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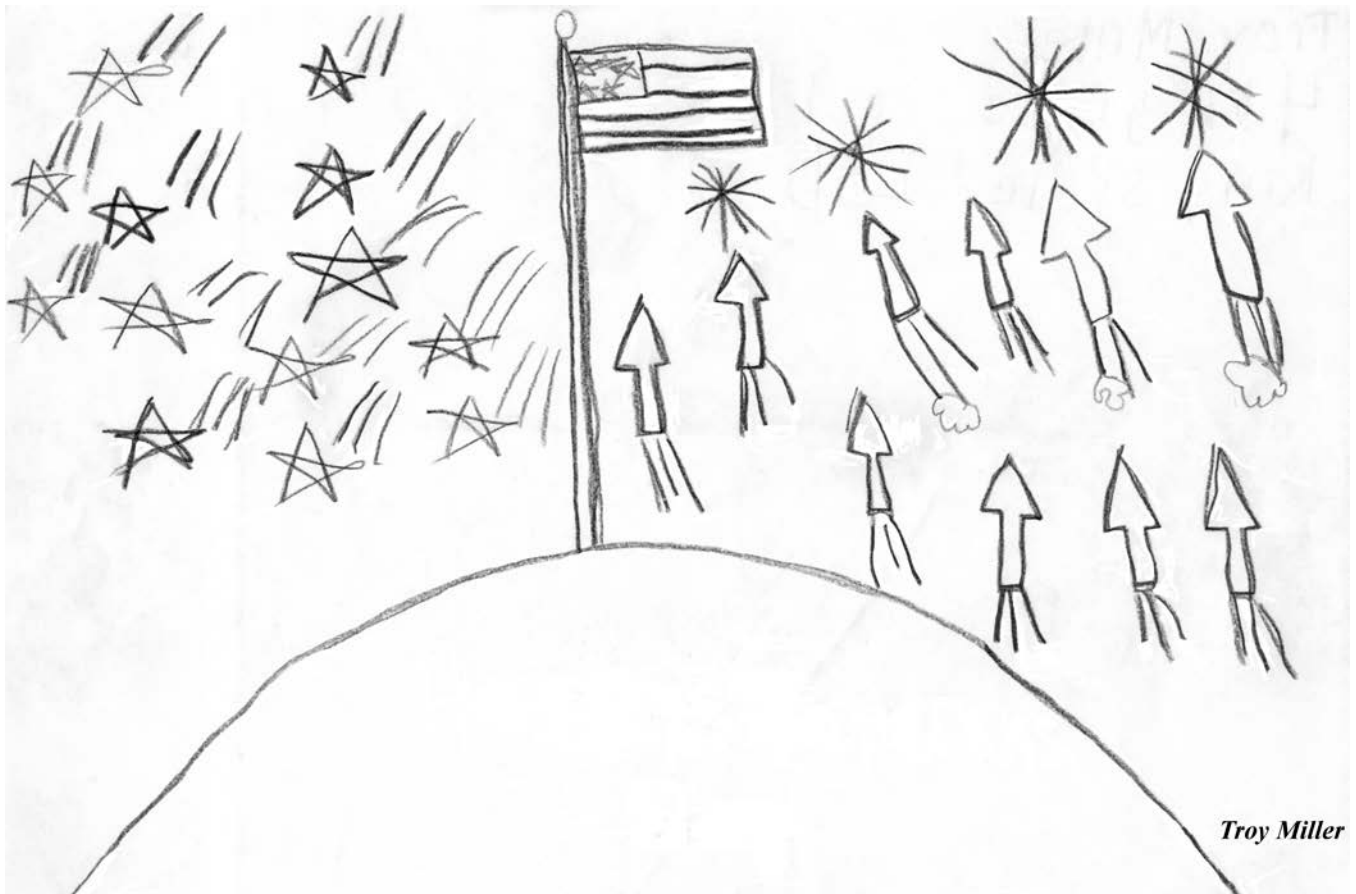
# TEXAS REGISTER

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

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# THE GOVERNOR

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

## Appointments

Appointed to the Peace Officers' Star of Texas Award Advisory Committee for a term to expire at the pleasure of the Governor, Patrick B. Hernandez of Leander (replacing Humberto Barrera of Houston).

Appointed to the Peace Officers' Star of Texas Award Advisory Committee for a term to expire at the pleasure of the Governor, Allen "D'Wayne" Jernigan of Del Rio (replacing Christine Nix of Waco who resigned).

Rick Perry, Governor

TRD-201302917



## Proclamation 41-3355

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, the resignation of The Honorable Mark Strama, and its acceptance, has caused a vacancy to exist in Texas State House District No. 50, which consists of a part of Travis County; and

WHEREAS, Article III, Section 13 of the Texas Constitution and Section 203.002 of the Texas Election Code require that a special election be ordered upon such a vacancy; and

WHEREAS, the vacancy occurred on July 2, 2013, and, therefore, pursuant to Section 203.004 of the Texas Election Code, the special election must be held on the first uniform date occurring on or after the 36th day after the date the special election is ordered; and

WHEREAS, Section 3.003 of the Texas Election Code requires the special election to be ordered by proclamation of the governor; and

WHEREAS, Tuesday, November 5, 2013, is the first uniform election date, occurring on or after the 36th day after the date the special election is ordered;

NOW, THEREFORE, I, RICK PERRY, Governor of Texas, under the authority vested in me by the Constitution and Statutes of the State of Texas, do hereby order a special election to be held in House District No. 50 on Tuesday, November 5, 2013, for the purpose of electing a state representative to serve out the unexpired term of The Honorable Mark Strama.

Candidates who wish to have their names placed on the special election ballot must file their applications with the secretary of state no later than 5:00 p.m. on September 4, 2013, in accordance with Section 201.054(a)(1), of the Texas Election Code.

Early voting by personal appearance shall begin on Monday, October 21, 2013, in accordance with Section 85.001(a) of the Texas Election Code.

A copy of this order shall be mailed immediately to the County Judge of Travis County, and all appropriate writs will be issued and all proper proceedings will be followed for the purpose that said election may be held to fill the vacancy in District No. 50 and its result proclaimed in accordance with law.

IN TESTIMONY WHEREOF, I have hereto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 11th day of July, 2013.

Rick Perry, Governor

TRD-201302918



## Proclamation 41-3356

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, RICK PERRY, Governor of the State of Texas, issued an Emergency Disaster Proclamation on July 5, 2011, certifying that exceptional drought conditions posed a threat of imminent disaster in specified counties in Texas.

WHEREAS, record high temperatures, preceded by significantly low rainfall, have resulted in declining reservoir and aquifer levels, threatening water supplies and delivery systems in many parts of the state; and

WHEREAS, prolonged dry conditions continue to increase the threat of wildfire across many portions of the state; and

WHEREAS, these drought conditions have reached historic levels and continue to pose an imminent threat to public health, property and the economy; and

WHEREAS, this state of disaster includes the counties of Anderson, Andrews, Aransas, Archer, Armstrong, Atascosa, Austin, Bailey, Bandera, Bastrop, Baylor, Bee, Bell, Bexar, Blanco, Borden, Bosque, Bowie, Brazoria, Brazos, Briscoe, Brooks, Brown, Burleson, Burnet, Caldwell, Calhoun, Callahan, Cameron, Carson, Castro, Childress, Clay, Cochran, Coke, Coleman, Collin, Collingsworth, Colorado, Comal, Comanche, Concho, Cooke, Coryell, Cottle, Crane, Crockett, Crosby, Culberson, Dallam, Dallas, Dawson, Deaf Smith, Delta, Denton, DeWitt, Dickens, Dimmit, Donley, Duval, Eastland, Ector, Edwards, Ellis, El Paso, Erath, Falls, Fannin, Fayette, Fisher, Floyd, Foard, Fort Bend, Franklin, Freestone, Frio, Gaines, Galveston, Garza, Gillespie, Glasscock, Goliad, Gonzales, Gray, Grayson, Grimes, Guadalupe, Hale, Hall, Hamilton, Hansford, Hardeman, Harris, Hartley, Haskell, Hays, Hemphill, Hidalgo, Hill, Hockley, Hood, Hopkins, Houston, Howard, Hudspeth, Hunt, Hutchinson, Irion, Jack, Jackson, Jeff Davis, Jim Hogg, Jim Wells, Johnson, Jones, Karnes, Kaufman, Kendall, Kenedy, Kent, Kerr, Kimble, King, Kinney, Kleberg, Knox, La Salle, Lamar, Lamb, Lampasas, Lavaca, Leon, Liberty, Limestone, Lipscomb, Live Oak, Llano, Loving, Lubbock, Lynn, Madison, Martin, Mason, Matagorda, Maverick, McCulloch, McLennan, McMullen, Medina, Menard, Midland, Milam, Mills, Mitchell, Montague, Montgomery, Moore, Motley, Navarro, Nolan, Nueces, Ochiltree, Oldham, Palo Pinto, Parker, Parmer, Pecos, Potter, Presidio, Rains, Randall, Reagan, Real, Red River, Reeves, Refugio, Roberts, Robertson, Rockwall, Runnels, San Jacinto, San Patricio, San Saba, Schleicher, Scurry, Shackelford, Sherman, Somervell, Starr, Stephens, Sterling, Stonewall, Sutton, Swisher, Tarrant, Taylor, Terrell, Terry, Throckmorton, Tom Green, Travis, Upton, Uvalde, Val

Verde, Victoria, Waller, Ward, Washington, Webb, Wharton, Wheeler, Wichita, Wilbarger, Willacy, Williamson, Wilson, Winkler, Wise, Yoakum, Young, Zapata and Zavala.

THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby renew the disaster proclamation and direct that all necessary measures, both public and private as authorized under Section 418.017 of the code, be implemented to meet that threat.

As provided in Section 418.016 of the code, all rules and regulations that may inhibit or prevent prompt response to this threat are suspended for the duration of the state of disaster.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 12th day of July, 2013.

Rick Perry, Governor

TRD-201302919



# THE ATTORNEY GENERAL

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

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

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

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

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Requests for Opinions

**RQ-1134-GA**

**Requestor:**

The Honorable Todd Hunter  
Chair, Committee on Calendars  
Texas House of Representatives  
Post Office Box 2910  
Austin, Texas 78768-2910

Re: Texas Windstorm Insurance Association's authority to assess insurance carriers and to use future premiums to pay prior obligations (RQ-1134-GA)

**Briefs requested by August 1, 2013**

**RQ-1135-GA**

**Requestor:**

The Honorable Susan Combs

Texas Comptroller of Public Accounts

Post Office Box 13528

Austin, Texas 78711-3528

Whether Government Code section 51.608, which requires that court costs imposed on a defendant in a criminal proceeding be the amount required on the date the defendant is convicted, violates federal and state constitutional prohibitions on retroactive laws (RQ-1135-GA)

**Briefs requested by August 5, 2013**

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

TRD-201302928

Katherine Cary

General Counsel

Office of the Attorney General

Filed: July 17, 2013

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# PROPOSED RULES

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

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

## TITLE 34. PUBLIC FINANCE

### PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

#### CHAPTER 3. TAX ADMINISTRATION

##### SUBCHAPTER C. CRUDE OIL PRODUCTION TAX

###### 34 TAC §3.36, §3.38

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Comptroller of Public Accounts or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

The Comptroller of Public Accounts proposes the repeal of §3.36, concerning estimated tax payment, and §3.38, concerning exemption for hydrocarbons produced from a Texas experimental research and recovery activity well.

Section 3.36 is being repealed because the odd-numbered calendar year estimated tax payment was repealed by the 76th Legislature, 1999, effective September 1, 2001. Section 3.38 is being repealed because, based on a recommendation of a Sunset Review of the Railroad Commission, the Texas Experimental Research and Recovery Activity (TERRA) program was repealed by the 77th Legislature, 2001, effective September 1, 2001.

The repeals are also a result of a rules review of Texas Administrative Code, Title 34, Part 1, Chapter 3, Subchapter C, conducted by the comptroller. The rules review was performed under Government Code, §2001.039.

John Heleman, Chief Revenue Estimator, has determined that repeal of the rules will not result in any fiscal implications to the state or to units of local government.

Mr. Heleman also has determined the repeals would benefit the public by improving the administration of crude oil taxation. There would be no anticipated significant economic cost to the public. This repeal is adopted under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There are no additional costs to persons who are required to comply with the repeals.

Comments on the repeals 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 repeals are 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.

The repeals implement Tax Code, §202.1515.

§3.36. *Estimated Tax Payment.*

§3.38. *Exemption for Hydrocarbons Produced from a Texas Experimental Research and Recovery Activity Well.*

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 July 8, 2013.

TRD-201302814

Ashley Harden

General Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: August 25, 2013

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



##### SUBCHAPTER O. STATE SALES AND USE TAX

###### 34 TAC §3.313

The Comptroller of Public Accounts proposes an amendment to §3.313, concerning cable television service. In recent years, technological advances have changed the nature of cable television service. Cable service providers no longer rely exclusively upon coaxial cable systems to deliver content to subscribers' televisions, instead delivering content through a variety of means to a variety of devices, including mobile devices. In addition, cable television has changed. Cable service providers now offer their customers a wide range of fixed programming options, including high definition and digital channels, as well as on-demand, pay-per-view, and streaming content. Many cable service providers also provide services in addition to cable television service, such as Internet access, telephone, and home security services. Finally, cable service providers have changed their billing practices, often offering cable television service together with other taxable services in a "bundle," meaning that all of the services are provided for a single monthly charge. The proposed amendment to §3.313 is intended to clarify the application of existing tax law and policy to the provision of cable television and related services as those services, and the means of providing them, continue to evolve.

The title of §3.313 is proposed to be changed from "Cable Television Service" to "Cable Television Service and Bundled Cable Service." This proposed title amendment reflects the changes in the cable service industry described above.

Subsection (a) is proposed to be amended and reformatted with paragraphs (1) through (7). Paragraphs (1) and (2) are added to

define the new terms "bundled cable service" and "cable service provider." Paragraph (3) is added to provide a definition of the term "cable system," which is not defined in the Tax Code, and which was not previously defined by administrative rule. The proposed definition, which will apply for purposes of this section only, is intentionally broader than the definition of the term used by the Federal Communications Commission.

Paragraph (4) clarifies the definition of "cable television service" in former subsection (a). Tax Code, §151.0033 defines cable television service as "the distribution of video programming with or without use of wires to subscribing or paying customers." Pursuant to Tax Code, §151.0101, the comptroller has exclusive jurisdiction to interpret that definition. By amending former subsection (a) of this section, the comptroller intends to make clear that the term "cable television service" encompasses all forms of video programming, including streaming video, whether provided via the Internet or other technology. It is the comptroller's intent that the definition in paragraph (4), together with the new definitions of bundled cable service, cable service provider, and cable system in paragraphs (1) through (3), will streamline the application of state and local sales tax to all video programming and to all services sold in a bundle with video programming, thereby simplifying cable service providers' tax collection responsibilities.

Paragraphs (5) and (6) are added to subsection (a) to define the new terms "fixed physical connection" and "nomadic access," respectively. In addition, new paragraph (7) is proposed to define the term "point of delivery," which was previously undefined in this section. These definitions are intended to give effect to Tax Code, §321.203(j) and §323.203(j), which are addressed in greater detail below in the discussion of the proposed revisions to subsection (g), concerning local tax, and to give cable service providers additional guidance about the sourcing of sales of cable services for local sales tax purposes.

Minor amendments are proposed to subsection (b), concerning the imposition of tax. The term "bundled cable service" is added to the body of the main paragraph to make clear that bundled cable service will be taxed in the same manner and to the same extent as cable television service. To improve the relevance of this subsection to today's marketplace, the term "digital video recorder" is added to paragraph (3) and the reference to the sale of FM radio service in paragraph (6) is deleted. Finally, in both paragraphs (3) and (4), the term "purchaser" is substituted for the term "customer." This substitution, which is intended to improve the clarity of this section, is proposed in several places throughout the section.

Minor amendments are also proposed to subsection (c), concerning the taxability of deposits. The proposed amendments would incorporate references to bundled cable service and would state more precisely that a deposit for equipment is not taxable when it is made by a purchaser who is taking possession of tangible personal property that is necessary to access the cable television or bundled cable service.

Subsection (d)(1) is reorganized and expanded to improve the clarity and accuracy of this section. New subparagraph (A) addresses the tax-exempt purchase of taxable services that will be transferred directly to a purchaser as an integral part of a cable television or bundled cable service. This exemption, created by Tax Code, §151.151, was not directly addressed in the current version of the section. In addition, the contents of former subsection (d)(1) are moved to new subparagraph (B), which addresses the purchase of services that are performed on exempt tangible

personal property. In this proposed subparagraph, which implements Tax Code, §151.3111, the term "digital video recorder" is used in place of the term "converter" to reflect changes in the marketplace.

Amendments to improve clarity and readability are also proposed to subsection (d)(2) and subsections (e) and (f). No substantive changes to policy are intended as a result of these proposed amendments.

Finally, subsection (g), concerning local tax, is proposed to be amended and reformatted with paragraphs (1) through (7). Paragraph (1) explains that local tax is due on the sale of cable television and bundled cable service based upon the point of delivery to the purchaser. Paragraph (2) restates the local sales tax exemption created by federal law for direct-to-satellite service providers, which is currently set out in subsection (g). This new paragraph also explains that a bundled cable service provided by means of a direct-to-satellite connection is taxed in the same manner as cable television service provided through such a connection.

Subsection (g)(3) explains how the point of delivery of a cable television or bundled cable service is determined. The primary goal of subsection (g)(3) is to give effect to Tax Code, §321.203(j) and §323.203(j). The legislature first enacted these provisions (which originally applied to sales of "cable television service") in 1987. The Bill Analysis prepared by the House Committee on Ways and Means stated that these statutory amendments would "define the point of sale for cable television services as the point at which the consumer receives the service, so that consumers would pay local sales tax to the city in which they live." See House Bill 133, 70th Legislature, 1987. The Bill Analysis acknowledged that, absent such a specific sourcing provision, a purchaser of taxable cable service would pay local tax to the "foreign" jurisdiction from which the cable service originated, not to the local jurisdiction in which the purchaser lived. In 2003, the legislature amended the provisions of the Tax Code to state "that the sale of services delivered via cable systems is consummated at the point of delivery to the consumer."

In 1987, the terms "point of delivery" and "point at which the consumer receives the service" would have been synonymous and clearly understood. At the time, all cable services were provided over coaxial cable. Advances in technology, however, have made the terms ambiguous. The definition proposed in subsection (a)(7), together with the sourcing rules provided in subsection (g)(3), are intended to resolve this ambiguity and create a clear, administratively-feasible rule that will adhere to the legislative intent behind "point of delivery" without requiring providers to undertake the herculean effort of determining the exact physical location at which each purchaser receives any portion of a cable television or bundled cable service. This policy change is prospective from the effective date of the adoption of the amendment to the section.

Subsection (g)(3)(A) provides that when an account is associated with a fixed physical connection, the address of that physical connection shall be the point of delivery, even if the purchaser also has the option of nomadic access. Subsection (g)(3)(B) provides that if there is no fixed physical connection, and the cable television or bundled cable service is provided by an entity that is also a mobile telecommunications service provider, then the point of delivery shall be the place of primary use of the purchaser's mobile device. Subsection (g)(3)(C), which applies only when subparagraphs (A) and (B) do not, states that the point of delivery shall be either the mailing address of the purchaser or

the billing address associated with the purchaser's payment instrument, if the cable service provider maintains either address in its books and records. A purchaser may voluntarily provide its mailing address in this state to a cable service provider, even if the provider does not request that address, in order to ensure that the provider only collects from the purchaser those local taxes that are actually due. Finally, subsection (g)(3)(C)(iii) states that if the cable service provider does not and cannot deliver any services to the purchaser by means of a fixed physical connection, is not a mobile telecommunications service provider, and does not maintain an address for the purchaser in its books and records, and if the purchaser has not otherwise provided its Texas mailing address to the provider, then the provider shall use as the point of delivery the address, "Unspecified Jurisdiction, Texas." For local sales tax purposes only, and only in this limited circumstance, the cable service provider shall collect local sales tax at the maximum two percent rate, and the comptroller shall allocate to each local taxing jurisdiction its share of the local tax revenue remitted with no specific jurisdiction identified.

The statutory basis for the requirements of subsection (g)(3) originates in Tax Code, §151.054 and §151.107, which create a presumption that all gross receipts of a seller engaged in business in Texas are subject to Texas sales tax. Tax Code, §321.003 and §323.003 each provide, "Chapters 142 and 151 apply to the taxes and the administration and enforcement of the taxes imposed by this chapter in the same manner that those laws apply to state taxes...." Thus, the gross receipts of a seller are also presumed to be subject to both state and local sales tax. See also Comptroller's Decision No. 43,887 (2005) ("Local sales and use tax is imposed on each taxable sale made in this state, and the amount subject to local sales and use tax is the same tax base as the state's sales and use tax base. Thus, when taxpayers make tax errors, it is the general practice for auditors to schedule taxable amounts to which both state and applicable local tax rates are applied. Transactions are scheduled in a way that the appropriate local jurisdiction would get the local tax assessment.") The proposed amendments to subsection (g) apply the presumption of taxability to the sale of cable television and bundled cable service. In the event that a cable service provider does not retain records sufficient to determine the point of delivery more precisely, sales of cable television and bundled cable service will be presumed to be subject to, and tax shall be collected at, the rate of two percent, and the comptroller shall allocate a proportional share of the revenue collected to each local taxing jurisdiction. This provision will ensure that local jurisdictions receive the revenue to which they are entitled while recognizing the limitations of current business models.

New subsection (g)(4) outlines a purchaser's rights and remedies in the event that a cable service provider relies upon an inaccurate point of delivery when calculating the purchaser's local sales tax. As explained in subsection (g)(4)(A), a purchaser who does not have a fixed physical connection, and who is not receiving service from a cable service provider who is also a provider of mobile telecommunications services, may contact his or her cable service provider to provide or update the mailing address that will be considered to be the point of delivery to the purchaser. A cable service provider who accepts a purchaser's statement regarding the place of delivery in good faith will not be held liable for any additional tax, penalty, or interest if the comptroller subsequently determines that the statement is invalid. In addition, subsection (g)(4)(B) outlines how a purchaser may obtain a refund of local sales tax if a cable service provider collects and remits local tax in error.

New subsection (g)(5) explains that the hierarchy outlined in subsection (g)(3) also applies when determining the point of delivery of cable services provided by means of nomadic access.

Subsection (g)(6) and (7) explain that the point of sale of taxable items other than cable television or bundled cable service is determined based upon the generally-applicable provisions of Tax Code, §321.203 and §323.203, not §321.203(j) and §323.203(j). These paragraphs reflect longstanding agency policy regarding sourcing for local sales tax purposes.

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 clarification for providers of cable television and bundled cable services, and their customers. 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*.

This 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.

The proposed amendments implement Tax Code, §§151.0033, 151.0101, 151.025, 321.003, 321.203, 323.003, and 323.203.

*§3.313. Cable Television Service and Bundle Cable Service.*

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

(1) Bundled cable service--The provision of cable television service and at least one other taxable service by a cable service provider through a cable system for a single price. Other taxable services may include, but are not limited to, telecommunications services, as defined in §3.344 of this title (relating to Telecommunications Services); Internet access services, as defined in §3.366 of this title (relating to Internet Access Services); data processing services, as defined in §3.330 of this title (relating to Data Processing Services); information services, as defined in §3.342 of this title (relating to Information Services); and security services, as defined in §3.333 of this title (relating to Security Services). Services sold to a purchaser by a third party, rather than the cable service provider, are not bundled cable services even if they are provided by means of a cable system.

(2) Cable service provider--A person who provides cable television service or bundled cable service through a cable system.

(3) Cable system--The system through which a cable service provider delivers cable television or bundled cable service. A cable system may comprise any or all of the following: tangible personal property; real property; and other media, such as radio waves, microwaves, or any other means of conveyance now in existence or that may be developed.

(4) [(a)] Cable television service--The digital[; Cable television service is the] distribution of video programming to purchasers

by any means now in existence or that may be developed[; with or without the use of wires, to subscribing or paying customers]. The term includes, but is not limited to, direct broadcast satellite service (DBS);<sup>2</sup> subscription television service (STV);<sup>2</sup> satellite master antenna television service (SMATV);<sup>2</sup> master antenna television service (MATV);<sup>2</sup> multipoint distribution service (MDS);<sup>2</sup> [; and] multichannel multipoint distribution service (MMDS); fixed programming; and any audio portion of a video program; streaming video programming provided via the Internet or other technology, regardless of the type of device used by the purchaser to receive the service; video on demand services or subscription services that allow purchasers to choose from a library of available content; and any other video programming provided in exchange for consideration. The term does not include the provision of tangible personal property, such as video content that has been downloaded by the purchaser or is stored on a compact disc or other physical media, or the provision of telecommunications services, as defined in §3.344 of this title.

(5) Fixed physical connection--The place at a purchaser's residence or business where the cable service provider or its agent has installed any materials or equipment that connect the purchaser to the provider's cable system. For example, a coaxial cable connection at a distribution box or an outdoor antenna or dish that connects to a satellite receiver is a fixed physical connection.

(6) Nomadic access--The ability to access cable television service or bundled cable service from multiple locations with or without the use of a fixed physical connection.

(7) Point of delivery--The physical address of the purchaser's fixed physical connection or, in the absence of such connection, the physical address of the purchaser at which the cable television or bundled cable service is considered to be received, as determined in subsection (g)(3) of this section.

(b) Imposition of tax. The sale of cable television or bundled cable service,<sup>2</sup> and any services or expenses connected to the provision of the service, are subject to [the] sales and use tax. Taxable charges include:

(1) service connection fees. The term "service connection fee" includes terms such as installation, connect, or reconnect;

(2) charges for video programming services;

(3) charges for tangible personal property [taxable items], such as converters,<sup>2</sup> [and] descramblers, and digital video recorders, transferred to the care, custody, and control of purchasers as an integral part of the services provided [customers];

(4) amounts billed to purchasers [customers] for [taxable] repairs or maintenance;

(5) municipal franchise fees; and

(6) any licensing fees for the right to receive or distribute a satellite signal. [No tax is due on separate charges for FM radio service.]

(c) Deposits. A deposit that represents future payment for cable television or bundled cable service is part of the sales price of the service and is taxable when the deposit is used to pay for the service. A deposit paid to receive equipment that is transferred to the care, custody, and control of the purchaser as an integral part of the service, such as a converter that is returned to the cable [television] service provider when the service is terminated,<sup>2</sup> is not taxable.

(d) Sales for resale.

(1) Taxable services. A cable service provider may issue a resale certificate [may be used] to purchase a taxable service tax free in the following circumstances:

(A) if the service will be transferred as an integral part of the [a taxable] cable television or bundled cable service. For example, if a cable service provider sells a bundled cable service that includes data storage, and the provider purchases data storage capacity from a third party, then the provider may issue a resale certificate to the provider of the data storage capacity; or

(B) if the service is performed on tangible personal property that the cable service provider will transfer to the care, custody, and control of the purchaser as an integral part of the cable television or bundled cable service. For example, [;] if a cable [television] service provider that provides digital video recorders [converters] to purchasers hires a third party to repair [its customers and] a digital video recorder, then the [converter is repaired by a third party; the cable television service] provider may issue [give] a resale certificate to the repair service provider in lieu of paying tax on the [purchased] repair service. See §3.285 of this title (relating to Resale Certificate; Sales for Resale).

(2) Tangible personal property. A resale certificate may be used to purchase tangible personal property tax free if [the] care, custody, and control of the property are [is] transferred to the purchaser [customer as a part] of the cable television or bundled cable service as an integral part of the service. For example, a cable [television] service provider may issue [give] a resale certificate to the seller of [converters and] remote controls that are provided to purchasers of the cable television service [customers] as part of the sale of the [cable television] service. See §3.285 of this title.

(c) Taxable purchases. [A cable television service provider owes tax on equipment and supplies that are not transferred to the care, custody, and control of its customer but are used in providing the service. Equipment and supplies purchased out of state and brought or shipped into Texas for use in providing the service are subject to Texas use tax. See §3.346 of this title (relating to Use Tax). Credit will be allowed against the use tax for any sales or use tax legally imposed and paid to another state. See §3.338 of this title (relating to Multistate Tax Credits and Allowance of Credit for Tax Paid to Suppliers). For example, a cable television service provider must pay tax on the satellite receiving and transmitting equipment, cables, and wiring that are not located on a customer's premises that are used to provide the service.]

(1) Taxable services. A cable service provider owes tax on its purchases of taxable services that are not transferred to purchasers as an integral part of a cable television or bundled cable service, but are instead used by the cable service provider in providing that service.

(2) Tangible personal property. A cable service provider owes tax on its purchases of equipment, supplies, and other items that are not transferred to the care, custody, and control of purchasers as an integral part of the cable television or bundled cable service, but are instead used by the cable service provider to provide that service. For example, a cable service provider owes tax on the satellite receiving and transmitting equipment, cables, and wiring that it uses to provide cable television service and that are not located on the purchaser's premises. Taxable items that a cable service provider purchases out of state and brings into Texas for use in providing a cable television bundled cable service are subject to Texas use tax. See §3.346 of this title (relating to Use Tax). Credit will be allowed against the use tax for any sales or use tax legally imposed and paid to another state. See §3.338 of this title (relating to Multistate Tax Credits and Allowance of Credit for Tax Paid to Suppliers).

(f) Real property rental. An owner of real property, such as an apartment complex or hotel, that provides cable television or bundled cable service to its residents or guests must collect sales tax on any charge it imposed on residents or guests that is attributable to the cable television or bundled cable service. If the owner does not charge the residents or guests for the cable television or bundled cable service, the owner is the consumer of the service and must pay tax on that service and all services or expenses connected to the provision of that service, in accordance with subsection (b) of this section [all taxable items purchased].

(g) Local tax. [The sale of cable television service occurs at the point of delivery to the customer. Cable television service providers must collect local tax, if adopted, for the city, county, transit authority, and any special purpose districts in which delivery is made to the customer. However, direct-to-home satellite cable television service programming transmitted or broadcast directly to a customer's premises, including a residence, hotel, or motel, without use of ground receiving or distribution equipment, except at the subscriber's premises or in the uplink process to the satellite is not subject to local tax under the Telecommunications Act of 1996, §602. Equipment used to provide direct-to-home satellite cable television service is subject to local sales and use taxes, unless otherwise exempted by this section.]

(1) Cable service providers are required to collect all local tax due on the sale of a cable television or bundled cable service, and on all services or expenses connected with the provision of that service, in accordance with subsection (b) of this section, based upon the point of delivery to the purchaser. For more information regarding the calculation of local tax, see Tax Code, Title 3, Subtitle C.

(2) Direct-to-home satellite. The sale of cable television or bundled cable service by means of direct-to-home satellite is exempt from local tax under the Telecommunications Act of 1996, §602. For purposes of this section, direct-to-home satellite refers to cable television or bundled cable service that is transmitted directly to a purchaser's premises, including a residence, hotel, or motel, without use of ground receiving or distribution equipment, except at the purchaser's premises or in the uplink process to the satellite. Tangible personal property transferred to the care, custody, and control of the purchaser as an integral part of the cable television or bundled cable service is considered to be part of the service and is also exempt from local tax. Equipment used by a cable service provider to provide direct-to-home satellite cable television or bundled cable service is subject to local sales and use taxes, unless otherwise exempt.

(3) Point of delivery.

(A) Service delivered through a fixed physical connection.

(i) If a cable service provider delivers, or under its contract with the purchaser is able to deliver, cable television or bundled cable service, or any portion or element thereof, to the purchaser by means of a fixed physical connection, then the address of that fixed physical connection is the point of delivery, even if the purchaser can access the service both through a fixed physical connection and by means of nomadic access.

(ii) Two or more fixed physical connections. If fixed physical connections at two or more locations are associated with a single account, then the service provider must collect local taxes for each separately stated charge for cable television or bundled cable service based upon the location of the fixed physical connection to which the charge is allocable. For example, if a purchaser's account is associated with coaxial cable connections in City A and in City B, and the purchaser incurs a separately stated charge for a pay-per-view movie that is provided through the coaxial cable connection in City B, then the

service provider should collect local taxes on the pay-per-view charge using the City B location as the point of delivery. If the service provider cannot determine the location of the fixed physical connection to which a charge is allocable, then the point of delivery is the location of the fixed physical connection designated by the purchaser prior to or at the time of purchase. Information about a purchaser's designated point of delivery must be maintained in the seller's books and records. For example, if a purchaser's account is associated with fixed physical connections at two or more locations, and the purchaser incurs a separately stated charge for video programming that is provided by means of nomadic access, then the point of delivery is the location of the fixed physical connection designated by the purchaser prior to or at the time of purchase.

(B) Service delivered by mobile telecommunications service provider. If the purchaser's account does not have a fixed physical connection, and if the cable service provider is also a mobile telecommunications service provider, then the point of delivery to the purchaser is the purchaser's place of primary use of the mobile telecommunications service, as that term is defined in §3.344 of this title.

(C) Service delivered without a fixed physical connection. If the purchaser does not have a fixed physical connection, and the cable service provider is not a mobile telecommunications service provider, then the point of delivery shall be:

(i) the purchaser's mailing address in this state. For example, if there is no fixed physical connection, but the cable service provider sends invoices to the purchaser at a mailing address in this state, or has on file in its books and records for the purchaser a mailing address in this state, then the purchaser's Texas mailing address is the point of delivery. A cable service provider acting in good faith may rely upon a statement from a purchaser regarding the purchaser's mailing address as provided in paragraph (4) of this subsection, in which case the provider will not be held liable for any additional tax, penalty, or interest if the comptroller subsequently determines that the statement is invalid;

(ii) the address in this state that is associated with the payment instrument used by the purchaser to pay for the service, but only if the cable service provider cannot determine, or the purchaser has not provided, a mailing address in this state under clause (i) of this subparagraph; or

(iii) Unspecified Jurisdiction, Texas, if neither clause (i) nor (ii) of this subparagraph applies, in which case the cable service provider shall be responsible for collecting and remitting local sales tax at the rate of 2.0%, and reporting the point of delivery on its sales and use tax returns as Unspecified Jurisdiction, Texas. The comptroller shall allocate to each local taxing jurisdiction its share of the local tax revenue remitted with no specific jurisdiction identified.

(4) Purchaser's rights and remedies.

(A) Mailing address. If the point of delivery to the purchaser is not a fixed physical connection under paragraph (3)(A) of this subsection or the place of primary use under paragraph (3)(B) of this subsection, then the purchaser may contact the cable service provider to provide an accurate mailing address or to update the mailing address already in the provider's books and records. The cable service provider must then collect local tax on the sale of cable television and bundled cable service to the purchaser based upon the point of delivery determined in accordance with paragraph (3)(C)(i) of this subsection using the information provided by the purchaser.

(B) Refund. If a cable service provider collects local sales tax from a purchaser in error, then the purchaser may request a

refund of that local sales tax from the comptroller in accordance with the procedures set forth in §3.325 of this title, (relating to Refunds and Payments Under Protest).

(5) Nomadic access. If a purchaser has an account with nomadic access, the point of delivery is determined in accordance with paragraph (3) of this subsection.

(6) Tangible personal property. Tangible personal property that is transferred to the care, custody, and control of the purchaser as an integral part of a cable television or bundled cable service is regarded as a component of that service and is subject to local tax based upon the point of delivery to the purchaser in accordance with paragraph (3) of this subsection. A cable service provider is responsible for collecting local tax in accordance with Tax Code, Title 3, Subtitle C on any other sale, lease, or rental of tangible personal property. When a cable service provider charges a single price for the provision of both cable television or bundled cable service and tangible personal property that is not an integral part of that service, such as the rental of compact discs containing video programming, then the cable service provider must identify in its contracts, invoices, or books and records that portion of each charge that is attributable to the provision of tangible personal property and must collect local sales tax upon that amount in accordance with the provisions of the Tax Code governing the application of local tax to the sale of tangible personal property.

(7) Other taxable services.

(A) A cable service provider providing a service other than cable television or bundled cable service through a cable system is responsible for collecting local tax on the separately stated charges for that service in accordance with Tax Code, Title 3, Subtitle C, or, if applicable, the specific provisions of the section of the title that address the services provided. For example, a cable service provider who provides an information service for a separate charge must collect the local tax due on that charge in accordance with the provisions of Tax Code, §321.203 and §323.203.

(B) A service provider, other than a cable service provider, who provides services through a cable system is responsible for collecting local tax on those services in accordance with Tax Code, Title 3, Subtitle C, or, if applicable, the specific provisions of the section of the title that address the services provided.

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 July 15, 2013.

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Ashley Harden

General Counsel

Comptroller of Public Accounts

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



## SUBCHAPTER S. MOTOR FUEL TAX

### 34 TAC §3.437

The Comptroller of Public Accounts proposes an amendment to §3.437, concerning trip permit in lieu of interstate trucker license. Subsection (a) states this rule applies only to motor fuel transactions that take place on or after January 1, 2004. Motor fuel transactions that occur prior to January 1, 2004, were governed

by sections in Texas Administrative Code, Title 34, Part 1, Chapter 3, Subchapter L. The amendment removes subsection (a) and subsequent subsections are re-lettered.

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 removing outdated references. 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 78711-3528. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendment is proposed under Tax Code, §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.

This amendment implements Tax Code, §§162.001(36), 162.003, 162.106, 162.110, 162.207, and 162.211.

*§3.437. Trip Permit in Lieu of Interstate Trucker License [(Tax Code, §§162.003, 162.106, 162.110, 162.207, and 162.211)].*

{(a) This rule applies only to motor fuel transactions that take place on or after January 1, 2004. Motor fuel transactions that occur prior to January 1, 2004, will be governed by sections in Texas Administrative Code, Title 34, Part 1, Chapter 3, Subchapter L.}

(a) [(b)] Who may qualify. A person entering Texas for commercial purposes with a motor vehicle that has two axles and a registered gross weight in excess of 26,000 pounds; or has three or more axles, or is used in combination and the registered gross weight of the combination exceeds 26,000 pounds, may purchase a temporary trip permit in lieu of the required interstate trucker license or registration under a multistate tax agreement (International Fuel Tax Agreement) if no more than five entries into the state are made during a calendar year.

(b) [(c)] Conditions.

(1) A trip permit must be obtained before or at the time of entry into Texas.

(2) The trip permit is valid for 20 days from date of purchase.

(3) The trip permit may be used for only one entry into the state.

(c) [(d)] Procedures.

(1) A fee of \$50 for the trip permit shall be paid to the Texas comptroller.

(2) The fee may be paid in the form of a cashier's check or a money order delivered by mail or wire service to the Texas comptroller's office, Austin.

(3) The receipt from the cashier's check or money order shall be marked "trip permit" and, identify the motor vehicle by license plate number or the manufacturer's vehicle identification number.

(4) The receipt must be carried in the vehicle for which the tax payment is made.

(d) [(e)] Limitations. Persons who make more than five entries in a calendar year must obtain an interstate trucker license or register under a multistate tax agreement (International Fuel Tax Agreement).

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

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Ashley Harden

General Counsel

Comptroller of Public Accounts

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



### 34 TAC §3.439

The Comptroller of Public Accounts proposes an amendment to §3.439, concerning motor fuel transportation documents. Subsection (a) states this rule applies only to motor fuel transactions that take place on or after January 1, 2004. Motor fuel transactions that occur prior to January 1, 2004, were governed by sections in Texas Administrative Code, Title 34, Part 1, Chapter 3, Subchapter L. The amendment removes subsection (a) and subsequent subsections are re-lettered. Re-lettered subsection (b)(7) is amended to include fuel ethanol and renewable diesel, as they are treated the same as biodiesel per Tax Code, §162.204(a)(9). Re-lettered subsection (b)(15) is added to reference import verification and diversion numbers and subsequent paragraph is re-numbered. The reference to (c) in new subsection (c) was re-lettered to (b).

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 removing outdated references and providing businesses in this industry with the information required for record keeping purposes. 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 78711-3528. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendment is proposed under Tax Code, §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.

This amendment implements Tax Code, §162.004.

§3.439. *Motor Fuel Transportation Documents.*

{(a)} This rule applies only to motor fuel transactions that take place on or after January 1, 2004. Motor fuel transactions that occur

prior to January 1, 2004, will be governed by sections in Texas Administrative Code, Title 34, Part 1, Chapter 3, Subchapter L. The words and terms used in this section have the same meaning as those defined in Tax Code Chapter 162.

(a) [(b)] Manifest required.

(1) A terminal operator or an operator of a bulk plant must give a shipping document or cargo manifest to the person who operates the barge, vessel, railroad tank car, or transport vehicle into which motor fuel is loaded at the terminal rack or bulk plant rack. The terminal operator or operator of the bulk plant must keep copies of shipping documents for at least four years.

(2) A motor fuel transporter must carry the shipping document or cargo manifest in the transport vehicle for which the document was issued when transporting the fuel described in the document. The motor fuel transporter must keep copies of shipping documents for at least four years.

(b) [(e)] Information required. The cargo manifest or shipping document shall be issued in sufficient quantities to provide coverage for the record keeping requirements of all parties involved in the transaction and shall contain the following information:

(1) the name and physical address or Terminal Code Number assigned by the United States Internal Revenue Service of the terminal or the name and physical address of the bulk plant at which the cargo was loaded;

(2) the date of loading or movement;

(3) the type of motor fuel that is cargo, and if the fuel is dyed diesel fuel, a notice that states "Dyed Diesel Fuel, Nontaxable Use Only, Penalty for Taxable Use";

(4) the number of gallons:

(A) in net temperature-adjusted gallons when loaded from a terminal; or

(B) in gross gallons if loaded from a bulk plant;

(5) the percentage of ethanol or methanol contained in the motor fuel;

(6) the types and percentages of cosolvents contained in the motor fuel, if methanol has been added;

(7) the percentage of water, fuel ethanol, renewable diesel, or biodiesel blended with petroleum diesel fuel;

(8) the destination of the cargo;

(9) the name of the seller, consignor, or shipper;

(10) the name, federal employer identification number, license, or permit number if applicable, and physical address of the purchaser or consignee. If the federal identification number, license, or permit number, and physical address of the purchaser or consignee are not printed on the cargo manifest or shipping document, then that information must be in the records of the terminal or bulk plant operator and available for review;

(11) the name and the federal employer identification number or social security number of the carrier. If the federal identification number or social security number of the carrier is not printed on the cargo manifest or shipping document, then that information must be in the records of the terminal or bulk plant operator and made available for review when requested;

(12) the method of transportation:

(A) if by truck, the license or unit number;

(B) if by barge or boat, the name of the vessel; or

(C) if by railway, the rail car number and initial;

(13) the name of the person responsible for payment of the tax as given to the terminal operator if different from the licensed supplier, permissive supplier, distributor, or importer. If this information is not printed on the manifest or shipping document, it must be in the records of the terminal operator and made available for review when requested;

(14) the amount of delivery fee assessed under Water Code, §26.3574; ~~and~~

(15) import verification number or diversion number when required under §3.441 of this title (relating to Documentation of Imports and Exports, Import Verification Numbers, Export Sales, and Diversion Numbers); and

(16) ~~[(15)]~~ any other information the comptroller deems necessary for the proper administration of Tax Code, Chapter 162.

(c) ~~[(d)]~~ Waybills or bills of lading. If a carrier transports motor fuel for which a waybill is required under the regulations of the Texas Railroad Commission, or a bill of lading is required under the regulations of the United States Department of Transportation, or if similar documentation is required by another regulatory agency, these documents may be used in lieu of the manifest or shipping document prescribed in this section, so long as the waybill, bill of lading, or similar document lists the information described in subsection (b) ~~[(e)]~~ of this section.

(d) ~~[(e)]~~ Delivery of cargo manifest or shipping document. One copy of the shipping document or cargo manifest shall be delivered to the purchaser when the fuel is delivered, and the seller shall retain one copy. If a motor fuel transporter delivers the fuel, the motor fuel transporter must also retain one copy. Copies of shipping documents must be retained by the seller, transporter, and receiver for at least four years from the date of delivery.

(1) If the motor fuel transporter receives cargo at different locations, a notation of the fuel loaded at each location must be made on the cargo manifest by the motor fuel transporter or a separate manifest that covers the fuel or blend material loaded at each location must be issued by the terminal operator or the operator of the bulk plant or the seller of the blend material.

(2) If the motor fuel transporter off-loads cargo at various locations, then the motor fuel transporter must note the fuel off-loaded on the required cargo manifest, or a customer invoice indicating the location and amount of motor fuel that has been off-loaded at each location. If separate invoices are used, then the invoices must be attached to or cross referenced to the manifest for record purposes. The cargo manifest or a copy of the customer invoice shall be retained with the transporting vehicle until the motor fuel is removed from the cargo tank.

(3) A cargo manifest is not required if an end user transports motor fuel in the user's own cargo tank, and the fuel is for the end user's use and not for resale.

(4) If the delivery fee assessed under Water Code, §26.3574, is not shown on the cargo manifest, it must be shown on the invoice that covers the delivery, and be cross referenced to the manifest or shipping document for record purposes.

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

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Ashley Harden

General Counsel

Comptroller of Public Accounts

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### 34 TAC §3.440

The Comptroller of Public Accounts proposes an amendment to §3.440, concerning on-highway travel of farm machinery. Subsection (a) states this rule applies only to motor fuel transactions that take place on or after January 1, 2004. Motor fuel transactions that occur prior to January 1, 2004, were governed by sections in Texas Administrative Code, Title 34, Part 1, Chapter 3, Subchapter L. The amendment removes subsection (a) and subsequent subsections are re-lettered.

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 removing outdated references. 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 78711-3528. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendment is proposed under Tax Code, §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.

This amendment implements Tax Code, §162.103 and §162.203.

*§3.440. On-Highway Travel of Farm Machinery [(Tax Code, §162.103 and §162.203)].*

~~[(a)]~~ This rule applies only to motor fuel transactions that take place on or after January 1, 2004. Motor fuel transactions that occur prior to January 1, 2004, will be governed by sections in Texas Administrative Code, Title 34, Part 1, Chapter 3, Subchapter L.]

~~(a)~~ ~~[(b)]~~ Owners or operators of multiple farms, ranches, or similar tracts of land in the same vicinity may move farm tractors, combines, and similar self-propelled farm machinery over the public highways for the purpose of transferring the base of operation of the machinery.

~~(b)~~ ~~[(e)]~~ Gasoline and diesel fuel used for travel on the highway for any purpose other than for moving the machinery from one tract of land to another to change base of operation shall be considered taxable.

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 July 15, 2013.

TRD-201302886

Ashley Harden

General Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: August 25, 2013

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



## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### PART 11. TEXAS JUVENILE JUSTICE DEPARTMENT

#### CHAPTER 346. FUNDING FORMULAS

Senate Bill 653 (82nd Texas Legislature) removed the requirement for the Texas Juvenile Justice Department (TJJD) to adopt rules that establish funding formulas for allocating state aid to local juvenile probation departments. Accordingly, TJJD proposes the repeal of Chapter 346, §§346.100, 346.200, 346.202, 346.204, 346.206, 346.208, and 346.210, concerning Funding Formulas. The repeal of Chapter 346 will allow the TJJD Board more flexibility in developing formulas to distribute county funding. Flexibility is needed to appropriately accommodate the specific appropriation pattern enacted during each legislative session and to implement the funding formulas after the appropriations bill is signed but before the beginning of the state fiscal year.

Mike Meyer, Chief Financial Officer, has determined that for the first five-year period the repeal is in effect, there will be no significant fiscal impact for state government as a result of enforcing or administering the repeal. However, the fiscal impact of the repeal on local governments cannot be determined at this time because the TJJD Board has not yet adopted final funding distributions for any of the upcoming five fiscal years. The effect on individual juvenile probation departments may vary; however, staff recommendations for the 2014-2015 fiscal biennium are consistent with the methodology employed in 2012-2013.

Brett Bray, General Counsel, has determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of administering the repeal will be a more flexible system for determining appropriate funding formulas.

There will be no effect on small businesses or micro-businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed. No private real property rights are affected by adoption of this repeal.

Comments on the proposal may be submitted within 20 days after publication of this notice to Steve Roman, Policy Coordinator, Texas Juvenile Justice Department, P.O. Box 12757, Austin, Texas 78711 or email [policy.proposals@tjjd.texas.gov](mailto:policy.proposals@tjjd.texas.gov). The reduced comment period is necessary to allow sufficient time for the repeal to be adopted by the TJJD board at its last meeting in fiscal year 2013.

#### SUBCHAPTER A. DEFINITIONS

##### 37 TAC §346.100

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of*

*the Texas Juvenile Justice Department or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

The repeal is proposed under Human Resources Code §242.003, which provides TJJD with the authority to adopt rules appropriate to the proper accomplishment of its functions, and by the removal of Human Resources Code §141.081(d), which formerly required the agency to adopt rules establishing funding formulas for allocating state aid to county juvenile probation departments.

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

##### §346.100. Definitions.

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 July 11, 2013.

TRD-201302864

Brett Bray

General Counsel

Texas Juvenile Justice Department

Earliest possible date of adoption: August 25, 2013

For further information, please call: (512) 490-7014



#### SUBCHAPTER B. GRANTS

##### 37 TAC §§346.200, 346.202, 346.204, 346.206, 346.208, 346.210

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Juvenile Justice Department or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

The repeals are proposed under Human Resources Code §242.003, which provides TJJD with the authority to adopt rules appropriate to the proper accomplishment of its functions, and by the removal of Human Resources Code §141.081(d), which formerly required the agency to adopt rules establishing funding formulas for allocating state aid to county juvenile probation departments.

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

##### §346.200. Grant A State Aid.

##### §346.202. Grant C Commitment Reduction Program.

##### §346.204. Grant H Diversionary Fund.

##### §346.206. Grant U Intensive Community-Based Pilot.

##### §346.208. Grant X Intensive Community-Based Program.

##### §346.210. Grant Y Community Corrections.

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 July 11, 2013.

TRD-201302865

Brett Bray

General Counsel

Texas Juvenile Justice Department

Earliest possible date of adoption: August 25, 2013

For further information, please call: (512) 490-7014

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# TITLE 40. SOCIAL SERVICES AND ASSISTANCE

## PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

### CHAPTER 48. COMMUNITY CARE FOR AGED AND DISABLED

#### SUBCHAPTER K. MINIMUM STANDARDS FOR ADULT FOSTER CARE

##### 40 TAC §48.8902, §48.8903

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), amendments to §48.8902, concerning provider qualifications and §48.8903, concerning substitute provider qualifications; in Chapter 48, Community Care for Aged and Disabled.

##### BACKGROUND AND PURPOSE

The purpose of the proposed amendments is to update requirements for adult foster care (AFC) providers and substitute providers. AFC services are provided under Title XX of the Social Security Act and through the Community Based Alternatives Program, a Medicaid waiver program operating under §1915(c) of the Social Security Act. The amendments provide that a relative, other than the spouse, of an individual receiving AFC services may be the individual's AFC provider or substitute provider. The amendments require an AFC provider to submit to DADS information regarding any convictions or pending criminal charges against the provider before enrollment and, if the information changes, during the term of the provider's contract. The amendments describe the annual training requirements for AFC providers more clearly. The amendments also prohibit a person who is barred from employment under Texas Health and Safety Code, Chapter 250, from being an AFC provider.

##### SECTION-BY-SECTION SUMMARY

The proposed amendment to §48.8902(a)(1) deletes the statement that substitute providers must meet the requirements of that paragraph because §48.8903, regarding substitute provider qualifications, addresses the requirements in §48.8902 that a substitute provider must meet. The proposed amendment to §48.8902(a)(8) allows a person related to an individual receiving AFC services to be the individual's AFC provider if the person is not the individual's spouse. Currently, a person related to the individual receiving services may not be the individual's AFC provider. Section 48.8902(a)(12) is amended to reflect that an AFC provider must submit information to DADS about the provider's criminal convictions and pending criminal charges before enrollment and, if the information changes, during the term of the provider's contract. The description in §48.8902(a)(12) regarding the convictions that prohibit a person from being an AFC provider has been deleted and addressed in new subsection (b) by stating that a person who is barred from employment under Chapter 250 of the Texas Health and Safety Code may not be an AFC provider. This change is consistent with §48.8904, which prohibits any person disqualified under Chapter 250 from providing AFC services. Section 48.8902(a)(14) and (16) have been amended to use the term "resident" instead of "client" to

reference an individual who is receiving AFC services to use consistent terminology within the subchapter. In addition, the exception for AFC providers enrolled before January 1, 1992 to receive orientation before providing services has been deleted because it is no longer applicable. Section 48.8902(a)(15) has been amended to more clearly describe the annual training requirements for AFC providers and topics that must be covered in that training during the first two years after enrollment. Section 48.8902(a)(16) has been amended to add the statement from subsection (a)(19) that certain providers are exempt from the requirements of subsection (a)(16) and to clarify that the standards in subsection (a)(16) became effective on January 1, 1994. Section 48.8902(a)(18) has been amended to reflect that the Department of Family and Protective Services is the agency that conducts investigations that should be reported to DADS. In addition, non-substantive revisions have been made throughout §48.8902 to correct sentence structure and punctuation.

The proposed amendment to §48.8903 adds §48.8902(a)(8) to the list of paragraphs in §48.8902 that a substitute provider must comply with, thereby prohibiting a spouse from being a substitute provider, but continuing to allow other persons who are related to an individual receiving AFC services to be the individual's substitute provider. In addition, the reference to §48.8902(a)(13), which requires a provider to have at least one substitute provider, has been deleted because it is not a responsibility of a substitute provider.

