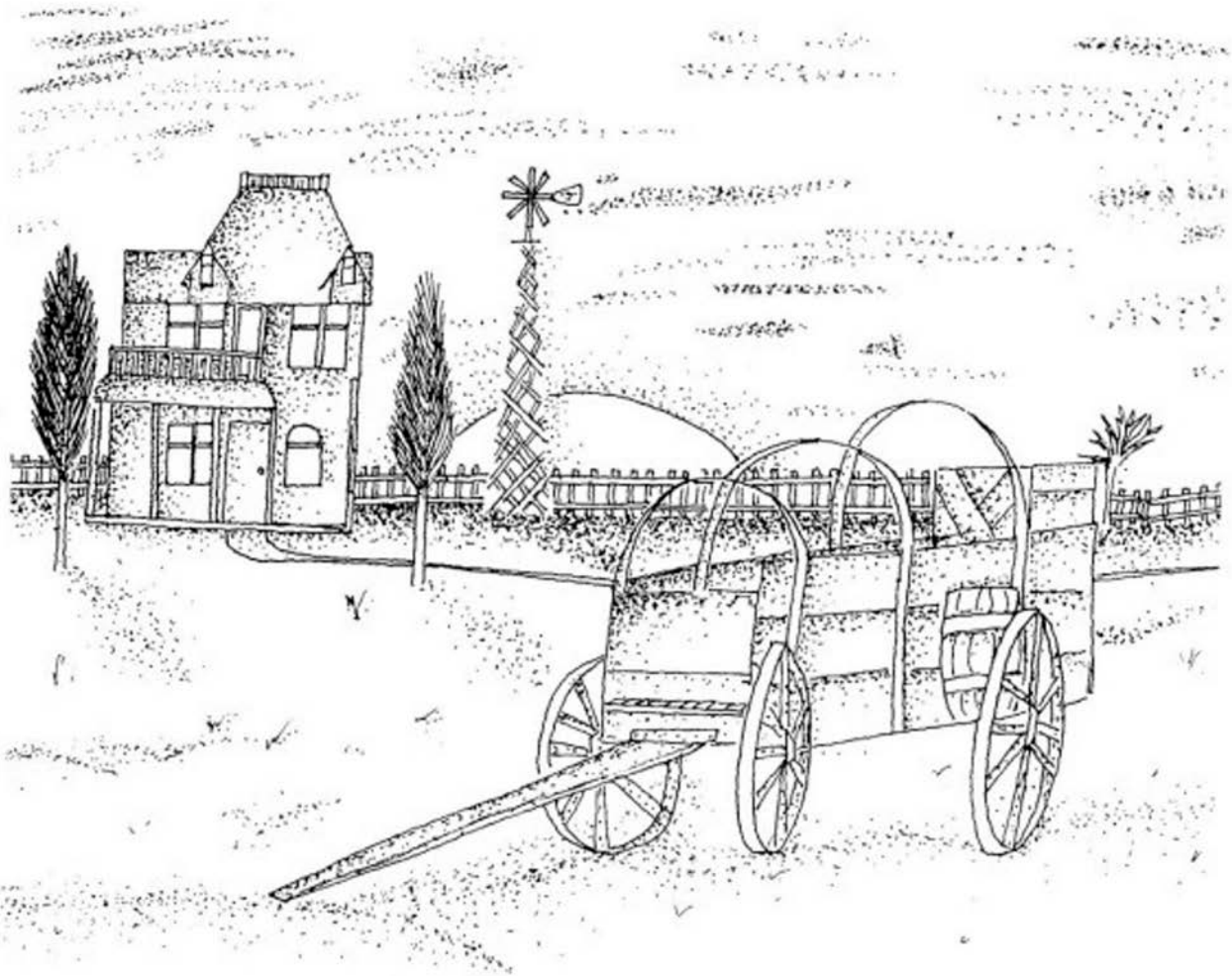

TEXAS REGISTER

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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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Open Meetings

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

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

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

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

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

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

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

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

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

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

THE ATTORNEY GENERAL

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

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

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

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

Requests for Opinions

RQ-1136-GA

Requestor:

Mr. David Slayton

Administrative Director

Office of Court Administration

Post Office Box 12066

Austin, Texas 78711-2066

Re: Confidentiality of records in juvenile misdemeanor cases (RQ-1136-GA)

Briefs requested by August 6, 2013

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

TRD-201303003

Katherine Cary

General Counsel

Office of the Attorney General

Filed: July 24, 2013

◆ ◆ ◆

Opinions

Opinion No. GA-1013

The Honorable Joshua Hamby

Howard County Attorney

Post Office Box 2096

Big Spring, Texas 79721-2096

Re: Whether a commissioners court may require a permit and charge a fee for installing an access point to a county road (RQ-1110-GA)

S U M M A R Y

Transportation Code §251.003 and §251.016 authorize a commissioners court to require permits for the construction within the county right-of-way of access points to county roads. Section 251.017 authorizes a commissioners court to set a reasonable fee for such permits.

Opinion No. GA-1014

The Honorable Elton R. Mathis

Waller County Criminal District Attorney

645 12th Street

Hempstead, Texas 77445

Re: Whether counties operating under the County Road Department System may accept money from private entities in exchange for agreeing to repair or improve county roads designated by the private entities (RQ-1111-GA)

S U M M A R Y

In counties operating under the County Road Department System, the county commissioners court has discretion, subject to judicial review, under §81.032 of the Local Government Code to determine whether and under what conditions to accept monetary donations from private entities. While a county commissioners court may not delegate its decision-making power over improving public roads, it has the authority to accept donations subject to conditions so long as the conditions are reasonable and not inconsistent with other law. In deciding whether to accept any specific donation, the commissioners court should carefully evaluate all factors relevant to the improvement of any particular road.

