innovation. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-12R11, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030 or street address 701 West 51st St., Austin, Texas 78751; faxed to (512) 438-5759; or e-mailed to rulescomments@dads.state.tx.us. To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register*. The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 12R11" in the subject line.

STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

The amendment affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021.

§9.178. *Certification Principles: Quality Assurance.*

(a) In the provision of HCS Program services to an individual, the program provider must promote the active and maximum cooperation with generic service agencies, non-HCS Program service providers, and advocates or other actively involved persons.

(b) The program provider must ensure personalized service delivery based upon the choices made by each individual or LAR and those choices that are available to persons without an intellectual disability or other disability.

(c) Before providing services to an individual in a residence in which foster/companion care, supervised living, or residential support is provided, and annually thereafter, the program provider must:

(1) conduct an on-site inspection to ensure that, based on the individual's needs, the environment is healthy, comfortable, safe, appropriate, and typical of other residences in the community, suited for the individual's abilities, and is in compliance with applicable federal, state, and local regulations for the community in which the individual lives;

(2) ensure that the service coordinator is provided with a copy of the results of the on-site inspection within five calendar days after completing the inspection;

(3) complete any action identified in the on-site inspection for a residence in which supervised living or residential support will be provided to ensure that the residence meets the needs of the individual; and

(4) ensure completion of any action identified in the on-site inspection for a residence in which foster/companion care will be provided to ensure that the residence meets the needs of the individual.

(d) The program provider must ensure that:

(1) emergency plans are maintained in each residence in which foster/companion care, supervised living or residential support is provided;

(2) the emergency plans address relevant emergencies appropriate for the type of service, geographic location, and the individuals living in the residence;

(3) the individuals and service providers follow the plans during drills and actual emergencies; and

(4) documentation of drills and responses to actual emergencies are maintained in each residence.

(e) The program provider must ensure that a four-person residence:

(1) meets one of the following requirements at the time the residence is reviewed by DADS in accordance with §9.188 of this subchapter (relating to DADS Approval of Residences) and at least annually thereafter:

(A) is certified by a local fire safety authority having jurisdiction for the location of the residence (or by HHSC if the local fire safety authority has refused to inspect for certification) to be in compliance with the relevant portions of Chapter 32 or Chapter 33 of the NFPA (National Fire Protection Association) 101 Life Safety Code applicable to small facilities and most recently adopted by the Texas State Fire Marshal's Office; or

(B) is certified by a fire safety authority having jurisdiction for the location of the residence to be in compliance with portions of the International Fire Code applicable to an "Institutional Group I-1 occupancy" housing more than 16 persons and most recently adopted by the governmental entity having jurisdiction for the location of the residence;

(2) contains documentation of the residence's most recent inspection by the fire safety authority;

(3) is approved by DADS in accordance with §9.188 of this subchapter; and

(4) is in continuous compliance with all applicable local building codes and ordinances and applicable state and federal laws, rules, and regulations.

(f) The program provider must establish an ongoing consumer/advocate advisory committee composed of individuals, LARs, community representatives, and family members that meets at least quarterly. The committee, at least annually:

(1) reviews information provided by the program provider regarding satisfaction of individuals and LARs with the program provider's services as described in subsection (p)(1) of this section;

(2) reviews information provided by the program provider regarding complaints about the operations of the program provider as described in subsection (p)(2) of this section;

(3) reviews information provided by the program provider regarding incidents of confirmed abuse, neglect, and exploitation and unusual incidents as described in subsection (p)(3) of this section;

(4) reviews information provided by the program provider regarding termination of HCS Program services as described in subsection (p)(4) of this section;

(5) based on the information reviewed as required by this subsection, makes recommendations to the program provider for im-

provements to the processes and operations of the program provider; and

(6) reviews information provided by the program provider regarding the data about restraints described in subsection (p)(5) of this section.

(g) The program provider must make available all records, reports, and other information related to the delivery of HCS Program services as requested by DADS, other authorized agencies, or the Centers for Medicare and Medicaid Services and deliver such items, as requested, to a specified location.

(h) The program provider must conduct, at least annually, a satisfaction survey of individuals and LARs and take action regarding any areas of dissatisfaction.

(i) The program provider must publicize and make available a process for eliciting complaints and maintain a record of verifiable resolutions of complaints received from:

- (1) individuals, their families, and LARs;
- (2) staff members, service providers, and CDS service providers;
- (3) the general public; and
- (4) the local authority.

(j) The program provider must ensure that:

(1) the individual and LAR are informed of how to report allegations of abuse, neglect, or exploitation to DFPS and are provided with the DFPS toll-free telephone number (1-800-647-7418) in writing; and

(2) all staff members and service providers:

(A) are instructed to report to DFPS immediately, but not later than one hour after having knowledge or suspicion, that an individual has been or is being abused, neglected, or exploited; and

(B) are provided with the DFPS toll-free telephone number (1-800-647-7418) in writing; and

(3) all staff members and service providers report suspected abuse, neglect, or exploitation as instructed.

(k) If the program provider suspects an individual has been or is being abused, neglected, or exploited or is notified of an allegation of abuse, neglect, or exploitation, the program provider must take necessary actions to secure the safety of the alleged victim, including:

(1) obtaining immediate and ongoing medical or psychological services for the alleged victim as necessary;

(2) if necessary, restricting access by the alleged perpetrator of the abuse, neglect, or exploitation to the alleged victim or other individuals pending investigation of the allegation; and

(3) notifying, as soon as possible but no later than 24 hours after the program provider reports or is notified of an allegation, the alleged victim, the alleged victim's LAR, and the service coordinator of the allegation report and the actions that have been or will be taken.

(l) Staff members and service providers must cooperate with the DFPS investigation of an allegation of abuse, neglect, or exploitation, including:

(1) providing complete access to all HCS Program service sites owned, operated, or controlled by the program provider;

(2) providing complete access to individuals and program provider personnel;

(3) providing access to all records pertinent to the investigation of the allegation; and

(4) preserving and protecting any evidence related to the allegation in accordance with DFPS instructions.

(m) In all respite facilities and all residences in which a service provider of residential assistance or the program provider hold a property interest, the program provider must post in a conspicuous location:

(1) the name, address, and telephone number of the program provider;

(2) the effective date of the Waiver Program Provider Agreement; and

(3) the name of the legal entity named on the Waiver Program Provider Agreement.

(n) The program provider must:

(1) promptly, but not later than five calendar days after the program provider's receipt of a DFPS investigation report:

(A) notify the alleged victim or LAR and the service coordinator of:

(i) the investigation finding; and

(ii) the corrective action taken by the program provider in response to the DFPS investigation; and

(B) notify the alleged victim or LAR of:

(i) the process to appeal the investigation finding as described in Chapter 711, Subchapter M, of this title (relating to Requesting an Appeal if You are the Reporter, Alleged Victim, Legal Guardian, or with Advocacy, Incorporated); and

(ii) the process for requesting a copy of the investigative report from the program provider;

(2) report to DADS in accordance with DADS instructions the program provider's response to the DFPS investigation that involves a staff member or service provider within 14 calendar days after the program provider's receipt of the investigation report; and

(3) upon request of the alleged victim or LAR, provide to the alleged victim or LAR a copy of the DFPS investigative report after concealing any information that would reveal the identity of the reporter or of any individual who is not the alleged victim.

(o) If abuse, neglect, or exploitation is confirmed by the DFPS investigation, the program provider must take appropriate action to prevent the reoccurrence of abuse, neglect or exploitation, including, when warranted, disciplinary action against or termination of the employment of a staff member confirmed by the DFPS investigation to have committed abuse, neglect, and exploitation.

(p) At least annually, the program provider must:

(1) evaluate information about the satisfaction of individuals and LARs with the program provider's services and identify program process improvements to increase the satisfaction;

(2) review records of complaints, as described in subsection (i) of this section about the operations of the program provider and identify program process improvements to reduce the filing of complaints;

(3) review incidents of confirmed abuse, neglect, or exploitation; complaints; and unusual incidents; and identify program

process improvements that will prevent the reoccurrence of such incidents and improve service delivery;

(4) review the reasons for terminating HCS Program services to individuals and identify any related need for program process improvements;

(5) evaluate its use of restraint and, at a minimum, compare aggregate data provided by DADS at www.dads.state.tx.us with critical incident data concerning use of restraint and identify program process improvements that will prevent the reoccurrence of restraints and improve service delivery;

(6) provide all information the program provider reviewed, evaluated, and created as described in paragraphs (1) - (5) of this subsection to the consumer/advocate advisory committee required by subsection (f) of this section;

(7) implement any program process improvements identified by the program provider in accordance with this subsection; and

(8) review recommendations made by the consumer/advocate advisory committee as described in subsection (f)(5) of this section and implement the recommendations approved by the program provider.

(q) The program provider must ensure that all personal information concerning an individual, such as lists of names, addresses, and records obtained by the program provider is kept confidential, that the use or disclosure of such information and records is limited to purposes directly connected with the administration of the program provider's HCS Program, and is otherwise neither directly nor indirectly used or disclosed unless the consent of the individual to whom the information applies or his or her LAR is obtained beforehand.

(r) The program provider must comply with this subsection regarding charges against an individual's personal funds.

(1) The program provider must, in accordance with this paragraph, collect a monthly amount for room from an individual who lives in a three-person or four-person residence. The cost for room must consist only of:

(A) an amount equal to:

(i) rent of a comparable dwelling in the same geographical area that is unfurnished; or

(ii) the program provider's ownership expenses, limited to the interest portion of a mortgage payment, depreciation expense, property taxes, neighborhood association fees, and property insurance: and

(B) the cost of:

(i) shared appliances, electronics, and housewares;

(ii) shared furniture;

(iii) monitoring for a security system;

(iv) monitoring for a fire alarm system;

(v) property maintenance, including personnel costs, supplies, lawn maintenance, pest control services, carpet cleaning, septic tank services, and painting;

(vi) utilities, limited to electricity, gas, water, garbage collection, and a landline telephone; and

(vii) shared television and Internet service used by the individuals who live in the residence.

(2) Except as provided in subparagraph (B) of this paragraph, a program provider must collect a monthly amount for board from an individual who lives in a three-person or four-person residence.

(A) The cost for board must consist only of the cost of food, including food purchased for an individual to consume while away from the residence as a replacement for food and snacks normally prepared in the residence, and of supplies used for cooking and serving, such as utensils and paper products.

(B) A program provider is not required to collect a monthly amount for board from an individual if collecting such an amount may make the individual ineligible for the Supplemental Nutrition Assistance Program operated by HHSC.

(3) To determine the maximum room and board charge for each individual, a program provider must:

(A) divide the room cost described in paragraph (1) of this subsection by the number of residents receiving HCS Program services or similar services that the residence has been developed to support plus the number of service providers and other persons who live in the residence;

(B) divide the board cost described in paragraph (2) of this subsection by the number of persons consuming the food; and

(C) add the amounts calculated in accordance with subparagraphs (A) and (B) of this paragraph.

(4) A program provider must not increase the charge for room and board because a resident moves from the residence.

(5) A program provider:

(A) must not charge an individual a room and board amount that exceeds an amount determined in accordance with paragraphs (1) - (3) of this subsection; and

(B) must maintain documentation demonstrating that the room and board charge was determined in accordance with paragraphs (1) - (3) of this subsection.

(6) Before an individual or LAR selects a residence, a program provider must provide the room and board charge, in writing, to the individual or LAR.

(7) Except as provided in paragraph (8) of this subsection, a program provider may not charge or collect payment from any person for room and board provided to an individual receiving foster/companion care.

(8) If a program provider makes a payment to an individual's foster/companion care provider while waiting for the individual's federal or state benefits to be approved, the program provider may seek reimbursement from the individual for such payments.

(9) A program provider who manages personal funds of an individual who receives foster/companion care:

(A) may pay a room and board charge for the individual that is less than the foster/companion care provider's cost of room and board, as determined using the calculations described in paragraphs (1) and (2) of this subsection for a three-person or four-person residence, divided by the number of persons living in the foster/companion care provider's home;

(B) must pay the foster/companion care provider directly from the individual's account; and

(C) must not pay a foster/companion care provider a room and board charge that exceeds the foster/companion care provider's cost of room and board, as determined using the calculations

described in paragraphs (1) and (2) of this subsection for a three-person or four-person residence, divided by the number of persons living in the foster/companion care provider's home.

(10) For an item or service other than room and board, the program provider must apply a consistent method in assessing a charge against the individual's personal funds that ensures that the charge for the item or service is reasonable and comparable to the cost of a similar item or service generally available in the community.

~~{(†) The program provider must apply a consistent method in assessing charges against the individual's personal funds that ensures that charges for items or services, including room and board, are reasonable and comparable to the costs of similar items and services generally available in the community.}~~

(s) The program provider must ensure that the individual or LAR has agreed in writing to all charges assessed by the program provider against the individual's personal funds before the charges are assessed.

(t) The program provider must not assess charges against the individual's personal funds for costs for items or services reimbursed through the HCS Program.

(u) At the written request of an individual or LAR, the program provider[-]

[(4)] must manage the individual's personal funds entrusted to the program provider, without charge to the individual or LAR in accordance with this subsection.[-]

(1) [(2)] The program provider must not commingle the individual's personal funds with the program provider's funds.[-] and

(2) [(3)] The program provider must maintain a separate, detailed record of:

(A) all deposits into the individual's account; and

(B) all expenditures from the individual's account that includes: [for the individual.]-

(i) the amount of the expenditure;

(ii) the date of the expenditure;

(iii) the person to whom the expenditure was made;

(iv) except as described in clause (vi) of this subparagraph, a written statement issued by the person to whom the expenditure was made that includes the date the statement was created and the cost of the item or service paid for;

(v) if the statement described in clause (iv) of this subparagraph documents an expenditure for more than one individual, the amount allocated to each individual identified on the statement; and

(vi) if the expenditure is made to the individual for personal spending money, an acknowledgement signed by the individual indicating that the funds were received.

(3) The program provider may accrue an expense for necessary items and services for which the individual's personal funds are not available for payment, such as room and board, medical and dental services, legal fees or fines, and essential clothing.

(4) If an expense is accrued as described in paragraph (3) of this subsection, the program provider must enter into a written payment plan with the individual or LAR for reimbursement of the funds.

(v) If the program provider determines that an individual's behavior may require the implementation of behavior management tech-

niques involving intrusive interventions or restriction of the individual's rights, the program provider must comply with this subsection.

(1) The program provider must:

(A) obtain an assessment of the individual's needs and current level and severity of the behavior;

(B) ensure that a service provider of behavioral support services:

(i) develops, with input from the individual, LAR, program provider, and actively involved persons, a behavior support plan that includes the use of techniques appropriate to the level and severity of the behavior; and

(ii) considers the effects of the techniques on the individual's physical and psychological well-being in developing the plan.

(2) The behavior support plan must:

(A) describe how the behavioral data concerning the behavior is collected and monitored;

(B) allow for the decrease in the use of the techniques based on the behavioral data; and

(C) allow for revision of the plan when desired behavior is not displayed or the techniques are not effective.

(3) Before implementation of the behavior support plan, the program provider must:

(A) obtain written consent from the individual or LAR to implement the plan;

(B) provide written notification to the individual or LAR of the right to discontinue implementation of the plan at any time; and

(C) notify the individual's service coordinator of the plan.

(4) The program provider must, at least annually:

(A) review the effectiveness of the techniques and determine whether the behavior support plan needs to be continued; and

(B) notify the service coordinator if the plan needs to be continued.

(w) The program provider must report the death of an individual to DADS and the service coordinator by the end of the next business day following the death or the program provider's learning of the death and, if the program provider reasonably believes that the LAR does not know of the individual's death, to the LAR as soon as possible, but not later than 24 hours after the program provider learns of the individual's death.

(x) A program provider must not discharge or otherwise retaliate against:

(1) a staff member, service provider, individual, or other person who files a complaint, presents a grievance, or otherwise provides good faith information relating to the:

(A) misuse of restraint by the program provider;

(B) use of seclusion by the program provider; or

(C) possible abuse, neglect, or exploitation of an individual; or

(2) an individual because someone on behalf of the individual files a complaint, presents a grievance, or otherwise provides good faith information relating to the:

- (A) misuse of restraint by the program provider;
- (B) use of seclusion by the program provider; or
- (C) possible abuse, neglect, or exploitation of an individual.

(y) A program provider must enter critical incident data in CARE no later than 30 calendar days after the last day of the month being reported.

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

Filed with the Office of the Secretary of State on January 10, 2013.

TRD-201300058

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: February 24, 2013

For further information, please call: (512) 438-3734



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 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 358. MEDICAID ELIGIBILITY FOR THE ELDERLY AND PEOPLE WITH DISABILITIES

SUBCHAPTER C. FINANCIAL REQUIREMENTS

The Texas Health and Human Services Commission (HHSC) adopts new §358.356 and §358.388, concerning tuition savings programs, without changes to the proposed text as published in the October 26, 2012, issue of the *Texas Register* (37 TexReg 8369) and will not be republished.

Background and Justification

The new sections are adopted to implement the provisions of House Bill 3708, 82nd Legislature, Regular Session, 2011. House Bill 3708, in part, amended the Texas Human Resources Code by adding §32.02611, which prohibits HHSC from considering assets or resources in prepaid tuition programs and higher education savings plans when making eligibility determinations for Medicaid programs.

Medicaid for the Elderly and People with Disabilities (MEPD) is available to eligible people who need continuous, long-term services and supports, including people who receive Supplemental Security Income. Services can be provided either through community programs while the person is living at home or in a place of care where the person lives, such as a nursing facility or a facility for people with intellectual disabilities.

In determining eligibility for MEPD, HHSC previously counted resources and income in prepaid tuition programs and higher education savings plans (collectively called "tuition savings programs" for purposes of this adoption). The new sections change the policy for MEPD eligibility determinations to comply with §32.02611 of the Texas Human Resources Code, so that funds used to establish a tuition savings program, or payments made from or interest earned on a tuition savings program, will be excluded from resources and income calculations in determining financial eligibility for MEPD programs.

Notices of the adoption of related rules governing the Medicare Savings Program, Medicaid Buy-In Program, and Medicaid Buy-In for Children Program appear elsewhere in this issue of the *Texas Register*.

Comments

HHSC received no comments regarding adoption of the new sections, including at a public hearing held in Austin on November 9, 2012.

DIVISION 2. RESOURCES

1 TAC §358.356

Legal Authority

The new section is adopted under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; the Texas Human Resources Code, §32.021, and Texas Government Code, §531.021, which authorize HHSC to administer the federal medical assistance (Medicaid) program in Texas; and the Texas Human Resources Code, §32.02611, which prohibits HHSC from considering assets or resources in prepaid tuition programs and higher education savings plans when determining eligibility for Medicaid programs.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 14, 2013.

TRD-201300070

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Effective date: February 3, 2013

Proposal publication date: October 26, 2012

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



DIVISION 3. INCOME

1 TAC §358.388

Legal Authority

The new section is adopted under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; the Texas Human Resources Code, §32.021, and Texas Government Code, §531.021, which authorize HHSC to administer the federal medical assistance (Medicaid) program in Texas; and the Texas Human Resources Code, §32.02611, which prohibits HHSC from considering assets or resources in prepaid tuition programs and higher education savings plans when determining eligibility for Medicaid programs.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 14, 2013.

TRD-201300071

Steve Aragon

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Texas Health and Human Services Commission

Effective date: February 3, 2013

Proposal publication date: October 26, 2012

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



CHAPTER 359. MEDICARE SAVINGS PROGRAM

1 TAC §§359.101, 359.103, 359.109

The Texas Health and Human Services Commission (HHSC) adopts amendments to §359.101, concerning purpose and scope; §359.103, concerning Qualified Medicare Beneficiary Program; and §359.109, concerning Qualified Disabled and Working Individual Program, without changes to the proposed text as published in the October 26, 2012, issue of the *Texas Register* (37 TexReg 8371) and will not be republished.

Background and Justification

Medicare savings programs are for people who receive Medicare and need help paying for Medicare premiums, co-insurance, and deductibles. If a person meets income and resource requirements of a Medicare savings program, Medicaid will help pay for some Medicare costs. The four Medicare savings programs administered by HHSC are the Qualifying Individual (QI) program, the Specified Low-Income Medicare Beneficiary (SLMB) program, the Qualified Medicare Beneficiary (QMB) program, and the Qualified Disabled and Working Individual (QDWI) program.

The amendment to §359.101 is adopted to correct the name of the QI program, which appears in the rule currently as the "Qualified"--rather than "Qualifying"--Individual Program.

The amendments to §359.103 and §359.109 are adopted to implement the provisions of House Bill 3708, 82nd Legislature, Regular Session, 2011. House Bill 3708, in part, amended the Texas Human Resources Code by adding §32.02611, which prohibits HHSC from considering assets or resources in prepaid tuition programs and higher education savings plans when making eligibility determinations for Medicaid programs.

In determining eligibility for the QMB program, HHSC previously counted resources and income in prepaid tuition programs and higher education savings plans (collectively called "tuition savings programs" for purposes of this adoption) in compliance with 42 U.S.C. §1396d(p). The amendment to §359.103 changes the policy for QMB eligibility determinations to comply with §32.02611 of the Texas Human Resources Code, so that funds used to establish a tuition savings program, or payments made from or interest earned on a tuition savings program, will be excluded from resources and income calculations in determining financial eligibility for QMB.

In determining eligibility for the QDWI program, HHSC previously counted resources and income in tuition savings programs. The amendment to §359.109 changes the policy for QDWI eligibility determinations to comply with §32.02611 of the Texas Human Resources Code, so that funds used to establish a tuition savings program, or payments made from or interest earned on a tuition savings program, will be excluded from resources and income calculations in determining financial eligibility for QDWI.

Similar policy changes will apply to the SLMB and QI programs. Amendments to the eligibility rules for those programs were not needed, however, because their eligibility requirements are based on and cross-referenced to the QMB eligibility requirement in §359.103.

Notices of the adoption of related rules governing eligibility for Medicaid for the elderly and people with disabilities, the Medicaid Buy-In Program, and the Medicaid Buy-In for Children Program appear elsewhere in this issue of the *Texas Register*.

Comments

HHSC received no comments regarding adoption of the amendments, including at a public hearing in Austin on November 9, 2012.

Legal Authority

The amendments are adopted under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; the Texas Human Resources Code, §32.021, and Texas Government Code, §531.021, which authorize HHSC to administer the federal medical assistance (Medicaid) program in Texas; and the Texas Human Resources Code, §32.02611, which prohibits HHSC from considering assets or resources in prepaid tuition programs and higher education savings plans when determining eligibility for Medicaid programs.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 14, 2013.

TRD-201300072

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Effective date: February 3, 2013

Proposal publication date: October 26, 2012

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



CHAPTER 360. MEDICAID BUY-IN PROGRAM

1 TAC §360.113

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §360.113, concerning resources, without changes to the proposed text as published in the October 26, 2012, issue of the *Texas Register* (37 TexReg 8373) and will not be republished.

Background and Justification

The Medicaid Buy-In Program (MBI) provides Medicaid benefits to eligible people with disabilities who work, regardless of their age. People "buy in" to the program by paying a monthly premium.

The amendment is adopted to implement the provisions of House Bill 3708, 82nd Legislature, Regular Session, 2011. House Bill 3708, in part, amended the Texas Human Resources Code by adding §32.02611, which prohibits HHSC from considering assets or resources in prepaid tuition programs and higher education savings plans when making eligibility determinations for Medicaid programs.

In determining eligibility for MBI, HHSC previously counted resources in prepaid tuition programs and higher education savings plans (collectively called "tuition savings programs" for purposes of this adoption). The amendment changes the policy for MBI eligibility determinations to comply with §32.02611 of the Texas Human Resources Code, so that funds used to establish a tuition savings program will be excluded from the calculation of resources in determining financial eligibility for MBI. Unearned income, such as payments received from or interest earned on a tuition savings program, is not counted in the eligibility determination for MBI and, thus, is not addressed in this policy change.

Notices of adoption of related rules governing eligibility for Medicaid for the elderly and people with disabilities, Medicare savings programs, and the Medicaid Buy-In for Children Program appear elsewhere in this issue of the *Texas Register*.

Comments

HHSC received no comments regarding adoption of the amendment, including at a public hearing in Austin on November 9, 2012.

Legal Authority

The amendment is adopted under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; the Texas Human Resources Code, §32.021, and Texas Government Code, §531.021, which authorize HHSC to administer the federal medical assistance (Medicaid) program in Texas; and the Texas Human Resources Code, §32.02611, which prohibits HHSC from considering assets or resources in prepaid tuition programs and higher education savings plans when determining eligibility for Medicaid programs.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 14, 2013.

TRD-201300073

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Effective date: February 3, 2013

Proposal publication date: October 26, 2012

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



CHAPTER 361. MEDICAID BUY-IN FOR CHILDREN PROGRAM

1 TAC §361.111

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §361.111, concerning income, without changes to the proposed text as published in the October 26, 2012, issue of the *Texas Register* (37 TexReg 8374) and will not be republished.

Background and Justification

The Medicaid Buy-In for Children Program (MBIC) provides health care to eligible children with disabilities whose families have too much income to receive regular Medicaid benefits but who need help with their children's medical bills. Families "buy in" to the program by paying a monthly premium.

The amendment is adopted to implement the provisions of House Bill 3708, 82nd Legislature, Regular Session, 2011. House Bill 3708, in part, amended the Texas Human Resources Code by adding §32.02611, which prohibits HHSC from considering assets or resources in prepaid tuition programs and higher education savings plans when making eligibility determinations for Medicaid programs.

In determining eligibility for MBIC, HHSC previously counted the income from prepaid tuition programs and higher education savings plans (collectively called "tuition savings programs" for purposes of this adoption). The amendment changes the policy for MBIC eligibility determinations to comply with §32.02611 of the Texas Human Resources Code, so that payments made from or interest earned on a tuition savings program will be excluded from the calculation of income in determining financial eligibility for MBIC. Resources, such as funds used to establish a tuition savings program, are not counted in the eligibility determination for MBIC and, thus, are not addressed in this policy change.

Notices of the adoption of related rules governing eligibility for Medicaid for the elderly and people with disabilities, Medicare savings programs, and the Medicaid Buy-In Program appear elsewhere in this issue of the *Texas Register*.

Comments

HHSC received no comments regarding adoption of the amendment, including at a public hearing in Austin on November 9, 2012.

Legal Authority

The amendment is adopted under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; the Texas Human Resources Code, §32.021, and Texas Government Code, §531.021, which authorize HHSC to administer the federal medical assistance (Medicaid) program in Texas; and the Texas Human Resources Code, §32.02611, which prohibits HHSC from considering assets or resources in prepaid tuition programs and higher education savings plans when determining eligibility for Medicaid programs.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 14, 2013.

TRD-201300074

Steve Aragon
Chief Counsel
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Effective date: February 3, 2013
Proposal publication date: October 26, 2012
For further information, please call: (512) 424-6900



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

The Texas Health and Human Services Commission (HHSC) adopts the amendments to §372.904, concerning application processing time frame; §372.1155, concerning consequence for noncooperation with Personal Responsibility Agreement requirements; and §372.1351, concerning Supplemental Nutrition Assistance Program (SNAP) work requirements. The amendments are adopted without changes to the proposed text as published in the October 26, 2012, issue of the *Texas Register* (37 TexReg 8381) and will not be republished.

Background and Justification

The amendments are adopted in response to a clarification from the United States Department of Agriculture, Food and Nutrition Service (FNS) regarding Title 7, Code of Federal Regulations §273.7(f)(7). Section 273.7(f)(7) provides that if a person receiving SNAP food benefits is also receiving either Temporary Assistance for Needy Families (TANF) or Unemployment Insurance cash benefits, then the person must cooperate with the work requirements of the TANF or Unemployment Insurance programs. If the person fails to cooperate with those work requirements, the person is considered also to have failed to cooperate with SNAP work requirements, unless the person is exempt from SNAP work requirements.

HHSC's previous rules and policy did not impose a sanction on SNAP food benefits for failing to cooperate with TANF or Unemployment Insurance work requirements. Therefore, the amendments are adopted to comply with federal regulations. The amendment to §372.1155 provides that if a person fails or refuses to cooperate with a TANF personal responsibility agreement work requirement, the person's SNAP benefits will be subject to consequences for noncompliance with SNAP work requirements, unless the person is exempt from SNAP work requirements. The amendment to §372.1351 requires a person receiving SNAP benefits to participate in TANF or Unemployment Insurance work activities, as applicable, if the person also receives TANF or unemployment insurance benefits. The amendment to §372.904 is a conforming revision to update a cross-reference to §372.1155 affected by the adopted amendment to §372.1155.

Comments

HHSC received no comments regarding adoption of the amendments, including at a public hearing in Austin on November 9, 2012.

SUBCHAPTER D. APPLICATION PROCESS DIVISION 1. APPLICATION

1 TAC §372.904

Legal Authority

The amendment is adopted under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; Texas Human Resources Code, §31.001, which authorizes HHSC to administer financial assistance programs (TANF); and Texas Human Resources Code, §33.0006, which authorizes HHSC to operate the food stamp program (SNAP).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 14, 2013.

TRD-201300067
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Effective date: February 3, 2013
Proposal publication date: October 26, 2012
For further information, please call: (512) 424-6900



SUBCHAPTER E. PARTICIPATION REQUIREMENTS DIVISION 2. THE TANF PERSONAL RESPONSIBILITY AGREEMENT (PRA)

1 TAC §372.1155

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 14, 2013.

TRD-201300068
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Effective date: February 3, 2013
Proposal publication date: October 26, 2012
For further information, please call: (512) 424-6900



DIVISION 6. WORK

1 TAC §372.1351

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 14, 2013.

TRD-201300069

Steve Aragon
Chief Counsel

Texas Health and Human Services Commission

Effective date: February 3, 2013

Proposal publication date: October 26, 2012

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



TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER E. CERTIFICATION, LICENSING AND REGISTRATION

16 TAC §25.109

The Public Utility Commission of Texas (commission) adopts an amendment to §25.109, relating to Registration of Power Generation Companies and Self-Generators, with changes to the proposed text as published in the September 28, 2012, issue of the *Texas Register* (37 TexReg 7645). These amendments will clarify the registration procedure for power generation companies (PGC) and self-generators. These amendments are adopted under Project Number 40601.

The commission received written comments on the amendments from Luminant Generation Company, LLC (Luminant) and Texas Industrial Energy Consumers (TIEC).

General Comments

Luminant commented that the rule should include broad, substantive registration categories, although not in the same level of detail as in the current rule, rather than shifting the categories to the form and relying on a catch-all reference to the form in the rule, which would provide more effective notification of the applicable requirements to persons subject to the rule. Specifically, Luminant recommended that "contact information" could be included as a broad category, without listing the specific types of contact information. Luminant's position was that rules are more visible than forms to regulated persons because rules are the place such persons expect to find substantive requirements. Luminant commented that moving the substantive requirements from the rule to the form will not substantially further administrative efficiency because significant changes to the form must follow the Administrative Procedure Act (APA) notice and comment process anyway. Luminant suggested a degree of specificity between the current rule and the proposed rule.