The proposed amendments to §48.8902 and §48.8903 also update references to the Department of Human Services to DADS because the authority of former DHS regarding AFC was transferred to DADS in 2004.

##### FISCAL NOTE

James Jenkins, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendments are in effect, enforcing or administering the amendments does not have foreseeable implications relating to costs or revenues of state or local governments.

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

DADS has determined that the proposed amendments and repeal will not have an adverse economic effect on small businesses or micro-businesses, because rates for AFC services will not change as a result of enforcing the amendments and repeal.

##### PUBLIC BENEFIT AND COSTS

Chris Adams, Deputy Commissioner, has determined that, for each year of the first five years the amendments are in effect, the public benefit expected as a result of enforcing the amendments is an increased opportunity for family members of an individual receiving AFC services to be the individual's provider or substitute provider, thereby increasing the community-based residential options for those individuals.

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

##### TAKINGS IMPACT ASSESSMENT

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

## PUBLIC COMMENT

Questions about the content of this proposal may be directed to Alesia Brown at (512) 438-2578 in DADS Center for Policy and Innovation. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-13R03, 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](mailto: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 13R03" in the subject line.

## STATUTORY AUTHORITY

The amendments are 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 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; and 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.

The amendments affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021.

### §48.8902. *Provider Qualifications.*

#### (a) The provider must:

- (1) be a responsible, mature, healthy adult (18 years of age or older) capable of meeting the needs of the residents in the home[- Substitute providers must also meet these requirements];
- (2) be physically and mentally able to perform all the required duties and tasks;
- (3) be able to communicate directly with the resident and the resident's family;
- (4) show evidence of an examination for tuberculosis performed[- This examination must be current] within six months prior to the date of enrollment [and must be obtained] from a licensed physician or a local health department with negative results or, if the[- If test] results are positive, provide a physician's statement [is required documenting] that the disease is non-communicable;
- (5) not deliver direct services when the provider [he] has a communicable disease or illness, but [must] ensure that a resident's needs are met by an approved substitute provider;
- (6) ensure that persons whose behavior or health status endangers the residents are not allowed at the home;
- (7) provide, at the time of enrollment [application], three references for the provider and the substitute provider from persons not related to the provider [for substitute provider];

(8) not be the spouse of a resident [related to Department of Human Services (DHS) funded foster care residents] in the provider's care;

(9) live in and share the same household (i.e., have common living areas that are not detached from the home) with the residents[- Detached living quarters do not constitute the same living area];

(10) be the primary caregiver of the residents;

(11) be the owner or lessee of the adult foster home;

(12) submit to the Department of Aging and Disability Services (DADS) a statement providing information concerning any felony or [and/or] misdemeanor convictions, and [of] any pending criminal charges against the provider before enrollment and, if the information changes, during the term of its contract[- No one who has been convicted of any felony classified as an offense against the person or family, or of public indecency, or of violation of the Texas Controlled Substances Act, or convicted of any misdemeanor classified as an offense against the person or family, or of public indecency, may serve as an adult foster care provider];

(13) have at least [a minimum] one approved substitute provider, who the provider is responsible for paying, before the enrollment process is completed[- Payment to the substitute is the responsibility of the primary provider];

(14) receive orientation covering the topics listed on the adult foster care program orientation checklist before serving residents, and familiarize [clients. The provider must ensure that he familiarizes] all substitute providers with the topics[- A provider enrolled before January, 1992, is not required to receive orientation];

(15) participate in six hours of in-service training annually on topics approved by DADS, which must include: [the adult foster care caseworker. Ongoing training requirements do not apply to substitute providers. If the provider does not meet this requirement within 12 months of enrollment or reassessment, he will be given an additional 60 days to comply with the standard. Training on AIDS/HIV and cultural diversity is mandatory during the first year of enrollment. First-aid training must be completed by the second year of enrollment. Providers enrolled before the effective date of these standards must have received cultural diversity and first-aid training within one year from the date of their next reassessment];

(A) training on acquired immune deficiency syndrome, human immune deficiency virus, and cultural diversity within one year after enrollment, unless DADS grants a 60-day extension; and

(B) training on first aid within two years after enrollment, unless DADS grants a 60-day extension, and annually thereafter;

(16) demonstrate the ability to read and comprehend the minimum standards for adult foster care, the resident [client] and provider agreements, service plans, and DADS [DHS] directives, unless the provider enrolled as an AFC provider before January 1, 1994;

(17) prior to initial enrollment, demonstrate and maintain financial stability, independent of DADS [DHS] provider payment, and demonstrate the ability to meet existing financial obligations;

(18) not represent any other residential settings that the provider [he] owns or operates as DADS-enrolled [DHS-enrolled] homes and[- The provider must] report Texas Department of Family and Protective [Protective and Regulatory] Services [Adult Protective Services or Texas Department of Health] investigations of these settings to DADS [the adult foster care caseworker]; and

(19) agree to abide by all policies and procedures of DADS. [DHS. Providers enrolled before the effective date of these standards are exempt from the standards specified in paragraph (16) of this section.]

(b) A person who is barred from employment under Chapter 250 of the Texas Health and Safety Code may not be an AFC provider.

*§48.8903. Substitute Provider Qualifications.*

A substitute provider must meet the requirements specified in §48.8902(a)(1) - (8), (12), and (16) [§48.8902(1)-(7), (12), (13), and (16)] of this title (relating to Provider Qualifications) and §48.8904 of this title (relating to Individuals Who May Not Provide Adult Foster Care Services). The [Texas] Department of Aging and Disability [Human] Services [DHS] reserves the right to disapprove a substitute provider or attendant. The provider must orient any substitute caregiver to the home and the residents to the following:

- (1) the location of fire extinguishers;
- (2) evacuation procedures;
- (3) location of residents' records;
- (4) location of telephone numbers for the residents' physicians, the provider, and other emergency contacts;
- (5) location of medications;
- (6) introduction to residents; and
- (7) instructions for caring for each resident.

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 July 15, 2013.

TRD-201302894

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: August 25, 2013

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



## CHAPTER 92. LICENSING STANDARDS FOR ASSISTED LIVING FACILITIES

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), amendments to §92.2, concerning definitions; §92.5, concerning health care professional; §92.11, concerning criteria for licensing; §92.41, concerning standards for type A and type B assisted living facilities; §92.61, concerning introduction and application; §92.62, concerning general requirements; §92.63, concerning construction and initial survey of completed construction; §92.64, concerning plans, approvals, and construction procedures; §92.102, concerning abuse, neglect, or exploitation reportable to the Texas Department of Human Services (DHS) by facilities; §92.127, concerning required postings; and the repeal of §92.101, concerning definitions of "abuse," "neglect," and "exploitation," in Chapter 92, Licensing Standards for Assisted Living Facilities.

### BACKGROUND AND PURPOSE

The purpose of the proposed amendments, in part, is to implement Senate Bill (SB) 7, 82nd Legislature, First Called

Session, 2011. SB 7 added Chapter 260A, Reports of Abuse, Neglect, and Exploitation of Residents of Certain Facilities. The proposed amendments add definitions for "abuse," "neglect," and "exploitation," including definitions that apply to a person under the age of 18. The amendments also require a facility to provide the resident's immediate family, and document the family's receipt of, the DADS telephone hotline number to report suspected abuse, neglect, or exploitation. The proposal amends reporting requirements to include the DADS website as a way to report suspected abuse, neglect, and exploitation and requires a facility to post a sign in public view that includes the DADS hotline number for reporting abuse, neglect, and exploitation. The proposed amendments also require specific documentation to be kept in an employee's personnel records.

SB 7 also amended Texas Health and Safety Code (THSC), §247.002 to allow the provision of skilled nursing services in an assisted living facility for limited purposes. The proposal allows for the provision of services in an assisted living facility by a health care professional within the professional's scope of practice and as authorized by THSC, Chapter 247, for limited purposes.

In addition, the proposal implements the requirements of the 2000 edition of the National Fire Protection Association (NFPA) 101, the Life Safety Code. Additional editorial changes were made for clarity and consistency.

### SECTION-BY-SECTION SUMMARY

The proposed amendment to §92.2 adds definitions for "abuse," "neglect," "exploitation," "flame spread," "local code," and "listed." The amendment also updates the definition for "NFPA 101" to reflect the current publication.

The proposed amendment to §92.5 clarifies that a health care professional may coordinate the provision of services to a resident within the professional's scope of practice and as authorized under THSC, Chapter 247.

The proposed amendment to §92.11 limits the provision of skilled nursing services to: coordinating resident care with an HCSSA or health care professional; providing or delegating personal care services and medication administration; assessing a resident to determine the care required; and delivering temporary skilled nursing services for minor illness, injury, or emergency for a period not to exceed 30 days.

The proposed amendment to §92.41 adds a requirement that a facility must provide the resident's immediate family, and document the family's receipt of, the DADS telephone hotline number to report suspected abuse, neglect, or exploitation; for specific documentation to be kept in an employee's personnel records, including a criminal history report; an annual employee misconduct registry check; an annual nurse aide registry check; documentation of an initial tuberculosis screening; documentation of an employee's compliance with or exemption from the facility vaccination policy; and a signed statement in an employee's record acknowledging that an employee may be held criminally liable for failure to report suspected abuse, neglect, or exploitation.

The proposed amendment to §92.61 updates the NFPA 101 Life Safety Code references from the 1988 edition to the 2000 edition. This includes updating organization names, terminology, and references.

The proposed amendment to §92.62 updates the NFPA 101 Life Safety Code references from the 1988 edition to the 2000 edition. This includes updating organization names, terminology, and references.

The proposed amendment to §92.63 updates the NFPA 101 Life Safety Code references from the 1988 edition to the 2000 edition. This includes updating organization names, terminology, and references.

The proposed amendment to §92.64 updates the NFPA 101 Life Safety Code references from the 1988 edition to the 2000 edition. This includes updating organization names, terminology, and references.

The proposed repeal of §92.101 removes definitions for "abuse," "neglect," and "exploitation" that have been consolidated in the proposed amendment to §92.2.

The proposed amendment to §92.102 updates the reporting requirements for abuse, neglect, or exploitation and requires a facility to obtain signed statements from employees, as a condition of employment, acknowledging that an employee may be held criminally liable for failure to report suspected abuse, neglect, or exploitation.

The proposed amendment to §92.127 requires an assisted living facility to post a sign in a public area stating that suspected abuse, neglect, and exploitation must be reported to DADS at 1-800-458-9858.

#### FISCAL NOTE

James Jenkins, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendments and repeal are in effect, enforcing or administering the amendments and repeal 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 amendments and repeal will not have an adverse economic effect on small businesses or micro-businesses, because there is no cost to implement the changes. In particular, local building authorities require assisted living facilities to comply with requirements at least as stringent as the 2000 NFPA requirements.

#### PUBLIC BENEFIT AND COSTS

Veronda Durden, DADS Assistant Commissioner for Regulatory Services, has determined that, for each year of the first five years the amendments and repeal are in effect, the public benefit expected as a result of enforcing the amendments and repeal is an increased assurance of the health and safety of residents in assisted living facilities.

Ms. Durden anticipates that there will not be an economic cost to persons who are required to comply with the amendments and repeal. The amendments and repeal will not affect a local economy.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Questions about the content of this proposal may be directed to Kim Lammons at (512) 438-2264 in DADS Regulatory Services Division. Written comments on the proposal may be submitted to *Texas Register* Liaison, Legal Services-13R09, 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 13R09" in the subject line.

## SUBCHAPTER A. INTRODUCTION

### 40 TAC §92.2, §92.5

#### STATUTORY AUTHORITY

The amendments are 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 Health and Safety Code, Chapter 247, which authorizes DADS to license and regulate assisted living facilities; and 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.

The amendments implement Texas Government Code, §531.0055; Texas Health and Safety Code, §§247.001 - 247.069; and Texas Human Resources Code, §161.021.

#### §92.2. Definitions.

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

##### (1) Abuse--

(A) for a person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes, the term has the meaning in Texas Family Code §261.401(1), which is an intentional, knowing, or reckless act or omission by an employee, volunteer, or other individual working under the auspices of a facility or program that causes or may cause emotional harm or physical injury to, or the death of, a child served by the facility or program as further described by rule or policy; and

(B) for a person other than one described in subparagraph (A) of this paragraph, the term has the meaning in Texas Health and Safety Code §260A.001(1), which is:

(i) the negligent or willful infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical or emotional harm or pain to a resident by the resident's caregiver, family member, or other individual who has an ongoing relationship with the resident; or

(ii) sexual abuse of a resident, including any involuntary or nonconsensual sexual conduct that would constitute an offense under Section 21.08, Penal Code (indecent exposure), or Chapter 22, Penal Code (assaultive offenses), committed by the resident's

caregiver, family member, or other individual who has an ongoing relationship with the resident.

(2) [(4)] Accreditation commission--Has the meaning given in Texas Health and Safety Code, §247.032.

(3) [(2)] Advance directive--Has the meaning given in Texas Health and Safety Code, §166.002.

(4) [(3)] Affiliate--With respect to:

(A) a partnership, each partner thereof;

(B) a corporation, each officer, director, principal stockholder, subsidiary, and each person with a disclosable interest, as the term is defined in this section; and

(C) a natural person:

(i) said person's spouse;

(ii) each partnership and each partner thereof of which said person or any affiliate of said person is a partner; and

(iii) each corporation in which said person is an officer, director, principal stockholder, or person with a disclosable interest.

(5) [(4)] Alzheimer's facility--A type B assisted living facility that is certified to provide specialized services to residents with Alzheimer's or a related condition.

(6) [(5)] Applicant--A person applying for a license to operate an assisted living facility under Texas Health and Safety Code, Chapter 247.

(7) [(6)] Attendant--A facility employee who provides direct care to residents. This employee may serve other functions, including cook, janitor, porter, maid, laundry worker, security personnel, bookkeeper, activity director, and manager.

(8) [(7)] Authorized electronic monitoring (AEM)--The placement of an electronic monitoring device in a resident's room and using the device to make tapes or recordings after making a request to the facility to allow electronic monitoring.

(9) [(8)] Behavioral emergency--Has the meaning given in §92.41(p)(2) of this chapter (relating to Standards for Type A and Type B Assisted Living Facilities).

(10) [(9)] Change of ownership--A change of ownership is:

(A) a change of sole proprietorship that is licensed to operate a facility;

(B) a change of 50 percent or more in the ownership of the business organization that is licensed to operate the facility;

(C) a change in the federal taxpayer identification number; or

(D) relinquishment by the license holder of the operation of the facility.

(11) [(10)] Commingles--The laundering of apparel or linens of two or more individuals together.

(12) [(11)] Controlling person--A person with the ability, acting alone or with others, to directly or indirectly influence, direct, or cause the direction of the management, expenditure of money, or policies of an assisted living facility or other person. A controlling person includes:

(A) a management company, landlord, or other business entity that operates or contracts with others for the operation of an assisted living facility;

(B) any person who is a controlling person of a management company or other business entity that operates an assisted living facility or that contracts with another person for the operation of an assisted living facility;

(C) an officer or director of a publicly traded corporation that is, or that controls, a facility, management company, or other business entity described in subparagraph (A) of this paragraph but does not include a shareholder or lender of the publicly traded corporation; and

(D) any other individual who, because of a personal, familial, or other relationship with the owner, manager, landlord, tenant, or provider of an assisted living facility, is in a position of actual control or authority with respect to the facility, without regard to whether the individual is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the facility, except an employee, lender, secured creditor, landlord, or other person who does not exercise formal or actual influence or control over the operation of an assisted living facility.

(13) [(12)] Covert electronic monitoring--The placement and use of an electronic monitoring device that is not open and obvious, and the facility and DADS have not been informed about the device by the resident, by a person who placed the device in the room, or by a person who uses the device.

(14) [(13)] DADS--The Department of Aging and Disability Services.

(15) [(14)] DHS--Formerly, this term referred to the Texas Department of Human Services; it now refers to DADS.

(16) [(15)] Dietitian--A person who currently holds a license or provisional license issued by the Texas State Board of Examiners of Dietitians.

(17) [(16)] Disclosure statement--A DADS form for prospective residents or their legally authorized representatives that a facility must complete. The form contains information regarding the preadmission, admission, and discharge process; resident assessment and service plans; staffing patterns; the physical environment of the facility; resident activities; and facility services.

(18) [(17)] Electronic monitoring device--Video surveillance cameras and audio devices installed in a resident's room, designed to acquire communications or other sounds that occur in the room. An electronic, mechanical, or other device used specifically for the nonconsensual interception of wire or electronic communication is excluded from this definition.

(19) Exploitation--

(A) for a person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes, the term has the meaning in Texas Family Code §261.401(2), which is the illegal or improper use of a child or of the resources of a child for monetary or personal benefit, profit, or gain by an employee, volunteer, or other individual working under the auspices of a facility or program as further described by rule or policy; and

(B) for a person other than one described in subparagraph (A) of this paragraph, the term has the meaning in Texas Health and Safety Code §260A.001(4), which is the illegal or improper act or process of a caregiver, family member, or other individual who has an

ongoing relationship with the resident using the resources of a resident for monetary or personal benefit, profit, or gain without the informed consent of the resident.

(20) [(18)] Facility--An entity required to be licensed under the Assisted Living Facility Licensing Act, Texas Health and Safety Code, Chapter 247.

(21) [(19)] Fire suppression authority--The paid or volunteer fire-fighting organization or tactical unit that is responsible for fire suppression operations and related duties once a fire incident occurs within its jurisdiction.

(22) Flame spread--The rate of fire travel along the surface of a material. This is different than other requirements for time-rated "burn through" resistance ratings, such as one-hour rated. Flame spread ratings are Class A (0-25), Class B (26-75), and Class C (76-200).

(23) [(20)] Governmental unit--The state or any county, municipality, or other political subdivision, or any department, division, board, or other agency of any of the foregoing.

(24) [(21)] Health care professional--An individual licensed, certified, or otherwise authorized to administer health care, for profit or otherwise, in the ordinary course of business or professional practice. The term includes a physician, registered nurse, licensed vocational nurse, licensed dietitian, physical therapist, and occupational therapist.

(25) [(22)] Immediate threat--There is considered to be an immediate threat to the health or safety of a resident, or a situation is considered to put the health or safety of a resident in immediate jeopardy, if there is a situation in which an assisted living facility's non-compliance with one or more requirements of licensure has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident.

(26) [(23)] Immediately available--The capacity of facility staff to immediately respond to an emergency after being notified through a communication or alarm system. The staff are to be no more than 600 feet from the farthest resident and in the facility while on duty.

(27) [(24)] Large facility--A facility licensed for 17 or more residents.

(28) [(25)] Legally authorized representative--A person authorized by law to act on behalf of a person with regard to a matter described in this chapter, and may include a parent, guardian, or managing conservator of a minor, or the guardian of an adult.

(29) Listed--Equipment, materials, or services included in a list published by an organization concerned with evaluation of products or services, that maintains periodic inspection of production of listed equipment or materials or periodic evaluation of services, and whose listing states that either the equipment, material, or service meets appropriate designated standards or has been tested and found suitable for a specified purpose. The listing organization must be acceptable to the authority having jurisdiction, including DADS or any other state, federal or local authority.

(30) Local code--A model building code adopted by the local building authority where the assisted living facility is constructed or located.

(31) [(26)] Management services--Services provided under contract between the owner of a facility and a person to provide for the operation of a facility, including administration, staffing, maintenance, or delivery of resident services. Management services do not include contracts solely for maintenance, laundry, transportation, or food services.

(32) [(27)] Manager--The individual in charge of the day-to-day operation of the facility.

(33) [(28)] Medication--

(A) Medication is any substance:

(i) recognized as a drug in the official United States Pharmacopoeia, Official Homeopathic Pharmacopoeia of the United States, Texas Drug Code Index or official National Formulary, or any supplement to any of these official documents;

(ii) intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease;

(iii) other than food intended to affect the structure or any function of the body; and

(iv) intended for use as a component of any substance specified in this definition.

(B) Medication includes both prescription and over-the-counter medication, unless otherwise specified.

(C) Medication does not include devices or their components, parts, or accessories.

(34) [(29)] Medication administration--The direct application of a medication or drug to the body of a resident by an individual legally allowed to administer medication in the state of Texas.

(35) [(30)] Medication assistance or supervision--The assistance or supervision of the medication regimen by facility staff. Refer to §92.41(j) of this chapter.

(36) [(31)] Medication (self-administration)--The capability of a resident to administer the resident's own medication or treatments without assistance from the facility staff.

(37) Neglect--

(A) for a person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes, the term has the meaning in Texas Family Code, §261.401(3), which is a negligent act or omission by an employee, volunteer, or other individual working under the auspices of a facility or program, including failure to comply with an individual treatment plan, plan of care, or individualized service plan, that causes or may cause substantial emotional harm or physical injury to, or the death of, a child served by the facility or program as further described by rule or policy; and

(B) for a person other than one described in subparagraph (A) of this paragraph, the term has the meaning in Texas Health and Safety Code §260A.001(6), which is the failure to provide for one's self the goods or services, including medical services, which are necessary to avoid physical or emotional harm or pain or the failure of a caregiver to provide such goods or services.

(38) [(32)] NFPA 101--The 2000 [1988] publication titled "NFPA 101 Life Safety Code" published by the National Fire Protection Association, Inc., 1 Batterymarch Park, Quincy, Massachusetts 02169.

(39) [(33)] Ombudsman--Has the meaning given in §85.2 of this title (relating to Definitions).

(40) [(34)] Person--Any individual, firm, partnership, corporation, association, or joint stock association, and the legal successor thereof.

(41) [(35)] Person with a disclosable interest--Any person who owns 5.0 percent interest in any corporation, partnership, or other

business entity that is required to be licensed under Texas Health and Safety Code, Chapter 247. A person with a disclosable interest does not include a bank, savings and loan, savings bank, trust company, building and loan association, credit union, individual loan and thrift company, investment banking firm, or insurance company unless such entity participates in the management of the facility.

(42) [(36)] Personal care services--Assistance with feeding, dressing, moving, bathing, or other personal needs or maintenance; or general supervision or oversight of the physical and mental well-being of a person who needs assistance to maintain a private and independent residence in the facility or who needs assistance to manage his or her personal life, regardless of whether a guardian has been appointed for the person.

(43) [(37)] Physician--A practitioner licensed by the Texas Medical Board.

(44) [(38)] Practitioner--An individual who is currently licensed in a state in which the individual practices as a physician, dentist, podiatrist, or a physician assistant; or a registered nurse approved by the Texas Board of Nursing to practice as an advanced practice nurse.

(45) [(39)] Qualified medical personnel--An individual who is licensed, certified, or otherwise authorized to administer health care. The term includes a physician, registered nurse, and licensed vocational nurse.

(46) [(40)] Resident--An individual accepted for care in a facility.

(47) [(41)] Respite--The provision by a facility of room, board, and care at the level ordinarily provided for permanent residents of the facility to a person for not more than 60 days for each stay in the facility.

(48) [(42)] Restraint hold--

(A) A manual method, except for physical guidance or prompting of brief duration, used to restrict:

(i) free movement or normal functioning of all or a portion of a resident's body; or

(ii) normal access by a resident to a portion of the resident's body.

(B) Physical guidance or prompting of brief duration becomes a restraint if the resident resists the guidance or prompting.

(49) [(43)] Restraints--Chemical restraints are psychoactive drugs administered for the purposes of discipline or convenience and are not required to treat the resident's medical symptoms. Physical restraints are any manual method, or physical or mechanical device, material, or equipment attached or adjacent to the resident that restricts freedom of movement. Physical restraints include restraint holds.

(50) [(44)] Safety--Protection from injury or loss of life due to such conditions as fire, electrical hazard, unsafe building or site conditions, and the hazardous presence of toxic fumes and materials.

(51) [(45)] Seclusion--The involuntary separation of a resident from other residents and the placement of the resident alone in an area from which the resident is prevented from leaving.

(52) [(46)] Service plan--A written description of the medical care, supervision, or nonmedical care needed by a resident.

(53) [(47)] Short-term acute episode--An illness of less than 30 days duration.

(54) [(48)] Small facility--A facility licensed for 16 or fewer residents.

(55) [(49)] Staff--Employees of an assisted living facility.

(56) [(50)] Standards--The minimum conditions, requirements, and criteria established in this chapter with which a facility must comply to be licensed under this chapter.

(57) [(51)] Terminal condition--A medical diagnosis, certified by a physician, of an illness that will result in death in six months or less.

(58) [(52)] Universal precautions--An approach to infection control in which blood, any body fluids visibly contaminated with blood, and all body fluids in situations where it is difficult or impossible to differentiate between body fluids are treated as if known to be infectious for HIV, hepatitis B, and other blood-borne pathogens.

(59) [(53)] Vaccine Preventable Diseases--The diseases included in the most current recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention.

(60) [(54)] Working day--Any 24-hour period, Monday through Friday, excluding state and federal holidays.

#### §92.5. Health Care Professional.

(a) A health care professional, may coordinate the provision of [provide] services to a resident within the professional's scope of practice and as authorized under Texas Health and Safety Code, Chapter 247, [;] however, the facility must not provide ongoing services to a resident that are comparable to the services available in a nursing facility licensed under Texas Health and Safety Code, Chapter 242.

(b) A resident may contract with a home and community support services agency licensed under Chapter 142 or with an independent health professional to have health care services delivered to the resident at the facility.

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

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Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

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For further information, please call: (512) 438-4162

## SUBCHAPTER B. APPLICATION PROCEDURES

### 40 TAC §92.11

#### 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 Health and Safety Code, Chapter 247, which authorizes DADS to license and regulate assisted living facilities; and 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.

The amendment implements Texas Government Code, §531.0055; Texas Health and Safety Code, §§247.001 - 247.069; and Texas Human Resources Code, §161.021.

§92.11. *Criteria for Licensing.*

(a) A person must be licensed to establish or operate an assisted living facility in Texas.

(1) An assisted living facility is an establishment that:

(A) furnishes, in one or more facilities, food and shelter to four or more persons who are unrelated to the proprietor of the establishment;

(B) provides:

(i) personal care services;

(ii) administration of medication by a person licensed or otherwise authorized in this state to administer the medication; or

(iii) services described in clauses (i) and (ii) of this subparagraph; and

(C) may provide assistance with or supervision of the administration of medication.

(2) An assisted living facility may provide skilled nursing services for the following limited purposes:

(A) coordinate resident care with an outside home and community support services agency or health care professional;

(B) provide or delegate personal care services and medication administration, as described in this chapter;

(C) assess residents to determine the care required; and

(D) deliver, for a period not to exceed 30 days, temporary skilled nursing services for a minor illness, injury, or emergency.

(3) ~~[(2)]~~ DADS considers one or more facilities to be part of the same establishment and, therefore, subject to licensure as an assisted living facility, based on the following factors:

(A) common ownership;

(B) physical proximity;

(C) shared services, personnel, or equipment in any part of the facilities' operations; and

(D) any public appearance of joint operations or of a relationship between the facilities.

(4) ~~[(3)]~~ The presence or absence of any one factor in paragraph (3) ~~[(2)]~~ of this subsection is not conclusive.

(b) To obtain a license, a person must follow the application requirements in this subchapter and meet the criteria for a license.

(c) An applicant must affirmatively show that the applicant, license holder, controlling person, and any person required to submit background and qualification information meet the criteria and eligibility for licensing, in accordance with this section, and:

~~[(1) affirmatively show that:]~~

(1) ~~[(A)]~~ the building in which the facility is housed:

(A) ~~[(i)]~~ meets local fire ordinances;

~~[(B) (ii)]~~ is approved by the local fire authority; and

~~[(C) (iii)]~~ meets DADS licensing standards in accordance with Subchapter D of this chapter (relating to Facility Construction) based on an on-site inspection by DADS; and

~~[(D) (B)]~~ operation of the facility meets DADS licensing standards based on an on-site health inspection by DADS, which must include observation of the care of a resident; or

(2) ~~[(affirmatively show that)]~~ the facility meets the standards for accreditation based on an on-site accreditation survey by the accreditation commission.

(d) An applicant who [that] chooses the option authorized [allowed] in subsection (c)(2) of this section must contact DADS to determine which accreditation commissions are available to meet the requirements of that subsection ~~[(e)(2) of this section]~~.

(e) DADS issues a license to a facility meeting all requirements of this chapter. The facility must not exceed the maximum allowable number of residents specified on the license.

(f) DADS denies an application for an initial license or a ~~[(for the)]~~ renewal of a license if:

(1) the applicant, license holder, controlling person, or any person required to submit background and qualification information has been debarred or excluded from the Medicare or Medicaid programs by the federal government or a state;

(2) a court has issued an injunction prohibiting the applicant, license holder, controlling person, or any person required to submit background and qualification information from operating a facility; or

(3) during the five years preceding the date of the application, a license to operate a health care facility, long-term care facility, assisted living facility, or similar facility in any state held by the applicant, license holder, controlling person, or any person required to submit background and qualification information has been revoked.

(g) A license holder or controlling person who operates a nursing facility or an assisted living facility for which a trustee was appointed and for which emergency assistance funds, other than funds to pay the expenses of the trustee, were used is subject to exclusion from eligibility for:

(1) the issuance of an initial license for a facility for which the person has not previously held a license; and

(2) the renewal of the license of the facility for which the trustee was appointed.

(h) DADS may deny an application for an initial license or refuse to renew a license if an applicant, license holder, controlling person, or any person required to submit background and qualification information:

(1) violates Texas Health and Safety Code, Chapter 247; a section, standard or order adopted under Chapter 247; or a license issued under Chapter 247 in either a repeated or substantial manner;

(2) commits an act described in §92.551(a)(2) - (7) of this chapter (relating to Administrative Penalties);

(3) aids, abets, or permits a substantial violation described in paragraphs (1) - (2) of this subsection about which the person had or should have had knowledge;

(4) fails to provide the required information, facts, or references;

(5) provides the following false or fraudulent information:

(A) knowingly submits false or intentionally misleading statements to DADS;

(B) uses subterfuge or other evasive means of filing an application for licensure;

(C) engages in subterfuge or other evasive means of filing on behalf of another who is unqualified for licensure;

(D) knowingly conceals a material fact related to licensure; or

(E) is responsible for fraud;

(6) fails to pay the following fees, taxes, and assessments when due:

(A) license fees as described in §92.4 of this chapter (relating to License Fees); or

(B) franchise taxes, if applicable;

(7) during the five years preceding the date of the application, has a history in any state or other jurisdiction of any of the following:

(A) operation of a facility that has been decertified or has had its contract canceled under the Medicare or Medicaid program;

(B) federal or state long-term care facility, assisted living facility, or similar facility sanctions or penalties, including monetary penalties, involuntary downgrading of the status of a facility license, proposals to decertify, directed plans of correction, or the denial of payment for new Medicaid admissions;

(C) unsatisfied final judgments, excluding judgments wholly unrelated to the provision of care rendered in long-term care facilities;

(D) eviction involving any property or space used as a facility; or

(E) suspension of a license to operate a health care facility, long-term care facility, assisted living facility, or a similar facility;

(8) violates Texas Health and Safety Code, §247.021 by operating a facility without a license; or

(9) is subject to denial or refusal as described in Chapter 99 of this title (relating to Denial or Refusal of License) during the time frames described in that chapter.

(i) DADS reviews all information provided by an applicant, a license holder, a person with a disclosable interest, or a manager when considering [For the] grounds for denial of an [application for an] initial license application or a [an application for] renewal application in accordance with [of a license set out in] subsection (h)(8) of this section. DADS [considers exculpatory information provided by an applicant, a license holder, a person with a disclosable interest, or a manager and] may grant a license if DADS finds the applicant, license holder, person with a disclosable interest, affiliate, or manager is able to comply with the rules in this chapter.

(j) DADS reviews final actions when considering [For] the grounds for denial of an initial license application [for an initial license] or [an application for] renewal application in accordance with [of a license set out in] subsections (f) and (h)(8) of this section. DADS considers only final actions. An action is final when routine administrative and judicial remedies are exhausted. An applicant must disclose all actions, whether pending or final.

(k) If an applicant owns multiple facilities, DADS examines the overall record of compliance in all of the applicant's facilities. An overall record poor enough to deny issuance of a new license does not preclude the renewal of a license of a facility with a satisfactory record.

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

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## SUBCHAPTER C. STANDARDS FOR LICENSURE

### 40 TAC §92.41

#### 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 Health and Safety Code, Chapter 247, which authorizes DADS to license and regulate assisted living facilities; and 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.

The amendment implements Texas Government Code, §531.0055; Texas Health and Safety Code, §§247.001 - 247.069; and Texas Human Resources Code, §161.021.

§92.41. *Standards for Type A and Type B Assisted Living Facilities.*

(a) Employees.

(1) Manager. Each facility must designate, in writing, a manager to have authority over the operation.

(A) Qualifications. In small facilities, the manager must have proof of graduation from an accredited high school or certification of equivalency of graduation. In large facilities, a manager must have:

(i) an associate's degree in nursing, health care management, or a related field;

(ii) a bachelor's degree; or

(iii) proof of graduation from an accredited high school or certification of equivalency of graduation and at least one year of experience working in management or in health care industry management.

(B) Training in management of assisted living facilities. After August 1, 2000, a manager must have completed at least one educational course on the management of assisted living facilities, which must include information on the assisted living standards; resident characteristics (including dementia), resident assessment and

skills working with residents; basic principles of management; food and nutrition services; federal laws, with an emphasis on the Americans with Disability Act's accessibility requirements; community resources; ethics, and financial management.

(i) The course must be at least 24 hours in length.

(I) Eight hours of training on the assisted living standards must be completed within the first three months of employment.

(II) The 24-hour training requirement may not be met through in-services at the facility, but may be met through structured, formalized classes, correspondence courses, training videos, distance learning programs, or off-site training courses. All training must be provided or produced by academic institutions, assisted living corporations, or recognized state or national organizations or associations. Subject matter that deals with the internal affairs of an organization will not qualify for credit.

(III) Evidence of training must be on file at the facility and must contain documentation of content, hours, dates, and provider.

(ii) Managers hired after August 1, 2000, who can show documentation of a previously completed comparable course of study are exempt from the training requirements.

(iii) Managers hired after August 1, 2000, must complete the course by the first anniversary of employment as manager.

(iv) An assisted living manager who was employed by a licensed assisted living facility on August 1, 2000, is exempt from the training requirement. An assisted living manager who was employed by a licensed assisted living facility as the manager before August 1, 2000, and changes employment to another licensed assisted living facility as the manager, with a break in employment of no longer than 30 days, is also exempt from the training requirement.

(C) Continuing education. All managers must show evidence of 12 hours of annual continuing education. This requirement will be met during the first year of employment by the 24-hour assisted living management course. The annual continuing education requirement must include at least two of the following areas:

(i) resident and provider rights and responsibilities, abuse/neglect, and confidentiality;

(ii) basic principles of management;

(iii) skills for working with residents, families, and other professional service providers;

(iv) resident characteristics and needs;

(v) community resources;

(vi) accounting and budgeting;

(vii) basic emergency first aid; or

(viii) federal laws, such as Americans with Disabilities Act, Civil Rights Act of 1991, the Rehabilitation Act of 1993, Family and Medical Leave Act of 1993, and the Fair Housing Act.

(D) Manager's responsibilities. The manager must be on duty 40 hours per week and may manage only one facility, except for managers of small Type A facilities, who may have responsibility for no more than 16 residents in no more than four facilities. The managers of small Type A facilities must be available by telephone or pager when conducting facility business off-site.

(E) Manager's absence. An employee competent and authorized to act in the absence of the manager must be designated in writing.

(2) Attendants. Full-time facility attendants must be at least 18 years old or a high-school graduate.

(A) An attendant must be in the facility at all times when residents are in the facility.

(B) Attendants are not precluded from performing other functions as required by the assisted living facility.

(3) Staffing.

(A) A facility must develop and implement staffing policies, which require staffing ratios based upon the needs of the residents, as identified in their service plans.

(B) Prior to admission, a facility must disclose, to prospective residents and their families, the facility's normal 24-hour staffing pattern and post it monthly in accordance with §92.127 of this title (relating to Required Postings).

(C) A facility must have sufficient staff to:

(i) maintain order, safety, and cleanliness;

(ii) assist with medication regimens;

(iii) prepare and service meals that meet the daily nutritional and special dietary needs of each resident, in accordance with each resident's service plan;

(iv) assist with laundry;

(v) assure that each resident receives the kind and amount of supervision and care required to meet his basic needs; and

(vi) ensure safe evacuation of the facility in the event of an emergency.

(D) A facility must meet the staffing requirements described in this subparagraph.

(i) Type A facility: Night shift staff in a small facility must be immediately available. In a large facility, the staff must be immediately available and awake.

(ii) Type B facility: Night shift staff must be immediately available and awake, regardless of the number of licensed beds.

(4) Staff training. The facility must document that staff members are competent to provide personal care before assuming responsibilities and have received the following training.

(A) All staff members must complete four hours of orientation before assuming any job responsibilities. Training must cover, at a minimum, the following topics:

(i) reporting of abuse and neglect;

(ii) confidentiality of resident information;

(iii) universal precautions;

(iv) conditions about which they should notify the facility manager;

(v) residents' rights; and

(vi) emergency and evacuation procedures.

(B) Attendants must complete 16 hours of on-the-job supervision and training within the first 16 hours of employment following orientation. Training must include:

(i) in Type A and B facilities, providing assistance with the activities of daily living;

(ii) resident's health conditions and how they may affect provision of tasks;

(iii) safety measures to prevent accidents and injuries;

(iv) emergency first aid procedures, such as the Heimlich maneuver and actions to take when a resident falls, suffers a laceration, or experiences a sudden change in physical and/or mental status;

(v) managing disruptive behavior;

(vi) behavior management, for example, prevention of aggressive behavior and de-escalation techniques, practices to decrease the frequency of the use of restraint, and alternatives to restraints; and

(vii) fall prevention.

(C) Direct care staff must complete six documented hours of education annually, based on each employee's hire date. Staff must complete one hour of annual training in fall prevention and one hour of training in behavior management, for example, prevention of aggressive behavior and de-escalation techniques, practices to decrease the frequency of the use of restraint, and alternatives to restraints. Training for these subjects must be competency-based. Subject matter must address the unique needs of the facility. Suggested topics include:

(i) promoting resident dignity, independence, individuality, privacy, and choice;

(ii) resident rights and principles of self-determination;

(iii) communication techniques for working with residents with hearing, visual, or cognitive impairment;

(iv) communicating with families and other persons interested in the resident;

(v) common physical, psychological, social, and emotional conditions and how these conditions affect residents' care;

(vi) essential facts about common physical and mental disorders, for example, arthritis, cancer, dementia, depression, heart and lung diseases, sensory problems, or stroke;

(vii) cardiopulmonary resuscitation;

(viii) common medications and side effects, including psychotropic medications, when appropriate;

(ix) understanding mental illness;

(x) conflict resolution and de-escalation techniques; and

(xi) information regarding community resources.

(D) Facilities that employ licensed nurses, certified nurse aides, or certified medication aides must provide annual in-service training, appropriate to their job responsibilities, from one or more of the following areas:

(i) communication techniques and skills useful when providing geriatric care (skills for communicating with the hearing impaired, visually impaired and cognitively impaired; therapeutic touch; recognizing communication that indicates psychological abuse);

(ii) assessment and interventions related to the common physical and psychological changes of aging for each body system;

(iii) geriatric pharmacology, including treatment for pain management, food and drug interactions, and sleep disorders;

(iv) common emergencies of geriatric residents and how to prevent them, for example falls, choking on food or medicines, injuries from restraint use; recognizing sudden changes in physical condition, such as stroke, heart attack, acute abdomen, acute glaucoma; and obtaining emergency treatment;

(v) common mental disorders with related nursing implications; and

(vi) ethical and legal issues regarding advance directives, abuse and neglect, guardianship, and confidentiality.

(b) Social services. The facility must provide an activity and/or social program at least weekly for the residents.

(c) Resident assessment. Within 14 days of admission, a resident comprehensive assessment and an individual service plan for providing care, which is based on the comprehensive assessment, must be completed. The comprehensive assessment must be completed by the appropriate staff and documented on a form developed by the facility. When a facility is unable to obtain information required for the comprehensive assessment, the facility should document its attempts to obtain the information.

(1) The comprehensive assessment must include the following items:

(A) the location from which the resident was admitted;

(B) primary language;

(C) sleep-cycle issues;

(D) behavioral symptoms;

(E) psychosocial issues (i.e., a psychosocial functioning assessment that includes an assessment of mental or psychosocial adjustment difficulty; a screening for signs of depression, such as withdrawal, anger or sad mood; assessment of the resident's level of anxiety; and determining if the resident has a history of psychiatric diagnosis that required in-patient treatment);

(F) Alzheimer's/dementia history;

(G) activities of daily living patterns (i.e., wakened to toilet all or most nights, bathed in morning/night, shower or bath);

(H) involvement patterns and preferred activity pursuits (i.e., daily contact with relatives, friends, usually attended religious services, involved in group activities, preferred activity settings, general activity preferences);

(I) cognitive skills for daily decision-making (independent, modified independence, moderately impaired, severely impaired);

(J) communication (ability to communicate with others, communication devices);

(K) physical functioning (transfer status; ambulation status; toilet use; personal hygiene; ability to dress, feed and groom self);

(L) continence status;

(M) nutritional status (weight changes, nutritional problems or approaches);

- (N) oral/dental status;
- (O) diagnoses;
- (P) medications (administered, supervised, self-administers);
- (Q) health conditions and possible medication side effects;
- (R) special treatments and procedures;
- (S) hospital admissions within the past six months or since last assessment; and
- (T) preventive health needs (i.e., blood pressure monitoring, hearing-vision assessment).

(2) The service plan must be approved and signed by the resident or a person responsible for the resident's health care decisions. The facility must provide care according to the service plan. The service plan must be updated annually and upon a significant change in condition, based upon an assessment of the resident.

(3) For respite clients, the facility may keep a service plan for six months from the date on which it is developed. During that period, the facility may admit the individual as frequently as needed.

(4) Emergency admissions must be assessed and a service plan developed for them.

(d) Resident policies.

(1) Before admitting a resident, facility staff must explain and provide a copy of the disclosure statement to the resident, family, or responsible party. An assisted living facility that provides brain injury rehabilitation services must attach to its disclosure statement a specific statement that licensure as an assisted living facility does not indicate state review, approval, or endorsement of the facility's rehabilitative services. The facility must document receipt of the disclosure statement.

(2) The facility must provide residents with a copy of the Resident Bill of Rights.

(3) When a resident is admitted, the facility must provide to the resident's immediate family, and document the family's receipt of, the DADS telephone hotline number to report suspected abuse, neglect, or exploitation, as referenced in §92.102 of this chapter (relating to Abuse, Neglect, or Exploitation Reportable to DADS).

(4) [(3)] The facility must have written policies regarding residents accepted, services provided, charges, refunds, responsibilities of facility and residents, privileges of residents, and other rules and regulations.

(5) [(4)] Each facility must make available copies of the resident policies to staff and to residents or residents' responsible parties at time of admission. Documented notification of any changes to the policies must occur before the effective date of the changes.

(6) [(5)] Before or upon admission of a resident, a facility must notify the resident and, if applicable, the resident's legally authorized representative, of DADS [DADS'] rules and the facility's policies related to restraint and seclusion.

(e) Admission policies.

(1) A facility must not admit or retain a resident whose needs cannot be met by the facility or who cannot secure the necessary services from an outside resource. As part of the facility's general supervision and oversight of the physical and mental well-being of its residents, the facility remains responsible for all care provided at the

facility. If the individual is appropriate for placement in a facility, then the decision that additional services are necessary and can be secured is the responsibility of facility management with written concurrence of the resident, resident's attending physician, or legal representative. Regardless of the possibility of "aging in place" or securing additional services, the facility must meet all Life Safety Code requirements based on each resident's evacuation capabilities, except as provided in subsection (f) of this section.

(2) There must be a written admission agreement between the facility and the resident. The agreement must specify such details as services to be provided and the charges for the services. If the facility provides services and supplies that could be a Medicare benefit, the facility must provide the resident a statement that such services and supplies could be a Medicare benefit.

(3) A facility must share a copy of the facility disclosure statement, rate schedule, and individual resident service plan with outside resources that provide any additional services to a resident. Outside resources must provide facilities with a copy of their resident care plans and must document, at the facility, any services provided, on the day provided.

(4) Each resident must have a health examination by a physician performed within 30 days before admission or 14 days after admission, unless a transferring hospital or facility has a physical examination in the medical record.

(5) The assisted living facility must secure at the time of admission of a resident the following identifying information:

- (A) full name of resident;
- (B) social security number;
- (C) usual residence (where resident lived before admission);
- (D) sex;
- (E) marital status;
- (F) date of birth;
- (G) place of birth;
- (H) usual occupation (during most of working life);
- (I) family, other persons named by the resident, and physician for emergency notification;
- (J) pharmacy preference; and
- (K) Medicaid/Medicare number, if available.

(f) Inappropriate placement in Type A or Type B facilities.

(1) DADS or a facility may determine that a resident is inappropriately placed in the facility if a resident experiences a change of condition but continues to meet the facility evacuation criteria.

(A) If DADS determines the resident is inappropriately placed and the facility is willing to retain the resident, the facility is not required to discharge the resident if, within 10 working days after receiving the Statement of Licensing Violations and Plan of Correction, Form 3724, and the Report of Contact, Form 3614-A, from DADS, the facility submits the following to the DADS regional office:

(i) Physician's Assessment, Form 1126, indicating that the resident is appropriately placed and describing the resident's medical conditions and related nursing needs, ambulatory and transfer abilities, and mental status;

(ii) Resident's Request to Remain in Facility, Form 1125, indicating that:

(I) the resident wants to remain at the facility; or

(II) if the resident lacks capacity to provide a written statement, the resident's family member or legally authorized representative wants the resident to remain at the facility; and

(iii) Facility Request, Form 1124, indicating that the facility agrees that the resident may remain at the facility.

(B) If the facility initiates the request for an inappropriately placed resident to remain in the facility, the facility must complete and date the forms described in subparagraph (A) of this paragraph and submit them to the DADS regional office within 10 working days after the date the facility determines the resident is inappropriately placed, as indicated on the DADS prescribed forms.

(2) DADS or a facility may determine that a resident is inappropriately placed in the facility if the facility does not meet all requirements referenced in §92.3 of this chapter (relating to Types of Assisted Living Facilities) for the evacuation of a designated resident.

(A) If, during a site visit, DADS determines that a resident is inappropriately placed at the facility and the facility is willing to retain the resident, the facility must request an evacuation waiver as described in subparagraph (C) of this paragraph to the DADS regional office within 10 working days after the date the facility receives the Statement of Licensing Violations and Plan of Correction, Form 372, and the Report of Contact, Form 3614-A. If the facility is not willing to retain the resident, the facility must discharge the resident within 30 days after receiving the Statement of Licensing Violations and Plan of Correction and the Report of Contact.

(B) If the facility initiates the request for a resident to remain in the facility, the facility must request an evacuation waiver as described in subparagraph (C) of this paragraph from the DADS regional office within 10 working days after the date the facility determines the resident is inappropriately placed, as indicated on the DADS prescribed forms.

(C) To request an evacuation waiver for an inappropriately placed resident, a facility must submit to the DADS regional office:

(i) Physician's Assessment, Form 1126, indicating that the resident is appropriately placed and describing the resident's medical conditions and related nursing needs, ambulatory and transfer abilities, and mental status;

(ii) Resident's Request to Remain in Facility, Form 1125, indicating that:

(I) the resident wants to remain at the facility; or

(II) if the resident lacks capacity to provide a written statement, the resident's family member or legally authorized representative wants the resident to remain at the facility;

(iii) Facility Request, Form 1124, indicating that the facility agrees that the resident may remain at the facility;

(iv) a detailed emergency plan that explains how the facility will meet the evacuation needs of the resident, including:

(I) the specific staff positions that will be on duty to assist with evacuation and their shift times;

(II) specific staff positions that will be on duty and awake at night; and

(III) specific staff training that relates to resident evacuation;

(v) a copy of an accurate facility floor plan, to scale, that labels all rooms by use and indicates the specific resident's room;

(vi) a copy of the facility's emergency evacuation plan;

(vii) a copy of the facility fire drill records for the last 12 months;

(viii) a copy of a completed Fire Marshal/State Fire Marshal Notification, Form 1127, signed by the fire authority having jurisdiction (either the local Fire Marshal or State Fire Marshal) as an acknowledgement that the fire authority has been notified that the resident's evacuation capability has changed;

(ix) a copy of a completed Fire Suppression Authority Notification, Form 1129, signed by the local fire suppression authority as an acknowledgement that the fire suppression authority has been notified that the resident's evacuation capability has changed;

(x) a copy of the resident's most recent comprehensive assessment that addresses the areas required by subsection (c) of this section and that was completed within 60 days, based on the date stated on the evacuation waiver form submitted to DADS;

(xi) the resident's service plan that addresses all aspects of the resident's care, particularly those areas identified by DADS, including:

(I) the resident's medical condition and related nursing needs;

(II) hospitalizations within 60 days, based on the date stated on the evacuation waiver form submitted to DADS;

(III) any significant change in condition in the last 60 days, based on the date stated on the evacuation waiver form submitted to DADS;

(IV) specific staffing needs; and

(V) services that are provided by an outside provider;

(xii) any other information that relates to the required fire safety features of the facility that will ensure the evacuation capability of any resident; and

(xiii) service plans of other residents, if requested by DADS.

(D) A facility must meet the following criteria to receive a waiver from DADS:

(i) The emergency plan submitted in accordance with subparagraph (C)(iv) of this paragraph must ensure that:

(I) staff is adequately trained;

(II) a sufficient number of staff is on all shifts to move all residents to a place of safety;

(III) residents will be moved to appropriate locations, given health and safety issues;

(IV) all possible locations of fire origin areas and the necessity for full evacuation of the building are addressed;

(V) the fire alarm signal is adequate;

(VI) there is an effective method for warning residents and staff during a malfunction of the building fire alarm system;

(VII) there is a method to effectively communicate the actual location of the fire; and

(VIII) the plan satisfies any other safety concerns that could have an effect on the residents' safety in the event of a fire; and

(ii) the emergency plan will not have an adverse effect on other residents of the facility who have waivers of evacuation or who have special needs that require staff assistance.

(E) DADS reviews the documentation submitted under this subsection and notifies the facility in writing of its determination to grant or deny the waiver within 10 working days after the date the request is received in the DADS regional office.

(F) Upon notification that DADS has granted the evacuation waiver, the facility must immediately initiate all provisions of the proposed emergency plan. If the facility does not follow the emergency plan, and there are health and safety concerns that are not addressed, DADS may determine that there is an immediate threat to the health or safety of a resident.

(G) DADS reviews a waiver of evacuation during the facility's annual renewal licensing inspection.

(3) If a DADS surveyor determines that a resident is inappropriately placed at a facility and the facility either agrees with the determination or fails to obtain the written statements or waiver required in this subsection, the facility must discharge the resident.

(A) The resident is allowed 30 days after the date of notice of discharge to move from the facility.

(B) A discharge required under this subsection must be made notwithstanding:

(i) any other law, including any law relating to the rights of residents and any obligations imposed under the Property Code; and

(ii) the terms of any contract.

(4) If a facility is required to discharge the resident because the facility has not submitted the written statements required by paragraph (1) of this subsection to the DADS regional office, or DADS denies the waiver as described in paragraph (2) of this subsection, DADS may:

(A) assess an administrative penalty if DADS determines the facility has intentionally or repeatedly disregarded the waiver process because the resident is still residing in the facility when DADS conducts a future onsite visit; or

(B) seek other sanctions, including an emergency suspension or closing order, against the facility under Texas Health and Safety Code Chapter 247, Subchapter C (relating to General Enforcement), if DADS determines there is a significant risk and immediate threat to the health and safety of a resident of the facility.

(5) The facility's disclosure statement must notify the resident and resident's legally authorized representative of the waiver process described in this section and the facility's policies and procedures for aging in place.

(6) After the first year of employment and no later than the anniversary date of the facility manager's hire date, the manager must show evidence of annual completion of DADS training on aging in place and retaliation.

(g) Advance directives.

(1) The facility must maintain written policies regarding the implementation of advance directives. The policies must include a clear and precise statement of any procedure the facility is unwilling or unable to provide or withhold in accordance with an advance directive.

(2) The facility must provide written notice of these policies to residents at the time they are admitted to receive services from the facility.

(A) If, at the time notice is to be provided, the resident is incompetent or otherwise incapacitated and unable to receive the notice, the facility must provide the written notice, in the following order of preference, to:

(i) the resident's legal guardian;

(ii) a person responsible for the resident's health care decisions;

(iii) the resident's spouse;

(iv) the resident's adult child;

(v) the resident's parents; or

(vi) the person admitting the resident.

(B) If the facility is unable, after diligent search, to locate an individual listed under subparagraph (A) of this paragraph, the facility is not required to give notice.

(3) If a resident who was incompetent or otherwise incapacitated and unable to receive notice regarding the facility's advance directives policies later becomes able to receive the notice, the facility must provide the written notice at the time the resident becomes able to receive the notice.

(4) Failure to inform the resident of facility policies regarding the implementation of advance directives will result in an administrative penalty of \$500.

(A) Facilities will receive written notice of the recommendation for an administrative penalty.

(B) Within 20 days after the date on which written notice is sent to a facility, the facility must give written consent to the penalty or make written request for a hearing to the Texas Health and Human Services Commission.

(C) Hearings will be held in accordance with the formal hearing procedures at 1 TAC Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedures Act).

(h) Resident records.

(1) Records that pertain to residents must be treated as confidential and properly safeguarded from unauthorized use, loss, or destruction.