Opinion No. GA-1015

The Honorable Harvey Hilderbran

Chair, Committee on Ways & Means

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether machinery and equipment at a cattle feedlot are used in the "production of farm or ranch products" for purposes of Tax Code §11.161 (RQ-1113-GA)

S U M M A R Y

The Comptroller's interpretation of Tax Code §11.161, that a cattle feedlot is engaged in the "production of farm or ranch products," is reasonable and does not contravene any statute. Accordingly, a court would likely uphold the Comptroller's interpretation of §11.161.

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

TRD-201302998

Katherine Cary
General Counsel
Office of the Attorney General
Filed: July 23, 2013



PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 5. TEXAS FACILITIES COMMISSION

CHAPTER 111. ADMINISTRATION SUBCHAPTER B. GENERAL PROVISIONS

1 TAC §111.25

Introduction and Background.

The Texas Facilities Commission ("Commission") proposes new §111.25, concerning Negotiated Rulemaking. Senate Bill 211, passed by the 83rd Legislature and effective June 14, 2011, added a new section to Chapter 2152 of the Texas Government Code, §2152.066. The new section directs the Commission to develop and implement negotiated rulemaking procedures. Upon researching the procedures and processes of other state agencies, the Commission has determined that the negotiated rulemaking procedures should be formally adopted by rule. The Commission further determined that the new rule should be added to Subchapter B, General Provisions, of Chapter 111, Title 1 of the Texas Administrative Code, which also addresses rule-making procedures of the Commission.

This new rule is proposed pursuant to Texas Government Code §2152.066, Act of May 26, 2013, 83rd Leg., R.S., S.B. 211, §6 (to be codified at Texas Government Code §2152.066), requiring the Commission to develop negotiated rulemaking procedures and Texas Government Code §2001.004(1) (Vernon 2008), which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

Section by Section Summary.

The Commission proposes Texas Administrative Code, Title 1, Part 5, §111.25, relating to negotiated rulemaking procedures. The new rule provides clarification concerning the process to be followed by the Commission when undertaking negotiated rulemaking pursuant to Chapter 2008 of the Texas Government Code, the Negotiated Rulemaking Act.

Fiscal Note.

Terry Keel, Executive Director, has determined that for each year of the first five-year period the proposed rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rule.

Public Benefit/Cost Note.

Mr. Keel has also determined that for each year of the first five-year period the proposed rule is in effect the public benefit will be further clarification of the negotiated rulemaking process.

Mr. Keel has further determined that there will be no effect on individuals or large, small, and micro-businesses as a result of the proposed rule. Consequently, an Economic Impact Statement and Regulatory Flexibility Analysis, pursuant to Texas Government Code §2006.002 (Vernon 2008), are not required.

In addition, Mr. Keel has determined that for each year of the first five-year period the proposed rule is in effect there should be no effect on a local economy; therefore, no local employment impact statement is required under Administrative Procedure Act, Texas Government Code §2001.022 (Vernon 2008).

Request for Comments.

Interested persons may submit written comments on the proposed rules to the General Counsel, Legal Services Division, Texas Facilities Commission, P.O. Box 13047, Austin, Texas 78711-3047. Comments may also be sent via email to rulescomments@tfc.state.tx.us. For comments submitted electronically, please include "Section 111.25 Negotiated Rulemaking" in the subject line. Comments must be received no later than thirty (30) days from the date of publication of the proposed rule in the *Texas Register*. Comments should be organized in a manner consistent with the organization of the proposed rule. Questions concerning the proposed new rule may be directed to Ms. Kay Molina, General Counsel, at (512) 463-7220.

Statutory Authority.

The new rule is proposed pursuant to Texas Government Code §2152.066, Act of May 26, 2013, 83rd Leg., R. S., S.B. 211, §6 (to be codified at Texas Government Code §2152.066) requiring the Commission to develop a negotiated rulemaking policy and procedures and Texas Government Code §2001.004(1) (Vernon 2008), which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

Cross Reference to Statute.

The statutory provisions affected by the proposed rule are those set forth in Texas Government Code §2152.066, Act of May 26, 2013, 83rd Leg., R.S., S.B. 211, §6 (to be codified at Texas Government Code §2152.066).

§111.25. Negotiated Rulemaking.

(a) The Commission will undertake negotiated rulemaking procedures when the Commission is of the opinion that proposed rules are likely to be complex, controversial, or may affect disparate groups.

(b) When negotiated rulemaking is to be considered, the Commission will appoint a convener, in accordance with Government Code, §2008.052, to assist in determining whether it is advisable to proceed. The convener shall have the duties as described in Chapter 2008, Government Code, and shall make a recommendation to the Executive Director to proceed or to defer negotiated rulemaking. The recommen-

ation shall be made after the convener, at a minimum, has considered all of the items set forth in Government Code, §2008.052(c).

(c) Upon the convener's recommendation to proceed, the Commission shall initiate negotiated rulemaking according to the provisions of Chapter 2008, Government Code.

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

Filed with the Office of the Secretary of State on July 18, 2013.

TRD-201302945

Kay Molina

General Counsel

Texas Facilities Commission

Earliest possible date of adoption: September 1, 2013

For further information, please call: (512) 463-4257



PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER A. PURCHASED HEALTH SERVICES

The Texas Health and Human Services Commission (HHSC) proposes to amend §354.1005, concerning unauthorized charges, and §354.1131, concerning payments to eligible providers.

Background and Justification

HHSC proposes to amend §354.1005 and §354.1131 to update obsolete Texas Administrative Code citations, update agency and program names, clarify the use of inconsistent terminology, and align the rules with HHSC's preferred drafting style. The amendments do not change current agency policy or practice.

HHSC is the sole state agency responsible for administering the Texas Medicaid Program. Effective September 1, 2001, HHSC assumed the operation of certain aspects of the Texas Medicaid Program previously operated by the Department of Health. As a result of this transfer, summarized in the May 24, 2002, issue of the *Texas Register* (27 TexReg 4561), certain rules at Texas Administrative Code, Title 25, Part 1, Chapter 29, were moved to Title 1, Part 15, Chapter 354, Subchapter A and renumbered. The proposed amendments update obsolete citations and agency names related to this transfer.