Commission Response

The commission believes that more specificity in the rule is unnecessary. The detailed provisions of the current §25.109 limit the commission's ability to make minor adjustments to the registration form without making changes to the rule as well. Because the commission cannot anticipate future technological advances that may affect the method by which forms may be submitted or the information necessitated therein, flexibility is warranted. Commission forms are readily accessible on the commission's website and are therefore sufficiently visible to regulated entities.

Section 25.109(d): Registration requirements for power generation companies and self-generators.

TIEC commented that combining the requirements for PGCs and self-generators would subject self-generators to expanded registration requirements that are unnecessary and inappropriate because they do not sell power in the wholesale market. Since the revised form did not reflect those changes to the rule, TIEC requested that the commission's intent be clarified.

Commission Response

The commission agrees that the expanded registration requirements for self-generators are unnecessary, and the commission has therefore modified the rule language accordingly.

Section 25.109(f): Registration procedures.

TIEC commented that, because self-generators do not participate in the wholesale market, the current requirement that they report material changes to their registration forms annually should suffice. TIEC suggested that the commission provide guidance on the format and method for reporting such changes should the commission decide to require that they be filed within 45 days.

Commission Response

The commission agrees with TIEC's suggestion. The commission will require that self-generators report changes annually, and the rule has been amended accordingly.

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting the amendments, the commission has made changes consistent with the discussion above and to clarify its intent.

The amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2012) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and specifically, PURA §39.351, which requires the commission to register power generation companies and grants the commission authority to collect information on generation facilities.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §39.351.

§25.109. Registration of Power Generation Companies and Self-Generators.

(a) Application.

(1) A person that owns an electric generating facility, or electric energy storage equipment or facilities to which the Public Utility Regulatory Act, Chapter 35, Subchapter E applies, in Texas and is either a power generation company (PGC), as defined in §25.5 of this title (relating to Definitions), or a qualifying facility (QF) as defined in §25.5 of this title, and generates electricity intended to be sold at wholesale, must register as a PGC.

(2) A person that owns an electric generating facility rated at one megawatt (MW) or more, but is not a PGC, must register as a self-generator. A QF that does not sell electricity or provides electricity only to the purchaser of the facility's thermal output must register as a self-generator.

(3) A person that becomes subject to this section after September 1, 2000 must register on or before the first date of generating electricity.

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

(1) Generating facility--All generating units located at, or providing power to the electricity-consuming equipment at an entire facility or location.

(2) Nameplate rating--The full-load continuous rating of a generator under specified conditions as designated by the manufacturer.

(3) Net dependable capability--The maximum load in megawatts, net of station use, which a generating unit or generating station can carry under specified conditions for a given period of time, without exceeding approved limits of temperature and stress.

(4) Person--Includes an individual, a partnership of two or more persons having a joint or common interest, a mutual or cooperative association, and a corporation, but does not include an electric cooperative.

(c) Capacity ratings. For purposes of this section, the capacity of generating units shall be reported as follows:

(1) Renewable resource generating units shall be rated at the nameplate rating;

(2) All other generating units having a nameplate rating of ten MW or less shall be rated at the nameplate rating; and

(3) All other generating units having a nameplate rating greater than ten MW shall be rated at the summer net dependable capability. Self-generation units that are not required to calculate net dependable capability by the reliability council in which they operate or by the independent organization for the power region in which they operate shall be rated at the nameplate rating.

(d) Registration requirements for self-generators. To register as a self-generator, a person shall provide all of the following information:

(1) A description of the location of the facility used to generate electricity; and

(2) Any information requested on the commission-prescribed form.

(e) Registration requirement for power generation companies. To register as a power generation company, a person shall provide all of the following information:

(1) A description of the location of the facility used to generate electricity;

(2) A description of the types of services provided by the person that pertain to the generation of electricity;

(3) For any application filed with the Federal Energy Regulatory Commission (FERC) after the effective date of this section, copies of any information, excluding responses to interrogatories, that was filed in connection with the FERC registration, and any order issued by the FERC pursuant thereto. Such registrations shall include,

for example, determination of exempt wholesale generator (EWG) or QF status; and

(4) Any information requested on the commission-prescribed form.

(f) Registration procedures. The following procedures apply to the registration of PGCs and self-generators.

(1) Registration shall be made by completing the commission-prescribed form, which shall be verified by oath or affirmation and signed by an owner, partner, or officer of the registering party. Registration forms may be obtained from the Central Records division of the Public Utility Commission of Texas during normal business hours, or from the commission's Internet site. Each registering party shall file its registration form with the commission's Filing Clerk in accordance with the commission's procedural rules, Chapter 22, Subchapter E of this title (relating to Pleadings and Other Documents).

(2) The commission staff shall review the submitted form for completeness. Within 15 business days of receipt of an incomplete form, the commission staff shall notify the registering party in writing of the deficiencies in the request. The registering party shall have ten business days from the issuance of the notification to cure the deficiencies. If the deficiencies are not cured within ten business days, the staff will notify the registering party that the registration request is rejected without prejudice.

(3) The registering party may designate answers or documents that it believes to contain proprietary or confidential information. Information designated as proprietary or confidential will be treated in accordance with the standard protective order issued by the commission applicable to registration information for PGCs and self-generators.

(g) Post-registration requirements for self-generators. Self-generators shall report any material change during the preceding year in the information provided on the registration form by February 28 of each year.

(h) Post-registration requirements for power generation companies. PGCs shall report any change in the information provided on the registration form within 45 days of the change. PGCs shall comply with the reporting requirements of §25.91 of this title (relating to Generating Capacity Reports).

(i) Suspension and revocation of power generation company registration and administrative penalty. Pursuant to PURA §39.356, registrations of PGCs pursuant to this section are subject to suspension and revocation for significant violations of PURA or rules adopted by the commission. The commission may also impose an administrative penalty for a significant violation at its discretion. Significant violations may include the following:

(1) Failure to comply with the reliability standards and operational criteria duly established by the independent organization that is certified by the commission;

(2) For a PGC operating in the Electric Reliability Council of Texas (ERCOT), failure to observe all scheduling, operating, planning, reliability, and settlement policies, rules, guidelines, and procedures established by the independent system operator in ERCOT;

(3) Providing false or misleading information to the commission;

(4) Engaging in fraudulent, unfair, misleading, deceptive or anti-competitive practices;

(5) A pattern of failure to meet the conditions of this section, other commission rules, regulations or orders;

(6) Suspension or revocation of a registration, certification, or license by any state or federal authority;

(7) Failure to operate within the applicable legal parameters established by PURA §39.351; and

(8) Failure to respond to commission inquiries or customer complaints in a timely fashion.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 11, 2013.

TRD-201300064

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Effective date: January 31, 2013

Proposal publication date: September 28, 2012

For further information, please call: (512) 936-7223



PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 401. ADMINISTRATION OF STATE LOTTERY ACT

SUBCHAPTER D. LOTTERY GAME RULES

16 TAC §401.305

The Texas Lottery Commission (Commission) adopts amendments to 16 TAC §401.305, concerning "Lotto Texas" On-Line Game Rule, without changes to the proposed text as published in the November 23, 2012, issue of the *Texas Register* (37 TexReg 9227).

The purpose of the adoption is to add a new add-on game feature called "Extra" that allows players to purchase a chance to increase the amount of any non-jackpot prizes won in a Lotto Texas drawing and to win a prize for matching two of the six numbers drawn, to increase the length of the annuitized prize payment period from twenty-five (25) years to thirty (30) years, and to make certain clarifications to the rule language. These amendments will be effective on April 14, 2013.

A public comment hearing was held on Wednesday, December 5, 2012, at 11:00 a.m., at 611 E. 6th Street, Austin, Texas 78701. No members of the public were present at the hearing. The commission received no written comments from individuals, groups, or associations during the public comment period.

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

This adoption implements Texas Government Code, Chapter 466.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 14, 2013.

TRD-201300085

Bob Biard

General Counsel

Texas Lottery Commission

Effective date: April 14, 2013

Proposal publication date: November 23, 2012

For further information, please call: (512) 344-5275



CHAPTER 402. CHARITABLE BINGO OPERATIONS DIVISION

SUBCHAPTER D. LICENSING REQUIREMENTS

16 TAC §402.450

The Texas Lottery Commission (Commission) adopts amendments to 16 TAC §402.450, concerning Request for Waiver, without changes to the proposed text as published in the November 23, 2012, issue of the *Texas Register* (37 TexReg 9230).

The purpose of the amendments is to clarify the information required in a licensed authorized organization's credible business plan and to specify the period of an organization's operations and compliance history that the Commission may consider in the approval of waiver applications regarding the net proceeds requirement as two years. Specifically, the amendments: (1) add "Application for Waiver" and delete "written request for a waiver" to subsection (b)(1); (2) delete existing subsection (b)(3)(D) - (K); (3) add new subsection (b)(3)(D) and (E); (4) change the time period from "one or more years" to "two years" in subsection (e)(2); (5) add "two year" to subsection (e)(3); and (6) delete subsections (g) and (h).

A public comment hearing was held on Wednesday, December 5, 2012, at 10:00 a.m. No individuals were present to offer comments at the hearing and the Commission did not receive any written comments on the amendments from any individuals, groups, or associations during the public comment period.

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

The adoption implements Texas Occupations 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 January 14, 2013.

TRD-201300076

Bob Biard
General Counsel
Texas Lottery Commission
Effective date: February 3, 2013
Proposal publication date: November 23, 2012
For further information, please call: (512) 344-5012



16 TAC §402.453

The Texas Lottery Commission (Commission) adopts amendments to 16 TAC §402.453, concerning Request for Operating Capital Increase, without changes to the proposed text as published in the November 23, 2012, issue of the *Texas Register* (37 TexReg 9231).

The purpose of the amendments is to clarify the information required in a licensed authorized organization's credible business plan when an organization applies for an increase in operating capital. Specifically, the amendments: (1) delete existing subsection (b)(4)(D) through (K); (2) add new subsection (b)(4)(D) and (E); and (3) delete the phrase "with supporting documentation" from subsection (c).

A public comment hearing was held on Wednesday, December 5, 2012 at 10:00 a.m. No individuals were present to offer comments at the hearing and the Commission did not receive any written comments on the amendments from any individuals, groups or associations during the public comment period.

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

The adoption implements Texas Occupations 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 January 14, 2013.

TRD-201300077
Bob Biard
General Counsel
Texas Lottery Commission
Effective date: February 3, 2013
Proposal publication date: November 23, 2012
For further information, please call: (512) 344-5012



SUBCHAPTER E. BOOKS AND RECORDS

16 TAC §402.503

The Texas Lottery Commission (Commission) adopts amendments to 16 TAC §402.503, concerning Bingo Gift Certificates, without changes to the proposed text as published in the November 23, 2012, issue of the *Texas Register* (37 TexReg 9233).

The purpose of the proposed amendments is to make this rule consistent with other administrative rules and the Bingo Enabling

Act. Specifically, the amendments: (1) delete "and funds other than bingo proceeds are used to obtain the gift certificate" from subsection (d); and (2) add "second business day after the bingo occasion" and delete "next business day" from subsection (g)(3).

A public comment hearing was held on Wednesday, December 5, 2012 at 10:00 a.m. No individuals were present to offer comments at the hearing and the Commission did not receive any written comments on the amendments from any individuals, groups or associations during the public comment period.

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

The adoption implements Texas Occupations 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 January 14, 2013.

TRD-201300078
Bob Biard
General Counsel
Texas Lottery Commission
Effective date: February 3, 2013
Proposal publication date: November 23, 2012
For further information, please call: (512) 344-5012



TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 1. GENERAL ADMINISTRATION SUBCHAPTER C. ASSESSMENT OF MAINTENANCE TAXES AND FEES

28 TAC §1.414

The Texas Department of Insurance adopts amendments to §1.414, concerning the 2013 assessment of maintenance taxes and fees imposed by the Texas Insurance Code. The amendments are adopted without changes to the proposed text as published in the November 30, 2012, issue of the *Texas Register* (37 TexReg 9452).

The amendments are necessary to adjust the rates of assessment for maintenance taxes and fees for 2013 on the basis of gross premium receipts for calendar year 2012 and following the methodology described below.

Section 1.414 includes rates of assessment to be applied to life, accident, and health insurance; motor vehicle insurance; casualty insurance and fidelity, guaranty, and surety bonds; fire insurance and allied lines, including inland marine; workers' compensation insurance; workers' compensation self-insured groups; title insurance; health maintenance organizations (HMOs); third

party administrators; nonprofit legal services corporations issuing prepaid legal services contracts; and workers' compensation certified self-insurers.

The following paragraphs provide an explanation of the methodology used to determine the adopted rates of assessment for maintenance taxes and fees for 2013:

In general, the department's 2013 revenue need (the amount that must be funded by maintenance taxes or fees; examination overhead assessments; the department's self-directed budget account, as established under the Insurance Code §401.252; and premium finance examination assessments) is determined by calculating the department's total cost need, and subtracting from that number funds resulting from fee revenue and funds remaining from fiscal year 2012.

To determine total cost need, the department combined costs from the following: (i) appropriations set out in Chapter 1355 (House Bill 1), Acts of the 82nd Legislature, Regular Session, 2011 (the General Appropriations Act), which come from two funds, the General Revenue Dedicated - Texas Department of Insurance Operating Account No. 0036 (Account No. 0036) and the General Revenue Fund - Insurance Companies Maintenance Tax and Insurance Department Fees; (ii) funds allowed by the Insurance Code Chapter 401, Subchapters D and F, as approved by the commissioner for the self-directed budget account in the Treasury Safekeeping Trust Company to be used exclusively to pay examination costs associated with salary, travel, or other personnel expenses; (iii) an estimate of other costs statutorily required to be paid from those two funds and the self-directed budget account, such as fringe benefits and statewide allocated costs; and (iv) an estimate of the cash amount necessary to finance both funds and the self-directed budget account from the end of the 2013 fiscal year until the next assessment collection period in 2014. From these combined costs, the department subtracted costs attributable to the Division of Workers' Compensation and the workers' compensation research and evaluation group.

The department determined how to allocate the remaining cost need to be attributed to each funding source using the following method:

For each area within the department that provides services directly to the public or the insurance industry, the department allocated the costs for providing those direct services on a percentage basis to each funding source, such as the maintenance tax or fee line, the premium finance assessment, the self-directed budget account, the examination assessment, or another funding source. The department applied these percentages to each section's annual budget to determine the total direct cost to each funding source.

The department calculated the percentage for each funding source by dividing the total directly allocated to each funding source by the total direct cost. The department used this percentage to allocate administrative support costs to each funding source. Examples of administrative support costs include services provided by human resources, accounting, budget, the commissioner's administration, and information technology. The department calculated the total direct costs and administrative support costs for each funding source.

The General Appropriations Act includes appropriations to state agencies other than the department that must be funded by Account No. 0036 and the General Revenue Fund - Insurance Companies Maintenance Tax and Insurance Department Fees.

The department adds these costs to the sum of the direct costs and the administrative support costs for the appropriate funding source when possible. For instance, the department allocates an appropriation to the Texas Department of Transportation for the crash information records system to the motor vehicle maintenance tax. The department includes costs for other agencies that cannot be directly allocated to a funding source to the administrative support costs. For instance, the department includes an appropriation to the Texas Facilities Commission for building support costs in administrative support costs.

The department calculates the total revenue need after completing the allocation of costs to each funding source. To complete the calculation of revenue need, the department removes costs, revenues, and fund balance related to the self-directed budget account. Based on remaining balances the department reduces the total cost need by subtracting the estimated ending fund balance for fiscal year 2012 (August 31, 2012) and estimated fee revenue collections for fiscal year 2013. The resulting balance is the estimated revenue need that must be supported during the 2013 fiscal year by the following funding sources: the maintenance taxes or fees, exam overhead assessments, and premium finance exam assessments.

The department determines the revenue need for each maintenance tax or fee line by dividing the total cost need for each maintenance tax line by the total of the revenue needs for all maintenance taxes. The department multiplies the calculated percentage for each line by the total revenue need for maintenance taxes. The resulting amount is the revenue need for each maintenance tax line. The department adjusts the revenue need by subtracting the estimated amount of fee and reimbursement revenue collected for each maintenance tax or fee line from the total of the revenue need for each maintenance tax or fee line. The department further adjusts the resulting revenue need as described in the following paragraphs.

The cost allocated to the life, accident, and health maintenance tax exceeds the amount of revenue that can be collected at the maximum rate set by statute. The department allocates the difference between the amount estimated to be collected at the maximum rate and the costs allocated to the life, accident, and health maintenance tax to the other maintenance tax or fee lines. The department allocates the life, accident, and health shortfall based on each of the remaining maintenance tax or fee lines' proportionate share of the total costs for maintenance taxes or fees. The department uses the adjusted revenue need as the basis for calculating the maintenance tax rates.

For each line of insurance, the department divides the adjusted revenue need by the estimated premium volume or assessment base to determine the rate of assessment for each maintenance tax or fee.

The following paragraphs provide an explanation of the methodology to develop the proposed rates for the Division of Workers' Compensation and the Office of Injured Employee Counsel.

To determine the revenue need, the department considered the following factors applicable to costs for the Division of Workers' Compensation and the Office of Injured Employee Counsel: (i) the appropriations in the General Appropriations Act for fiscal year 2012 from Account No. 0036; (ii) estimated other costs statutorily required to be paid from Account No. 0036, such as fringe benefits and statewide allocated costs; and (iii) an estimated cash amount to finance Account No. 0036 costs from the end of the 2013 fiscal year until the next assessment collection

period in 2014. The department adds these three factors to determine the total revenue need.

The department reduces the total revenue need by subtracting the estimated fund balance at August 31, 2012, and the Division of Workers' Compensation fee and reimbursement revenue estimate to be collected and deposited to Account No. 0036 in fiscal year 2013. The resulting balance is the estimated revenue need from maintenance taxes. The department adjusted this balance by taking into consideration the balance of the Comptroller of Public Accounts tax allocation account for the Division of Workers' Compensation. The department calculated the maintenance tax rate by dividing the estimated revenue need by the combined estimated workers' compensation premium volume and the certified self-insurers' liabilities plus the amount of expense incurred for administration of self insurance.

The following paragraphs provide an explanation of the methodology to develop the proposed rates for the workers' compensation research and evaluation group.

To determine the revenue need, the department considered the following factors that are applicable to the workers' compensation and research and evaluation group: (i) the appropriations in the General Appropriations Act for fiscal year 2013 from Account No. 0036 and from General Revenue Fund - Insurance Companies Maintenance Tax and Insurance Department Fees; (ii) estimated other costs statutorily required to be paid from these two funds, such as fringe benefits and statewide allocated costs; and (iii) an estimated cash amount to finance costs from these two funds from the end of the 2013 fiscal year until the next assessment collection period in 2014. The department adds these three factors to determine the total revenue need.

The department reduced the total revenue need by subtracting the estimated fund balance at August 31, 2012. The resulting balance is the estimated revenue need from maintenance taxes. The department adjusted the revenue need by taking into consideration the balance of the Comptroller of Public Accounts tax allocation account for the Division of Workers' Compensation. The department calculated the maintenance tax rate by dividing the estimated revenue need by the estimated assessment base.

The following paragraphs provide a brief summary and analysis of the reasons for the adopted amendments.

The amendment to the section heading reflects the year for which the proposed assessment of maintenance taxes and fees is applicable. The amendments in subsections (a), (b), (c), (d), (e), (f), and (h) reflect the appropriate year for accurate application of the section.

Amendments in subsections (a)(1), (2), (3), (4), (6), (8), and (9); (c)(1), (2), and (3); (d); and (e) update rates to reflect the methodology the department developed for 2013, as previously described.

Finally, amendments in subsections (d), (e), (f), and (h) are grammatical in nature, for consistency with current department rule drafting style. In subsection (d), (e), and (f), every appearance of the word "shall" is changed to "must." In subsection (h), the word "shall" is changed to "will."

Section 1.414 provides the rates of assessment for maintenance taxes and fees for 2013 to be applied to life, accident, and health insurance; motor vehicle insurance; casualty insurance and fidelity, guaranty, and surety bonds; fire insurance and allied lines, including inland marine; workers' compensation insurance; workers' compensation self-insured groups; title

insurance; health maintenance organizations; third party administrators; nonprofit legal services corporations issuing prepaid legal services contracts; and workers' compensation certified self-insurers.

Subsection (a) establishes the calendar year 2012 rates for maintenance taxes and fees on gross premiums of insurers for the lines of insurance specified in paragraphs (1) - (9) of the subsection. Subsection (a)(1) sets the rate for motor vehicle insurance at .072 of 1.0 percent pursuant to the Insurance Code §254.002. Subsection (a)(2) sets the rate for casualty insurance and fidelity, guaranty, and surety bonds at .151 of 1.0 percent pursuant to the Insurance Code §253.002. Subsection (a)(3) sets the rate for fire insurance and allied lines, including inland marine, at .305 of 1.0 percent pursuant to the Insurance Code §252.002.

Paragraphs (4) - (8) of subsection (a) set rates for workers' compensation insurance; subsection (a)(4) sets a rate for workers' compensation insurance at .108 of 1.0 percent pursuant to the Insurance Code §255.002. Subsection (a)(5) sets a rate for workers' compensation insurance at 1.669 percent pursuant to the Labor Code §403.003. Subsection (a)(6) sets a rate for workers' compensation insurance at .017 of 1.0 percent, pursuant to the Labor Code §405.003. Subsection (a)(7) sets a rate for workers' compensation insurance at 1.669 percent pursuant to the Labor Code §407A.301. Subsection (a)(8) sets a rate for workers' compensation insurance at .108 of 1.0 percent, pursuant to the Labor Code §407A.302. Subsection (a)(9) sets the rate for title insurance at .151 of 1.0 percent pursuant to the Insurance Code §271.004.

Subsection (b) establishes the rates for maintenance taxes and fees for life, health, and accident insurance and the gross considerations for annuity and endowment contracts, setting them at .040 of 1.0 percent pursuant to the Insurance Code §257.002.

Subsection (c) establishes the rates for maintenance taxes for calendar year 2011 for entities as specified in paragraphs (1) - (9) of the subsection. Subsection (c)(1) sets the rate for single service health maintenance organizations at \$.41 per enrollee, for multi-service health maintenance organizations at \$1.23 per enrollee, and for limited service health maintenance organizations at \$.41 per enrollee, pursuant to the Insurance Code §258.003. Subsection (c)(2) sets the rate for third party administrators at .035 of 1.0 percent of the correctly reported gross amount of administrative or service fees pursuant to the Insurance Code §259.003. Subsection (c)(3) sets the rate for nonprofit legal services corporations at .029 of 1.0 percent of the correctly reported gross revenues pursuant to the Insurance Code §260.002.

Subsection (d) establishes the rates for maintenance taxes for certified self-insurers to support the workers' compensation research and evaluation group in calendar year 2012. Subsection (d) sets a rate of .017 of 1.0 percent of the tax base calculated, pursuant to the Labor Code §405.003, and it specifies that the maintenance tax shall be billed to the certified self-insurer by the Division of Workers' Compensation.

Subsection (e) establishes the rates for maintenance taxes for workers' compensation self-insurance groups to support the workers' compensation research and evaluation group in calendar year 2012. Subsection (e) sets a rate of .017 percent of 1.0 percent of the tax base calculated pursuant to the Labor Code §407.103(b) pursuant to the Labor Code §405.003 and §407A.301.

Subsection (f) establishes a self-insurer maintenance tax for certified self-insurers pursuant to the Labor Code §407.103 and §407.104. The rate set by subsection (f) is 1.669 percent of the tax base calculated pursuant to the Labor Code §407.103(b), and the subsection provides that it shall be billed to the certified self-insurer by the Division of Workers' Compensation.

Subsection (g) notes that the enactment of Senate Bill 14, 78th Legislature, Regular Session, relating to certain insurance rates, forms, and practices, did not affect the calculation of the maintenance tax rates or the assessment of the taxes.

Subsection (h) provides for the taxes assessed under §1.414(a), (b), (c), and (e) to be payable and due to the Comptroller of Public Accounts, P.O. Box 149356, Austin, TX 78714-9356 on March 1, 2013.

The department did not receive any comments on the published proposal.

The amendments are adopted pursuant to the Insurance Code §§201.001(a)(1), (b), and (c); 201.052(a), (d), and (e); 251.001; 252.001 - 252.003; 253.001 - 253.003; 254.001 - 254.003; 255.001 - 255.003; 257.001 - 257.003; 258.002 - 258.004; 259.002 - 259.004; 260.001 - 260.003; 271.002 - 271.006; and 36.001; and the Labor Code §§403.002, 403.003, 403.005, 405.003(a) - (c), 407.103, 407.104(b), 407A.301, and 407A.302.

The Insurance Code §201.001(a)(1) states that the Texas Department of Insurance operating account is an account in the general revenue fund, and that the account includes taxes and fees received by the commissioner or comptroller that are required by the Insurance Code to be deposited to the credit of the account. Section 201.001(b) states that the commissioner must administer money in the Texas Department of Insurance operating account and may spend money from the account in accordance with state law, rules adopted by the commissioner, and the General Appropriations Act. Section 201.001(c) states that money deposited to the credit of the Texas Department of Insurance operating account may be used for any purpose for which money in the account is authorized to be used by law.

The Insurance Code §201.052(a) requires the department to reimburse the appropriate portion of the general revenue fund for the amount of expenses incurred by the comptroller in administering taxes imposed under the Insurance Code or another insurance law of Texas. Section 201.052(d) provides that in setting maintenance taxes for each fiscal year, the commissioner must ensure that the amount of taxes imposed is sufficient to fully reimburse the appropriate portion of the general revenue fund for the amount of expenses incurred by the comptroller in administering taxes imposed under the Insurance Code or another insurance law of Texas. Section 201.052(e) provides that if the amount of maintenance taxes collected is not sufficient to reimburse the appropriate portion of the general revenue fund for the amount of expenses incurred by the comptroller, other money in the Texas Department of Insurance operating account must be used to reimburse the appropriate portion of the general revenue fund.

The Insurance Code §251.001 directs the commissioner to annually determine the rate of assessment of each maintenance tax imposed under the Insurance Code Title 3, Subtitle C.

The Insurance Code §252.001 imposes a maintenance tax on each authorized insurer with gross premiums subject to taxation under the Insurance Code §252.003.

The Insurance Code §252.001 also specifies that the tax required by the Insurance Code Chapter 252 is in addition to other taxes imposed that are not in conflict with the Insurance Code Chapter 252.

The Insurance Code §252.002 provides that the rate of assessment set by the commissioner may not exceed 1.25 percent of the gross premiums subject to taxation under the Insurance Code §252.003. Section 252.002 also provides that the commissioner must annually adjust the rate of assessment of the maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the commissioner determines is necessary to pay the expenses during the succeeding year of regulating all classes of insurance specified under: the Insurance Code Chapters 1807, 2001 - 2006, 2171, 6001, 6002, and 6003; Chapter 5, Subchapter C; Chapter 544, Subchapter H; Chapter 1806, Subchapter D; and §403.002; the Government Code §§417.007, 417.008, and 417.009; and the Occupations Code Chapter 2154.

The Insurance Code §252.003 specifies that an insurer must pay maintenance taxes under the Insurance Code Chapter 252 on the correctly reported gross premiums from writing insurance in Texas against loss or damage by: bombardment; civil war or commotion; cyclone; earthquake; excess or deficiency of moisture; explosion as defined by the Insurance Code §2002.006(b); fire; flood; frost and freeze; hail, including loss by hail on farm crops; insurrection; invasion; lightning; military or usurped power; an order of a civil authority made to prevent the spread of a conflagration, epidemic, or catastrophe; rain; riot; the rising of the waters of the ocean or its tributaries; smoke or smudge; strike or lockout; tornado; vandalism or malicious mischief; volcanic eruption; water or other fluid or substance resulting from the breakage or leakage of sprinklers, pumps, or other apparatus erected for extinguishing fires, water pipes, or other conduits or containers; weather or climatic conditions; windstorm; an event covered under a home warranty insurance policy; or an event covered under an inland marine insurance policy.

The Insurance Code §253.001 imposes a maintenance tax on each authorized insurer with gross premiums subject to taxation under the Insurance Code §253.003. Section 253.001 also provides that the tax required by the Insurance Code Chapter 253 is in addition to other taxes imposed that are not in conflict with the Insurance Code Chapter 253.

The Insurance Code §253.002 provides that the rate of assessment set by the commissioner may not exceed 0.4 percent of the gross premiums subject to taxation under the Insurance Code §253.003. Section 253.002 also provides that the commissioner must annually adjust the rate of assessment of the maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the commissioner determines is necessary to pay the expenses during the succeeding year of regulating all classes of insurance specified under the Insurance Code §253.003.

The Insurance Code §253.003 specifies that an insurer must pay maintenance taxes under the Insurance Code Chapter 253 on the correctly reported gross premiums from writing a class of insurance specified under the Insurance Code Chapters 2008, 2251, and 2252; Chapter 5, Subchapter B; Chapter 1806, Subchapter C; Chapter 2301, Subchapter A; and Title 10, Subtitle B.

The Insurance Code §254.001 imposes a maintenance tax on each authorized insurer with gross premiums subject to taxation

under the Insurance Code §254.003. Section 254.001 also provides that the tax required by the Insurance Code Chapter 254 is in addition to other taxes imposed that are not in conflict with the Insurance Code Chapter 254.

The Insurance Code §254.002 provides that the rate of assessment set by the commissioner may not exceed 0.2 percent of the gross premiums subject to taxation under the Insurance Code §254.003. Section 254.002 also provides that the commissioner shall annually adjust the rate of assessment of the maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the commissioner determines is necessary to pay the expenses during the succeeding year of regulating motor vehicle insurance. Section 254.003 specifies that an insurer must pay maintenance taxes under the Insurance Code Chapter 254 on the correctly reported gross premiums from writing motor vehicle insurance in Texas, including personal and commercial automobile insurance.

The Insurance Code §255.001 imposes a maintenance tax on each authorized insurer with gross premiums subject to taxation under the Insurance Code §255.003, including a stock insurance company, mutual insurance company, reciprocal or interinsurance exchange, and Lloyd's plan. Section 255.001 also provides that the tax required by the Insurance Code Chapter 255 is in addition to other taxes imposed that are not in conflict with the Insurance Code Chapter 255.

The Insurance Code §255.002 provides that the rate of assessment set by the commissioner may not exceed 0.6 percent of the gross premiums subject to taxation under the Insurance Code §255.003. Section 255.002 also provides that the commissioner must annually adjust the rate of assessment of the maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the commissioner determines is necessary to pay the expenses during the succeeding year of regulating workers' compensation insurance.

The Insurance Code §255.003 specifies that an insurer must pay maintenance taxes under the Insurance Code Chapter 254 on the correctly reported gross premiums from writing workers' compensation insurance in Texas, including the modified annual premium of a policyholder that purchases an optional deductible plan under the Insurance Code Chapter 2053, Subchapter E. The section also provides that the rate of assessment shall be applied to the modified annual premium before application of a deductible premium credit.