(2) Resident records must contain:

(A) information contained in the facility's standard and customary admission form;

(B) a record of the resident's assessments;

(C) the resident's service plan;

(D) physician's orders, if any;

(E) any advance directives;

(F) documentation of a health examination by a physician performed within 30 days before admission or 14 days after admission, unless a transferring hospital or facility has a physical exam-

ination in the medical record. Christian Scientists are excluded from this requirement; and

(G) documentation by health care professionals of any services delivered in accordance with the licensing, certification, or other regulatory standards applicable to the health care professional under law.

(3) Records must be available to residents, their legal representatives, and DADS staff.

(i) Personnel records. An assisted living [The] facility must keep current and complete personnel records on a facility employee for review by DADS [aH] staff including: [in a central location.]

(1) documentation that the facility performed a criminal history check;

(2) an annual employee misconduct registry check;

(3) an annual nurse aide registry check;

(4) documentation of initial tuberculosis screenings referenced in subsection (n) of this section;

(5) documentation of the employee's compliance with or exemption from the facility vaccination policy referenced in subsection (r) of this section; and

(6) the signed statement from the employee referenced in §92.102 of this chapter acknowledging that the employee may be criminally liable for the failure to report abuse, neglect and exploitation.

(j) Medications.

(1) Administration. Medications must be administered according to physician's orders.

(A) Residents who choose not to or cannot self-administer their medications must have their medications administered by a person who:

(i) holds a current license under state law that authorizes the licensee to administer medication; or

(ii) holds a current medication aide permit and acts under the authority of a person who holds a current nursing license under state law that authorizes the licensee to administer medication. A medication aide must function under the direct supervision of a licensed nurse on duty or on call by the facility.

(iii) is an employee of the facility to whom the administration of medication has been delegated by a registered nurse, who has trained them to administer medications or verified their training. The delegation of the administration of medication is governed by 22 TAC Chapter 225 (concerning RN Delegation to Unlicensed Personnel and Tasks Not Requiring Delegation in Independent Living Environments for Clients with Stable and Predictable Conditions), which implements the Nursing Practice Act.

(B) All resident's prescribed medication must be dispensed through a pharmacy or by the resident's treating physician or dentist.

(C) Physician sample medications may be given to a resident by the facility provided the medication has specific dosage instructions for the individual resident.

(D) Each resident's medications must be listed on an individual resident's medication profile record. The recorded information obtained from the prescription label must include, but is not limited to, the medication:

(i) name;

(ii) strength;

(iii) dosage;

(iv) amount received;

(v) directions for use;

(vi) route of administration;

(vii) prescription number;

(viii) pharmacy name; and

(ix) the date each medication was issued by the pharmacy.

pharmacy.

(2) Supervision. Supervision of a resident's medication regimen by facility staff may be provided to residents who are incapable of self-administering without assistance to include and limited to:

(A) reminders to take their medications at the prescribed time;

(B) opening containers or packages and replacing lids;

(C) pouring prescribed dosage according to medication profile record;

(D) returning medications to the proper locked areas;

(E) obtaining medications from a pharmacy; and

(F) listing on an individual resident's medication profile record the medication:

(i) name;

(ii) strength;

(iii) dosage;

(iv) amount received;

(v) directions for use;

(vi) route of administration;

(vii) prescription number;

(viii) pharmacy name; and

(ix) the date each medication was issued by the pharmacy.

pharmacy.

(3) Self-administration.

(A) Residents who self-administer their own medications and keep them locked in their room must be counseled at least once a month by facility staff to ascertain if the residents continue to be capable of self-administering their medications/treatments and if security of medications can continue to be maintained. The facility must keep a written record of counseling.

(B) Residents who choose to keep their medications locked in the central medication storage area may be permitted entrance or access to the area for the purpose of self-administering their own medication/treatment regimen. A facility staff member must remain in or at the storage area the entire time any resident is present.

(4) General.

(A) Facility staff will immediately report to the resident's physician and responsible party any unusual reactions to medications or treatments.

(B) When the facility supervises or administers the medications, a written record must be kept when the resident does



not receive or take his/her medications/treatments as prescribed. The documentation must include the date and time the dose should have been taken, and the name and strength of medication missed; however, the recording of missed doses of medication does not apply when the resident is away from the assisted living facility.

(5) Storage.

(A) The facility must provide a locked area for all medications. Examples of areas include, but are not limited to:

- (i) central storage area;
- (ii) medication cart; and
- (iii) resident room.

(B) Each resident's medication must be stored separately from other resident's medications within the storage area.

(C) A refrigerator must have a designated and locked storage area for medications that require refrigeration, unless it is inside a locked medication room.

(D) Poisonous substances and medications labeled for "external use only" must be stored separately within the locked medication area.

(E) If facilities store controlled drugs, facility policies and procedures must address the prevention of the diversion of the controlled drugs.

(6) Disposal.

(A) Medications no longer being used by the resident for the following reasons are to be kept separate from current medications and are to be disposed of by a registered pharmacist licensed in the State of Texas:

- (i) medications discontinued by order of the physician;
- (ii) medications that remain after a resident is deceased; or
- (iii) medications that have passed the expiration date.

(B) Needles and hypodermic syringes with needles attached must be disposed as required by 25 TAC §§1.131 - 1.137 (relating to Definition, Treatment, and Disposition of Special Waste from Health Care-Related Facilities).

(C) Medications kept in a central storage area are released to discharged residents when a receipt has been signed by the resident or responsible party.

(k) Accident, injury, or acute illness.

(1) In the event of accident or injury that requires emergency medical, dental or nursing care, or in the event of apparent death, the assisted living facility will:

(A) make arrangements for emergency care and/or transfer to an appropriate place for treatment, such as a physician's office, clinic, or hospital;

(B) immediately notify the resident's physician and next of kin, responsible party, or agency who placed the resident in the facility; and

(C) describe and document the injury, accident, or illness on a separate report. The report must contain a statement of final disposition and be maintained on file.

(2) The facility must stock and maintain in a single location first aid supplies to treat burns, cuts, and poisoning.

(3) Residents who need the services of professional nursing or medical personnel due to a temporary illness or injury may have those services delivered by persons qualified to deliver the necessary service.

(l) Resident finances. The assisted living facility must keep a simple financial record on all charges billed to the resident for care and these records must be available to DADS. If the resident entrusts the handling of any personal finances to the assisted living facility, a simple financial record must be maintained to document accountability for receipts and expenditures, and these records must be available to DADS. Receipts for payments from residents or family members must be issued upon request.

(m) Food and nutrition services.

(1) A person designated by the facility is responsible for the total food service of the facility.

(2) At least three meals or their equivalent must be served daily, at regular times, with no more than a 16-hour span between a substantial evening meal and breakfast the following morning. All exceptions must be specifically approved by DADS.

(3) Menus must be planned one week in advance and must be followed. Variations from the posted menus must be documented. Menus must be prepared to provide a balanced and nutritious diet, such as that recommended by the National Food and Nutrition Board. Food must be palatable and varied. Records of menus as served must be filed and maintained for 30 days after the date of serving.

(4) Therapeutic diets as ordered by the resident's physician must be provided according to the service plan. Therapeutic diets that cannot customarily be prepared by a layperson must be calculated by a qualified dietician. Therapeutic diets that can customarily be prepared by a person in a family setting may be served by the assisted living facility.

(5) Supplies of staple foods for a minimum of a four-day period and perishable foods for a minimum of a one-day period must be maintained on the premises.

(6) Food must be obtained from sources that comply with all laws relating to food and food labeling. If food, subject to spoilage, is removed from its original container, it must be kept sealed, and labeled. Food subject to spoilage must also be dated.

(7) Plastic containers with tight fitting lids are acceptable for storage of staple foods in the pantry.

(8) Potentially hazardous food, such as meat and milk products, must be stored at 45 degrees Fahrenheit or below. Hot food must be kept at 140 degrees Fahrenheit or above during preparation and serving. Food that is reheated must be heated to a minimum of 165 degrees Fahrenheit.

(9) Freezers must be kept at a temperature of 0 degrees Fahrenheit or below and refrigerators must be 41 degrees Fahrenheit or below. Thermometers must be placed in the warmest area of the refrigerator and freezer to assure proper temperature.

(10) Food must be prepared and served with the least possible manual contact, with suitable utensils, and on surfaces that have been cleaned, rinsed, and sanitized before use to prevent cross-contamination.

(11) Facilities must prepare food in accordance with established food preparation practices and safety techniques.

(12) A food service employee, while infected with a communicable disease that can be transmitted by foods, or who is a carrier of organisms that cause such a disease or while afflicted with a boil, an infected wound, or an acute respiratory infection, must not work in the food service area in any capacity in which there is a likelihood of such person contaminating food or food-contact surfaces with pathogenic organisms or transmitting disease to other persons.

(13) Effective hair restraints must be worn to prevent the contamination of food.

(14) Tobacco products must not be used in the food preparation and service areas.

(15) Kitchen employees must wash their hands before returning to work after using the lavatory.

(16) Dishwashing chemicals used in the kitchen may be stored in plastic containers if they are the original containers in which the manufacturer packaged the chemicals.

(17) Sanitary dishwashing procedures and techniques must be followed.

(18) Facilities that house 17 or more residents must comply with 25 TAC §§229.161 - 229.171 and §§229.173 - 229.175 (relating to Texas Food Establishment rules) and local health ordinances or requirements must be observed in the storage, preparation, and distribution of food; in the cleaning of dishes, equipment, and work area; and in the storage and disposal of waste.

(n) Infection control.

(1) Each facility must establish and maintain an infection control policy and procedure designated to provide a safe, sanitary, and comfortable environment and to help prevent the development and transmission of disease and infection.

(2) The facility must comply with departmental rules regarding special waste in 25 TAC §§1.131 - 1.137.

(3) The name of any resident of a facility with a reportable disease as specified in 25 TAC §§97.1 - 97.13 (relating to Control of Communicable Diseases) must be reported immediately to the city health officer, county health officer, or health unit director having jurisdiction, and appropriate infection control procedures must be implemented as directed by the local health authority.

(4) The facility must have written policies for the control of communicable disease in employees and residents, which includes tuberculosis (TB) screening and provision of a safe and sanitary environment for residents and employees.

(A) If employees contract a communicable disease that is transmissible to residents through food handling or direct resident care, the employee must be excluded from providing these services as long as a period of communicability is present.

(B) The facility must maintain evidence of compliance with local and/or state health codes or ordinances regarding employee and resident health status.

(C) The facility must screen all employees for TB within two weeks of employment and annually, according to Centers for Disease Control and Prevention (CDC) screening guidelines. All persons who provide services under an outside resource contract must, upon request of the facility, provide evidence of compliance with this requirement.

(D) All residents should be screened upon admission and after exposure to TB, in accordance with the attending physician's recommendations and CDC guidelines.

(5) Personnel must handle, store, process, and transport linens so as to prevent the spread of infection.

(6) Universal precautions must be used in the care of all residents.

(o) Access to residents. The facility must allow an employee of DADS or an employee of a local mental health and mental retardation authority into the facility as necessary to provide services to a resident.

(p) Restraints. All restraints for purposes of behavioral management, staff convenience, or resident discipline are prohibited. Seclusion is prohibited.

(1) As provided in §92.125(a)(3) of this chapter (relating to Resident's Bill of Rights and Provider Bill of Rights), a facility may use physical or chemical restraints only:

(A) if the use is authorized in writing by a physician and specifies:

(i) the circumstances under which a restraint may be used; and

(ii) the duration for which the restraint may be used; or

(B) if the use is necessary in an emergency to protect the resident or others from injury.

(2) A behavioral emergency is a situation in which severely aggressive, destructive, violent, or self-injurious behavior exhibited by a resident:

(A) poses a substantial risk of imminent probable death of, or substantial bodily harm to, the resident or others;

(B) has not abated in response to attempted preventive de-escalatory or redirection techniques;

(C) could not reasonably have been anticipated; and

(D) is not addressed in the resident's service plan.

(3) Except in a behavioral emergency, a restraint must be administered only by qualified medical personnel.

(4) A restraint must not be administered under any circumstance if it:

(A) obstructs the resident's airway, including a procedure that places anything in, on, or over the resident's mouth or nose;

(B) impairs the resident's breathing by putting pressure on the resident's torso;

(C) interferes with the resident's ability to communicate; or

(D) places the resident in a prone or supine position.

(5) If a facility uses a restraint hold in a circumstance described in paragraph (2) of this subsection, the facility must use an acceptable restraint hold.

(A) An acceptable restraint hold is a hold in which the individual's limbs are held close to the body to limit or prevent movement and that does not violate the provisions of paragraph (4) of this subsection.

(B) After the use of restraint, the facility must:

(i) with the resident's consent, make an appointment with the resident's physician no later than the end of the first working

day after the use of restraint and document in the resident's record that the appointment was made; or

(ii) if the resident refuses to see the physician, document the refusal in the resident's record.

(C) As soon as possible but no later than 24 hours after the use of restraint, the facility must notify one of the following persons, if there is such a person, that the resident has been restrained:

(i) the resident's legally authorized representative;

or  
(ii) an individual actively involved in the resident's care, unless the release of this information would violate other law.

(D) If, under the Health Insurance Portability and Accountability Act, the facility is a "covered entity," as defined in 45 Code of Federal Regulations (CFR) §160.103, any notification provided under subparagraph (C)(ii) of this paragraph must be to a person to whom the facility is allowed to release information under 45 CFR §164.510.

(6) In order to decrease the frequency of the use of restraint, facility staff must be aware of and adhere to the findings of the resident assessment required in subsection (c) of this section for each resident.

(7) A facility may adopt policies that allow less use of restraint than allowed by the rules of this chapter.

(8) A facility must not discharge or otherwise retaliate against:

(A) an employee, resident, or other person because the employee, resident, or other person files a complaint, presents a grievance, or otherwise provides in good faith information relating to the misuse of restraint or seclusion at the facility;

(B) a resident because someone on behalf of the resident files a complaint, presents a grievance, or otherwise provides in good faith information relating to the misuse of restraint or seclusion at the facility.

(q) Accreditation status. If a license holder uses an on-site accreditation survey by an accreditation commission instead of a licensing survey by DADS, as provided in §92.11(c)(2) and §92.15(j) of this chapter (relating to Criteria for Licensing; and Renewal Procedures and Qualifications), the license holder must provide written notification to DADS within five working days after the license holder receives a notice of change in accreditation status from the accreditation commission. The license holder must include a copy of the notice of change with its written notification to DADS.

(r) Vaccine Preventable Diseases.

(1) Effective September 1, 2012, a facility must develop and implement a policy to protect a resident from vaccine preventable diseases in accordance with Texas Health and Safety Code, Chapter 224.

(2) The policy must:

(A) require an employee or a contractor providing direct care to a resident to receive vaccines for the vaccine preventable diseases specified by the facility based on the level of risk the employee or contractor presents to residents by the employee's or contractor's routine and direct exposure to residents;

(B) specify the vaccines an employee or contractor is required to receive in accordance with paragraph (1) of this subsection;

(C) include procedures for the facility to verify that an employee or contractor has complied with the policy;

(D) include procedures for the facility to exempt an employee or contractor from the required vaccines for the medical conditions identified as contraindications or precautions by the Centers for Disease Control and Prevention;

(E) for an employee or contractor who is exempt from the required vaccines, include procedures the employee or contractor must follow to protect residents from exposure to disease, such as the use of protective equipment, such as gloves and masks, based on the level of risk the employee or contractor presents to residents by the employee's or contractor's routine and direct exposure to residents;

(F) prohibit discrimination or retaliatory action against an employee or contractor who is exempt from the required vaccines for the medical conditions identified as contraindications or precautions by the Centers for Disease Control and Prevention, except that required use of protective medical equipment, such as gloves and masks, may not be considered retaliatory action;

(G) require the facility to maintain a written or electronic record of each employee's or contractor's compliance with or exemption from the policy;

(H) include disciplinary actions the facility may take against an employee or contractor who fails to comply with the policy.

(3) The policy may:

(A) include procedures for an employee or contractor to be exempt from the required vaccines based on reasons of conscience, including religious beliefs; and

(B) prohibit an employee or contractor who is exempt from the required vaccines from having contact with residents during a public health disaster, as defined in Texas Health and Safety Code, §81.003 (relating to Communicable Diseases).

(s) A DADS employee must not retaliate against an assisted living facility, an employee of an assisted living facility, or a person in control of an assisted living facility for:

(1) complaining about the conduct of a DADS employee;

(2) disagreeing with a DADS employee about the existence of a violation of this chapter or a rule adopted under this chapter; or

(3) asserting a right under state or federal law.

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

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## SUBCHAPTER D. FACILITY CONSTRUCTION

### 40 TAC §§92.61 - 92.64

#### STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive com-

missioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Health and Safety Code, Chapter 247, which authorizes DADS to license and regulate assisted living facilities; and 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.

The amendments implement Texas Government Code, §531.0055; Texas Health and Safety Code, §§247.001 - 247.069; and Texas Human Resources Code, §161.021.

§92.61. *Introduction and Application.*

(a) Classification of facilities.

(1) A small facility is a building or buildings [building(s)] consisting of one or more floors providing sleeping accommodations for 16 or fewer residents exclusive of "live-in" houseparents, family or staff.

(2) A large facility is a building or buildings [building(s)] consisting of one or more floors providing sleeping accommodations for 17 or more residents exclusive of "live-in" staff.

(3) New construction is any construction work that began on or after October 15, 2013. Converting an unlicensed building or unlicensed portion of a building to an assisted living facility must meet the new construction requirements for the proposed new use referenced in the Life Safety Code.

(4) An existing facility is one that operated with a license as an assisted living facility before October 15, 2013 and has not subsequently become unlicensed.

(b) Applicability of requirements for construction and life safety.

(1) All buildings or structures, new or existing, used as a licensed assisted living facility must comply [be in accordance] with these standards. Any exceptions are specifically mentioned.

(2) Existing [~~For existing~~] buildings and structures that [which] are converted to assisted living occupancy, must not admit assisted living residents [no residents will be admitted] until all standards are met and DADS grants approval for occupancy [is granted by the licensing section of the Texas Department of Human Services (DHS)].

(3) A licensed nursing facility or licensed hospital that meet the requirements of Chapter 18 or Chapter 19[, meeting Chapter 12 or Chapter 13] of National Fire Protection Association 101 (NFPA 101), may be considered as an assisted living occupancy without implementing additional fire safety features as may be specified in this subchapter.

(4) Buildings and structures must comply with [~~conform to~~] the 2000 [1988] edition of NFPA 101, as published by the National Fire Protection Association, Inc., [Batterymarch Park, Quincy, Massachusetts 02269,] as follows. For new construction, DADS may authorize an assisted living facility to comply [DHS has the option, for new construction only, of accepting compliance] with later editions of the code, in their entirety, when required by local building authorities.

(A) All new Type A facilities and small Type B facilities must comply with [~~conform to~~] Chapter 32 [24].

(B) All existing Type A facilities and small Type B facilities must comply with Chapter 33.

(C) [~~B~~] All new Type B large facilities must comply with [~~conform to~~] Chapter 18 [12]. The requirements of limited care, as defined by the NFPA 101, may be used.

(D) All existing Type B large facilities must comply with Chapter 19. The requirements of limited care, as defined by the NFPA 101, may be used.

(E) [~~C~~] All assisted living facilities must comply with other [Other] chapters, sections, subsections, or paragraphs of the NFPA 101, including [such as] Chapters 1 through 10 [7 and Chapter 34], as they relate [must apply as referenced or intended for their relation] to Chapters 18, 19, 30, 32, and 33 [24, 12 and 18].

(F) [~~D~~] All assisted living facilities with buildings that [Buildings which] contain living units with independent cooking and bathroom facilities must comply [shall conform] with NFPA 101, Chapters 30, 31, 32, and 33 [24 and 18, New Apartment Buildings, Option #2, "Buildings provided with a complete automatic fire detection and notification system," as a minimum].

(5) New construction is subject to local codes. The description of the occupancy may vary with local codes. In the absence of a local code [~~codes or their enforcement for new construction~~], DADS requires compliance with [the department will require conformance to] the fundamentals of the following codes:

(A) the International Building Code, 2000 edition or later by the International Code Council, relating to "I-1" Occupancy for Type A facilities and "I-2" for Type B facilities [the Uniform Building Code, 1988 edition by the International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California 90601, 'R' Occupancy, Divisions 4 and 3 for Type A facilities, and 'I' Occupancy for Large Type B facilities];

(B) the International Plumbing Code, 2000 edition by the International Code Council [the Uniform Plumbing Code, 1988 edition, as published by the International Association of Plumbing and Mechanical Officials, 5032 Alhambra Avenue, Los Angeles, California 90032];

(C) the National Electrical Code as specified under NFPA 101; and

(D) illumination systems must be designed and installed in accordance with the Lighting Handbook of the Illuminatory Engineering Society (IES) of North America, except as may be modified in this subchapter.

(6) An existing building either occupied as an assisted living facility at the time of initial inspection by DADS [DHS] or converted to occupancy as an assisted living facility must meet all local requirements pertaining to that building for that occupancy. DADS [DHS] will require the facility sponsor or licensee to submit evidence that local requirements are satisfied. When local laws, codes or ordinances are more stringent than these standards for assisted living, the more stringent requirements will govern.

(7) Buildings must be structurally sound with regard to actual or expected dead, live, and wind loads according to applicable building codes.

(8) The facility must comply with the accessibility [meet the provisions and] requirements [concerning accessibility] for individuals with disabilities as referenced in the revised regulations for Title II and III (2010 ADA Standards for Accessible Design) of [in the following laws:] the Americans with Disabilities Act of 1990 at [(Public Law 101 - 336;) Title 42, United States Code, Chapter 126(3)]; federal regulations at Title 28, Code of Federal Regulations, Part 35 and Part 36; Texas Accessibility Standards (TAS) at Texas Govern-

ment Code, Chapter 469; and Texas Department of Licensing and Regulation (TDLR) rules at Title [Texas Civil Statutes, Article 9102; and Title] 16, Texas Administrative Code, Chapter 68. A subject facility must register plans [Plans] for new construction, substantial renovations, modifications, and alterations with TDLR [must be submitted to the Texas Department of Licensing and Regulation] (Attn: Elimination of Architectural Barriers Program) and comply with TAS [for accessibility approval under Article 9102].

§92.62. *General Requirements.*

(a) General. The concept of the National Fire Protection Association (NFPA) 101 Life Safety Code requirements for fire safety with regard to the residents, is based on evacuation capability. In accordance with NFPA 101, Chapters 32 and 33 [Chapter 24 of this title (relating to Residential Board and Care Occupancies)], Type A facilities are classified as "slow" evacuation capability and Type B facilities are classified as "impractical" evacuation capability.

(b) Evacuation procedures. A resident in a [Residents in] Type A facility [facilities] must be able to demonstrate to the Texas Department of Aging and Disability Services (DADS) [Human Services (DHS)] that the resident [they] can travel from the resident's [their] living unit to a centralized space, such as lobby, living or dining room on the level of discharge within a 13-minute period without continuous staff assistance. Elevators cannot be used as an evacuation route.

(c) Operational features.

(1) All fires causing damage to the facility and [and/or] equipment must be reported to DADS [DHS] within 72 hours after the fire is extinguished. Any fire causing injury or death to a resident must [shall] be reported immediately. A telephone report must be followed by a written report on a form that DADS supplies [which will be supplied by DHS].

(2) Fire drills must be conducted quarterly on each shift and with at least one drill conducted each month. The drills may be announced in advance to the residents. The drills must involve the participation of the staff in accordance with the emergency plan. Residents must be informed of evacuation procedures and locations of exits. All fire drills must be documented on a form provided by DADS [DHS]. In large Type B facilities, the drill must include the activation of the fire alarm signal, except between 9:00 p.m. and 6:00 a.m.

(3) Smoking regulations must be established, and smoking areas must be designated for residents and staff. Ashtrays of noncombustible material and safe design must be provided in smoking areas.

(4) All facilities, except small, one-story facilities, must post an emergency evacuation floor plan.

(5) An assisted living facility [The administration] must have in effect and available to all supervisory personnel written copies of an evacuation [a] plan for the protection of all persons in the facility in the event of fire. The plan must address sheltering in place, [and for their remaining in place, for their] evacuation to an area [areas] of refuge, and evacuation from the building when necessary. The plan must include special staff actions including fire protection procedures needed to ensure the safety of any resident. The plan [and] must be amended or revised when needed. All employees must be periodically instructed and [kept] informed of [with respect to] their duties and responsibilities under the plan. A copy of the plan must be readily available at all times within the facility. The [This written] plan must reflect the current evacuation capabilities of the residents.

(d) Safety operations. The facility must have a written emergency preparedness and response plan. The facility must attach to the plan procedures the staff must follow [Procedures to be followed] in an internal or external disaster [should be attached to the plan]. The

plan must address, at a minimum, the eight core functions of emergency management, which are: direction and control; warning (how the facility will be notified of emergencies and who they will notify); communication (with whom and by what mechanism); sheltering arrangements; evacuation (destinations, routes); transportation; health and medical needs; and resource management (supplies, staffing, emergency equipment, records). Plans must be coordinated with the local emergency management coordinator and should address those natural, technological and man-made emergencies that could affect the facility. Information about the local emergency management coordinator may be obtained from the office of the local mayor or county judge.

(e) Construction.

(1) An assisted living facility [There] must be separated [separation] from other occupancies. A common wall between an assisted living facility and another occupancy must be not less than a two-hour fire-rated partition. [The partition must be constructed as required by [as defined by] National Fire Protection Association Standards.] A licensed nursing facility or licensed hospital is not considered another occupancy for this purpose. An exception occurs when an [is where an unlicensed] occupancy not subject to DADS licensing standards is located [occurs] in the same building or structure and is so intermingled that a two hour fire rated partition is [separate safeguards are] impracticable. The means of egress, construction, protection and other safeguards for that location must comply with the National Fire Protection Association (NFPA) 101 requirements of the licensed occupancy.

(2) Interior wall and ceiling surfaces must have as the finished surface or as substrate or sheathing a fire resistance of not less than that provided by 3/8" gypsum board (20 minute fire rating), unless approved otherwise by DADS [DHS]. A sprinkler system will not substitute for the minimum construction requirements. Exceptions are existing [An exception is] Type B large facilities must [shall] meet the construction requirements of NFPA 101, Chapter 19, §1.6 and new Type B large facilities must meet NFPA 101, Chapter 18, §1.6 [12, §12-1.6].

(3) An assisted living facility must meet flame [Flame] spread rate requirements [must be] as specified in Chapters 18, 19, 32, and 33 of NFPA 101, §6-5. Flame spread is the rate of fire travel along the surface of a material. (This is different than other requirements for time-rated "burn through" resistance ratings, such as one-hour rated.) Flame spread ratings are Class A (0-25), Class B (26-75), and Class C (76-200).]

(4) Doors between resident rooms and corridors or public spaces must be not less than 1-3/4" thick solid core wood construction or 20-minute fire-rated, self-closing or automatic-closing, and latch in their frames. Exceptions are as follows.

(A) Small Type A facilities may [can] have smoke resisting doors, with self-closing or automatic closing devices, if [provided] the interior finish is Class 'B' or better and there are two remote exit routes.

(B) Small Type A facilities that have 20-minute fire-rated doors [or 1-3/4" solid core wood], Class 'B' or better interior finish, and two remote exit routes are not required to have [be] self-closing or automatic-closing doors.

(C) In a small or large [Small and Large] Type A facility [facilities] protected throughout by an approved automatic sprinkler system, doors to resident bedrooms are not required to be self-closing or automatic-closing, except for a three story or larger building that [which] does not meet construction requirements of NFPA 101, Chapter 18 [12].

(D) In a small or a ~~and~~ large Type B facility ~~facilities~~ protected throughout by an approved automatic sprinkler system, the facility may have smoke resisting doors. Door-closing devices are not required.

(5) Upper floors of an assisted living facility must have at least two separate approved stairs. Each stair must be arranged and located so that it is not necessary to go through another room, including a bedroom or bathroom, [(such as bedroom or bath)] to reach the stair. All stairs must be provided with handrails and with normal lighting. Refer to NFPA 101 for Class 'A' stair details. DADS may exempt an existing facility with [An exception is that for existing] 16 beds or less from meeting this requirement.[:] In the facility, at least one main stair may be Class 'B' ~~and~~. ~~Such stairs may be~~ constructed of wood.

(6) All hazardous areas, as defined in ~~the~~ NFPA 101, Chapter ~~18, 19, 32, or 33~~ ~~[21 or 42]~~, must have a [be] one-hour fire-separated barrier or have [provided with] sprinkler protection, or both, if considered severe. Gasoline, volatile materials, oil base paint, or similar products must not be stored in the building housing residents.

(7) Exit signs, with emergency power, must be provided in all large facilities and installed in accordance with NFPA 101, §7.10 [§5-10].

(8) Emergency lighting must be provided in all buildings with 25 or more rooms; in apartment buildings with 12 or more living units or that are three [which are 3] or more stories high [in height]; and in all large facilities that are designed for Type B. The system must be installed in accordance with NFPA 101, §7.9 [§5-9].

(9) Emergency motor generators, if required or provided, must be installed in accordance with NFPA 37 or NFPA 110 or other applicable NFPA code or standard.

(f) Fire alarm and sprinkler systems.

(1) Fire alarm and smoke detection system. An assisted living facility must install an [An] underwriter's laboratory (U.L.) listed manual fire alarm initiating system, with an interconnected automatic smoke detection and alarm initiation system, that complies [must be provided in accordance] with the NFPA 101, §9.6 [§7-6]. The operation of any alarm initiating device must activate [will sound] an audible or visual alarm [audible/visual alarm(s)] at the site.

(A) Smoke detectors must be installed in resident bedrooms, corridors, hallways, living rooms, dining rooms, offices, and public or common areas. Kitchens [Service areas, such as kitchens], laundries, and attached garages used for car parking may have heat detectors in lieu of smoke detectors. Exceptions are as follows.

(i) A large facility [Large facilities] with apartment units may use listed smoke detectors with an alarm device and separate heat detector contacts in the living area. The smoke detector [detectors] must emit [provide] an audible signal within the apartment, and annunciate at the main staff station or location. The heat detector contacts must be connected into the fire alarm system and provide a general alarm when activated.

(ii) A facility constructed to meet the requirements of NFPA 101, Chapter 18 [42], must [need only] meet §18-3.4.5.3 [§12-3.4.5.1.] for smoke detector locations.

(iii) A facility constructed to meet the requirements of NFPA 101, Chapter 19 must meet §19-3.4.5.1 for smoke detector locations.

(B) The fire alarm control panel must be visible to staff at or near the staff area that is attended 24 hours a day. An exception

to this requirement is a fire alarm control panel that is monitored by a device carried by the staff.

(C) The primary power source for the complete fire alarm system must be commercial electric and permanently wired for power on a dedicated circuit in accordance with the National Electrical Code.

(D) An emergency [Emergency] power source must be from approved storage batteries or on-site engine-driven generator set.

(E) The facility must have a written contract with a fire alarm firm which has been issued an Alarm Certificate of Registration (ACR) number from the Texas State Fire Marshal's Office to perform the inspection, test and maintenance requirements of NFPA 72 semiannually. Inspections stipulated in the contract must be performed. The person performing the semiannual service must have an individual fire alarm license from the Texas State Fire Marshal's Office. All other NFPA 72 requirements must ~~should~~ be performed and documented by a knowledgeable individual.

(F) Smoke detector sensitivity must be checked within one year after installation and every alternate year thereafter in accordance with NFPA 72. Documentation, including as-built installation drawings, operation and maintenance manuals, and a written sequence of operation, must be available for examination by DADS [DHS].

(G) In large facilities, the fire alarm panel must indicate as a separate zone, each floor and ~~and/or~~ smoke compartment as applicable. Each zone must have an alarm and trouble indication. Identification by zone is not required where all alarm initiating devices are addressable and the status of each device is identified on the fire alarm panel.

(H) In large Type B facilities the fire alarm must automatically notify the fire department in accordance with NFPA 101, §9.6.3 [§7-6.4].

~~[(F) Small Type A facilities, licensed for eight beds or less, may provide a manual fire alarm system, with smoke detection that complies with Household Fire Warning Equipment (NFPA 74), at a minimum.]~~

(2) Sprinkler systems. When installed or required, sprinkler systems must be inspected, tested, and maintained in accordance with NFPA 25. The facility must have a written contract with a fire protection sprinkler firm, that has been issued a Sprinkler Certificate of Registration number (SCR) from the Texas State Fire Marshal's Office[;] to perform the required services semiannually. The facility must have documentation available to show that all the requirements of NFPA 25 have been met including the annual inspection, test, and maintenance by the registered fire sprinkler firm. The facility must [should] retain one set of the fire sprinkler system plans and hydraulic calculations on the property in accordance with NFPA 25.

(A) An existing small [Small] Type A facility [facilities] housing 16 or fewer residents may have a system that meets NFPA 13, 13D, or 13R requirements. [Small Type B facilities housing 16 or fewer residents must be protected by a sprinkler system in compliance with NFPA 13 or NFPA 13D, with additional requirements for coverage in all habitable areas and closets as specified by NFPA 101, Chapter 21.]

(B) A new small Type A facility housing 16 or fewer residents must have a system that meets NFPA 13, 13D, or 13R requirements, installed in accordance with §32.2.3.5.2. [Large Type B facilities must have a complete NFPA 13 system.]

(C) An existing small Type B facility housing 16 or fewer residents must be protected by a sprinkler system that meets the

requirements of NFPA 13, 13D, or 13R with additional requirements for coverage in all habitable areas and closets as specified by NFPA 101, §32.2.3.5.2.

(D) A new small Type B facility housing 16 or fewer residents must be protected by a sprinkler system that meets the requirement of NFPA 13, NFPA 13R, or NFPA 13D, with additional requirements for coverage in all habitable areas and closets as specified by NFPA 101, §32.2.3.5.2.

(E) A new and an existing large Type B facility must have a complete sprinkler system that meets the requirements of the NFPA 13.

(F) ~~(C)~~ An existing large ~~[Large]~~ Type A facility ~~[facilities]~~ may have an NFPA 13 system. In a building not more than four stories high an NFPA 13R system may be permitted ~~[(up to and including three stories)].~~

(G) A new large Type A facility must have an NFPA 13 system, however a building not more than four stories high may have an NFPA 13R system.

(g) Site and location.

(1) The facility must be serviced by a paid or volunteer firefighting ~~[fire fighting]~~ unit ~~[as approved by DHS]~~. Water supply for firefighting ~~[fire fighting]~~ purposes must be as required and approved by the firefighting ~~[fire fighting]~~ unit.

(2) The facility must correct any ~~[Any]~~ site or building conditions determined by DADS to be ~~[that are]~~ a fire, health, or physical hazard~~;~~ ~~health hazard,~~ or physical hazard must have corrections made as determined by DHS].

(3) The facility must provide or arrange for nearby parking spaces for private vehicles of residents and visitors. A minimum of one space must be provided for each four beds or fraction thereof, or per local code, whichever is more stringent.

(4) The facility must ensure that ramps ~~[Ramps]~~, walks, and steps are ~~[must be]~~ of slip-resistive texture and uniform, without irregularities. Ramps must not exceed 1:12 slope, and must ~~[shall]~~ meet handicap standards for width. Guardrails, fences, or handrails must be provided where grades make an abrupt change in level.

(5) The facility must ensure that all ~~[All]~~ outside areas, grounds, and adjacent buildings are~~;~~ ~~etc.,~~ on the site must be maintained in good condition and kept free of rubbish, garbage, untended growth~~;~~ ~~etc.,~~ that may constitute a fire or health hazard. Site grades must provide for water drainage away from the structure to prevent ponding or standing water at or near the building.

(h) Sanitation and housekeeping.

(1) Wastewater ~~[Waste water]~~ and sewage must be discharged into an approved sewerage system or an onsite sewerage facility approved by the Texas Commission on Environmental Quality ~~[Texas Natural Resource Conservation Commission]~~ or its authorized agent.

(2) The water supply must be of safe, sanitary quality, suitable for use, and adequate in quantity and pressure, and ~~[must be]~~ obtained from a water supply system. The~~;~~ ~~the~~ location, construction, and operation of the water supply system must be ~~[which are]~~ approved by DADS ~~[DHS]~~.

(3) Waste, trash, and garbage must be disposed of from the premises at regular intervals in accordance with state and local requirements ~~[practices]~~. Excessive accumulations are not permitted. The facility must comply with 25 TAC §§1.131 - 1.137 (relating to

Definition, Treatment, and Disposal of Special Waste from Health Care Related Facilities).

(4) Operable windows must be insect screened.

(5) An ongoing pest control program must be provided by facility staff or by contract with a licensed pest control company. The least toxic and least flammable effective chemicals must be used.

(6) Bathrooms ~~[All bathrooms]~~, toilet rooms, and other odor-producing rooms or areas for soiled and unsanitary operations must be ventilated with operable windows. Bathrooms without operable windows must have ~~[or]~~ powered exhaust vented to the exterior for odor control. An exception is granted for ~~[that]~~ small facilities that ~~[may]~~ vent into an attic in accordance with the International Building Code ~~[Uniform Building Code]~~ or local building code.

(7) In kitchens and in laundries, there must be procedures utilized by facility staff to avoid cross-contamination between clean and soiled utensils and linens.

(8) The facility must be kept free of accumulations of dirt, rubbish, dust, and hazards. Floors must be maintained in good condition and cleaned regularly. Walls~~;~~ ~~walls]~~ and ceilings must be structurally maintained, repaired, and repainted or cleaned as needed. Storage areas and cellars must be kept in an organized manner. No storage will be permitted in the attic spaces.

(9) The facility must be ~~[capable of being]~~ ventilated through the use of windows, mechanical ventilation, or a combination of both. Interior areas designated for smoking within the building must have mechanical ventilation directed to the exterior to remove smoke at the rate of 10 air changes per hour.

(10) In addition to a janitor closet required ~~[closet(s) called for]~~ in specific departments of large facilities, other janitor closets ~~[closet(s)]~~ must be provided throughout the facility to maintain a clean and sanitary environment. Each janitor closet must have a service sink and forced air ventilation ducted to the outside.

(11) A large facility with 60 beds or less must provide a toilet, including a ~~[public/staff toilet, i.e.]~~ commode and lavatory, for use by the public and facility staff. A facility that has more than ~~[complying with accessibility standards is required for every large facility up to and including 60 beds. Facilities over]~~ 60 beds must have separate public and staff toilets in addition to the staff toilets ~~[toilet(s)]~~ required for the dietary staff. Toilets must comply with accessibility standards.

(12) If the facility provides linens to the residents, the quantity of available linen must meet the sanitary and cleanliness needs of the residents. Clean linens must be stored in a clean area.

(i) General safety features.

(1) The facility must have an annual inspection by the local fire marshal ~~[as part of the renewal procedures listed in §92.15 of this title (relating to Renewal Procedures and Qualifications)]~~.

(2) The building must be kept in good repair. Electrical~~;~~ ~~electrical]~~, heating, and cooling systems must be maintained in a safe manner. DADS ~~[DHS]~~ may require the facility sponsor or licensee to submit evidence to this effect, consisting of a report from the fire marshal, city or county ~~[city/county]~~ building official having jurisdiction over the location of the facility, licensed electrician, or a registered professional engineer. Use of electrical appliances, devices, and lamps must ~~[be such as]~~ not ~~[to]~~ overload circuits or cause excessive lengths of extension cords.

(3) Existing furnace and water heater installations may be continued in service, subject to approval by DADS ~~[DHS]~~.

(4) In a large Type B facility [facilities], all draperies and other window coverings in public or common areas, [and in] bedrooms, and [and/or] living units must be flame resistant. In a large Type A facility [facilities], draperies must be flame resistant, where smoking is permitted.

(5) In an existing large facility [facilities], all new floor carpet installed in public or common spaces after DADS performs the initial inspection [by DHS] must be classified as Class I or II based on the "Critical Radiant Flux" ratings as required by NFPA 101, §10.2.7. The facility must provide proper [Proper] documentation by the carpet manufacturer [must be provided].

(6) Open flame heating devices are prohibited. All fuel burning heating devices must be vented. Working fireplaces are acceptable if of safe design and construction and if screened or otherwise enclosed.

(7) There must be at least one telephone in the facility available to both staff and residents for use in case of an emergency. Emergency telephone numbers, including [at least] fire, police, ambulance, EMS, and poison control center, must be posted conspicuously at or near the telephone.

(8) An initial pressure test of facility gas lines from the gas meter must be provided. Additional pressure tests will be required when the facility has major renovations or additions where the gas service is interrupted. All gas heating systems must be checked prior to the heating season for proper operation and safety by persons who are licensed or approved by the State of Texas to inspect the [such] equipment. A record of the testing of the gas heating system [this service] must be maintained by the facility. The facility must correct [Any] unsatisfactory conditions [must be corrected] promptly.

(9) Exterior and interior stairs must have handrails that are firmly secured to prevent falls.

(10) Cooling and heating must be provided for resident [occupant] comfort. Air conditioning [Conditioning] systems must be capable of maintaining the comfort ranges of 68 degrees Fahrenheit to 82 degrees Fahrenheit in resident-use areas. A facility constructed or licensed after August 1, 2004, must have a central air conditioning system, or a substantially similar air conditioning system, that is capable of maintaining a temperature suitable for resident comfort within areas used by residents. Heating, ventilating, and air conditioning (HVAC) equipment must comply with the requirements [provisions] of NFPA 90A or 90B, as applicable. NFPA 90A requires automatic shut down upon activation of the fire alarm in HVAC systems of over 2,000 cubic feet per minute (cfm) capacity.

(11) The Illumination Engineering Society of North America recommendations must be followed to achieve proper illumination characteristics and lighting levels throughout the facility. Minimum illumination must be 10 footcandles in resident rooms during the day and 20 footcandles in corridors, staff stations, dining rooms, lobbies, toilets, bathing facilities, laundries, stairways and elevators during the day. Illumination requirements for these areas apply to lighting throughout the space and should be measured at approximately 30 inches above the floor anywhere in the room. Minimum illumination for medication preparation or storage areas, kitchens, and staff station desks must be 50 footcandles during the day. Illumination requirements for these areas apply to the task performed and should be measured on the tasks.

(12) All buildings three stories [floors] or higher and [in] facilities that provide services, treatment, or social activities on floors above or below the level of discharge and [which] house mobility impaired residents must have a passenger elevator. The lowest level of discharge will be the first floor for determining floor level.

(13) Floor, ceiling, and wall finish materials must be complete and in place to provide a sanitary and structurally safe environment.

(14) All equipment requiring periodic maintenance, testing, and servicing must be reasonably accessible. Necessary equipment to conduct maintenance, testing, and servicing, including [these services, such as] ladders, specific tools, and keys, must be readily available on site. Access panels (20" x 20" minimum) must be provided for building maintenance and must be located for reasonable access to equipment or barriers installed in the attic or other concealed spaces.

(15) The facility must implement procedures that comply [; in accordance] with the standards and recommendations of the Compressed Gas Association to [; that] assure safe and sanitary use and storage of oxygen. Liquid oxygen containers must be certified by Underwriters Laboratory (UL) or other approved testing laboratories [laboratory] for compliance with NFPA 50 requirements. The facility is responsible for defining all potential hazards both graphically and verbally to all persons involved in the use of liquid oxygen and ensuring the liquid oxygen provider does also.

(j) Portable fire extinguishers. Portable fire extinguishers must be provided and maintained to comply with the provisions of NFPA [the National Fire Protection Association (NFPA)] 10. For extinguisher types (A, B, C, and K), the facility must comply with [This includes such items as type of extinguishers (A, B, or C);] location, [and] spacing, mounting heights, monthly inspections by staff, yearly inspections by a licensed agent, including [(with) any necessary servicing()], and hydrostatic testing as recommended by the manufacturer.

(1) Extinguishers in resident corridors must be spaced so that travel distance is not more than 75 feet. The minimum size of extinguishers must be either 1-A [2 1/2 gallon] for water type or 2-A 5-BC [five pound for ABC] type. Actual sizes must meet NFPA 10 requirements for maximum floor area per unit covered. In large facilities, at least one portable Underwriters Laboratory (U.L.) or factory mutual (F.M.) approved 20-B [five-pound] Class B:C dry chemical fire extinguisher, rechargeable type, is required in each laundry, kitchen and walk-in mechanical room.

(2) Extinguishers must be installed on supplied hangers or brackets or be mounted in cabinets approved by DADS [the Texas Department of Human Services (DHS)].

(3) Extinguishers must be surface wall-mounted or recessed in cabinets where they are not subject to physical damage or dislodgement.

(4) Extinguishers having a gross weight not exceeding 40 pounds must be installed so that the top of the extinguisher is not more than five feet above the floor. Extinguishers with a gross weight greater than 40 pounds must be installed so the top of the extinguisher is not more than 3 1/2 feet above the floor. The clearance between the bottom of the extinguisher and the floor must not be less than four inches.

(5) Portable extinguishers provided in hazardous rooms must be located as close as possible to the exit door opening and on the latch or knob [(knob)] side.

(6) Staff must be appropriately trained in the use of each type of extinguisher in the facility.

(7) Regular monthly inspections or "quick checks" must be made by facility representatives to assure that extinguishers are in the proper location, condition, and working order. Annual maintenance or "thorough checks" must be accomplished in accordance with NFPA 10A [National Fire Protection Association Standard Number 10A (NFPA 10A)] by competent personnel licensed or certified to per-



form servicing by the State Fire Marshal. Unserviceable extinguishers must be replaced.

(k) Waste and storage containers.

(1) Metal waste baskets of substantial gauge or any U.L. or F.M. approved containers must be provided in ~~[large Type B] facilities [and in all facilities]~~ in all areas where smoking is permitted.

(2) Garbage, waste, or trash containers provided for kitchens, janitor closets, laundries, mechanical or boiler rooms, general storage, and similar places must be made of metal or any U.L. or F.M. approved material with ~~;~~ ~~having~~ a close fitting cover. Disposable plastic liners may be used in these containers for sanitation.

(l) Accessibility provisions. The physical plant of ~~[all large facilities and all other]~~ facilities housing residents with physical disabilities and ~~[and/or]~~ mobility impairments must comply with applicable federal, state and local requirements for persons with disabilities.

(m) Resident accommodations.

(1) Resident bedrooms.

(A) Bedroom usable floor space for Type A facilities must not be less than 80 square feet for a one-bed room and not less than 60 square feet per bed for a multiple bed room. A bedroom must be not less than eight feet in the smallest dimension, unless specifically approved otherwise by DADS ~~[the department]~~. Bedrooms for persons with physical disabilities and ~~[and/or]~~ mobility impairment must meet accessibility standards for access around the bed or beds, which is a [i.e.,] minimum of 3'-0" clear width for access aisles.

(B) Bedroom usable floor space for Type B facilities must be not less than 100 square feet per bed for a single-bed room and not less than 80 square feet per bed for a multiple-bed room. Bedrooms for persons with physical disabilities and ~~[and/or]~~ mobility impairment must meet accessibility standards for access around the bed or beds, which is a [i.e.,] minimum of 3'-0" clear width for access aisles. A bedroom must not be less than ten feet in the smallest dimension unless specifically approved ~~[otherwise]~~ by DADS ~~[DHS]~~.

(C) In facilities that have living units consisting of separate living spaces, dining [living/dining] spaces, and bedrooms, 10 percent [10%] of the required bedroom square footage may be included as part of the living and dining [living/dining] space.

(D) A facility must have no more than 50 percent [50%] of its beds in bedrooms of three or more beds. A bedroom must have no more than four beds.

(E) Each bedroom must have at least one operable window with outside exposure. The window sill must be no higher than 44" from the floor and must be at or above grade level. The window must [will] be operable from the inside, without the use of tools or special devices, and provide an operable section with a clear opening of not less than 5.7 square feet with a ~~[a]~~ [minimum width of 20" x 41.2" high and minimum height of 24" x 34.2" wide]. Windows required for evacuation must [will] not be blocked by bars, shrubs, or any obstacle that would impede evacuation. Exceptions are as follows.

(i) In large Type B facilities and other facilities protected throughout by an approved automatic sprinkler system, the window opening size may be smaller than the minimum size listed in this subparagraph but must permit the venting of products of combustion in compliance [accordance] with the Life Safety Code for Healthcare Occupancy. The total window area in a bedroom must not be less than 8 percent [8%] of the required bedroom size.

(ii) In existing buildings, if the window is not required for the secondary means of escape, the window size and sill

height requirements do [will] not apply if [provided] the windows meet the requirements of the [Uniform Building Code requirements or] local building code.

(F) In the event the resident does not provide his or her own furnishings, the facility must provide for each resident a bed with mattress, chair, table or dresser, and enclosed closet space for clothing and personal belongings. Drawer space must be provided. Furnishings provided by the facility must be maintained in good repair.

(G) All resident rooms must open upon an exit, corridor, living area, or public area and must be arranged for convenient resident access to dining and recreation areas.

(H) A staff or attendant area must be provided on each floor or in each separate building. The area must consist of a desk or writing surface and telephone. An exception is that Type A facilities, two-story or less in height, with separate buildings grouped together, and connected by covered walks, need not have staff or attendant areas on each floor or in each building, provided that the areas are not more than 200 feet walking distance from the furthest resident living unit. The areas must have a communication system and fire alarm annunciation indicating the units served.

(I) Facilities which consist of two or more floors or separate buildings must have a communication system from each resident living unit to a central staff location. This communication system may be a direct telephone, nurse call, or intercom.

(2) Resident toilet and bathing facilities.

(A) All bedrooms must be served by separate private, connecting, or general toilet rooms for each sex ~~[(if the facility houses both sexes)].~~ General toilet room or bathing room must be accessible from a corridor or public space. A lavatory must be readily accessible to each water closet. At least one water closet, lavatory, and bathing unit must be provided on each sleeping floor accessible to residents of that floor.

(B) One water closet and one lavatory for each six occupants or fraction thereof including a [(portion less than six)] is required. One tub or shower for each ten occupants or fraction thereof is required.

(C) Privacy partitions or [and/or] curtains must be provided at water closets and bathing units in rooms for multi-resident use.

(D) Tubs and showers must have non-slip bottoms or floor surfaces, either built-in or applied to the surface.

(E) Resident-use hot water for lavatories and bathing units will be maintained between 100 degrees Fahrenheit and 120 degrees Fahrenheit.

(F) Towels, soap, and toilet tissue must be available at all times for individual resident use.

(3) Resident living areas.

(A) Social-diversional spaces ~~[such as living rooms, day rooms, lounges, sun rooms, etc.,]~~ must be provided and have appropriate furniture. Examples of social-diversional spaces include living rooms, day rooms, lounges, dens, game rooms, and sunrooms. A minimum of 120 square feet must be provided in at least one space regardless of number of residents. This space must have exterior windows providing a view of the outside.

(B) The total space requirement for social-diversional areas must be provided on a sliding scale as follows:

Figure: 40 TAC §92.62(m)(3)(B)  
~~[Figure: 40 TAC §92.62(m)(3)(B)]~~

(C) For calculation purposes, DADS deducts a pathway equal to the corridor width when a corridor is required through a living or dining area to access an exit. The ~~Where a required way of exit (or a service way) is through such living or dining area, a pathway equal to the corridor width will normally be deducted for calculation purposes and discounted from that area. Such~~ exit pathways must be kept clear of obstructions.

(4) Resident dining areas.

(A) A dining area must be provided and have appropriate furnishings. A minimum of 120 square feet must be provided in at least one space, regardless of number of residents. This space must have exterior windows providing a view of the outside.

(B) Access to a dining area from the resident living units or bedrooms must be covered.

(C) The total space requirement for a dining area must be provided on a sliding scale as follows:

Figure: 40 TAC §92.62(m)(4)(C)  
[Figure: 40 TAC §92.62(m)(4)(C)]

(D) The total living and dining area may ~~living-dining area(s) can~~ be a single or interconnecting space with a minimum of 240 square feet of area.

(5) Storage areas. The facility must provide sufficient separate storage spaces or areas for the following:

(A) administration for records and office supplies;

(B) locked areas for medications and medical supplies. Poisons must be stored in a locked area and separate from all medications and preparation;

(C) equipment supplied by the facility for resident needs including ~~such as~~ wheelchairs, walkers, beds, and mattresses~~;~~ etc.];

(D) cleaning supplies including ~~(cleaning supplies)~~;

(E) food storage;

(F) clean linens and towels if furnished by the facility;

(G) lawn and maintenance equipment, if needed;

(H) janitor closets ~~janitor(s) closet~~ with deep sink and hot and cold water for ~~(for large facilities only)~~; and

(I) soiled linen storage or holding room ~~room(s)~~ if the facility furnishes linen.

(6) Kitchen.

(A) The facility must have a kitchen or dietary area to meet the general food service needs of the residents. It must include provisions for the storage, refrigeration, preparation, and serving of food~~;~~ ~~for~~ dish and utensil cleaning~~;~~ and ~~for~~ refuse storage and removal. Exception: Food may be prepared off-site or in a separate building provided that the food is served at the proper temperature and transported in a sanitary manner.

(B) Kitchens ~~(main/dietary)~~ for facilities serving 17 or more non-employees per meal on a routine basis must be designed as follows:

(i) Kitchens are evaluated on the basis of their performance in the sanitary and efficient preparation and serving of meals to residents and compliance with requirements for ~~provisions covering~~ dietary service in §92.41(m)(18) of this chapter (relating to Standards for Type A and ~~;~~ Type B~~;~~ and Type E) Assisted Living Facilities).