The proposed amendments align the rules with HHSC's preferred drafting style. Whenever possible, HHSC prefers drafting rules in the singular and using concise and consistent terminology, including defined terms. According to §311.012(b) of the Texas Government Code, use of the singular includes the plural.

Section-by-Section Summary

Proposed §354.1005(b) replaces a reference to §29.1101 with §354.1131.

Proposed §354.1131(a) replaces the phrase, "makes payments to," with the simpler verb, "pays." The proposed subsection also replaces a reference to "authorized benefits as defined in this

chapter" with the simpler and more accurate phrase, "a service that is a benefit of the Texas Medicaid Program." The proposed subsection also removes the unnecessary phrase, "items of service."

Proposed §354.1131(b) clarifies that the subsection refers to Medicaid payment for a covered service. The proposed subsection removes two uses of the term "cannot" and replaces the word with more appropriate terminology, "may not" and "is not." The proposed subsection also removes the unnecessary phrase, "have agreed to," to clarify that an eligible provider must accept Medicaid payment as payment in full. With the phrase, "other recourse against any eligible recipient," the proposed subsection corrects a grammatical error and makes the language consistent with language in §354.1005(a). The proposed subsection also removes stilted language to clarify that a provider may charge an eligible recipient for a service that is outside the amount, duration, and scope of benefits of the Texas Medicaid Program.

Proposed §354.1131(c) replaces an "or" with an "and" to make the language consistent with the rest of the section: "amount, duration, and scope of benefits of the Texas Medicaid Program."

Proposed §354.1131(d) replaces a reference to §29.1112(a)(12) with §354.1149(a), which states that HHSC will not pay for services or supplies that are not medically necessary.

Proposed §354.1131(f) replaces a reference to "providers who do not file Medicaid claims" with "a provider who does not participate in the Texas Medicaid Program" to make the sentence consistent with the rest of the subsection. The proposed subsection clarifies that a provider who does not participate in the Texas Medicaid Program should inform an eligible recipient that the provider will not file a Medicaid claim for any service provided to the recipient.

Proposed §354.1131(g) amends a reference to a service that is "beyond the amount, duration, and scope of the Texas Medicaid Program" to make the phrase consistent with other uses throughout the rule: "outside the amount, duration, and scope of the benefits of the Texas Medicaid Program."

Proposed §354.1131 updates the name of the agency. Proposed §354.1131 removes references to "the department," "the Department of Health," and the department's "health insuring agent" and replaces these references with references to HHSC or its designee. This amendment more accurately reflects the current structure of the Texas Medicaid Program, which incorporates both managed care organizations (MCOs) and a fiscal agent. Proposed §354.1131 also replaces references to "medical care and services" and "service(s) or treatment(s)" with the simpler term "service."

Throughout proposed §354.1005 and proposed §354.1131, the term "Texas Medical Assistance Program" is revised to "Texas Medicaid Program" to reflect the program's more common name. In accordance with HHSC's preferred drafting style, proposed §354.1005 and §354.1131 replace references to plural nouns, such as "eligible providers," with singular nouns, such as "an eligible provider" or "the eligible provider" and changes the conjugation of verbs accordingly. To avoid confusion, proposed §354.1005 and §354.1131 add references to the terms "eligible recipient" and "eligible provider," which are defined terms in Texas Administrative Code, Title 1, Part 15, Chapter 354, Subchapter A.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that, for each year of the first five years that the amended rules will be in effect, there will be no fiscal impact to local governments or the state government. Enforcing or administering the sections does not have foreseeable implications relating to costs or revenues of local governments or the state government.

Small and Micro-business Impact Analysis

HHSC has determined that there will be no adverse economic effect on small or micro-businesses as a result of enforcing or administering these amended rules, as the changes proposed do not change policy or practice.

Public Benefit and Costs

Chris Traylor, Chief Deputy Commissioner, has determined that for each year of the first five years the amended rules will be in effect, the public benefit expected as a result of adopting the proposed rules is correct rule citations.

Greta Rymal, Deputy Executive Commissioner for Financial Services, anticipates that, for each year of the first five years that the amended rules will be in effect, there will not be an economic cost to persons who are required to comply with the amendments.

HHSC has determined that the amended rules will not affect a local economy or local employment.

Regulatory Analysis

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

Takings Impact Assessment

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

Public Comment

Written comments on the proposal may be submitted to Alexander Melis, Medicaid/CHIP Policy Development, Texas Health and Human Services Commission, P.O. Box, 85200, MC-H310, Austin, Texas 78708-5200; by fax to (512) 462-6270 or by e-mail to alex.melis@hhsc.state.tx.us within 30 days of publication in the *Texas Register*.

DIVISION 1. MEDICAID PROCEDURES FOR PROVIDERS

1 TAC §354.1005

Statutory Authority

The amendment is proposed under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out HHSC's duties under Texas Government Code, Chapter 531; and Texas Human Resources Code §32.021 and Texas Government Code

§531.021, which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

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

§354.1005. *Unauthorized Charges.*

(a) An eligible provider [Eligible providers] must certify that no charges beyond reimbursement paid under the Texas Medicaid [Medical Assistance] Program for a covered service has [services have] been, or will be, billed to an [the] eligible recipient.

(b) Within the provisions cited in §354.1131 [§29.1101] of this chapter (relating to Payments [Payment] to Eligible Providers), an eligible provider [providers] may not bill [eligible recipients] or take other recourse against an eligible recipient [recipients] for claims denied as a result of an error [error(s)] attributed to the provider.

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 22, 2013.