The Insurance Code §257.001(a) imposes a maintenance tax on each authorized insurer, including a group hospital service corporation, managed care organization, local mutual aid association, statewide mutual assessment company, stipulated premium company, and stock or mutual insurance company, that collects from residents of this state gross premiums or gross considerations subject to taxation under the Insurance Code §257.003. Section 257.001(a) also provides that the tax required by Chapter 257 is in addition to other taxes imposed that are not in conflict with the Insurance Code Chapter 257.

The Insurance Code §257.002 provides that the rate of assessment set by the commissioner may not exceed 0.04 percent of the gross premiums subject to taxation under the Insurance Code §257.003. Section 257.002 also provides that the commissioner must annually adjust the rate of assessment of the maintenance tax so that the tax imposed that year, together with any un-

expended funds produced by the tax, produces the amount the commissioner determines is necessary to pay the expenses during the succeeding year of regulating life, health, and accident insurers. Section 257.003 specifies that an insurer must pay maintenance taxes under the Insurance Code Chapter 257 on the correctly reported gross premiums collected from writing life, health, and accident insurance in Texas, as well as gross considerations collected from writing annuity or endowment contracts in Texas. The section also provides that gross premiums on which an assessment is based under the Insurance Code Chapter 257 may not include premiums received from the United States for insurance contracted for by the United States in accord with or in furtherance of Title XVIII of the Social Security Act (42 U.S.C. Section 1395c et seq.) and its subsequent amendments; or premiums paid on group health, accident, and life policies in which the group covered by the policy consists of a single nonprofit trust established to provide coverage primarily for employees of a municipality, county, or hospital district in this state; or a county or municipal hospital, without regard to whether the employees are employees of the county or municipality or of an entity operating the hospital on behalf of the county or municipality.

The Insurance Code §258.002 imposes a per capita maintenance tax on each authorized HMO with gross revenues subject to taxation under the Insurance Code §258.004. Section 258.002 also provides that the tax required by the Insurance Code Chapter 258 is in addition to other taxes that are not in conflict with the Insurance Code Chapter 258.

The Insurance Code §258.003 provides that the rate of assessment set by the commissioner on HMOs may not exceed \$2 per enrollee. Section 258.003 also provides that the commissioner must annually adjust the rate of assessment of the per capita maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the commissioner determines is necessary to pay the expenses during the succeeding year of regulating HMOs. Section 258.003 also provides that rate of assessment may differ between basic health care plans, limited health care service plans, and single health care service plans and must equitably reflect any differences in regulatory resources attributable to each type of plan.

The Insurance Code §258.004 provides that an HMO must pay per capita maintenance taxes under the Insurance Code Chapter 258 on the correctly reported gross revenues collected from issuing health maintenance certificates or contracts in Texas. Section 258.004 also provides that the amount of maintenance tax assessed may not be computed based on enrollees who, as individual certificate holders or their dependents, are covered by a master group policy paid for by revenues received from the United States for insurance contracted for by the United States in accord with or in furtherance of Title XVIII of the Social Security Act (42 U.S.C. Section 1395c et seq.) and its subsequent amendments; revenues paid on group health, accident, and life certificates or contracts in which the group covered by the certificate or contract consists of a single nonprofit trust established to provide coverage primarily for employees of a municipality, county, or hospital district in this state; or a county or municipal hospital, without regard to whether the employees are employees of the county or municipality or of an entity operating the hospital on behalf of the county or municipality.

The Insurance Code §259.002 imposes a maintenance tax on each authorized third party administrator with administrative or service fees subject to taxation under the Insurance Code

§259.004. Section 259.002 also provides that the tax required by the Insurance Code Chapter 259 is in addition to other taxes imposed that are not in conflict with the chapter. Section 259.003 provides that the rate of assessment set by the commissioner may not exceed one percent of the administrative or service fees subject to taxation under the Insurance Code §259.004. Section 259.003 also provides that the commissioner must annually adjust the rate of assessment of the maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the commissioner determines is necessary to pay the expenses of regulating third party administrators.

The Insurance Code §260.001 imposes a maintenance tax on each nonprofit legal services corporation subject to the Insurance Code Chapter 961 with gross revenues subject to taxation under the Insurance Code §260.003. Section 260.001 also provides that the tax required by the Insurance Code Chapter 260 is in addition to other taxes imposed that are not in conflict with the chapter. Section 260.002 provides that the rate of assessment set by the commissioner may not exceed one percent of the corporation's gross revenues subject to taxation under the Insurance Code §260.003. Section 260.002 also provides that the commissioner must annually adjust the rate of assessment of the maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the commissioner determines is necessary to pay the expenses during the succeeding year of regulating nonprofit legal services corporations. Section 260.003 provides that a nonprofit legal services corporation shall pay maintenance taxes under this chapter on the correctly reported gross revenues received from issuing prepaid legal services contracts in this state.

The Insurance Code §271.002 imposes a maintenance fee on all premiums subject to assessment under the Insurance Code §271.006. Section 271.002 also specifies that the maintenance fee is not a tax and shall be reported and paid separately from premium and retaliatory taxes. Section 271.003 specifies that the maintenance fee is included in the division of premiums and may not be separately charged to a title insurance agent. Section 271.004 provides that the commissioner must annually determine the rate of assessment of the title insurance maintenance fee. Section 271.004 also provides that in determining the rate of assessment, the commissioner must consider the requirement to reimburse the appropriate portion of the general revenue fund under the Insurance Code §201.052. Section 271.005 provides that rate of assessment set by the commissioner may not exceed one percent of the gross premiums subject to assessment under the Insurance Code §271.006. Section 271.005 also provides that the commissioner must annually adjust the rate of assessment of the maintenance fee so that the fee imposed that year, together with any unexpended funds produced by the fee, produces the amount the commissioner determines is necessary to pay the expenses during the succeeding year of regulating title insurance. Section 271.006 requires an insurer to pay maintenance fees under the Insurance Code chapter on the correctly reported gross premiums from writing title insurance in Texas.

The Labor Code §403.002 imposes an annual maintenance tax on each insurance carrier to pay the costs of administering the Texas Workers' Compensation Act and to support the prosecution of workers' compensation insurance fraud in Texas. The Labor Code §403.002 also provides that the assessment may not exceed an amount equal to two percent of the correctly reported gross workers' compensation insurance premiums, including the modified annual premium of a policyholder that purchases an op-

tionally deductible plan under the Insurance Code Article 5.55C. The Labor Code §403.002 also provides that the rate of assessment be applied to the modified annual premium before application of a deductible premium credit. Additionally, the Labor Code §403.002 states that a workers' compensation insurance company is taxed at the rate established under the Labor Code §403.003, and that the tax must be collected in the manner provided for collection of other taxes on gross premiums from a workers' compensation insurance company as provided in the Insurance Code Chapter 255. Finally, the Labor Code §403.002 states that each certified self-insurer must pay a fee and maintenance taxes as provided by the Labor Code Chapter 407, Subchapter F.

The Labor Code §403.003 requires the commissioner of insurance to set and certify to the comptroller the rate of maintenance tax assessment, taking into account: (i) any expenditure projected as necessary for the division and the Office of Injured Employee Counsel to administer the Texas Workers' Compensation Act during the fiscal year for which the rate of assessment is set and reimburse the general revenue fund as provided by the Insurance Code §201.052; (ii) projected employee benefits paid from general revenues; (iii) a surplus or deficit produced by the tax in the preceding year; (iv) revenue recovered from other sources, including reappropriated receipts, grants, payments, fees, gifts, and penalties recovered under the Texas Workers' Compensation Act; and (v) expenditures projected as necessary to support the prosecution of workers' compensation insurance fraud. The Labor Code §403.003 also provides that in setting the rate of assessment, the commissioner of insurance may not consider revenue or expenditures related to the State Office of Risk Management, the workers' compensation research functions of the department under the Labor Code Chapter 405, or any other revenue or expenditure excluded from consideration by law.

The Labor Code §403.005 provides that the commissioner of insurance must annually adjust the rate of assessment of the maintenance tax imposed under §403.003 so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the commissioner of insurance determines is necessary to pay the expenses of administering the Texas Workers' Compensation Act. The Labor Code §405.003(a) - (c) establishes a maintenance tax on insurance carriers and self-insurance groups to fund the workers' compensation research and evaluation group, it provides for the department to set the rate of the maintenance tax based on the expenditures authorized and the receipts anticipated in legislative appropriations, and it provides that the tax is in addition to all other taxes imposed on insurance carriers for workers' compensation purposes.

The Labor Code §407.103 imposes a maintenance tax on each workers' compensation certified self-insurer for the administration of the Division of Workers' Compensation and the Office of Injured Employee Counsel and to support the prosecution of workers' compensation insurance fraud in Texas. The Labor Code §407.103 also provides that not more than two percent of the total tax base of all certified self-insurers, as computed under subsection (b) of the section, may be assessed for the maintenance tax established under Labor Code §407.103. The Labor Code §407.103 also provides that to determine the tax base of a certified self-insurer for purposes of the Labor Code Chapter 407, the department must multiply the amount of the certified self-insurer's liabilities for workers' compensation claims incurred in the previous year, including claims incurred but not reported, plus the amount of expense incurred by the certified

self-insurer in the previous year for administration of self-insurance, including legal costs, by 1.02. The Labor Code §407.103 also provides that the tax liability of a certified self-insurer under the section is the tax base computed under subsection (b) of the section multiplied by the rate assessed workers' compensation insurance companies under the Labor Code §403.002 and §403.003. Finally, the Labor Code §407.103 provides that in setting the rate of maintenance tax assessment for insurance companies, the commissioner of insurance may not consider revenue or expenditures related to the operation of the self-insurer program under the Labor Code Chapter 407.

Section 407.104(b) provides that the department must compute the fee and taxes of a certified self-insurer and notify the certified self-insurer of the amounts due. Section 407.104(b) also provides that a certified self-insurer must remit the taxes and fees to the Division of Workers' Compensation.

The Labor Code §407A.301 imposes a self-insurance group maintenance tax on each workers' compensation self-insurance group based on gross premium for the group's retention. The Labor Code §407A.301 provides that the self-insurance group maintenance tax is to pay for the administration of the Division of Workers' Compensation, the prosecution of workers' compensation insurance fraud in Texas, the research functions of the department under Labor Code Chapter 405, and the administration of the Office of Injured Employee Counsel under Labor Code Chapter 404. The Labor Code §407A.301 also provides that the tax liability of a group under subsection (a)(1) and (2) of the section is based on gross premium for the group's retention multiplied by the rate assessed insurance carriers under the Labor Code §403.002 and §403.003. The Labor Code §407A.301 also provides that the tax liability of a group under subsection (a)(3) of the section is based on gross premium for the group's retention multiplied by the rate assessed insurance carriers under the Labor Code §405.003. Additionally, the Labor Code §407A.301 provides that the tax under the section does not apply to premium collected by the group for excess insurance. Finally, the Labor Code §407A.301 provides that the tax under the section must be collected by the comptroller as provided by the Insurance Code Chapter 255 and the Insurance Code §201.051.

The Labor Code §407A.302 requires each workers' compensation self-insurance group to pay the maintenance tax imposed under the Insurance Code Chapter 255, for the administrative costs incurred by the department in implementing the Labor Code Chapter 407A. The Labor Code §407A.302 provides that the tax liability of a workers' compensation self-insurance group under the section is based on gross premium for the group's retention and does not include premium collected by the group for excess insurance. The Labor Code §407A.302 also provides that the maintenance tax assessed under the section is subject to the Insurance Code Chapter 255, and that it must be collected by the comptroller in the manner provided by the Insurance Code Chapter 255.

The 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.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 10, 2013.

TRD-201300051

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General Counsel

Texas Department of Insurance

Effective date: January 30, 2013

Proposal publication date: November 30, 2012

For further information, please call: (512) 463-6327

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CHAPTER 7. CORPORATE AND FINANCIAL REGULATION

SUBCHAPTER J. EXAMINATION EXPENSES AND ASSESSMENTS

28 TAC §7.1001

The Texas Department of Insurance adopts amendments to §7.1001, concerning assessments to cover the expenses of examining domestic and foreign insurance companies and self-insurance groups providing workers' compensation insurance. The amendments are adopted without changes to the proposed text as published in the November 30, 2012, issue of the *Texas Register* (37 TexReg 9459).

The amendments are necessary to establish the examination expenses to be levied against and collected from each domestic and foreign insurance company and each self-insurance group providing workers' compensation insurance examined during the 2013 calendar year. The amendments are also necessary to establish the rates of assessment to be levied against and collected from each domestic insurance company examined during the 2013 calendar year, based on admitted assets and gross premium receipts for the 2012 calendar year, and from each foreign insurance company examined during the 2013 calendar year, based on a percentage of the gross salary paid to an examiner for each month or part of a month during which the examination is made.

The amendments are based on requirements in the Insurance Code §§201.001(a)(1), (b), and (c); 401.151; 401.152; 401.155; 843.156(h); and 36.001; and the Labor Code §407A.252(b).

The following paragraphs provide an explanation of the methodology used to determine examination overhead assessments for 2013.

In general, the department's 2013 revenue need (the amount that must be funded by maintenance taxes or fees; examination overhead assessments; premium finance exam assessments; and funds in the self-directed budget account, as established pursuant to the Insurance Code §401.252) is determined by calculating the department's total cost need, and subtracting from that number funds resulting from fee revenue and funds remaining from fiscal year 2012.

To determine total cost need, the department combined costs from the following: (i) appropriations set out in Chapter 1355 (House Bill 1), Acts of the 82nd Legislature, Regular Session, 2011 (the General Appropriations Act), which come from two funds, the General Revenue Dedicated - Texas Department of Insurance Operating Account No. 0036 (Account No. 0036) and the General Revenue Fund - Insurance Companies Main-

tenance Tax and Insurance Department Fees; (ii) funds allowed by the Insurance Code Subchapters D and F of Chapter 401 as approved by the commissioner of insurance for the self-directed budget account in the Treasury Safekeeping Trust Company to be used exclusively to pay examination costs associated with salary, travel, or other personnel expenses; (iii) an estimate of other costs statutorily required to be paid from those two funds and the self-directed budget account, such as fringe benefits and statewide allocated costs; and (iv) an estimate of the cash amount necessary to finance both funds and the self-directed budget account from the end of the 2013 fiscal year until the next assessment collection period in 2014. From these combined costs, the department subtracted costs attributable to the Division of Workers' Compensation and the workers' compensation research and evaluation group.

The department determined how to allocate the revenue need to be attributed to each funding source using the following method:

Each section within the department that provides services directly to the public or the insurance industry allocated the costs for providing those direct services on a percentage basis to each funding source, such as the maintenance tax or fee line, the premium finance assessment, the examination assessment, the self-directed budget account as limited by the Insurance Code §401.252, or another funding source. The department applied these percentages to each section's annual budget to determine the total direct cost to each funding source. The department calculated a percentage for each funding source by dividing the total directly allocated to each funding source by the total of the direct cost. The department used this percentage to allocate administrative support costs to each funding source. Examples of administrative support costs include services provided by human resources, accounting, budget, the commissioner's administration, and information technology. The department calculated the total of direct costs and administrative support costs for each funding source.

To complete the calculation of the revenue need the department combined the costs allocated to the examination overhead assessment source and the self-directed budget account source. The department then subtracted the fiscal year 2013 estimated amount of examination direct billing revenue from the amount of the combined costs of the examination overhead assessment source and the self-directed budget account source. The resulting balance is the amount of the examination revenue need for the purpose of calculating the examination overhead assessment rates.

To calculate the assessment rates, the department allocated 50 percent of the revenue need to admitted assets and 50 percent to gross premium receipts. The department divided the revenue need for gross premium receipts by the total estimated gross premium receipts for calendar year 2012 to determine the proposed rate of assessment for gross premium receipts. The department divided the revenue need for admitted assets by the total estimated admitted assets for calendar year 2012 to determine the proposed rate of assessment for admitted assets.

The following paragraphs provide a brief summary and analysis of the reasons for the adopted section.

The amendment to the section heading reflects the year for which the proposed assessment will be applicable. The amendments in subsections (b)(1), (c)(1), (c)(2)(A), (c)(2)(B), and (d) reflect the appropriate year for accurate application of the section.

The amendments in subsection (c)(2)(A) and (B) update assessments to reflect the methodology the department has developed for 2013, which is previously addressed.

New paragraph (3) in subsection (c) provides the overhead assessment for a company that was a domestic insurance company for less than a full year during calendar year 2012. Previous paragraphs (3), (4), and (5) of subsection (c) are redesignated to address the addition of new paragraph (3), and conforming changes are made in subsection (c)(2) and redesignated (4).

Finally, amendments in subsections (b), (b)(1), (b)(2), (b)(3), (c), (c)(1), (c)(2)(A), (c)(2)(B), redesignated (c)(6), (d), and (e) are grammatical in nature, for consistency with current department rule drafting style. In subsections (b), (b)(1), (b)(2), (b)(3), (c), (c)(1), (d), and (e), the department changes the word "shall" to "must" in each place that it appears. In subsections (b)(1) and (d) the department changes passively-phrased language to active voice. In subsection (c)(2)(A) and (B) the department deletes the word "upon." And in redesignated (c)(6) the department replaces the word "accordance" with the word "accord."

Section 7.1001(a) provides that, for purposes of the section, the term "insurance company" includes an HMO as defined in the Insurance Code §843.002.

Section 7.1001(b) establishes the examination expenses and assessments applicable to an insurer not organized under the laws of Texas (foreign insurance company). Section 7.1001(b)(1) requires a foreign insurance company to reimburse the department for the salary and examination expenses of each examiner participating in an examination of the insurance company, describes how to calculate the part of an examiner's salary included in the examination fee, and provides that expenses the department assesses are those actually incurred by the examiner to the extent permitted by law. Section 7.1001(b)(2) requires a foreign insurance company to pay an additional assessment of 34 percent of the gross salary the department pays to each examiner for each month or partial month of the examination to cover the examiner's longevity pay; state contributions to retirement, social security, and the state paid portion of insurance premiums; and vacation and sick leave accruals, pursuant to the Insurance Code §401.155. Section 7.1001(b)(3) provides that a foreign insurance company must pay the reimbursements and payments required by the subsection to the department as specified in each itemized bill the department provides to the foreign insurance company.

Section 7.1001(c) establishes the examination expenses and assessments applicable to a domestic insurance company.

Section 7.1001(c)(1) requires a domestic insurance company to pay the actual salaries and expenses of the examiners allocable to an examination of the company, it describes how to calculate the part of an examiner's salary included in the examination fee, and it provides that expenses assessed shall be those actually incurred by the examiner to the extent permitted by law.

Section 7.1012(c)(2) establishes the rates for the overhead assessment applicable to a domestic insurance company. Section 7.1001(c)(2)(A) provides that the overhead assessment applicable to a domestic insurance company includes .00237 of 1.0 percent of the admitted assets of the company as of December 31, 2012, upon taking into consideration the annual admitted assets that are not attributable to 90 percent of pension plan contracts as defined in Section 818(a) of the Internal Revenue Code of 1986 (26 U.S.C. Section 818(a)). Section 7.1001(c)(2)(B) provides that the overhead assessment applicable to a domestic

insurance company includes .00839 of 1.0 percent of the gross premium receipts of the company for the year 2012, upon taking into consideration the annual premium receipts that are not attributable to 90 percent of pension plan contracts as defined in Section 818(a) of the Internal Revenue Code of 1986 (26 U.S.C. Section 818(a)).

Section 7.1001(c)(3) provides that, except as provided by paragraph (4), if a company was a domestic insurance company for less than a full year during calendar year 2012, the overhead assessment for the company is the overhead assessment required under paragraph (2)(A) and (B) of the subsection divided by 366 and multiplied by the number of days the company was a domestic insurance company during calendar year 2012.

Section 7.1001(c)(4) provides that if the overhead assessment required under §7.1001(c)(2)(A) and (B) or paragraph (3) produces an overhead assessment of less than a \$25 total, a domestic insurance company shall pay a minimum overhead assessment of \$25.

Section 7.1001(c)(5) provides that the department will base the overhead assessments on the assets and premium receipts reported in a domestic insurance company's annual statement.

Section 7.1001(c)(6) provides that for the purpose of applying paragraph (2)(B) of the subsection, the term "gross premium receipts" does not include insurance premiums for insurance contracted for by a state or federal government entity to provide welfare benefits to designated welfare recipients or contracted for in accordance with or in furtherance of the Human Resources Code, Title 2, or the federal Social Security Act (42 U.S.C. Section 301 et seq.)

Section 7.1001(d) establishes the examination expenses applicable to a workers' compensation self-insurance group. The subsection requires a workers' compensation self-insurance group to pay the actual salaries and expenses of the examiners allocable to an examination of the company, it describes how to calculate the part of an examiner's salary included in the examination fee, and it provides that expenses the department assesses are those actually incurred by the examiner to the extent permitted by law.

Section 7.1001(e) requires a domestic insurance company to pay the overhead assessment required under §7.1001(c) to the Texas Department of Insurance not later than 30 days from the invoice date.

The department did not receive any comments on the published proposal.

The amendments are adopted under the Insurance Code §§201.001(a)(1), (b), and (c); 401.151; 401.152; 401.155, 401.156; 843.156(h); and 36.001; and the Labor Code §407A.252(b).

The Insurance Code §201.001(a)(1) states that the Texas Department of Insurance operating account is an account in the general revenue fund, and that the account includes taxes and fees received by the commissioner or comptroller that are required by the Insurance Code to be deposited to the credit of the account. Section 201.001(b) states that the commissioner shall administer money in the Texas Department of Insurance operating account and may spend money from the account in accordance with state law, rules adopted by the commissioner, and the General Appropriations Act. Section 201.001(c) states that money deposited to the credit of the Texas Department of

Insurance operating account may be used for any purpose for which money in the account is authorized to be used by law.

The Insurance Code §401.151 provides that a domestic insurer examined by the department or under the department's authority must pay the expenses of the examination in an amount the commissioner certifies as just and reasonable.

The Insurance Code §401.151 also provides that the department must collect an assessment at the time of the examination to cover all expenses attributable directly to that examination, including the salaries and expenses of department employees and expenses described by the Insurance Code §803.007. Section 401.151 also requires that the department impose an annual assessment on domestic insurers in an amount sufficient to meet all other expenses and disbursements necessary to comply with the laws of Texas relating to the examination of insurers. Additionally, Section 401.151 states that in determining the amount of assessment, the department will consider the insurer's annual premium receipts or admitted assets, or both, that are not attributable to 90 percent of pension plan contracts as defined by Section 818(a), Internal Revenue Code of 1986; or the total amount of the insurer's insurance in force.

The Insurance Code §401.152 provides that an insurer not organized under the laws of Texas must reimburse the department for the salary and expenses of each examiner participating in an examination of the insurer and for other department expenses that are properly allocable to the department's participation in the examination. Section 401.152 also requires an insurer to pay the expenses under the section directly to the department on presentation of an itemized written statement from the commissioner. Additionally, §401.152 provides that the commissioner must determine the salary of an examiner participating in an examination of an insurer's books or records located in another state based on the salary rate recommended by the National Association of Insurance Commissioners or the examiner's regular salary rate.

The Insurance Code §401.155 requires the department to impose additional assessments against insurers on a pro rata basis as necessary to cover all expenses and disbursements required by law and to comply with the Insurance Code Chapter 401, Subchapter D, and §§401.103, 401.104, 401.105, and 401.106.

The Insurance Code §401.156 requires the department to deposit any assessments or fees collected under the Insurance Code Chapter 401, Subchapter D, relating to the examination of insurers and other regulated entities by the financial examinations division or actuarial division, as those terms are defined by the Insurance Code §401.251, to the credit of an account with the Texas Treasury Safekeeping Trust Company to be used exclusively to pay examination costs, as defined by the Insurance Code §401.251. Additionally, §401.156 provides that revenue not related to the examination of insurers or other regulated entities by the financial examinations division or actuarial division be deposited to the credit of the Texas Department of Insurance operating account.

The Insurance Code §843.156(h) provides that the Insurance Code Chapter 401, Subchapter D, applies to an HMO, except to the extent that the commissioner determines that the nature of the examination of an HMO renders the applicability of those provisions clearly inappropriate.

The Labor Code §407A.252(b) provides that the commissioner of insurance may recover the expenses of an examination of a workers' compensation self-insurance group under the Insurance Code Article 1.16, which was recodified as the Insurance

Code §§401.151, 401.152, 401.155,401.156, and 401.156 by House Bill 2017, 79th Legislature, Regular Session (2005), to the extent the maintenance tax under the Labor Code §407A.302 does not cover those expenses.

The 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.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 10, 2013.

TRD-201300052

Sara Waitt

General Counsel

Texas Department of Insurance

Effective date: January 30, 2013

Proposal publication date: November 30, 2012

For further information, please call: (512) 463-6327



CHAPTER 25. INSURANCE PREMIUM FINANCE

SUBCHAPTER E. EXAMINATIONS AND ANNUAL REPORTS

28 TAC §25.88

The Texas Department of Insurance adopts amendments to §25.88, concerning an assessment which will be used to cover the general administrative expenses of the department's regulation of insurance premium finance companies. The amendments are adopted without changes to the proposed text as published in the November 30, 2012, issue of the *Texas Register* (37 TexReg 9464).

The amendments are necessary to adjust the rate of assessment to ensure that there are sufficient funds to meet the expenses of performing the department's statutory responsibilities for examining, investigating, and regulating insurance premium finance companies. Under §25.88, the department levies a rate of assessment to cover the department's general administrative expenses for fiscal year 2013.

The following paragraphs provide an explanation of the methodology the department used to determine its assessments for insurance premium finance companies for 2013.

In general, the department's 2013 revenue need (the amount that must be funded by maintenance taxes or fees; examination overhead assessments; the department's self-directed budget account, as established pursuant to the Insurance Code §401.252; and premium finance exam assessments) is determined by calculating the department's total cost need, and subtracting from that number funds resulting from fee revenue and funds remaining from fiscal year 2012.

To determine its total cost need, the department combined costs from the following: (i) appropriations set out in Chapter 1355 (House Bill 1), Acts of the 82nd Legislature, Regular Session, 2011 (the General Appropriations Act), which come from two

funds, the General Revenue Dedicated - Texas Department of Insurance Operating Account No. 0036 (Account No. 0036) and the General Revenue Fund - Insurance Companies Maintenance Tax and Insurance Department Fees; (ii) funds allowed by the Insurance Code Subchapters D and F of Chapter 401 as approved by the commissioner for the self-directed budget account in the Treasury Safekeeping Trust Company to be used exclusively to pay examination costs associated with salary, travel, or other personnel expenses; (iii) an estimate of other costs statutorily required to be paid from those two funds and the self-directed budget account, such as fringe benefits and statewide allocated costs; and (iv) an estimate of the cash amount necessary to finance both funds and the self-directed budget account from the end of the 2013 fiscal year until the next assessment collection period in 2014. From these combined costs, the department subtracted costs attributable to the Division of Workers' Compensation and the workers' compensation research and evaluation group.

The department determined how to allocate the revenue need to be attributed to each funding source using the following method:

For each section within the department that provides services directly to the public or the insurance industry, the department allocated the costs for providing those direct services on a percentage basis to each funding source, such as the maintenance tax or fee line, the premium finance assessment, the examination assessment, the self-directed budget account as limited by the Insurance Code §401.252, or another funding source.

The department applied these percentages to each section's annual budget to determine the total direct cost to each funding source. The department calculated a percentage for each funding source by dividing the total directly allocated to each funding source by the total of the direct cost. The department used this percentage to allocate administrative support costs to each funding source. Examples of administrative support costs include services provided by human resources, accounting, budget, the commissioner's administration, and information technology. The department calculated the total of direct costs and administrative support costs for each funding source.

In regard to premium finance company examinations, the department's examination division based its current allocation on the number of hours market conduct staff performs examinations on the premium finance companies. In previous years, the department's examination based its allocation methodology for premium finance company examinations on a pro rata share of the total number of examinations. This change in the cost allocations reduced the revenue need for premium finance company examinations significantly.

To complete the calculation of the revenue need, the department combined the costs allocated to the premium finance assessment source and the self-directed source attributable to regulation of premium finance insurance companies. The department subtracted the fiscal year 2013 estimated amount of premium finance fee revenue and the estimated combined 2012 ending funding balance of the premium finance assessment source and the self-directed budget account attributable to premium finance from the amount of the combined costs for regulation of premium finance insurance companies. The resulting balance was the amount of revenue need for the purpose of calculating the premium finance assessment rate. The department divided the revenue need by the estimated loan dollar volume to determine the proposed rate of assessment for premium finance insurance companies. Based on this, the department determined that the

estimated revenue need requires the collection of the minimum assessment amount of \$250 from each insurance premium finance company.

The following paragraphs provide a brief summary and analysis of the reasons for the adopted amendments.

The department amends the first sentence of the section to update the reference to the year in the section to 2013.

The department amends the third sentence of the section to update the rate of assessment to the level necessary for 2013. Additionally, the department deletes paragraphs (1) and (2) of the section because the way the assessment is structured for 2013 does not necessitate subdivisions within the section.

Finally, the department amends the first and second sentences of the section for consistency with current department rule drafting style. In the first sentence, the department changes the words "on or before" to "no later than." In the first and second sentences of the section, the department changes the word "shall" to "must" in each place that it appears.

Under §25.88, the department levies a rate of assessment to cover the department's general administrative expenses for fiscal year 2013.

The first sentence of §25.88 as amended specifies that no later than April 1, 2013, each insurance premium finance company holding a license issued by the department under the Insurance Code Chapter 651 must pay an assessment to cover the general administrative expenses attributable to the regulation of insurance premium finance companies. The second sentence of §25.88 provides that insurance premium finance companies must send payment to the department at the address shown in the section. The third sentence of §25.88 indicates that the assessment to general administrative expenses is \$250.

The Department did not receive any comments on the published proposal.

The amendments are adopted under the Insurance Code §§201.001(a)(1), (b), and (c); 651.003; 651.005(b); 651.006(a); and 36.001.

The Insurance Code §201.001(a)(1) states that the Texas Department of Insurance operating account is an account in the general revenue fund, and that the account includes taxes and fees received by the commissioner or comptroller that are required by the Insurance Code to be deposited to the credit of the account. Section 201.001(b) states that the commissioner must administer money in the Texas Department of Insurance operating account and may spend money from the account in accord with state law, rules adopted by the commissioner, and the General Appropriations Act. Section 201.001(c) states that money deposited to the credit of the Texas Department of Insurance operating account may be used for any purpose for which money in the account is authorized to be used by law.

The Insurance Code §651.003 authorizes the commissioner to adopt and enforce rules necessary to administer the Insurance Code Chapter 651.

The Insurance Code §651.005(b) requires that the department deposit an assessment or fee associated with examination costs, as defined by Insurance Code §401.251, to the account described by Insurance Code §401.156(a).