(I) A facility must consider ~~Consideration must be given to planning for~~ the type of meals served, the overall building design, the food service equipment, arrangement, and the work flow involved in the preparation and delivery of food.

(II) Plans must include a detailed kitchen layout designed by a registered or licensed dietitian or architect with ~~having~~ knowledge of ~~in~~ the design of food service operations.

(ii) Kitchens must be designed so that room temperature, at peak load or in the summer ~~(summertime)~~, must not exceed 85 degrees Fahrenheit measured over the room at the five foot level. The amount of supply air must take into account the large quantities of air that may be exhausted at the range hood and dishwashing area.

(iii) Facilities for washing and sanitizing dishes and cooking utensils must be provided. The kitchen must contain a multi-compartment pot sink large enough to immerse pots and pans, and a mechanical dishwasher for washing and sanitizing dishes. Separation of soiled and clean dish areas must be maintained, including air flow.

(iv) A food preparation sink must be provided. It must be separate from the pot and hand sinks.

(v) A supply of hot and cold water must be provided. Hot water for sanitizing purposes must be 180 degrees Fahrenheit or the manufacturer's suggested temperature for chemical sanitizers.

(vi) The kitchen must be provided with a hand-washing lavatory in the food preparation area with hot and cold water, soap, towel dispenser, and waste receptacle. The dish room area must have ready access to a hand washing ~~handwashing~~ lavatory.

(vii) Staff restroom facilities with lavatory must be directly accessible to kitchen staff without traversing resident use areas. The rest room must not open directly into the kitchen, but must open into a vestibule ~~(i.e., provide a vestibule)~~. An exception may exist in an existing facility if the ~~(is that)~~ staff restroom is ~~rest rooms in existing facilities must be provided, but may be~~ located outside of the kitchen area.

(viii) Janitorial facilities must be provided exclusively for the kitchen and must be located in the kitchen area. An exception may occur if a janitorial closet ~~(is that Janitorial closets)~~ in an existing facility is ~~(facilities may be)~~ located outside of the kitchen and if ~~(area provided)~~ sanitary procedures are used to reduce the possibility of cross-contamination.

(ix) Non-absorbent smooth finishes or surfaces must be used on kitchen floors, walls and ceilings. Surfaces ~~(Such surfaces)~~ must be capable of being routinely cleaned and sanitized to maintain a healthful environment. Counter and cabinet surfaces, inside and outside, must also have smooth, cleanable, non-porous finishes.

(x) Doors between kitchen and dining or serving areas must have 1/4-inch fixed safety ~~(wire)~~ glass or a fire related glazing view panel mounted in a steel frame.

(xi) A garbage can or cart washing area with drain and hot water must be provided either on the interior or exterior of the facility.

(xii) Floor drains must be provided in the kitchen and dishwashing areas. Exception: Floor drains are not required in existing facilities provided the floors are kept clean.

(xiii) A commercial range must be provided and equipped with a commercial range hood and exhaust designed and installed in accordance with NFPA 96. Small facilities with residential ranges may have residential range hoods, if the range hoods ~~(they)~~

meet the requirements of the local building code [Uniform Building Code (or local building code)].

(xiv) Grease traps must be provided as required by local authorities.

(C) Food storage areas for large facilities must be as follows.

(i) Food storage areas must provide for storage of a four-day minimum supply of non-perishable foods at all times.

(ii) Shelves must be adjustable wire type. An exception may occur if an [is that] existing facility uses [facilities with] wood shelves and keeps [may continue to use] the shelves [provided they are kept] sealed and clean.

(iii) Walls and floors must have a non-absorbent finish to provide a cleanable surface.

(iv) Food must not be stored on the floor. Dollies, racks, pallets, or wheeled containers may be used to elevate foods not stored on shelving.

(v) Dry foods storage must have an effective venting system to provide for positive air circulation.

(vi) The maximum room temperature for food storage must not exceed 85 degrees Fahrenheit at any time. The measurement must be taken at the highest food storage level, but not less than five feet from the floor.

(vii) Food storage areas may be located away [apart] from the food preparation area as long as there is space adjacent to the kitchen for necessary daily usage.

(D) Auxiliary serving kitchens that are [(not contiguous to a food preparation or serving [preparation/serving] area)] must be designed as follows.

(i) Where service areas other than the kitchen are used to dispense foods, these areas must be designated as food service areas and contain [must have] equipment for maintaining required food temperatures while serving.

(ii) Separate food service areas must have hand washing [handwashing] facilities as part of the food service area.

(iii) Finishes of all surfaces must be the same as those required for food and nutrition services or comparable areas.

(7) Laundry and linen [Laundry/linen] services.

(A) A large assisted living facility that commingles [which commingles] and processes laundry on-site in a central location must comply with the following.

(i) The laundry must be separated and provided with sprinkler protection if the laundry area is located in the main building. [(Separation must consist of a one-hour fire rated partition carried to the underside of the floor or roof deck above.)] Access doors must be from the exterior or interior non-resident use areas including[, such as] a small vestibule or service corridor.

(ii) The laundry must be provided with the following physical features:

(I) a soiled linen receiving, holding, and sorting room with a floor drain and forced exhaust to the exterior which must operate at all times when [there is] soiled linen is [being] held in this area and[- (This) may be combined with the washer section[-)];

(II) a general laundry work area that [which] is separated by partitioning [two areas -] a washer section and a dryer section;

(III) a storage area for laundry supplies;

(IV) a folding area;

(V) adequate air supply and ventilation for staff comfort without having to rely on opening a door that is part of the fire wall separation; and

(VI) provisions to exhaust heat from dryers and to separate dryer make-up air from the habitable work areas of the laundry.

(B) If linen is processed off the site, the following must be provided on the premises:

(i) a soiled linen holding room [(provided] with adequate forced exhaust ducted to the exterior[-)]; and

(ii) a clean linen receiving, holding, inspection, sorting or folding, and storage room [room(s)].

(C) Resident-use laundry, if provided, must utilize residential type washers and dryers. If more than three washers and three dryers are located in one space, the area must be separated by a one-hour fire rated barrier [separated] or have [provided with] sprinkler protection.

§92.63. Construction and Initial Survey of Completed Construction.

(a) Construction phase.

(1) DADS Regulatory Services Division, Licensing and Credentialing Section [in Austin, Texas,] must be notified in writing of construction start.

(2) All construction must comply [be done in accordance] with minimum licensing requirements. It is the sponsor's responsibility to employ qualified personnel to prepare the contract documents for construction of a new facility or remodeling of an existing facility. Contract documents for additions and remodeling and for the construction of an entirely new facility must be prepared by an architect licensed by the Texas [State] Board of Architectural Examiners. Drawings must bear the seal of the architect. Certain parts of contract documents [(including final plans, designs, and specifications concerning sheets and sections covering structural, electrical, mechanical, sanitary, and civil engineering)] must bear the seal of a [licensed] professional engineer licensed [approved] by the Texas Board of Professional Engineers to operate in Texas or the signature of[, as permitted by subsections (b)(12) and (15) of this section, signed by] a Responsible Managing Employee or Alarm Planning Superintendent licensed by the State Fire Marshal's Office as authorized by subsection (b)(12) and (15) of this section. [These certain parts include sheets and sections covering structural, electrical, mechanical, sanitary, and civil engineering.].

(A) Remodeling is the construction, removal, or relocation of walls and partitions,[-] the construction of foundations, floors, or ceiling-roof assemblies,[-] or the expanding or altering of safety systems [(including[-, but not limited to,] sprinkler, fire alarm, and emergency systems)].

(B) General maintenance and repairs of existing material and equipment, repainting, applications of new floor, wall, or ceiling finishes, or similar projects are not included as remodeling, unless as a part of new construction. DADS must be provided flame spread documentation for new materials applied as finishes.

(b) Contract documents.

(1) Site plan documents must include grade contours; streets [({with names})]; north arrow; fire hydrants; fire lanes; utilities, public or private; fences; unusual site conditions including; ~~such as~~ ditches, low water levels, other buildings on-site; and indications of buildings five feet or less beyond site property lines.

(2) Foundation plan documents must include general foundation design and details.

(3) Floor plan documents must include room names, numbers, and usages; numbered doors (~~numbered~~) including swing; windows; legend or clarification of wall types; dimensions; fixed equipment; plumbing fixtures; and kitchen basic layout; and identification of all smoke barrier walls from [({outside wall to outside wall})] or fire walls.

(4) For both new construction and additions or remodeling to existing buildings, an overall plan of the entire building must be drawn or reduced to fit on an 8 1/2 inch by 11 inch sheet; submit two reduced plans for file record. See subsection (d)(3) of this section.

(5) Schedules must include door materials, widths, types; window materials, sizes, types; room finishes; and special hardware.

(6) Elevations and roof plan must include exterior elevations, including material note indications and any roof top equipment; roof slopes, drains, and gas piping, and interior elevations where needed for special conditions.

(7) Details must include wall sections as needed (especially for special conditions); cabinet and built-in work; ~~basic design only~~; cross sections through buildings as needed; and miscellaneous details and enlargements as needed.

(8) Building structure documents must include structural framing layout and details [({primarily for column, beam, joist, and structural frame building})]; roof framing layout if the layout [~~when this~~] cannot be adequately shown on a cross section; cross sections in quantity and detail to show sufficient structural design and structural details as necessary to assure adequate structural design, also calculated design loads.

(9) Electrical documents must include electrical layout, including lights, convenience outlets, equipment outlets, switches, and other electrical outlets and devices; service, circuiting, distribution, and panel diagrams; exit light system with [({exit signs and emergency egress lighting})]; emergency electrical provisions including [~~such as~~] generators and panels; and similar systems including [~~such as~~] control panels [~~panel~~], devices, and alarms; sizes and details sufficient to assure safe and properly operating systems; and a staff communication system.

(10) Plumbing documents must include plumbing layout with pipe sizes and details sufficient to assure safe and properly operating systems, water systems, sanitary systems, gas systems, other systems normally considered under the scope of plumbing, fixtures, and provisions for combustion air supply.

(11) Heating, ventilation, and air-conditioning (HVAC) documents must include sufficient details of HVAC systems and components to assure a safe and properly operating installation including, but not limited to, heating, ventilating, and air-conditioning layout, ducts, protection of duct inlets and outlets, combustion air, piping, exhausts, and duct smoke and/or fire dampers; and equipment types, sizes, and locations.

(12) Fire sprinkler system plans and hydraulic calculations must be designed in accordance with and including all the required information on the plan, specified in NFPA [National Fire Protection Association (NFPA)] 13, NFPA 13R, or NFPA 13D as applicable and the

NFPA documents referenced therein, published by the National Fire Protection Association and [be] signed by a Responsible Managing Employee, licensed by the State Fire Marshal's Office or bear the seal of [~~sealed by~~] a licensed professional engineer.

(13) Other layouts, plans, or details as may be necessary for a clear understanding of the design and scope of the project; including plans covering private water or sewer systems must be reviewed by the local health or wastewater authority having jurisdiction. If no local authority, then the plans will be reviewed by DADS.

(14) Specifications must include installation techniques, quality standards and/or manufacturers, references to specific codes and standards, design criteria, special equipment, hardware, painting, and any others as needed to amplify drawings and notes.

(15) Detailed fire detection and alarm system working plans must be designed in accordance with the applicable sections of the National Fire Alarm and Signaling Code (NFPA 72) and the National Electric Code (NFPA 70) [~~published by the NFPA,~~] and signed by an Alarm Planning Superintendent licensed by the State Fire Marshal's Office or bear the seal of [~~sealed by~~] a licensed professional engineer.

(c) Initial survey of completed construction.

(1) Upon completion of construction, including grounds and basic equipment and furnishings, an initial architectural inspection of the facility, including additions or remodeled areas, is required to be performed by DADS prior to occupancy. The completed construction must have the written approval from [({of} the local authorities having jurisdiction where the facility is located), including the fire marshal, health department, and building inspector.

(2) The inspection described in paragraph (1) of this subsection may be obtained on an expedited basis by complying with §92.4(g) of this chapter (relating to License Fees).

(3) After the completed construction has been surveyed by DADS and found acceptable, DADS Life Safety Code staff conveys the survey results to [~~this information will be conveyed to the licensing officer of~~] DADS Licensing and Credentialing Section as part of an applicant's license application [~~the information needed to issue a license to the facility~~]. In the case of additions or remodeling of existing facilities, the applicant may be required to submit a revision or modification to an existing license [~~may be necessary~~]. All [~~Note that the~~] building, grades, drives, and parking must essentially be 100 percent [~~100%~~] complete including basic furnishings and operational needs at the time of the [~~this~~] initial visit for occupancy approval and licensing; [~~including basic furnishings and operational needs~~]. A facility may accept up to three residents after [~~between the time~~] it receives initial approval from the architectural section but before [~~and the time~~] the license is issued.

(4) The following documents must be available to DADS [~~DADS~~] surveyor at the time of the survey of the completed building:

(A) written approval of local authorities as called for in paragraph (1) of this subsection;

(B) record drawings of the fire detection and alarm system as installed, signed by an Alarm Planning Superintendent licensed by the State Fire Marshal's office or sealed by a licensed professional engineer, including a sequence of operation, the owner's manuals and the manufacturer's published instructions covering all system equipment, a signed copy of the State Fire Marshal's Office Fire Alarm Installation Certificate, and, for software-based systems, a record copy of the site-specific software [({excluding the system executive software

or external programmer software[)] in a non-volatile, non-erasable, non-rewritable memory;

(C) documentation of materials used in the building which are required to have a specific limited fire or flame spread rating including special wall finishes or floor coverings, flame retardant curtains ([including cubicle curtains and[);] rated ceilings[; etc.]. In the case of carpeting, the documentation [This] must include a signed letter from the installer, [in the case of carpeting, etc.], verifying that the carpeting installed is named in the laboratory test document;

(D) record drawings of the fire sprinkler system as installed, signed by a Responsible Managing Employee, licensed by the State Fire Marshal's Office or sealed by a licensed professional engineer, including the hydraulic calculations, alarm configuration, above-ground and underground Contractor's Material and Test Certificate, all literature and instructions provided by the manufacturer describing the proper operation and maintenance of all equipment and devices in accordance with NFPA 25, Standard for the Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems;

(E) service contracts for maintenance and testing of alarm systems and[;] sprinkler systems[; etc.];

(F) a copy of gas test results of the facility's gas lines from the meter;

(G) a written statement from an architect or engineer [architect/engineer] stating that, from periodic onsite observation visits, the facility as constructed is, to the best of the architect's or engineer's [his/her] knowledge and belief, in substantial compliance with the architect's or engineer's [his/her] construction documents, the Life Safety Code, DADS licensure standards, and local codes; and

(H) the contract documents specified in subsection (b) of this section.

(d) Non-approval [Nonapproval] of new construction.

(1) If, during the initial on-site survey of completed construction, the surveyor finds certain basic requirements not met, the surveyor [he] may recommend to DADS Licensing and Credentialing Unit [the department] that the facility should not yet be licensed and approved for occupancy. The [Such] basic items that may trigger non approval include [the following]:

(A) construction which does not meet minimum code or licensure standards for basic requirements including [such as] corridors that are [being] less than the required width, ceilings installed at less than the minimum seven-foot six-inch height, resident bedroom dimensions less than required, and other [such] features which would disrupt or otherwise adversely affect the residents and staff if corrected after occupancy;

(B) lack of [no] written approval by local authorities having jurisdiction, including the fire marshal, health department, and building inspector;

(C) fire protection systems not completely installed or not functioning properly, including, but not limited to, fire alarm systems, emergency power and lighting, and sprinkler systems;

(D) required exits not all usable according to NFPA 101 requirements;

(E) telephone not installed or not properly working;

(F) sufficient basic furnishings, essential appliances, and equipment are not installed or not functioning; and

(G) any other basic operational or safety feature which the surveyor, as the authority having jurisdiction, believes [encounters

which in his judgment] would preclude safe and normal occupancy by residents on that day.

(2) If the surveyor encounters minor [only less basic (and less important)] deficiencies, the surveyor may recommend approval of the facility's license [licensure may be recommended] based on an approved written plan of correction from the facility's administrator.

(3) A facility must submit two copies [Copies] of reduced size floor plans on an 8 1/2 inch by 11 inch sheet [must be submitted in duplicate] to DADS [the department] for DADS record [record/file use] and for the facility's use including an [and for facility's use for] evacuation plan or[;] fire alarm zone identification[; etc.]. The plan must contain basic legible information including [such as] scale, room usage names, actual bedroom numbers, doors, windows, and any other pertinent information.

#### *§92.64. Plans, Approvals, and Construction Procedures.*

At the option of the applicant, DADS [the Texas Department of Human Services (DHS)] reviews plans for new buildings, additions, conversion of buildings not licensed by DADS [DHS], or remodeling of existing licensed facilities. DADS [DHS] informs the applicant of the results of the review within 30 days after receipt of the plans. If the plans comply with DADS [DHS's] architectural requirements, DADS [DHS] may not subsequently change the architectural requirement applicable to the project unless the change is required by federal law or the applicant fails to complete the project within a reasonable time.

(1) Submittal of plans.

(A) For review of plans, before construction is begun, the applicant must submit one copy of contract documents including working drawings and specifications [~~contract documents~~] in sufficient detail to interpret compliance with these standards and assure proper construction by the general contractor or builder. Documents must be prepared according to accepted architectural practice and must include general construction, special conditions, and schedules.

(B) Final copies of plans must have [~~in the reproduction process by which plans are reproduced~~] a title block showing name of facility, person, or organization preparing the sheet, sheet numbers, facility address, and drawing date. Sheets and sections covering structural, electrical, mechanical, and sanitary engineering final plans, designs, and specifications must bear the seal of a registered professional engineer licensed [~~approved~~] by the Texas [State] Board of [Registration for] Professional Engineers [to operate in Texas]. Contract documents for additions, remodeling, and construction of an entirely new facility must be prepared by an architect licensed by the Texas [State] Board of Architectural Examiners. Drawings must bear the seal of the architect.

(C) A final plan for a major addition to a facility must include a basic layout to scale of the entire building onto which the addition connects. North direction must be shown. Usually the entire basic layout can be drawn to scale of [such as] 1/16 inch per foot or 1/32 inch per foot for very large buildings.

(D) Plans and specifications for conversions or remodeling must be complete for all parts and features involved. DADS review is limited to the plans and specifications for conversions or remodeling as submitted.

(E) The sponsor is responsible for employing qualified personnel to prepare the contract documents for construction. If the contract documents have errors or omissions to the extent that compliance [conformance] with architectural and DADS licensing standards cannot be reasonably assured or determined by DADS, DADS may request a revised set of documents for review [may be requested].

(F) The review of plans and specifications by DADS [DHS] is based on general utility, the minimum licensing standards, and conformance of the Life Safety Code, and is not to be construed as all-inclusive approval of the structural, electrical, or mechanical components, nor does it include a review of building plans for compliance with the Texas Accessibility Standards as administered and enforced by the Texas Department of Licensing and Regulation.

(G) Fees for plan review will be required in accordance with §92.4 [§92.20] of this chapter [title] (relating to License Fees).

(2) Contract documents.

(A) Site plan documents must include grade contours; streets [({with names})]; North arrow; fire hydrants, fire lanes, utilities, public or private; fences; and unusual site conditions, including [such as] ditches, low water levels, other buildings on-site, and indications of buildings five feet or less beyond site property lines.

(B) Foundation plan documents must include general foundation design and details.

(C) Floor plan documents must include room names, numbers, and usages; numbered doors [~~(numbered)~~] including swing; windows; legend or clarification of wall types; dimensions; fixed equipment; plumbing fixtures; kitchen basic layout; and identification of all smoke barrier walls from [({outside wall to outside wall})] or fire walls.

(D) For both new construction and additions or remodeling to existing buildings, an overall plan of the entire building must be drawn or reduced to fit on an 8 1/2 inch by 11 inch sheet.

(E) Schedules must include door materials, widths, and types; window materials, sizes, and types; room finishes; and special hardware.

(F) Elevations and roof plan must include exterior elevations, including material note indications and any roof top equipment; roof slopes, drains, gas piping, [~~etc.~~], and interior elevations where needed for special conditions.

(G) Details must include wall sections as needed, especially for special conditions; cabinet and built-in work [~~; basic design only~~]; cross sections through buildings as needed and miscellaneous details and enlargements as needed.

(H) Building structure documents must include structural framing layout and details [({primarily for column, beam, joist, and structural building})]; roof framing layout if the layout [~~(when)~~] cannot be adequately shown on a cross section[)]; and cross sections in quantity and detail to show sufficient structural design and structural details as necessary to assure adequate structural design and calculated design loads.

(I) Electrical documents must include electrical layout, including lights, convenience outlets, equipment outlets, switches, and other electrical outlets and devices; service, circuiting, distribution, and panel diagrams; exit light system including [({exit signs and emergency egress lighting})]; emergency electrical provisions including [such as] generators and panels[)]; staff communication system; fire alarm and similar systems including [such as] control panel, devices, and alarms[)]; and sizes and details sufficient to assure safe and properly operating systems.

(J) Plumbing documents must include plumbing layout with pipe sizes and details sufficient to assure safe and properly operating systems, water systems, sanitary systems, gas systems, and other systems normally considered under the scope of plumbing, fixtures, and provisions for combustion air supply.

(K) Heating, ventilating and air-conditioning systems (HVAC) documents must include sufficient details of HVAC systems and components to assure a safe and properly operating installation including, but not limited to, heating, ventilating, and air-conditioning layout, ducts, protection of duct inlets and outlets, combustion air, piping, exhausts, and duct smoke and/or fire dampers; and equipment types, sizes, and locations.

(L) Sprinkler system documents must include plans and details of NFPA [National Fire Protection Association (NFPA)] designed systems; plans and details of partial systems provided only for hazardous areas; and electrical devices interconnected to the alarm system.

(M) Specifications must include information about installation techniques; quality standards and [and/or] manufacturers; references to applicable [specific] codes and other standards used for design; design criteria; special equipment; hardware; finishes; and any other information DADS may need to interpret [others as needed to amplify] drawings and notes.

(N) Other layout, plans, or details as may be necessary for a clear understanding of the design and scope of the project, including plans covering private water or sewer systems, must be reviewed by local health or wastewater authority having jurisdiction where the facility is located.

(3) Construction phase.

(A) DADS [DHS] must be notified in writing prior to construction start.

(B) All construction not done to comply [in accordance] with the completed plans and specifications as submitted for review and as modified in accordance with review requirements will require additional drawings if the change is significant.

(4) Initial survey of completed construction.

(A) Upon completion of construction, including grounds and basic equipment and furnishings, a final construction inspection or [({initial survey})] of the facility must be performed by DADS [DHS] prior to the facility admitting residents, unless DADS issues a provisional license [has been granted]. An initial architectural inspection will be scheduled after DADS [DHS] receives a notarized licensure application, required fee, fire marshal approval, and a letter from an architect or engineer stating that to the best of the architect's or engineer's [their] knowledge that the facility meets the architectural requirements for a license [licensure].

(B) After DADS [DHS] surveys the completed construction and finds it acceptable, DADS [DHS] forwards the [this] information to the Licensing and Credentialing Unit [Facility Enrollment Section] as part of the applicant's license application [information needed to issue a license to the facility]. In the case of additions or remodeling of existing facilities, the applicant may be required to submit a revision or modification to an existing license [may be necessary]. All buildings [Note that the building], including basic furnishings and operational needs, grades, drives, and parking must be 100 percent [essentially 100%] complete at the time of the [this] initial visit for occupancy approval and licensing. A facility may admit no more than [accept up to] three residents after [between the time] it receives initial approval from DADS but before [DHS and the time] the license is issued unless DADS issues a provisional license [has been granted].

(C) An applicant must make the following documents available to a DADS surveyor at the time of the survey of the completed building:

(i) written approval of local authorities as required by subparagraph (A) of this paragraph;

(ii) record drawings of the fire detection and alarm system as installed, signed by an Alarm Planning Superintendent licensed by the State Fire Marshal's office or bearing the seal of a licensed professional engineer, including a sequence of operation, the owner's manuals, and the manufacturer's published instructions covering all system equipment;

(iii) a signed copy of the State Fire Marshal's Office Fire Alarm Installation Certificate;

(iv) for software-based fire alarm systems, a record copy of the site-specific software, excluding the system executive software or external programmer software in a non-volatile, non-erasable, non-rewritable memory;

(v) documentation of materials used in the building which have a specific limited fire or flame spread rating, including special wall finishes or floor coverings, flame retardant curtains, including cubicle curtains, and rated ceilings;

(vi) a signed letter from the installer of carpeting verifying that the carpeting is named in the laboratory test document;

(vii) record drawings of the fire sprinkler system as installed, signed by a Responsible Managing Employee licensed by the State Fire Marshal's Office, or bearing the seal of a licensed professional engineer, including the hydraulic calculations, fire alarm configuration, aboveground and underground Contractor's Material and Test Certificate;

(viii) all literature and instructions provided by the sprinkler system manufacturer describing the proper operation and maintenance of all equipment and devices in accordance with NFPA 25;

(ix) service contracts for maintenance and testing of alarm systems, sprinkler systems, and other systems;

(x) a copy of a gas test results of the facility's gas lines from the meter;

(xi) a written statement from an architect or engineer stating that, from periodic onsite observation visits, the facility as constructed is, to the best of architect or engineer's knowledge and belief, in substantial compliance with the architect or engineer's contract documents, the Life Safety Code, DADS licensure standards, and local codes; and

(xii) the contract documents described in paragraph (2) of this section.

~~[(C) The following documents must be available to DHS's NFPA 101 inspecting surveyor at the time of the survey of the completed building:]~~

~~[(i) written approval of local authorities as required in subparagraph (A) of this paragraph;]~~

~~[(ii) written certification of the fire alarm system by the installing agency (Form FML-009) of the Texas State Fire Marshal;]~~

~~[(iii) documentation of materials used in the building which are required to have a specific limited fire or flame spread rating, including special wall finishes or floor coverings, flame retardant curtains (including cubicle curtains), rated ceilings, etc., and, in the case of carpeting, a signed letter from the installer verifying that the carpeting installed is named in the laboratory test document;]~~

~~[(iv) approval of the completed sprinkler system installation by the Texas Department of Insurance or designing engineer. A copy of the material list and test certification must be available;]~~

~~[(v) service contracts for maintenance and testing of alarm systems, sprinkler systems, etc.;]~~

~~[(vi) a copy of gas test results of the facility's gas lines from the meter;]~~

~~[(vii) a written statement from an architect/engineer stating, to the best of his/her knowledge, the building was constructed in substantial compliance with the construction documents, the Life Safety Code, DHS licensure standards, and local codes; and]~~

~~[(viii) any other such documentation as needed.]~~

(5) ~~Non-approval [Nonapproval]~~ of new construction.

(A) If, during the initial on-site survey of completed construction, the surveyor finds certain basic requirements not met, ~~DADS [DHS]~~ may recommend that the facility not be licensed and approved for occupancy. ~~The [Such] items that may trigger non-approval include [the following]:~~

~~(i) substantial changes made during construction that [which] were not submitted to DADS [DHS] for review and which may require revised "as-built" drawings to cover the changes, including[- This may include] architectural, structural, mechanical, and electrical items [as] specified in paragraph (3)(B) of this section;~~

~~(ii) construction that [which] does not meet minimum Life Safety Code [code] or DADS licensure standards, including [such as] corridors that are [being] less than required width, ceilings installed at less than the minimum seven-foot six-inch height, resident bedroom dimensions less than required, and other [such] features which would disrupt or otherwise adversely affect the residents and staff if corrected after occupancy;~~

~~(iii) lack of [no] written approval by local authorities;~~

~~(iv) fire protection systems, including[, but not limited to,] fire alarm systems, emergency power and lighting, and sprinkler systems, not completely installed or not functioning properly;~~

~~(v) required exits not all usable according to NFPA 101 requirements;~~

~~(vi) telephones that are [telephone] not installed or not properly working;~~

~~(vii) sufficient basic furnishings, essential appliances, and equipment that are not installed or not functioning; and~~

~~(viii) any other basic operational or safety feature which would preclude safe and normal occupancy by residents on that day.~~

(B) If the surveyor encounters only minor deficiencies, licensure may be recommended based on an approved written plan of correction from the facility's administrator.

(C) A facility must submit two copies [~~Copies~~] of reduced size floor plans on an 8 1/2 inch by 11 inch sheet [~~must be submitted in duplicate~~] to ~~DADS [DHS]~~ for ~~DADS records [record/file use]~~ and [~~for~~] the facility's use for evacuation plans and [~~plan,]~~ fire alarm zone identification[, etc]. The plan must contain basic legible information including [~~such as~~] scale, room usage names, actual bedroom numbers, doors, windows, and any other pertinent information.

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 July 15, 2013.

TRD-201302890

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: August 25, 2013

For further information, please call: (512) 438-4162



## SUBCHAPTER F. ABUSE, NEGLECT AND EXPLOITATION; COMPLAINT AND INCIDENT REPORTS AND INVESTIGATIONS

### 40 TAC §92.101

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

#### STATUTORY AUTHORITY

The repeal 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 Health and Safety Code, Chapter 247, which authorizes DADS to license and regulate assisted living facilities; and 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.

The repeal implements Texas Government Code, §531.0055; Texas Health and Safety Code, §§247.001 - 247.069; and Texas Human Resources Code, §161.021.

#### §92.101. Definitions of "Abuse," "Neglect," and "Exploitation."

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 July 15, 2013.

TRD-201302891

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: August 25, 2013

For further information, please call: (512) 438-4162



### 40 TAC §92.102

#### 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 Health and Safety Code, Chapter 247, which authorizes DADS to license and regulate assisted living facilities; and 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.

The amendment implements Texas Government Code, §531.0055; Texas Health and Safety Code, §§247.001 - 247.069; and Texas Human Resources Code, §161.021.

*§92.102. Abuse, Neglect, or Exploitation Reportable to DADS [the Texas Department of Human Services (DHS) by Facilities].*

(a) An assisted living [Any] facility staff who has [reasonable] cause to believe that the physical or mental health or welfare of a resident has been or may be adversely affected by [a resident is in a state of] abuse, neglect, or exploitation or that the resident has died due to abuse or neglect, must report the abuse, neglect, or exploitation to: [DHS's state office at 1-800-458-9858 and must follow the facility's internal policies regarding abuse, neglect, or exploitation.]

(1) DADS Consumer Rights and Services section at 1-800-458-9858 or via the DADS website; and

(2) one of the following law enforcement agencies:

(A) a municipal law enforcement agency, if the facility is located within the territorial boundaries of a municipality; or

(B) the sheriff's department of the county in which the facility is located if the facility is not located within the territorial boundaries of a municipality.

(b) An assisted living facility must follow its internal policies regarding the prevention, detection, and reporting of abuse, neglect, or exploitation.

(c) [(b)] The following information must be reported to DADS [DHS]:

(1) name, age, and address of the resident;

(2) name and address of the person responsible for the care of the resident, if available;

(3) nature and extent of the elderly or disabled person's condition;

(4) basis of the reporter's knowledge; and

(5) any other relevant information.

(d) [(e)] An assisted living [The] facility must immediately make an oral report to DADS of the alleged abuse, neglect, or exploitation and must investigate the allegation [alleged abuse or neglect] and send a written report of the investigation to DADS [DHS's] state office no later than the fifth calendar day after the oral report.

(e) [(4)] An assisted living [A] facility may not retaliate against a person for filing a complaint, presenting a grievance, or providing in good faith information relating to personal care services provided by the facility.

(f) An assisted living facility must require facility staff, as a condition of employment with the facility, to sign a statement indicating that the employee may be criminally liable for the failure to report abuse, neglect, or exploitation.

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 July 15, 2013.

TRD-201302892

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

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For further information, please call: (512) 438-4162



## SUBCHAPTER G. MISCELLANEOUS PROVISIONS

### 40 TAC §92.127

#### 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 Health and Safety Code, Chapter 247, which authorizes DADS to license and regulate assisted living facilities; and 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.

The amendment implements Texas Government Code, §531.0055; Texas Health and Safety Code, §§247.001 - 247.069; and Texas Human Resources Code, §161.021.

*§92.127. Required Postings.*

An assisted living [~~Each~~] facility must prominently and conspicuously post for display in a public area of the facility that is readily available to residents, employees, and visitors:

(1) the license issued under this chapter;

(2) a sign prescribed by DADS [~~the department~~] that specifies complaint procedures established under these rules and specifies how complaints may be filed with DADS [~~the department~~];

(3) a notice in the form prescribed by DADS [~~the department~~] stating that inspection and related reports are available at the facility for public inspection and providing DADS [~~the department's~~] toll-free telephone number that may be used to obtain information concerning the facility;

(4) a copy of the most recent inspection report relating to the facility;

(5) Resident Bill of Rights;

(6) Provider Bill of Rights;

(7) the telephone number of the Office of the State Long Term Care Ombudsman; [~~and~~]

(8) the facility's normal 24-hour staffing patterns; and[-]

(9) a sign stating: "Cases of Suspected Abuse, Neglect, or Exploitation must be reported to the Texas Department of Aging and Disability Services by calling 1-800-458-9858".

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 July 15, 2013.

TRD-201302893

Kenneth L. Owens

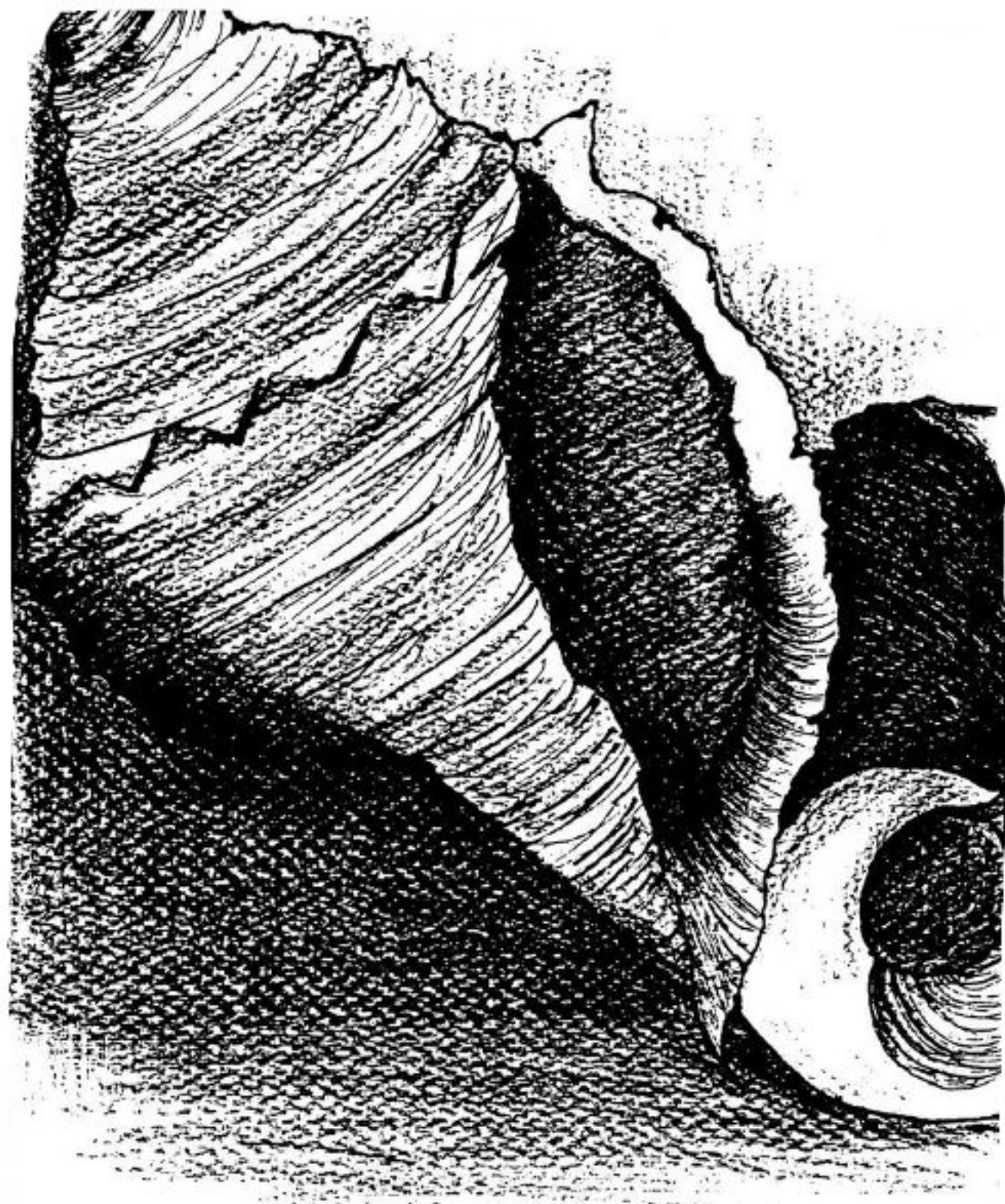
General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: August 25, 2013

For further information, please call: (512) 438-4162





# WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

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## TITLE 19. EDUCATION

### PART 2. TEXAS EDUCATION AGENCY

#### CHAPTER 101. ASSESSMENT

##### SUBCHAPTER DD. COMMISSIONER'S

##### RULES CONCERNING SUBSTITUTE

##### ASSESSMENTS FOR GRADUATION

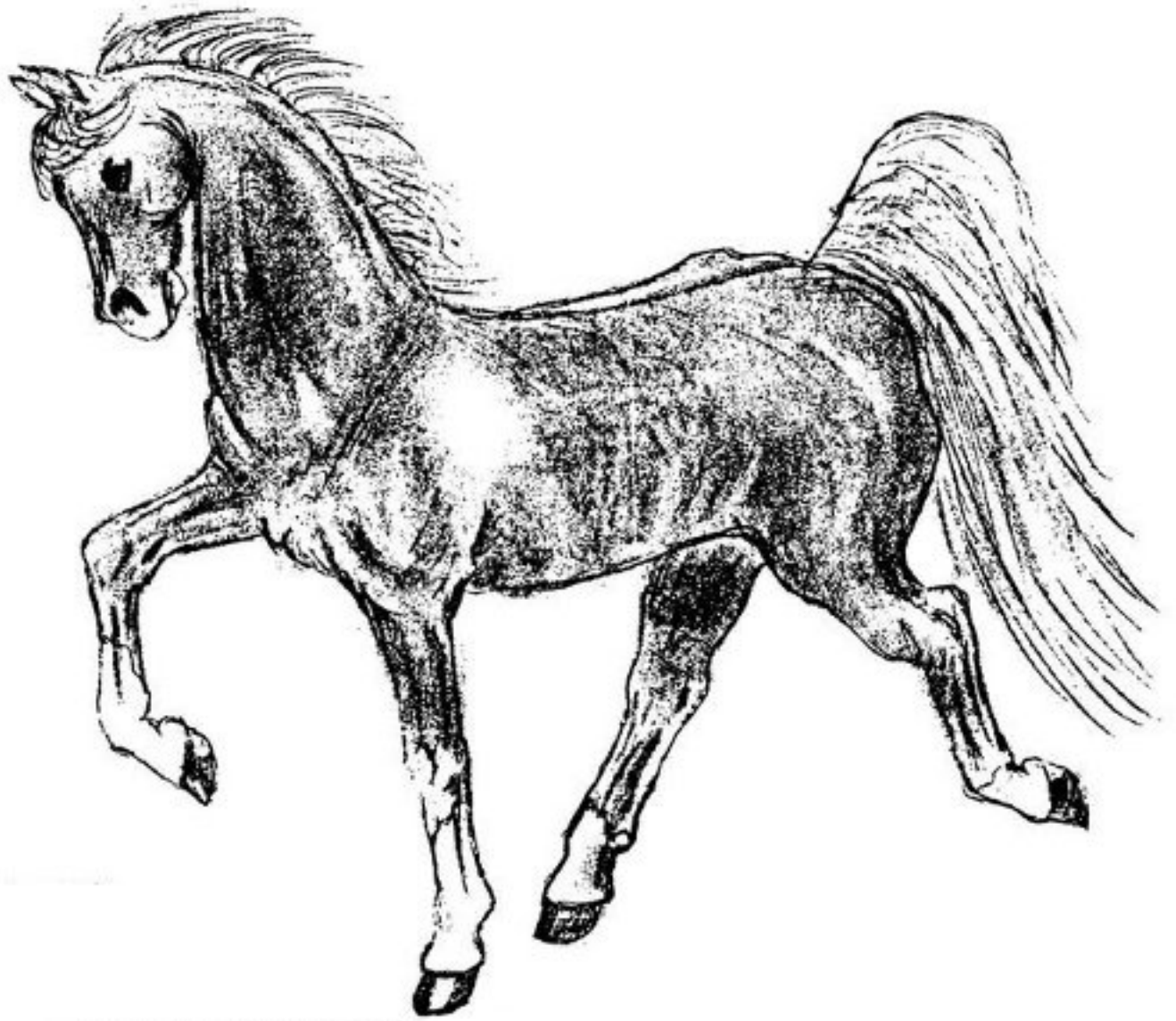
19 TAC §§101.4001 - 101.4003, 101.4005

Proposed new and amended §§101.4001 - 101.4003 and 101.4005, published in the January 4, 2013, issue of the *Texas Register* (38 TexReg 13), are withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on July 9, 2013.

TRD-201302822





# 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 355. REIMBURSEMENT RATES SUBCHAPTER A. COST DETERMINATION PROCESS

##### 1 TAC §355.105

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §355.105, concerning General Reporting and Documentation Requirements, Methods, and Procedures, without changes to the proposed text as published in the May 3, 2013, issue of the *Texas Register* (38 TexReg 2721) and will not be republished.

##### Background and Justification

HHSC, under its authority and responsibility to administer and implement rates, adopts the amendment to amend this rule to: 1) clarify limitations on reporting related-party compensation on Medicaid cost reports; 2) incorporate changes to reflect person first respectful language; and 3) clarify the references in subsection (a).

HHSC limits the reporting of compensation for owners and related-party administrators and assistant administrators to ensure that only reasonable and necessary costs are included in Texas Medicaid cost reports. In this context, a related party is generally defined as any person or organization related to the provider by blood, marriage, common ownership, or control. Language in §355.105(i) currently indicates that these limitations apply only to related-party salaries, wages, payroll taxes, and benefits. The adopted amendment clarifies that the limitations apply not just to salaries, wages, and benefits, but to all related-party compensation including related-party contracted labor. The adopted amendment also clarifies that the limitations apply not just to direct employees of the provider, but to related-party administrators and assistant administrators who work as contract labor.

In addition, the amendment is adopted to incorporate person first respectful language in compliance with Texas Government Code §392.002.

##### Comments

The 30-day comment period ended June 2, 2013. During this period, HHSC received no comments regarding the proposed amendment to this rule.

##### Legal Authority

The amendment is adopted under Texas Government Code §531.033, which authorizes the Executive Commissioner of

HHSC to adopt rules necessary to carry out the commission's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b)(2), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

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 July 12, 2013.

TRD-201302869

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Effective date: August 1, 2013

Proposal publication date: May 3, 2013

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



#### CHAPTER 355. REIMBURSEMENT RATES

The Texas Health and Human Services Commission (HHSC) adopts the repeal of §355.451, concerning Definitions and General Reimbursement Information; §355.452, concerning Cost Reporting Procedures; §355.453, concerning Allowable and Unallowable Costs; §355.703, concerning Basic Objectives and Criteria for Review of Cost Reports; §355.704, concerning Determination of Inflation Indices; §355.705, concerning Notification; §355.706, concerning Adjusting Reimbursement; §355.708, concerning Allowable and Unallowable Costs; and §355.709, concerning Revenues. The repeals are adopted without changes to the proposed text as published in the April 19, 2013, issue of the *Texas Register* (38 TexReg 2439) and will not be republished.

##### Background and Justification

These rules govern various aspects of cost reporting for providers in programs serving individuals with an intellectual disability or related conditions. The same provisions contained in these rules also appear in Subchapter A of this chapter (relating to Cost Determination Process). Therefore, the repeals are adopted to remove obsolete and duplicative rules from HHSC's rule base.

##### Comments

The 30-day comment period ended May 19, 2013. During this period, HHSC received no comments regarding the proposed repeals.

SUBCHAPTER D. REIMBURSEMENT  
METHODOLOGY FOR INTERMEDIATE CARE  
FACILITIES FOR INDIVIDUALS WITH AN  
INTELLECTUAL DISABILITY OR RELATED  
CONDITIONS (ICF/IID)

**1 TAC §§355.451 - 355.453**

Legal Authority

The repeals are adopted under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out the commission's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

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 July 10, 2013.

TRD-201302860

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Effective date: July 30, 2013

Proposal publication date: April 19, 2013

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



SUBCHAPTER F. REIMBURSEMENT  
METHODOLOGY FOR PROGRAMS SERVING  
PERSONS WITH MENTAL ILLNESS OR  
INTELLECTUAL OR DEVELOPMENTAL  
DISABILITY

**1 TAC §§355.703 - 355.706, 355.708, 355.709**

Legal Authority

The repeals are adopted under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out the commission's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

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 July 10, 2013.

TRD-201302861

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Effective date: July 30, 2013

Proposal publication date: April 19, 2013

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



**TITLE 16. ECONOMIC REGULATION**

**PART 9. TEXAS LOTTERY  
COMMISSION**

**CHAPTER 402. CHARITABLE BINGO  
OPERATIONS DIVISION**

**SUBCHAPTER D. LICENSING REQUIRE-  
MENTS**

**16 TAC §402.404**

The Texas Lottery Commission (Commission) adopts amendments to 16 TAC §402.404, concerning License and Registry Fees, with changes to the proposed text as published in the May 24, 2013, issue of the *Texas Register* (38 TexReg 3235). For reasons explained in this preamble, we have deleted §402.404(a)(3)(A)(iii), (a)(3)(B)(iii) and (e)(4) and amended (a)(3)(A)(ii), (a)(3)(B)(ii) and (e)(3) of the proposed rule.

The purpose of the adopted amendments is to impose a new fee for bingo worker registration applications and renewal applications and to increase the fees for licenses to conduct bingo and commercial licenses to lease bingo premises. The heading of §402.404 will be changed from "License Fees" to "License and Registry Fees" in order to reflect the changes made in the adopted amendments.

As explained in the preamble to the proposed amendments, as published in the May 24, 2013, issue of the *Texas Register* (38 TexReg 3235), the Commission proposed these amendments under the assumption that the General Appropriations Act for the 2014 - 2015 biennium would contain a provision making appropriations to the Commission to fund the redesign of the automated charitable bingo system (ACBS) and/or to restore the number of employees in the Commission's Charitable Bingo Operations Division (Division) contingent on the Commission assessing or increasing fees sufficient to generate a specified amount of revenue. The final General Appropriations Act passed by the 83rd Legislature and signed by the governor did include a provision making appropriations to the Commission to fund the employee restoration contingent on the Commission assessing or increasing fees sufficient to generate a specified amount of revenue. Additionally, the portion of the amendments that imposes a fee for bingo worker registration original and renewal applications was proposed under the assumption that the Bingo Enabling Act would be amended to authorize the Commission to impose such a fee. House Bill 2197, which was passed by the 83rd Legislature and signed by the governor, did amend the Bingo Enabling Act to authorize the Commission to impose such a fee. Accordingly, the adoption of these amendments is consistent with the proposed rulemaking published in the May 24, 2013, issue of the *Texas Register* (38 TexReg 3235).

While the final General Appropriations Act did include a provision making appropriations to the Commission to fund the employee restoration contingent on the Commission assessing or increasing fees sufficient to generate a specified amount of revenue, it did not contain a provision making appropriations to the Commission to fund the redesign of the ACBS contingent on the Commission assessing or increasing fees. Rather, the ACBS redesign will be funded entirely through general revenue. Therefore, as explained in the preamble to the proposed amendments, the license fee increase for bingo conductors and commercial lessors set in the adopted amendments will be lower than those in the proposed amendments. The proposed amendments set fees for licenses that become effective on or after September 1, 2013, but before September 1, 2015, at a higher rate than licenses that become effective on or after September 1, 2015. For purposes of the fee increase, the adopted rules will now only differentiate between licenses that become effective before September 1, 2013, and those that become effective on or after September 1, 2013.

A public comment hearing was held on Wednesday, May 29, 2013, at 10:00 a.m., at 611 E. 6th Street, Austin, Texas 78701. Four members of the public provided comments at this hearing and were against some or all of the proposed amendments: a representative of Texas Charity Advocates, a representative of the Veterans of Foreign Wars - Department of Texas, a representative of the Fraternal Order of the Eagles No. 3111, and a representative of River City Bingo charities, Texas Charity Advocates, and K&B Sales, Inc., d/b/a Good Time Action Games. The Commission also received four written comments against some or all of the proposed amendments, including comments from representatives of the Houston Elks Lodge #151 and Texas Charity Advocates.

**COMMENT SUMMARY:** Several commenters stated that a \$25 fee for bingo worker registration applications and renewal applications is too high and will prevent many bingo workers from volunteering their services to the bingo conductors. One commenter stated that his charity uses only volunteer bingo workers and that he will likely have to cease bingo operations if his volunteers cannot pay the \$25 fee.

**COMMISSION RESPONSE:** The Commission declines to alter the amount of the fee for bingo worker registration applications and renewal applications as requested. While the Commission acknowledges the possible negative fiscal impact this fee could have on bingo workers, the implementation of a bingo worker registration application fee was recommended by the Sunset Advisory Commission and ultimately adopted by the 83rd Legislature. See Sunset Advisory Commission, *Texas Lottery Commission: Report to the 83rd Legislature* at 108 (February 2013). The fee was set at \$25 because the Commission determined that to be a sufficient amount to cover the cost of processing the applications and renewals. Furthermore, a bingo worker's placement on the registry is valid for three (3) years. Thus, the \$25 fee amounts to only \$8.33 per year. Finally, to ease the burden this fee may have on volunteer bingo workers, the licensed bingo conductors may choose to reimburse their workers the cost of the fee as an allowable expense under §2001.458 of the Texas Occupations Code.

**COMMENT SUMMARY:** One commenter noted that the Bingo Enabling Act has been amended to require bingo licensees to pay the total cost of a two-year license up front. Previously, bingo licensees had the option to pay for a two-year license up front or in two annual installments. The commenter questioned whether

it was legal for the Commission to require a licensee that has already paid for a two-year license to pay an increased fee for the second license year.

**COMMISSION RESPONSE:** The Commission declines to alter the amendments in response to this comment. The Bingo Enabling Act explicitly authorizes the Commission to set license fees and to require the payment of any additional fee amount determined to be due by the Commission. See Texas Occupations Code §2001.104, and §2001.158. The Commission is not aware of any statute, rule, decision, or opinion that would prevent the Commission from requiring a licensee with a two-year license to pay an additional amount for the second license year if the fee for that license class was duly increased after the license was issued. Furthermore, the statutory requirement that bingo licensees pay the total cost of a two-year license up front does not go into effect until September 1, 2013, which is the same date that the license fees will increase. Therefore, the only licensees that will be affected by this scenario are those who elected to pay up front the cost of a two-year license that became effective on or after September 1, 2012, but before September 1, 2013. Out of the one thousand four hundred seventy five (1475) bingo conductors and commercial lessors currently licensed, there are approximately only one hundred fifty (150) licensees that fit this category. For the second year of their two-year licenses, those 150 licensees will be required to remit to the Commission the difference between the current annual license fee and the increased annual license fee.

**COMMENT SUMMARY:** Two commenters expressed concern that the fee increase for licenses to conduct bingo and commercial licenses to lease bingo premises was too high and would collect more revenue than is actually needed by the Commission. The commenters requested that the fee increase be lowered and that a provision be added to the amendments that would allow the Commission to review and adjust the license fees, or give credits to licensees, if the Commission collects more revenue than is needed.

**COMMISSION RESPONSE:** The Commission declines to alter the amendments as requested. The Commission's research indicates that the license fee increase in the adopted amendments will provide \$1,588,321 to the Commission in excess of the \$5,913,000 contained in the Comptroller of Public Accounts' Biennial Revenue Estimate (BRE) for fiscal years 2014 - 2015 in Object Code 3152. This is approximately the amount of revenue that must be generated by the fees in order for the Commission to obtain general revenue funding for the employee restoration. Therefore, the fee amounts set by the adopted amendments are proper. The Commission reviews all its administrative rules, including §402.404, every four (4) years as required by §2001.039 of the Texas Government Code. The next review will occur in 2015. If the increased fees generate more revenue than is needed under the General Appropriations Act, the Commission can alter the fee amount or provide for a credit to the licensees through the standard rulemaking process at that time.

**COMMENT SUMMARY:** One commenter provided analysis to support the argument that the adopted fee increase would generate more revenue than is actually needed by the Commission. By the commenter's calculations, a fee increase of 32% would generate approximately \$928,000 annually, when only \$775,000 is required. The commenter states that a 27% increase would generate approximately \$783,000.

**COMMISSION RESPONSE:** The Commission declines to alter the fee amounts as requested. The Commission disagrees with

the commenter's calculations. The commenter's calculations are based on the total amount of revenue generated under Object Code 3152, but that object code includes revenue generated from temporary license fees and license amendment fees. Temporary license fees are set in statute and cannot be increased by the Commission. Beginning September 1, 2013, the Commission is authorized to increase license amendment fees. However, the Commission has determined that any reasonable increase in license amendment fees would result in a negligible amount of revenue and would have to be borne, mostly, by the bingo conductors and commercial lessors. Therefore, the Commission has chosen not to increase those fees at this time. The commenter's calculations also do not factor in the recent decline in the number of bingo conductors and commercial lessors or that the amount generated must be in excess of the \$5,913,000 included in the FY 2014 - 2015 BRE. For example, there were 1,548 active bingo conductors and lessors at the end of fiscal year 2011 as compared to 1,475 in April 2013. This amounts to a decline of 4.72%. With fewer conductors and lessors, the fee increase must be spread out amongst a smaller number of licensees.