TRD-201302962

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: September 1, 2013

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



DIVISION 11. GENERAL ADMINISTRATION

1 TAC §354.1131

Statutory Authority

The amendment is proposed under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out HHSC's duties under Texas Government Code, Chapter 531; and Texas Human Resources Code §32.021 and Texas Government Code §531.021, which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

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

§354.1131. *Payments to Eligible Providers.*

(a) The Health and Human Services Commission or its designee (HHSC) pays an [health insuring agent makes payments to] eligible provider [providers] on behalf of an eligible recipient [recipients] for a service that is a benefit of the Texas Medicaid Program [authorized benefits as defined in this chapter] when the [items of] service is [are] medically necessary for diagnosis or treatment, or both, of illness or injury, or when the [such items of] service is [are] appropriately authorized for prevention of the occurrence of a medical condition, and is [are] prescribed by a physician or doctor, as appropriate to the particular benefit [benefits], in accordance with the utilization review provisions of this chapter.

(b) Subject to the qualifications, limitations, and exclusions set forth in this chapter, Medicaid payment [payments] for a covered service is [services covered are] made only to an eligible provider [providers] of that service [such services]. The provider must [have

agreed to] accept payment of the reasonable charge, reasonable costs, or stipulated fee for service, as appropriate to the eligible provider, as the full and complete payment. The provider may not [cannot] charge or take other recourse against [to] any eligible recipient for a service [services] for which payment is made or will be made, except as may otherwise be specifically provided. An eligible provider may charge an [Eligible providers are not precluded from charging] eligible recipient [recipients] for a service that is [medical care and services which are] outside the amount, duration, and scope of benefits of the Texas Medicaid [Medical Assistance] Program. Payment for a covered service is not [medical care and services cannot be] made to any eligible recipient.

(c) An eligible provider [Providers] may not bill [eligible recipients] or take other recourse against an eligible recipient [recipients] for a denied or reduced claim [claims] for a service that is [medical care and services] within the amount, duration, and [or] scope of benefits of the Texas [Medical Assistance (Medicaid)] Program if the denial or payment reduction results [reductions result] from any of the following, as determined by HHSC [the department or its health insuring agent]:

(1) the provider's failure to submit a claim, including claims that are not received by HHSC [the department or its health insuring agent];

(2) the provider's failure to submit a claim within the claims filing period established by HHSC [the department or its health insuring agent];

(3) the filing of an unsigned or otherwise incomplete claim, including but not limited to, failure to submit a valid hysterectomy acknowledgment statement or sterilization consent form when these forms are required for the applicable procedures;

(4) the filing of an incorrect claim;

(5) the provider's failure to resubmit a claim within the resubmittal period established by HHSC [the department or its health insuring agent];

(6) the provider's failure to appeal a claim within the appeal filing period(s) established by HHSC [the department or its health insuring agent];

(7) errors made in the claims preparation, submission, or appeal processes that are attributable to the provider as discerned by HHSC [the department or its health insuring agent].

(d) HHSC [The department] does not pay claims for services that are not reasonable and medically necessary according to the criteria established by HHSC [the department and its health insuring agent], as cited at §354.1149(a) [§29.1112(a)(12)] of this chapter (relating to Exclusions and Limitations [and Exclusions]). An eligible [The] provider may bill an eligible [the] recipient only if:

(1) a specific service is provided at the request of the recipient; and

(2) the provider has obtained and kept a written acknowledgment, signed by the recipient, that states: "I understand that, in the opinion of (provider's name), the services or items that I have requested to be provided to me on (dates of service) may not be covered under the Texas Medicaid [Medical Assistance] Program as being reasonable and medically necessary for my care. I understand that the Texas Health and Human Services Commission [Department of Health] or its designee [health insuring agent] determines the medical necessity of the services or items that I request and receive. I also understand that I am responsible for payment of the services or items I request and receive if these services or items are determined not to be reasonable and medically necessary for my care."["]

(e) An attempt by the eligible provider to bill or recover money from an eligible recipient [recipients] beyond the conditions stated in subsection (d) and subsection (g) of this section is in noncompliance with these rules and constitutes a violation of the agreement between HHSC [the department] and the provider for participation in the Texas [Medical Assistance (Medicaid)] Program.

(f) Before providing a service to an eligible recipient, a provider [Providers] who does [do] not participate in the Texas Medicaid Program [file Medicaid claims] should inform the eligible recipient that the provider will not file a Medicaid claim for [recipients before providing] any service provided to the recipient. A recipient [service(s) or treatment(s). Recipients] receiving a service [service(s) or treatment(s)] from a provider [providers] who does [do] not participate in the Texas Medicaid Program is [are] directly responsible for the payment of that service [those services or treatment]. HHSC has [The department and its health insuring agent have] no liability for reimbursement for any service provided [services or treatment] to an eligible recipient [recipients] by a provider who does not participate [providers not participating] in the Texas Medicaid Program.

(g) An eligible recipient is [Recipients are] responsible for any service the eligible recipient receives [medical care or services they receive] that is outside [are beyond] the amount, duration, and scope of benefits of the Texas Medicaid Program, as determined by HHSC [the department or its health insuring agent]. An eligible provider [Providers] must inform the recipient [recipients] of this responsibility.

(h) Each eligible provider must provide covered Medicaid services to eligible Medicaid recipients in the same manner, to the same extent, and of the same quality as services provided to other patients. A service [Services] made available to other patients must be made available to an eligible recipient [recipients] if the service is [services are] covered by the Texas Medicaid [Medical Assistance] Program. The provider may [must] not bill the recipient for a covered service [services].

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

Filed with the Office of the Secretary of State on July 22, 2013.

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Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: September 1, 2013

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



DIVISION 11. GENERAL ADMINISTRATION

1 TAC §354.1149, §354.1175

The Texas Health and Human Services Commission (HHSC) proposes to amend §354.1149, concerning Exclusions and Limitations, and §354.1175, concerning Organ Transplants.