The Insurance Code §651.006(a) requires each insurance premium finance company licensed by the department to pay an

amount imposed by the department to cover the direct and indirect costs of examinations and investigations and a proportionate share of general administrative expenses attributable to regulation of insurance premium finance companies.

The 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.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 10, 2013.

TRD-201300053

Sara Waitt

General Counsel

Texas Department of Insurance

Effective date: January 30, 2013

Proposal publication date: November 30, 2012

For further information, please call: (512) 463-6327



TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 4. SCHOOL LAND BOARD

CHAPTER 155. LAND RESOURCES

SUBCHAPTER A. COASTAL PUBLIC LANDS

31 TAC §§155.1, 155.3, 155.5, 155.15

The School Land Board (Board) adopts amendments to §§155.1, 155.3, 155.5, and 155.15, relating to Coastal Land Public Lands. The amendments are adopted without changes to the proposed text published in the December 7, 2012, issue of the *Texas Register* (37 TexReg 9603) and will not be republished.

BACKGROUND AND REASONED JUSTIFICATION FOR THE ADOPTED RULES

The amendments are adopted to clarify and simplify structure registration requirements, as well as update structure registration criteria. The amendments also consolidate, update, and simplify rents and fees, revise current definitions, and provide other clarifications relating to current Board policy for uses of and activities on Coastal Public Lands.

The amendment to §155.1, relating to General Provisions, defines the "act" in subsection (a)(5) and clarifies the definitions of "Industrial activity," "Return on investment," and "Watercraft storage facility" in subsection (d). The amendment also adds a new definition for "Covered second level," which is a partially or fully covered second story associated with boathouses and boatlifts, and deletes related portions of the existing definitions of "Boathouse" and "Boatlift." The new definition makes clear that enclosure of a second story is strictly prohibited. Conforming numbering changes have been made to account for the new definition.

The amendment to §155.3, relating to Easements, adds additional activities, including pipelines, fiber optic lines, electric

lines, and other uses included under Texas Natural Resources Code Chapter 51, for which the Commissioner is authorized to approve an easement without Board approval. The amendment also changes §155.3(f)(7) by clarifying that jetties are subject to each requirement of §155.3(f)(7) and by providing that non-compliance with any of the requirements of §155.3(f)(7)(C) is sufficient cause for denial or termination of authorization for a particular action and for removal of a non-conforming structure.

The amendment to §155.5, relating to Registration of Structures, clarifies in subsection (c) that reconstruction and modification of piers must follow the same registration process as new construction of piers. The amendment deletes paragraphs (1) - (6) in subsection (b) and deletes subsection (d), which are duplicative of information and assurances required by the General Land Office's (GLO's) structure registration form. Construction criteria is updated by deleting parts of relettered subsection (d) and substituting new subsection (d)(1). New subsection (d)(1) provides that construction must be consistent with the specific criteria set forth in the GLO's residential pier construction requirements, which are updated periodically and available online at the GLO web site. General construction criteria from existing subsection (e) have been retained and are in relettered subsection (d).

The amendment to §155.5 also clarifies in a new subsection (e) that the Commissioner retains the discretion to authorize registration of non-commercial pier structures that meet the specifications in Texas Natural Resources Code §33.115. Elements from deleted subsection (d) have been moved to a new subsection (f), which requires compliance with general terms and conditions of the structure registration form and other legal requirements. Finally, subsections (f) and (g) have been consolidated into a new subsection (g) and revised in order to address both piers and structures, shorten the reference to Texas Natural Resources Code §33.115, and add references to registration under new subsections (b), (d), and (e).

The amendment to §155.15, relating to Fees, simplifies and clarifies the listing of fees and increases the rent fees in both Categories II and III for breakwater, jetty, and groins; new and existing dredges; and open encumbered areas. New rental fees are imposed for piers, docks, and walkways as well as Category III multiple boatlifts, boathouses, covered boat slips, and oversized personal and watercraft slips. A new fee for covered second levels is also adopted. Easements were expressly added to the types of public lands for which rents and fees are assessed. Finally, grantees were added to the list of individuals for which consequences would be imposed for the dishonor or nonpayment of fees. The increase in fees for piers, docks, and walkways associated with cabins will take effect on September 1, 2015.

The justification for adopting the revisions to §155.1 is to clarify definitions relating to the Board's rules for granting interests in Coastal Public Lands. This includes changing definitions regarding covered second levels on boatlifts and boathouses in order to reflect current Board policy. Overall, the revisions to §155.1 will help the public better understand the Board's policies and rules relating to Coastal Public Lands.

The justification for adopting the revisions to §155.3 is to incorporate additional activities for which the Commissioner may issue easements, without Board approval, pursuant to Texas Natural Resources Code Chapter 51. The revisions to §155.3 regarding dredging and placement of dredged materials, and regarding restrictions on new and existing jetties, are justified because the revisions clarify the existing rules and current Board policy.

The justification for adopting the revisions to §155.5 is that the amended rule will streamline the structure registration process and provide the public with a clearer understanding of the requirements for structure registrations. Similarly, the revisions to §155.15 will simplify the list of rents and fees for certain uses of and activities on Coastal Public Lands for the benefit of the public. The addition of new fees and increases in fees under §155.15 are justified by the costs that the GLO incurs in reviewing, processing, and providing other administrative support and services associated with the granting of interests in Coastal Public Lands.

COMMENTS BY THE PUBLIC

The GLO did not receive any comments on the amendments.

STATUTORY AUTHORITY

The amendments are adopted under Texas Natural Resources Code §§33.101 - 33.136, relating to the Board's authority to grant rights in coastal public land, and Texas Natural Resources Code §33.064, providing that the Board may adopt procedural and substantive rules which it considers necessary to administer, implement, and enforce Chapter 33, Texas Natural Resources Code.

No other statutes, articles or codes are affected by adoption of these amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 14, 2013.

TRD-201300083

Larry L. Laine

Chief Clerk, Deputy Land Commissioner, General Land Office

School Land Board

Effective date: February 3, 2013

Proposal publication date: December 7, 2012

For further information, please call: (512) 475-1859



SUBCHAPTER C. EXPLORATION AND DEVELOPMENT OF GEOTHERMAL ENERGY AND ASSOCIATED RESOURCES ON PERMANENT SCHOOL FUND LAND

31 TAC §155.42

The School Land Board (Board) adopts amendments to 31 TAC §155.42. The amendments are adopted without changes to the proposed text as published in the December 7, 2012, issue of the *Texas Register* (37 TexReg 9612) and will not be republished.

BACKGROUND AND REASONED JUSTIFICATION FOR THE ADOPTED RULES

The amendments clarify the application requirements for converting a prospect permit to a mining lease for geothermal energy on Permanent School Fund (PSF) Land. Specifically, the amendments revise 31 TAC §155.42(b)(3)(G), which addresses the surveying requirements for land to be leased. The justification for adoption of the revised rule is that it will provide applicants with a clearer understanding of the application requirements for

a geothermal energy mining lease and it will also ensure that surveys for such leases comply with the requirements for surveys of public land pursuant to Texas Natural Resources Code §21.011.

COMMENTS BY THE PUBLIC

The GLO did not receive any comments on the amendments.

CONSISTENCY WITH COASTAL MANAGEMENT PROGRAM

All requests for prospect permits and mining leases for geothermal energy on PSF land under Chapter 155, Subchapter C, must continue to meet the same criteria for Board approval. The proposed rule amendments do not alter the requirements for actions which, pursuant to §155.49, must be consistent with the Coastal Management Program (CMP) goals and policies. Accordingly, the Board determined that the proposed actions are consistent with applicable CMP goals and policies. No comments were received from the public or the Commissioner regarding the consistency determination. Thus, the GLO has determined that the adopted actions are consistent with the applicable CMP goals and policies.

ENVIRONMENTAL REGULATORY ANALYSIS

The GLO evaluated the adopted rulemaking action in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the action is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the statute. "Major environmental rule" means 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 the state or a sector of the state. The adopted amendments are not anticipated to 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 the state or a sector of the state.

STATUTORY AUTHORITY

The amendments are adopted under the authority granted to the Board by Texas Natural Resources Code §§32.062, 32.205, 141.073, and 141.071.

The adopted amendments affect no other code, article, or statute.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 14, 2013.

TRD-201300084

Larry L. Laine

Chief Clerk, Deputy Land Commissioner, General Land Office

School Land Board

Effective date: February 3, 2013

Proposal publication date: December 7, 2012

For further information, please call: (512) 475-1859



TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION SUBCHAPTER A. GENERAL RULES

34 TAC §3.1

The Comptroller of Public Accounts adopts the repeal of §3.1, concerning request for extension of time in which to file report, because the provisions of that section are nearly verbatim statements of Tax Code, §111.057 (Extension for Filing Report) and Tax Code, §111.058 (Filing Extension Because of Natural Disaster). The comptroller has determined that additional guidance is not needed in an agency rule to address those statutory provisions. The repeal is adopted without changes to the proposal as published in the November 23, 2012, issue of the *Texas Register* (37 TexReg 9327).

No comments were received regarding adoption of the repeal.

The repeal is adopted under Tax Code, §111.002 and §111.0022, which provide the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2, as well as taxes, fees, or other charges which the comptroller administers under other law.

The repeal implements no specific provision of the Tax Code, but is within the comptroller's authority to propose and adopt as part of her general authority under Tax Code, §111.002 and §111.0022.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 8, 2013.

TRD-201300041

Ashley Harden

General Counsel

Comptroller of Public Accounts

Effective date: January 28, 2013

Proposal publication date: November 23, 2012

For further information, please call: (512) 475-0387



34 TAC §3.1

The Comptroller of Public Accounts adopts new §3.1, concerning private letter rulings and general information letters, without changes to the proposed text as published in the November 23, 2012, issue of the *Texas Register* (37 TexReg 9327). The existing §3.1, concerning Request for Extension of Time in Which to File Report, is being repealed because the provisions of that section are nearly verbatim statements of Tax Code, §111.057 (Extension for Filing Report) and Tax Code, §111.058 (Filing Extension Because of Natural Disaster). The comptroller has determined that additional guidance is not needed in an agency rule to address those statutory provisions.

New §3.1 adopts specific guidelines for the public to request, and the comptroller to issue, private letter rulings and general information letters. The purpose of the section is to distinguish between requests for taxability information that is already available in the form of rules, publications, and other agency resources

and requests for taxability information in situations where guidance is not already provided by law or by the comptroller. The section will assist the comptroller in balancing limited resources with the important responsibility to provide information to promote voluntary compliance. In addition, according to *Combs v. Entertainment Publ'ns, Inc.*, 292 S.W.3d 712 (Tex.App.--Austin 2009, no pet.), the comptroller must follow the required statutory rulemaking process, which provides for public review and input, when issuing taxability guidance through statements of general applicability.

This section only applies to requests submitted to the comptroller as of the effective date of this section. Taxability letters issued by the comptroller to persons prior to the effective date of this section are eligible for detrimental reliance relief as provided for in §3.10 of this title (relating to Taxpayer Bill of Rights). Also, letters and other documents reflecting agency policy will remain on the comptroller's State Tax Automated Research System, but will continue to be evaluated for accuracy. These documents will also be incorporated into agency rules as time and resources permit.

Subsection (a) provides definitions for the terms "general information letter" and "private letter ruling." It also includes a definition for the term "related person" that is based on the definition of the term "related party" under Tax Code, Chapter 171, but is intended to apply to all taxes, fees, and charges administered by the comptroller.

Subsection (b) provides information about general information letter requests. The subsection also states that a person cannot make a claim of detrimental reliance based on a general information letter.

Subsection (c) explains the requirements for private letter rulings, circumstances under which the comptroller will not issue such rulings, and options for how the comptroller can respond to requests for private letter rulings. Although the comptroller will not issue a private letter ruling under some circumstances, such as when a person is under audit, under §3.10 of this title, taxpayers still have the right to request assistance from the agency to answer taxability questions related to those matters.

Subsection (d) explains the binding effect of private letter rulings on the comptroller and when the comptroller will not be bound by such rulings. Only a person who receives a private letter ruling may rely on it. The subsection also explains that a person who receives a private letter ruling may claim detrimental reliance as provided under §3.10 of this title.

Subsection (e) explains the guidelines for any modification or revocation of a private letter ruling. It explains how the comptroller will notify a person that a private letter ruling has been revoked or modified. The notice provisions are based on those in Tax Code, §111.008.

Subsection (f) discusses confidentiality provisions relating to both general information letters and private letter rulings.

Comments were received on the proposed new section from the State Tax Committee of the Texas Society of Certified Public Accountants (TSCPAs), who expressed general concern that the new section was a "clamp down on the issuance of policy letters" and that "the lack of guidance for current issues on the State Tax Automated Research ("STAR") system will result in either: (1) Taxpayers taking a conservative approach and over-paying taxes; or (2) under-paying taxes and then facing late penalties and interest if audited." They express further concern that the

new section will "limit taxpayers' ability to obtain timely, reliable tax policy determinations, forcing more taxpayers into the hearing process even further bogging down an already congested system." In response to these general concerns, the comptroller refers the TSCPAs to the preamble to this section and the statement therein which explains the comptroller's need to address limited resources and to abide by laws related to providing policy statements applicable to the general public by way of agency rules. Specific concerns noted by the TSCPAs are identified with responses as follows.

Although the TSCPAs noted that the preamble to the section indicates that it applies to requests submitted as of the effective date of the section, the TSCPAs asked for "clarification regarding whether the new rule would be applied prospectively only to requests received and/or dated as of the effective date or whether it would also apply to the pre-existing ruling requests that Tax Policy currently has on hand pending a response as of the effective date." The comptroller responds that any written requests for tax policy guidance that are submitted prior to the effective date of the section are not subject to the section and responses will be issued in accordance to the agency's policy in effect prior to the effective date of the section. The agency will not ask a person who has previously asked for guidance to resubmit the request in accordance with the requirements under this section.

The TSCPAs also expressed concern that the section is silent as to when private letter rulings and general information letters will be answered. They submit that "[t]imely responses are essential to facilitate taxpayer compliance" and suggest that while a 10-day turnaround may not be practical, "having a more realistic aspirational timeline for most responses to private letter ruling requests would be beneficial by providing taxpayers an expectation of the timeline during which they could expect a response." The TSCPAs do not suggest a specific timeframe for the comptroller to respond to private letter ruling requests, but note that the Internal Revenue Service will provide written updates regarding the status of information requested through the Freedom of Information Act even when the service cannot respond within prescribed timelines.

The comptroller declines to include in the section any specific timeline for responding to private letter rulings or general information letters, but instead intends to respond to all inquiries as quickly as possible given all factors surrounding the requests themselves and the competing priorities faced by agency staff. The comptroller notes that as taxpayers and others needing assistance begin to submit requests with all of the information and documents required by this section for private letter rulings, the comptroller's ability to respond quickly will be enhanced. The comptroller has provided this specific list of documents and information required for such rulings to remedy the agency's previous lack of published guidance.

The TSCPAs also submit that the comptroller should allow taxpayers to submit private letter rulings when similar rulings are pending, suggest that subsection (c)(3) of the section does not allow for this, and submit that not doing so raises issues concerning equal protection and equal and uniform taxation. They further submit that such a limitation is too broad and that it is not possible for taxpayers to know what private letter rulings may be pending at the agency. In addition, the TSCPAs ask that the comptroller remove from the section the requirement that a person submitting a private letter ruling disclose whether or not a request on the same or similar matter is pending before another state department of revenue or the Internal Revenue Service.

The comptroller first responds that the limitation in subsection (c)(3) concerning submission of the same or similar private letter ruling expressly states that it only applies to "the same person or a related person." In other words, the comptroller does not expect all taxpayers to know what private letter rulings may be pending with the agency, but does expect taxpayers to know what other private letter rulings they, or a person related to them, has pending with the agency. The comptroller will respond to multiple private letter rulings asking for the same guidance if the requests are submitted by persons who are not related. Moreover, especially in such situations, it is also the comptroller's intent to amend appropriate agency rules to make sure that all taxpayers are treated the same and given an opportunity to comment on the comptroller's policy determinations in accordance with the Administrative Procedures Act. The comptroller declines to remove from the section the requirement that persons requesting a private letter ruling indicate whether the same person has submitted similar requests to other departments of revenue or the Internal Revenue Service, as the comptroller deems this information important to making sure all relevant facts are before the agency before issuing guidance on policy questions that are new or novel.

The TSCPAs included in their comments a paragraph titled "Potential Chilling Effect on Ruling Requests" along with statements that acknowledge the previous changes that the comptroller has made to the section based on earlier comments submitted by the organization. The paragraph includes no specific concerns or requests for changes however, so the comptroller is unable to respond.

The TSCPAs also included a concern that the section imposes a "potential chilling effect on voluntary disclosures" because subsection (c)(3) of the section does not allow a taxpayer to request a private letter ruling if the request relates to the same or similar issue before the comptroller as part of a voluntary disclosure agreement. The TSCPAs "are concerned taxpayers will not want to disclose if they cannot be assured through a tax policy ruling that their disclosures are accurate and complete." The comptroller responds that the concern is addressed in the preamble to this section and in proposed amendments to §3.10 of this title, which in new subsection (e)(5) expressly states that "[t]axpayers have the right to request that staff from the Tax Policy Division be included in disputes and discussions about taxability issues when taxpayers are involved in an audit examination of any kind, or negotiating a voluntary disclosure agreement." (emphasis added). In other words, although a taxpayer cannot request a private letter ruling when the taxpayer comes forward to request a voluntary disclosure agreement, the taxpayer can still request that appropriate agency staff be involved if the agreement raises taxability issues.

The TSCPAs also expressed concern that general information letters, as defined by the section, are not binding on the agency and cannot be relied on as evidence of agency policy, and that the definition appears to describe current letters on the agency's State Tax Automated Research (STAR) system and essentially all information on the agency's website. The TSCPAs believe that "[t]his gives taxpayers no certainty regarding such Comptroller guidance and impermissibly disallows use of public statements as evidence of Comptroller policy." The group includes a citation to the Texas Rules of Evidence 803(24), which allows admissibility of statements against interest. The comptroller responds that the section is not intended to affect how a court of law may view statements of policy by the agency as potential

evidence in a lawsuit. Instead, the section only speaks to the agency's detrimental reliance policy, which is not provided as a matter of law but as a matter of equity. Taxpayers who have received letters from the agency up until the amendments to §3.1 of this title become effective can continue to rely on those letters and receive detrimental reliance. However, general information letters will not be eligible for detrimental reliance because the agency's intended response format for such letters will typically either direct the requestor to appropriate agency rules, publications, or other existing resources without analysis of the facts presented or indicate that the agency is not able to provide guidance at this time.

The new section is adopted under Tax Code, §111.002 and §111.0022, which provide the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2, as well as taxes, fees, or other charges which the comptroller administers under other law.

The new section implements no specific provision of the Tax Code, but is within the comptroller's authority to propose and adopt as part of her general authority under Tax Code, §111.002 and §111.0022.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 8, 2013.

TRD-201300042

Ashley Harden

General Counsel

Comptroller of Public Accounts

Effective date: January 28, 2013

Proposal publication date: November 23, 2012

For further information, please call: (512) 475-0387



34 TAC §3.10

The Comptroller of Public Accounts adopts amendments to §3.10, concerning taxpayer's bill of rights, which the comptroller is renaming taxpayer bill of rights, without changes to the proposed text as published in the November 23, 2012, issue of the *Texas Register* (37 TexReg 9330). The section is being revised and reorganized to provide current information concerning agency policies and practices and legislative changes.

Subsection (a) still states the purposes in having a taxpayer bill of rights, which are updated to identify the Compact with Texans that all state agencies must develop.

New subsection (b) explains the comptroller's commitment to providing timely and accurate information in a professional manner and explains the resources that exist to help taxpayers find answers to their questions. Some information from the former subsection (b) is being deleted because it is outdated and no longer applicable. However, information from former paragraphs (1) and (2) is updated and retained in the section, but relocated. A new paragraph (5) is added to explain that additional information, including all private letter rulings issued under §3.1 of this title (relating to Private Letter Rulings and General Information Letters), will be maintained on the comptroller's State Tax Automated Research System.

Subsection (c) now explains the comptroller's longstanding policy regarding detrimental reliance, which is a policy that is not required by law, but is provided by the agency as a matter of equity. The taxes, fees, and other charges administered by the comptroller that are eligible for detrimental reliance are those that are collected and remitted on behalf of the state. If the comptroller provides incorrect guidance and a tax, fee, or charge that should have been collected and remitted was not collected based on that incorrect guidance, then the seller of that item can be held harmless for the agency's error. In contrast to the taxes, fees, and charges identified in subsection (c)(2) and (3) and as explained in subsection (c)(4), taxes, fees, and charges that are imposed directly on a person or are paid by the ultimate consumer and included in the price of an item are not eligible for detrimental reliance because no similar harm is caused if the agency provides incorrect information. Therefore, taxes such as the franchise tax, the mixed beverage tax, and fuels taxes do not qualify for detrimental reliance, although the comptroller may grant waiver of penalty and/or interest if incorrect taxability information was provided. Information that has always existed in this section is now supplemented with more detailed information about the four-part test that has existed for many years for taxpayers to prove they are entitled to relief, as well as specific information related to relief available to sellers and purchasers under the sales and use tax, as reflected in a December 13, 2007 memo on the agency's State Tax Automated Research System under accession #200712099L. Information about the extent to which the comptroller will provide detrimental reliance with respect to the other taxes, fees, and charges administered by the agency is also provided. The statement in former subsection (c)(1) that agency materials will be written in simple terms is now incorporated into new subsection (b)(4). Other information in former subsection (c) is deleted because it is no longer accurate or is not appropriate for the section.

Under Senate Bill 1563, 76th Legislature, 1999, which added Government Code, Chapter 2113 (Customer Service), each state agency is required to have a customer relations representative and develop a Compact with Texans to explain and address customer service issues. Government Code, Chapter 2113 was renumbered as Government Code, Chapter 2114 by House Bill 2812, 77th Legislature, 2001. The comptroller calls this person the customer service liaison, and subsection (d) is updated to reflect these changes and legislative mandates. In addition, all of the rights and responsibilities of the ombudsman have now been merged into the customer service liaison position, so taxpayers may now contact that person for the same type of assistance that was previously provided by the ombudsman.

Subsection (e) explains agency policy and practices that relate to the comptroller's commitment to helping taxpayers comply with their obligations and protect their rights, including information about the voluntary disclosure program and the confidentiality of taxpayer information. Information from the former subsection is incorporated to the extent it is still accurate, relevant or not otherwise covered by other sections of this title. New information is added to explain that taxpayers can ask for an independent review of an audit at a location near their primary place of business. Taxpayers can also ask for the Tax Policy Division to participate in taxability discussions or disputes related to audits and voluntary disclosure agreements. New subsection (e) also states the comptroller's policy with respect to audit leads and requests for private letter rulings and general information letters.

Subsection (f) is revised to explain the comptroller's commitment to welcoming input from taxpayers and the business community to improve customer service and provide comments on agency rules and procedures, including the comptroller's intent to host roundtable discussions and encourage open dialog between taxpayers and the agency. Former paragraph (1) is unnecessary because the information relating to interest due on refund claims is covered by §3.325 of this title (relating to Refunds and Payments Under Protest). Former paragraph (2) no longer reflects agency practice. Former paragraph (3) contained information that is stated and covered in more detail in §3.282 of this title (relating to Auditing of Taxpayer Records).

Former subsection (g) is deleted and the information it contains is now incorporated and updated in subsection (f).

Comments were received on the proposed amendments from the State Tax Committee of the Texas Society of Certified Public Accountants (TSCPAs), who raised general concerns that the comptroller "appears to be backing away from the longstanding policy of detrimental reliance, which generally allowed a taxpayer to rely upon advice issued by the Comptroller if the taxpayer provided all relevant facts and relied upon the Comptroller's advice to its detriment." As a general response, the comptroller notes, as stated in the preamble to this section, that the information provided in the section reflects the agency's longstanding policy and there is no change to the agency's policy as to who is entitled to detrimental reliance or how it will be administered by the agency. Specific concerns noted by the TSCPAs are identified with responses as follows.

The TSCPAs request that the comptroller expand detrimental reliance relief to all taxes administered by the agency, such as the franchise tax and mixed beverage gross receipts tax. The comptroller declines to do so because, as noted in the preamble to the section, the comptroller's intent is to maintain the agency's current detrimental reliance policy while providing more details about this longstanding policy in the section without expanding the scope of the taxes, fees and charges that are eligible for relief.

The TSCPAs note that the amendments delete from the section the 10-day timeline for responding to ruling requests and do not "address the timeframe for responses to other open records requests made under the Texas public information act, but only requires that the Comptroller respond promptly." The TSCPAs also note that in their experience taxpayers often wait months or years before receiving any response from the agency despite what the section has said in the past about taxpayers receiving responses within ten days. The group suggests that the comptroller provide an initial response within 30 days so taxpayers have some information about what to expect with respect to their pending requests. In response, the comptroller first notes that this section has nothing to do with requests for information made under the Texas Public Information Act, which are handled by the agency's Open Records Division, not the Tax Policy Division, which is responsible for the requests submitted under this section. The amendments to this section are not intended in any way to affect the timelines for responding to open records requests. The comptroller declines to include in the section any timeline for responding to private letter rulings or general information letters, but intends to respond to all inquiries as quickly as possible given all factors surrounding the requests themselves and competing priorities faced by agency staff. The comptroller notes that if taxpayers and others needing assistance provide all the information and documents as required by §3.1 of this title

for private letter rulings, the comptroller will be able to respond more quickly to those requests, and that is why the comptroller has included in that section a specific list of requirements for such rulings.

The TSCPAs express concern that although subsection (b)(5) of the section states that the Comptroller will continue to maintain the State Tax Automated Research (STAR) system, it appears that fewer letter rulings and administrative hearings have been added to the system in the past few years, resulting in less guidance being provided to taxpayers. They request that the comptroller publish "all hearing decisions and all or most private letter rulings on STAR, in a way that continues to redact confidential taxpayer information." The comptroller first responds that subsection (b)(5) of the section, to which the TSCPAs refer in their comments, expressly states that "[a]ll private letter rulings, including information about rulings that have been revoked or modified, issued in accordance with §3.1 of this title (relating to Private Letter Rulings and General Information Letters) will be maintained on STAR." Thus, the comptroller has already committed to placing all private letter rulings on STAR as the TSCPAs have requested in their comment. The comptroller declines, however, to place all hearing decisions on STAR and instead will continue to add only those decisions that add substantive knowledge on tax policy to the system. For example, adding all hearing decisions to STAR which find for the comptroller on the basis that the taxpayer did not provide any documents or evidence to support a request for redetermination, without any substantive analysis on any specific taxability issue, adds nothing helpful to the public's knowledge of comptroller policy.

The final comment and request made by the TSCPAs is for subsection (e)(4) of the section to be amended to clarify that independent audit reviews are conducted by comptroller employees. Although it is true that the independent audit reviewers are agency staff, they are not part of, and act independently of, the Audit Division. The comptroller declines to make any change to the subsection as it still accurately identifies a right that is provided by the agency above and beyond any legal requirements set by the Texas Legislature and other applicable laws.

The amendments are adopted under Tax Code, §111.002 and §111.0022, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2, as well as taxes, fees, or other charges which the comptroller administers under other law.

The amendments implement Government Code, §2114.006.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 8, 2013.

TRD-201300043

Ashley Harden

General Counsel

Comptroller of Public Accounts

Effective date: January 28, 2013

Proposal publication date: November 23, 2012

For further information, please call: (512) 475-0387



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 5. TEXAS BOARD OF PARDONS AND PAROLES

CHAPTER 146. REVOCATION OF PAROLE OR MANDATORY SUPERVISION

37 TAC §§146.3, 146.4, 146.6 - 146.12

The Texas Board of Pardons and Paroles adopts amendments to 37 TAC §§146.3, 146.4, and 146.6 - 146.12, concerning right to counsel, procedure after waiver of preliminary hearing, scheduling of preliminary hearing, preliminary hearing, scheduling of revocation hearings, revocation hearing, final board disposition, releasee's motion to reopen hearing or reinstate supervision, and procedure after motion to reopen is granted; time; rights of the releasee; final disposition. The amendments are adopted without changes to the proposed text as published in the October 19, 2012, issue of the *Texas Register* (37 TexReg 8287). The text of the rules will not be republished.

The amendments are adopted to clean up language, correct grammar/punctuation, update statutory references, replace "board panel" with "parole panel," and add "written" to clarify the type of request to be submitted.

No public comments were received regarding adoption of the amendments.

The amendments are adopted under §§508.0441, 508.045, 508.281, and 508.283, Government Code. Section 508.0441 vests the Board with the authority to determine the continuation, modification, and revocation of parole or mandatory supervision. Section 508.045 provides parole panels with the authority to grant, deny, revoke parole, or revoke mandatory supervision. Section 508.281 and §508.283 relate to hearings to determine violations of the releasee's parole or mandatory supervision.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 11, 2013.

TRD-201300060

Bettie Wells

General Counsel

Texas Board of Pardons and Paroles

Effective date: January 31, 2013

Proposal publication date: October 19, 2012

For further information, please call: (512) 406-5388



CHAPTER 147. HEARINGS SUBCHAPTER A. GENERAL RULES FOR HEARINGS

37 TAC §147.5, §147.6

The Texas Board of Pardons and Paroles adopts amendments to 37 TAC §147.5 and §147.6, concerning witnesses and record. The amendments are adopted without changes to the proposed

text as published in the October 19, 2012, issue of the *Texas Register* (37 TexReg 8289). The text of the rules will not be republished.

The amendments are adopted to clean up language, correct the reference title to §141.111, and correctly reference the TDCJ Parole Division.

No public comments were received regarding adoption of the amendments.

The amendments are adopted under §§508.036, 508.0441, 508.281, and 508.283, Government Code. Section 508.036 authorizes the board to adopt rules relating to the decision-making processes used by the board and parole panels. Section 508.0441 authorizes the board to develop and implement policy relating to the decision-making processes used to revoke parole or mandatory supervision. Section 508.281 and §508.283 relate to hearings to determine violations of the releasee's parole or mandatory supervision.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 11, 2013.

TRD-201300061
Bettie Wells
General Counsel
Texas Board of Pardons and Paroles
Effective date: January 31, 2013
Proposal publication date: October 19, 2012
For further information, please call: (512) 406-5388



CHAPTER 149. MANDATORY SUPERVISION SUBCHAPTER A. RULES AND CONDITIONS OF MANDATORY SUPERVISION

37 TAC §149.3

The Texas Board of Pardons and Paroles adopts amendments to 37 TAC §149.3, concerning Texas mandatory supervision offenders supervised in other states. The amendments are adopted without changes to the proposed text as published in the October 19, 2012, issue of the *Texas Register* (37 TexReg 8290). The text of the rule will not be republished.

The amendments are adopted to update the Interstate Compact title and delete the Texas Government Code reference.

No public comments were received regarding adoption of the amendments.