**COMMENT SUMMARY:** Two commenters requested that the license fee increase provided for in the adopted amendments expire upon the end of the 2014 - 2015 biennium. One commenter suggested that the 84th Legislature could alter the Commission's funding in a manner that would render the fee increase unnecessary in the next biennium.

**COMMISSION RESPONSE:** The Commission declines to alter the amendments as requested. If the adopted amendments were set to expire at the end of the 2014 - 2015 biennium, and the 84th Legislature did not alter the Commission's funding as described by the commenter, then the Commission would have to adopt similar amendments again in a new rulemaking. The Commission believes it is more prudent to not include an expiration date, but should the 84th Legislature alter the Commission's funding in a manner that would render the fee increase unnecessary in the 2016 - 2017 biennium, the Commission can alter the fee amounts through the standard rulemaking process at that time.

**COMMENT SUMMARY:** One commenter stated that the increase in license fees could create hardships for the smaller bingo conductors.

**COMMISSION RESPONSE:** The Commission declines to alter the amendments in response to this comment. As explained in the preamble to the proposed amendments, the Commission recognizes that smaller bingo conductors will be negatively impacted by the license fee increase, but the fee increase in the adopted amendments is necessary in order to fund the employee restoration. In order to reduce the impact on organizations with lower gross receipts, the Commission considered increasing license fees only for the higher classes of licenses. The Commission also considered increasing the license fees for higher classes by a greater percentage than the license fees for lower classes. However, the Commission ultimately determined that applying an equal percentage increase to fees for all license classes would be most equitable.

**COMMENT SUMMARY:** One commenter requested that the portion of the proposed fee increase attributable to the ACBS redesign not be adopted because that redesign will be fully funded through general revenue.

**COMMISSION RESPONSE:** As previously stated, the Commission has altered the proposed amendments in response to the final General Appropriations Act. The license fee increase will not be as high as originally proposed because revenue generated from the fees will not be needed to fund the ACBS redesign. Rather than imposing the proposed 56.5% fee increase for all license classes, the adopted increase will only be 32%.

**COMMENT SUMMARY:** Several commenters requested that the fees for manufacturer and distributor licenses be increased as well so that they could share in the cost of funding the regulation and administration of bingo.

**COMMISSION RESPONSE:** The Commission declines to alter the amendments as requested. As a result of the passage of House Bill 2197, the Commission's sunset legislation, the Commission will have the authority to increase the fees for manufacturer and distributor licenses on September 1, 2013. However, any revenue generated from such fees cannot be counted toward the amount of revenue that must be raised by the Commission in order to receive appropriations for the employee restoration. As written, the General Appropriations Act only allows the Commission to raise the requisite revenue from Object Code 3152, which does not include fees for manufacturer and distributor licenses. Therefore, increasing the fees for manufacturer and distributor licenses will not help the Commission to restore the employees to the Division.

**COMMENT SUMMARY:** One commenter requested that Commission staff work with Comptroller staff to amend Object Code 3152 to include fees for manufacturer and distributor licenses so that those fees can be counted toward the amount of revenue that must be raised by the Commission in order to receive funding for the restoration of employees in the Division.

**COMMISSION RESPONSE:** At the request of members of the bingo community, Commission staff attended a meeting with the Comptroller's staff and representatives of the bingo community to discuss Object Code 3152. The Comptroller's staff has indicated that they are currently not in a position to amend Object Code 3152 to include fees for manufacturer and distributor licenses.

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

This adoption implements Chapter 2001 of the Texas Occupations Code.

*§402.404. License and Registry Fees.*

(a) Definitions.

(1) Application Escrow Account--A formal record of the debits and credits for application fees.

(2) License period--For purposes of Texas Occupations Code §2001.104 and §2001.158, the term "license period" means the four full calendar quarters immediately preceding the license end date.

(3) Regular License Fee Amount:

(A) License to Conduct Bingo:

(i) The annual fee for a license to conduct bingo that becomes effective before September 1, 2013, shall be an amount equal



to the minimum license fee amounts based on annual gross receipts specified in Texas Occupations Code, §2001.104(a).

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

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

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

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

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

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

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

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

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

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

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

(B) Commercial Lessor License:

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

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

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

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

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

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

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

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

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

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

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

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

(b) Original License Application.

(1) License to Conduct Charitable Bingo.

(A) An initial license fee for an original license to conduct charitable bingo or an original license to lease bingo premises submitted by an authorized organization that does not have a license issued under the Bingo Enabling Act, must be paid from the organization's general fund bank account.

(B) An applicant may be required to submit additional license fees if the estimated gross receipts used to calculate the license fee are not reasonable when compared to gross receipts of other organizations with the same number of occasions conducting bingo at the same bingo premises. If no such organizations exist, the Charitable Bingo Operations Division may use gross receipts amounts from organizations with the same number of occasions conducting bingo at similarly situated bingo premises. These amounts are used to establish the gross receipts amount upon which the applicant's license fee is based and must be submitted.

(2) Commercial License to Lease Bingo Premises.

(A) License fees for an original license to lease bingo premises submitted by an authorized organization licensed to conduct bingo must be paid from the organization's bingo bank account.

(B) An applicant may be required to submit additional license fees if the estimated gross rental income used to calculate the license fee is not reasonable when compared to the gross rental income at similarly situated bingo premises. These comparative amounts are used to establish the gross rental income amount upon which the applicant's license fee is based and must be submitted.

(3) Understating the anticipated gross receipts or rental income from a licensed activity for any purpose by an applicant or licensed entity may be grounds for administrative disciplinary action against the licensee.

(c) Changes Within Six Months of the License Term.

(1) An organization shall re-estimate its annual gross receipts and submit any balance due in license fee amount if there is an increase in the number of bingo occasions conducted within six months of the issuance of the original license to conduct bingo.

(2) An organization shall re-estimate its annual gross rental income and submit any balance due in license fee amount if there is an increase within six months of the issuance of the original lessor license in:

(A) the number of organizations conducting bingo at a licensed location; and

(B) the number of bingo occasions conducted at the licensed location.

(d) License Renewal Fee.

(1) The amount of license fee to be paid upon renewal of a license to conduct bingo or license to lease bingo premises is the recalculated license fee amount calculated for the preceding license period.

(2) If the recalculation of the license fee amount for the previous license period reflects an underpayment of the license fee amount for that license period, the incremental difference must be submitted by the organization within 30 days of the license expiration date and before the license may be renewed.

(3) If the recalculated license fee amount calculation for the first year of a two year license reflects an underpayment of license fee

amount for the first year, the incremental difference must be submitted by the organization within 30 days of the first anniversary of the date the license became effective.

(4) Upon written request by an organization to renew its license to conduct bingo or license to lease bingo premises that is in administrative hold, the organization may submit a renewal fee of \$100 in lieu of the recalculated fee amount from the preceding license period.

(5) The Commission may require an amount of license fee in addition to the recalculated fee at renewal if there is a change in:

- (A) playing location;
- (B) rental amount per occasion; or,
- (C) increase in the number of occasions bingo is conducted.

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

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

(e) Two-Year License Fee Payments.

(1) To be timely received, the full license fee payment for the second year of a two year license must be postmarked no later than the first anniversary of the date the license became effective. A license fee payment bearing no legible postmark, postal meter date, or date of delivery to the common carrier may be considered to have been sent seven calendar days before receipt by the Agency, or on the date of the check, if the check date is less than seven days earlier than date of receipt. If the first anniversary of the date the license became effective falls on a Saturday, Sunday, or legal holiday, the payment will be due the next day which is not a Saturday, Sunday, or legal holiday.

(2) An organization that places its license on administrative hold during the first year of a two year license period and elected to pay the second year by the first anniversary of the license effective date may pay an estimated license fee of \$100 for the second year of the license period.

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

(f) Regular License Fee Recalculation.

(1) For the purpose of determining the license fee recalculation for a license to conduct bingo or license to lease bingo premises, the annual gross receipts or gross rental income, as applicable, shall be based on the four consecutive quarterly returns due immediately prior to the license expiration date.

(2) For the purposes of determining the license fee recalculation for a two year license to conduct bingo or license to lease bingo premises, each year of the license period shall be recalculated separately. The final recalculated fee will be the total of the yearly license

fees. The annual gross receipts or gross rental income, as applicable, shall be based on the four consecutive quarterly returns due immediately prior to the first year period and the four consecutive quarterly returns due immediately prior to the license expiration date of the second year period.

(3) For accounting units, gross receipts used to recalculate the license fee apportioned to a unit member will be calculated by dividing the unit's gross receipts by the total number of members during the quarter unless the accounting unit bases its distribution of proceeds on the number of occasions.

(4) For accounting units who base their distribution of proceeds on the number of occasions a member conducts, the gross receipts used to recalculate the license fee apportioned to a unit member will be calculated by dividing the unit's gross receipts by the total number of occasions conducted by all unit members and then multiplying by the number of occasions reported by the unit member.

(5) If a quarterly return is due less than 50 days prior to a license expiration, the gross receipts or gross rental income reported on that return will not be available to be used to calculate the annual gross receipts or gross rental income. Instead, the gross receipts or gross rental income reported on the four immediately preceding quarterly returns, as applicable, will be used to recalculate the organization's license fee.

(6) If an organization fails to file a report for one or more quarter(s) of the license period, or if there are not four quarters available for any other reason, the Commission shall estimate the quarterly gross receipts or gross rental income for the missing quarter(s) to recalculate the organization's license fee.

(A) The estimated annual gross receipts are determined by calculating the average gross receipts per occasion reported on the returns filed for the license period and multiplying by the number of occasions licensed per week and then multiplying by 52.

(B) The estimated gross rental income per quarter is determined by adding the gross rental income reported on the returns filed in the license period and dividing this number by the number of returns filed. The resulting number would then be multiplied by four to calculate the organization's license fee and to estimate the second year license fee of a two year license.

(7) License no longer exists.

(A) Notwithstanding the fact that an organization conducted bingo under a license that ceased to exist for whatever reason, the organization must submit the recalculated license fee for the period that the organization conducted bingo and collected gross receipts.

(B) Notwithstanding the fact that an organization which leased bingo premises under a license that ceased to exist for whatever reason, the organization must submit the recalculated license fee for the period that the organization leased the premises and collected gross rental income.

(C) If an organization ceases to be licensed for whatever reason, all gross receipts or gross rental income collected (from the period after the last quarterly return used to recalculate the license fee for the prior year) is used to recalculate the final license fee due. If the organization fails to file a return for any required period(s), an estimated return will be used. The organization shall submit any balance due after license fee recalculation.

(8) The Commission may recalculate license fees for up to four consecutive immediately preceding license periods if a change in an organization's reported gross receipts or gross rental income occurs

as a result of an audit, or if the original recalculation was determined by using estimated gross receipts or gross rental income.

(9) If there is a change in an organization's reported gross receipts or gross rental income, the organization may submit a written request to the Charitable Bingo Operations Division to recalculate its license fees for up to four immediately preceding license periods.

(10) If an organization issued a license that is effective for two years ceases to be licensed prior to conducting bingo in a quarter used to calculate the second year fee, a \$100 fee will apply for the second year of the license for the purposes of recalculating the license fee.

(g) Overpayment of License Fee.

(1) An overpayment of a regular license fee based on the previous license period's recalculation is a credit and shall be applied to the license renewal license fee for the next license period or the second year of a two year license, as applicable.

(2) An organization may submit a written request to have the overpayment of a regular license fee based on the previous license period's recalculation applied to:

(A) outstanding liabilities;

(B) regular license fee for another license issued to the organization under the Bingo Enabling Act; or

(C) remain in the application escrow account.

(3) An organization may submit additional license fees to be placed in the application escrow account and applied toward future license applications.

(4) An accounting unit may submit additional license fees to be placed in an application escrow account and applied toward future license application for its members. At the time of submission of the additional license fees, the accounting unit must designate in writing the member organization to which the additional license fee payment applies.

(5) The unit's designated agent, unit manager or officer of the trustee organization may submit a written request to move excess license fee payments previously submitted from one active unit member's application escrow account to another active unit member's application account.

(6) All license fee payments are considered the property of the licensed authorized organization regardless of whether the license fee is submitted prior to joining the accounting unit or payment is made by the accounting unit. Any overpayment of license fee existing when the licensed authorized organization leaves a unit is considered the property of the licensed authorized organization and will be credited to the licensed authorized organization. Any underpayment of license fee when the licensed authorized organization leaves a unit is considered the liability of the licensed authorized organization.

(h) Refund of Payments.

(1) Once an organization is no longer licensed, and if any outstanding liabilities exist, the license fee payment will be applied to the outstanding liability. Any balance from the license fee payment, after liabilities are paid, shall be refunded to the organization provided no other outstanding liabilities under the Bingo Enabling Act to the State exist. A refund will not be issued until all liabilities to the State under the Bingo Enabling Act have been paid and all quarterly reports have been filed and processed by the Commission.

(2) If an application for a license is denied, the Director may refund the application fee less the cost incurred by the Charitable Bingo Operations Division to process the application.

(3) If an application for an original license is withdrawn, the applicant's license fee may be refunded upon written request less a \$100 processing fee.

(4) If the Commission serves the applicant for an original license with a notice of application denial and the applicant later withdraws the application, the Commission will refund the applicant's license fee, less a \$400 processing fee, upon the applicant's written request.

(5) The Commission will refund to the licensed authorized organization any overpayment of regular license fee for a licensed authorized organization who was a member of a unit.

(i) Transfer of Commercial License to Lease Bingo Premises.

(1) All gross rental income collected in connection with a license to lease bingo premises that has been transferred during the term of the license shall be used to recalculate the license fee.

(2) A license fee recalculation credit in connection with a license to lease bingo premises that was transferred during the term of the license shall be credited to the current license holder at the time of license renewal.

(3) A license fee recalculation balance due for a license to lease bingo premises that was transferred during the term of the license shall be the liability of the current license holder at the time of license renewal.

(j) The license fee in connection with a license to manufacture bingo supplies, distribute bingo supplies, or system service provider is not refundable.

(k) An organization must submit a fee of \$10.00 to the Commission at the time the licensed organization notifies the Commission of a change in the time or date of a game for a regular license to conduct bingo.

(l) Temporary Authorization to Conduct Bingo.

(1) The amount of gross receipts collected in connection with a temporary authorization is used to recalculate the regular license fee.

(2) An organization conducting bingo pursuant to a temporary authorization must comply with the same statutory and administrative rule requirements, annual gross receipts fee schedule, and quarterly return filing requirements as an organization which has a regular license to conduct bingo.

(3) If an organization conducting bingo pursuant to a temporary authorization does not become licensed to conduct bingo, the fee for the temporary authorization will be determined by the fee schedule for a license to conduct bingo set out in Occupations Code, §2001.104(a).

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

This agency hereby certifies that the 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 July 11, 2013.

TRD-201302868

Bob Biard

General Counsel

Texas Lottery Commission

Effective date: July 31, 2013

Proposal publication date: May 24, 2013

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



## TITLE 28. INSURANCE

### PART 1. TEXAS DEPARTMENT OF INSURANCE

#### CHAPTER 3. LIFE, ACCIDENT, AND HEALTH INSURANCE AND ANNUITIES

##### SUBCHAPTER FF. CREDIT LIFE AND CREDIT ACCIDENT AND HEALTH INSURANCE

##### DIVISION 10. RESPONSIBILITIES AND OBLIGATIONS OF INSURANCE COMPANIES AND THEIR AGENTS AND REPRESENTATIVES

###### 28 TAC §3.6011

The Texas Department of Insurance adopts amendments to 28 TAC §3.6011, adopting a revised *Consumer Bill of Rights for Credit Life, Credit Disability, and Credit Involuntary Unemployment Insurance* (Consumer Bill of Rights) that insurers must provide to each insured with a new policy or renewal notice. The amendments are adopted with nonsubstantive changes in response to comments to the proposed text published in the *Texas Register* (38 TexReg 283) on January 18, 2013.

**REASONED JUSTIFICATION.** The department regulates credit life, credit disability, and credit involuntary unemployment insurance under Insurance Code Chapter 1153. Insurance Code §501.156 requires the Office of Public Insurance Counsel (OPIC) to submit to the department for adoption a consumer bill of rights appropriate to each personal line of insurance regulated by the department. On May 3, 2012, the department received a petition from OPIC, requesting the adoption of a revised Consumer Bill of Rights. On November 16, 2012, amendments to §3.6011 were adopted that included a revised Consumer Bill of Rights. Additional amendments were proposed to §3.6011 to address an apparent statutory conflict between the Insurance and Finance Codes in the revised Consumer Bill of Rights No. 6.

###### HOW THE SECTION WILL FUNCTION.

Section 3.6011(a) adopts the revised Consumer Bill of Rights, and §3.6011(c) adopts the Spanish version of the revised Consumer Bill of Rights.

Section 3.6011(e) provides that the effective date of compliance with this rule is November 25, 2013.

###### SUMMARY OF COMMENTS AND DEPARTMENT RESPONSE.

**Comment:** A commenter stated that the bill of rights adopted in 1993 adequately advises consumers of their rights. The commenter also stated that the proposed Consumer Bill of Rights

and the previously adopted bill of rights are flawed, and the commenter has no recollection of receiving any consumer complaints about the 1993 version.

**Response:** The department will proceed with adopting the proposed Consumer Bill of Rights with the changes outlined in this adoption. As stated in the introduction, a revised Consumer Bill of Rights has been adopted because OPIC petitioned the department for rulemaking to adopt an update to the bill of rights for credit insurance. The updated Consumer Bill of Rights includes privacy rights that were not contained in the 1993 version, and it is more concise and readable than earlier versions.

**Comment:** A commenter stated that insurers would prefer a shorter two-page bill of rights that refers consumers to a website for more detailed information. Additionally, the commenter states that the industry expects the Consumer Financial Protection Bureau to adopt required federal disclosures for credit insurance products.

**Response:** The department did not make changes in response to this comment. The adopted Consumer Bill of Rights includes three additional rights and is the same length as the version it is replacing. As addressed in response to another comment, the department does not interpret this rule or the underlying statutes as forbidding an insurer from providing the Consumer Bill of Rights electronically, as long as the regulated entity is in compliance with the statutes and rules for electronic transactions. However, the department does not agree that referring consumers to an electronic link satisfies the requirement to provide each insured with the Consumer Bill of Rights. Although the Consumer Financial Protection Bureau may require disclosures for credit insurance products, there is no timetable for when those federal regulations may be adopted, so the department is proceeding with adopting the Consumer Bill of Rights.

**Comment:** A commenter disagreed with the department's finding of no fiscal impact on state government. The commenter stated that adopting this amendment will force industry to move from credit insurance products to debt cancellation products, which will reduce premium tax revenue. As an example, the commenter identifies the automotive industry's movement from Guaranteed Auto Protection insurance to waiver of debt cancellation products.

**Response:** The department did not make changes in response to this comment. The department disagrees that this adoption will have any impact on industry's choice between the two products. The commenter did not provide documentation to support the assertion about the automotive industry, nor was there any evidence provided suggesting that if, in fact, the trend exists, it is due to requirements related to providing consumers a bill of rights and not due to other market and industry factors.

**Comment:** A commenter stated "loan" should be replaced with "debt" throughout the Consumer Bill of Rights because the term "loan," as defined in the Finance Code, does not include retail installment transactions. Because credit insurance is authorized by statute to be offered in connection with retail installment transactions, it should be included in the terminology of the Consumer Bill of Rights.

**Response:** The department agrees and has replaced two of the five occurrences of "loan" in the Consumer Bill of Rights with "debt," more specifically in Right Nos. 11 and 12. In Right No. 2, "loan process" was replaced with "transaction" and in Right Nos. 3 and 10 it was deleted due to other revisions.

Comment: Commenters requested that the department allow insurers to satisfy their requirement to provide the Consumer Bill of Rights to each insured by referencing it on their website. In support of this request the commenter states that this would reduce compliance costs for insurers now and in the future and would assist the insureds by having an immediate source to reference the document before, during, or after the term of the covered transaction.

Response: The department disagrees that the requirement in §3.6011 would be satisfied by referencing an electronic link. However, the department believes it would be possible to satisfy the notice provision by providing the Consumer Bill of Rights electronically if an insurer has a procedure in place to conduct business electronically in compliance with Insurance Code §35.003 and any applicable rules.

Comment: Commenters stated that insurers should be provided additional time to comply with this amended rule so that they may deplete their stock of the prior bill of rights, work with platform providers to reprogram delivery systems, and implement the amended rule in the field. Commenters suggest an effective date of six to nine months from adoption.

Response: The department disagrees that six to nine months is required for compliance because industry has been on notice of this revision process since July 6, 2012. Further, the department questions the complexity of necessary changes in systems, programming, and implementation since the terms of compliance remain the same except for the actual document or electronic file changes. In an effort to provide ample time to comply and to mitigate costs associated with compliance, the date set forth in §3.6011(e) will be extended to November 25, 2013.

Comment: A commenter stated that the last part of the first sentence, "[the bill of rights] does not become part of your policy," should be bolded.

Response: The department disagrees that the phrase needs to be emphasized because bolding that part would detract from other parts of the introduction. Further, the department has no evidence that consumers confuse the Consumer Bill of Rights as part of their policy.

Comment: A commenter stated that the sentence, "[m]any people do not file credit insurance claims because they forget they have coverage," was not included in other lines of insurance bill of rights and is not supported by any evidence.

Response: The department agrees that the sentence does not constitute notice of a consumer right and has removed the sentence.

Comment: A commenter stated the current phrasing of Right No. 1, which states, "[a] creditor must provide a written statement describing any insurance you must provide in order to receive credit," needs to be restated to clarify the "true purpose of the right." The commenter suggested the following revision: "[i]f credit insurance is required by the creditor to obtain the debt, the creditor must provide you a written statement that it is required." Another commenter stated that Right Nos. 1 and 2 should be combined.

Response: The department agrees that the commenter's suggestion will clarify the right and has made that change. The department declines to combine Right Nos. 1 and 2 because although both rights address the purchase of credit insurance, each right addresses different types of notices the consumer should receive from the creditor.

Comment: Commenters stated Right No. 2 is incorrect and misleading because credit insurance is tied to a particular debt. Commenters also stated that the right conflicts with Finance Code §345.205 and §348.206, which allow a debtor 10 days after the close of the transaction to provide an equivalent policy in lieu of purchasing credit insurance for that particular transaction.

Response: The department agrees with commenters that the right should not state that the debtor may provide another credit insurance policy. Instead, it should state that another insurance policy may be provided to satisfy the creditor's requirement. Therefore, "credit" has been removed in reference to the debtor's right to obtain insurance from other sources and in regard to providing an existing policy. The department disagrees that this right, which is based on 28 TAC §3.5101 and Insurance Code §1153.161, conflicts with the referenced Finance Code sections. Insurance Code §1153.161 provides consumers with the right to satisfy a creditor's requirement for additional security by using an existing insurance policy or obtaining a policy from another insurer authorized to engage in the business of insurance in this state. 28 TAC §3.5101 requires creditors to notify consumers of the right provided by Insurance Code §1153.161 prior to the close of the transaction so the right is meaningful and the consumer has a real opportunity to make a choice. The referenced Finance Code sections require the creditor to allow the consumer 10 days to provide an alternate policy. Providing a consumer a notice of an option is different and distinct from the time the consumer is allowed to provide the alternative security, so this right does not conflict with the Finance Code.

Comment: Commenters stated that Right No. 3 is impossible to comply with when the credit insurance is for a revolving account because the total cost will change based on the outstanding balance. Commenters also stated that the right may mislead consumers to believe the amount provided includes other fees and interest related to financing of the premium. The commenters made various suggested revisions to address these concerns.

Response: The department agrees that this right should be revised to add clarity. The phrase containing "total cost" has been removed and language tracking Insurance Code §1153.159(2)(C) has been inserted. Right No. 3 now states, in pertinent part, "[y]our application and policy must separately include the amount of the premium or total identifiable charge, if any, to be paid by the debtor for credit insurance and the amount, term, and description of the coverage provided...." The department disagrees that it is impossible to provide a consumer notice of the premium for credit insurance on a revolving account. Although the premium may change month to month based on the amount outstanding, the insurer should be able to provide the consumer the monthly rate that will be applied depending on the financed amount.

Comment: Commenters stated that Right No. 6 may be confusing to consumers because the consumer does not see the insurer "charging" the creditor. Instead, the consumer is provided the insurance premium, on a form approved by the department, that will be billed by the creditor. Commenters included several suggested revisions.

Response: The department agrees that this right may be confusing. The right has been revised to state, "[a] creditor cannot charge you a higher premium for credit insurance than what the insurer charges for that coverage but may include the premium for the credit insurance in your debt amount with a finance charge, subject to the Finance Code."

Comment: A commenter stated that Right Nos. 8 and 9 should be combined. The commenter also stated that Right No. 8 should be revised to address the difference between open- and closed-end transactions by qualifying that the right only applies to open-end transactions.

Response: The department declines to make either suggested change. Right Nos. 8 and 9 should not be combined into one right because each addresses a distinct and different circumstance when a notice is required. Although not all transactions are subject to rate or insurer change during the term of the debt as described in Right No. 8, the statement is already qualified by "[i]f your rate changes." Further, the intent of the Consumer Bill of Rights is to explain a consumer's rights, to the extent possible, without using technical terminology that may result in a longer and less consumer-friendly bill of rights.

Comment: A commenter stated Right No. 10 may confuse those consumers that are required to have credit insurance. The commenter suggests the following revision to the first sentence, "Unless the credit insurance is required by the creditor, you can cancel your credit insurance policy at any time."

Response: The department agrees and has made the suggested revision.

Comment: Commenters stated Right No. 11 is inaccurate in regard to financed premiums and settlement due to or during claim settlement. Additionally, commenters stated that creditors and insurers may be confused about the de minimus amount when a refund is no longer required because some transactions under the Finance Code require a refund unless the amount is less than \$1, but the Insurance Code requires a refund of unearned credit insurance premiums unless the amount is less than \$3. A commenter also stated that the use of the phrase "an accounting" is incorrect because an accounting is not required by statute; and if the reference remains, there should be clarity in regard to who is responsible for providing the accounting because that requirement would be time consuming and costly to industry.

Response: The department agrees, in part, that this right could be stated more clearly. The right has been revised, as one commenter suggested, to state, "If your debt is paid off early, you may be entitled to a refund or credit of the unearned premiums. Please read your policy for more information regarding refunds." The department notes that neither the creditor nor insurer is responsible to provide a debtor an accounting of unearned premiums.

Comment: Commenters stated that the language in Right No. 12 may confuse consumers when the unearned premium is credited to the underlying debt. Commenters suggested various revisions.

Response: In an effort to avoid any confusion Right No. 12 has been revised to read as follows: "[y]our creditor has 60 days to tell your insurance company that you have paid off your debt. They must give the insurance company your name, address, and the date your debt was paid off so that any unearned premiums may be credited to your account or refunded to you."

Comment: A commenter stated that the reference to arson in Right No. 17 should be deleted because it does not apply to credit insurance claims.

Response: The department agrees and has revised this right by deleting the reference to arson.

Comment: A commenter stated that Right No. 19 limits an insurer's basis to deny a claim due to a misrepresentation related to the insured risk because the right states, "...material, or contributed, to the cause of the loss." Further, the commenter states that the right is attempting to amend the Administrative Code without legislation and that it conflicts with 28 TAC §3.5106(a)(2)(D).

Response: The department disagrees that Right No. 19 limits an insurer's right to deny a claim based on a misstatement related to the insured risk, because any misstatement related to the risk would likely be material to the insurance contract. However, for clarity the right has been revised to insert "to your risk" after "material" and remove the two commas that follow. The department disagrees that Right No. 19 conflicts with 28 TAC §3.5106(a)(2)(D) or Insurance Code §705.004 and §705.051, because the right does not limit an insurer's right to include additional provisions or statements in an application, policy, or certificate that fraudulent statements or misrepresentations that are material or contributory to the cause of the policy becoming payable are contestable beyond the two year period. Right No. 19 does not limit an insurer's requirement to fully comply with 28 TAC §3.5106(a)(2)(D).

Comment: A commenter requested a new right stating that credit insurance may be purchased for less than the amount needed to extinguish the indebtedness. Response: The department disagrees that a new right is necessary. Because the goal of the bill of rights is to provide consumers general, understandable, and useful information, it is not possible to include rights to cover every circumstance a consumer may encounter with credit insurance. Because the Right No. 3 explicitly requires the coverage amount to be provided to the consumer, the department believes at that time the consumer will be aware of the difference in coverage and debt.

Comment: A commenter requested a new right in response to Right No. 22, which addresses a consumer's right to sue his or her insurer, that states the potential penalties for committing insurance fraud.

Response: The department disagrees that a new right is necessary. The topic of insurance fraud is not squarely within the scope of the Consumer Bill of Rights. One of the goals of the Consumer Bill of Rights is to provide a concise statement of those rights and, to that end, not all peripheral issues can be included. The department notes, however, that insurers may include a statement to applicants warning them about the potential penalties of insurance fraud to raise these consumers' awareness of the seriousness of insurance fraud.

**NAMES OF THOSE COMMENTING FOR AND AGAINST THE PROPOSAL.** For, with changes: American Financial Services Association, American National Insurance Company, Consumer Credit Industry Association, Office of Consumer Credit Commissioner, Old United Insurance Companies, and Texas Association of Life and Health Insurers. American National Insurance Company, Consumer Credit Industry Association, and Chase submitted untimely comments that were for the adoption with changes. The suggested changes are addressed in the section of comments and responses.

**STATUTORY AUTHORITY.** The amendments are adopted under Insurance Code §501.156 and §36.001. Section 501.156 requires OPIC to submit to a consumer bill of rights appropriate to each personal line of insurance regulated by the department to be distributed on issuance of a policy by an insurer to each

policyholder. Section 36.001 provides that the commissioner of insurance may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state.

*§3.6011. Responsibility and Obligation of Insurers to Provide Copies of Consumer Bill of Rights for Credit Life, Credit Disability, and Credit Involuntary Unemployment Insurance to Each Insured.*

(a) The commissioner adopts the Consumer Bill of Rights for Credit Life, Credit Disability, and Credit Involuntary Unemployment Insurance. All insurers writing credit life, credit disability, and credit involuntary unemployment insurance policies must provide with each new policy and certificate of credit life, credit disability, and credit involuntary unemployment insurance a copy of the Texas Department of Insurance Consumer Bill of Rights for Credit Life, Credit Disability, and Credit Involuntary Unemployment Insurance. The Consumer Bill of Rights for Credit Life, Credit Disability, and Credit Involuntary Unemployment Insurance must accompany each renewal notice for credit life, credit disability, and credit involuntary unemployment insurance unless the current version of the form has been previously provided to the insured by the insurer.

Figure: 28 TAC §3.6011(a)

(b) Insurers may reproduce the Consumer Bill of Rights for Credit Life, Credit Disability, and Credit Involuntary Unemployment Insurance for the distribution required by subsection (a) of this section. Alternatively, insurers may generate it on their own equipment. If the Consumer Bill of Rights for Credit Life, Credit Disability, and Credit Involuntary Unemployment Insurance is generated by the insurers, it must appear in no less than 10-point font and be on separate pages with no other text on those pages.

(c) The commissioner adopts the Spanish language version of the Consumer Bill of Rights for Credit Life, Credit Disability, and

Credit Involuntary Unemployment Insurance. The Spanish language version of the Consumer Bill of Rights for Credit Life, Credit Disability, and Credit Involuntary Unemployment Insurance must be provided to any consumer who requests it from the insurer.

Figure: 28 TAC §3.6011(c)

(d) Insurers may reproduce the Spanish language version of the Consumer Bill of Rights for the distribution required by subsection (c) of this section. Alternatively, insurers may generate the form on their own equipment. If the form is generated by the insurers, it must appear in no less than 10 point font and be on separate pages with no other text on those pages.

(e) This section applies to all credit life, credit disability, and credit involuntary unemployment insurance policies offered, issued, renewed, or delivered after November 25, 2013.

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 July 8, 2013.

TRD-201302816

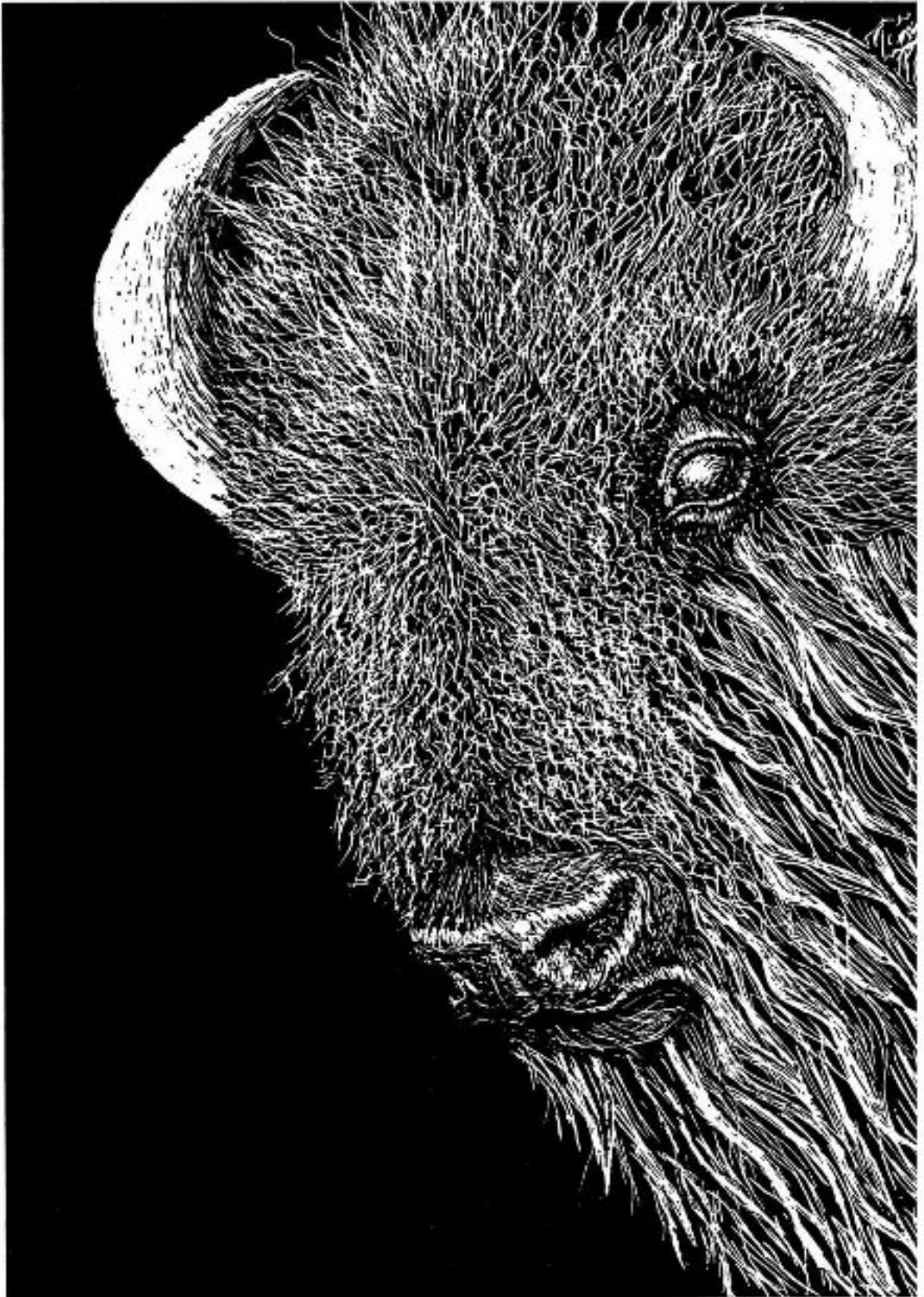
Sara Waitt  
General Counsel

Texas Department of Insurance  
Effective date: November 5, 2013

Proposal publication date: January 18, 2013

For further information, please call: (512) 463-6327







# TABLES & GRAPHICS

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Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

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**Consumer Bill of Rights for Credit Life, Credit Disability,  
and Credit Involuntary Unemployment Insurance**

AVISO: Este documento es un resumen de sus derechos como asegurado. Usted tiene el derecho a llamar a su compañía y pedir una copia de estos derechos en español.

**What is the Bill of Rights?**

This Bill of Rights is a summary of your rights and does not become a part of your policy. The Texas Department of Insurance (TDI) adopted this Bill of Rights and requires insurance companies to provide you a copy when they issue your policy. In this document the term "policy" includes a certificate of insurance.

Texas law gives you certain rights regarding your credit life, credit disability (also called credit accident and health), and credit involuntary unemployment insurance. This Bill of Rights identifies your rights specified by rule or state statute but does not include all of your rights. Some exceptions to the rights are not listed here, and legislative or regulatory changes enacted since the adoption of this notice are not reflected. Contact TDI if your agent, company, or adjuster tells you that one of these rights does not apply to you.

This Bill of Rights does not address your responsibilities. Your responsibilities concerning your insurance can be found in your policy. Failure to meet your obligations may affect your rights. Keep this notice and your policy with your other important documents.

**The Bill of Rights**

**Purchasing Credit Insurance**

1. If credit insurance is required by the creditor to obtain the debt, the creditor must provide you a written statement that it is required.
2. If credit insurance is required, a creditor cannot require that you buy it from a particular company or agent and must advise you of your right to obtain insurance from other sources before you complete the transaction. You may purchase a policy yourself, or you may be able to use an existing insurance policy.
3. Your application and policy must separately include the amount of the premium or total identifiable charge, if any, you must pay for credit insurance and the amount, term and description of the coverage provided. When you buy credit insurance, your creditor must give you a copy of your policy, your application for insurance, or a notice of proposed insurance.
4. An insurance company may not refuse to insure you, limit your coverage, or charge a different rate for the same coverage because of your race, color, religion, or national origin.
5. Unless it is based on sound underwriting or actuarial principles or permitted by applicable law or rule, an insurance company cannot refuse to insure you, limit your coverage, or charge a different rate for the same coverage because of your age, gender, marital status, geographic location, disability, or partial disability. Under some circumstances, an insurer may be able

to refuse coverage or charge a different rate based on age or limit coverage based on a disability. For example, an insurer may refuse to issue you a credit health policy if you are age 65 or older or charge you a higher premium based on your age for a credit life policy.

### **Restrictions on Premiums and Coverage**

6. A creditor cannot charge you a higher premium for credit insurance than what the insurer charges for that coverage but may include the premium for the credit insurance in your debt amount with a finance charge, subject to the Finance Code.
7. A creditor cannot require you to obtain credit insurance in an amount larger than the total amount of your debt.
8. If your rate changes, a creditor must notify you at least 30 days before any unscheduled premium increases are direct drafted from your bank account. Your company must send you notice by U.S. mail and it must include a toll-free number and mailing address to accept your objection. You must object to the increased draft at least five days before it goes into effect to stop the direct draft.
9. A credit card company must give you at least 30 days written notice before changing credit insurance providers. The notice must tell you about any rate increase, your right to cancel your insurance, and explain any major decrease, if any, in coverage resulting from the change.

### **Cancellation and Refunds**

10. Unless the credit insurance is required by the creditor, you can cancel your credit insurance policy at any time. Before canceling your policy, you should contact your creditor or attorney to make sure you are not breaking the terms of your loan.
11. If your debt is paid off early, you may be entitled to a refund or credit of the unearned premiums. Please read your policy for more information regarding refunds.
12. Your creditor has 60 days to tell your insurance company that you have paid off your debt. They must give the insurance company your name, address, and the date your debt was paid off so that any unearned premiums may be credited to your account or refunded to you.

### **Protecting Your Privacy**

13. You may prevent an insurance company from disclosing your private personal financial information to unaffiliated companies. Some examples of private personal information are income, social security number, credit history, and premium payment history. You may not prevent the release of information that is publicly available, information the company must share in order to conduct ordinary business activities, or when the disclosure is required by law.
14. Before sharing your private personal financial information with an unaffiliated business, an insurance company must provide you with a privacy notice explaining that it intends to share your private personal financial information.
15. An insurance company must give you at least 30 days from the date you receive the privacy notice to object, or "opt out," of the disclosure of your personal financial information. You have the right to opt out at any time, and your decision remains in effect until you revoke it.

### **Filing a Claim on your Credit Insurance**

16. When you, or your beneficiary, file a claim, your insurance company must acknowledge receipt of the claim, request any additional information relevant to the claim, and commence any investigation within 15 days.
17. When the insurance company receives all the information necessary to process the claim, it has 15 business days to send a written explanation denying the claim or a written notice approving the claim. The company can extend this deadline for an additional 45 days if it sends a written explanation of why it needs more time.
18. Your insurance company must pay a claim within five (5) days of the date you, or your beneficiary, receive written notice that the company has approved your claim.
19. Your insurance company must provide a written notice stating the reason for any claim that it denies. An insurance company cannot deny a claim because of a false statement on your application unless there is proof that the misstatement was material to your risk or contributed to the cause of your claim. If the company discovers a false statement, they must notify you within 90 days in order to use the misrepresentation as a defense at trial.
20. You, or your beneficiary, can reject any settlement amount offered by the insurance company.
21. If there is a claim on your policy and the benefits paid exceed the debt pay-off, the settlement must include a payment to you, or your beneficiary, for the excess amount.
22. You, or your beneficiary, may sue your insurance company for the claim amount plus 18 percent annual interest and attorney's fees if the claim is covered under your policy and the company fails to meet the required claims processing or payment deadlines listed in Rights 16, 17, and 18.

### **Enforcing Your Rights**

23. You can file a complaint with TDI about an insurance company or insurance matter.
24. You have the right to sue your insurance company with or without an attorney.
25. You may request that TDI make or change rules regarding any insurance issue that concerns you.

### **Where to Find More Information**

<p>To file a complaint with TDI about an insurance company or insurance matter or for more information about:</p> <ul style="list-style-type: none"><li>• your rights as an insurance consumer</li><li>• the license status of an insurance company or agent</li><li>• the financial condition of an insurance company</li><li>• the complaint history of an insurance company or agent</li><li>• insurance companies' rates, and</li><li>• other insurance consumer concerns.</li></ul>	<p>Texas Department of Insurance Consumer Protection Mail Code 111-1A P.O. Box 149091 Austin, Texas 78714-9091 Consumer Helpline - 1-800-252-3439 or 512-463-6515 TDI Publication and Complaint Form Order Line - 1-800-599-7467 or 512-305-7211. The order line is available 24 hours a day, seven days a week. Email - <a href="mailto:ConsumerProtection@tdi.texas.gov">ConsumerProtection@tdi.texas.gov</a> Website - <a href="http://www.tdi.texas.gov">www.tdi.texas.gov</a></p>
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To request an administrative rule or rule change.	Texas Department of Insurance Attn.: Commissioner (Mail Code 113-2A) P.O. Box 149104 Austin, Texas 78714-9104
For questions, comments, or a list of the specific law(s) and rule(s) summarized in this Bill of Rights.	Office of Public Insurance Counsel 333 Guadalupe St., Suite 3-120 Austin, Texas 78701 1-877-611-6742 Website - <a href="http://www.opic.state.tx.us">www.opic.state.tx.us</a>
For information about noninsurance credit issues.	Office of Consumer Credit Commissioner Consumer Helpline - 1-800-538-1579 Email Address - <a href="mailto:info@occc.state.tx.us">info@occc.state.tx.us</a> Website - <a href="http://www.occc.state.tx.us">www.occc.state.tx.us</a>
For information about your policy or to make a claim or complaint with your insurance company.	Your insurance company must maintain a toll-free number and include that number on each insurance policy.

**DECLARACIÓN DE DERECHOS DEL CONSUMIDOR  
SEGUROS DE VIDA DE CRÉDITO, SEGURO DE CRÉDITO POR INCAPACIDAD, Y SEGURO  
DE CRÉDITO POR DESEMPLEO INVOLUNTARIO**

**¿Qué es la Declaración de Derechos?**

Esta Declaración de Derechos es un resumen de sus derechos, y no forma parte de su póliza. El Departamento de Seguros de Texas (Texas Department of Insurance - TDI, por su nombre y siglas en inglés) adoptó esta Declaración de Derechos y exige que las compañías de seguros le proporcionen una copia cuando le expidan su póliza. En este documento, el término "póliza" incluye un certificado de seguro.

La ley de Texas le otorga ciertos derechos respecto a su seguro de vida de crédito, seguro de crédito por incapacidad (también llamado crédito de accidente y salud), y seguro de crédito por desempleo involuntario. Esta Declaración de Derechos identifica sus derechos, los cuales han sido especificados por reglamento o por estatuto estatal, pero no incluye todos sus derechos. Algunas excepciones a los derechos no están incluidas aquí, así como tampoco reflejan los cambios legislativos o reguladores que se adoptaron desde la última vez que se revisó este aviso. Si su agente, compañía o ajustador le dice que alguno de estos derechos no le corresponde a usted, comuníquese con TDI.

Esta Declaración de Derechos no menciona las responsabilidades suyas. Sus responsabilidades referentes a su seguro pueden ser encontradas en su póliza. No cumplir con sus obligaciones podría afectar sus derechos. Mantenga este aviso y su póliza junto con sus otros documentos importantes.

**La Declaración de Derechos**

**Cómo Comprar un Seguro de Crédito**

1. Si un seguro de crédito es requerido por el acreedor para obtener la deuda, el acreedor tiene que proporcionarle a usted una declaración por escrito que indique que éste es requerido.
2. Si un crédito de seguro es requerido, un acreedor no puede requerir que usted lo compre de una compañía o agente en particular y tiene que informarle sobre su derecho a obtener el seguro de otras fuentes antes de que usted complete la transacción. Usted puede comprar una póliza por sí mismo, o es posible que pueda usar una póliza de seguro existente.
3. Su solicitud y póliza tienen que incluir por separado la cantidad de la prima o el total del cobro identificable, si es que lo hay, que usted debe pagar por el seguro de crédito, así como la cantidad, término, y una descripción de la cobertura que es proporcionada. Cuando usted compra un seguro de crédito, su acreedor tiene que darle una copia de su póliza, su solicitud para obtener el seguro, o un aviso del seguro propuesto.

4. Una compañía de seguros no puede rehusarse a asegurarlo, limitar su cobertura, o cobrar un precio diferente por la misma cobertura debido a su raza, color, religión u origen nacional.
5. A menos que esté basado en principios aseguradores sólidos de actuario o esté permitido por la ley o un reglamento aplicable, una aseguradora no puede rehusarse a asegurarlo, limitar su cobertura, o cobrar un precio diferente por la misma cobertura debido a su edad, sexo, estado civil, ubicación geográfica, incapacidad, o incapacidad parcial. Bajo ciertas circunstancias, una aseguradora puede rehusarse a asegurar o cobrar un precio diferente basándose en la edad o limitar la cobertura basándose en una incapacidad. Por ejemplo, una aseguradora puede rehusarse a expedirle una póliza de crédito de salud si usted tiene 65 años de edad o más o cobrarle un precio más alto por su prima, basándose en su edad para una póliza de seguro de vida de crédito.

#### **Restricciones en las Primas y Coberturas**

6. Un acreedor no puede cobrarle una prima más alta por un seguro de crédito de lo que la aseguradora cobra por esa cobertura, pero sí puede incluir la prima para el seguro de crédito en la cantidad de su deuda con un cargo de financiamiento, el cual está sujeto al Código de Financiamiento (Finance Code, por su nombre en inglés).
7. Un acreedor no puede requerir que usted obtenga un seguro de crédito en una cantidad mayor que la cantidad total de su deuda.
8. Si su precio cambia, el acreedor tiene que notificarle por lo menos 30 días antes de que cualquier aumento no programado a la prima sea retirado directamente de su cuenta bancaria. Su compañía tiene que enviarle un aviso por medio del correo postal de los Estados Unidos y dicho aviso debe incluir un número de teléfono gratuito y una dirección de correo postal para aceptar su objeción. Usted tiene que oponerse al aumento por lo menos cinco días antes de que entre en vigor para poder evitar que los fondos sean retirados automáticamente de su cuenta bancaria.
9. Una compañía de tarjeta de crédito tiene que darle un aviso por escrito por lo menos 30 días antes de cambiar de proveedor de seguro de crédito. El aviso tiene que informarle sobre cualquier aumento de precio, su derecho para cancelar su seguro, y explicar cualquier reducción importante en la cobertura que resulte del cambio, si es que la hay.

#### **Cancelación y Reembolsos**

10. Al menos que el seguro de crédito sea requerido por el acreedor, usted puede cancelar su póliza de seguro de crédito en cualquier momento. Antes de cancelar su póliza, usted debe comunicarse con su acreedor o abogado para asegurarse de no estar quebrantando los términos de su préstamo.
11. Si su deuda es pagada anticipadamente, usted puede tener derecho a que le reembolsen o le den un crédito por las primas que no han sido usadas. Por favor lea su póliza para obtener más información sobre los reembolsos.

12. Su acreedor tiene 60 días para informarle a su compañía de seguros que usted ha pagado su deuda. Ellos tienen que entregar a la compañía de seguros su nombre, dirección, y la fecha en que la deuda fue pagada para que cualquier prima que no haya sido usada, pueda ser acreditada a su cuenta o reembolsada a usted.

### **Protección de su Privacidad**

13. Usted puede evitar que una compañía de seguros revele sus datos financieros personales privados a las compañías que no están afiliadas. Algunos ejemplos de los datos personales privados son el ingreso, el número de seguro social, la información de crédito y su historial de pago de primas. Usted no puede prevenir que se revelen los datos que están públicamente disponibles, así como la información que la compañía tiene que compartir para poder llevar a cabo las actividades ordinarias del negocio, o cuando por ley se debe revelar la información.
14. Antes de compartir sus datos financieros personales privados con un negocio que no está afiliado, una compañía de seguros tiene que darle a usted un aviso de privacidad que explica que tiene la intención de compartir sus datos financieros personales privados.
15. Una compañía de seguros tiene que darle un mínimo de 30 días, a partir de la fecha en que usted recibe el aviso de privacidad para que pueda rehusarse a permitir que revelen sus datos financieros personales privados. El rehusarse a que revelen sus datos se conoce como optar por no participar (opting out, por su nombre en inglés). Usted tiene derecho a optar por no participar (opt out) en cualquier momento y su decisión para optar por no participar permanece vigente, a menos que usted la revoque.

### **Cómo Presentar una Reclamación en su Seguro de Crédito**

16. Cuando usted, o su beneficiario, presentan una reclamación, su compañía de seguros tiene que acusar recibo de la reclamación, solicitar cualquier información adicional que sea relevante a la misma y comenzar cualquier investigación dentro de un plazo de 15 días.
17. Cuando la compañía de seguros recibe toda la información que es requerida para procesar la reclamación, la compañía tiene 15 días hábiles para enviar una explicación por escrito donde explica el porqué ha denegado la reclamación o un aviso por escrito donde aprueba la reclamación. La compañía puede extender este periodo de tiempo hasta por 45 días si le envía un aviso por escrito donde le explica el motivo por el cual necesita más tiempo.
18. Su compañía de seguros tiene que pagar dentro de cinco (5) días, a partir de la fecha en que usted, o su beneficiario, reciben un aviso por escrito donde se les informa que la compañía de seguros aprobó su reclamación.



19. Su compañía de seguros tiene que proporcionar un aviso por escrito donde informa las razones por las cuales cualquier reclamación es denegada. Una compañía de seguros no puede denegar una reclamación debido a una declaración falsa hecha en su solicitud al menos que existan pruebas de que la declaración falsa fue relevante para el riesgo, o contribuida a la causa de su reclamación. Si la compañía descubre una declaración falsa, deben notificarle a usted esta información dentro de 90 días para poder utilizar la declaración falsa como material de defensa en un juicio.
20. Usted, o su beneficiario pueden rechazar cualquier cantidad de liquidación que es ofrecida por la compañía de seguros.
21. Si existe una reclamación en su póliza y los beneficios que han sido pagados sobrepasan la cantidad de liquidación de la deuda, el pago de liquidación tiene que incluir un pago a usted, o a su beneficiario, por la cantidad en exceso.
22. Usted, o su beneficiario, pueden demandar a su compañía de seguros por la cantidad de la reclamación, más un 18 por ciento de interés anual y honorarios de abogado, si la reclamación está cubierta bajo su póliza y la compañía no cumple con el proceso que es requerido para las reclamaciones o con los marcos de tiempo para el pago que se muestran en los Derechos 16, 17 y 18.

**El Cumplimiento de sus Derechos**

23. Usted puede presentar una queja ante TDI sobre cualquier compañía de seguros o asunto de seguros.
24. Usted tiene derecho a demandar a su compañía de seguros con o sin un abogado.
25. Usted puede solicitar que TDI establezca o cambie reglamentos, respecto a cualquier cuestión de seguros que a usted le interese.