Background and Justification

Section 6507 of the Patient Protection and Affordable Care Act (PPACA) requires a state Medicaid program, for claims filed on or after October 1, 2010, to use mechanized claims processing and information retrieval systems that are compatible with National Correct Coding Initiative (NCCI) methodologies that have been identified by the Secretary of Health and Human

Services. HHSC accordingly implemented the specified NCCI medical coding edits for claims processing.

HHSC proposes to amend §354.1149 and §354.1175 to be consistent with claims processing system processes that have been implemented as part of the new methodologies. Specifically, the claims processing system now processes inpatient hospitalization and related expenditures on all claims that exceed the annual individual inpatient cap of \$200,000 sequentially, based on the date of service, rather than based on the date billings are received

In addition to the amendments proposed to effectuate section 6507 of the PPACA, HHSC proposes to amend §354.1175 to correct rule and agency references.

Section-by-Section Summary

Proposed amended §354.1149(a)(15) replaces "in order of receipt" with "based on the sequential date of service" to reflect that claims are processed in order of service date and not in order of receipt.

Proposed amended §354.1175(c) replaces the reference to §29.1112 with a reference to §354.1149. The substance of §29.1112 was transferred to §354.1149 in 2002. See the May 24, 2002, issue of the *Texas Register* (27 TexReg 4561). In the same year, several Medicaid programs previously administered by the Texas Department of Health were transferred to HHSC, see *id.*, so current references to "the department" are confusing and are proposed to be changed to "HHSC."

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the amended rules are in effect, there will be no fiscal impact to state government. Local governments will not incur additional costs.

Ms. Rymal anticipates that, for each year of the first five years the rules will be in effect, there will be no economic costs to persons who are required to comply with the proposed rules. There is no anticipated negative impact on local employment.

Small and Micro-business Impact Analysis

HHSC has determined that there will be no adverse economic effect on small businesses or micro-businesses to comply with the amendments, because the number of inpatient Medicaid cases with charges amounting to more than \$200,000 is very small and unlikely to affect small or micro-businesses. Only 26 such cases occurred from September 2011 through January 2013, and no hospital or attending physician involved in those cases met the definition of a small business or a micro-business.

Public Benefit

Chris Traylor, Chief Deputy Commissioner, has determined that for each year of the first five years the sections are in effect, the public will benefit from the adoption of the rules. The anticipated public benefit of enforcing the proposed amended rules is that claims are currently being processed based on sequential date of service and not based on the date of receipt.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "major environmental rule" is defined to mean a rule that is specifically intended to protect the environment or reduce risk to human health from environmental exposure and that may

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

Takings Impact Assessment

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

Public Comment

Written comments on the proposal may be submitted to Pat Boone, Senior Program Specialist, Medicaid/CHIP Division, Health and Human Services Commission, Mail Code H-390, 4900 N. Lamar Boulevard, P.O. Box 13247, Austin, Texas 78711; by fax to (512) 249-3707; or by email to pat.boone@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

Statutory Authority

The amendments are proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and 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.

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

§354.1149. Exclusions and Limitations.

(a) Notwithstanding any other provision of this subchapter, Medicaid services or supplies that are not medically necessary will not be considered for Medicaid reimbursement. The following benefit exclusions and limitations are applicable under the Medicaid program for services provided under this subchapter. They do not apply to Medicaid services provided through the Texas Health Steps Comprehensive Care Program. Additional exclusions and limitations are listed in the Texas Medicaid Provider Procedures Manual. The following benefits are not included in the Texas Medicaid Program:

(1) services provided to any individual who is an inmate in a public institution (except as a patient in a medical institution approved for participation in the Medicaid program), or is a patient in:

(A) an institution for tuberculosis;

(B) the hospital or nursing sections of facilities for persons with intellectual and developmental disabilities; or

(C) an institution for mental disease if the patient is between the ages of 22 and 64;

(2) special shoes or other supportive devices for the feet and ambulation aids (except as provided for in the home health services program);

(3) any services provided by military medical facilities, except:

(A) those military hospitals enrolled to provide inpatient emergency services;

(B) Veterans Administration facilities; or

(C) United States Public Health Service hospitals;

(4) care and treatment related to any condition covered by workers' compensation laws;

(5) care, treatment, or other services by a doctor of dentistry unless:

(A) the recipient's dental diagnosis is causally related to a life-threatening medical condition; or

(B) the treatment is specifically authorized by the Health and Human Services Commission (HHSC) or its designee;

(6) any care or services to the extent that a benefit is paid or payable under Medicare;

(7) any services or supplies provided to an individual before the effective date of designation by HHSC as an eligible recipient or after the effective date of denial as an eligible recipient except orthodontic services that are authorized and initiated while the recipient is eligible for Medicaid may be continued for 36 months after a recipient is no longer Medicaid eligible;

(8) any services or supplies provided in connection with cosmetic surgery except as required for the prompt repair of accidental injury or for improvement of the functioning of a malformed body member;

(9) immunizations specifically for travel to or from foreign countries. Immunizations included on the immunization schedule approved by the Advisory Committee on Immunization Practices (ACIP) are a benefit unless an immunization is specifically excluded by HHSC;

(10) any services provided by an immediate relative of the eligible recipient or member of the eligible recipient's household except for personal care services;

(11) custodial care;

(12) any services or supplies provided outside of the United States, except for Medicare deductible and coinsurance amounts subject to the limits specified in §354.1143 of this title (relating to Coordination of Medicaid with Medicare Parts A, B, and C);

(13) any services or supplies not provided for in this chapter;

(14) any services or supplies not provided for in this chapter for:

(A) the treatment of flat foot conditions and the prescription of supportive devices therefor;

(B) the treatment of subluxations of the foot;

(C) routine foot care (including the cutting or removal of corns, warts, or calluses, the trimming of nails, and other routine hygiene care);