The amendments are adopted under §508.036 and §508.044, Government Code. Section 508.036 authorizes the board to promulgate rules relating to the board's decision-making processes, and §508.044 provides the board with the authority to adopt rules relating to the eligibility of an inmate for release on parole or mandatory supervision.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 11, 2013.

TRD-201300062
Bettie Wells
General Counsel
Texas Board of Pardons and Paroles
Effective date: January 31, 2013
Proposal publication date: October 19, 2012
For further information, please call: (512) 406-5388



CHAPTER 150. MEMORANDUM OF UNDERSTANDING AND BOARD POLICY STATEMENTS SUBCHAPTER A. PUBLISHED POLICIES OF THE BOARD

37 TAC §150.55

The Texas Board of Pardons and Paroles adopts amendments to 37 TAC §150.55, concerning conflict of interest policy. The amendments are adopted without changes to the proposed text as published in the October 19, 2012, issue of the *Texas Register* (37 TexReg 8290). The text of the rule will not be republished.

The amendments are adopted to clarify the procedure and update the agency names.

No public comments were received regarding adoption of the amendments.

The amendments are adopted under Subtitle B, Ethics, Chapter 572 and §508.0441, Government Code. Subtitle B, Ethics, Chapter 572 is the ethics policy of this state for state officers or state employees. Section 508.0441 requires the board to implement a policy under which a board member or parole commissioner should disqualify himself or herself on parole or mandatory supervision decisions.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 11, 2013.

TRD-201300063
Bettie Wells
General Counsel
Texas Board of Pardons and Paroles
Effective date: January 31, 2013
Proposal publication date: October 19, 2012
For further information, please call: (512) 406-5388



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.

Adopted Rule Reviews

Texas Board of Pardons and Paroles

Title 37, Part 5

The Texas Board of Pardons and Paroles files this notice of readoption of 37 TAC Part 5, Chapter 146, concerning Revocation of Parole or Mandatory Supervision; Chapter 147, concerning Hearings; Chapter 149, concerning Mandatory Supervision; and Chapter 150, concerning Memorandum of Understanding and Board Policy Statements. The Board amended §§146.3, 146.4, and 146.6 - 146.12 to clean up language, correct grammar/punctuation, update statutory references, replace "board panel" with "parole panel," and add "written" to clarify the type of request to be submitted. Section 147.5 and §147.6 were amended to correct a reference title to §141.111 and correctly reference the TDCJ Parole Division. Section 149.3 was amended to update the Interstate Compact title and delete the Texas Government Code reference, and §150.55 was amended to clarify the procedure and update

the agency names. The readoption of Chapters 146, 147, 149, and 150 are filed in accordance with the Board of Pardons and Paroles' Notice of Intent to Review published in the October 19, 2012, issue of the *Texas Register* (37 TexReg 8337). No public comments were received.

The assessment of Chapters 146, 147, 149, and 150 indicate that the original justifications for these rules continue to exist, and the Board is readopting the rules in accordance with Texas Government Code, §2001.039.

This concludes the review of 37 TAC Chapters 146, 147, 149, and 150.

TRD-201300059

Bettie Wells

General Counsel

Texas Board of Pardons and Paroles

Filed: January 11, 2013



TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 22 TAC §190.14(9)

Violation Description	Statutory/Rule Citation	Low Sanction	High Sanction
Abusive Behavior	§164.052(a)(5) (unprofessional conduct likely to injure public); Rule §190.8(2)(K)	Remedial Plan: Anger management and communications CME, JP exam, medical ethics	Agreed Order with IME or Public Referral to PHP; CME in medical ethics, anger management, communications with colleagues, JP exam. For multiple orders or egregious actions--interfering with patient care: public reprimand, suspension with terms and conditions
Aiding in unlicensed practice	§164.052(a)(17) (directly or indirectly aids or abets unlicensed practice)	Remedial Plan: Directed CME in supervision or delegation if applicable; 8 hours CME in medical ethics, 8 hours CME in risk management; must pass JP within 1 year; \$2,000 penalty	Public reprimand plus all sanctions in low category
Bad faith mediation by a licensee in relation to an out-of-network health benefit claim	§1467.101 and §1467.102 of the Texas Insurance Code (bad faith in out-of-network claim dispute resolution) - "except for good cause shown, the regulatory agency shall impose an administrative penalty"	Good cause shown: Remedial Plan: 8 hours of medical ethics; otherwise, admin penalty is statutorily required	Public reprimand; \$5,000 admin penalty, "except for good cause shown" per §1467.102; plus all sanctions in low category
Boundary Violation (close friendship, intimacy or financial involvement with patient)	§164.052(a)(5) (unprofessional conduct likely to injure public) Rule §190.8(2)(E) and (F)	Single incident: Boundaries course, CME in ethics, JP exam	Several incidents: Public reprimand; Vanderbilt or PACE boundaries course; JP exam; chaperone; CME in ethics; may not treat patient of the affected gender; suspension and/or revocation
Breach of Confidentiality	§164.052(a)(5) (unprofessional conduct likely to injure public); Rule §190.8(2)(N) (specifies violation)	Remedial Plan: 8 hours risk management CME to include HIPAA, \$500 administration fee	Public reprimand, CME in risk management and in HIPAA requirements; \$3,000 per occurrence; JP exam

Cease and desist order-- issuance of: See "Unlicensed practice of medicine"	§164.002 (Board's general authority to dispose of "any complaint or matter" unless precluded by another statute) §165.052 (power to issue cease and desist orders against unlicensed persons)		
Cease and desist order (existing), violation of	§165.052(b) (violation of (c) and (d) is grounds for imposing admin penalty)	Administrative penalty \$2,000 - \$5,000 per offense	Referral to Attorney General for civil penalty and costs or criminal prosecution. §165.101 (civil) and §165.152 (criminal)
Change in practice or mailing address, failure to notify the board of	Rule §166.1(d) (notify Board within 30 days of change of mailing or practice address or professional name on file)	Remedial Plan: 4 hours of ethics/risk management and \$500 administration fee	Agreed Order: 8 hours of ethics/risk management; \$2,000 admin penalty; JP exam
CME - Failure to obtain or document CME	§164.051(a)(3) (forbids breaking or attempting to break a Board rule); Rule §166.2 (48 credits each 24 months + other requirements and accreditation of CME req'ts)	Remedial Plan: All missing hours of CME and 4 hours of ethics/risk management and \$500 administration fee	Agreed Order: 8 hours of CME in ethics/risk management plus complete all missing hours; \$1,000 admin penalty; JP exam
Crime: Abortion - performing a criminal abortion. Health and Safety Code §170.002 and Chapter 171 (§170.002 prohibits third- trimester abortions, with exceptions; Chapter 171 requires physicians to make available certain materials to abortion patients and restricts how informed consent is obtained; the criminal offense (§171.018) is an unspecified class of misdemeanor punishable only by a \$10,000 fine)	§164.052(a)(16) (prohibits performing, procuring, aiding, or abetting in procuring a criminal abortion); §164.055 (requires "appropriate disciplinary action" against a physician who violates Health and Safety Code §170.002 or Chapter 171)	Public Reprimand; must pass JP within 1 year; \$5,000 admin penalty	Suspension, probated with terms, or revocation

Crime: Arrest for offense under Penal Code §§21.02; 21.11; 22.011(a)(2); 22.021(a)(1)(B); (assaultive offenses against children)	§164.0595 (Temporary suspension or restriction of license for certain arrests)	Restriction of license, chaperone; may not treat pediatric patients	Suspension of license, no probation
Crime: Deferred adjudication community supervision for offense under Penal Code §§21.11; 22.011(a)(2); 22.021(a)(1)(B); (assaultive offenses against children)	§164.057(c) (mandates revocation upon proof of deferred adjudication community supervision)		Revocation is statutorily required
Crime: Felony conviction	§204.303(a)(2) of the Physician Assistant Act; §205.351(a)(7) of the Acupuncture Act; §164.057(a)(1)(A) of the Medical Practice Act (requires suspension on initial conviction for a felony)	Initial conviction: Statutorily required suspension with or without notice per Rule §190.8(6)(A)(iv) and §164.057(a)(1)(A)	Revocation is statutorily required on final conviction - §164.057(b)
Crime: Felony deferred adjudication	§204.303(a)(2) of the Physician Assistant Act; §205.351(a)(7) of the Acupuncture Act; §164.051(a)(2)(A) of the Medical Practice Act (authorizes sanctions for initial convictions and deferred adjudications for felonies)	Appropriate sanction such as referral to PHP, anger management, IME, restrictions on practice, CME	Revocation is statutorily required on final conviction - §164.057(b)
Crime: Misdemeanor conviction or deferred adjudication of crime involving moral turpitude	§205.351(a)(7) of the Acupuncture Act; §164.051(a)(2)(B) of the Medical Practice Act (authorizes sanctions for either conviction or deferred adjudication; Rule §190.8(6)(B)(v) defines moral turpitude)	If the offense is not related to the duties and responsibilities of the licensed occupation, the standard sanction shall require: (-a-) Suspension of license, which may be probated after 90 days; (-b-) compliance with all restrictions, conditions and terms imposed by any order of probation or deferred adjudication; (-c-) public reprimand; and (-d-) administrative penalty of \$2,000 per violation.	If the offense is related to the duties and responsibilities of the licensed occupation, the standard sanction shall be revocation of the license.

Crime: Misdemeanor conviction not involving moral turpitude that is connected with the physician's practice of medicine	§164.053(a)(1) and (b) (authorizes sanctions without conviction); Rule §190.8(6)(B)(v) defines moral turpitude	Anger management or other appropriate course; JP exam; admin penalty; CME in communication with appropriate group (patients, colleagues)	Suspension with terms and conditions OR Revocation for repeat or egregious offenses or when patient care is affected or threatened
Crime: Misdemeanor deferred adjudication or conviction not involving moral turpitude that is not connected with physician's practice of medicine and not an offense under Chapter 22 or 25 of the Penal Code	§164.052(a)(5), as defined by Rule §190.8(2)(R)(iv), (vi), (vii), (ix), (x), (xi), and (xii) (authorizes sanctions based upon unprofessional conduct that would include commission of violations of federal and state law, whether or not there is a complaint, indictment, or conviction)	Appropriate sanction such as referral to PHP, anger management, IME, restrictions on practice, CME	Suspension with terms and conditions OR Revocation for repeat or egregious offenses
Crime: Misdemeanor initial conviction under Penal Code Chapter 22 (assaultive offenses - see also: arrest or deferred adjudication for assaultive offenses against children) of crime punishable by more than a fine; OR Penal Code §25.07 (violation of court order re: family violence); OR §25.071 (violation of court order re: crime of bias or prejudice); OR one requiring registration as a sex offender under Code of Criminal Procedures Chapter 62	§164.057(a)(1)(B), (C), (D), and (E) (when misdemeanor conviction requires suspension)	Suspension is statutorily required per §164.057(a)(1)(B)	Revocation is statutorily required on final conviction - §164.057(b)
Death certificate, failure to sign electronically	§164.053(a)(1) (authorizes sanctions via §164.052(a)(5) for breaking any law that "is connected with the physician's practice of medicine"); Health and Safety Code Chapter 193 (requires electronic filing of death certificates)	Remedial Plan: 4 hours of ethics/risk management and \$500 administration fee	Agreed Order: CME - 8 hours of risk management, 4 - 8 hours medical ethics; \$2,000 admin penalty; JP exam

<p>Delegation of professional medical responsibility or acts to person if the physician knows or has reason to know that the person is not qualified by training, experience, or licensure to perform the responsibility or acts</p>	<p>§164.053(a)(9) (describes the violation as unprofessional conduct, allows sanctions)</p>	<p>Remedial Plan: 12 hours CME in supervision and delegation, 8 hours in risk management, 8 hours in medical ethics; JP exam</p>	<p>No delegation or supervision authority; administrative penalty of \$2,000 per violation</p>
<p>Discipline by peers. may be either an administrative violation or SOC</p>	<p>§164.051(a)(7) (describes offense: includes being subjected to disciplinary action taken by peers in a local, regional, state, or national professional medical ass'n or being disciplined by a licensed hospital or medical staff of a hospital, including removal, suspension, limitation of privileges, or other action IF the board finds the action was based on unprofessional conduct or professional incompetence that was likely to harm the public and "was appropriate and reasonably supported by evidence submitted to the board." Expert panel report provides such evidence)</p>	<p>See the applicable sanction for the violation of the Texas Medical Practice Act that most closely relates to the basis of the disciplinary action by peers. In addition, the licensee shall comply with all restrictions, conditions and terms imposed by the disciplinary action by peers to the extent possible.</p>	<p>Public reprimand; comply with all restrictions, conditions and terms imposed by the disciplinary action by peers to the extent possible; and administrative penalty of \$3,000 per violation, plus directed CME and, if SOC case, a chart monitor. If not SOC: IME; anger management; CME in communications</p>
<p>Disciplined by another state or military may be either an administrative violation or a patient care violation</p>	<p>§164.051(a)(9) (describes the violation, requires that acts for which discipline imposed be the same or similar to acts in §164.052 or acts that are the same or similar to acts described in §164.051(a), for example rule violations, SOC violations, and all forms of impairment) Issue is only whether there was an order--no relitigation of prior facts, e.g., no new expert panel required</p>	<p>If no standard of care concerns, Remedial Plan with appropriate CME and \$500 administration fee; OR reciprocal Agreed Order as appropriate.</p>	<p>If out-of-state order is revocation, revocation is statutorily required.</p>

Drug logs - Failure to maintain	§164.053(a)(2) (describes offense and refers to Chapter 481 of the Health and Safety Code and 21 USC §801 et seq.)	Remedial Plan: 8 hours of ethics/risk management and \$500 administration fee	Agreed Order: Public reprimand; 8 hours of ethics/risk management; \$2,000 admin penalty; JP exam
Employing a revoked/cancelled/ or suspended physician	§164.052(a)(14) (describes offense: "directly or indirectly employs . . ."); §164.052(a)(15) (forbids associating in the practice of medicine with such a person)	Agreed Order: Public reprimand; \$3,000 admin penalty; take and pass JP exam	Agreed Order: Public reprimand; \$5,000 admin penalty; JP exam; no delegation authority
Failing to adequately supervise subordinates and improper delegation	§164.053(a)(8); §164.053(a)(9) - These sections describe the respective violations and define them as unprofessional conduct	Remedial Plan: 12 hours CME in supervision and delegation; consider ordering Rsp to furnish ED copies of delegation orders of develop and furnish delegation orders to ED; \$500 admin fee	Low category sanctions plus: monitoring of practice; no delegation or supervision authority; administrative penalty of \$2,000 per violation; JP exam
Fails to keep proper medical records	§164.051(a)(3) (authorizes sanctioning rule violations); §164.051(a)(6) (authorizes sanctioning failure to practice acceptably consistent with public welfare); Rule §165.1 describes contents of an adequate medical record	Remedial Plan: CME in appropriate area; \$500 administration fee	Agreed Order: 8 or more hours of medical record-keeping, require in-person attendance if practical; chart monitor 8 - 12 cycles; \$2,000 admin penalty; JP exam; PACE course in medical record-keeping if prior order for inadequate record-keeping
Failure to Communicate with patient or other providers	§164.052(a)(5) (prohibits conduct that is "likely to deceive or defraud the public" and unprofessional conduct as defined by §164.053)	Single incident: Remedial Plan--8 hours risk management CME to include patient communications, \$500 administration fee	Multiple instances: Public reprimand, risk management and communications CME, fine, counseling, IME
Failure to display a "Notice Concerning Complaints" sign	Rule §178.3(a)(1) (requires display of sign)	Remedial Plan: 4 hours of ethics/risk management and \$500 administration fee	Agreed Order: 8 hours of ethics/risk management, \$1,000 admin penalty; JP exam
Failure to report dangerous behavior to governmental body	§164.052(a)(5) (prohibits conduct that is "likely to deceive or defraud the public" and unprofessional conduct as defined by §164.053)	Single incident: Admin penalty; CME in medical ethics; JP exam	Multiple or egregious: Low category sanctions plus public reprimand and \$5,000 admin penalty

Failure to Pay SI/CS	Government Code; Family Code Chapter 232 (authorizes suspending licenses of any kind granted by the state to persons who do not pay support payments)	Suspension until such time as the licensee is no longer in default is required - statutorily required	Suspension until such time as the licensee is no longer in default - statutorily required
Fees, failure to provide explanation of	§101.203 (prohibits overbilling via ref to Health and Safety Code §311.025); §101.351 (establishes requirement and excludes application of §101.351 to physicians who post a billing practice sign in their waiting room)	Remedial Plan: 8 hours of ethics/risk management/billing practices and \$500 administration fee	Agreed Order: 8 - 16 hours of CME in ethics, risk management, billing practices, and CPT coding, \$2,000 admin penalty
Fraud on a diploma/in an exam	§164.052(a)(2); §164.052(a)(3) (describes offense as presenting an illegally or fraudulently obtained credential and cheating on exams)	Misrepresentations that do not make licensee/applicant ineligible: Remedial Plan - 8 hours of ethics/risk management and \$500 administration fee	If misrepresentation makes the licensee ineligible, then revocation.
Fraudulent, improper billing practices - requires that Respondent knows the service was not provided or knows was improper, unreasonable, or medically or clinically unnecessary. Should not sanction for an unknowing and isolated episode.	§101.203 (prohibits overbilling via ref to Health and Safety Code §311.025); §164.053(a)(7) (prohibits violation of Health and Safety Code §311.0025)	Agreed order: Including, but not limited to: monitoring of billing practices; directed CME; restitution; and administrative penalty of \$1,000, but not to exceed the amount of improper billing	Public reprimand, monitoring of practice, including billing practices; directed CME; restitution; and administrative penalty of \$3,000 per violation
Health care liability claim, failure to report	§160.052(b) (requires reporting health care liability claims to Board) Rules §176.2 and §176.9 (prescribes form for such reporting)	Remedial Plan: 4 hours of ethics/risk management and \$500 administration fee	Agreed Order: 8 hours of ethics/risk management; \$2,000 admin penalty; JP exam

Impairment (no history and no aggravating factors such as SOC, boundary violation, or felony)	§164.051(a)(4) (authorizes sanctions for practicing by those unable because of illness, drunkenness, excessive use of substances, or a mental or physical condition); §164.052(a)(4) (forbids use of alcohol or drugs in an intemperate manner that could endanger a patient's life)	Refer to PHP--Public referral via remedial plan or agreed order required if case involves discharge from PHP, otherwise private referral is OK if appropriate	Voluntary surrender or temporary suspension
Impairment (with history or SOC violation or boundary violation or felony)	§164.051(a)(4) (authorizes sanctions for practicing by those unable because of illness, drunkenness, excessive use of substances, or a mental or physical condition); §164.052(a)(4) (forbids use of alcohol or drugs in an intemperate manner that could endanger a patient's life)	Order IME with report to ED or to panel at re-convened ISC, restrict practice or voluntary suspension pending report; if impairment is found at ISC, suspension of license until such time as the licensee can demonstrate that the licensee is safe and competent to practice medicine, with conditions to be determined by a subsequent panel	Suspension of license until such time as the licensee can demonstrate that the licensee is safe and competent to practice medicine. OR Suspension probated for 10 years with terms and conditions including but not necessarily limited to: drug testing; restrictions on practice; AA or NA attendance evidenced by logs; IME for psychiatric/psychological evaluation and treatment; proficiency testing OR revocation.
Intimidation of Complainant	§164.052(a)(5) (prohibits unprofessional conduct as defined by §164.053 or that is "likely to deceive or defraud the public")	Single Incident: Public reprimand and fine	Multiple/Egregious: Suspension and/or revocation; significant admin penalty; CME in ethics; JP exam
Medical Records: failure to release/overcharging for	§159.006 of the Act (information furnished by licensee); §164.051(a)(3) (prohibits rule violations); Rule §165.2 (requires release to proper person as described therein unless release would harm the patient and prescribes allowable charges - no more than \$25 for the first 20 pages and \$0.50 per page thereafter)	Remedial Plan: 4 hours of ethics/risk management and \$500 administration fee	Agreed Order: 8 hours of ethics/risk management, \$2,000 admin penalty; JP exam. Also, §159.006 (Board may appoint temp or permanent custodian of patient records held by a physician)

Misleading advertising with regard to board certification	§164.052(6) (prohibits false advertising); Rule §164.4(e) (defines the offense re: board certification)	Remedial Plan: 8 hours of ethics/risk management, correct the advertisement and \$500 administration fee	Agreed Order: 16 hours of ethics/risk management in person, correct the advertisement, \$5,000 admin penalty, JP exam
Operating an unlicensed pharmacy	§158.001(b) (requires physicians to comply with Occupations Code Chapter 558 to operate a retail pharmacy)	Agreed Order: Must pass JP within 1 year, \$2,000 penalty, CME - medical ethics	JP exam; cease operating pharmacy; CME - ethics and risk management
Overbilling: See fraudulent, improper billing			
Peer review action: See Discipline by peers			
Physician-patient relationship, Improper termination of	Rule §190.8(1)(J) (requires reasonable notice to patient of termination)	Single incident: Remedial Plan: 8 hours CME - 4 risk management and 4 ethics, \$500 administration fee	Multiple instances: Public reprimand, risk management, fine, CME - in physician-patient communications
Pill mills, unregistered pain clinics, overprescribing - See Delegation, Supervision, Prescribing			Revocation
Prescribing, nontherapeutic--or dispensing, or administering of drugs nontherapeutically	§164.053(a)(5) (prohibits prescribing or administering any drug or treatment that is nontherapeutic <i>per se</i> or because of the way it is administered or prescribed)	Agreed Order: chart monitor, directed CME, restrictions on practice, including prescribing, administering controlled substances and dangerous drugs	Low sanctions plus restrictions on practice, including prescribing and administering controlled substances and dangerous drugs; proficiency testing; directed CME; and administrative penalty of \$3,000 per violation. If there are aggravating factors, revocation should be considered.
Prescribing to self	§164.051(a)(6); Rule §190.8(1)(M)	Agreed Order: CME - 8 hours drug-seeking behavior, 8 hours risk management; consider chart monitor at least 8 cycles; admin penalty	Low sanctions plus: restrictions on practice including restrictions on prescribing and administering controlled substances and dangerous drugs; proficiency testing; directed CME; and administrative penalty of \$3,000 per violation

Prescribing, writes false or fictitious prescriptions OR prescribes or dispenses drugs to a person who is known to be an abuser of narcotic drugs, controlled substances, or dangerous drugs OR writes prescriptions for or dispenses to a person who the physician should have known was an abuser of narcotic drugs, controlled substances, or dangerous drugs OR inconsistent with public welfare	§164.053(a)(3) - (6) (defines the violations under unprofessional conduct)	Agreed Order: CME - 8 hours drug-seeking behavior, 8 hours risk management; chart monitor at least 8 cycles; if Respondent does not use one, order to develop a pain management contract with specific provisions for termination of physician-patient relationship on a maximum of 3 violations by the patient including a positive test for a controlled substance not prescribed by Respondent, drug screens required by contract; admin penalty	Low sanctions plus: restrictions on practice including restrictions on prescribing and administering controlled substances and dangerous drugs; proficiency testing; directed CME; and administrative penalty of \$3,000 per violation.
Refusal to respond to board subpoena	§160.009 of the Act and Rule §179.4 (relating to Request for Information and Records from Physicians); §164.052(a)(5) (prohibits unprofessional conduct as defined by §164.053 or that is "likely to deceive or defraud the public")	If records eventually received, Remedial Plan of 8 hours of ethics/risk management and \$500 administration fee	If records never received and intentionally withheld, public reprimand; JP exam; admin penalty; CME in medical ethics
Reporting false or misleading information on an initial application for licensure or for licensure renewal	§164.052(a)(1) (forbids submission of false or misleading statements of documents in an application for a license)	Misrepresentations that do not make licensee/applicant ineligible: Remedial Plan - 8 hours of ethics/risk management and \$500 administration fee	If misrepresentation makes the licensee ineligible, then revocation.
Self-Prescribing: See "Prescribing to self."			
Solicitation of patients/Drumming	§165.155 (provides a Class A misdemeanor penalty)	Agreed Order (if no conviction): 8 hours of ethics/risk management and \$500 administration fee	Egregious: Public reprimand, chart sign off, \$5,000 fine, JP exam, CME in medical ethics OR referral to county attorney for prosecution as Class A misdemeanor under §165.155(e)

Standard of Care - one patient, no prior SOC or care-related violations	§164.051(a)(6) (fails to practice medicine in an acceptable, professional manner consistent with public health and welfare)	Remedial Plan*: CME in appropriate area; \$500 administration fee per year. *No RP if case concerns a patient death	Proficiency testing; directed CME; chart monitor for 8 cycles; administrative penalty of \$3,000 per violation
Standard of care - one patient, one prior SOC or care-related violation	§164.051(a)(6) (fails to practice medicine in an acceptable, professional manner consistent with public health and welfare)	Agreed Order: Chart monitor; directed CME	Limiting the practice of the person or excluding one or more specified activities of medicine; proficiency testing; directed CME; monitoring of the practice; public reprimand; and administrative penalty of \$3,000 per violation.
Standard of care - one patient, multiple prior SOC or care-related violations	§164.051(a)(6) (fails to practice medicine in an acceptable, professional manner consistent with public health and welfare); §164.051(a)(8) (recurring meritorious healthcare liability claims that evidence professional incompetence likely to injure the public); Rule §190.8(5) (defines "recurring" as 3 or more claims awarded or settled for \$50,000 in a 5-year period)	Agreed Order: Proficiency testing; directed CME; monitoring of the practice; administrative penalty of \$3,000 per violation	Agreed Order: K-STAR or PACE proficiency testing; directed CME; chart monitoring, restricting the practice; withdrawal of prescribing privileges or delegating privileges; public reprimand; administrative penalty of \$3,000 per violation
Standard of care - multiple patients, no prior SOC or care-related violation	§164.051(a)(6) (fails to practice medicine in an acceptable, professional manner consistent with public health and welfare); §164.051(a)(8) (recurring meritorious healthcare liability claims that evidence professional incompetence); Rule §190.8(5) (defines "recurring" as 3 or more claims awarded or settled for \$50,000 in a 5-year period)	Remedial Plan*: Chart Monitor for 8 cycles; CME in appropriate area; \$500 administration fee per year *No RP if case concerns a patient death	Proficiency testing; directed CME; chart monitor 12 cycles; public reprimand; and administrative penalty of \$3,000 per violation

Standard of care - multiple patients, multiple prior SOC or care-related violations	§164.051(a)(6) (fails to practice medicine in an acceptable, professional manner consistent with public health and welfare); §164.051(a)(8) (recurring meritorious healthcare liability claims that evidence professional incompetence); Rule §190.8(5) (defines "recurring" as 3 or more claims awarded or settled for \$50,000 in a 5-year period)	Agreed Order; Proficiency testing; directed CME; monitoring for 12 cycles; requiring oversight or restricting of the practice; public reprimand; and administrative penalty of \$3,000 per violation.	Suspension and revocation
Supervision of midlevels, failure to perform: See "Failing to adequately supervise subordinates and improper delegation."			
Unlicensed practice of medicine	§165.052(a) (see definition of "practice of medicine" at §151.002(a)(13))	Cease and Desist Order and referral of Order to District Attorney or Attorney General	Cease and Desist Order; referral to Attorney General's office for injunction or civil penalties
Unsound Mind - adjudicated (See also "Impairment")	§164.051(a)(5) (enables Board to take action if a licensee or applicant "is found by a court to be of unsound mind")	Suspension of license until such time as the licensee can demonstrate that the licensee is safe and competent to practice medicine; IME and return to ISC panel with results	Temporary suspension prior to seeking revocation; show cause hearing under §164.056
Violation of Board Order	§164.052(a)(5) (enables sanctioning of unprofessional or dishonorable conduct as defined by §164.053 or conduct that injures the public)	Administrative in nature - Administrative Penalty of \$1,000; Substantive in nature - extension of order and increase the terms of the original order	Low sanctions plus: public reprimand; admin penalty of \$3,000 - \$5,000
Violation of state or federal law connected with physician's practice	§164.053(a)(1) (authorizes sanctions via §164.052(a)(5) for breaking any law that "is connected with the physician's practice of medicine")	If criminal law, see above under "Crime." If civil law, must pass JP exam and 8 hours of risk management/ethics (remedial plan or agreed order)	Agreed Order; public reprimand; restriction of license; surrender of controlled substance privileges; plus low sanctions

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.

Comptroller of Public Accounts

Special Update to Local Sales Tax Rate Change Notice
Effective January 1, 2013

The Spectrum Management District has changed its legal name as listed below. The change is effective January 1, 2013. There is no change in the local code or the local sales tax rate.

<u>SPD NAME</u>	<u>LOCAL CODE</u>	<u>LOCAL RATE</u>
Lower Kirby Pearland Management District	5101696	.005000

TRD-201300099
Ashley Harden
General Counsel
Comptroller of Public Accounts
Filed: January 15, 2013



Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 01/21/13 - 01/27/13 is 18% for Consumer¹/Agricultural/Commercial² credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 01/21/13 - 01/27/13 is 18% for Commercial over \$250,000.

¹ Credit for personal, family or household use.

² Credit for business, commercial, investment or other similar purpose.

TRD-201300090
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: January 15, 2013



Credit Union Department

Application for a Merger or Consolidation

Notice is given that the following application has been filed with the Credit Union Department (Department) and is under consideration:

An application was received from First Service Credit Union (Houston) seeking approval to merge with El Paso Corporation Federal Credit Union (Houston), with First Service Credit Union being the surviving credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-201300105
Harold E. Feeney
Commissioner
Credit Union Department
Filed: January 16, 2013



Applications to Expand Field of Membership

Notice is given that the following applications have been filed with the Credit Union Department (Department) and are under consideration:

An application was received from PosTel Family Credit Union, Wichita Falls, Texas, to expand its field of membership. The proposal would permit persons who work, reside, worship, or attend school in Baylor, Clay, Wichita, or Wilbarger Counties, Texas, to be eligible for membership in the credit union.

An application was received from EECU, Fort Worth, Texas, to expand its field of membership. The proposal would permit persons who live, work, attend school, or worship within a 10-mile radius of the branch office of EECU located at 3414 Midcourt, Suite 104, Carrollton, Texas 75006, to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at <http://www.cud.texas.gov/page/bylaw-charter-applications>. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request

for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-201300104
Harold E. Feeney
Commissioner
Credit Union Department
Filed: January 16, 2013



Notice of Final Action Taken

In accordance with the provisions of 7 TAC §91.103, the Credit Union Department provides notice of the final action taken on the following applications:

Application to Expand Field of Membership - Approved

Neighborhood Credit Union, Dallas, Texas - See *Texas Register* issue, dated September 28, 2012.

Application for a Merger or Consolidation - Approved

America's Credit Union (Garland) and Dallas TxDOT Credit Union (Mesquite) - See *Texas Register* issue, dated September 28, 2012.