**Donde Encontrar Más Información**

<p>Para presentar una queja ante TDI sobre una compañía o asunto de seguros o para obtener más información sobre:</p> <ul style="list-style-type: none"> <li>• sus derechos como consumidor de seguros</li> <li>• el estado de la licencia de una compañía de seguros o agente</li> <li>• la condición financiera de una compañía de seguros</li> <li>• el historial de quejas de una compañía de seguros o agente</li> <li>• los precios de una compañía de seguros, y</li> </ul>	<p>Texas Department of Insurance  Consumer Protection  Mail Code 111-1A  P.O. Box 149091  Austin, Texas 78714-9091</p> <p>Línea de Ayuda al Consumidor - 1-800-252-3439 o 512-463-6515</p> <p>Línea para Pedidos de Publicaciones y Formularios de Queja de TDI - 1-800-599-7467 o 512-305-7211.</p> <p>La línea para pedidos está disponible las 24 horas del día, siete días a la semana.  Email - <a href="mailto:ConsumerProtection@tdi.texas.gov">ConsumerProtection@tdi.texas.gov</a></p>
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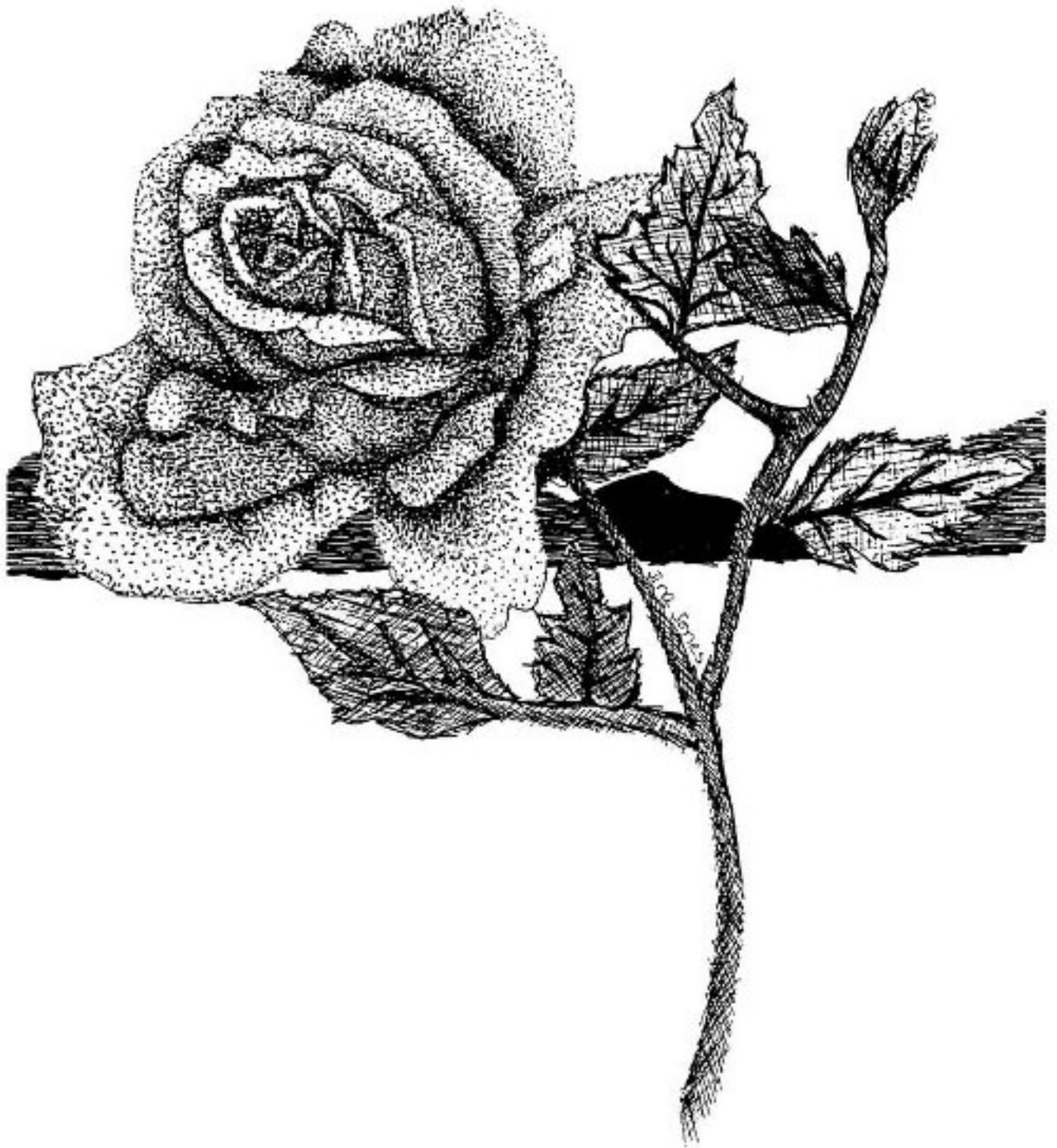
<ul style="list-style-type: none"> <li>• otros asuntos relacionados con el consumidor.</li> </ul>	Sitio Web - <a href="http://www.tdi.texas.gov">www.tdi.texas.gov</a>
Para solicitar que se establezca un reglamento administrativo o para que se hagan cambios a un reglamento.	Texas Department of Insurance Attn.: Commissioner (Mail Code 113-2A) P.O. Box 149104 Austin, Texas 78714-9104
Para preguntas, comentarios, o para una lista de la ley(es) y reglamento(s) que han sido resumidos en esta Declaración de Derechos.	Office of Public Insurance Counsel 333 Guadalupe St., Suite 3-120 Austin, Texas 78701 1-877-611-6742 Sitio Web - <a href="http://www.opic.state.tx.us">www.opic.state.tx.us</a>
Para obtener información sobre asuntos de crédito, no relacionados con el seguro.	Office of Consumer Credit Commissioner Línea de Ayuda al Consumidor - 1-800-538-1579 Email - <a href="mailto:info@occc.state.tx.us">info@occc.state.tx.us</a> Sitio Web - <a href="http://www.occc.state.tx.us">www.occc.state.tx.us</a>
Para obtener información sobre su póliza o para presentar una reclamación o queja con su compañía de seguros.	Su compañía de seguros tiene que mantener un número de teléfono gratuito y tiene que incluir el número en cada póliza de seguro.

Figure: 40 TAC §92.62(m)(3)(B)

Number of Beds	Area Per Bed Minimum in square feet
4-16	15 (minimum 120)
17-39	13
40-59	12
60 or more	10

Figure: 40 TAC §92.62(m)(4)(C)

Number of Beds	Area Per Bed Minimum in square feet
4-16	15 (minimum 120)
17-39	13
40-59	12
60 or more	10



## Texas Department of Agriculture

### Request for Applications: Young Farmer Grant Program

**Statement of Purpose.** Pursuant to the Texas Agriculture Code, §58.011, the Texas Department of Agriculture (TDA) is requesting applications for the Young Farmer Grant program (YFGP). The YFGP is administered by TDA under the direction of the Texas Agricultural Finance Authority (TAFE). The purpose of this program is to provide financial assistance in the form of dollar-for-dollar matching grant funds to those persons 18 years or older but younger than 46 years of age that are engaged or will be engaged in creating or expanding an agricultural business in Texas.

**Submission Dates/Locations.** Forms required for submitting an application are available by accessing TDA's website at: [www.TexasAgriculture.gov](http://www.TexasAgriculture.gov) or by emailing TAFE at [finance@TexasAgriculture.gov](mailto:finance@TexasAgriculture.gov). One hard copy of the application must arrive no later than 5:00 p.m. on **September 6, 2013**, to one of the following:

Physical Address: Texas Department of Agriculture, Texas Agricultural Finance Authority, Attn: Allen Regehr, 1700 N. Congress Ave., 2nd Floor, Austin, Texas 78701, Phone (512) 463-9932 or (512) 463-4320, Fax (888) 216-9867.

Mailing Address: Texas Department of Agriculture, Texas Agricultural Finance Authority Attn: Allen Regehr, P.O. Box 12847, Austin, Texas 78711.

Proposals must set forth accurate and complete information as required by this Request for Applications (RFA). Oral modifications will not be considered. Electronic applications will not be accepted or considered.

**Eligibility.** Grant applications will be accepted from any person 18 years or older but younger than 46 years of age that is engaged or will be engaged in creating or expanding agriculture in Texas. The applicant must be able to make dollar-for-dollar matching expenditures to sustain, create or expand the proposed project.

#### Application Requirements.

**Funding Parameters:** The TAFE Board of Directors (board) anticipates funding in an amount of \$150,000 for grants not less than \$5,000 and not to exceed \$10,000 per grant application. Recipients will have up to two years to expend grant funds.

The TAFE board reserves the right to fully or partially fund any particular grant application.

**Form Requirements:** Applications must be submitted on form RED-300 for consideration. Required forms and instructions are available by accessing TDA's website at [www.TexasAgriculture.gov](http://www.TexasAgriculture.gov) or by emailing TAFE at: [finance@TexasAgriculture.gov](mailto:finance@TexasAgriculture.gov). An applicant is permitted to submit only one application pursuant to this RFA. Multiple grant applications submitted by the same applicant under the same RFA will be rejected, and will not be considered by the board.

**Budget Information:** YFGP projects are paid on a cost reimbursement basis.

**1. Eligible Expenses.** Generally, eligible expenses include those costs that are necessary and reasonable for proper and efficient performance

and administration of a project. Expenses must be properly documented with sufficient detail, including copies of invoices. Examples of eligible expenditures are:

Personnel costs - both salary and benefits of those that perform work for the grant recipient;

Materials and direct operating expenses - equipment that costs less than \$5,000 per unit, animals, seed, fertilizer, irrigation, etc.;

Equipment - nonexpendable, tangible personal property having a useful life of less than one year and an acquisition cost of less than \$5,000; and

Other expenses - any expenses that do not fall into the above categories;

Indirect expenses - the YFGP limits reimbursable indirect expenses to 10% of the grant award.

**2. Ineligible Expenses.** Expenses that are prohibited by state or federal law are ineligible. Examples of these expenditures are:

Alcoholic beverages;

Entertainment;

Contributions for charitable, political, or lobbying purposes;

Expenses falling outside of the contract period;

Expenses for expenditures not listed in the project budget;

Expenses that are not adequately documented;

Value of applicant's own services;

Land; and

Personal property or other capital items with a useful life of more than one year and a cost of more than \$5,000.

**3. Description of the Budget.** Applicant must present an overall project budget and include the following items in the budget description:

A. Wages: Grant funds may be used for directly supporting salaries and wages of employees, but not for the value of your own services.

B. Materials and Direct Operating Expenses: The grant may be used for expenses that are directly related to the day-to-day operation of the project, if those expenses are not included in any other budget category, and if those expenses have an acquisition cost of less than \$5,000 per unit. An applicant must allocate costs on a prorated basis for shared usage.

C. Equipment: Eligible equipment is defined as tangible personal property having a useful life of less than one year and an acquisition cost of \$5,000 or less per unit. Applicants must submit a list of all proposed equipment purchases for approval. Recipients are not authorized to purchase any equipment until they have received written approval to do so from the Commissioner or his designee through the original grant award or a subsequent grant adjustment notice. The YFGP may refuse any request for equipment. Decisions regarding equipment purchases are made based on whether or not the grant recipient has demonstrated

that the requested equipment will be purchased at a reasonable cost and is essential to the successful operation of the project.

D. Professional/Contractual: Any contract or agreement between a grant recipient and a third party must be in writing and consistent with Texas law. Recipients must maintain adequate documentation supporting budget items for a contractor's time, services, and rates of compensation.

E. Indirect Expenses: Grant funds may be used for indirect costs up to 10% of the amount of the grant award.

F. Additional Budget Information: Applicant should provide additional information that will be helpful to the TAFE board in evaluating a grant application, including justification for equipment purchases, a list of subcontractors and amounts, a list of key personnel and salaries to be paid with the grant, and a description of other large expenditures.

G. Documentation of Employment Status. Applicant should be prepared to furnish documentation of lawful employment status for each employee included in personnel costs for the project.

**Evaluation of Applications.** The TAFE board will review and evaluate all applications. Prior to consideration by the board, TDA staff will score and rank the applications based on the criteria identified by the TAFE board. The board is not required to make awards based solely on staff's scoring or ranking of the applications. The board may consider other factors in making grant awards under the program, including, without limitation, the quality of the application, applicant's need for financial assistance, the project's ability to create, enhance, or sustain applicant's agricultural operation, the project's ability to improve overall agricultural productivity in Texas, and the project's ability to increase the number of agricultural enterprises in Texas that are owned and operated by young farmers.

**Award Information and Notification.** The TAFE board will approve projects for funding. The TAFE board reserves the right to accept or reject any or all applications. TDA and TAFE are under no legal or other obligation to award a grant on the basis of a submitted application. Neither TDA nor TAFE will pay for any cost or expense incurred by applicant or any other entity in responding to this RFA, including, without limitation, compensation for the value of applicant's time or services incurred in responding to this RFA.

Public announcements and written notifications of funding rounds will be made. Selected applicants will be notified of the amount of award, duration of the grant, and any special conditions associated with the project.

**General Compliance Information.**

1. Prior to accepting the Young Farmer grant and signing the grant agreement, the recipient will be provided a copy of TDA reporting requirements, for review and execution. The Grant Agreement outlines billing procedures, annual reporting requirements, procedures for requesting a change in the scope or budget for a project, and other miscellaneous items.
2. Late or incomplete applications will not be accepted.
3. Any delegation by a grant recipient to a subcontractor regarding any duties and responsibilities imposed by the grant award must be approved in advance by TDA but shall not relieve the recipient of responsibility for performance.
4. All grant awards are subject to the availability of appropriations and authorizations by the Texas Legislature, TDA and TAFE.
5. Any information or documentation submitted to TDA in connection with a grant application is subject to disclosure under the Texas Public Information Act.

6. While TDA and TAFE attempt to observe the strictest confidence in handling applications, they cannot guarantee complete confidentiality on any matter. The confidentiality of applicant's "proprietary data", if so designated, shall be strictly observed to the extent permitted by Texas law, including the Texas Public Information Act.

7. The ownership and disposition of all patentable products and intellectual property inventories shall be subject to the agreement of the grant recipient and TDA.

8. Funded projects must remain in full compliance with state and federal law and regulations. Noncompliance may result in termination.

9. Grant recipients must keep a separate bookkeeping account with a complete record of all expenditures relating to the project. Records shall be maintained for three years after the completion of the project or as otherwise agreed with TDA. TDA and the Texas State Auditor's Office reserve the right to examine all books, documents, records, and accounts relating to the project at any time throughout the duration of the grant agreement and for three years immediately following completion of the project. If there has been any litigation, claim, negotiation, audit or other action started prior to the expiration of the three-year period involving the project's records, then the records must be retained until the completion of the action and resolution of all issues which arise from it, or until the end of the regular three-year period, whichever is later. TDA and the Texas State Auditor's Office reserve the right to inspect project locations and to obtain full information regarding all project activities.

10. If a grant recipient has a financial audit performed in any year during which the recipient receives grant funds, the recipient shall, upon TDA's request, provide a complete copy of such audit and all information related thereto to TDA and/or TAFE, including the audit transmittal letter, management letter, and any schedules in which grant funds are analyzed, discussed, included, or reported.

11. Grant awards shall comply in all respects with the Uniform Grant Management Standards (UGMS). A copy may be downloaded from the following website: <http://www.governor.state.tx.us/files/state-grants/UGMS062004.doc>.

**For any questions:** Please contact Mr. Allen Regehr at (512) 463-9932 or by email at: [finance@TexasAgriculture.gov](mailto:finance@TexasAgriculture.gov).

TRD-201302916  
Dolores Alvarado Hibbs  
General Counsel  
Texas Department of Agriculture  
Filed: July 16, 2013

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**Office of the Attorney General**

Texas Water Code and Texas Health and Safety Code  
Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Water Code and the Texas Health and Safety Code. Before the State may settle a judicial enforcement action under the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Texas Water Code and the Texas Health and Safety Code.

Case Title and Court: Harris County, Texas and the State of Texas, acting on behalf of the Texas Commission on Environmental Quality (TCEQ) v. Drilling Structures International, Inc., Cause No. 2013-09652, in the 133rd Judicial District Court, Harris County, Texas.

Nature of Defendant's Operations: The case involves Drilling Structures International, Inc., a manufacturing plant located at 18874 E. Hardy Road, Houston, Texas 77073. The defendant is alleged to have emitted air contaminants during the course of its sandblasting and surface coating activities. The activities are alleged to have occurred without a permit and are alleged not to be compliant with any TCEQ Permit by Rule.

Proposed Agreed Judgment: The Agreed Final Judgment orders an injunction against defendant to cease all sandblasting operations, except where authorized by a New Source Review Permit issued by the TCEQ. Defendant agrees to pay civil penalties and costs of prosecution to the State. Defendant agrees to pay civil penalties of \$22,875 to be divided equally between Harris County and the State of Texas. The Defendant will pay attorney's fees to the State of Texas in the amount of \$2,500 and also pay attorney's fees to Harris County in the amount of \$2,500.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement, should be directed to Anthony W. Benedict, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-201302866  
Katherine Cary  
General Counsel  
Office of the Attorney General  
Filed: July 11, 2013

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**Comptroller of Public Accounts**

**Certification of the Average Taxable Price of Gas and Oil - June 2013**

The Comptroller of Public Accounts, administering agency for the collection of the Crude Oil Production Tax, has determined, as required by Tax Code, §202.058, that the average taxable price of crude oil for reporting period June 2013 is \$70.44 per barrel for the three-month period beginning on March 1, 2013, and ending May 31, 2013. Therefore, pursuant to Tax Code, §202.058, crude oil produced during the month of June 2013 from a qualified Low-Producing Oil Lease is not eligible for exemption from the crude oil production tax imposed by Tax Code, Chapter 202.

The Comptroller of Public Accounts, administering agency for the collection of the Natural Gas Production Tax, has determined, as required by Tax Code, §201.059, that the average taxable price of gas for reporting period June 2013 is \$3.19 per mcf for the three-month period beginning on March 1, 2013, and ending May 31, 2013. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of June 2013 from a qualified Low-Producing Well is eligible for 25% credit on the natural gas production tax imposed by Tax Code, Chapter 201.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of West Texas Intermediate crude oil for the month of June 2013 is \$95.76 per barrel. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall not exclude

total revenue received from oil produced during the month of June 2013 from a qualified low-producing oil well.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of gas for the month of June 2013 is \$3.82 per MMBtu. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall exclude total revenue received from gas produced during the month of June 2013 from a qualified low-producing gas well.

Inquiries should be directed to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

TRD-201302899  
Ashley Harden  
General Counsel  
Comptroller of Public Accounts  
Filed: July 16, 2013

◆ ◆ ◆  
**Public Notice of Court Costs and Fees - 2013**

Government Code, §51.607, requires the comptroller to publish a list of all court costs and fees imposed or changed during the most recent regular session of the legislature. This section also provides that, notwithstanding the effective date of the law imposing or changing the amount of a court cost or fee, the change does not take effect until January 1.

The listing of court costs and fees to be identified and published as required by Government Code, §51.607 are as follows:

**House Bill 349**

**Electronically Filing any Court Document in a Criminal Case in Hidalgo County**

Effective September 1, 2015. House Bill 349 relates to electronically filing any court document in a criminal case in Hidalgo County.

The bill amends Government Code, §24.194, by adding subsection (d), authorizing a party in a criminal case before the court to electronically file any required court document. In addition, the bill requires the court to implement the statewide electronic court filing system to assist a party in electronic filing.

The bill amends Government Code, §24.195, by adding subsection (d), authorizing a party in a criminal case before the court to electronically file any required court document. In addition, the bill requires the court to implement the statewide electronic court filing system to assist a party in electronic filing.

The bill amends Government Code, §24.241, by adding subsection (d), authorizing a party in a criminal case before the court to electronically file any required court document. In addition, the bill requires the court to implement the statewide electronic court filing system to assist a party in electronic filing.

The bill amends Government Code, §24.385, by adding subsection (b), authorizing a party in a criminal case before the court to electronically file any required court document. In addition, the bill requires the court to implement the statewide electronic court filing system to assist a party in electronic filing.

The bill amends Government Code, §24.452, by adding subsection (b), authorizing a party in a criminal case before the court to electronically file any required court document. In addition, the bill requires the court to implement the statewide electronic court filing system to assist a party in electronic filing.

The bill amends Government Code, §24.478, by adding subsection (b), authorizing a party in a criminal case before the court to electronically file any required court document. In addition, the bill requires the court to implement the statewide electronic court filing system to assist a party in electronic filing.

The bill amends Government Code, §24.515, by adding subsection (b), authorizing a party in a criminal case before the court to electronically file any required court document. In addition, the bill requires the court to implement the statewide electronic court filing system to assist a party in electronic filing.

The bill amends Government Code, §24.534, by adding subsection (b), authorizing a party in a criminal case before the court to electronically file any required court document. In addition, the bill requires the court to implement the statewide electronic court filing system to assist a party in electronic filing.

The bill amends Government Code, §24.543, by adding subsection (b), authorizing a party in a criminal case before the court to electronically file any required court document. In addition, the bill requires the court to implement the statewide electronic court filing system to assist a party in electronic filing.

The bill amends Government Code, §24.574, by adding subsection (c), authorizing a party in a criminal case before the court to electronically file any required court document. In addition, the bill requires the court to implement the statewide electronic court filing system to assist a party in electronic filing.

The bill amends Government Code, §24.593, by adding subsection (c), authorizing a party in a criminal case before the court to electronically file any required court document. In addition, the bill requires the court to implement the statewide electronic court filing system to assist a party in electronic filing.

#### House Bill 410

##### Second Court of Appeals District

Effective September 1, 2013. House Bill 410 relates to the administration and operation of the appellate judicial system for the Second Court of Appeals District; changing an appellate judicial system court costs fee in certain counties.

The bill amends Government Code, §22.2031, by requiring the commissioners court of each county in the Second Court of Appeals District by order entered in its minutes to establish an appellate judicial system to assist the court of appeals for the county in the processing of appeals filed with the court of appeals from the county courts, statutory county courts, statutory probate courts, and district courts; and defray costs and expenses incurred in the operation of the court of appeals. To fund the system, the commissioners court is required to set a court costs fee of \$5.00 for each civil suit filed in county court, statutory county court, statutory probate court, or district court in the county. The court costs fee does not apply to a suit filed by any governmental entity or to a suit for delinquent taxes. The court costs fee shall be taxed, collected, and paid as other court costs in a suit. The clerk of the court shall collect the court costs fee set under this section and pay it to the county officer who performs the county treasurer's functions. That officer shall deposit the fee in a separate appellate judicial system funds for the court of appeals district. The fund may not be used for any other purpose. The fund collected under this section must be forwarded monthly to the court of appeals for expenditures by the court of appeals. The chief justice of the court of appeals is responsible for management of the funds forwarded to the court of appeals under this section and has sole discretion as to the use of the funds, except that the funds must be used for purposes consistent with the purposes of the appellate judicial system as described by subsection (a).

The bill amends Government Code, §101.0611, requiring the clerk of a district court in the Second Court of Appeals District to collect an appellate judicial system filing fee of \$5.00 under, Government Code, §22.2031.

The bill amends Government Code, §101.0811, requiring the clerk of a statutory county court in the Second Court of Appeals District to collect an appellate judicial system filing fee of \$5.00 under Government Code, §22.2031.

The bill amends Government Code, §101.1011, requiring the clerk of a statutory probate court in the Second Court of Appeals District to collect an appellate judicial system filing fee of \$5.00 under Government Code, §22.2031.

The bill amends Government Code, §101.1212, requiring the clerk of a county court in a county in the Second Court of Appeals District to collect an appellate judicial system filing fee of \$5.00 under Government Code, §22.2031.

#### House Bill 438

##### Fee Collected for an Occupational Driver's License

Effective September 1, 2013. House Bill 438 relates to the courts authorized to issue an occupational driver's license.

The bill amends Transportation Code, §521.242(a) authorizing a person whose license has been suspended for a cause other than a physical or mental disability or impairment or a conviction under Penal Code, §49.04 (Driving While Intoxicated), to apply for an occupational license by filing a verified petition with the clerk of a justice, county, or district court with jurisdiction that includes the precinct or county in which the person resides or the offense occurred for which the license was suspended.

The bill amends Transportation Code, §521.242(b), authorizing a person to apply for an occupational license by filing a verified petition only with the clerk of the court, in which the person was convicted if certain criteria are met.

The bill amends Transportation Code, §521.242(e), requiring the clerk of the court to file the petition as in any other matter.

#### House Bill 1513

##### Records Archive Fees and Records Management and Preservation Fees

Effective September 1, 2013 (Article 1), and September 1, 2019 (Article 2). House Bill 1513 relates to the temporary increases in the records archive fees and the records management and preservation fees charged by district and county clerks.

The bill amends Government Code, §51.305(b), authorizing a commissioners court of a county to adopt district court records archive fees of not more than \$10 for the filing of a suit, including an appeal from an inferior court, or a cross-action, counterclaim, intervention, contempt action, motion for new trial, or third-party petition, in a district court in the county as part of the county's annual budget. The fee must be set and itemized in the county's annual budget as part of the budget preparation process and must be approved in a public meeting. The fee is for preservation and restoration services performed in connection with maintaining a district court records archive.

The bill amends Government Code, §51.317(b), authorizing the amount adopted by the county commissioners court, not to exceed \$10 for court records archiving, in addition to the other fees imposed under this section, for filing a suit, including an appeal from an inferior court, or a cross-action, counterclaim, intervention, contempt action, motion for new trial, or third-party petition.



The bill amends Government Code, §101.0611, requiring the clerk of a district court, if adopted by the commissioners court as provided by Government Code, §51.317(b)(5), to collect a fee for district court records archiving not to exceed \$10.

The bill amends Local Government Code, §118.011(b) and (f), authorizing the county clerk to set and collect, for records management and preservation, a fee as provided by Local Government Code, §118.0216, not to exceed \$10.

#### House Bill 1755

##### Public Probate Administrator Fee

Effective January 1, 2014. House Bill 1755 relates to authorizing the appointment of a public probate administrator; authorizing fees.

The bill amends Local Government Code, §118.052, by requiring each clerk of a county court to collect \$10 fee for the Supplemental Public Probate Administrator Fee for counties that have appointed a Public Probate Administrator (§118.068).

The bill amends Local Government Code, Chapter 118, Subchapter C, by adding §118.068, providing that the "supplemental public probate administrator fee" under §118.052(2)(F) is for the support of the office of public probate administrator under Estates Code, Chapter 455. Fees collected under §118.052(2)(F) must be deposited in the county treasury to fund the expenses of the public probate administrator's office. The supplemental public probate administrator fee is charged for: (1) a probate original action described by §118.055 and for which a fee is charged in accordance with §118.055(2)(A)(i), (ii), (iii), (iv), or (v); and §118.057(2) and for which a fee is charged in accordance with §118.052(2)(C). The supplemental public probate administrator fee must be paid by the person against whom the fee for a probate original action or adverse probate action, as applicable, is charged and is due at the time that fee is due. The supplemental public administrator fee is in addition to all other fees charged in probate original actions and adverse probate actions.

The bill amends Government Code, Chapter 101, Subchapter E, by adding §101.08145, requiring the clerk of a statutory county court to collect a supplemental public probate administrator fee of \$10 under Local Government Code, §118.052 and §118.068.

The bill amends Government Code, Chapter 101, Subchapter F, by adding §101.103, requiring the clerk of a statutory probate court to collect a supplemental public probate administrator fee of \$10 under Local Government Code, §118.052 and §118.068.

The bill amends Government Code, Chapter 101, Subchapter G, by adding §101.12145, requiring the clerk of a county court to collect a supplemental public probate administrator fee of \$10 under Government Code, §118.052 and §118.068.

#### House Bill 2302

##### Electronic or Digital Court Documents and Electronic Filing System

Effective September 1, 2013. House Bill 2302 relates to signing electronic or digital court documents, to the electronic filing system established by the Texas Supreme Court, to the statewide electronic filing system fund, to certain court fees by taxing units; imposing and authorizing certain fees.

The bill amends Government Code, Chapter 51, by adding Subchapter I-1, requiring the clerk of the supreme court, a court of appeals, a district court, a county court, a statutory county court, or a statutory probate court to collect a \$20 fee on the filing of any civil action or proceeding requiring a filing fee, including an appeal, and on the filing of any counterclaim, cross-action, intervention, interpleader, or third-party action requiring a filing fee to be used as provided by §51.852, in addition

to other court costs. The bill requires the clerk of a justice court to collect a \$10 fee on the filing of any civil action or proceeding requiring a filing fee, including an appeal, and on the filing of any counterclaim, cross-action, intervention, interpleader, or third-party action requiring a filing fee to be used as provided by §51.852, in addition to other court costs. Also, the bill requires a person to pay \$5.00 as a court cost on conviction of any criminal offense in a district court, county court, or statutory county court, in addition to other court costs.

The bill amends Government Code, Chapter 72, Subchapter C, by adding §72.031, allowing a local government or appellate court that uses the electronic filing system to charge a fee of \$2.00 for each electronic filing transaction if the fee is necessary to recover the actual system operating costs reasonably incurred by the local government or appellate court to accept electronic payment methods or interface with other technology information systems; the fee does not include an amount to recover local government or appellate court employee costs, other than costs for directly maintaining the system; the governing body of the local government or the appellate court approves the fee using the local government or appellate court's standard approval process for fee increases; and the local government or appellate court annually certifies to the office on a form prescribed by the office that the amount of the fee is necessary to recover the actual system operating costs incurred by the local government or appellate court. A local government or appellate court would be allowed to use electronic payment methods to collect this fee. A governmental entity that was not otherwise required to pay a filing fee would not be required to pay this fee. A court would be required to waive the fee for an indigent individual.

The bill amends Government Code, Chapter 101, Subchapter B, by adding §101.0211, requiring the clerk of the supreme court to collect a statewide electronic filing system fund fee of \$20 under Government Code, §51.851.

The bill amends Government Code, Chapter 101, Subchapter C, by adding §101.0411, requiring the clerk of the court of appeals to collect a statewide electronic filing system fund fee of \$20 under Government Code, §51.851.

The bill amends Government Code, Chapter 101, Subchapter D, by adding §101.06118, requiring the clerk of a district court to collect a statewide electronic filing system fund fee of \$20 under Government Code, §51.851.

The bill amends Government Code, Chapter 101, Subchapter E, by adding §101.08117, requiring the clerk of a statutory county court to collect a statewide electronic filing system fund fee of \$20 under Government Code, §51.851.

The bill amends Government Code, Chapter 101, Subchapter F, by adding §101.10116, requiring the clerk of a statutory probate court to collect a statewide electronic filing system fund fee of \$20 under Government Code, §51.851.

The bill amends Government Code, Chapter 101, Subchapter G, by adding §101.12126, requiring the clerk of a county court to collect a statewide electronic filing system fund fee of \$20 under Government Code, §51.851.

The bill amends Government Code, Chapter 101, Subchapter H, by adding §101.1411, requiring the clerk of a justice court to collect a statewide electronic filing system fund fee of \$10 under Government Code, §51.851.

The bill amends Government Code, Chapter 102, Subchapter C, by adding §102.0415, requiring the clerk of a district court to collect from a defendant a court cost on conviction of \$5.00 under Government Code, §51.851.

The bill amends Government Code, Chapter 102, Subchapter D, by adding §102.0615, requiring the clerk of a statutory county court to collect from a defendant a court cost on conviction of \$5.00 under Government Code, §51.851.

The bill amends Government Code, Chapter 102, Subchapter E, by adding §102.082, requiring the clerk of a county court to collect from a defendant a court cost on conviction of \$5.00 under Government Code, §51.851.

The bill amends Government Code, §103.027, requiring that any fee of \$2.00 charged by a local government or appellate court for an electronic filing transaction as authorized under Government Code, §72.031(c), be collected. It provides that this subsection expires September 1, 2019.

#### Senate Bill 355

##### Statewide Electronic Filing System Fund Fee (Title IV-D Agency)

Effective September 1, 2013. Senate Bill 355 relates to the powers and duties of the Title IV-D agency regarding the establishment, collection, and enforcement of child support and in connection with an application for a marriage license or protective order; authorizing a surcharge.

The bill amends Family Code, §231.204, by authorizing a statewide electronic filing system fund fee becoming law, adds such a fee to those which an appellate court, a clerk of an appellate court, a district or county clerk, sheriff, constable, or other government officers or employee is prohibited from charging the office of the attorney general or a private attorney or political subdivision that has entered into a contract to provide child support services.

#### Senate Bill 389

##### Court Cost in Criminal Proceedings

Effective immediately. Senate Bill 389 relates to the imposition of court cost in certain criminal proceedings.

The bill amends Government Code, Chapter 51, Subchapter G, by adding §51.608, requiring the clerk of a district, county, or statutory county court to collect court cost from a defendant in a criminal proceeding based on the law in effect on the date the offense was committed, the amount of a court cost imposed on the defendant in a criminal proceeding must be the amount established under the law in effect on the date the defendant is convicted of the offense.

#### Senate Bill 390

##### Repeals Government Code, §51.607(d)

Effective immediately. Senate Bill 390 relates to the effective date of a new court cost or fee or of an amendment to the amount of a court cost or fee.

The bill amends Government Code, §51.607(d), by repealing §51.607(d), relating to the exception to the statutory provisions that require the identification and listing of certain new or amended court costs and fees and delay their implementation, which exception applies to a court cost or fee if the law imposing or changing the amount of the cost or fee expressly provides that such provisions are inapplicable to the imposition or change in the amount of the cost or fee or if the law takes effect before August 1 or after the next January 1 following the regular session of the legislature at which the law was enacted.

#### Senate Bill 391

##### Defendant's Obligation to Pay Fines and Court Costs

Effective September 1, 2013. Senate Bill 391 relates to a defendant's obligation to pay a fine or court cost after the expiration of a period of community supervision.

The bill amends Code of Criminal Procedures, Article 42.12, Section 11, by adding subsection (b-1), to clarify that a defendant's obligation to pay a fine or court cost as ordered by a judge exists independently of any requirement to pay the fine or court cost as a condition of the defendant's community supervision. A defendant remains obligated to pay any unpaid fine or court cost after the expiration of the defendant's period of community supervision.

#### Senate Bill 395

##### Juvenile Offenders in Texas

Effective September 1, 2013. Senate Bill 395 relates to fines and court costs imposed on a child in a criminal case.

The bill amends Code of Criminal Procedure, Article 42.15, by amending subsection (b), and adding subsections (d), (e), and (f), to authorize a judge to allow a defendant who is a child, as defined by Article 45.058 (h), to elect at the time of conviction, as defined by Local Government Code, §133.101, to discharge the fine and costs by: performing community service or receiving tutoring under Article 45.0492, as added by Chapter 227 (H.B. 350), Acts of the 82nd Legislature, 2011, or paying the fine and cost in a manner described by subsection (b). The election under subsection (d) must be made in writing, signed by the defendant, and, if present, signed by the defendant's parent, guardian, or managing conservator. The court shall maintain the written election as a record of the court and provide a copy to the defendant. The requirement under Article 45.0492(a), as added by Chapter 227 (H.B.350), Acts of the 82nd Legislature, 2011, that an offense occur in a building or on the grounds of the primary or secondary school at which the defendant was enrolled at the time of the offense does not apply to the performance of community service or the receipt of tutoring to discharge a fine or costs under subsection (d)(1).

The bill amends Code of Criminal Procedure, Article 43.091, by amending the heading: WAIVER OF PAYMENT OF FINES AND COSTS FOR INDIGENT DEFENDANTS AND CHILDREN, and by authorizing a court to waive payment of a fine or cost imposed on a defendant who defaults in payment if the court determines that the defendant is indigent or was, at the time the offense was committed, a child as defined by Article 45.058(h) and each alternative method of discharging the fine or cost under Article 43.09 or 42.15 would impose an undue hardship on the defendant.

The bill amends Code of Criminal Procedure, Article 45.041, by amending subsection (b), and adding subsections (b-3), to authorize a judge to allow a defendant who is a child, as defined by Article 45.058(h), to elect at the time of conviction, as defined by Local Government Code, §133.101, to discharge the fine and costs by: performing community service or receiving tutoring under Article 45.0492, as added by Chapter 227 (H.B. 350), Acts of the 82nd Legislature, 2011, or paying the fine and cost in a manner described by subsection (b). The election under (b-3) must be made in writing, signed by the defendant, and, if present, signed by the defendant's parent, guardian, or managing conservator. The court shall maintain the written election as a record of the court and provide a copy to the defendant. The requirement under Article 45.0492(a), as added by Chapter 227 (H.B.350), Acts of the 82nd Legislature, 2011, that an offense occur in a building or on the grounds of the primary or secondary school at which the defendant was enrolled at the time of the offense does not apply to the performance of community service or the receipt of tutoring to discharge a fine or costs under subsection (b-3)(1).

The bill amends Code of Criminal Procedure, Article 45.0491, by amending the heading: WAIVER OF PAYMENT OF FINES AND COSTS FOR INDIGENT DEFENDANTS AND CHILDREN, and by authorizing that a municipal court, regardless of whether the court is a

court of record, or a justice court may waive payment of a fine or cost imposed on a defendant who defaults in payment if the court determines that the defendant is indigent or was, at the time the offense was committed, a child as defined by Article 45.058(h); and discharging the fine or cost under Article 45.049 or as otherwise authorized by this chapter would impose an undue hardship on the defendant.

#### Senate Bill 462

##### Specialty Court Programs

Effective September 1, 2013. Senate Bill 462 relates to specialty court programs in this state.

The bill amends Government Code, §102.021, by requiring a person convicted of an offense to pay under the Code of Criminal Procedure, in addition to all other costs: costs attendant to convictions under Penal Code, Chapter 49, and under Health and Safety Code, Chapter 481, to help fund drug court programs established under Government Code, Chapters 122, 123, 124, or 125, or former law (Code of Criminal Procedure, Art. 102.0178), §60.

The bill amends Government Code, Chapter 103, Subchapter B, by adding §103.0271, to require fees and costs to be paid or collected under the Government Code as follows: (1) a program fee for a drug court program (Government Code, §123.004) not to exceed \$1,000; an alcohol or controlled substance testing, counseling, and treatment fee (Government Code, §123.004) the amount necessary to cover the costs of testing, counseling, and treatment; a reasonable program fee for a veterans court program (Government Code, §124.005) not to exceed \$1,000; and a testing, counseling, and treatment fee for testing, counseling, or treatment performed or provided under a veterans court program (Government Code, §124.005) the amount necessary to cover the costs of testing, counseling, or treatment.

The bill amends Government Code, Chapter 103, Subchapter B, by adding §103.0292, to require a nonrefundable program fee for a first offender prostitution prevention program established under Health and Safety Code, §169.002, to be collected under Health and Safety Code, §169.005, in a reasonable amount not to exceed \$1,000, which includes: (1) a counseling and services fee in an amount necessary to cover the cost of counseling and services provided by the program; (2) a victim services fee in an amount equal to 10% of the total fee; and (3) a law enforcement training fee in an amount equal to 5.0% of the total fee.

#### Senate Bill 484

##### Prostitution Prevention Program

Effective September 1, 2013. Senate Bill 484 relates to the creation of a prostitution prevention program; authorizing a fee.

The bill amends Health and Safety Code, Title 2, Subtitle H, by adding §169A.005, to allow a prostitution prevention program established under this chapter to collect from a participant in the program a nonrefundable program fee in a reasonable amount not to exceed \$1,000, from which the following must be paid: (1) a counseling and services fee in an amount necessary to cover the costs of the counseling and services provided by the program; (2) a victim services fee in an amount equal to 10% of the amount paid under subdivision (1), to be deposited to the credit of the general revenue fund to be appropriated only to cover costs associated with the grant program described by Government Code, §531.383; and (3) a law enforcement training fee, in an amount equal to 5.0% of the total amount paid under subdivision (1), to be deposited to the credit of the treasury of the county or municipality that established the program to cover costs associated with the provision of training to law enforcement personnel on domestic violence, prostitution, and the trafficking of persons. Fees collected under

this section may be paid on a periodic basis or on a deferred payment schedule at the discretion of the judge, magistrate, or program director administering the prostitution prevention program. The fee must be based on the participant's ability to pay.

The bill amends Government Code, Chapter 103, Subchapter B, by adding §103.0292, to establish a nonrefundable program fee for a prostitution prevention program established under Health and Safety Code, §169A.002, to be collected under Health and Safety Code, §169A.005, in a reasonable amount based on the defendant's ability to pay and not to exceed \$1,000, which includes a counseling and services fee in an amount necessary to cover the costs of counseling and services provided by the program; a victim services fee in an amount equal to 10% of the total fee; and a law enforcement training fee in an amount equal to 5.0% of the total fee.

#### Senate Bill 967

##### Collection Improvement Program

Effective immediately. Senate Bill 967 relates to the authority of a municipality or county to retain certain fees.

The bill amends Local Government Code, §133.058(e), prohibiting a municipality or county from retaining a service fee if, during an audit under Article 103.0033(j) (relating to requiring the Office of Court Administration of the Texas Judicial System (OCA) to audit counties and municipalities regarding the collection improvement program), Code of Criminal Procedure, OCA determines that the municipality or county is not in compliance with Article 103.0033 (Collection Improvement Program), Code of Criminal Procedure, and the municipality or county is unable to reestablish compliance on or before the 180th day after the date the municipality or county receives written notice of noncompliance from OCA.

#### Senate Bill 1096

##### Community Supervision

Effective September 1, 2013. Senate Bill 1096 relates to the monthly fee a defendant must pay during a period of community supervision.

The bill amends Code of Criminal Procedure, Article 42.12, by adding subsection (a-1), prohibiting a judge from requiring a defendant to pay the fee under subsection (a) for any month after the period of community supervision has been terminated by the judge under Section 20.

#### Senate Bill 1237

##### Alternative Dispute Resolution

Effective September 1, 2013. Senate Bill 1237 relates to referral of disputes for alternative dispute resolution, including victim-directed referrals; authorizing a fee.

The bill amends Civil Practice and Remedies Code, Chapter 152, by adding §152.007, authorizing an entity that provides services for the resolution of criminal disputes under this chapter to collect a reasonable fee set by the commissioners court from a person who receives the services, not to exceed \$350, except that a fee may not be collected from an alleged victim of the crime. Fees collected under this section may be paid on a periodic basis or on a deferred payment schedule at the discretion of the judge, magistrate, or program director administering the pretrial victim-offender mediation program. The fees must be based on the defendant's ability to pay.

#### Senate Bill 1419

##### Truancy Prevention and Diversion Fund

Effective September 1, 2013. Senate Bill 1419 relates to funding for juvenile case managers through certain court costs and to the establishment of the truancy prevention and diversion fund.

The bill amends Code of Criminal Procedure, Chapter 102, Subchapter A, by adding Article 102.015, establishing the truancy prevention and diversion fund as a dedicated account in the general revenue fund. A person convicted in municipal or justice court of an offense, other than an offense relating to a pedestrian or the parking of a motor vehicle, shall pay as a court cost \$2.00 in additional to other court costs. For purposes of this article, a person is considered to have been convicted if a sentence is imposed; or the defendant receives deferred disposition in the case. Court costs under this article are collected in the same manner as other fines or costs. An officer collecting the cost shall keep separate records of the funds collected as costs under this article and shall deposit the funds in the county treasury or municipal treasury, as applicable.

#### Senate Bill 1792

##### Community Supervision

Effective immediately. Senate Bill 1792 relates to remedies for non-payment of tolls for the use of toll projects; authorizing a fee; creating an offense.

The bill amends Transportation Code, Chapter 372, adding Subchapter C, authorizing a justice court jurisdiction to conduct a hearing in accordance with this section. A hearing requested under §372.106 shall be conducted in a justice court in a county in which the toll collection facilities where at least 25% of the events of non-payments occurred are located. A party requesting a hearing shall pay a filing fee of \$100 to the clerk of the justice court. If that party prevails under the justice's finding under subsection (f), the other party shall reimburse the prevailing party for the amount of the filing fee within 10 days after issuance of the finding.

The bill amends Government Code, Chapter 103, Subchapter B, adding §103.0321, authorizing a filing fee of \$100 to be collected under Transportation Code, §372.107(c), for determining whether a person is a habitual violator for purposes of Transportation Code, Chapter 372, Subchapter C.

#### Senate Bill 1827

##### Rockwall County Courts

Effective immediately. Senate Bill 1827 relates to an additional fee for filing civil cases in certain Rockwall County courts.

The bill amends Government Code, Chapter 51, Subchapter H, by adding §51.709, requiring the clerk of district courts, statutory probate courts, county courts at law, and justice courts in Rockwall County, except as otherwise provided by this section and in addition to all other fees authorized or required by other law, to collect a filing fee of not more than \$15 in each civil case filed in the court to be used for the construction, renovation, or improvement of the facilities that house the courts collecting the fee. Court fees due under this section shall be collected in the same manner as other fee, fines, or costs are collected in the case. Requires the clerk to send the fees to the county treasurer at least as frequently as monthly; and requires the treasurer to deposit the fees in a special account in the county treasury dedicated to the construction, renovation, or improvement of the facilities that house the courts collecting the fee. This section applies only to fees for a 12-month period beginning July 1, if the commissioners court adopts a resolution authorizing a fee of not more than \$15; and files the resolution with the county treasurer not later than June 1 immediately preceding the first 12-month period during which the fees are to be collected. A resolution adopted under subsection (e) continues from year

to year until July 1, 2025, allowing the county to collect fees under the terms of this section until the resolution is rescinded. The commissioners court may rescind the resolution adopted under subsection (e) by adopting a resolution rescinding the resolution and submitting the recession resolution to the county treasurer not later than June 1 preceding the beginning of the first day of the county fiscal year. The commissioners court may adopt an additional resolution in the manner provided by subsection (e) after rescinding a previous resolution under that subsection. A fee established under a particular resolution is abolished on the earlier of the date of a resolution adopted under subsection (e) is rescinded as provided by subsection (g) or July 1, 2025.

The bill amends Government Code, Chapter 101, Subchapter D, by adding §101.061191, requiring the clerk of a district court in Rockwall County to collect an additional filing fee of not more than \$15 under §51.709 in civil cases to fund the construction, renovation, or improvement of court facilities, if authorized by the county commissioners court.

The bill amends Government Code, Chapter 101, Subchapter E, by adding §101.08119, requiring the clerk of a statutory county court in Rockwall County to collect an additional filing fee of not more than \$15 under §51.709 in civil cases to fund the construction, renovation, or improvement of court facilities, if authorized by the county commissioners court.

The bill amends Government Code, Chapter 101, Subchapter F, by adding §101.10118, requiring the clerk of a statutory probate court in Rockwall County to collect an additional filing fee of not more than \$15 under §51.709 in civil cases to fund the construction, renovation, or improvement of court facilities, if authorized by the county commissioners court.

The bill amends Government Code, Chapter 101, Subchapter F, by adding §101.142, requiring the clerk of a justice court in Rockwall County to collect an additional filing fee of not more than \$15 under §51.709 in civil cases to fund the construction, renovation, or improvement of court facilities, if authorized by the county commissioners court.

#### Senate Bill 1891

##### Travis County Courts

Effective immediately. Senate Bill 1891 relates to an additional fee for filing civil cases in certain Travis County courts.

The bill amends Government Code, Chapter 51, Subchapter H, by adding §51.709, requiring the clerk of district courts, probate courts, and county courts at law in Travis County, except as otherwise provided by this section and in addition to all other fees authorized or required by other law, to collect a filing fee of not more than \$15 in each civil case filed in the court to be used for the construction, renovation, or improvement of the facilities that house the Travis County civil courts. Court fees due under this section shall be collected in the same manner as other fee, fines, or costs are collected in the case. Requires the clerk to send the fees collected under this section to the county treasurer or to any other official who discharges the duties commonly assigned to the county treasurer at least as frequently as monthly; and requires the treasurer or other official to deposit the fees in a special account in the county treasury dedicated to the construction, renovation, or improvement of the facilities that house the courts collecting the fee. This section applies only to fees for a 12-month period beginning October 1, if the commissioners court adopts a resolution authorizing a fee of not more than \$15; adopts a resolution requiring the county to spend \$1.00 for the construction, renovation, or improvement of the court facilities for each dollar spent from the special account dedicated to that purpose; and files the resolution with the county treasurer or with

any other official who discharges the duties commonly assigned to the county treasurer not later than September 1 immediately preceding the first 12-month period during which the fees are to be collected. A resolution adopted under subsection (e) continues from year to year until October 1, 2028, allowing the county to collect fees under the terms of this section until the resolution is rescinded. The commissioners court may rescind a resolution adopted under subsection (e) by adopting a resolution rescinding the resolution and submitting the rescission resolution to the county treasurer or to any other official who discharges the duties commonly assigned to the county treasurer not later than June 1 preceding the beginning of the first day of the county fiscal year. The commissioners court may adopt an additional resolution in the manner provided by subsection (e) after rescinding a previous resolution under that subsection. A fee established under a particular resolution is abolished on the earlier of the date of a resolution adopted under subsection (e) is rescinded as provided by subsection (g) or October 1, 2028.

The bill amends Government Code, Chapter 101, Subchapter D, by adding §101.06120, requiring the clerk of a district court in Travis County to collect an additional filing fee of not more than \$15 under Government Code, §51.709, in civil cases to fund the construction, renovation, or improvement of court facilities, if authorized by the county commissioners court.

The bill amends Government Code, Chapter 101, Subchapter E, by adding §101.08119, requiring the clerk of a statutory county court in Travis County to collect an additional filing fee of not more than \$15 under Government Code, §51.709, in civil cases to fund the construction, renovation, or improvement of court facilities, if authorized by the county commissioners court.

The bill amends Government Code, Chapter 101, Subchapter F, by adding §101.10118, requiring the clerk of a statutory probate court in Travis County to collect an additional filing fee of not more than \$15 under Government Code, §51.709, in civil cases to fund the construction, renovation, or improvement of court facilities, if authorized by the county commissioners court.

TRD-201302863  
Ashley Harden  
General Counsel  
Comptroller of Public Accounts  
Filed: July 11, 2013

## Office of Consumer Credit Commissioner

### Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.009, and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 07/22/13 - 07/28/13 is 18% for Consumer<sup>1</sup>/Agricultural/Commercial<sup>2</sup> credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 07/22/13 - 07/28/13 is 18% for Commercial over \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 08/01/13 - 08/31/13 is 5.00% for Consumer/Agricultural/Commercial credit through \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 08/01/13 - 08/31/13 is 5.00% for Commercial over \$250,000.

<sup>1</sup> Credit for personal, family or household use.

<sup>2</sup> Credit for business, commercial, investment or other similar purpose.

TRD-201302898  
Leslie L. Pettijohn  
Commissioner  
Office of Consumer Credit Commissioner  
Filed: July 15, 2013

## Credit Union Department

### Application to Expand Field of Membership

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 InTouch Credit Union, Plano, Texas to expand its field of membership. The proposal would permit employees of Dr Pepper Snapple Group, Inc. (DPSG) and its majority owned subsidiaries, including employees of any successors(s) in interest, on-site contractors/vendors who have a business relationship with DPSG and regularly work on DPSG facilities at one or more DPSG locations throughout the United States, and members of the family of such persons, except foreign nationals at foreign locations, 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-201302879  
Harold E. Feeney  
Commissioner  
Credit Union Department  
Filed: July 12, 2013

### Applications for a Merger or Consolidation

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 Texas Trust Credit Union (Mansfield) seeking approval to merge with Security One Federal Credit Union (Arlington), with Texas Trust Credit Union being the surviving credit union.

An application was received from Lincoln City Credit Union (Houston) seeking approval to merge with Team Financial Federal Credit Union (Houston), the latter to be 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-201302880

Harold E. Feeney  
Commissioner  
Credit Union Department  
Filed: July 12, 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 Amend Articles of Incorporation - Approved

The Education Credit Union, Amarillo, Texas - See *Texas Register* issue dated May 31, 2013.

#### Application to Expand Field of Membership - Approved

First Community Credit Union, Houston, Texas - See *Texas Register* issue dated November 30, 2012.

#### Applications for a Merger or Consolidation - Approved

Fort Worth Telco Credit Union (Fort Worth) and EECU (Fort Worth) - See *Texas Register* issue dated November 30, 2012.

Dr. Pepper Employees Federal Credit Union (Plano) and InTouch Credit Union (Plano) - See *Texas Register* issue dated April 26, 2013.

TRD-201302881

Harold E. Feeney

Commissioner

Credit Union Department

Filed: July 12, 2013



## Texas Education Agency

### Request for Applications Concerning 2014-2015 Texas Mathematics and Science Partnership Professional Development Network, Cycle 2

**Eligible Applicants.** The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-13-108 from Texas public institutions of higher education (IHEs) for the 2014-2015 Texas Mathematics and Science Partnership (TxMSP) Professional Development Network, Cycle 2, grant. Eligible applicants must have in place a statewide professional development network or demonstrate the ability to establish a statewide network within the transition timeframe. The network will be focused on providing sustained professional development in mathematics and science to teachers across the state. Applicants must also demonstrate the existence of a partnership between the applicant IHE and the science, technology, engineering, and mathematics (STEM) department of a public IHE (whether the STEM department belongs to an IHE that is the same as or different from the applicant IHE) and one or more high-need local educational agencies (LEAs). ("High need" signifies an LEA in which at least 40 percent of students qualify for free or reduced-price lunch.) The applicant must describe in the application the roles and activities of its partners. Additional eligibility requirements apply, as described in the RFA.