(15) any medical and remedial care, services, and supplies provided to a hospital inpatient after total hospitalization-related expenditures under the Medicaid Program reach \$200,000 per recipient, per 12-month benefit period unless the services are exempted by subparagraphs (A) - (C) of this paragraph. For the purposes of this limit, "12-month benefit period" means 12 consecutive months beginning November 1 of each year and ending October 31 of the next year. The limit applies to hospitalization-related services while the recipient is a hospital inpatient regardless of where the services are provided, how soon within the 12-month period the limit is reached, and how many hospital stays are involved. For the purposes of this limit, HHSC or its designee processes and pays claims, if payable, based on the sequential

date of service [in order of receipt]. The services exempted from the \$200,000 limit are:

(A) covered benefits under §354.1175 of this title (relating to Organ Transplants);

(B) care, services, and supplies otherwise authorized by HHSC; and

(C) physician services as allowed by Title XIX laws and regulations and state law;

(16) any services or supplies that are experimental or investigational.

(b) Outpatient Behavioral Health Services. Benefits to an individual for the diagnosis or treatment of mental disease, psychoneurotic, and personality disorders while not confined as an inpatient in a hospital are limited to 30 visits to enrolled practitioners per calendar year. This utilization control limitation may be exceeded when prior authorized on a case-by-case-basis.

(c) Private Room Facilities. Private room facilities are not a benefit unless a facility submits a physician's certification of medical necessity to HHSC or its designee certifying that one of the following conditions is met:

(1) the recipient, based on a medical opinion, has a critical or contagious illness;

(2) the eligible recipient's condition results in undue disturbance to other patients; or

(3) the need for care is emergent and lower cost facilities are not immediately available.

(d) Institutional Care. Separate payments are not made for services and supplies in an institution where the reimbursement formula and vendor payment include such services or supplies as a part of the institutional care.

§354.1175. Organ Transplants.

(a) Subject to the specifications, conditions, and limitations established by the Health and Human Services Commission (HHSC) [department], organ transplant services are covered as follows:

(1) Coverage is limited to those services, as approved by HHSC [the department] or its designee, that are determined to be reasonable, medically necessary, and standard medical procedures.

(2) Coverage includes solid and nonsolid organ procurement (including acquiring/harvesting, processing, preserving, storing, distributing, and tissue typing). If a hospital obtains an organ outside of the hospital, the hospital must obtain it from an organ procurement organization designated by the secretary of the Department of Health and Human Services. Coverage does not include donor expenses.

(3) Coverage of each type of solid organ transplant [transplants] is limited to an initial transplant and one subsequent retransplant because of rejection as a lifetime benefit.

(b) As specified by HHSC [the department] or its designee, prior authorization is required for certain organ transplant services. If a covered organ transplant has been prior authorized as medically necessary by HHSC [the department] or its designee because of an emergent, life-threatening situation, a maximum of 30 days of inpatient hospital services during a Title XIX spell of illness may be covered beginning with the actual first day of the transplant. This coverage is in addition to covered inpatient hospital days provided before the actual first day of the transplant. This 30-day period is considered a separate inpatient hospital admission for reimbursement purposes. Physician services that HHSC [the department] or its designee determines to be rea-

sonable and medically necessary are also covered during the 30-day period.

(c) If expenditures for a single inpatient hospital admission exceed the \$200,000 limit on hospitalization-related services specified in §354.1149 [§29.1112] of this title (relating to Exclusions and Limitations), expenditures for that admission are excluded in calculating expenditures toward the limit. This policy only applies to an inpatient hospital admission to perform a covered organ transplant procedure determined to be medically necessary because of an emergent, life-threatening situation.

(d) To be reimbursed for transplant services, a hospital must meet the requirements included in the Social Security Act, §1138 and be approved and designated by HHSC [the department] as an organ transplant facility.

(e) For purposes of this section, the term "organ" means a human heart, kidney, liver, cornea, or bone marrow, and any other human organ or tissue specified by HHSC [the department].

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 17, 2013.

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Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: September 1, 2013

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



DIVISION 23. FEDERALLY QUALIFIED HEALTH CENTER SERVICES

1 TAC §354.1322

The Texas Health and Human Services Commission (HHSC) proposes to amend §354.1322, concerning Provider Participation Requirements.

Background and Justification

The 2012-13 General Appropriations Act (Article II, Health and Human Services Commission, Rider 78, H.B. 1, 82nd Legislature, Regular Session, 2011) and the 2014-15 General Appropriations Act (Article II, Health and Human Services Commission, Rider 58, S.B. 1, 83rd Legislature, Regular Session, 2013) prohibit the expenditure of state funds to reimburse the costs of a federally qualified health center (FQHC) for Medicaid services performed or provided by a provider or group of providers under an affiliation agreement with the FQHC unless HHSC determines that the agreement complies with federal law or administrative rules adopted by HHSC. HHSC proposes to amend the relevant provider participation rules to reflect these requirements.

To effectuate Riders 78 and 58, the proposed rule requires an FQHC to attest that the affiliation relationship between the FQHC and a health-care provider (affiliate) that is the subject of an affiliation agreement is justified by reason of access to care, scope of services, or cost-effectiveness. Once HHSC receives the attestation, it has 30 business days to review the attestation to ensure that the affiliation is sufficiently justified.

Section-by-Section Summary

Proposed §354.1322(a) is proposed to be amended to add the caption "Participation requirements." This will distinguish subsection (a) from the new subsection (b), which will be captioned "Affiliation agreements." Additionally, minor clarifications are made to update agency references and to replace the term "Texas Medical Assistance Program" with "Texas Medicaid Program" to reflect the program's more common name.