TRD-201300106
Harold E. Feeney
Commissioner
Credit Union Department
Filed: January 16, 2013



Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is February 25, 2013. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on February 25, 2013. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075

provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: Bay Bluff, L.P.; DOCKET NUMBER: 2012-2001-MWD-E; IDENTIFIER: RN105675839; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0014931001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits; PENALTY: \$3,563; ENFORCEMENT COORDINATOR: Christopher Bost, (512) 239-4575; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: City of Del Rio; DOCKET NUMBER: 2012-1914-MSW-E; IDENTIFIER: RN102143294; LOCATION: Del Rio, Val Verde County; TYPE OF FACILITY: Type I Municipal Solid Waste (MSW) landfill; RULE VIOLATED: 30 TAC §30.201(b) and MSW Permit Number 207A, by failing to have at least one individual licensed to supervise or manage an MSW facility; and 30 TAC §330.165(g) and MSW Permit Number 207A, by failing to repair eroded areas of the intermediate cover within five days of detection; PENALTY: \$18,750; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(3) COMPANY: City of Hitchcock; DOCKET NUMBER: 2012-1971-MWD-E; IDENTIFIER: RN101920031; LOCATION: Hitchcock, Galveston County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010690001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits; PENALTY: \$5,062; ENFORCEMENT COORDINATOR: Christopher Bost, (512) 239-4575; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(4) COMPANY: Columbia Medical Center of Lewisville Subsidiary, L.P.; DOCKET NUMBER: 2012-2208-PST-E; IDENTIFIER: RN100548171; LOCATION: Lewisville, Denton County; TYPE OF FACILITY: property with two backup diesel generators and two underground storage tanks (USTs); RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(b), by failing to provide proper release detection for the suction piping associated with the UST system; PENALTY: \$2,949; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: ConocoPhillips Company; DOCKET NUMBER: 2012-1975-AIR-E; IDENTIFIER: RN101619179; LOCATION: Old Ocean, Brazoria County; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §122.143(4) and §122.146(2), Texas Health and Safety Code, §382.085(b), and Federal Operating Permit Number O1626, General Terms and Conditions, by failing to submit a Permit Compliance Certification within 30 days of the end of the certification period; PENALTY: \$8,300; ENFORCEMENT COORDINATOR: Katy Schumann, (512) 239-2602; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(6) COMPANY: DANISH ENTERPRISES, INCORPORATED dba Short Stop; DOCKET NUMBER: 2012-2523-PST-E; IDENTIFIER: RN102354438; LOCATION: Porter, Montgomery County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(d)(1)(B), by failing to implement inventory control methods; PENALTY: \$5,250; ENFORCEMENT COORDINATOR: Rebecca Boyett, (512) 239-2503; REGIONAL

OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(7) COMPANY: Danny Crump dba Southend Exxon; DOCKET NUMBER: 2012-1885-PST-E; IDENTIFIER: RN102026465; LOCATION: Mount Pleasant, Titus 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 proper release detection for the pressurized piping associated with the UST system; PENALTY: \$3,504; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(8) COMPANY: DOUGLASS DISTRIBUTING COMPANY dba Lone Star 97; DOCKET NUMBER: 2012-1965-PST-E; IDENTIFIER: RN102648334; LOCATION: Denton, Denton 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 pressurized piping associated with the underground storage tanks; PENALTY: \$7,779; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: Entergy Texas, Incorporated; DOCKET NUMBER: 2012-2542-PST-E; IDENTIFIER: RN100660992; LOCATION: Conroe, Montgomery County; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §334.50(a)(1)(A) and TWC, §26.3475(c)(1), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: \$2,625; ENFORCEMENT COORDINATOR: Margarita Dennis, (512) 239-2578; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(10) COMPANY: FALCON RURAL WATER SUPPLY CORPORATION; DOCKET NUMBER: 2012-1959-PWS-E; IDENTIFIER: RN101181964; LOCATION: Salineno, Starr County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.122(c)(2)(A), by failing to post public notification for failure to collect repeat monitoring samples for the month of September 2010 and increased monitoring samples for the month of October 2010; and 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 of total trihalomethanes, based on the running annual average; PENALTY: \$896; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(11) COMPANY: FATIMA FAMILY VILLAGE, INCORPORATED; DOCKET NUMBER: 2012-2122-PWS-E; IDENTIFIER: RN101236685; LOCATION: Houston, Harris County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(s)(1), by failing to calibrate the facility's well meter at least once every three years; 30 TAC §290.41(c)(3)(O), by failing to enclose the well with an intruder-resistant fence with a lockable gate or a locked and ventilated well house; 30 TAC §290.41(c)(3)(A), by failing to submit well completion data for review and approval prior to placing a public drinking water well into service; 30 TAC §290.45(h)(1)(D), by failing to provide one of the options of sufficient power to meet capacity requirements and in accordance with the affected utility's emergency preparedness plan; and 30 TAC §290.41(c)(1)(F) and TCEQ AO Docket Number 2006-1777-PWS-E, Ordering Provision Number 2.a.i., by failing to obtain a sanitary

control easement that covers the land within 150 feet of Well Number G1010746B; PENALTY: \$957; ENFORCEMENT COORDINATOR: Epi Villarreal, (361) 825-3425; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(12) COMPANY: Fayette County Water Control and Improvement District Monument Hill; DOCKET NUMBER: 2012-1917-PWS-E; IDENTIFIER: RN101389054; LOCATION: La Grange, Fayette County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(f)(3) and Texas Health and Safety Code, §341.033(d), by failing to comply with the maximum contaminant level for total coliform for the month of July 2012; 30 TAC §290.109(c)(4)(B), by failing to collect one raw groundwater source *escherichia coli* sample from each of the facility's two wells within 24 hours of notification of a distribution total coliform-positive sample during the month of May 2011; and 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to timely submit a Disinfectant Level Quarterly Operating Report to the executive director each quarter by the tenth day of the month following the end of the quarter; PENALTY: \$1,024; ENFORCEMENT COORDINATOR: Jim Fisher, (512) 239-2537; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, (512) 339-2929.

(13) COMPANY: Gary Wayne Ashby dba Brady's Great BBQ; DOCKET NUMBER: 2012-1918-PWS-E; IDENTIFIER: RN101230241; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: restaurant with a public water supply; RULE VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and Texas Health and Safety Code, §341.033(d), by failing to collect routine distribution water samples for coliform; 30 TAC §290.106(e), by failing to timely provide the results of quarterly nitrate/nitrite monitoring to the executive director; and 30 TAC §290.51(a)(6) and TWC, §5.702, by failing to pay all annual Public Health Service Fees, for fiscal year 2012, including any associated late fees and penalties, for TCEQ Financial Administration Account Number 91520209; PENALTY: \$2,904; ENFORCEMENT COORDINATOR: Epi Villarreal, (361) 825-3425; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7092.

(14) COMPANY: Hardin Fuels, Incorporated; DOCKET NUMBER: 2012-1281-AIR-E; IDENTIFIER: RN106330657; LOCATION: Evadale, Jasper County; TYPE OF FACILITY: biodiesel processing plant; RULE VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.085(b) and §382.0518(a), by failing to obtain authorization prior to operating a source which emits air contaminants; PENALTY: \$1,275; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(15) COMPANY: MANILA CORPORATION dba Best Food Market 4; DOCKET NUMBER: 2012-2101-PST-E; IDENTIFIER: RN101761724; LOCATION: Humble, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the underground storage tank system; PENALTY: \$3,750; ENFORCEMENT COORDINATOR: Margarita Dennis, (512) 239-2578; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(16) COMPANY: Medina County Water Control & Improvement District Number 2; DOCKET NUMBER: 2012-2200-MWD-E; IDENTIFIER: RN101919801; LOCATION: D'Hanis, Medina County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and (17) and §319.7(d) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0011144001, Monitoring and Reporting Requirements Number 1, by failing to timely submit monitoring results at the intervals specified in the

permit; and 30 TAC §305.125(1) and (17) and TPDES Permit Number WQ0011144001, Sludge Provisions, by failing to timely submit the annual sludge report for the monitoring period ending July 31, 2011, by September 30, 2011; PENALTY: \$1,500; ENFORCEMENT COORDINATOR: Nick Nevid, (512) 239-2612; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(17) COMPANY: North Mission Glen Municipal Utility District; DOCKET NUMBER: 2012-1924-MWD-E; IDENTIFIER: RN102075264; LOCATION: Fort Bend County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0012379001, Interim and Final Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits; PENALTY: \$41,249; ENFORCEMENT COORDINATOR: Christopher Bost, (512) 239-4547; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(18) COMPANY: Rodell Water System, Incorporated; DOCKET NUMBER: 2012-1946-MLM-E; IDENTIFIER: RN105061436; LOCATION: Buffalo, Leon County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.121(a) and (b), by failing to develop, maintain on hand, and make available to the executive director upon request an accurate and up-to-date chemical and microbiological monitoring plan that includes but is not limited to: identifying all sampling locations that are representative of the distribution system, describing the sampling frequency, and specifying the analytical procedures and laboratories that the public water system will use to comply with the monitoring requirements; 30 TAC §290.46(l), by failing to flush dead-end mains at regular monthly intervals; 30 TAC §290.45(f)(3), by failing to have a water purchase contract that establishes the maximum rate at which water may be drawn on a daily and hourly basis, or in the absence of specific maximum daily or maximum hourly rates in the contract shall provide for a uniform purchase rate for the contract period; 30 TAC §290.109(c)(1)(A), by failing to collect routine distribution coliform samples at active service connections which are representative of water quality throughout the distribution system; 30 TAC §290.44(d)(2), by failing to provide increased pressure by means of booster pumps taking suction from ground storage tanks or obtain an exception by acquiring plan approval by the executive director for a booster pump taking suction from the distribution lines; and 30 TAC §288.20(a) and §288.30(5)(B), and TWC, §11.1272(c), by failing to have on hand and make available to the executive director an agency approved and adopted Drought Contingency Plan which includes all elements for municipal use by a retail public water supplier; PENALTY: \$937; ENFORCEMENT COORDINATOR: Epi Villarreal, (361) 825-3425; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(19) COMPANY: S S A Properties, Incorporated dba Bunnys Down Town; DOCKET NUMBER: 2012-1538-PST-E; IDENTIFIER: RN101744399; LOCATION: Tyler, Smith County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the piping associated with the underground storage tank (UST) system; and 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the UST system; PENALTY: \$7,628; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(20) COMPANY: The George R. Brown Partnership, L.P.; DOCKET NUMBER: 2012-2165-AIR-E; IDENTIFIER: RN106516875; LOCATION: Post, Garza County; TYPE OF FACILITY: crude oil treating;

RULE VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to obtain the proper authorization prior to operating a tank battery; PENALTY: \$1,250; ENFORCEMENT COORDINATOR: Kimberly Morales, (713) 422-8938; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7092.

TRD-201300091
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: January 15, 2013



Enforcement Orders

An agreed order was entered regarding Texas Department of Transportation, Docket No. 2011-2055-PST-E on December 20, 2012 assessing \$2,250 in administrative penalties with \$450 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 Transatlantic Alliance Corp. dba The Corner, Docket No. 2011-2319-PST-E on December 20, 2012 assessing \$1,875 in administrative penalties with \$375 deferred.

Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Samah Enterprises, Inc. dba Quick Destiny Food Mart, Docket No. 2012-0451-PST-E on December 20, 2012 assessing \$2,136 in administrative penalties with \$427 deferred.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Green, Enforcement Coordinator at (512) 239-2587, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Aaina Enterprises Inc. dba Nu-Texas Truck Stop, Docket No. 2012-0737-PST-E on December 20, 2012 assessing \$5,000 in administrative penalties with \$1,000 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 DZ Beechnut, LP dba Chevron, Docket No. 2012-0842-PST-E on December 20, 2012 assessing \$6,750 in administrative penalties with \$1,350 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 E. I. du Pont de Nemours and Company, Docket No. 2012-0861-AIR-E on December 20, 2012 assessing \$7,500 in administrative penalties with \$1,500 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 Debbie Block and Melvin Block dba Cherry Hill Water System, Docket No. 2012-0941-PWS-E on December 20, 2012 assessing \$2,078 in administrative penalties with \$415 deferred.

Information concerning any aspect of this order may be obtained by contacting Jim Fisher, Enforcement Coordinator at (512) 239-2537, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Brushy Creek Water Supply Corporation, Docket No. 2012-0953-PWS-E on December 20, 2012 assessing \$1,260 in administrative penalties with \$252 deferred.

Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding M & M Skillman, LLC, Docket No. 2012-0995-PST-E on December 20, 2012 assessing \$6,037 in administrative penalties with \$1,207 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 Jack Haston Holt dba La Cabana Mexican Restaurant, Docket No. 2012-1027-PWS-E on December 20, 2012 assessing \$1,212 in administrative penalties with \$242 deferred.

Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Martin-Tomlinson Roofing Company, Inc., Docket No. 2012-1031-PST-E on December 20, 2012 assessing \$2,635 in administrative penalties with \$527 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Collinsville, Docket No. 2012-1044-MWD-E on December 20, 2012 assessing \$3,310 in administrative penalties with \$662 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 Ridu Corporation dba 1st Choice Food Mart, Docket No. 2012-1061-PST-E on December 20, 2012 assessing \$2,250 in administrative penalties with \$450 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 Katherine S. Reiser dba Vivid Landscaping, Docket No. 2012-1072-LII-E on December 20, 2012 assessing \$237 in administrative penalties with \$47 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 The Consolidated Water Supply Corporation dba Consolidated WSC Beria System, Docket No. 2012-1074-PWS-E on December 20, 2012 assessing \$451 in administrative penalties with \$90 deferred.

Information concerning any aspect of this order may be obtained by contacting Jim Fisher, Enforcement Coordinator at (512) 239-2537, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Lawn, Docket No. 2012-1075-PWS-E on December 20, 2012 assessing \$249 in administrative penalties with \$49 deferred.

Information concerning any aspect of this order may be obtained by contacting Jim Fisher, Enforcement Coordinator at (512) 239-2537, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Howard Hurst, Docket No. 2012-1097-MSW-E on December 20, 2012 assessing \$1,187 in administrative penalties with \$237 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 Amit Haldar dba Flagship Truck Stop, Docket No. 2012-1121-PST-E on December 20, 2012 assessing \$1,925 in administrative penalties with \$385 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 Calpine Hidalgo Energy Center, L.P., Brownsville Public Utilities Board, and Calpine Operating Services Company, Inc., Docket No. 2012-1126-IWD-E on December 20, 2012 assessing \$4,515 in administrative penalties with \$903 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 Travis County Water Control and Improvement District No. 20, Docket No. 2012-1144-PWS-E on December 20, 2012 assessing \$165 in administrative penalties with \$33 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 Caney Creek Municipal Utility District of Matagorda County and Caney Creek Municipal Utility District, Docket No. 2012-1145-PWS-E on December 20, 2012 assessing \$855 in administrative penalties with \$171 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 City of Brownsville, Docket No. 2012-1150-AIR-E on December 20, 2012 assessing \$2,988 in administrative penalties with \$597 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 Tiger Corner Inc., Docket No. 2012-1180-PST-E on December 20, 2012 assessing \$2,438 in administrative penalties with \$487 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 Copano Field Services/North Texas, L.L.C., Docket No. 2012-1215-IHW-E on December 20, 2012 assessing \$6,928 in administrative penalties with \$1,385 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 DALLAS FRONTIER PETRO INC. dba Corporate Mart, Docket No. 2012-1227-PST-E on December 20, 2012 assessing \$3,581 in administrative penalties with \$716 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 Texas H2O, Inc., Docket No. 2012-1229-MWD-E on December 20, 2012 assessing \$5,000 in administrative penalties with \$1,000 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 Richards Independent School District, Docket No. 2012-1257-MWD-E on December 20, 2012 assessing \$2,237 in administrative penalties with \$447 deferred.

Information concerning any aspect of this order may be obtained by contacting Nick Nevid, Enforcement Coordinator at (512) 239-2612, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Treasure Island Municipal Utility District, Docket No. 2012-1261-PWS-E on December 20, 2012 assessing \$750 in administrative penalties with \$150 deferred.

Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Amarillo, Docket No. 2012-1264-PST-E on December 20, 2012 assessing \$6,875 in administrative penalties with \$1,375 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 Robert Garcia, Docket No. 2012-1291-MSW-E on December 20, 2012 assessing \$3,750 in administrative penalties with \$750 deferred.

Information concerning any aspect of this order may be obtained by contacting Maggie Dennis, Enforcement Coordinator at (512) 239-2578, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Luminant Big Brown Mining Company LLC and Luminant Mining Company LLC, Docket No. 2012-1321-IWD-E on December 20, 2012 assessing \$5,558 in administrative penalties with \$1,111 deferred.

Information concerning any aspect of this order may be obtained by contacting Remington Burkland, Enforcement Coordinator at (512) 239-2611, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Gary L. Broadus dba Broadway Express, Docket No. 2012-1340-PST-E on December 20, 2012 assessing \$2,942 in administrative penalties with \$588 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Boyett, Enforcement Coordinator at (512) 239-2503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding JAMIL ENTERPRISES, INC. dba Quick & Easy 2, Docket No. 2012-1387-PST-E on December 20, 2012 assessing \$4,443 in administrative penalties with \$888 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 ANNETTE GOODRUM, INC. dba Kicks Club and Association of Persons, Docket No. 2012-1456-PWS-E on December 20, 2012 assessing \$110 in administrative penalties with \$22 deferred.

Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Devon Energy Production Company, L.P., Docket No. 2012-1487-WR-E on December 20, 2012 assessing \$869 in administrative penalties with \$173 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 Medical Center of McKinney Subsidiary, L.P., Docket No. 2012-1515-PST-E on December 20, 2012 assessing \$2,626 in administrative penalties with \$524 deferred.

Information concerning any aspect of this order may be obtained by contacting Jessica Schildwachter, Enforcement Coordinator at (512) 239-2617, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding City of Rusk, Docket No. 2012-1801-WQ-E on December 20, 2012 assessing \$875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512)

239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding ConocoPhillips Specialty Products Inc, Docket No. 2012-1802-WQ-E on December 20, 2012 assessing \$875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Schultz, Juan, Docket No. 2012-1803-WOC-E on December 20, 2012 assessing \$175 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 P & H Mining Equipment Inc, Docket No. 2012-1821-WQ-E on December 20, 2012 assessing \$875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Panhandle Northern Railroad LLC, Docket No. 2012-1827-WQ-E on December 20, 2012 assessing \$875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Allgood Construction Company, Incorporated, Docket No. 2012-1871-WQ-E on December 20, 2012 assessing \$875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Ash Grove Texas LP, Docket No. 2012-1872-WQ-E on December 20, 2012 assessing \$875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding ORTHOPEDIC HOSPITAL LIMITED, Docket No. 2012-1880-PST-E on December 20, 2012 assessing \$3,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Maggie Dennis, Enforcement Coordinator at (512) 239-2578, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201300107

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: January 16, 2013

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Notice of Correction to Agreed Order Number 17

In the January 11, 2013, issue of the *Texas Register* (38 TexReg 265), the Texas Commission on Environmental Quality published a notice of Agreed Orders. Agreed Order Number 17, concerning Compass Development and Construction, Incorporated, which appeared on page 267, has been revised. The reference to Docket Number 2012-2085-WQ-E should instead be Docket Number 2012-2485-WQ-E.

For questions concerning this error, please contact Debra Barber at (512) 239-0412.

TRD-201300092

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: January 15, 2013

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Notice of Water Quality Applications

The following notices were issued on January 4, 2013 through January 11, 2013.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

INFORMATION SECTION

HOUSTON REFINING LP which operates the Houston Refining Plant, has applied for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0000392000, which authorizes the discharge of equalized contaminated stormwater overflow, stormwater, process wastewater, and utility wastewater on an intermittent and flow variable basis via Outfall 001; emergency sump overflow of partially treated process wastewater, contaminated stormwater, stormwater, and utility wastewater on an intermittent and flow variable basis via Outfall 002; and equalized contaminated stormwater overflow, stormwater, process wastewater, and utility wastewater on an intermittent and flow variable basis via Outfall 003. The facility is located at 12000 Lawndale Avenue in the City of Houston, Harris County, Texas 77017.

MOTIVA ENTERPRISES LLC, FLINT HILLS RESOURCES PORT ARTHUR AND LLC AND AFTON CHEMICAL ADDITIVES CORPORATION which operates the wastewater treatment system at the Motiva Port Arthur Refinery, have applied to the Texas Commission on Environmental Quality (TCEQ) for a major amendment with renewal to TPDES Permit No. WQ0000414000 to authorize a reduction of the monitoring frequency for total suspended solids, biochemical oxygen demand (5-day), chemical oxygen demand, oil and grease, ammonia as nitrogen, sulfides, phenolic compounds, total chromium and hexavalent chromium from once per day to three per week at Outfall 001; reduction of monitoring frequency for total organic carbon, total suspended solids, biochemical oxygen demand (5-day), chemical oxygen demand, oil and grease, ammonia as nitrogen, sulfides, phenolic compounds, total chromium, hexavalent chromium and pH from once per day to once per week at Outfall 002; reduction of monitoring frequency for total organic carbon, oil and grease and pH from once per day to once per week at Outfalls 003, 004, and 005a; reduction of monitoring frequency for total organic carbon and oil and grease from three times per week to once per week at Outfall 011; inclusion of an Other Re-

quirement to note that the discharge of Praxair is monitored and limited under TPDES Permit No. WQ0004605000; and changing the method of measurement and sampling for pH at Outfall 011 from continuous and recorded to once per week by grab sample. The current permit authorizes the discharge of treated process wastewater and other refinery and petrochemical wastes such as but not limited to: utility wastewater, tank bottom water, ballast water, hydrostatic test water, and water from groundwater recovery or drawdown wells at a daily average flow not to exceed 24,000,000 gallons per day via Outfall 001; steam condensate, stormwater, hydrostatic test water, and treated process wastewater on an intermittent and flow variable basis via Outfall 002; steam condensate, stormwater, hydrostatic test water, and overflow from the clarifier sludge ponds on an intermittent and flow variable basis via Outfall 003; steam condensate, hydrostatic test water, and stormwater from the tank farms on an intermittent and flow variable basis via Outfalls 004 and 005; hydrostatic test water and overflows via spillways A and B from clarifier sludge ponds on an intermittent and flow variable basis via Outfall 008; steam condensate, hydrostatic test water, and treated stormwater from the aeration tank and other stormwater on an intermittent and flow variable basis via Outfall 011; steam condensate, hydrostatic test water, and stormwater on an intermittent and flow variable basis via Outfall 015; Zeolite softener backflush and hydrostatic test water at a daily average flow not to exceed 100,000 gallons per day via Outfall 016; steam condensate, hydrostatic test water, and stormwater on an intermittent and flow variable basis via Outfalls 012, 018, 019, 020, and 021. The draft permit authorizes the discharge of treated process wastewater and other refinery and petrochemical wastes such as but not limited to: utility wastewater, tank bottom water, ballast water, hydrostatic test water, water from groundwater recovery or drawdown wells, treated stormwater from the aeration tank at a daily average flow not to exceed 24,000,000 gallons per day via Outfall 001; steam condensate, stormwater, hydrostatic test water, treated process wastewater and Praxair Inc. (utility wastewater) on an intermittent and flow variable basis via Outfall 002; steam condensate, stormwater, hydrostatic test water, and overflow from the clarifier sludge ponds on an intermittent and flow variable basis via Outfall 003; steam condensate, hydrostatic test water, and stormwater from the tank farms on an intermittent and flow variable basis via Outfall 004; steam condensate, hydrostatic test water, and stormwater on an intermittent and flow variable basis via Outfall 005a; and steam condensate, hydrostatic test water, and stormwater on an intermittent and flow variable basis via Outfall 011. The facility is located at the northwest end of Houston Avenue in the City of Port Arthur, Jefferson County, Texas 77641; the Port Neches Terminal is located just east of the intersection of State Highway 366 and Farm-to-Market Road 136 and adjacent to the Neches River in the City of Port Neches, Jefferson County, Texas 77651.

TARGA DOWNSTREAM LLC, 1000 Louisiana Street, Suite 4300, Houston, Texas 77002, which operates Galena Park Terminal, has applied for a new TPDES Permit No. WQ0004988000, to authorize the discharge of stormwater and boiler blowdown on an intermittent and flow variable basis via Outfall 001; cooling tower blowdown at a daily maximum flow not to exceed 114,000 gallons per day (GPD) via Outfall 007; cooling tower blowdown at a daily maximum flow not to exceed 76,000 GPD via Outfall 009; cooling tower blowdown at a daily maximum flow not to exceed 191,000 GPD via Outfall 010; cooling tower blowdown at a daily maximum flow not to exceed 107,000 GPD via Outfall 011. Located at 12510 American Petroleum Road, Galena Park, Harris County, Texas 77547.

CITY PUBLIC SERVICE OF SAN ANTONIO, which operates Leon Creek Steam Electric Station, has applied for a renewal of TPDES Permit No. WQ0001517000, which authorizes the discharge of cooling tower blowdown, stormwater, and previously monitored effluent (cooling tower blowdown, low volume wastes, metal cleaning wastes, and

stormwater) at a daily average flow not to exceed 1,300,000 gallons per day via Outfall 001, and a daily maximum flow not to exceed 1,740,000 gallons per day. The facility is located at 7718 Quintana Road, on the southeast corner of the intersection of Quintana Road and Pitluk Avenue, in the City of San Antonio, Bexar County, Texas 78211.

BAMMEL UTILITY DISTRICT has applied for a renewal of TPDES Permit No. WQ0011105001 which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,000,000 gallons per day. The facility is located at 17402 Falling Creek Drive, on the south bank of Cypress Creek, at the dead-end of Falling Creek Drive in Harris County, Texas 77068.

MEADOWHILL REGIONAL MUNICIPAL UTILITY DISTRICT has applied for a renewal of TPDES Permit No. WQ0011215001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,400,000 gallons per day. The facility is located at 3530 Farm-to-Market Road 2920, Spring, approximately two miles west of the intersection of Interstate Highway 45 and Farm-to-Market Road 2920 in Harris County, Texas 77388.

NORTH PARK PUBLIC UTILITY DISTRICT has applied for a renewal of TPDES Permit No. WQ0011855001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,310,000 gallons per day. The facility is located at 22971 Imperial Valley Drive, approximately 2,200 feet east of Interstate Highway 45 and 2,400 feet north of Farm-to-Market Road 1960 on Imperial Valley Drive in Harris County, Texas 77073.

TEXAS DEPARTMENT OF CRIMINAL JUSTICE has applied for a renewal of TPDES Permit No. WQ0011915001 which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,440,000 gallons per day. The facility is located at 1391 Farm-to-Market Road 3328, Tennessee Colony approximately six miles northwest of the intersection of U.S. Highways 84 and 79 and Farm-to-Market Road 645, and approximately two miles west of the intersection of Farm-to-Market Roads 645 and 3328 in Anderson County, Texas 77342.

QUARTERS LLC has applied for a renewal of TPDES Permit No. WQ0012318001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 5,100 gallons per day. The facility is located in the Jacintoport Industrial Development, approximately 1.5 miles southwest of the confluence of the Houston Ship Channel and Carpenter's Bayou in the eastern part of Harris County, Texas 77015.

NORTH MISSION GLEN MUNICIPAL UTILITY DISTRICT has applied for a major amendment to TPDES Permit No. WQ0012379001 to remove or reduce the frequency of effluent limitations and monitoring requirements for Total Mercury. The existing permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1.18 million gallons per day. The facility is located at 8820 Addicks-Clodine Road, approximately 1/2 mile west of Gaines Road and approximately 3/4 mile south of the intersection of Addicks-Clodine Road and Beechnut Street in Fort Bend County, Texas 77083.

MILLENNIUM RAIL INC has applied for a renewal of TPDES Permit No. WQ0013472001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 6,000 gallons per day. The facility is located at 17000 Premium Drive, immediately north of Betke Road between Premium Drive and Kermie Road, west of the City of Hockley in Harris County, Texas 77447.

CITY OF SOUTHSIDE PLACE has applied for a renewal of TPDES Permit No. WQ0014850001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 300,000 gallons per day. The facility is located at 3701 Bellaire Boulevard,

approximately 1.5 miles east of the intersection of Interstate Highway 610 and Bellaire Boulevard in Harris County, Texas 77025.

CITY OF LAWN has applied for a new permit, proposed TPDES Permit No. WQ0015027001, to authorize the discharge of treated filter backwash effluent from a water treatment plant at a daily average flow not to exceed 200,000 gallons per day. The facility is located approximately 800 feet south of the intersection of Frontier Trail Road in the Comanche Shore Subdivision on the North Shore of Lake Coleman in Coleman County, Texas 79510.

LOOKOUT PARTNERS LP AND CITY OF LEANDER have applied for a new permit, Proposed TCEQ Permit No. WQ0015042001, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 788,000 gallons per day via public access subsurface drip irrigation with a minimum area of 91.43 acres, public access surface irrigation of grasses with a minimum area of 94.26 acres, and public access surface irrigation of native trees with a minimum area of 11.63 acres. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 768,000 gallons per day. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site will be located 0.62 mile northwest of the intersection of Vista Rock Drive and Farm-to-Market Road 1431 in Travis County, Texas 78641.

VICTORIAN GARDENS LTD has applied to the Texas Commission on Environmental Quality (TCEQ) for a new permit, proposed TPDES Permit No. WQ0015056001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 600,000 gallons per day. The facility will be located 1640 feet northwest of the intersection of Bissonnet Street and Clodine Road in northeast Fort Bend County, Texas 77469.

PERRIN WHITT CONSOLIDATED INDEPENDENT SCHOOL DISTRICT has applied for a new permit, proposed TPDES Permit No. WQ0015059001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 9,000 gallons per day. The facility will be located at 216 North Benson, Perrin, in Jack County, Texas 76486.

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.

HORIZON REGIONAL MUNICIPAL UTILITY DISTRICT has applied for a minor amendment to the TPDES Permit No. WQ0010795001 to remove Outfall 001. The current permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 3,000,000 gallons per day via Outfall 003. The existing permit also authorizes the disposal of treated domestic wastewater via irrigation of 145 acres of golf course via Outfall 003 and 320 acres of pastureland via Outfall 002. The facility is located approximately 0.5 mile west of the intersection of Ashford Road and Horizon Boulevard and approximately two miles northeast of the intersection of Interstate Highway 10 (U.S. Highway 10) and Farm-to-Market Road 1281 (Horizon Boulevard) in El Paso County, Texas 79928. One disposal site (pastureland) is located approximately 1.3 miles southeast of the wastewater treatment facility. The second disposal site (golf course) is located approximately 1.2 miles northeast of the wastewater treatment facility.

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. Si desea información en español, puede llamar al 1-800-687-4040.

TRD-201300108
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: January 16, 2013

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Texas Ethics Commission

List of Late Filers

Listed below are the names of filers from the Texas Ethics Commission who did not file reports, or failed to pay penalty fines for late reports in reference to the listed filing deadline. If you have any questions, you may contact Robbie Douglas at (512) 463-5800.