**Description.** TEA is seeking applications from IHEs as fiscal agents of eligible partnerships that demonstrate the ability to establish a statewide educator network that provides high-quality professional development to mathematics and science teachers in Texas prekindergarten-Grade 12 schools in order to improve students' academic performance in mathematics and science by encouraging state educational agencies, IHEs, LEAs, elementary schools, and secondary

schools to participate in programs that do the following: (1) improve and upgrade the status and stature of mathematics and science teaching by encouraging IHEs to assume greater responsibility for improving mathematics and science teacher education through the establishment of a comprehensive, integrated system of recruiting, training, and advising mathematics and science teachers; (2) focus on the education of mathematics and science teachers as a career-long process that continuously stimulates teachers' intellectual growth and upgrades teachers' knowledge and skills; (3) bring mathematics and science teachers in elementary schools and secondary schools together with scientists, mathematicians, and engineers to increase the subject matter knowledge of mathematics and science teachers and improve such teachers' teaching skills through the use of sophisticated laboratory equipment and work space, computing facilities, libraries, and other resources that IHEs are better able to provide than the elementary schools and secondary schools; (4) develop more rigorous mathematics and science curricula that are aligned with challenging state and local academic content standards and with the standards expected for postsecondary study in engineering, mathematics, and science; and (5) improve and expand training of mathematics and science teachers, including training such teachers in the effective integration of technology into curricula and instruction.

The 2014-2015 Texas Mathematics and Science Partnership (TxMSP) Professional Development Network, Cycle 2, grant program is intended to improve teachers' content knowledge through scientifically researched, sustained, and high-intensity professional development and mentoring. All professional development activities must align to the Texas Essential Knowledge and Skills, priorities established by the Texas Legislature and TEA, and the requirements of Public Law 107-110, Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001, Title II, Part B.

**Dates of Project.** The 2014-2015 Texas Mathematics and Science Partnership (TxMSP) Professional Development Network, Cycle 2, grant will be implemented in the spring of 2014 and the 2014-2015 school year. Applicants should plan for a start date of no earlier than January 1, 2014, and an end date of no later than August 31, 2015.

**Project Amount.** Funding will be provided for one statewide project. The project will receive a maximum of \$10 million for the January 1, 2014, to August 31, 2015, project period. This project is funded 100 percent from federal funds.

**Selection Criteria.** Applications will be selected based on the ability of each applicant to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. Special consideration will be given to applicants that meet the following criteria: (1) have the capacity to deliver professional development statewide, and (2) have current data systems for collection and analysis of teacher and student performance data. TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA.

TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

**Applicants' Conference.** An applicants' conference will be held by webinar on Wednesday, August 28, 2013, from 2:00 p.m. to 4:00 p.m. To reserve a webinar seat, go to <https://www2.gotomeeting.com/register/626230106>. The system requirements for PC-based attendees are

Windows 2000, XP Home, XP Pro, 2003 Server, or Vista. The requirements for Macintosh-based attendees are Mac OS X 10.4 (Tiger) or later. Each person attending will be required to sign a register setting out the representative's name and the name, address, and telephone number of the applicant organization.

Questions relevant to the RFA may be emailed to Sara Grunberger at [sara.grunberger@tea.state.tx.us](mailto:sara.grunberger@tea.state.tx.us) or faxed to (512) 463-9560 prior to Wednesday, August 21, 2013. These questions, along with other information, will be addressed in the webinar. The webinar will be open to all potential applicants and will provide general and clarifying information about the program and RFA.

**Requesting the Application.** The announcement letter and complete RFA will be posted on the TEA website at <http://burleson.tea.state.tx.us/GrantOpportunities/forms> for viewing and downloading. In the "Select Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

**Further Information.** For clarifying information about the RFA, contact Christina Grady, Division of Grants Administration, Texas Education Agency, by email at [christina.grady@tea.state.tx.us](mailto:christina.grady@tea.state.tx.us) or by telephone at (512) 463-8525. In order to assure that no prospective applicant may obtain a competitive advantage because of acquisition of information unknown to other prospective applicants, any and all questions must be submitted in writing to the TEA contact persons identified in the Program Guidelines of the RFA. All questions and the written answers thereto will be posted on the TEA website in the format of Frequently Asked Questions (FAQs) at <http://burleson.tea.state.tx.us/GrantOpportunities/forms>. In the "Select Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

**Deadline for Receipt of Applications.** Applications must be received in the TEA Document Control Center by 5:00 p.m. (Central Time), Tuesday, September 24, 2013, to be eligible to be considered for funding.

TRD-201302930

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Filed: July 17, 2013



### Request for Coordinated School Health Program Materials for Grades K-5, K-6, 6-8, 7-8, or K-8

**Description.** The Texas Education Agency (TEA) is publishing notification that Coordinated School Health Programs may be submitted for review. The purpose of the review process is to assist school districts in meeting requirements of the Texas Education Code (TEC), §38.013 and §38.014. TEC, §38.013, requires the TEA to make available to each school district one or more coordinated school health programs designed to prevent obesity, cardiovascular disease, oral diseases, and Type 2 diabetes in elementary, middle, and junior high schools and to notify each school district of the program(s). TEC, §38.014, requires that each school district participate in the appropriate training for the implementation of a TEA-approved coordinated school health program in each elementary, middle, and junior high school in the district. Each school district is required to implement a coordinated school health program approved by TEA in each elementary, middle, and junior high school.

**Program Requirements.** Any entity that elects to have a program reviewed is invited to send a complete description of the program to TEA. Coordinated school health programs submitted to TEA for review must coordinate the four required components of (1) health education, including oral health education; (2) physical education and physical activity; (3) nutrition services; and (4) parental involvement. Coordinated school health programs are integrated, planned, school-based programs that are designed to promote the physical, emotional, and educational development of students in kindergarten through Grade 8. They may be patterned after the Centers for Disease Control and Prevention's eight-component model, which also includes health services; counseling, psychological, and social services; healthy and safe school environment; and health promotion for staff.

**Selection Criteria.** Selection of qualified coordinated health programs by the review committee will follow a two-step process. A submitted program will first be screened to determine whether it meets two mandatory criteria: (1) the program coordinates classroom health education, physical education and physical activity, nutrition/cafeteria services, and parental involvement; and (2) the program is coordinated within and across Grades K-5, K-6, 6-8, 7-8, or K-8. A successfully screened program will then be evaluated for final approval using a rating scale based on the following criteria.

- (1) The program coordinates physical education/physical activity, classroom health education, nutrition/cafeteria services, and parental involvement.
- (2) The program is coordinated within and across all grade levels on an elementary, middle, or junior high school campus.
- (3) The program has a training component that includes physical education/physical activity, classroom health education, nutrition/cafeteria services, and parental involvement activities and coordinates the four required components. (See Program Requirements listed previously.) The training component must also include teaching staff and parents.
- (4) The program curricular components (health education and physical education) are based on 19 TAC Chapter 115, Texas Essential Knowledge and Skills for Health Education, and 19 TAC Chapter 116, Texas Essential Knowledge and Skills for Physical Education.
- (5) The program includes assessment tools for schools to measure cognitive, behavioral, and attitudinal changes related to the four required components.
- (6) The program is based on health education theory and national standards for instructional and/or industry best practices in each of the four required components.
- (7) The program allows for tailoring to schools' individual needs and can be adapted to a variety of specific situations, such as ethnic diversity, children with disabilities, school schedules, socioeconomic status, geographic locations, and gender differences.
- (8) The program trains school district staff in the annual use of assessment and planning tools for school health programs and policies, such as the elementary school version of the School Health Index available at the Centers for Disease Control and Prevention website at <http://apps.nccd.cdc.gov/shi>.
- (9) The program includes an evaluation of its nutritional services component that includes compliance with the Department of Agriculture guidelines relating to foods of minimal nutritional value.

Coordinated school health programs developed by school districts may be approved and made available as approved programs. Such programs must use materials that are proven effective, such as State Board of Education-adopted instructional materials developed by nationally recognized and/or government-approved entities.

Coordinated school health programs not developed by school districts may be approved and made available as approved programs. Such programs must be peer reviewed and show empirical evidence of effectiveness prior to submission.

**Further Information.** For clarifying information, contact Barney Fudge, Curriculum Division, Texas Education Agency, by phone at (512) 463-9581 or by email at william.fudge@tea.state.tx.us.

**Deadline for Receipt of Materials.** Materials must be submitted to the Texas Education Agency, Curriculum Division, 1701 North Congress Avenue, Austin, Texas 78701 by 5:00 p.m. (Central Time), August 30, 2013, to be considered on the List of Approved Coordinated School Health Programs. No materials will be returned to submitting entities. Materials will be kept as a reference for staff at the Texas Education Agency.

TRD-201302929

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Filed: July 17, 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 August 26, 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 August 26, 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: 14777 CHRISMAN ROAD, LLC; DOCKET NUMBER: 2013-0543-PWS-E; IDENTIFIER: RN102878717; LOCATION: Houston, Harris County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.106(e), by failing to timely provide the results of annual nitrate/nitrite sampling to the

executive director for the 2011 and 2012 monitoring periods; 30 TAC §290.106(e), by failing to timely provide the results of triennial mineral sampling to the executive director for the January 1, 2008 - December 31, 2010 monitoring period; 30 TAC §§290.106(e), 290.107(e), and 290.113(e), by failing to timely provide the results of triennial disinfectant byproduct contaminants, synthetic organic chemical contaminants, and metal sampling to the executive director; and 30 TAC §290.107(e), by failing to timely provide the results of sexennial volatile organic chemical contaminant sampling to the executive director for the January 1, 2007 - December 31, 2012 monitoring period; PENALTY: \$350; ENFORCEMENT COORDINATOR: Sam Keller, (512) 239-2678; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: 6965 S. L., INCORPORATED dba Simon's Korner; DOCKET NUMBER: 2013-0492-PST-E; IDENTIFIER: RN101828507; LOCATION: Needville, Fort Bend County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.10(b), by failing to maintain UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: \$10,125; ENFORCEMENT COORDINATOR: Joel McAlister, (512) 239-2619; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: ANRIGE, INCORPORATED dba A Clean Portoco; DOCKET NUMBER: 2013-0668-WQ-E; IDENTIFIER: RN105653430; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: sludge transporter; RULE VIOLATED: TWC, §26.121(a)(1), by failing to prevent the unauthorized discharge of wastewater into or adjacent to water in the state; PENALTY: \$938; ENFORCEMENT COORDINATOR: Jacquelyn Green, (512) 239-2587; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(4) COMPANY: A-RY's GENERAL STORE, LLC dba Mr. G's 5; DOCKET NUMBER: 2013-0322-PST-E; IDENTIFIER: RN102038270; LOCATION: Hillsboro, Hill County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide release detection for the pressurized piping associated with the UST system; and 30 TAC §334.10(b), by failing to maintain UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: \$5,130; ENFORCEMENT COORDINATOR: Clinton Sims, (512) 239-6933; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(5) COMPANY: BIG CHIEF R.V. RESORT, L.L.C.; DOCKET NUMBER: 2013-0422-PWS-E; IDENTIFIER: RN104633896; LOCATION: Burnet, Llano County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.106(e), by failing to provide the results of annual nitrate/nitrite sampling to the executive director for the 2010, 2011, and 2012 monitoring periods; 30 TAC §290.109(c)(4)(B) and §290.122(c)(2)(B), by failing to collect one raw groundwater source *Escherichia coli* sample from the facility's well within 24 hours of notification of a distribution total coliform-positive sample and by failing to provide public notification regarding the failure to collect a raw groundwater source sample; 30 TAC §290.122(c)(2)(B), by failing to provide public notification for failure to collect repeat monitoring samples for the month of November



2011; and 30 TAC §290.51(a)(6) and TWC, §5.702, by failing to pay all annual Public Health Service fees and associated late fees for TCEQ Financial Administration Account Number 90270132 for Fiscal Year 2013; PENALTY: \$475; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, (512) 339-2929.

(6) COMPANY: City of Galveston; DOCKET NUMBER: 2013-0564-PST-E; IDENTIFIER: RN102061223; LOCATION: Galveston, Galveston County; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$7,500; Supplemental Environmental Project offset amount of \$6,000 applied to Gulf Coast Waste Disposal Authority - River, Lakes, Bays, and Bayous Trash Bash; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(7) COMPANY: City of La Villa; DOCKET NUMBER: 2013-0762-PWS-E; IDENTIFIER: RN101388957; LOCATION: La Villa, Hidalgo County; TYPE OF FACILITY: municipal public water supply; RULE VIOLATED: 30 TAC §290.108(e), by failing to provide the results of triennial radionuclide sampling to the executive director; 30 TAC §290.106(e), by failing to provide the results of annual metal sampling to the executive director for the 2012 monitoring period; 30 TAC §290.122(c)(2)(A), by failing to provide public notification regarding the failure to submit Surface Water Monthly Operating Reports during the months of March and April 2012; and 30 TAC §290.113(e) and §290.122(c)(2)(A), by failing to provide the results of Stage 1 disinfectant by-product sampling to the executive director for the third and fourth quarter of 2012 and by failing to provide public notification regarding the failure to provide the results of Stage 1 disinfectant by-product sampling; PENALTY: \$788; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3425; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(8) COMPANY: City of Rockdale; DOCKET NUMBER: 2013-0555-MWD-E; IDENTIFIER: RN101388288; LOCATION: Rockdale, Milam 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 (TPDES) Permit Number WQ0010658001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; and 30 TAC §305.125(1) and (17) and §319.7(d) and TPDES Permit Number WQ0010658001, Other Requirements, by failing to submit effluent monitoring results at the intervals specified in the permit; PENALTY: \$8,250; ENFORCEMENT COORDINATOR: Jacquelyn Green, (512)239-2587; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(9) COMPANY: City of Smiley; DOCKET NUMBER: 2013-0814-PWS-E; IDENTIFIER: RN101200756; LOCATION: Smiley, Gonzales County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(e)(4)(B), by failing to employ an operator with a Class C or higher groundwater license at a groundwater system serving between 250 and 1,000 connections; 30 TAC §290.110(c)(4)(B) and (f)(1), by failing to monitor the disinfectant residual at representative locations in the distribution system at least once per day and at sites designated in the monitoring plan; 30 TAC §290.39(l)(4), by failing to meet the conditions for an issued exception; 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 §290.44(h)(4)(C), by failing to ensure

that any backflow prevention assembly Test and Maintenance report form which varies from the format specified in 30 TAC §290.47(f) is approved by the executive director prior to being placed in use; 30 TAC §290.46(f)(2) and (3)(B)(iv), by failing to maintain calibration records for laboratory equipment, flow meters, rate-of-flow controllers, on-line turbidimeters, and on-line disinfectant residual analyzers; 30 TAC §290.46(s), by failing to ensure that accurate testing equipment or some other means of monitoring the effectiveness of any chemical treatment process used by the system; 30 TAC §290.46(m)(4), by failing to maintain all distribution system lines, storage and pressure maintenance facilities, water treatment units, and all related appurtenances in a watertight condition; 30 TAC §290.46(d)(2)(A) and §290.110(b)(4) and Texas Health and Safety Code, §341.0315(c), by failing to operate the disinfection equipment to continuously maintain a disinfectant residual of 0.2 milligrams per liter of free chlorine throughout the distribution system at all times; and 30 TAC §290.110(f)(1)(B), by failing to ensure that disinfectant residual samples collected at sites in the distribution system not designated in the monitoring plan are not included in the compliance determination calculations; PENALTY: \$517; ENFORCEMENT COORDINATOR: Michaelle Garza, (210) 403-4076; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(10) COMPANY: D & D Global, Incorporated dba Quick Stop; DOCKET NUMBER: 2013-0316-PST-E; IDENTIFIER: RN102242427; LOCATION: Walnut Springs, Bosque County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: \$3,879; ENFORCEMENT COORDINATOR: Joel McAlister, (512) 239-2619; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(11) COMPANY: DALLAS MERCHANT, INCORPORATED dba Kwik Pik Food Store; DOCKET NUMBER: 2012-2246-PST-E; IDENTIFIER: RN102038528; LOCATION: Dallas, Collin County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank (UST) system; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.10(b), by failing to maintain UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: \$7,875; ENFORCEMENT COORDINATOR: Joel McAlister, (512) 239-2619; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(12) COMPANY: Dan Barton dba Dan's Shell; DOCKET NUMBER: 2013-0643-PST-E; IDENTIFIER: RN101657757; LOCATION: Fort Hancock, Hudspeth County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(c)(4) and TWC, §26.3475(d), by failing to test the cathodic protection system for operability and adequacy of protection at a frequency of at least once every three years; 30 TAC §334.42(i), by failing to inspect all sumps including the dispenser sumps, manways, overspill containers, or catchment basins associated with the underground storage tank system at least once every 60 days to assure that the sides, bottoms, and any penetration points are maintained liquid-tight and free of any liquid or debris; and 30 TAC §334.602(a), by failing to designate at least one Class A, Class B, and Class C operator for the facility; PENALTY: \$5,038; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5825; REGIONAL OFFICE:

401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(13) COMPANY: Equistar Chemicals, LP; DOCKET NUMBER: 2013-0504-AIR-E; IDENTIFIER: RN100221662; LOCATION: Corpus Christi, Nueces County; TYPE OF FACILITY: industrial organic chemicals manufacturing plant; RULE VIOLATED: 30 TAC §101.20(3) and §116.115(b)(2)(F) and (c), Texas Health and Safety Code, §382.085(b), and New Source Review Permit Numbers 4682B and PSDTX761M2, General Conditions Number 8 and Special Conditions Number 23, by failing to prevent unauthorized emissions during an emissions event; PENALTY: \$15,000; Supplemental Environmental Project offset amount of \$6,000 applied to Texas A&M University - Corpus Christi - Texas A&M University Autocheck Program; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(14) COMPANY: Fort Griffin Special Utility District; DOCKET NUMBER: 2013-0061-PWS-E; IDENTIFIER: RN101264729; LOCATION: Albany, Shackelford County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(c)(2)(F) and §290.122(c)(2)(A), by failing to collect at least five routine distribution coliform samples the month following a coliform-positive sample result for the months of July and August 2012 and by failing to provide public notification regarding the failure to sample for the month of July 2012; 30 TAC §290.109(c)(3)(A)(i) and §290.122(c)(2)(A), by failing to collect a set of repeat distribution coliform samples within 24 hours of being notified of a total coliform-positive sample result on a routine sample and by failing to provide public notification regarding the failure to conduct repeat sampling; and 30 TAC §290.113(f)(4) and Texas Health and Safety Code, §341.0315, by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes, based on the running annual average; PENALTY: \$690; ENFORCEMENT COORDINATOR: Jacquelyn Green, (512) 239-2587; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(15) COMPANY: George Brown and Donna Brown dba The Trading Post; DOCKET NUMBER: 2013-0469-PST-E; IDENTIFIER: RN101791242; LOCATION: Holiday Lakes, Brazoria County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: \$2,942; ENFORCEMENT COORDINATOR: Jason Fraley, (512) 239-2552; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(16) COMPANY: GOLDEN ERA, INCORPORATED dba Ferry Shell; DOCKET NUMBER: 2013-0567-PST-E; IDENTIFIER: RN101821148; LOCATION: Galveston, Galveston County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank (UST) system; 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the UST system; and 30 TAC §334.10(b), by failing to maintain UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: \$5,818; ENFORCEMENT COORDINATOR: Joel McAlister, (512) 239-2619; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(17) COMPANY: J. M. Holm & Company, Incorporated; DOCKET NUMBER: 2012-2073-AIR-E; IDENTIFIER: RN100890227; LOCATION: Pearland, Brazoria County; TYPE OF FACILITY: sandblasting

and painting; RULE VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code (THSC), §382.0518(a) and §382.085(b), by failing to obtain authorization for the sand storage silo and a surface coating booth; 30 TAC §106.6(b) and §106.452(1) and THSC, §382.085(b), by failing to ensure that dry abrasive cleaning operations are conducted in an enclosed facility, as represented in Permit by Rule (PBR) Registration Number 79176; and 30 TAC §106.8(c)(1) and (4) and THSC, §382.085(b), by failing to maintain a copy of each PBR and the applicable general conditions under which the plant is operating; PENALTY: \$4,087; ENFORCEMENT COORDINATOR: Rebecca Johnson, (361) 825-3423; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(18) COMPANY: Johnny D. Johnson dba Johnson Excavating; DOCKET NUMBER: 2013-0694-MLM-E; IDENTIFIER: RN105694665; LOCATION: Lufkin, Angelina County; TYPE OF FACILITY: sand mining; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge storm water associated with industrial activities under the Texas Pollutant Discharge Elimination System General Permit Number TXR050000; 30 TAC §342.25, by failing to register the site as an aggregate production operation by October 30, 2012; 30 TAC §334.127(a)(1), by failing to register above ground storage tanks; and TWC, §26.121(a), by failing to prevent an unauthorized discharge into or adjacent to water in the state; PENALTY: \$6,750; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5886; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(19) COMPANY: Karishma Group, Incorporated dba Pick N Pay; DOCKET NUMBER: 2013-0542-PST-E; IDENTIFIER: RN102464559; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$4,500; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(20) COMPANY: KM Liquids Terminals LLC; DOCKET NUMBER: 2013-0369-AIR-E; IDENTIFIER: RN100224815; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: petroleum storage terminal; RULE VIOLATED: 30 TAC §116.115(c), Texas Health and Safety Code, §382.085(b), and New Source Review Permit Number 5171, Special Conditions Number 1, by failing to prevent unauthorized emissions during an event that began on October 2, 2012 (Incident Number 174672), lasting 173 hours and 43 minutes; PENALTY: \$100,000; Supplemental Environmental Project offset amount of \$50,000 applied to Barbers Hill Independent School District - Barbers Hill Vehicle and Equipment Program; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(21) COMPANY: Lucite International, Incorporated; DOCKET NUMBER: 2013-0224-IWD-E; IDENTIFIER: RN102736089; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: petrochemical plant complex producing organic and inorganic chemicals in separate units; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0000473000, Effluent Limitations and Monitoring Requirements Numbers 1 and 2 - Tier 1, Outfall Number 001; Effluent Limitations and Monitoring Requirements Number 2 - Tier 1, Outfall Number 001; Effluent Limitations and Monitoring Requirements Number 2, Outfall Number 002; Effluent Limitations and

Monitoring Requirements Number 2, Outfall Number 011; and Interim and Final Effluent Limitations and Monitoring Requirements Number 1, Outfall Number 101, by failing to comply with permitted effluent limits; and 30 TAC §319.5(b) and §305.125(1), and TPDES Permit Number WQ0000473000, Monitoring and Reporting Requirements Number 1, by failing to monitor effluent at the intervals specified in the permit; PENALTY: \$89,169; Supplemental Environmental Project offset amount of \$35,668 applied to Big Thicket Association - Wetland Species and Ecosystems Analysis; ENFORCEMENT COORDINATOR: Christopher Bost, (512) 239-4575; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(22) COMPANY: Maria A. Venegas dba Kitty's Mini Mart; DOCKET NUMBER: 2013-0691-PST-E; IDENTIFIER: RN102715711; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: \$3,506; ENFORCEMENT COORDINATOR: Stephen Thompson, (512) 239-2558; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(23) COMPANY: Maximus Coffee Group, LP; DOCKET NUMBER: 2012-1316-AIR-E; IDENTIFIER: RN100214931; LOCATION: Houston, Harris County; TYPE OF FACILITY: rice and coffee processing plant; RULE VIOLATED: 30 TAC §116.115(c) and §122.143(4), Permit Number 17723, Special Conditions Number 1, Federal Operating Permit (FOP) Number O1018, Special Terms and Conditions Number 5, and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain compliance with the maximum allowable emission rates for Emission Point Numbers 103, 107, 108, 259, and 262; and 30 TAC §122.143(4) and §122.145(2)(C), FOP Number O1018, General Terms and Conditions, and THSC, §382.085(b), by failing to report all instances of deviations within 30 days after the end of the reporting period; PENALTY: \$10,884; ENFORCEMENT COORDINATOR: Kimberly Morales, (713) 422-8938; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(24) COMPANY: Natividad Hernandez dba Bayer Road Salvage Yard; DOCKET NUMBER: 2013-0458-WQ-E; IDENTIFIER: RN106447550; LOCATION: Victoria, Victoria County; TYPE OF FACILITY: salvage yard; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge storm water runoff associated with industrial activities under Texas Pollutant Discharge Elimination System General Permit Number TXR050000; and TWC, §26.121(a), by failing to prevent the discharge of industrial waste into or adjacent to water in the state; PENALTY: \$4,012; ENFORCEMENT COORDINATOR: Jorge Ibarra, P.E., (817) 588-5890; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(25) COMPANY: Overstreet-Hughes Company, Incorporated; DOCKET NUMBER: 2012-1687-AIR-E; IDENTIFIER: RN102338027; LOCATION: Carrollton, Dallas County; TYPE OF FACILITY: copper tube ends manufacturing plant; RULE VIOLATED: 30 TAC §122.145(2)(B), Federal Operating Permit (FOP) Number O1071, General Terms and Conditions, and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit a deviation report for at least each six-month period after permit issuance; 30 TAC §§101.20(2), 113.100, and 113.250, 40 Code of Federal Regulations §63.10(a)(4)(ii) and §63.468(f), and THSC, §382.085(b), by failing to submit reports to the delegated authority; and 30 TAC §122.165(a)(7) and THSC, §382.085(b), by failing to include a signed certification of

accuracy and completeness with a report required by FOP Number O1071; PENALTY: \$6,175; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3629; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(26) COMPANY: PANTRY CONVENIENCE STORES, INCORPORATED; DOCKET NUMBER: 2013-0234-PST-E; IDENTIFIER: RN103015913, RN1014445237, and RN103016838; LOCATION: Beeville, Bee County; TYPE OF FACILITY: convenience stores with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$11,250; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(27) COMPANY: PHET & PHEAP CORPORATION dba Stop N Shop; DOCKET NUMBER: 2013-0303-PST-E; IDENTIFIER: RN102226800; LOCATION: Waco, McLennan County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: \$3,879; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(28) COMPANY: PL Propylene LLC; DOCKET NUMBER: 2013-0720-AIR-E; IDENTIFIER: RN102576063; LOCATION: Houston, Harris County; TYPE OF FACILITY: olefins manufacturing plant; RULE VIOLATED: 30 TAC §§101.20(3), 116.115(c), and 122.143(4), Texas Health and Safety Code, §382.085(b), Federal Operating Permit Number O1251, Special Terms and Conditions Numbers 9B and 15, and New Source Review Permit Numbers 18999 and PSDTX755, Special Conditions Number 27D, by failing to conduct stack testing within 180 days after initial start-up; PENALTY: \$1,980; ENFORCEMENT COORDINATOR: Amancio R. Gutierrez, (512) 239-3921; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(29) COMPANY: POLLOK-REDTOWN WATER SUPPLY CORPORATION; DOCKET NUMBER: 2013-0573-PWS-E; IDENTIFIER: RN101250744; LOCATION: Pollok, Angelina County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.42(1), by failing to maintain a thorough and up-to-date plant operations manual for operator review and reference; 30 TAC §290.121(a) and (b), by failing to compile an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with the monitoring requirements which is maintained at each treatment plant and at a central location; 30 TAC §290.46(e)(4)(B) and Texas Health and Safety Code, §341.033(a), by failing to operate the water system under the direct supervision of a water works operator who holds a Class C or higher license; 30 TAC §290.109(c)(1)(B), by failing to collect routine distribution coliform samples at locations specified in the facility's monitoring plan; 30 TAC §290.41(c)(3)(K), by failing to provide a well casing vent with an opening that is covered with 16-mesh or finer corrosion-resistant screen, facing downward, elevated and located so as to minimize the drawing of contaminants into the well; 30 TAC §290.42(e)(4)(A), by failing to provide a full-face self-contained breathing apparatus or supplied air respirator that meets Occupation Safety and Health Administration standards

and is readily accessible outside the chlorination room; and 30 TAC §290.46(f)(2) and (3)(B)(iv), by failing to provide facility records to commission personnel at the time of the investigation; PENALTY: \$513; ENFORCEMENT COORDINATOR: Michaelle Garza, (210) 403-4076; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(30) COMPANY: Robert F. Bryer dba Bentwood Estates Mobile Home Park; DOCKET NUMBER: 2013-0218-PWS-E; IDENTIFIER: RN102682192; LOCATION: Huffman, Harris County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(c)(2)(F) and §290.122(c)(2)(A), by failing to collect at least five routine distribution coliform samples the month following a coliform-positive sample result, and by failing to provide public notification of the failure to collect five distribution samples; 30 TAC §290.109(c)(3)(A)(ii) and §290.122(c)(2)(A), by failing to collect a set of repeat distribution samples within 24 hours of being notified of a total coliform-positive result, and by failing to post public notification of the failure to collect repeat distribution samples; 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit a Disinfectant Level Quarterly Operating Report to the executive director each quarter by the tenth day of the month following the end of each quarter; and 30 TAC §290.122(c)(2)(A), by failing to provide public notification regarding the failure to collect one raw groundwater source *Escherichia coli* sample from each of the facility's active wells within 24 hours of notification of a distribution total coliform-positive sample; PENALTY: \$1,264; ENFORCEMENT COORDINATOR: Jim Fisher, (512) 239-2537; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(31) COMPANY: Roundup Partners, L.P. dba Star Stop; DOCKET NUMBER: 2013-0507-PST-E; IDENTIFIER: RN101436673; LOCATION: Haskell, Haskell County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: \$2,567; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(32) COMPANY: Shamsuddin Khoja dba Chavez Food Mart; DOCKET NUMBER: 2013-0714-PST-E; IDENTIFIER: RN101330827; LOCATION: San Antonio, Bexar 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 tank (UST) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: \$3,881; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(33) COMPANY: SOUTH CENTRAL WATER COMPANY; DOCKET NUMBER: 2013-0835-MWD-E; IDENTIFIER: RN106228489; LOCATION: McMullen County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0015016001, Monitoring and Reporting Requirements Number 1 and 30 TAC §305.125(1) and §319.7(d), by failing to timely submit the monthly discharge monitoring reports (DMRs) for the months of August 2012 - January 2013 by the 20th day of the following month; and TPDES Permit Number WQ0015016001, Monitoring and Reporting Requirements Number 1 and 30 TAC §305.125(1) and §319.7(d), by failing to submit the quarterly DMRs for the monitoring periods ending October 2012 and January 2013 by the 20th day of the

following month; PENALTY: \$4,000; ENFORCEMENT COORDINATOR: Jorge Ibarra, P.E., (817) 588-5890; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(34) COMPANY: SPIRIT RAYS, INCORPORATED dba Hills Country Food Mart; DOCKET NUMBER: 2013-0785-PST-E; IDENTIFIER: RN104375084; LOCATION: Marble Falls, Burnet County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: \$5,625; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, (512) 339-2929.

(35) COMPANY: SR & East Texas Journey, LLC dba One Stop; DOCKET NUMBER: 2013-0528-PST-E; IDENTIFIER: RN102356953; LOCATION: Annona, Red River County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank (UST) system; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.10(b)(1)(B), by failing to maintain UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: \$8,375; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(36) COMPANY: STONE GATE GOLF COURSE, L.C.; DOCKET NUMBER: 2012-2383-PWS-E; IDENTIFIER: RN101193332; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(c)(2)(A)(i), and Texas Health and Safety Code (THSC), §341.033(d), by failing to collect routine distribution water samples for coliform analysis; 30 TAC §290.109(c)(3)(A)(ii), by failing to collect a set of repeat distribution coliform samples within 24 hours of being notified of a total coliform-positive result on a routine sample; and 30 TAC §290.109(c)(4)(B), by failing to collect one raw groundwater source *Escherichia coli* sample from the facility's well within 24 hours of notification of a distribution total coliform-positive result; PENALTY: \$1,739; ENFORCEMENT COORDINATOR: Jim Fisher, (512) 239-2537; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7092.

(37) COMPANY: TAAS Corporation dba Mac's Corner; DOCKET NUMBER: 2013-0335-PST-E; IDENTIFIER: RN102354198; LOCATION: Grapevine, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.10(b), by failing to maintain UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: \$10,125; ENFORCEMENT COORDINATOR: Joel McAlister, (512) 239-2619; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(38) COMPANY: Valero Refining - Texas, L.P.; DOCKET NUMBER: 2013-0248-IWD-E; IDENTIFIER: RN100211663; LOCATION: Corpus Christi, Nueces County; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §305.125(4), TWC, §26.121(a)(1),

and Texas Pollutant Discharge Elimination System Permit Number WQ0000465000, Permit Conditions Number 2.g, by failing to prevent the unauthorized discharge of contaminated storm water into or adjacent to any water in the state; PENALTY: \$8,438; ENFORCEMENT COORDINATOR: Heather Brister, (254) 761-3034; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(39) COMPANY: Verdant Industries, LLC; DOCKET NUMBER: 2013-0315-IWD-E; IDENTIFIER: RN100220110; LOCATION: Lufkin, Angelina County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0000368000, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, Outfall Numbers 001 and 002, by failing to comply with permitted effluent limitations; PENALTY: \$6,250; ENFORCEMENT COORDINATOR: Jacquelyn Green, (512) 239-2587; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(40) COMPANY: WTG Gas Processing, L.P.; DOCKET NUMBER: 2013-0119-AIR-E; IDENTIFIER: RN100211473; LOCATION: Coahoma, Howard County; TYPE OF FACILITY: natural gas plant; RULE VIOLATED: 30 TAC §101.201(a)(1)(A) and (B) and Texas Health and Safety Code (THSC), §385.085(b), by failing to report an emissions event within 24 hours of discovery; 30 TAC §116.115(c), THSC, §382.085(b), and New Source Review (NSR) Permit Number 20137, Special Conditions (SC) 1, by failing to prevent unauthorized emissions (Incident Number 168976); 30 TAC §116.115(c), THSC, §382.085(b), and NSR Permit Number 20137, SC 1, by failing to prevent unauthorized emissions (Incident Number 169430); 30 TAC §116.115(c), THSC, §382.085(b), and NSR Permit Number 20137, SC 1, by failing to prevent unauthorized emissions (Incident Number 171852); and 30 TAC §116.115(c), THSC, §382.085(b), NSR Permit Number 20137, SC 5, by failing to maintain the sulfur recovery efficiency; PENALTY: \$48,376; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(41) COMPANY: WTG Jameson, LP; DOCKET NUMBER: 2012-2691-AIR-E; IDENTIFIER: RN101246478; LOCATION: Silver, Coke County; TYPE OF FACILITY: natural gas processing plant; RULE VIOLATED: Federal Operating Permit (FOP) Number O865, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 9, Standard Permit Registration Number 53757, 30 TAC §§116.115(b)(2)(F), 116.615(2), and 122.143(4), and Texas Health and Safety Code (THSC), §382.085(b), by failing to prevent unauthorized emissions (Incident Number 171853); FOP Number O865, GTC and STC Number 9, Standard Permit Registration Number 53757, 30 TAC §§116.115(b)(2)(F), 116.615(2), and 122.143(4), and THSC, §382.085(b), by failing to prevent unauthorized emissions (Incident Number 170344); and FOP Number O865, GTC and STC Number 2.F., 30 TAC §101.201(a)(1)(B) and §122.143(4), and THSC, §382.085(b), by failing to report Incident Numbers 171853, 172109, and 170344 within 24 hours after discovery; PENALTY: \$21,264; ENFORCEMENT COORDINATOR: Rebecca Johnson, (361) 825-3423; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (325) 655-9479.

TRD-201302902

Kathleen C. Decker  
Director, Litigation Division  
Texas Commission on Environmental Quality  
Filed: July 16, 2013

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Notice of District Petition

Notice issued July 10, 2013.

TCEQ Internal Control No. D-04162013-019; The Lake Cities Municipal Utility Authority of Denton County (the "Authority") filed an application with the Texas Commission on Environmental Quality (TCEQ) for authority to levy an impact fee of \$4,257 per equivalent single-family connection (ESFC) for water facilities and \$3,415 per ESFC for wastewater facilities. The Authority files this application under the authority of Chapter 395 of the Local Government Code, 30 Texas Administrative Code Chapter 293, and the procedural rules of the TCEQ. The purpose of impact fees is to generate revenue to recover the costs of water and wastewater capital improvements or facility expansions made necessary by and attributable to serving new development in the Authority's service area. At the direction of the Authority, a registered engineer has prepared a capital improvements plan for the water and wastewater systems that identifies the capital improvements or facility expansions and their costs for which the impact fees will be assessed. The impact fee application and supporting information are available for inspection and copying during regular business hours in the Utilities and Districts Section of the Water Supply Division, Third Floor of Building F (in the TCEQ Park 35 Office Complex located between Yager Lane and Braker Lane on North IH-35), 12100 Park 35 Circle, Austin, Texas 78753. The capital improvements plan is available for inspection and copying at the District's office during regular business hours.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at [www.tceq.texas.gov/comm\\_exec/cc/pub\\_notice.html](http://www.tceq.texas.gov/comm_exec/cc/pub_notice.html) or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC

103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at [www.tceq.texas.gov](http://www.tceq.texas.gov).

TRD-201302927

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 17, 2013



### Notice of Information Request to Compile a Preapproved List of Natural Gas Engines and Vehicles for Grant Eligibility under the Texas Natural Gas Vehicle Grant Program

The Texas Natural Gas Vehicle Grant Program (TNGVGP) is established under Texas Health and Safety Code, Chapter 394, to be administered by the Texas Commission on Environmental Quality (TCEQ). The TNGVGP offers grants for eligible heavy-duty and medium-duty vehicles to offset the incremental cost for an entity to repower or replace an existing diesel or gasoline vehicle with a vehicle and/or engine powered by natural gas. In order to implement the program, the TCEQ is required to compile a list of preapproved natural gas vehicles and/or engines eligible for grant funding.

The TCEQ has released an information request to compile the required preapproved list of natural gas engines and vehicles. Engines eligible to be included on the list must be certified by the United States Environmental Protection Agency (EPA) to the heavy-duty engine emissions standard of 0.2 grams of nitrogen oxides (NO<sub>x</sub>) per brake horsepower-hour or lower. Vehicles eligible to be included on the list are those classified under EPA requirements as Medium Duty Passenger Vehicles between 8,501 and 10,000 pounds Gross Vehicle Weight Rating (GVWR) and certified by the EPA to the light-duty vehicle NO<sub>x</sub> emission standards at Bin 5 or lower. Chassis-certified heavy-duty vehicles between 8,501 and 14,000 pounds GVWR and certain vehicle conversion systems may also be eligible to be included on the list.

The TCEQ is requesting information from those entities listed as the manufacturer on the EPA Certificate of Conformity for the natural gas engine or vehicle. Entities not listed as the manufacturer on the EPA certificate should not respond to this request. However, as explained in the instructions, the respondent completing the forms should work with other applicable entities, as needed, to obtain the information requested on the forms.

In addition to compiling the list of preapproved natural gas engines and vehicles, the TCEQ is required to develop predetermined grant amounts for eligible grant projects. The grant amounts are based, in part, on a percentage of the incremental cost of purchasing a natural gas vehicle or repowering a vehicle with a natural gas engine when compared with an equivalent new gasoline or diesel vehicle or engine. The information request asks for average incremental cost information associated with the engines and vehicles.

To respond to this request, the appropriate entities should visit TCEQ's Texas Emission Reduction Plan Web site at [www.terpgrants.org](http://www.terpgrants.org) for further instructions and forms. The TCEQ will accept responses on a continuous basis as vehicles, engines, or conversion systems are certified by the EPA.

For additional information regarding this information request, please contact Colin Donovan, Implementation Grants Section, at (512) 239-1984 or toll free at (800) 919-TERP (8377).

TRD-201302901

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: July 16, 2013



### Notice of Water Quality Applications

The following notices were issued on July 5, 2013 through July 12, 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

MARTIN OPERATING PARTNERSHIP LP which operates Stanolind Cut Terminal, a storage and distribution facility for molten sulphur, sulphuric acid, asphalt and fuel oil #6, crude oil, and diesel fuel, has applied for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0004074000, which authorizes the discharge of process wash water from the acid truck and acid cutter areas, non contact cooling water, water softener wastewater, boiler blowdown, and storm water (from the tank containment area, rail loading area, and acid rack) on an intermittent and flow variable basis via Outfall 001. The facility is located at Number 10 Sulphur Plant Road, 0.7 miles east of the interchange of State Highway 380 and US Route 69, southeast of the City of Beaumont, Jefferson County, Texas 77701.

CITY OF BAYTOWN has applied for a renewal of TPDES Permit No. WQ0010395007, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 6,000,000 gallons per day. The facility is located at 3030 Ferry Road approximately 2,250 feet south of the intersection of Ferry Road and Massey Thompkins Road in Harris County, Texas.

YES COMPANIES LLC has applied for a renewal of TPDES Permit No. WQ0012849001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 75,000 gallons per day. The facility is located approximately 1 mile north of the intersection of Farm-to-Market Road 518 and Suburban Gardens Road and approximately 2.3 miles west-northwest of the City of Pearland in Brazoria County, Texas.

LAURA REDOW KARBALAI has applied for a renewal of TPDES Permit No. WQ0014217001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 20,000 gallons per day. The facility is located approximately 900 feet north and 1,900 feet east of the intersection of Airline Drive and Carby Street in Harris County, Texas.

CITY OF DRIPPING SPRINGS has applied for a renewal of Texas Commission on Environmental Quality (TCEQ) Permit No. WQ0014488002 which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 250,000 gallons per day via a public access subsurface drip irrigation system with a minimum area of 57.39 acres. This permit will not authorize a discharge of pollutants into waters in the State. The domestic wastewater treatment facility will be located within the Scenic Greens development, located approximately 4.4 miles west of Dripping Springs along U.S. Highway 290 in Hays County, Texas 78620. The subsurface disposal site will be located in various locations throughout the Scenic Greens development in Hays County.

CAROLINA CREEK CHRISTIAN CAMP has applied for a renewal of TPDES Permit No. WQ0014582001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 150,000 gallons per day. The facility is located approximately 6,000 feet northeast of the intersection of Farm-to-Market Road 980 and Farm-to-Market Road 3454 in Walker County, Texas 77320.

ABRAXAS CORPORATION has applied for a new permit, proposed TPDES Permit No. WQ0015010001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 20,000 gallons per day. The facility was previously permitted under TCEQ Permit No. 11086-001 which expired December 1, 2009. The facility is located at 3301 Cattlebaron Road, approximately 0.9 mile north of the intersection of Cattlebaron and White Settlement Roads in Parker County, Texas 76108.

If you need more information about these permit applications or the permitting process, please call the TCEQ Public Education Program, toll free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at [www.tceq.texas.gov](http://www.tceq.texas.gov). Si desea información en español, puede llamar al 1-800-687-4040.

TRD-201302926

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 17, 2013



## General Land Office

### Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of June 18th, through June 24, 2013. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the Texas General Land Office web site. The notice was published on the web site on July 17, 2013. The public comment period for this project will close at 5:00 p.m. on August 16, 2013.

#### FEDERAL AGENCY ACTIONS:

**Applicant: East Bay Farms, LLC;** Location: The project site consists of 464.07-acres first phase of a proposed wetland mitigation bank located northeast and adjacent to the Anahuac National Wildlife Refuge in southern Chambers County. The project can be located on the U.S.G.S. quadrangle map entitled: Stanolind Reservoir, Texas. Approximate UTM Coordinates in NAD83 (meters): Zone 15: Easting: 363442; Northing: 3281439. Project Description: East Bay Farms, LLC (Sponsor), is proposing to establish and operate a mitigation bank to be known as the Gulf Coastal Plains Wetland Mitigation Bank (GCPWMB) on properties owned by the Sponsor. The GCPWMB is planned to eventually encompass approximately 1,851 acres, currently maintained in agricultural production and previously cleared, leveled, ditched and drained. Phase 1 will include re-establishing tidally influenced wetlands in the southern portion of Phase 1 and the conversion

of existing freshwater wetlands. Proposed impacts associated with the hydrologic restoration for Phase 1 include dredging and fill activities of 11,427 cubic yards in 8.39 acres of Waters of the U.S., including wetlands. CMP Project No.: 13-1091-F2. Type of Application: This application is being evaluated under §10 of the Rivers and Harbors Act of 1899, Section 404 of the Clean Water Act (CWA), and 33 CFR 332 "Compensatory Mitigation for Losses of Aquatic Resources" (April 10, 2008 Federal Register Vol. 73, No. 70 pp. 19594-19705).

**Applicant: USFWS - McFaddin National Wildlife Refuge;** Location: The project site is located in the Gulf of Mexico in the McFaddin National Wildlife Refuge (NWR), Jefferson County, Texas. Start - Latitude: 29.5621970; Longitude -94.3588786 West. End- Latitude: 29.6476333 North; Longitude -94.1384315 West. Project Description: The applicant proposes to impact a total of 181 acres of wetlands with the construction of a 14.43-mile clay and sand berm (270,959 CY) along the coastline of the McFaddin National Wildlife Refuge. The proposed berm will be constructed from material excavated from on-site borrow areas and will consist of three segments: Berm No. 2, Berm No. 1A, and Berm No. 1B. The entire extent of the berm will be located approximately 600 feet inland and parallel to the current beach and will convert 63 acres of wetlands to uplands. The borrow areas will be located parallel to, and landward of, the berm segments and consist of shallow, alternating areas that would be no more than 4 feet deep, 1,000 feet long, and 75 feet wide. The borrow areas will impact 118 acres of wetlands. CMP Project No.: 13-1076-F1. Type of Application: U.S.A.C.E. permit application #SWG-2012-00381 is being evaluated under §10 of the Rivers and Harbors Act of 1899 and §404 of the Clean Water Act (CWA).

**Applicant: Oiltanking Beaumont;** Location: The project site is located in the Neches River, at 6275 Highway 347, in Beaumont, Jefferson County, Texas. The project can be located on the U.S.G.S. quadrangle map titled: Beaumont East, Texas. Latitude: 30.035640; Longitude -94.035628 West. Project Description: The applicant proposes to construct a ship berthing area adjacent to their existing docking facility. Activities include dredging 1.73 acres of tidal wetlands, 10.12 acres of non-tidal wetlands, 5.63 acres of open water, and 5.67 acres of uplands. The applicant proposed to dredge to a depth of -40 feet below mean low water, with a 2-foot overdredge. Approximately 1,442,000 cubic yards of material is proposed to be dredged during construction. In addition, the applicant proposes to clear 0.08 acre of tidal wetlands, and 0.72 acre of non-tidal wetlands. The applicant proposes to fill 0.39 acre of non-tidal wetlands and 0.05 acre of tidal wetlands to construct a revetment for erosion control. The applicant proposes to fill 0.05 acre of non-tidal wetland to construct a road and pipe rack.

The applicant proposes to construct a new finger pier dock in the dredged basin, with an 8,000-square-foot loading platform, a new roadway and pipe rack, a new concrete approachway and pipe rack, and associated mooring and breasting structures.

The applicant proposed to use dredge material beneficially by placing it in open water within the Rose City Marsh complex, or to place the material into dredge material placement areas 23, 24, or 25, depending on capacity and availability. CMP Project No.: 13-1275-F1. Type of Application: U.S.A.C.E. permit application #SWG-2012-00381 is being evaluated under §10 of the Rivers and Harbors Act of 1899 and §404 of the Clean Water Act (CWA).

**Applicant: Odfjell Terminals (Houston), Inc.** Location: The project site is located along the Bayport Turning Basin, within Odfjell Terminal's facility at 12211 Port Road, in Seabrook, Harris County, Texas. The project can be located on the U.S.G.S. quadrangle map titles: League City, Texas. Latitude: 29.60929; Longitude -95.01795 West. Project Description: The applicant proposes to hydraulically dredge a 9.06-acre area within their facility. Current depth at the site is -40

feet mean low water (MLLW); the proposed work will deepen the facility to -47 feet MLLW. Approximately, 110,000 cubic yards of material, consisting of sand/clay, will be removed and placed in Dredged Material Placement Areas (DMPAs) 14, 15, and 16 within the Spillman Island, or Port of Houston DMPAs 1 and/or 2. The purpose of the project is to deepen an existing channel so as to accommodate deeper vessels at the facility. CMP Project No.: 13-1277-F1. Type of Application: U.S.A.C.E. permit application #SWG-2012-00381 is being evaluated under §10 of the Rivers and Harbors Act of 1899 and §404 of the Clean Water Act (CWA).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action or activity is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Land Commissioner for review.

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection may be obtained from Ms. Sheri Land, Director, P.O. Box 12873, Austin, Texas 78711-2873 or via email at federal.consistency@glotexas.gov. Comments should be sent to Ms. Land at the above address or by email.

TRD-201302931

Larry L. Laine

Chief Clerk, Deputy Land Commissioner

General Land Office

Filed: July 17, 2013



## Texas Health and Human Services Commission

### Public Notice

The Texas Health and Human Services Commission is submitting to the Centers for Medicare and Medicaid Services a request for an amendment to the Texas Healthcare Transformation and Quality Improvement Program (THTQIP), a Medicaid waiver program operating under the authority of §1115 of the Social Security Act. The Texas Healthcare Transformation Quality Improvement Program is currently approved for the five-year period beginning December 12, 2011, and ending September 30, 2016. The proposed effective date for the amendment is January 1, 2014.

The Texas Healthcare Transformation and Quality Improvement Program serves as the vehicle that allows the state to expand the Medicaid managed care delivery system while preserving hospital funding, provides incentive payments for health care improvements and directs more funding to hospitals that serve large numbers of uninsured patients.

The Texas Health and Human Services Commission is requesting an amendment to remove the policy that allows a managed care organization to request disenrollment for beneficiaries who are dependent on a ventilator or who have been diagnosed with End Stage Renal Disease. The waiver currently allows a managed care organization to request disenrollment of beneficiaries who are totally dependent on a ventilator or who have been diagnosed with End Stage Renal Disease. Currently, these clients are served through fee-for-service when they are disenrolled from a managed care organization. By removing this provision from the waiver, Medicaid managed care organizations will no longer be able to request disenrollment of members because they are ventilator dependent or have been diagnosed with End Stage Renal Disease.

The Texas Health and Human Services Commission is requesting that the Centers for Medicare and Medicaid Services approve the waiver

amendment beginning January 1, 2014, and ending September 30, 2016. The amendment does not impact budget neutrality.

To obtain copies of the proposed waiver amendment, interested parties may contact JayLee Mathis by mail at Texas Health and Human Services Commission, P.O. Box 13247, mail code H-370, Austin, Texas 78711-3427, phone (512) 462-6289, fax (512) 730-7472, or by email at TX\_Medicaid\_Waivers@hhsc.state.tx.us.

TRD-201302867

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Filed: July 11, 2013



### Public Notice

The Texas Health and Human Services Commission is submitting to the Centers for Medicare and Medicaid Services a request for an amendment to the Texas Healthcare Transformation Quality Improvement Program (THTQIP) waiver program, a Medicaid waiver program operating under the authority of §1115 of the Social Security Act. The Texas Healthcare Transformation Quality Improvement Program waiver program is currently approved for the five-year period beginning December 12, 2011, and ending September 30, 2016. The proposed effective date for the amendment is January 1, 2014.

The Texas Healthcare Transformation Quality Improvement Program serves as the vehicle that allows the state to expand the Medicaid managed care delivery system while preserving hospital funding, provides incentive payments for health care improvements and directs more funding to hospitals that serve large numbers of uninsured patients.

Effective January 1, 2014, the Affordable Care Act requires states to determine financial eligibility for most individuals in Medicaid and the Children's Health Insurance Program (CHIP) using Modified Adjusted Gross Income methodologies. The Affordable Care Act also requires states to change other eligibility determination policies and processes for Medicaid/CHIP, coordinate eligibility determinations between Medicaid/CHIP and the Health Insurance Marketplace, and mandate coverage of certain populations.

The Texas Health and Human Services Commission is requesting an amendment to the Texas Healthcare Transformation Quality Improvement Program to include the federally-required Medicaid populations: children ages 6 through 18 with incomes from 101 - 133 percent of the Federal Poverty Level and former foster care youth (individuals who aged out of foster care at 18 or older) up to the age of 26. The amendment also includes the requirement by the Affordable Care Act stating eligibility for most populations will be determined using methodologies that are based on the Modified Adjusted Gross Income. The populations whose eligibility will be determined based on the Modified Adjusted Gross Income include pregnant women, children, and families. Some Medicaid groups are exempt from the Modified Adjusted Gross Income methodologies, such as individuals who qualify for Medicaid on a basis that does not require a determination of income by the Medicaid agency (e.g., blind, disabled, certain foster care youth, or some individuals with breast and/or cervical cancer). The waiver will be amended to use tax filing rules to determine income and household composition. Most income disregards will be prohibited, except a five percentage point across-the-board income disregard will be applied.

The Texas Health and Human Services Commission is requesting that the Centers for Medicare and Medicaid Services approve the waiver amendment beginning January 1, 2014, and ending September 30, 2016. The amendment does impact budget neutrality.



To obtain copies of the proposed waiver amendment, interested parties may contact JayLee Mathis by mail at Texas Health and Human Services Commission, P.O. Box 13247, mail code H-370, Austin, Texas 78711-3427, phone (512) 462-6289, fax (512) 730-7472, or by email at TX\_Medicaid\_Waivers@hhsc.state.tx.us.

TRD-201302870

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Filed: July 12, 2013



## Public Notice

The Texas Health and Human Services Commission is submitting to the Centers for Medicare and Medicaid Services a request for an amendment to the NorthSTAR Behavioral Health waiver program, a Medicaid waiver program operating under the authority of §1915(b) of the Social Security Act. The Texas Health and Human Services Commission previously submitted to the Centers for Medicare and Medicaid Services a request to renew the NorthSTAR Behavioral Health waiver program for the two-year period beginning October 1, 2013, and ending September 30, 2015. The proposed effective date for the amendment is January 1, 2014.

The NorthSTAR program is designed to provide behavioral health services (mental health and substance abuse) to Medicaid-eligible individuals in the Dallas service delivery area. These services are provided to eligible clients in a managed care setting. Individuals enrolled in NorthSTAR have access to coordinated mental health and substance abuse/chemical dependency services that exceed the traditional Medicaid service array. NorthSTAR serves seven counties in Texas: Collin, Dallas, Ellis, Hunt, Kaufman, Navarro, and Rockwall.