Proposed new §354.1322(b) requires an FQHC to attest that an affiliation, formalized with an affiliation agreement, is justified before HHSC will reimburse the FQHC for services that the affiliate has performed on the FQHC's behalf. Paragraph (1) defines the term "affiliation agreement" to exclude an agreement formalizing an arrangement in which a physician temporarily substitutes for an FQHC physician or temporarily fills a staff vacancy, and paragraph (2) defines the term "health-care provider." The proposed rule further requires that an affiliation be justified by allowing an FQHC to improve access to care or to expand or maintain the types of services it offers or by costing less than employing a physician who would perform the same service. As proposed in the rule, an FQHC would be required to submit to HHSC an attestation that explains the need for the affiliation and HHSC has 30 business days to determine that the affiliation is sufficiently justified. Finally, the proposed rule indicates that HHSC will not reimburse FQHC claims until HHSC deems the affiliation that is the subject of the agreement to be sufficiently justified. If the FQHC does not receive information to the contrary from HHSC within 35 business days after HHSC receives the attestation, the affiliation is deemed justified.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the proposed rule is in effect, there will be no fiscal impact to the state or to local governments.

Ms. Rymal anticipates that, for each year of the first five years the rule will be in effect, there will be no economic costs to persons who are required to comply with the proposed rule. There is no anticipated negative impact on local employment.

Small and Micro-business Impact Analysis

HHSC has determined that there will be no adverse economic effect on small businesses or micro-businesses because the amendment will result in neither revenue reductions nor cost increases to providers.

Public Benefit

Chris Traylor, Chief Deputy Commissioner, has determined that for each year of the first five years the proposal is in effect, the public will benefit from the adoption of the amendment. The anticipated public benefit as a result of enforcing the proposed amended rule is to not allow duplicate payments or overpayments to an FQHC for services performed on behalf of the FQHC by another health-care provider under an affiliation agreement.

Regulatory Analysis

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

proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Takings Impact Assessment

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

Public Comment

Written comments on the proposal may be submitted to Peggy Atkins, Senior Policy Analyst, Operations Oversight, Medicaid/CHIP Division, Texas Health and Human Services Commission, P.O. Box 85200, Austin, Texas 78708-5200, Mail Code H390-91X; by fax to (512) 249-3707; or by e-mail to peggy.atkins@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

Statutory Authority

The amendment is proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and 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.

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

§354.1322. *Provider Participation Requirements.*

(a) Participation requirements. To participate in the Texas Medicaid [~~Medical Assistance~~] Program, a federally qualified health center (FQHC) must:

(1) be receiving a grant under the Public Health Service Act §§329, 330, or 340, or be designated by the secretary of the Department of Health and Human Services as meeting the requirements to be receiving such a grant;

(2) comply with all federal, state, and local laws and regulations applicable to the services provided;

(3) be enrolled and approved for participation in the Texas Medicaid [~~Medical Assistance~~] Program;

(4) sign a written provider agreement with the Health and Human Services Commission (HHSC) [~~Texas Department of Health (department)~~] or its designee;

(5) comply with the terms of the provider agreement and all requirements of the Texas Medicaid [~~Medical Assistance~~] Program, including regulations, rules, handbooks, standards, and guidelines published by HHSC [~~the department or its designee~~]; and

(6) bill for covered services in the manner and format prescribed by HHSC [~~the department or its designee~~].

(b) Affiliation agreements. Notwithstanding any other provision, HHSC will not reimburse an FQHC for services performed on behalf of the FQHC by a health-care provider under an affiliation agreement with the FQHC unless the FQHC has submitted to HHSC an attestation justifying the affiliation as required by paragraphs (3) and (4) of this subsection and HHSC has deemed the affiliation justified.

(1) For purposes of this subsection, the term "affiliation agreement" means an agreement that establishes a relationship between an FQHC and a health-care provider ("affiliate") under which the affil-

iate agrees to provide health-care services within the FQHC's scope of services on behalf of the FQHC and to be reimbursed by the FQHC for such services. The term does not include an employment agreement or an agreement formalizing an arrangement in which an individual physician either temporarily substitutes for a member of the FQHC's staff of physicians or temporarily fills a vacancy in the FQHC's staff of physicians.

(2) For purposes of this subsection, the term "health-care provider" means a physician, physician assistant, nurse practitioner, certified nurse-midwife, visiting nurse, a qualified clinical psychologist, clinical social worker, other health professional for mental health services, dentist, dental hygienist, or an optometrist.

(3) The FQHC must justify the need for the affiliate to perform services on the FQHC's behalf because the affiliation increases access to care, expands the types of services offered by the FQHC, or costs less than the employment of a physician.

(4) The FQHC must submit to HHSC an attestation, signed by an individual with authority to sign documents on the FQHC's behalf, explaining the need for the affiliation. The attestation must answer and must explain the answers to the following questions:

(A) Does the affiliation governed by the agreement increase access to care?

(B) Does the affiliation governed by the agreement:

(i) add services to the FQHC's scope of services; or

(ii) enable the FQHC to maintain access to care or the services currently within the FQHC's scope of services?

(C) Would a health-care provider employed by the FQHC be less expensive than the affiliation governed by the agreement?

(5) Once HHSC receives an attestation, it has 30 business days to review the attestation and determine that the affiliation is justified. If the FQHC does not receive information to the contrary from HHSC within 35 business days after HHSC receives the attestation, the affiliation is deemed justified.

(6) The FQHC may submit claims to HHSC for services provided by the affiliate whose attestation is under review, but HHSC will not pay the claims until HHSC deems the affiliation to be justified.

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 17, 2013.

TRD-201302921

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: September 1, 2013

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



DIVISION 27. WOMEN'S HEALTH PROGRAM

1 TAC §§354.1361 - 354.1364

(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 Health and Human Services Commission or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Health and Human Services Commission (HHSC) proposes to repeal Division 27, Women's Health Program, consisting of §§354.1361 - 354.1364, concerning the Medicaid Women's Health Program.