Deadline: Semiannual Report due July 16, 2012 for Candidates and Officeholders

Teresa J. Hawthorne, P.O. Box 670844, Dallas, Texas, 75367-0844

Deadline: 8-Day Pre-election Report due October 29, 2012 for Candidates and Officeholders

Dominique L. Collins, 1661 Sylvan Ave., Dallas, Texas 75208

TRD-201300050
David Reisman
Executive Director
Texas Ethics Commission
Filed: January 9, 2013

◆ ◆ ◆
Texas Facilities Commission

Request for Proposals #303-4-20366

The Texas Facilities Commission (TFC), on behalf of the Health and Human Services Commission (HHSC), the Department of Aging and Disability Services (DADS), the Department of State Health Services (DSHS), and the Department of Family and Protective Services (DFPS), announces the issuance of Request for Proposals (RFP) #303-4-20366. TFC seeks a five (5) or ten (10) year lease of approximately 10,952 square feet of office space in Gainesville, Cooke County, Texas.

The deadline for questions is February 14, 2013 and the deadline for proposals is February 21, 2013 at 3:00 p.m. The award date is March 20, 2013. 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=103983.

TRD-201300101
Kay Molina
General Counsel
Texas Facilities Commission
Filed: January 15, 2013

◆ ◆ ◆
Department of Family and Protective Services

Criminal History Requirements for Child Care Operations

(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 charts are not included in the print version of the Texas Register. The charts are available in the on-line version of the January 25, 2013, issue of the Texas Register.)

On December 1, 2012, the Department of Family and Protective Services (DFPS) adopted 40 TAC §745.651 (relating to What types of criminal convictions may affect a person's ability to be present at an operation?). The section stated that the three charts listed in subsection (a) of the section would be updated annually and published every January in the *Texas Register* as an "In Addition" document. The three charts are entitled: (1) Licensed or Certified Child Care Operations: Criminal History Requirements; (2) Foster or Adoptive Placements: Criminal History Requirements; and (3) Registered Child Care Homes and Listed Family Homes: Criminal History Requirements. Each chart has three parts to it: an introduction that explains the types of operations each chart covers, defines certain terms used in the chart, and clarifies certain assumptions; a Table of Contents; and the actual chart.

TRD-201300054

Gerry Williams

General Counsel

Department of Family and Protective Services

Filed: January 10, 2013

Department of State Health Services

Notice of Certification of Nonprofit Hospitals or Hospital Systems for Limited Liability

The Hospital Survey Program in the Center for Health Statistics, Department of State Health Services (department), has completed its analysis of hospital data for the purpose of certifying nonprofit hospitals or hospital systems for limited liability in accordance with the Health and Safety Code, §311.0456. We received requests for certification from 14 hospitals. We will notify each hospital by mail that is certified in accordance with §311.0456. Therefore, if you have any comments or questions about the following certification results, please contact Mr. Dwayne Collins or Ms. JaNell Jenkins of the department's Center for Health Statistics.

Certified: 1 non-profit hospital system (6 hospitals) and 5 non-profit hospitals were determined to be eligible for certification based on information that they provided; i.e., charity care in an amount equal to or greater than 8 percent of their net patient revenue and that they provided 40 percent or more of the charity care in their counties. The certification issued under Health and Safety Code, §311.0456, to a non-profit hospital or hospital system takes effect on December 31, 2012, and expires on the anniversary of that date.

Seton Healthcare System - Travis County only (6 hospitals)

1. Dell Children's Medical Center in Travis County
2. Seton Medical Center Austin in Travis County
3. Seton Northwest Hospital in Travis County
4. Seton Shoal Creek Hospital in Travis County
5. Seton Southwest Hospital in Travis County

6. University Medical Center at Brackenridge Hospital in Travis County
7. Seton Edgar B. Davis in Caldwell County
8. Seton Medical Center Hays in Hays County
9. Hillcrest Baptist Medical Center in McLennan County
10. Shannon West Texas Memorial Hospital in Tom Green County
11. Seton Medical Center Williamson in Williamson County

Not Certified: 2 non-profit hospitals were not certified because, based on their survey data, they did not provide charity care in an amount equal to or greater than 8 percent of their net patient revenue nor did they provide 40 percent of the charity care in their counties. One hospital did not qualify because it was a public hospital.

1. Scott and White Memorial Hospital in Bell County
2. Seton Highland Lakes in Burnet County
3. Seton Smithville Regional Hospital in Bastrop County (Public)

For further information about this report, please contact Mr. Dwayne Collins or Ms. JaNell Jenkins in the Center for Health Statistics, Department of State Health Services, 1100 West 49th Street, Austin, Texas, telephone (512) 776-7261.

TRD-201300066

Lisa Hernandez

General Counsel

Department of State Health Services

Filed: January 11, 2013

Texas Department of Housing and Community Affairs

Notice of Public Hearing for Expenditure of American Recovery and Reinvestment Act (ARRA) Weatherization Assistance Program (WAP) Funds

In commitment to the full expenditure of ARRA WAP funds, as allowed by the Department of Energy Weatherization Assistance Program under the American Recovery and Reinvestment Act, Texas Department of Housing and Community Affairs (TDHCA) proposes to obligate ARRA WAP funds in the amount of \$2,048,645 to the 26 Sub-recipient agencies in the existing Weatherization Assistance Program network. The Department will allocate funding in accordance with 10 TAC Chapter 5, Community Affairs Programs, Subchapter E, Weatherization Assistance Program General, §5.503, Distribution of WAP Funds.

A representative from TDHCA will receive comments from interested citizens and affected groups regarding the proposed obligation of funds. The public hearing has been scheduled as follows:

Tuesday, February 5, 2013, 1:00 p.m.

Texas Department of Housing and Community Affairs

221 East 11th Street, Room 116

Austin, Texas 78701

Local officials and citizens are encouraged to participate in the hearing process. Written comments must be submitted no later than 5:00 p.m. on February 12, 2013, to Cate Taylor, Senior Planner, Community Affairs Division, Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711 or by electronic mail to cate.taylor@tdhca.state.tx.us.

Individuals who require auxiliary aids or services for this meeting should contact Ms. Gina Esteves, ADA responsible employee, at (512) 475-3943 or Relay Texas at 1-800-735-2989 at least two (2) days before the meeting so that appropriate arrangements can be made.

Non-English speaking individuals who require interpreters for this meeting should contact Jorge Reyes by phone at (512) 475-4577 or by email at jorge.reyes@tdhca.state.tx.us at least three (3) days before the meeting so that appropriate arrangements can be made.

Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 o enviarle un correo electrónico a jorge.reyes@tdhca.state.tx.us por lo menos tres días antes de la junta para hacer los preparativos apropiados.

TRD-201300123
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Filed: January 16, 2013



Texas Department of Insurance

Company Licensing

Application to change the name of FRANK WINSTON CRUM INSURANCE, INC. to FRANK WINSTON CRUM INSURANCE COMPANY a Foreign Fire and/or Casualty company. The home office is in Clearwater, Florida.

Application to do business in the State of Texas by LOVELACE HEALTH SYSTEMS, INC., a foreign Health Maintenance Organization. The home office is in Albuquerque, New Mexico.

Application for LOVELACE HEALTH SYSTEMS, INC., a foreign health maintenance organization, doing business as LOVELACE HEALTH PLAN. The home office is in Albuquerque, New Mexico.

Application for LOVELACE HEALTH SYSTEMS, INC., a foreign health maintenance organization, doing business as LOVELACE HEALTH PLAN OF TEXAS. The home office is in Albuquerque, New Mexico.

Any objections must be filed with the Texas Department of Insurance, within 20 calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, MC 305-2C, Austin, Texas 78701.

TRD-201300055
Sara Waitt
General Counsel
Texas Department of Insurance
Filed: January 10, 2013



Notice of Hearing

The commissioner of insurance will hold a public hearing under Docket No. 2751 at 9:30 a.m. on Tuesday, February 12, 2013, in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street, Austin, Texas, to consider the Texas Automobile Insurance Plan Association's (TAIPA) annual private passenger and commercial automobile insurance rate filing. TAIPA submitted the filing on January 2, 2013, under Insurance Code §2151.202. Insurance Code §2151.206(c) clarifies that this will not be a contested case hearing.

You may review TAIPA's rate filing by contacting the TDI Office of the Chief Clerk, 333 Guadalupe Street, Austin, Texas during regular

business hours. For further information or to request a copy of the filing, please contact the Office of the Chief Clerk by telephone at (512) 463-6327 or by email at ChiefClerk@tdi.texas.gov (refer to Petition No. A-0113-01).

If you wish to submit written comments, analyses, or other information related to the filing, please do so by 5:00 p.m. on Tuesday, February 12, 2013. You must provide two copies of your submission. Send one copy to the Texas Department of Insurance, Office of the Chief Clerk, Mail Code 113-2A, P.O. Box 149104, Austin, Texas 78714-9104, or email it to ChiefClerk@tdi.texas.gov. Send the other copy to Texas Department of Insurance, Property and Casualty Actuarial, J'ne Byckovski, Chief Actuary, Mail Code 105-5F, P.O. Box 149104, Austin, Texas 78714-9104 or email it to PCActuarial@tdi.texas.gov.

Under Insurance Code §2151.206(a), you may also present written or oral comments related to the filing at the hearing. Insurance Code §2151.206(b) permits TAIPA, the Office of Public Insurance Counsel, and any other interested person or entity that submits proposed changes or actuarial analyses to ask questions of any person testifying at the hearing.

TRD-201300057
Sara Waitt
General Counsel
Texas Department of Insurance
Filed: January 10, 2013



Texas Lottery Commission

Instant Game Number 1494 "Wild Card"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1494 is "WILD CARD". The play style is "cards - 2 of a kind".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1494 shall be \$2.00 per Ticket.

1.2 Definitions in Instant Game No. 1494.

A. Display Printing - That area of the Instant Game Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Ticket.

C. Play Symbol - The printed data under the latex on the front of the Instant Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in symbol font in black ink in positive except for dual-image games. The possible red Play Symbols are: 2 DIAMOND CARD SYMBOL, 3 DIAMOND CARD SYMBOL, 4 DIAMOND CARD SYMBOL, 5 DIAMOND CARD SYMBOL, 6 DIAMOND CARD SYMBOL, 7 DIAMOND CARD SYMBOL, 8 DIAMOND CARD SYMBOL, 9 DIAMOND CARD SYMBOL, 10 DIAMOND CARD SYMBOL, JACK DIAMOND CARD SYMBOL, QUEEN DIAMOND CARD SYMBOL, KING DIAMOND CARD SYMBOL, ACE DIAMOND CARD SYMBOL, 2 HEART CARD SYMBOL, 3 HEART CARD SYMBOL, 4 HEART CARD SYMBOL, 5 HEART CARD SYMBOL, 6 HEART CARD SYMBOL, 7 HEART CARD SYMBOL, 8 HEART CARD SYMBOL, 9 HEART CARD SYMBOL, 10 HEART CARD SYMBOL, JACK HEART CARD SYMBOL, QUEEN HEART CARD SYMBOL, KING HEART CARD SYMBOL and ACE HEART CARD SYMBOL. The possible black Play Symbols are: 2 CLUB CARD SYMBOL, 3 CLUB CARD SYMBOL, 4 CLUB CARD SYMBOL, 5 CLUB CARD SYMBOL, 6 CLUB CARD SYMBOL, 7 CLUB CARD SYMBOL, 8 CLUB CARD

SYMBOL, 9 CLUB CARD SYMBOL, 10 CLUB CARD SYMBOL, JACK CLUB CARD SYMBOL, QUEEN CLUB CARD SYMBOL, KING CLUB CARD SYMBOL, ACE CLUB CARD SYMBOL, 2 SPADE CARD SYMBOL, 3 SPADE CARD SYMBOL, 4 SPADE CARD SYMBOL, 5 SPADE CARD SYMBOL, 6 SPADE CARD SYMBOL, 7 SPADE CARD SYMBOL, 8 SPADE CARD SYMBOL, 9 SPADE CARD SYMBOL, 10 SPADE CARD SYMBOL, JACK SPADE CARD SYMBOL, QUEEN SPADE CARD SYMBOL, KING SPADE CARD SYMBOL, ACE SPADE CARD SYMBOL, \$2.00,

\$5.00, \$10.00, \$15.00, \$20.00, \$30.00, \$50.00, \$100, \$1,000 and \$20,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1494 - 1.2D

PLAY SYMBOL	CAPTION
2 DIAMOND CARD SYMBOL (RED)	2DMD
3 DIAMOND CARD SYMBOL (RED)	3DMD
4 DIAMOND CARD SYMBOL (RED)	4DMD
5 DIAMOND CARD SYMBOL (RED)	5DMD
6 DIAMOND CARD SYMBOL (RED)	6DMD
7 DIAMOND CARD SYMBOL (RED)	7DMD
8 DIAMOND CARD SYMBOL (RED)	8DMD
9 DIAMOND CARD SYMBOL (RED)	9DMD
10 DIAMOND CARD SYMBOL (RED)	10DMD
JACK DIAMOND CARD SYMBOL (RED)	JDMD
QUEEN DIAMOND CARD SYMBOL (RED)	QDMD
KING DIAMOND CARD SYMBOL (RED)	KDMD
ACE DIAMOND CARD SYMBOL (RED)	ADMD
2 CLUB CARD SYMBOL (BLACK)	2CLB
3 CLUB CARD SYMBOL (BLACK)	3CLB
4 CLUB CARD SYMBOL (BLACK)	4CLB
5 CLUB CARD SYMBOL (BLACK)	5CLB
6 CLUB CARD SYMBOL (BLACK)	6CLB
7 CLUB CARD SYMBOL (BLACK)	7CLB
8 CLUB CARD SYMBOL (BLACK)	8CLB
9 CLUB CARD SYMBOL (BLACK)	9CLB
10 CLUB CARD SYMBOL (BLACK)	10CLB
JACK CLUB CARD SYMBOL (BLACK)	JCLB
QUEEN CLUB CARD SYMBOL (BLACK)	QCLB
KING CLUB CARD SYMBOL (BLACK)	KCLB
ACE CLUB CARD SYMBOL (BLACK)	ACLB
2 HEART CARD SYMBOL (RED)	2HRT
3 HEART CARD SYMBOL (RED)	3HRT
4 HEART CARD SYMBOL (RED)	4HRT
5 HEART CARD SYMBOL (RED)	5HRT
6 HEART CARD SYMBOL (RED)	6HRT
7 HEART CARD SYMBOL (RED)	7HRT
8 HEART CARD SYMBOL (RED)	8HRT
9 HEART CARD SYMBOL (RED)	9HRT
10 HEART CARD SYMBOL (RED)	10HRT
JACK HEART CARD SYMBOL (RED)	JHRT
QUEEN HEART CARD SYMBOL (RED)	QHRT
KING HEART CARD SYMBOL (RED)	KHRT
ACE HEART CARD SYMBOL (RED)	AHRT
2 SPADE CARD SYMBOL (BLACK)	2SPD
3 SPADE CARD SYMBOL (BLACK)	3SPD
4 SPADE CARD SYMBOL (BLACK)	4SPD
5 SPADE CARD SYMBOL (BLACK)	5SPD
6 SPADE CARD SYMBOL (BLACK)	6SPD
7 SPADE CARD SYMBOL (BLACK)	7SPD
8 SPADE CARD SYMBOL (BLACK)	8SPD

9 SPADE CARD SYMBOL (BLACK)	9SPD
10 SPADE CARD SYMBOL (BLACK)	10SPD
JACK SPADE CARD SYMBOL (BLACK)	JSPD
QUEEN SPADE CARD SYMBOL (BLACK)	QSPD
KING SPADE CARD SYMBOL (BLACK)	KSPD
ACE SPADE CARD SYMBOL (BLACK)	ASPD
\$2.00 (BLACK)	TWO\$
\$5.00 (BLACK)	FIVE\$
\$10.00 (BLACK)	TEN\$
\$15.00 (BLACK)	FIFTN
\$20.00 (BLACK)	TWENTY
\$30.00 (BLACK)	THIRTY
\$50.00 (BLACK)	FIFTY
\$100 (BLACK)	ONE HUND
\$1,000 (BLACK)	ONE THOU
\$20,000 (BLACK)	20 THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$2.00, \$5.00, \$6.00, \$10.00, \$15.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$30.00, \$50.00 or \$100.

H. High-Tier Prize - A prize of \$1,000 or \$20,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1494), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 125 within each Pack. The format will be: 1494-0000001-001.

K. Pack - A Pack of "WILD CARD" Instant Game Tickets contains 125 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One Ticket will be folded over to expose a front and back of one Ticket on each Pack. 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 "WILD CARD" Instant Game No. 1494 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 "WILD CARD" Instant Game is determined once the latex on the Ticket is scratched off to expose 16 (sixteen) Play Symbols. In each Hand, if a player reveals a pair, the player wins the PRIZE for that Hand. The player may use the Bonus Card to make a pair in any one Hand, and the player wins the PRIZE for that Hand. Each Hand is played separately. A pair is two cards of the same rank. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as 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 16 (sixteen) Play Symbols must appear under the Latex Overprint on the front portion of the Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Ticket;
8. The Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Ticket must not be counterfeit in whole or in part;
10. The Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Ticket must not have been stolen, nor appear on any list of omitted Tickets or non-activated Tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The Ticket must be complete and not miscut, and have exactly 16 (sixteen) 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 16 (sixteen) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 16 (sixteen) 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 of either Play Symbols or prize symbols.
- B. A Ticket will win as indicated by the prize structure.
- C. A Ticket can win up to five (5) times.
- D. Prize Symbols will always appear in black.
- E. All cards on a single Ticket will be unique.
- F. On Tickets winning with the Bonus Card, the rank of the two cards being used within that hand is to be different.
- G. The Bonus Card can be used to create multiple wins on a single Ticket.
- H. No winning hand of a pair will have the same rank of the Bonus Card on a Ticket.

I. On winning and Non-Winning Tickets, the top cash prize of \$20,000 and the \$1,000 prize will each appear at least once, except on Tickets winning four (4) or five (5) times.

J. On winning Tickets, a non-winning Prize Symbol will not match a winning Prize Symbol.

K. On all Tickets, a Prize Symbol will not appear more than two (2) times, except as required by the prize structure to create multiple wins.

L. On Non-Winning Tickets, the Bonus Card will not be of the same rank of any cards in Hands 1 through 5. For example, if the Bonus Card is a King of Clubs, no cards in Hands 1 through 5 will appear as a King of any suit.

M. On Non-Winning Tickets, the two cards will never be the same rank within the same hand.

2.3 Procedure for Claiming Prizes.

A. To claim a "WILD CARD" Instant Game prize of \$2.00, \$5.00, \$6.00, \$10.00, \$15.00, \$20.00, \$30.00, \$50.00 or \$100, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$30.00, \$50.00 or \$100 Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "WILD CARD" Instant Game prize of \$1,000 or \$20,000, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "WILD CARD" Instant Game prize, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:
 - a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;
 - b. in default on a loan made under Chapter 52, Education Code; or
 - c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "WILD CARD" 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 "WILD CARD" 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. 1494. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1494 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$2	672,000	8.93
\$5	352,000	17.05
\$6	144,000	41.67
\$10	192,000	31.25
\$15	16,000	375.00
\$20	32,000	187.50
\$30	10,200	588.24
\$50	5,250	1,142.86
\$100	2,850	2,105.26
\$1,000	18	333,333.33
\$20,000	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 4.21. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1494 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. 1494, 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-201300103

Bob Biard

General Counsel

Texas Lottery Commission

Filed: January 16, 2013



Instant Game Number 1495 "Fun 5's"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1495 is "FUN 5'S". The play style is "multiple games".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1495 shall be \$5.00 per Ticket.

1.2 Definitions in Instant Game No. 1495.

A. Display Printing - That area of the Instant Game Ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Ticket.

C. Play Symbol - The printed data under the latex on the front of the instant Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 1 SYMBOL, 2 SYMBOL, 3 SYMBOL, 4 SYMBOL, 5 SYMBOL, 6 SYMBOL, 7 SYMBOL, 8 SYMBOL, 9 SYMBOL, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 18, 19, 20, \$5.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100, \$250, \$500, \$1,000 and \$50,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1495 - 1.2D

PLAY SYMBOL	CAPTION
1 SYMBOL	ONE
2 SYMBOL	TWO
3 SYMBOL	THR
4 SYMBOL	FOR
6 SYMBOL	SIX
7 SYMBOL	SVN
8 SYMBOL	EGT
9 SYMBOL	NIN
5 SYMBOL	WIN
1 SYMBOL	*
2 SYMBOL	*
3 SYMBOL	*
4 SYMBOL	*
6 SYMBOL	*
7 SYMBOL	*
8 SYMBOL	*
9 SYMBOL	*
5 SYMBOL	*
1	ONE
2	TWO
3	THR
4	FOR
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
5 SYMBOL	DBL
\$5.00	FIVES\$
\$10.00	TENS\$
\$15.00	FIFTN
\$20.00	TWENTY
\$50.00	FIFTY
\$100	ONE HUND
\$250	TWO FTY
\$500	FIV HUN
\$1,000	ONE THOU
\$50,000	50 THOU

*The captions for these symbols will be in the format of PSTTT, whereas P denotes the 1 through 9 position in the play area, S denotes the actual symbol, and TTT denotes the ticket number.

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$5.00, \$10.00, \$15.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$50.00, \$100, \$250 or \$500.

H. High-Tier Prize - A prize of \$1,000 or \$50,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1495), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 1495-0000001-001.

K. Pack - A Pack of "FUN 5'S" Instant Game Tickets contains 075 Tickets, Packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 001 will be shown on the front of the Pack; the back of Ticket 075 will be revealed on the back of the Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack. Every other book will reverse i.e., reverse order will be: the back of Ticket 001 will be shown on the front of the Pack and the front of Ticket 075 will be shown on the back of the 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 "FUN 5'S" Instant Game No. 1495 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 "FUN 5'S" Instant Game is determined once the latex on the Ticket is scratched off to expose 54 (fifty-four) Play Symbols. GAME 1: If a player reveals a "5" Play Symbol, the player wins the PRIZE for that symbol. GAME 2: If a player reveals three "5" Play Symbols in any one row, column or diagonal, the player wins the PRIZE. GAME 3: If a player reveals three "5" Play Symbols in any one row, column or diagonal, the player wins the PRIZE. GAME 4: If a player matches any of YOUR NUMBERS Play Symbols to either WINNING NUMBER Play Symbol, the player wins PRIZE for that number. If a player reveals a "5" Play Symbol, the player wins DOUBLE the PRIZE for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. Exactly 54 (fifty-four) Play Symbols must appear under the Latex Overprint on the front portion of the Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Ticket;

8. The Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Ticket must not be counterfeit in whole or in part;

10. The Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Ticket must not have been stolen, nor appear on any list of omitted Tickets or non-activated Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Ticket must be complete and not miscut, and have exactly 54 (fifty-four) Play Symbols under the Latex Overprint on the front portion of the Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the Ticket;

14. The Serial Number of an apparent winning Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Tickets, and a Ticket with that Serial Number shall not have been paid previously;

15. The Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 54 (fifty-four) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 54 (fifty-four) Play Symbols on the Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price

from any other current Instant Lottery game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets within a Pack will not have identical patterns of either Play Symbols or Prize Symbols.

B. A Ticket will win as indicated by the prize structure.

C. A Ticket can win up to eighteen (18) times.

D. On winning and Non-Winning Tickets, the top cash prizes of \$50,000 and \$1,000 will each appear at least once, except on Tickets winning eighteen (18) times.

E. On winning Tickets, a non-winning prize amount will not match a winning prize amount.

F. On all Tickets, a prize amount will not appear more than 3 times, except as required by the prize structure to create multiple wins.

G. Non-winning Play Symbols will not equal the corresponding Prize Symbol (i.e., 10 will not appear with \$10).

H. GAME 1: Players can win up to six (6) times in this play area.

I. GAME 1: This play area will consist of six (6) Play Symbols and six (6) Prize Symbols.

J. GAME 1: Non-winning prize amounts on winning games will all be different and they will not be the same as a winning prize amount.

K. GAME 1: Non-winning play spots on winning games will display one of the allowable non-winning Play Symbols.

L. GAME 1: There will be no duplicate non-winning Play Symbols on a winning game.

M. GAME 1: The "5" symbol will never appear on Non-Winning Tickets.

N. GAME 1: Non-winning Prize Symbols will all be different.

O. GAME 1: Play Symbols will not appear more than once on any one Ticket, except where required by a multiple win.

P. GAME 2 & 3: Players can win up to one (1) time in GAME 2 and one (1) time in GAME 3.

Q. GAME 2 & 3: The play area in GAME 2 and GAME 3 will each consist of nine (9) Play Symbols and one (1) Prize Symbol.

R. GAME 2 & 3: Games win the PRIZE shown by getting three (3) "5" symbols in any one row, column or diagonal.

S. GAME 2 & 3: No winning game will contain more than one vertical, horizontal or diagonal straight line with three (3) winning "5" Play Symbols.

T. GAME 2 & 3: No non-winning game will ever contain the same symbol in all four (4) corners in one game.

U. GAME 2 & 3: Non-winning games will not have same symbols in any row, column or diagonal.

V. GAME 4: Players can win up to ten (10) times in this play area.

W. GAME 4: This play area will consist of two (2) WINNING NUMBERS Play Symbols, ten (10) YOUR NUMBERS Play Symbols and ten (10) Prize Symbols.

X. GAME 4: On winning or Non-Winning Tickets, the two (2) WINNING NUMBERS Play Symbols are to be different.

Y. GAME 4: The \$50,000 Prize Symbol will never appear adjacent to another \$50,000 Prize Symbol on the same Ticket. (e.g., left to right, top to bottom or on a diagonal.)

Z. GAME 4: The "5" Play Symbol will never appear as one of the WINNING NUMBERS Play Symbols or in the Prize Symbol area in the YOUR NUMBERS play area.

AA. GAME 4: On non-winning play spots (winning or Non-Winning Tickets), the Prize Symbol will never be the same as its YOUR NUMBERS Play Symbol, excluding the "5" DOUBLER symbol and the \$5 Prize Symbol.

BB. GAME 4: The "5" symbol will only appear on winning Tickets.

CC. GAME 4: On winning Tickets, all non-winning YOUR NUMBERS Play Symbols are to be different.

DD. GAME 4: On winning Tickets, non-winning Prize Symbols may appear up to twice on a ticket but will not match the winning Prize Symbol(s).

EE. GAME 4: On Non-Winning Tickets all ten (10) YOUR NUMBERS are to be different.

FF. GAME 4: On Non-Winning Tickets, no Prize Symbol may appear more than two (2) times in this area.

GG. GAME 4: Play Symbols will not appear more than once on any one Ticket, except where required by a multiple win.

2.3 Procedure for Claiming Prizes.

A. To claim a "FUN 5'S" Instant Game prize of \$5.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100, \$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 \$50.00, \$100, \$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 Section 2.3.C of these Game Procedures.

B. To claim a "FUN 5'S" Instant Game prize of \$1,000 or \$50,000, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "FUN 5'S" Instant Game prize, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "FUN 5'S" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "FUN 5'S" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with

an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §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 7,200,000 Tickets in the Instant Game No. 1495. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1495 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$5	944,000	7.63
\$10	672,000	10.71
\$15	176,000	40.91
\$20	64,000	112.50
\$50	73,920	97.40
\$100	27,300	263.74
\$250	3,300	2,181.82
\$500	2,520	2,857.14
\$1,000	110	65,454.55
\$50,000	10	720,000.00

*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 3.67. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1495 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 Ticket 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. 1495, 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-201300102
 Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: January 16, 2013

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Notice of Public Comment Hearing

A public hearing to receive public comments regarding proposed amendments to the Texas Lottery Commission procedure *Lotto Texas*® Jackpot Estimation, OC-JE-002, a procedure that affects *Lotto Texas*® players, will be held on Monday, February 25, 2013, at 2:00 p.m. at the Texas Lottery Commission, Commission Auditorium, First Floor, 611 E. Sixth Street, Austin, Texas 78701.

Persons requiring any accommodation for a disability should notify Michelle Guerrero, Executive Assistant to the General Counsel, Texas Lottery Commission, at (512) 344-5113 at least 72 hours prior to the public hearing.

The proposed amendments incorporate recent revisions to the *Lotto Texas*® game, including changes to the annuity period, starting jackpot amount and roll increments.



TEXAS LOTTERY COMMISSION

OFFICE OF THE CONTROLLER

PROCEDURE

Number: OC-JE-002	Title: <i>Lotto Texas</i> ® Jackpot Estimation	Approval: Texas Lottery Commission
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Effective Date: October 19, 2011	Approval Date: October 19, 2011	Review Date:

PROCEDURE NUMBER

OC-JE-002 [Supersedes OC-JE-002 effective October ~~2, 2009~~19, 2011]

PURPOSE

To provide policy guidelines for projecting and estimating sales for future *Lotto Texas* estimated annuitized jackpot prize amounts that will be advertised.

SCOPE

This procedure applies to staff of the Texas Lottery Commission.

RESPONSIBILITY

The final approval for the estimated annuitized jackpot amount to advertise will be provided by the Texas Lottery Commission Executive Director, or their designee.

GENERAL

The Texas Lottery Commission (TLC) ensures that *Lotto Texas* sales and other information necessary to estimate the jackpot amount to be advertised is utilized in preparation of the jackpot estimation. The Executive Director, or their designee, has the sole authority to approve the final projected estimated annuitized jackpot amount to advertise for *Lotto Texas* Drawings.

The "Lotto Texas" On-Line Game rule is found in the Texas Administrative Code, Title 16, Part 9, Chapter 401, Subchapter D, Rule 401.305. The *Lotto Texas* Game rule states, "The jackpot prize for a drawing is the greater of 40.47 percent of the proceeds from *Lotto Texas* ticket sales for all drawings in the roll cycle and any earnings on an investment of all or part of the sales proceeds, paid in ~~25-30~~ annual installments; or the amount advertised in accordance with subsection (e) of the *Lotto Texas* On-Line Game Rule as the estimated jackpot for the drawing, paid in ~~25-30~~ annual installments."

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A roll cycle is a series of drawings that ends when there is a drawing for which one or more tickets are sold that match the six numbers drawn in the drawing. A new roll cycle begins with the next drawing after a drawing for which one or more jackpot tickets are sold that match the six numbers drawn in the drawing.

The advertised amount shall be an amount payable in ~~25-30~~ annual installments. To the extent that the advertised amount is based on projected sales, the projections shall be fair and reasonable. The Executive Director, or designee, may approve an increase in the amount of the jackpot originally advertised for a drawing if the increase is supported by reasonable sales projections.

PROCEDURE

I. Timeline

1. Distribution of estimated jackpot information as outlined in Section VI shall be completed by close of business, or 5:00 p.m. on Wednesdays and Fridays.
2. The advertised jackpot for the current draw may be increased based on revised sales projections, if the Executive Director, or their designee, determines that sales have grown sufficiently to support an increased advertised jackpot. The Executive Director, or their designee, will be consulted regarding the time frame for increasing the advertised jackpot amount.
3. In the event Wednesday or Friday falls on a holiday and management has agreed that the sales trends and jackpot levels are such that an early estimation may be achieved, or if, due to a large jackpot level, a Friday estimation is delayed until Saturday, the above deadlines may be revised as needed.