Effective January 1, 2014, the Affordable Care Act requires states to determine financial eligibility for most individuals in Medicaid and the Children's Health Insurance Program (CHIP) using Modified Adjusted Gross Income methodologies. The Affordable Care Act also requires states to change other eligibility determination policies and processes for Medicaid/CHIP, coordinate eligibility determinations between Medicaid/CHIP and the Health Insurance Marketplace, and mandate coverage of certain populations.

The Texas Health and Human Services Commission is requesting an amendment to the NorthSTAR program to include the federally-required Medicaid populations: children ages 6 through 18 with incomes from 101 - 133 percent of the Federal Poverty Level and former foster care youth (individuals who aged out of foster care at 18 or older) up to the age of 26. The amendment also includes the requirement by the Affordable Care Act stating eligibility for most populations will be determined using methodologies that are based on the Modified Adjusted Gross Income. The populations whose eligibility will be determined based on the Modified Adjusted Gross Income include pregnant women, children, and families. Some Medicaid groups are exempt from the Modified Adjusted Gross Income methodologies, such as individuals who qualify for Medicaid on a basis that does not require a determination of income by the Medicaid agency (e.g., blind, disabled, certain foster care youth, or some individuals with breast and/or cervical cancer). The waiver will be amended to use tax filing rules to determine income and household composition. Most income disregards will be prohibited, except a five percentage point across-the-board income disregard will be applied.

The Texas Health and Human Services Commission is requesting that the waiver amendment be approved for the period beginning January

1, 2014, through September 30, 2015. The amendment maintains cost effectiveness for federal years 2014 through 2015.

To obtain copies of the proposed waiver amendment, interested parties may contact JayLee Mathis by mail at Texas Health and Human Services Commission, P.O. Box 13247, mail code H-370, Austin, Texas 78711-3427, phone (512) 462-6289, fax (512) 730-7472, or by email at TX\_Medicaid\_Waivers@hhsc.state.tx.us.

TRD-201302871

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Filed: July 12, 2013



## Department of State Health Services

### Amendment to the Schedules of Controlled Substances

This amendment to the Schedules of Controlled Substances was signed by the Commissioner of the Department of State Health Services on July 15, 2013, and will become effective 21 days following the date of publication of this notice in the *Texas Register*.

The Administrator of the Drug Enforcement Administration (DEA) placed the substance Lorcaserin, including its salts, isomers and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible, into Schedule IV of the United States Controlled Substances Act (USCSA) effective June 7, 2013. This final rule was published in the *Federal Register* Volume 78, Number 89, pages 26701 - 26705. The Administrator of the DEA has taken this action based on the following.

- (1) Lorcaserin has a low potential for abuse relative to the drugs or other substances in Schedule III.
- (2) Lorcaserin has a currently accepted medical use in treatment in the United States.
- (3) Abuse of Lorcaserin may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in Schedule III.

Pursuant to Section 481.034(g), as amended by the 75th legislature, of the Texas Controlled Substances Act, Health and Safety Code, Chapter 481, at least thirty-one days have expired since notice of the above referenced action was published in the *Federal Register*; and, in the capacity as Commissioner of the Department of State Health Services, David L. Lakey, M. D. hereby orders that the substance Lorcaserin be placed into Schedule IV of the Schedules of Controlled Substances. The section entitled "Schedule IV Other Substances" is renumbered to arrange the substances into alphabetical order.

#### SCHEDULE IV

Schedule IV consists of:

Schedule IV depressants

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Schedule IV stimulants

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Schedule IV narcotics

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Schedule IV other substances

Unless specifically excepted or unless listed in another schedule, a material, compound, or preparation containing the following substances or their salts:

- (1) Butorphanol, including its optical isomers;
- (2) Carisoprodol;
- (3)\* Lorcazerin including its salts, isomers and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible;
- (4) Pentazocine, its salts, derivatives, compounds, or mixtures.

Changes to the schedules are designated by a single asterisk (\*)

TRD-201302908

Lisa Hernandez  
General Counsel

Department of State Health Services

Filed: July 16, 2013

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## Texas Department of Housing and Community Affairs

Housing Trust Fund "2014 - 2015 Amy Young Barrier Removal Program" Notice of Funding Availability

### I. Source of Housing Trust Funds.

The Housing Trust Fund (HTF) was established by the 72nd Legislature, Senate Bill 546, Texas Government Code, §2306.201 to create affordable housing for low- and very low-income households. Funding sources consist of appropriations or transfers made to the fund, unencumbered fund balances, and public or private gifts, grants, or donations.

### II. Notice of Funding Availability (NOFA).

The Texas Department of Housing and Community Affairs ("the Department") announces the availability of \$3,578,250 in funding from the Housing Trust Fund (HTF) for the Amy Young Barrier Removal Program (Program) through the Department's first-come, first-served Reservation System. For Fiscal Year (FY) 2014, \$1,789,125 in combined project and administration funding will be available on **October 1, 2013**. For FY 2015, another \$1,789,125 in combined project and administration funding is expected to be available on September 3, 2014.

The Amy Young Barrier Removal Program provides one-time grants of up to \$20,000 to Persons with Disabilities, qualified as earning 80 percent or less of the applicable Area Median Family Income, for home modifications necessary for accessibility and addressing housing-related health and safety hazards, as approved by the Department. Program beneficiaries may be tenants or homeowners and their household members with disabilities.

Starting on **July 26, 2013**, the Department will accept applications from organizations seeking authorization to access the first-come, first-served Reservation System (which opens on October 1, 2013) on an ongoing basis until all Program funds are reserved. For the release of funding for FY 2015, the Department will reopen the process for accepting applications from organizations seeking authorization to access the Reservation System on July 1, 2014.

### III. Application Deadline and Availability.

The HTF "2014 - 2015 Amy Young Barrier Removal Program" NOFA is posted on the Department's website: <http://www.tdhca.state.tx.us/htf/index.htm>. Subscribers to the Department's LISTSERV will receive notification that the NOFA is posted.

Questions regarding the HTF Program NOFA may be addressed to Mark Leonard at (512) 936-7799 or [htf@tdhca.state.tx.us](mailto:htf@tdhca.state.tx.us).

TRD-201302934

Barbara Deane

General Counsel

Texas Department of Housing and Community Affairs

Filed: July 17, 2013

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## Request for Proposal for a Program Administrator for the Single Family Mortgage Loan and Mortgage Credit Certificate Programs

The Texas Department of Housing and Community Affairs (TDHCA) has issued a Request for Proposal (RFP) for Program Administrator. TDHCA anticipates the need for a Program Administrator relating to the Administration of its tax-exempt mortgage revenue bond and mortgage credit certificate programs. The Program Administrator must demonstrate qualifications and experience in one or more areas that are listed in the RFP.

**Proposals must be received at TDHCA no later than 2:00 p.m. on MONDAY, AUGUST 5, 2013.**

For more information, see RFP #332-RFP14-1002 on the Electronic State Business Daily website at <http://esbd.cpa.state.tx.us/>.

TRD-201302883

Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

Filed: July 15, 2013

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## Request for Proposal for Master Servicer for the Single Family Residential Mortgage Revenue Bond Programs or Other Alternatively Funded Programs

The Texas Department of Housing and Community Affairs (TDHCA) has issued a Request for Proposal (RFP) for Master Servicer. TDHCA anticipates the need for a Master Servicer relating to its Single Family Residential Mortgage Revenue Bond Programs or other alternatively funded programs. The Master Servicer must demonstrate qualifications and experience in one or more areas that are listed in the RFP.

**Proposals must be received at TDHCA no later than 2:00 p.m. on August 7, 2013.**

For more information, see RFP #332-RFP14-1001 on the Electronic State Business Daily website at <http://esbd.cpa.state.tx.us/>.

TRD-201302903

Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

Filed: July 16, 2013

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## Texas Lottery Commission

Instant Game Number 1507 "Twisted Bingo"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1507 is "TWISTED BINGO." The play style for the game is "bingo."

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1507 shall be \$3.00 per Ticket.

1.2 Definitions in Instant Game No. 1507.

A. Display Printing - That area of the Instant Game Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Ticket.

C. Play Symbol - The printed data under the latex on the front of the Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: B01, B02, B03, B04, B05, B06, B07, B08, B09, B10, B11, B12, B13, B14, B15, I16, I17, I18, I19, I20, I21, I22, I23, I24, I25, I26, I27, I28, I29, I30, N31, N32, N33, N34, N35, N36, N37, N38, N39, N40, N41, N42, N43, N44, N45, G46, G47, G48, G49, G50, G51, G52, G53, G54, G55, G56, G57, G58,

G59, G60, O61, O62, O63, O64, O65, O66, O67, O68, O69, O70, O71, O72, O73, O74, O75, 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75 and FREE.

D. Play Symbol Caption - The small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. Crossword and Bingo style games do not typically have Play Symbol captions. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1507 - 1.2D

<b>PLAY SYMBOL</b>	<b>CAPTION</b>
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FREE	

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$3.00, \$5.00, \$10.00, \$15.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$25.00, \$50.00, \$100, \$150, \$250 or \$500.

H. High-Tier Prize - A prize of \$40,000.

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 (1507), 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: 1507-0000001-001.

K. Pack - A Pack of "TWISTED BINGO" Instant Game Tickets contains 125 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). There will be two (2) fanfold configurations for this game. Configuration A will show the front of Ticket 001 and the back of Ticket 125. Configuration B will show the back of Ticket 001 and the front of Ticket 125.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "TWISTED BINGO" Instant Game No. 1507 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 "TWISTED BINGO" Instant Game is determined once the latex on the Ticket is scratched off to expose 127 (one hundred twenty-seven) Play Symbols. The player must scratch off the "CALLER'S CARD" area to reveal 27 (twenty-seven) Bingo Numbers. The player must scratch only those Bingo Numbers on the four (4) "BINGO" Cards that match the Bingo Numbers on the "CALLER'S CARD." The player must also scratch the "FREE" spaces on the four (4) "BINGO" Cards. If the player matches all Bingo Numbers in a complete vertical, horizontal or diagonal line; all numbers in all four (4) corners; all numbers to complete an "X" [eight (8) numbers plus

the "FREE" space]; or all numbers contained in the "SIDEWAYS W" pattern on the same "BINGO" Card, the player wins the prize in the corresponding prize legend for that "BINGO" Card. Note: Only one prize per Card. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. Exactly 127 (one hundred twenty-seven) Play Symbols must appear under the Latex Overprint on the front portion of the Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, and each Play Symbol must agree with its Play Symbol Caption. Crossword and Bingo style games do not typically have Play Symbol captions;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Ticket;
8. The Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Ticket must not be counterfeit in whole or in part;
10. The Ticket must have been issued by the Texas Lottery in an authorized manner;
11. The Ticket must not have been stolen, nor appear on any list of omitted Tickets or non-activated Tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The Ticket must be complete and not miscut and have exactly 127 (one hundred twenty-seven) 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 127 (one hundred twenty-seven) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 127 (one hundred twenty-seven) 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. GENERAL: Players can win up to four (4) times on a Ticket in accordance with the approved prize structure.

B. GENERAL: Adjacent Non-Winning Tickets within a Pack will not have identical Play Symbol patterns. Two (2) Tickets have identical Play Symbol patterns if they have the same Play Symbols in the same positions.

C. BINGO: No individual "BINGO" Card will win more than one (1) prize (i.e., only highest prize paid per card).

D. BINGO: All "BINGO" Cards will be different on a Ticket. Two cards are identical if and only if they have the same Play Symbols in the same positions.

E. BINGO: "CALLER'S CARD" Play Symbols will all be different.

F. BINGO: All Tickets will have all of the "CALLER'S CARD" Play Symbols reveal a number in at least one "BINGO" Card.

G. BINGO: There will be one (1) "FREE" Play Symbol fixed in the center of each "BINGO" Card.

H. BINGO: The number range used for each letter (B, I, N, G, O) will be as follows: B (1-15), I (16-30), N (31-45), G (46-60), O (61-75).

## 2.3 Procedure for Claiming Prizes.

A. To claim a "TWISTED BINGO" Instant Game prize of \$3.00, \$5.00, \$10.00, \$15.00, \$20.00, \$25.00, \$50.00, \$100, \$150, \$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 \$25.00, \$50.00, \$100, \$150, \$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 "TWISTED BINGO" Instant Game prize of \$40,000, 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 "TWISTED BINGO" Instant Game prize, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. a sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code, §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "TWISTED



BINGO" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "TWISTED BINGO" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in 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 15,000,000 Tickets in the Instant Game No. 1507. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1507 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$3	1,920,000	7.81
\$5	1,560,000	9.62
\$10	360,000	41.67
\$15	120,000	125.00
\$20	120,000	125.00
\$25	87,375	171.67
\$50	50,000	300.00
\$100	18,750	800.00
\$150	4,375	3,428.57
\$250	1,000	15,000.00
\$500	250	60,000.00
\$40,000	18	833,333.33

\*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 3.54. The individual odds of winning for a particular prize level may vary based on sales, distribution, and number of prizes claimed.

A. The actual number of Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1507 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. 1507, the State Lottery Act (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-201302873  
 Bob Biard  
 General Counsel  
 Texas Lottery Commission  
 Filed: July 12, 2013

◆ ◆ ◆

Instant Game Number 1512 "Line 'em Up"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1512 is "LINE 'EM UP." The play style is "slots-straight line."

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1512 shall be \$1.00 per Ticket.

1.2 Definitions in Instant Game No. 1512.

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: ORANGE SYMBOL, BELL SYMBOL, CHERRY SYMBOL, GOLD BAR SYMBOL, WISHBONE SYMBOL, CROWN SYMBOL, DIAMOND SYMBOL, BANANA SYMBOL, KEY SYMBOL, CLOVER SYMBOL, \$1.00, \$2.00, \$5.00, \$10.00, \$20.00, \$40.00, \$100 and \$1,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1512 - 1.2D

PLAY SYMBOL	CAPTION
ORANGE SYMBOL	ORANGE
BELL SYMBOL	BELL
CHERRY SYMBOL	CHERRY
GOLD BAR SYMBOL	BAR
WISHBONE SYMBOL	WISHBONE
CROWN SYMBOL	CROWN
DIAMOND SYMBOL	DIAMOND
BANANA SYMBOL	BANANA
KEY SYMBOL	KEY
CLOVER SYMBOL	CLOVER
\$1.00	ONE\$
\$2.00	TWO\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$40.00	FORTY
\$100	ONE HUND
\$1,000	ONE THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. There 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 \$1.00, \$2.00, \$5.00, \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$40.00 or \$100.

H. High-Tier Prize - A prize of \$1,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1512), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 150 within each Pack. The format will be: 1512-0000001-001.

K. Pack - A Pack of "LINE 'EM UP" Instant Game Tickets contains 150 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; Tickets 006 to 010 on the next page; etc.; and Tickets 146 to 150 will be on the last page with backs exposed. Ticket 001 will be folded over so the front of Ticket 001 and 010 will be exposed.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (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 "LINE 'EM UP" Instant Game No. 1512 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 "LINE 'EM UP" Instant Game is determined once the latex on the Ticket is scratched off to expose 20 (twenty) Play Symbols. The player scratches the entire play area. If a player reveals 3 matching Play Symbols within a SPIN, the player wins the PRIZE for that SPIN. 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 20 (twenty) 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 20 (twenty) 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 20 (twenty) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 20 (twenty) Play Symbols on the Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

#### 2.2 Programmed Game Parameters.

A. Players can win up to five (5) times on a Ticket in accordance with the approved prize structure.

B. Adjacent Non-Winning Tickets within a Pack will not have identical Play and Prize Symbol patterns. Two (2) Tickets have identical Play and Prize Symbol patterns if they have the same Play and Prize Symbols in the same positions.

C. No Ticket will ever contain more than two (2) identical non-winning Prize Symbols.

D. Non-winning Prize Symbols will never be the same as the winning Prize Symbol(s).

E. The top Prize Symbol will appear on every Ticket unless otherwise restricted.

F. Non-winning Play Symbols will never appear more than three (3) times.

G. There will be no duplicate non-winning SPINS on a Ticket. Duplicate non-winning SPINS are considered duplicate if the same Play Symbols appear in the same order in both SPINS.

H. No Ticket will contain an occurrence of three (3) or more consecutive identical Play Symbols vertically or diagonally unless otherwise restricted.

#### 2.3 Procedure for Claiming Prizes.

A. To claim a "LINE 'EM UP" Instant Game prize of \$1.00, \$2.00, \$5.00, \$10.00, \$20.00, \$40.00 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 \$40.00 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 "LINE 'EM UP" Instant Game prize of or \$1,000, the claimant must sign the winning Ticket and present it at one of the Texas

Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "LINE 'EM UP" 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 "LINE 'EM UP" 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 "LINE 'EM UP" 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 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 9,120,000 Tickets in the Instant Game No. 1512. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1512 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$1	1,216,000	7.50
\$2	608,000	15.00
\$5	121,600	75.00
\$10	60,800	150.00
\$20	30,400	300.00
\$40	23,750	384.00
\$100	1,900	4,800.00
\$1,000	76	120,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 4.42. 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. 1512 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. 1512, the State Lottery Act (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-201302874  
 Bob Biard  
 General Counsel  
 Texas Lottery Commission  
 Filed: July 12, 2013



Instant Game Number 1531 "\$20X Ca\$h"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1531 is "20X CA\$h." The play style is "slots-straight line."

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1531 shall be \$20.00 per Ticket.

1.2 Definitions in Instant Game No. 1531.

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: 10X SYMBOL, 20X SYMBOL, BELL SYMBOL, 4 LEAF CLOVER SYMBOL, LEMON SYMBOL, MONEY CLIP SYMBOL, RAINBOW SYMBOL, GOLD BAR SYMBOL, TREASURE CHEST SYMBOL, GOLD COIN SYMBOL, STACK OF CASH SYMBOL, PIGGY BANK SYMBOL, SAFE SYMBOL, SINGLE CHERRY SYMBOL, WALLET SYMBOL, STAR SYMBOL, WISHBONE SYMBOL, BANANA SYMBOL, SUN SYMBOL, MONEY BAG SYMBOL, ANCHOR SYMBOL, DIAMOND SYMBOL, LIMO SYMBOL, PEARLS SYMBOL, DIAMOND RING SYMBOL, WATCH SYMBOL, HORSESHOE SYMBOL, POT OF GOLD SYMBOL, CROWN SYMBOL, LIGHTNING BOLT SYMBOL, MOON SYMBOL, HAT SYMBOL, CLUB SYMBOL, DAISY FLOWER SYMBOL, HEART SYMBOL, SPADE SYMBOL, BUTTERFLY SYMBOL, KEY SYMBOL, \$20.00, \$25.00, \$50.00, \$100, \$150, \$200, \$500, \$1,000, \$10,000 and \$1,000,000.

D. Play Symbols 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.1531 - 1.2D

<b>PLAY SYMBOL</b>	<b>CAPTION</b>
10X SYMBOL	WIN10X
20X SYMBOL	WIN20X
BELL SYMBOL	BELL
4 LEAF CLOVER SYMBOL	CLOVER
LEMON SYMBOL	LEMON
MONEY CLIP SYMBOL	CLIP
RAINBOW SYMBOL	RAINBW
GOLD BAR SYMBOL	GOLD
TREASURE CHEST SYMBOL	CHEST
GOLD COIN SYMBOL	COIN
STACK OF CASH SYMBOL	CASH
PIGGY BANK SYMBOL	PGYBNK
SAFE SYMBOL	SAFE
SINGLE CHERRY SYMBOL	CHERRY
WALLET SYMBOL	WALLET
STAR SYMBOL	STAR
WISHBONE SYMBOL	WSHBNE
BANANA SYMBOL	BANANA
SUN SYMBOL	SUN
MONEY BAG SYMBOL	MNYBAG
ANCHOR SYMBOL	ANCHOR
DIAMOND SYMBOL	DMND
LIMO SYMBOL	LIMO
PEARLS SYMBOL	PEARLS
DIAMOND RING SYMBOL	RING
WATCH SYMBOL	WATCH
HORSESHOE SYMBOL	HRSHE
POT OF GOLD SYMBOL	POTGLD
CROWN SYMBOL	CROWN
LIGHTNING BOLT SYMBOL	LGHTNG
MOON SYMBOL	MOON
HAT SYMBOL	HAT
CLUB SYMBOL	CLUB
DAISY FLOWER SYMBOL	FLOWER
HEART SYMBOL	HEART
SPADE SYMBOL	SPADE
BUTTERFLY SYMBOL	BTRFLY
KEY SYMBOL	KEY
\$20.00	TWENTY
\$25.00	TWY FIV
\$50.00	FIFTY
\$100	ONE HUND
\$150	ONEFIFTY
\$200	TWO HUN
\$500	FIV HUN
\$1,000	ONE THOU
\$10,000	10 THOU
\$1,000,000	1MILLION

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 \$20.00.

G. Mid-Tier Prize - A prize of \$25.00, \$50.00, \$70.00, \$100, \$150, \$200 or \$500.

H. High-Tier Prize - A prize of \$1,000, \$10,000 or \$1,000,000.

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 (1531), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 025 within each Pack. The format will be: 1531-0000001-001.

K. Pack - A Pack of "20X CASH" Instant Game Tickets contains 025 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The front of Ticket 001 will be shown on the front of the Pack; the back of Ticket 025 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 025 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 (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 "20X CASH" Instant Game No. 1531 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 "20X CASH" Instant Game is determined once the latex on the Ticket is scratched off to expose 80 (eighty) Play Symbols. If a player reveals 3 matching Play Symbols in the same GAME, the player wins the PRIZE for that GAME. If a player reveals a "10X" Play Symbol, the player wins 10 times the PRIZE for that GAME. If a player reveals a "20X" Play Symbol, the player wins 20 times the PRIZE for that GAME. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

### 2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. Exactly 80 (eighty) 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 80 (eighty) 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 80 (eighty) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 80 (eighty) 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 twenty (20) times.
- D. On all Tickets, a prize amount will not appear more than 3 times, except as required by the prize structure to create multiple wins.
- E. This Ticket consists of sixty (60) Play Symbols and twenty (20) Prize Symbols.
- F. On winning and Non-Winning Tickets, the top cash prizes of \$10,000 and \$1,000,000 will each appear at least once, except on Tickets winning twenty (20) times.
- G. On winning Tickets, a non-winning prize amount will not match a winning prize amount.
- H. There will be no occurrence of three (3) or more consecutive identical Play Symbols vertically or diagonally.
- I. Play Symbols will appear at least once and no more than three (3) times on a Ticket, with respect to other parameters, play action or prize structure.
- J. The "10X" Play Symbol will only appear with the caption WIN10X and will only appear according to the prize structure.
- K. The "20X" Play Symbol will only appear with the caption WIN20X and will only appear according to the prize structure.
- L. The "10X" and "20X" Play Symbols will not appear on a Non-Winning Ticket.
- M. On "10X" or "20X" winning GAMES, the remaining two (2) Play Symbols within that GAME will be different.
- N. A "10X" Play Symbol and a "20X" Play Symbol will only appear as per prize structure.

### 2.3 Procedure for Claiming Prizes.

A. To claim a "20X CASH" Instant Game prize of \$20.00, \$25.00, \$50.00, \$70.00, \$100, \$150, \$200 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 \$25.00, \$50.00, \$70.00, \$100, \$150, \$200 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 "20X CASH" Instant Game prize of \$1,000, \$10,000 or \$1,000,000, 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 "20X CASH" Instant Game prize, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under 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 "20X CASH" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "20X CASH" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in 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 5,040,000 Tickets in the Instant Game No. 1531. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1531 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$20	537,600	9.38
\$25	336,000	15.00
\$50	504,000	10.00
\$70	88,200	57.14
\$100	157,080	32.09
\$150	24,360	206.90
\$200	2,520	2,000.00
\$500	78	64,615.38
\$1,000	30	168,000.00
\$10,000	10	504,000.00
\$1,000,000	5	1,008,000.00

\*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 3.05. 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. 1531 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. 1531, the State Lottery Act (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.

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 Bob Biard  
 General Counsel  
 Texas Lottery Commission  
 Filed: July 12, 2013

◆ ◆ ◆

Instant Game Number 1534 "Big Winning Numbers"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1534 is "BIG WINNING NUMBERS." The play style is "key number match."

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1534 shall be \$10.00 per Ticket.

1.2 Definitions in Instant Game No. 1534.

A. Display Printing - That area of the Instant Game Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Ticket.

C. Play Symbol - The printed data under the latex on the front of the Instant Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24,

25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, DOLLAR BILL SYMBOL, MONEYBAG SYMBOL, \$10.00, \$20.00, \$25.00, \$50.00, \$100, \$200, \$500, \$1,000, \$10,000 and \$250,000.

D. Play Symbols 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.1534 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
DOLLAR BILL SYMBOL	WINX10
MONEYBAG SYMBOL	WINALL
\$10.00	TEN\$
\$20.00	TWENTY
\$25.00	TWY FIV
\$50.00	FIFTY

\$100	ONE HUND
\$200	TWO HUND
\$500	FIV HUND
\$1,000	ONE THOU
\$10,000	10 THOU
\$250,000	TFY 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 \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$25.00, \$50.00, \$100, \$200 or \$500.

H. High-Tier Prize - A prize of \$1,000, \$5,000, \$10,000 or \$250,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1534), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 050 within each Pack. The format will be: 1534-0000001-001.

K. Pack - A Pack of "BIG WINNING NUMBERS" Instant Game Tickets contains 050 Tickets, packed in plastic shrink-wrapping and fan-folded in pages of one (1). Ticket back 001 and 050 will both be exposed.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (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 "BIG WINNING NUMBERS" Instant Game No. 1534 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 "BIG WINNING NUMBERS" Instant Game is determined once the latex on the Ticket is scratched off to expose 55 (fifty-five) Play Symbols. If a player matches any of YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If a player reveals a "DOLLAR BILL" Play Symbol, the player wins 10 TIMES the prize for that Play Symbol. If a player reveals a "MONEYBAG" Play Symbol, the player WINS ALL 25 PRIZES instantly! No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. Exactly 55 (fifty-five) Play Symbols must appear under the Latex Overprint on the front portion of the Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Ticket;
8. The Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Ticket must not be counterfeit in whole or in part;
10. The Ticket must have been issued by the Texas Lottery in an authorized manner;
11. The Ticket must not have been stolen, nor appear on any list of omitted Tickets or non-activated Tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The Ticket must be complete and not miscut and have exactly 55 (fifty-five) Play Symbols under the Latex Overprint on the front portion of the Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the Ticket;
14. The Serial Number of an apparent winning Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Tickets, and a Ticket with that Serial Number shall not have been paid previously;
15. The Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 55 (fifty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 55 (fifty-five) Play Symbols on the Ticket must be printed in the symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

## 2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets in a Pack will not have identical play data, spot for spot.

B. No more than four identical non-winning Prize Symbols on a Ticket.

C. The top Prize Symbol will appear at least once on every Ticket unless restricted by other parameters, play action or prize structure.

D. A non-winning Prize Symbol will never be the same as a winning Prize Symbol.

E. No matching WINNING NUMBERS Play Symbols on a Ticket.

F. No matching non-winning YOUR NUMBERS Play Symbols on a Ticket.

G. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 10 and \$10).

H. The "DOLLAR BILL" (win x 10) Play Symbol will only appear on intended winning Tickets as dictated by the prize structure.

I. The "MONEYBAG" (win all) Play Symbol will only appear on intended winning Tickets as dictated by the prize structure.

J. When the "MONEYBAG" (win all) Play Symbol appears, there will be no occurrence of any of YOUR NUMBERS Play Symbols matching to any WINNING NUMBERS Play Symbol.

## 2.3 Procedure for Claiming Prizes.

A. To claim a "BIG WINNING NUMBERS" Instant Game prize of \$10.00, \$20.00, \$25.00, \$50.00, \$100, \$200 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 \$25.00, \$50.00, \$100, \$200 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 "BIG WINNING NUMBERS" Instant Game prize of \$1,000, \$5,000, \$10,000 or \$250,000, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers.

If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "BIG WINNING NUMBERS" 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 "BIG WINNING NUMBERS" 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 "BIG WINNING NUMBERS" 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 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 8,040,000 Tickets in the Instant Game No. 1534. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1534 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$10	1,125,600	7.14
\$20	1,125,600	7.14
\$25	80,400	100.00
\$50	120,600	66.67
\$100	33,500	240.00
\$200	16,415	489.80
\$500	5,829	1,379.31
\$1,000	603	13,333.33
\$5,000	134	60,000.00
\$10,000	172	46,744.19
\$250,000	8	1,005,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 3.20. 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. 1534 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. 1534, the State Lottery Act (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-201302876

Bob Biard  
 General Counsel  
 Texas Lottery Commission  
 Filed: July 12, 2013



Instant Game Number 1557 "Super Weekly Grand"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1557 is "SUPER WEEKLY GRAND." The play style is "multiple games."

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1557 shall be \$10.00 per Ticket.

1.2 Definitions in Instant Game No. 1557.

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: \$10.00, \$20.00, \$50.00, \$100, \$200, \$1,000, GRAND SYMBOL, COIN SYMBOL, ANCHOR SYMBOL, LIMOUSINE SYMBOL, SPADE SYMBOL, BUTTERFLY SYMBOL, RING SYMBOL, LIGHTNING

BOLT SYMBOL, 3X SYMBOL, 01, 02, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49 and 50.

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. 1557 - 1.2D

PLAY SYMBOL	CAPTION
\$10.00	TEN\$
\$20.00	TWENTY
\$50.00	FIFTY
\$100	ONE HUND
\$200	TWO HUN
\$1,000	ONE THOU
GRAND SYMBOL	PRIZE
COIN SYMBOL	TRIPLE
ANCHOR SYMBOL	ANCHOR
LIMOUSINE SYMBOL	LIMO
SPADE SYMBOL	SPADE
BUTTERFLY SYMBOL	BTRFLY
RING SYMBOL	RING
LIGHTNING BOLT SYMBOL	LGHTNG
3X SYMBOL	WIN3X
01	ONE
02	TWO
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO



33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
41	FRON
42	FRTO
43	FRTH
44	FRFR
45	FRFV
46	FRSX
47	FRSV
48	FRET
49	FRNI
50	FFTY

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 \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$50.00, \$100, \$200 or \$500.

H. High-Tier Prize - A prize of \$1,000 or top prize of \$5,000/wk (\$5,000 per week for 20 years or Cash Value Option). The Cash Value Option of the prize will be determined at the time of claim and based on the cost of purchasing the annuity.

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 (1557), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 050 within each Pack. The format will be: 1557-0000001-001.

K. Pack - A Pack of "SUPER WEEKLY GRAND" Instant Game Tickets contains 050 Tickets, packed in plastic shrink-wrapping and fan-folded in pages of one (1). The back of Ticket 001 will be shown on the front of the Pack; the back of Ticket 050 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.

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 (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 "SUPER WEEKLY GRAND" Instant Game No. 1557 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 "SUPER WEEKLY GRAND" Instant Game is determined once the latex on the Ticket is scratched off to expose 51 (fifty-one) Play Symbols. GAME 1: If a player reveals 3 matching prize amounts, the player wins that amount. If a player reveals 2 matching prize amounts and a "COIN" Play Symbol, the player wins TRIPLE that prize! If a player reveals 3 "GRAND" Play Symbols, the player wins \$5,000 per week for 20 years. GAME 2: If a player matches 2 out of 3 Play Symbols, the player wins \$100 instantly. GAME 3: If YOUR NUMBER Play Symbol beats THEIR NUMBER Play Symbol in any one row across, the player wins the PRIZE for that row. If YOUR NUMBER Play Symbol is a "3X" Play Symbol, the player wins 3 TIMES the PRIZE for that row instantly! If a player wins a "GRAND" Play Symbol, the player wins \$5,000 per week for 20 years. 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 51 (fifty-one) 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 51 (fifty-one) 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 51 (fifty-one) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 51 (fifty-one) 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. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have identical patterns of either Play Symbols or Prize Symbols.

B. GENERAL: A Ticket will win as indicated by the prize structure.

C. GENERAL: A Ticket can win up to sixteen (16) times.

D. GAME 1: You can win up to one (1) time in this play area.

E. GAME 1: Winning games can have only one (1) set of three (3) matching Prize Symbols.

F. GAME 1: Winning games cannot have more than three (3) matching Prize Symbols.

G. GAME 1: On winning Tickets, two (2) matching Prize Symbols and the "COIN" Play Symbol will win TRIPLE the prize amount shown and will only win as per the prize structure.

H. GAME 1: There will never be more than one (1) "COIN" Play Symbol in this game.

I. GAME 1: On Non-Winning Tickets, the "COIN" Play Symbol may appear when all symbols are different.

J. GAME 1: The "COIN" Play Symbol will never appear on a Ticket which contains three (3) matching Prize Symbols.

K. GAME 1: No more than one pair of matching Prize Symbols will appear on a winning Ticket which does not contain a "COIN" Play Symbol.

L. GAME 1: No more than one pair of matching Prize Symbols will appear on a Ticket containing a "COIN" Play Symbol.

M. GAME 1: No Ticket will contain more than three (3) "GRAND" Prize Symbols.

N. GAME 1: Wins using the "GRAND" Prize Symbol will only appear as dictated by the prize structure.

O. GAME 2: There will never be more than two (2) matching Play Symbols in a game.

P. GAME 2: You can win up to one (1) time in this play area and wins will only appear as per the prize structure.

Q. GAME 3: You can win up to fourteen (14) times in this play area and wins will only appear as per the prize structure.

R. GAME 3: The YOUR NUMBER Play Symbol will never be the same as the THEIR NUMBER Play Symbol in the same row.

S. GAME 3: The YOUR NUMBER Play Symbol will never be a "01" Play Symbol.

T. GAME 3: The THEIR NUMBER Play Symbol will never be a "50" Play Symbol.

U. GAME 3: Non-winning rows on a Ticket will not have the same symbols regardless of order.

V. GAME 3: Wins revealing the "GRAND" Prize Symbol will only appear as per the prize structure.

W. GAME 3: The "3X" (triple) Play Symbol will never appear as a THEIR NUMBER Play Symbol.

X. GAME 3: The "3X" (triple) Play Symbol will never appear on Non-Winning Tickets.

Y. GAME 3: The "3X" (triple) Play Symbol will win triple the prize amount shown as per the prize structure.

## 2.3 Procedure for Claiming Prizes.

A. To claim a "SUPER WEEKLY GRAND" Instant Game prize of \$10.00, \$20.00, \$50.00, \$100, \$200 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, in some cases, required to pay a \$50.00, \$100, \$200 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 "SUPER WEEKLY GRAND" Instant Game prize of \$1,000, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. To claim a "SUPER WEEKLY GRAND" top level prize of \$5,000 per week for 20 years, the claimant must sign the winning Ticket and present it at Texas Lottery Commission headquarters in Austin, Texas. 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.

D. When claiming a "SUPER WEEKLY GRAND" Instant Game prize of \$5,000 per week for 20 years, the claimant must choose one of five (5) payment options for receiving his prize:

1. Cash Value Option via direct deposit transfer to the claimant/winner's account. For the top prize, a cash value option may be selected at the time of claiming the prize. The value of the prize will be determined at the time of claim and based on the cost of purchasing the annuity.

2. Weekly via direct deposit transfer to the claimant/winner's account. With this plan, a payment of \$5,000 less Federal withholding will be made once a week for 20 years. After the initial payment, installment payments will be made every Wednesday.

3. Monthly via direct deposit transfer to the claimant/winner's account. If the claim is made during the month, the claimant/winner will still receive the entire month's payment. This will allow the flow of payments throughout the 20 years to remain the same. With this plan, an initial payment of \$21,826 less Federal withholding will be made the month of the claim. Each additional month, a payment of \$21,666 less Federal withholding will be made once a month for 20 years. After the initial payment, installment payments will be made on the first business day of each month.

4. Quarterly via direct deposit transfer to the claimant/winner's account. If the claim is made during the quarter, the claimant/winner will still receive the entire quarter's payment. This will allow the flow of payments throughout the 20 years to remain the same. With this plan, a payment of \$65,000 less Federal withholding will be made each quarter (four times a year) for 20 years. After the initial payment, installment payments will be made on the first business day of the first month of every quarter (January, April, July, October).

5. Annually via direct deposit transfer to the claimant/winner's account. These payments will be made in a manner similar to how jackpot payments are currently handled. With this plan, a payment of \$260,000 less Federal withholding will be made once a year during the anniversary month of the claim for 20 years. After the initial payment, installment payments will be made on the first business day of the anniversary month.

E. As an alternative method of claiming a "SUPER WEEKLY GRAND" Instant Game prize of \$10.00, \$20.00, \$50.00, \$100, \$200, \$500 or \$1,000, 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.

F. 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.

G. 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.E 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 "SUPER WEEKLY GRAND" 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 "SUPER WEEKLY GRAND" 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 person-

nel as set forth in Government Code, §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Tickets ordered. The number of actual prizes available in a game may vary based on number of Tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game Ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game Ticket in the space designated, a Ticket shall be owned by the physical possessor of said Ticket. When a signature is placed on the back of the Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Ticket and shall

be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Ticket in the space designated. If more than one name appears on the back of the Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game Tickets and shall not be required to pay on a lost or stolen Instant Game Ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 12,000,000 Tickets in the Instant Game No. 1557. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1557 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$10	1,440,000	8.33
\$20	1,200,000	10.00
\$50	200,000	60.00
\$100	157,900	76.00
\$200	25,200	476.19
\$500	3,000	4,000.00
\$1,000	300	40,000.00
\$5,000/WK	3	4,000,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 3.97. 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. 1557 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. 1557, the State Lottery Act (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-201302877  
 Bob Biard  
 General Counsel  
 Texas Lottery Commission  
 Filed: July 12, 2013



Instant Game Number 1564 "Trim the Tree"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1564 is "TRIM THE TREE." The play style is "other."

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1564 shall be \$5.00 per Ticket.

1.2 Definitions in Instant Game No. 1564.

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: GIFT SYMBOL, STRING OF LIGHTS SYMBOL, CANDLE SYMBOL, CANDY CANE SYMBOL, CUP SYMBOL, DRUM SYMBOL, EARMUFFS SYMBOL, ICICLE SYMBOL, HAT SYM-

BOL, HOLLY SYMBOL, HORN SYMBOL, IGLOO SYMBOL, ORNAMENT SYMBOL, MITTEN SYMBOL, NUTCRACKER SYMBOL, REINDEER SYMBOL, SKATE SYMBOL, SLEIGH SYMBOL, SNOWFLAKE SYMBOL, SNOWMAN SYMBOL, STOCKING SYMBOL, BAG OF TOYS SYMBOL, STAR SYMBOL, BELL SYMBOL, WREATH SYMBOL, \$5.00, \$10.00, \$15.00, \$20.00, \$40.00, \$50.00, \$100, \$500, \$1,000 and \$100,000.

D. Play Symbols 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.1564 - 1.2D

PLAY SYMBOL	CAPTION
GIFT SYMBOL	GIFT
STRING OF LIGHTS SYMBOL	LIGHTS
CANDLE SYMBOL	CANDLE
CANDY CANE SYMBOL	CANE
CUP SYMBOL	CUP
DRUM SYMBOL	DRUM
EARMUFFS SYMBOL	EARMF
ICICLE SYMBOL	ICICLE
HAT SYMBOL	HAT
HOLLY SYMBOL	HOLLY
HORN SYMBOL	HORN
IGLOO SYMBOL	IGLOO
ORNAMENT SYMBOL	ORNAMENT
MITTEN SYMBOL	MITTEN
NUTCRACKER SYMBOL	NTCRKR
REINDEER SYMBOL	RNDEER
SKATE SYMBOL	SKATE
SLEIGH SYMBOL	SLEIGH
SNOWFLAKE SYMBOL	SNOWFLK
SNOWMAN SYMBOL	SNOWMAN
STOCKING SYMBOL	STOCKING
BAG OF TOYS SYMBOL	TOYS
STAR SYMBOL	STAR
BELL SYMBOL	WINX10
WREATH SYMBOL	WINALL
\$5.00	FIVE\$
\$10.00	TEN\$
\$15.00	FIFTN
\$20.00	TWENTY
\$40.00	FORTY
\$50.00	FIFTY
\$100	ONE HUND
\$500	FIV HUND
\$1,000	ONE THOU
\$100,000	HUN 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 \$5.00, \$10.00, \$15.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$50.00, \$100 or \$500.

H. High-Tier Prize - A prize of \$1,000 or \$100,000.

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 (1564), 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: 1564-0000001-001.

K. Pack - A Pack of "TRIM THE TREE" Instant Game Tickets contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The Packs will alternate. One will show the front of Ticket 001 and back of 075 while the other fold will show the back of Ticket 001 and front of 075.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (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 "TRIM THE TREE" Instant Game No. 1564 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 "TRIM THE TREE" Instant Game is determined once the latex on the Ticket is scratched off to expose 40 (forty) Play Symbols. The player must scratch the entire play area. If a player reveals a "STAR" Play Symbol, the player wins the prize for that Play Symbol. If a player reveals a "BELL" Play Symbol, the player wins 10 TIMES the prize for that Play Symbol. If a player reveals a "WREATH" Play Symbol, the player WINS ALL 20 PRIZES instantly! No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

#### 2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. Exactly 40 (forty) 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 40 (forty) 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 40 (forty) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 40 (forty) Play Symbols on the Ticket must be printed in the symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

#### 2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets in a Pack will not have identical play data, spot for spot.

B. No more than four matching non-winning Prize Symbols on a Ticket.

C. The top Prize Symbol will appear at least once on every Ticket unless restricted by other parameters, play action or prize structure.

D. A non-winning Prize Symbol will never be the same as a winning Prize Symbol.

E. No duplicate non-winning Play Symbols on a Ticket.

F. The "STAR" (win), "BELL" (win x 10) and "WREATH" (win all) Play Symbols will only appear on intended winning Tickets as dictated by the prize structure.

G. When the "WREATH" (win all) Play Symbol appears, there will be no occurrence of the "STAR" (win) or "BELL" (win x 10) Play Symbols.

### 2.3 Procedure for Claiming Prizes.

A. To claim a "TRIM THE TREE" Instant Game prize of \$5.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100 or \$500, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$50.00, \$100 or \$500 Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "TRIM THE TREE" Instant Game prize of \$1,000 or \$100,000, 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 "TRIM THE TREE" 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 "TRIM THE TREE" 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 "TRIM THE TREE" 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 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 8,040,000 Tickets in the Instant Game No. 1564. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1564 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$5	750,400	10.71
\$10	857,600	9.38
\$15	321,600	25.00
\$20	107,200	75.00
\$50	23,450	342.86
\$100	32,160	250.00
\$500	5,159	1,558.44
\$1,000	274	29,343.07
\$100,000	8	1,005,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 3.83. 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. 1564 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. 1564, the State Lottery Act (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-201302878  
 Bob Biard  
 General Counsel  
 Texas Lottery Commission  
 Filed: July 12, 2013



**License and Registry Fee Notice**

On July 11, 2013, the Texas Lottery Commission (Commission) voted to adopt amendments to 16 TAC §402.404, License and Registry Fees. Those amendments will become effective on July 31, 2013. The amendments would create a new bingo worker registration application fee and increase license fees for bingo conductors and commercial lessors. The new bingo worker registration application fee and fee increase for bingo conductor and commercial lessor licenses were both recommended by the Sunset Advisory Commission. Furthermore, the 83rd Legislature made certain funding for the Commission contingent on the Commission increasing fee rates.

Pursuant to §6.16, article IX, of the 2014 - 2015 General Appropriations Act, the Commission hereby gives notice to the payers of the

bingo worker registration application fee and the bingo conductor and commercial lessor license fees that the applicable fee rates have been set by the Commission and not mandated by the Legislature.

TRD-201302906  
 Bob Biard  
 General Counsel  
 Texas Lottery Commission  
 Filed: July 16, 2013



**Public Utility Commission of Texas**

**Notice of Application for Waiver from Requirements**

Notice is given to the public of an application filed on July 9, 2013, with the Public Utility Commission of Texas (commission) for waiver from the requirements in P.U.C. Substantive Rule §26.402.

Docket Style and Number: Petition of GCEC Telecom for a Good Cause Waiver from the Requirements of P.U.C. Substantive Rule §26.402 Regarding the Filing of a Five-Year Plan. Docket Number 41662.

The Application: GCEC Telecom is a competitive local exchange carrier (CLEC) and has been designated as an eligible telecommunications provider (ETP) and as an eligible telecommunications carrier (ETC) by the commission. GCEC Telecom requests that the commission grant for good cause a waiver of the requirements in P.U.C. Substantive Rule §26.402(d) that it file a five-year plan in 2013.

Pursuant to the rule, the report shall be filed by July 1, 2013, a date that coincided with the deadline for the Federal Communications Commission's (FCC) federal filing. However, on May 16, 2013, the FCC eliminated the requirement for the filing of a five-year plan by competitive ETCs and granted a limited waiver of the requirement that ETCs submit a five-year plan in 2013, instead requiring rate-of-return ETCs to file the five-year plans with their 2014 annual reports on July 1, 2014.



Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 41662.

TRD-201302895  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: July 15, 2013

◆ ◆ ◆  
**Texas Department of Savings and Mortgage Lending**

**Notice of Application for Change of Control of a State Savings Bank**

Notice is hereby given that on July 15, 2013, application was filed with the Savings and Mortgage Lending Commissioner of Texas for change of control of Strategic Growth Bank Incorporated, and therefore, Capital Bank SSB, El Paso, Texas, by David C. Hernandez.

This application is filed pursuant to 7 TAC §§75.121 - 75.127 of the Rules and Regulations Applicable to Texas Savings Banks. These rules are on file with the Secretary of State, Texas Register Division, or may be seen at the Department's offices in the Finance Commission Building, 2601 North Lamar, Suite 201, Austin, Texas 78705.

TRD-201302900  
Douglas B. Foster  
Commissioner  
Texas Department of Savings and Mortgage Lending  
Filed: July 16, 2013

◆ ◆ ◆  
**Texas Department of Transportation**

**Aviation Division - Request for Qualifications for Professional Architectural/Engineering Services**

The City of Goldthwaite, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive qualifications for professional aviation engineering design services for the current project as described below.

Current Project: City of Goldthwaite. TxDOT CSJ No.:14HG-GOLDW. Scope: Provide engineering/design services to:

1. Construct T-hangars
2. Construct T-hangar apron
3. Construct access road

The HUB goal for the current project is 9 percent. The TxDOT Project Manager is Ryan Hindman.

The following is a listing of proposed projects at the Goldthwaite/Mills County Airport during the course of the next five years through multiple grants.

Future scope work items for engineering/design services within the next five years may include the following: install a game-proof fence; install fuel system; rehabilitate and mark runway, taxiways, and aprons;

install beacon tower; install signage and lighting; and install electrical vault.

The City of Goldthwaite 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

<http://www.txdot.gov/inside-txdot/division/aviation/projects.html> by selecting "Goldthwaite/Mills County Airport."

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

<http://www.txdot.gov/inside-txdot/division/aviation/projects.html>.

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:

FIVE 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 4:00 p.m., August 20, 2013. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Beverly Longfellow.

The consultant selection committee will be composed of Aviation Division staff members. 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

<http://www.txdot.gov/inside-txdot/division/aviation/projects.html> under the Notice to Consultants link.

All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Beverly Longfellow, Grant Manager. For technical questions, please contact Ryan Hindman, Project Manager.

TRD-201302909  
Joanne Wright  
Deputy General Counsel  
Texas Department of Transportation  
Filed: July 16, 2013



#### Public Notice - Photographic Traffic Signal Enforcement Systems: Municipal Reporting of Traffic Crashes

The Texas Department of Transportation (department) is requesting that each municipality subject to the requirements contained in Transportation Code, §707.004 provide the required data to the department **no later than October 25, 2013**, in order for the department to meet the mandated deadline for an annual report to the Texas Legislature.

Pursuant to Transportation Code, §707.004, each municipality operating a photographic traffic signal enforcement system or planning to install such a system must compile and submit to the department certain statistical information. Before installing such a system, the municipality is required to submit a written report on the number and type of traffic crashes that have occurred at the intersection over the last 18 months prior to installation. The municipality is also required to provide annual reports to the department after installation showing the number and type of crashes that have occurred at the intersection.

The department is required by Transportation Code, §707.004 to produce an annual report of the information submitted to the department by December 1 of each year.

The department has created a web page detailing municipal reporting requirements and to allow the required data to be submitted electronically:

<http://www.txdot.gov/driver/laws/red-light.html>.

For additional information contact the Texas Department of Transportation, Traffic Operations Division, 125 East 11th Street, Austin, Texas 78701-2483 or call (512) 416-3118.

TRD-201302872  
Angie Parker  
Associate General Counsel  
Texas Department of Transportation  
Filed: July 12, 2013



#### Request for Qualifications - Loop 375 Border Highway West Extension Project in El Paso County, Texas

Pursuant to the authority granted under Texas Transportation Code, Chapter 223, (enabling legislation), the Texas Department of Transportation (department) may enter into public-private partnership agreements, also known as comprehensive development agreements, for the design, development, construction, financing, maintenance, and operation of a toll project on the state highway system. The enabling legislation authorizes private involvement in toll projects and provides a process for the department to solicit proposals for such projects. Transportation Code, §223.203 prescribes requirements for issuance of a request for qualifications and requires the department to publish a notice in the *Texas Register* if the department decides to issue a request for qualifications for a project. The Texas Transportation Commission

(commission) has promulgated rules located at Title 43, Texas Administrative Code, §§27.1 - 27.10 (the rules), governing the submission and processing of qualifications submittals, and providing for publication of notice that the department is requesting qualifications submittals, and setting forth the basic criteria for professional experience, technical competence, and capability to complete a proposed project, and such other information the department considers relevant or necessary in the request for qualifications. The commission has authorized the issuance of a request for qualifications to develop, design, construct, and maintain the Loop 375 Border Highway West Extension Project (Loop 375 BHW Project) in El Paso County from Racetrack Drive near Doniphan Road and New Mexico 273 (west of downtown) to US 54 (east of downtown), a distance of approximately 9 miles, through a public-private partnership agreement (P3A). The project will add capacity by providing a new four-lane, controlled access facility, which may be supported by toll revenues, from Racetrack Drive to the terminus of the existing Loop 374, in the vicinity of Santa Fe Street, a distance of approximately 7 miles. A two mile section at the eastern end of this facility will incorporate several improvements to the existing segment of Loop 375 from Santa Fe Street to US 54.

On June 27, 2013, in Minute Order 113618, the commission authorized the department to commence the procurement process for the project under the enabling legislation. This notice represents the next step in the process.

Through this notice, the department is seeking qualifications submittals (QS) from teams interested in entering into a design build P3A in response to a request for qualifications (RFQ). The department intends to evaluate any QS received and may request submission of detailed proposals, potentially leading to negotiation, award, and execution of a P3A. The department will accept for consideration any QS received in accordance with the rules and the RFQ on or before the deadline in this notice. The department anticipates issuing the RFQ, receiving and analyzing the QSs, developing a shortlist of proposing entities or consortia, and issuing a request for detailed proposals (RFP) to the short-listed entities. After review and a best value evaluation of the responses to the RFP, the department may negotiate and enter into a P3A for the project.

**RFQ Evaluation Criteria.** QSs will be evaluated by the department for shortlisting purposes using the following general criteria: technical qualifications and capability, statement of technical approach, and safety qualifications. The specific criteria under the foregoing categories will be identified in the RFQ, as will the relative weighting of the criteria.

**Release of RFQ and Due Date.** The department currently anticipates that the RFQ will be available on or about July 26, 2013. Copies of the RFQ will be available at the Texas Department of Transportation, 814 Arion Parkway, Suite 401, San Antonio, Texas 78216, and on the following website:

<http://www.txdot.gov/inside-txdot/projects/studies/el-paso/border-highway-west.html>

QSs will be due at 12:00 p.m. Central Time on September 12, 2013 at the address specified in the RFQ.

TRD-201302933  
Jack Ingram  
Associate General Counsel  
Texas Department of Transportation  
Filed: July 17, 2013



## How to Use the Texas Register

**Information Available:** The 14 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

**Governor** - Appointments, executive orders, and proclamations.

**Attorney General** - summaries of requests for opinions, opinions, and open records decisions.

**Secretary of State** - opinions based on the election laws.

**Texas Ethics Commission** - summaries of requests for opinions and opinions.

**Emergency Rules**- sections adopted by state agencies on an emergency basis.

**Proposed Rules** - sections proposed for adoption.

**Withdrawn Rules** - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

**Adopted Rules** - sections adopted following public comment period.

**Texas Department of Insurance Exempt Filings** - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

**Texas Department of Banking** - opinions and exempt rules filed by the Texas Department of Banking.

**Tables and Graphics** - graphic material from the proposed, emergency and adopted sections.

**Transferred Rules**- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

**In Addition** - miscellaneous information required to be published by statute or provided as a public service.

**Review of Agency Rules** - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

**How to Cite:** Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 36 (2011) is cited as follows: 36 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "36 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 36 TexReg 3."

**How to Research:** The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: <http://www.sos.state.tx.us>. The *Register* is available in an .html version as well as a .pdf (portable document

format) version through the internet. For website information, call the Texas Register at (512) 463-5561.

## Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>.

The following companies also provide complete copies of the TAC: Lexis-Nexis (800-356-6548), and West Publishing Company (800-328-9352).

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

**How to Cite:** Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

**How to update:** To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*. The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*. If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

### TITLE 1. ADMINISTRATION

#### Part 4. Office of the Secretary of State

#### Chapter 91. Texas Register

40 TAC §3.704.....950 (P)