II. Compile Estimate Information:

1. Determine the Interest Factor: Investment cost information is obtained from the Texas Treasury Safekeeping Trust Company prior to each estimation. Commission staff requests the estimated cost of ~~25-30~~ annual payments to yield the advertised jackpot. The interest factor is calculated by dividing the advertised jackpot by the estimated cost, including the initial payment required, to fund an investment stream that would yield the total advertised jackpot over a ~~25-30~~ -year period. Note that the investment information may not be obtainable if the appropriate financial institutions and/or brokers are not open for business such as on business holidays. In those instances either a request for the information is made the day before or the prior estimation interest factor is used.
2. Compile actual *Lotto Texas* draw sales for the current drawing.

III. Estimate the Sales and Jackpot Support for the Current and Future Draws:

Commission staff will estimate draw sales and jackpot support for the current *Lotto Texas* drawing and project the jackpot to be advertised for the next drawing in the event of a roll. Estimations may be made on a day prior to Wednesday or Friday if Wednesday or Friday fall on a holiday and management has agreed that the sales trends and jackpot levels are such that an early estimation may be achieved.

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1. Project the *Lotto Texas* draw sales for the current drawing: Estimations are made each Wednesday and Friday. If the draw day is on a Wednesday, estimate sales for that Wednesday. If the draw day is on a Saturday, estimate sales for Friday and Saturday. However, jackpot estimations may be updated at any time if Commission staff believe that changes in *Lotto Texas* sales or other factors may impact jackpot prize support. Estimate draw sales by using historical sales data and other relevant factors that may impact sales. Combine the actual draw sales to date with the projected draw sales for the remainder of the draw period to calculate the total projected draw sales.
 - a) Evaluate historical sales data: Project the current draw day sales by estimating the expected increase/decrease in sales using the hourly sales trend and/or growth pattern for previous like-day drawings.
 - b) Other factors to consider in estimating draw sales, along with evaluating historical sales data, include but are not limited to:
 - Wednesday draw sales are generally lower than Saturday draw sales.
 - length of time since a large jackpot was advertised
 - effect of holidays (Holidays generally cause sales to peak early and then fall below average on the holiday.)
 - weather throughout the state, especially in key markets
 - sales trends for like jackpots and/or most recent roll cycles
 - current advertising/promotions schedule
 - relevant media issues
 - on-line terminal connection problems
 - jackpots advertised for games such as Mega Millions and Powerball
 - new on-line game launches or other game enhancements
 - overall trends in sales over similar time periods
 - other - IRS deadlines, spring break, strength of the economy, etc.

It is not necessary to evaluate all these factor for every estimate. Sound judgment should be used in determining which factors to consider.

2. Evaluate Sales Support for the Current Advertised Jackpot: Determine the projected *Lotto Texas* jackpot sales support given the current advertised jackpot.
 - a) If sales proceeds are not sufficient to pay a jackpot prize, the TLC shall use funds from the State Lottery Account as identified in Government Code, Section 466.355.
 - b) The advertised jackpot for the current draw may be increased prior to the draw based on revised sales projections, if the Executive Director, or their designee, determines that sales have grown sufficiently to support an increased advertised jackpot.

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3. Estimate sales for the next draw in the event of a rollover: To estimate sales for the next draw, use historical sales data and any other relevant information as described in 1.a) and 1.b) above.
4. Project a range of prospective estimated annuitized jackpot prize amounts that may be advertised in the event of a rollover: Use estimated draw sales for the current draw, estimated draw sales for the next draw, and the estimated interest factor to identify a range of prospective estimated annuitized jackpot prize amounts.
 - a) The estimated annuitized jackpot prize amount will automatically be set to ~~four~~five million dollars for the first draw following a draw in which at least one jackpot prize ticket is identified.
 - b) In the event of a rollover, the range of projected estimated annuitized jackpot will roll in increments of at least \$250,000 more amounts to advertise in the event of a rollover should reflect at least one million dollars greater than the current advertised jackpot.

IV. Approval of Estimated Annuitized Jackpot Amount to Advertise:

1. The recommendation of the jackpot amount to advertise in the event of a rollover should typically be based on the “low end” sales support shown at the time of estimation, however, for marketing related purposes there may be instances when the recommended jackpot could be based on an amount exceeding the “high end” sales support.
2. The range of potential jackpots to advertise in the event of a rollover should be used by management as a tool to understand the amount of additional funds that may be required to fund the jackpot prize. In the event that “low end” sales do not support a roll from the currently advertised jackpot, the TLC will roll the jackpot in ~~\$1 million~~\$250,000 increments.
3. The recommended jackpot amount to advertise is presented to the Executive Director, or their designee, for final approval of the subsequent (annuitized) jackpot prize amount that will be advertised in the event of a *Lotto Texas* jackpot rollover. The *Lotto Texas Jackpot Estimation Worksheet* presented will state the projected current (annuitized) jackpot prize amount for the current draw.

V. Distribution of Estimated Jackpot Information on the Agency Website:

1. The Commission staff will perform the following:
 - a) After the Executive Director, or their designee, has approved an advertised estimated jackpot under subsection (e) of the *Lotto Texas On-Line Game Rule*, Commission staff will post to the agency website the amount of ticket sales, if any,

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for previous drawings in the roll cycle, the amount of projected ticket sales for the upcoming drawing, investment information used to determine the advertised estimated jackpot, and other information used to determine the advertised estimated jackpot.

b) The interest factor calculated by the agency based on investment information obtained from the Texas Treasury Safekeeping Trust Company and used by the TLC to determine the advertised jackpot will be posted to the agency website.

c) The approved estimated jackpot for the next draw in the roll cycle and the approximate cash value of the estimated jackpot will be posted to the agency website and will be published after the draw if no jackpot tickets were sold.

d) In addition, the approximate cash value of the jackpot prize amount for ~~four~~ five million dollars is entered on the advertised jackpot screens for posting to the agency website and publishing after the draw if a jackpot prize ticket is sold for a drawing.

VI. Distribution of information when the current advertised jackpot prize amount is changed:

If the estimated annuitized jackpot prize amount that is currently advertised is changed prior to the drawing, Commission personnel will communicate the new *Lotto Texas* estimated annuitized jackpot prize amount to advertise to all pertinent TLC and vendor staff. Media Relations will notify the media that there is a new estimated annuitized jackpot prize amount being advertised.

TRD-201300095
Bob Biard
General Counsel
Texas Lottery Commission
Filed: January 15, 2013

R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: January 14, 2013

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North Central Texas Council of Governments

Notice of Consultant Contract Award

Pursuant to the provisions of Government Code, Chapter 2254, the North Central Texas Council of Governments publishes this notice of consultant contract award. The consultant request appeared in the August 24, 2012, issue of the *Texas Register* (37 TexReg 6813). The selected consultant will perform technical and professional work for the McKinney State Highway 5 (SH 5) Context Sensitive Transportation Study.

The consultant selected for this project is Kimley-Horn and Associates, Inc., 2201 West Royal Lane, Suite 275, Irving, Texas 75063. The amount of the contract is not to exceed \$156,250.

TRD-201300089

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North East Texas Regional Mobility Authority

Notice of Availability of Request for Qualifications for Financial Advisory Services

The North East Texas Regional Mobility Authority ("NET RMA"), a political subdivision, is soliciting statements of interest and qualifications from professional financial advisory firms interested in providing financial advisory services to the authority. Firms responding must demonstrate a history of providing expert advice to governmental agencies, including but not limited to investment of available assets in legally permissible interest-yielding accounts and paper, issuance and servicing of tax-exempt debt, analysis of the financial feasibility of potential turnpike projects, and previous involvement in financing of transportation infrastructure.

The request for qualifications will be available on or about January 11, 2013. Copies may be obtained electronically from the website of the

NET RMA at www.netrma.org. Copies will also be available by contacting Mike Battles at (903) 509-1552. Periodic updates, addenda, and clarifications may be posted on the NET RMA website, and interested parties are responsible for monitoring the website accordingly. Final proposals must be received by the North East Texas Regional Mobility Authority, c/o Atkins North America, 909 ESE Loop 323, Suite 360, Tyler, Texas 75701, Attn: Everett Owen, by 3:00 p.m., C.S.T., February 11, 2013, to be eligible for consideration.

Each firm will be evaluated based on the criteria and process set forth in the RFQ. The final selection of the financial advisory firm, if any, will be made by the NET RMA Board of Directors.

TRD-201300113

Everett Owen

Project Director

North East Texas Regional Mobility Authority

Filed: January 16, 2013



Notice of Availability of Request for Qualifications for General Counsel Services

The North East Texas Regional Mobility Authority ("NET RMA"), a regional mobility authority and political subdivision of the State of Texas, is requesting information from qualified law firms interested in providing outside general legal counsel services to the NET RMA. The outside general legal counsel will provide general legal advice and services to NET RMA staff and directors as well as to administer and oversee legal matters relating to or affecting the NET RMA. Outside general legal counsel must demonstrate competence and expertise in legal requirements related to developing and operating transportation and turnpike projects, procurement of transportation infrastructure, construction and consultant contracting, financing and other feasibility studies, property acquisition, compliance with environmental requirements, state agency rulemaking and other governmental or private entities for the development of transportation and turnpike projects, and debt financing of public works projects.

The Request for Qualifications for outside general legal counsel services will be available on or about January 11, 2013. Copies may be obtained from the NET RMA website at www.netrma.org. Copies will also be available by contacting Mr. Everett Owen, Project Director at (512) 983-0618. Periodic updates, addenda and clarifications may be posted on the NET RMA website, and interested parties are responsible for monitoring the website accordingly. Final responses must be received by the North East Texas Regional Mobility Authority, c/o Atkins North America, 909 ESE Loop 323, Suite 360, Tyler, Texas 75701 no later than 3:00 p.m. CST, February 11, 2013 to be eligible for consideration. Each response will be evaluated based on the criteria and process set forth in the RFQ. The final selection of outside general legal counsel, if any, will be made by the NET RMA Board of Directors.

All questions concerning this RFQ shall be submitted to the NET RMA in writing, via email, no later than January 28, 2013. Questions should be submitted to Mr. Everett Owen, emowen@ctrma.org.

TRD-201300112

Everett Owen

Project Director

North East Texas Regional Mobility Authority

Filed: January 16, 2013



Notice of Availability of Request for Qualifications for General Engineering Consulting Services

The North East Texas Regional Mobility Authority ("NET RMA"), a political subdivision, is soliciting statements of interest and qualifications from experienced professional civil engineering firms interested in providing general engineering consulting ("GEC") services to the NET RMA. The selected firm shall operate in complete coordination with the NET RMA with respect to current and future projects, with responsibilities to include managing the development of toll projects within the region served by the NET RMA and providing advisory services related to the operation and maintenance of NET RMA toll projects.

The request for qualifications will be available on or about January 11, 2013. Copies may be obtained electronically from the website of the NET RMA at www.netrma.org. Copies will also be available by contacting Mr. Everett Owen, Project Director at (512) 983-0618. Periodic updates, addenda, and clarifications may be posted on the NET RMA website, and interested parties are responsible for monitoring the website accordingly. Final proposals must be received by the North East Texas Regional Mobility Authority, c/o C. Brian Cassidy, Locke Lord LLP, 600 Congress Avenue, Ste. 2200, Austin, Texas 78701 by 3:00 p.m., C.S.T., February 11, 2013, to be eligible for consideration.

Each firm will be evaluated based on the criteria and process set forth in the RFQ. The final selection of a firm to serve as GEC, if any, will be made by the NET RMA Board of Directors.

TRD-201300114

Everett Owen

Project Director

North East Texas Regional Mobility Authority

Filed: January 16, 2013



Panhandle Regional Planning Commission

Legal Notice

The Panhandle Regional Planning Commission (PRPC) seeks a vendor or vendors that can supply pre-paid fuel cards usable for the purchase of fuel by workforce development program customers at outlets in the Panhandle Workforce Development Area (PWDA).

Cards must be available pre-loaded in various denominations directly from the vendor and limited to fuel purchases only.

PRPC makes no guarantees of purchases from the selected vendor(s) and reserves the right to use alternative methods to purchase fuel.

Interested vendors may obtain a copy of the solicitation packet by contacting Leslie Hardin at (806) 372-3381/(800) 477-4562 or lhardin@theprpc.org. The packet may also be picked up at PRPC's offices located at 415 West Eighth in Amarillo, Texas. The required information should be submitted to PRPC no later than February 15, 2013.

TRD-201300097

Leslie Hardin

Workforce Development Facilities, Training and Support Coordinator

Panhandle Regional Planning Commission

Filed: January 15, 2013



Public Utility Commission of Texas

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on January 10, 2013, to amend a state-issued certificate of franchise au-

thority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Central Texas Cable Partners, Inc. to Amend Its State-Issued Certificate of Franchise Authority, Project Number 41125.

The requested amendment is to expand the service area footprint to include the municipalities of Lyons, Somerville, Bartlett, Granger, and Bandera, 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 41125.

TRD-201300093
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 15, 2013



Notice of Application for Service Area Exception

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on January 11, 2013, for an amendment to certificated service area for a service area exception within Collin County, Texas.

Docket Style and Number: Application of Sharyland Utilities, L.P. to Amend a Certificate of Convenience and Necessity for Electric Service Area Exception within Collin County; Docket Number 41132.

The Application: Sharyland Utilities, L.P. (Sharyland) filed an application for a service area exception to allow Sharyland to provide service to a specific customer located within the certificated service area of Fannin County Electric Cooperative (FCEC). FCEC has provided an affidavit of relinquishment for the proposed change.

Persons wishing to comment on the action sought or intervene should contact the commission no later than February 4, 2013 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 41132.

TRD-201300094
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 15, 2013



Public Notice of Workshops and Request for Comments

The Public Utility Commission of Texas (commission) will hold a workshop regarding Project No. 41061, *Rulemaking Regarding Demand Response in the Electric Reliability Council of Texas (ERCOT) Market*, commencing on Thursday, March 14, 2013 at 9:00 a.m., and regarding Project No. 41060, on the inputs included in the ERCOT Capacity, Demand, and Reserves (CDR) Report commencing on Thursday, March 14, 2013 at 1:00 p.m. Both workshops will be conducted in the Commissioners' Hearing Room, located on the

7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. In preparation for the workshops, the commission requests comments from interested parties on Project No. 41061 to explore the potential impact of demand response (DR) and further integration of this resource into the market. The commission also requests comments from interested parties on Project 41060 on components, options, and possible obstacles/questions for each input included in the ERCOT CDR Report.

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 by Friday, February 15, 2013. All responses should reference either Project No. 41060 or Project No. 41061. The commission request comments be limited to 20 pages for each project.

On Thursday, March 7, 2013, the commission shall make available in Central Records under Project No. 41060 and Project No. 41061 an agenda for the format of the workshop. Questions concerning the workshop or this notice should be referred to: for Project 41061, Rebecca Reed, Wholesale Markets Analyst, Competitive Markets, (512) 936-7371; for Project 41060, Diana Leese, Wholesale Markets Analyst, Competitive Markets, (512) 936-7204. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-201300109
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 16, 2013



Request for Comments

Section One: Increasing DR in ERCOT

The staff of the Public Utility Commission of Texas (commission) requests comments in Project No. 41061, *Rulemaking Regarding Demand Response in the Electric Reliability Council of Texas (ERCOT) Market*. The project has been established to evaluate the potential impact of Demand Response (DR) and how to further integrate it into the ERCOT market. The Brattle Group's June 1, 2012 report on "ERCOT Investment Incentives and Resource Adequacy" estimated DR could achieve 8-15% of peak load reduction. The commission seeks comments on possible changes to the ERCOT market that could help increase DR penetration.

-What additional products and programs could ERCOT develop to facilitate DR? How should the programs be designed?

-Should economic incentives be developed to stimulate large DR programs and, if so, should the incentives be market based or load-ratio share based obligations?

-What regulations are needed to ensure residential and small commercial customers are adequately protected when participating in aggregated DR programs?

-How can advanced metering systems and related technology support DR in residential and small commercial customer classes?

Section Two: Incorporating DR in Wholesale Markets

Forecasting:

-How are existing ERCOT, Load Serving Entities (LSE), and utility DR programs forecasted in forward demand and resource adequacy projections? How could DR programs be better reflected?

-How do price-based DR incentives offered by LSEs contribute to load forecasting errors? What other pricing and rate structures impact the wholesale market?

Pricing:

-What mechanisms could ensure that DR deployments appropriately contribute to price formation rather than price reversal?

-Do the Real-Time Market Enhancement and/or Hour-Ahead Market proposals submitted by the Market Enhancement Task Force to the Technical Advisory Committee (TAC) offer an appropriate framework for the participation of DR in the ERCOT market?

-Is load participation in the real-time market feasible when compared to voluntary price response? How does voluntary price response help set pricing or skew scarcity pricing signals?

-Would Loads in SCED attract significant DR participation beyond those resources already providing ancillary services?

TRD-201300110
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 16, 2013



Request for Comments

The staff of the Public Utility Commission of Texas requests comments in Project No. 41060, *Proceeding to Examine the Inputs Included in the ERCOT Capacity, Demand and Reserves (CDR) Report*. The following table categorizes each CDR input, along with the parameters of each, options for future reports, as well as potential obstacles and/or questions. We welcome comments and/or suggestions as to how those inputs might be revised for future reports.

CDR Input	Components	Options	Potential Obstacles/Questions
Load Forecast:	Most recent CDR is based on economic data in Moody's latest "Low Economic Growth" forecast for the ERCOT region. ERCOT's economic outlook includes non-farm employment. Developed by ERCOT on annual basis.	Other ISOs use multiple economic vendors to provide forecasts: 44% use Moody's, 31% use Global Insight, 23% create own forecast. 21% use local vendor or university. 8% use Woods and Poole.	Does the Moody's forecast currently in use support an accurate forecast of demand in the ERCOT region?
Total Summer Peak Demand	Load forecast developed annually by ERCOT including the methodology, assumptions, and data to create the forecast in the Long-Term Demand and Energy Forecast report.		Is this an accurate assessment of demand?
Less LRS Serving as RRS	Based on a statistical analysis of loads bidding into LRS over the previous peak season(s).		
Less LRS Serving as NSRS	The amount of Non-Spin a Load Resource is providing for the Peak Load Season.		NSRS not included in last two CDR reports. Should this category continue to be included?
Less ERS	Based on a statistical analysis of loads bidding into ERS over the previous peak season(s). Does not include the resources participating in the 30-minute ERS Pilot Project.		What is the effect of the new program, (weather sensitive loads), the 30-minute program, and "passive" demand response activities?
Less Energy Efficiency Programs	Developed based on statutorily-required reductions with some input by PUCT staff regarding implementation of State EE legislation. Includes DR programs developed by TSPs.		What assumptions should be incorporated into the development of the CDR to account for energy efficiency programs, including load management? Should NOIE EE programs be included? Should Non-ERCOT DR programs be listed as a separate line item?
Resources:			
Installed Capacity	The sum of available capacity information provided in the unit Resource Asset Registration forms (RARFs).		
Capacity from Private Networks	Based on statistical analysis of PJM generation during peak season scarcity conditions.		

CDR Input	Components	Options	Potential Obstacles/Questions
ELCC of Wind Generation	Effective load carrying capacity determined by ERCOT Planning Staff and then approved/modified by ERCOT BOD.	Geographically analyze the effective carrying capacity of wind generation resources (WGRs): i.e., segregation of coastal and west Texas WGRs	Is data representative of new turbines, which are more efficient? Should Coastal wind and West Texas wind be assessed separately?
RMR Units to be under contract	Sum of existing contracts between ERCOT and RMR units owners.		
50% of Non-Synchronous Ties	50% of DC-tie capacity as stipulated in Planning Guide.		Is 50% the appropriate amount?
Switchable Units	Sum of switchable units as provided in RARFs.		
Available Mothballed Generation	Based on probability of return information provided by mothball unit owners.		
Planned Units (not wind)	Units must have a signed interconnection agreement with a TO and (if needed) an air permit from TCEQ.	Three publicly announced projects are not included (i.e., projects must have a signed interconnection agreement and air permits in place to be included).	
ELCC of Planned Wind Units with Signed IA	Units must have a signed interconnection agreement with a TO and a nameplate capacity (as determined by ERCOT Planning Staff and approved/modified by ERCOT BOD).		
Less Switchable Units Unavailable to ERCOT	Based on notification to ERCOT by switchable resource owners.		
Less Retiring Units	Based on notification to ERCOT by resource owners.		

TRD-201300111
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 16, 2013



Revised Notice of Application for a Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on January 8, 2013, for a service provider certificate of operating authority, pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act.

Docket Title and Number: Application of Zone Telecom, LLC for a Service Provider Certificate of Operating Authority, Docket Number 41114.

Applicant intends to provide facilities-based and resale telecommunications services.

Applicant seeks to provide service within the entire State of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll free at (888) 782-8477 no later than February 1, 2013. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll-free at (800) 735-2989. All comments should reference Docket Number 41114.

TRD-201300065
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 11, 2013



Texas Department of Transportation

Aviation Division - Request for Qualifications for Professional Architectural/Engineering Services

The City of Bonham, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Chapter 2254, Subchapter A, of the Government Code. TxDOT Aviation Division will solicit and receive qualifications for professional aviation engineering design services described below.

The following is a listing of proposed projects at the Jones Field during the course of the next five years through multiple grants.

Current Project: City of Bonham. TxDOT CSJ No.: 13HGBONHM. Scope: Provide engineering/design services to construct multiple T-Hangar units, expand apron, and construct hangar access taxiway at Jones Field, Bonham, Texas.

The DBE goal for the current project is 12 percent. TxDOT Project Manager is Eusebio Torres.

Future scope work items for engineering/design services within the next five years may include the following:

1. Rehabilitate and mark aprons
2. Reconstruct entrance road
3. Construct auto parking

4. Install REIL Runway 17-35
5. Overlay stub taxiway
6. Install Jet A fuel system
7. Rehabilitate and mark Runway 17-35
8. Rehabilitate and mark taxiway to Runway 17
9. Rehabilitate hangar access taxiways and turnaround Runway 35
10. Rehabilitate stub taxiway

The City of Bonham reserves the right to determine which of the above scope of services may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services above.

To assist in your qualification statement preparation the criteria, 5010 drawing, project diagram, and most recent Airport Layout Plan are available online at

www.txdot.gov/inside-txdot/division/aviation/projects

by selecting "Jones Field." The qualification statement should address a technical approach for the current scope only. Firms shall use page 4, Recent Airport Experience, to list relevant past projects for both current and future scope.

Interested firms shall utilize the latest version of Form AVN-550, titled "Qualifications for Aviation Architectural/Engineering Services." The form may be requested from TxDOT Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PI-LOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at

www.txdot.gov/inside-txdot/division/aviation/projects

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. Qualifications shall not exceed the number of pages in the AVN-550 template. The AVN-550 consists of eight and one half by eleven inch pages of data plus one optional illustration page. The optional illustration page shall be no larger than eleven by seventeen inches and may be folded to an eight and one half by eleven inch size. A prime provider may only submit one AVN-550. If a prime provider submits more than one AVN-550, that provider will be disqualified. AVN-550s shall be stapled but not bound or folded in any other fashion. AVN-550s WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

Please note:

Seven completed copies of Form AVN-550 **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than **February 20, 2013, 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 AVN-550s. The committee will review all AVN-550s and rate and rank each. The Evaluation Criteria for Engineering Qualifications can be found at

www.txdot.gov/inside-txdot/division/aviation/projects

under the Notice to Consultants link. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Edie Stimach, Grant Manager. For technical questions, please contact Eusebio Torres, Project Manager.

TRD-201300125
Leonard Reese
Associate General Counsel
Texas Department of Transportation
Filed: January 16, 2013

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Public Notice - Public Hearing for Proposed Removal and Transfer to the North East Texas Regional Mobility Authority of Segments of Loop 49 in Smith County

Pursuant to Transportation Code, §228.151 and 43 TAC §27.13, the Texas Department of Transportation (department) will conduct a public hearing on Tuesday, February 5, 2013 at 6:00 p.m., at TxDOT's Tyler District Office, 2709 West Front Street, Tyler, Texas 75702, to receive comments from interested persons concerning the proposed removal from the state highway system and transfer to the North East Texas Regional Mobility Authority (authority) of segments of Loop 49 (LP 49) from State Highway 110 southeast of Tyler to Interstate 20 northwest of Tyler.

Transportation Code, §228.151 authorizes the department to lease, sell, or transfer in another manner a toll project or system that is part of the state highway system, including a nontolled state highway or a segment of a nontolled state highway converted to a toll project, to a governmental entity that has the authority to operate a tolled highway. A lease, sale, or transfer is subject to a prior public hearing in each county in which the project is located, and is subject to the Texas Transportation Commission (commission) and the Governor approving the transfer of the toll project or system as being in the best interests of the state and the entity receiving the project or system. Transportation Code, §228.153 requires the authority to reimburse the department for any expenditures of the department for the financing, design, development, construction, operation, or maintenance of the highway that have not been reimbursed with the proceeds of bonds issued for the highway, unless the commission finds that the transfer will result in substantial net benefits to the state, the department, and the public that equal or exceed that cost.

Criteria and guidelines for the approval of the transfer have been adopted by rule by the commission in 43 TAC §27.13, and specify that the commission may, after considering public comments received, approve the transfer of a toll project to the authority, if:

- (1) the authority agrees, through a written commitment, to:
 - (A) assume all liability and responsibility for the safe and effective maintenance and operation of the highway on its transfer;
 - (B) assume all liability and responsibility for existing and future environmental permits, issues, and commitments, including obtaining all environmental permits and approvals and for compliance with all federal and state environmental laws, regulations, and policies applicable to the highway and related improvements;

(C) provide for public involvement and to conduct a study of the social and environmental impact of all proposed improvements to the toll project; and

(D) if applicable, comply with the design and construction standards of 43 TAC §27.15 when developing projects on the transferred highway; and

(2) the commission finds that the transfer:

(A) is in the best interests of the state;

(B) is in the best interests of the entity receiving the project; and

(C) will not adversely affect:

(i) the financial viability of the project; or

(ii) regional mobility.

The commission may not approve the transfer unless the governor approves the transfer as being in the best interests of the state and the entity receiving the project.

Maps and drawings showing the segments of LP 49 to be transferred and other information concerning the proposed transfer are on file and available for public inspection and copying by contacting Dale Booth, Texas Department of Transportation, 2709 West Front, Tyler, Texas 75702, telephone (903) 510-9113.

All interested citizens are invited to attend this public hearing. Any interested person may appear and offer comments or testimony, either orally or in writing; however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments or testimony will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive comment. Groups, organizations, or associations are encouraged to present their commonly held views, and same or similar comments, through a representative member where possible. Presentations must remain pertinent to the issue being discussed. A person may not assign a portion of his or her time to another speaker.

Persons with disabilities who plan to attend the hearing and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are requested to contact Jay Tullos in the Tyler District, Texas Department of Transportation, 2709 West Front Street, Tyler, Texas 75702, telephone (903) 510-9153 at least two work days prior to the hearing so that appropriate arrangements can be made.

Written comments may be submitted following the public hearing to Vernon Webb, P.E., Director of Transportation Planning and Development, Texas Department of Transportation, 2709 W. Front, Tyler, Texas 75702. The deadline for submitting written comments is 5:00 p.m. on Friday, February 15, 2013.

TRD-201300126
Jack Ingram
Associate General Counsel
Texas Department of Transportation
Filed: January 16, 2013

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Texas Veterans Commission

Request for Applications Concerning the Texas Veterans Commission Fund for Veterans' Assistance Grant Program

Filing Authority. The availability of grant funds is authorized by Texas Government Code, §434.017.

Eligible Applicants. The Texas Veterans Commission (TVC) is requesting applications from organizations eligible to apply for grant funding. Eligible Applicants are units of local government, IRS Code §501(c)(19) Posts or Organizations of Past or Present Members of the Armed Forces, IRS Code §501(c)(3) private nonprofit corporations authorized to conduct business in Texas, Texas chapters of IRS Code §501(c)(4) veterans service organizations, and nonprofit organizations authorized to do business in Texas with experience providing services to veterans.

Description. The purpose of this Request for Applications (RFA) is to seek grant applications from Eligible Applicants for reimbursement grants using funds from the Fund for Veterans' Assistance (FVA). The TVC is authorized to award grants to Eligible Applicants addressing the needs of Texas veterans and their families. These needs include, but are not limited to: emergency financial assistance; transportation services; family and/or individual counseling for Post-Traumatic Stress Disorder (PTSD) and Traumatic Brain Injury (TBI); employment, training/job placement assistance; housing assistance for homeless veterans; family and child services; legal services, excluding criminal defense; and development of professional services networks.

The Texas Veterans Commission established the following priorities for this RFA: 1) Outstanding grant applications, 2) Service Categories of financial assistance, counseling, and homeless/housing, 3) Wide-spread distribution of grants across the state, and 4) Varied services in geographic areas to ensure no over-saturation or duplication of services in areas of the state.

Grant Funding Period. Grants awarded will begin on July 1, 2013, and end on June 30, 2014. All grants are reimbursement grants. Reimbursement will only be made for those expenses that occur within the term of this grant. No pre-award spending is allowed. The Agency shall disburse 10% of the awarded grant amount upon execution of the grant agreement.

Grant Amounts. For this solicitation, the minimum grant award will be \$5,000. The maximum grant award will be \$500,000.

Number of Grants to be Awarded and Total Available. The total amount of grant funding for this award is \$3,000,000. The number of awards made will be contingent upon the amount of funding requested and awarded to Eligible Applicants.

Selection Criteria. Applications will be reviewed by TVC staff for conformance to RFA guidelines. All eligible applications will be evaluated and recommended for funding by the FVA Advisory Committee. The FVA Advisory Committee will prepare a funding recommendation to be presented to the Commission for action. The Commission makes the final funding decisions based upon the FVA Advisory Committee's funding recommendation. Applications must address all requirements of the RFA to be considered for funding.

TVC is not obligated to approve an application, provide funds, or endorse any application submitted in response to this solicitation. There is no expectation of continued funding. This issuance does not obligate TVC to award a grant or pay any costs incurred in preparing a response.

Requesting the Materials Needed to Complete an Application. All information needed to respond to this solicitation will be posted to the TVC website at <http://www.tvc.texas.gov/FVAGrantApply.aspx> on or about Friday, January 25, 2013.

Further Information. In order to assure that no prospective applicant may obtain a competitive advantage because of acquisition of information unknown to other prospective applicants, all questions must be submitted via email to grants@tvc.texas.gov. All questions and the written answers will be posted on the TVC website as per the RFA.

Deadline for Receipt of an Application. Applications must be received by TVC no later than 4:00 p.m. in Austin, Texas on Thursday, February 28, 2013, to be considered for funding.

TRD-201300115

Kathy I. Wood

Director, Fund for Veterans' Assistance

Texas Veterans Commission

Filed: January 16, 2013