Background and Purpose

These rules were adopted to govern the Medicaid Women's Health Program, which ceased operations on December 31, 2012. On January 1, 2013, the Department of State Health Services (DSHS) implemented a similar program, the Texas Women's Health Program (Texas WHP), which is governed by rules codified in Title 25, Part 1, Chapter 39, Subchapter B, Texas Women's Health Program. The rules HHSC proposes to repeal do not apply to the Texas WHP.

Thus, the purpose of the proposed repeal is to delete obsolete material in the Texas Administrative Code and to mitigate possible consumer and provider confusion over the applicability of the obsolete rules to the Texas WHP.

Section-by-Section Summary

Sections 354.1361 - 354.1364 are repealed as the information is obsolete.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the repeals are in effect, there will be no fiscal impact to the state or local governments.

Cost to Persons and Effect on Local Economies

Ms. Rymal does not anticipate that there will be any economic cost to persons who are required to comply with this rule change. Repealing these rules will not affect a local economy.

Small Business and Micro-Business Impact Analysis

HHSC has determined that there is no adverse economic effect on small businesses or micro-businesses as a result of enforcing or administering the proposed repeals. The providers that are impacted by repealing these rules may be qualified to participate in the similar successor program implemented by DSHS.

Public Benefit

Chris Traylor, Chief Deputy Commissioner, has determined that for each of the first five years the rule repeals are in effect, the expected public benefit is that obsolete rules will be deleted from HHSC's rule base.

Regulatory Analysis

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

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her private real property that would otherwise exist in the absence of government action and, there-

fore, does not constitute a taking under Texas Government Code §2007.043.

Public Comment

Written comments on the proposal may be submitted to Alexander Melis, Medicaid/CHIP Policy Development, Texas Health and Human Services Commission, P.O. Box 85200, MC-H310, Austin, Texas 78708-5200; by fax to (512) 491-1953; or by e-mail to alex.melis@hhsc.state.tx.us within 30 days of publication in the *Texas Register*.

Statutory Authority

The repeals are proposed under the Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and 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.

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

§354.1361. *Applicability.*

§354.1362. *Definitions.*

§354.1363. *Prohibition of Contracts with Certain Providers.*

§354.1364. *Certification.*

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 17, 2013.

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Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: September 1, 2013

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



CHAPTER 355. REIMBURSEMENT RATES SUBCHAPTER J. PURCHASED HEALTH SERVICES

DIVISION 31. AMBULANCE SERVICES

1 TAC §355.8600

The Texas Health and Human Services Commission (HHSC) proposes to amend §355.8600, concerning Reimbursement for Ambulance Services.

Background and Justification

Since February 2009, Texas has administered a program under which governmental ambulance providers could receive supplemental payments for their unreimbursed costs of providing ambulance services to Medicaid patients. A demonstration waiver under §1115 of the Social Security Act, the Texas Healthcare Transformation and Quality Improvement Program (waiver), was approved by the Centers for Medicare and Medicaid Services (CMS) in December 2011. The waiver granted Texas the authority to expand governmental ambulance supplemental payments to include unreimbursed costs associated with uninsured patients in addition to Medicaid patients. These supplemental

payments are made from the Uncompensated Care pool created by the waiver.

As a result of CMS approval of the expansion of the government ambulance supplemental payment program, HHSC proposes to amend §355.8600. This amendment allows approved governmental ambulance providers to receive supplemental payments for their unreimbursed costs of providing ambulance services to Medicaid and uninsured patients if the services meet the definition of "medical assistance" as defined in §1905(a) of the Social Security Act.

Additionally, HHSC proposes to amend this section to indicate that supplemental payments are only available for services provided on or after the first day of the month after a governmental ambulance provider's request for eligibility is approved. The funds available in the Uncompensated Care pool are limited each year as described in the waiver. The limitation on which dates of service are eligible for supplemental payments is proposed to ensure that HHSC is aware of all possible claims for ambulance supplemental payments prior to distributing funds from the waiver pool to governmental ambulance providers. HHSC will utilize the methodology described in §355.8201 (relating to Waiver Payments to Hospitals) to determine the maximum amount of Uncompensated Care pool funds available for governmental ambulance providers.

There are no changes to the reimbursement methodology currently in place for private ambulance providers.

Section-by-Section Summary

HHSC proposes amendments to §355.8600 as follows:

Update the title of the rule from "Reimbursement for Ambulance Services" to "Reimbursement Methodology for Ambulance Services."

Revise subsection (a) to add reimbursement determination authority.

Revise subsection (b) to add definitions of Centers for Medicare and Medicaid Services, Medicaid shortfall, uncompensated care costs, and uninsured costs and renumber the remaining paragraphs; add a Code of Federal Regulations citation regarding the definition of governmental ambulance providers; and delete obsolete language.

Revise subsection (c)(2) to delete extraneous language and add clarifying language.

Revise subsection (c)(2)(A) to indicate that only services provided on or after the first day of the month after a governmental ambulance provider's request for eligibility is approved will be eligible for supplemental payments and to add criteria (vii) requiring a signed letter documenting the governmental provider's voluntary contribution of non-federal funds.

Revise subsection (c)(2)(B) to allow for the reporting of costs associated with uninsured clients effective March 1, 2012, and to accommodate and clarify cost reporting time frames; and in paragraph (2)(B), revise clause (i) to clarify the cost report due date and cost report certification requirements, revise clause (ii) to delete current language limiting reimbursement "to fee for service Medicaid clients" and add reimbursement to address uncompensated care costs, revise clause (iii) to add a new cost-to-billed charge ratio calculation methodology, and delete clause (iv).

Add new subsection (c)(2)(C) to describe the calculation of supplemental payments, including: new clause (i), which describes the calculation of supplemental payments for services provided from October 1, 2011, through February 29, 2012; new clause (ii), which describes the calculation of supplemental payments for services provided on or after March 1, 2012; new clause (iii), which indicates that the maximum aggregate supplemental payments will be determined in a manner described in §355.8201 of this chapter (relating to Waiver Payments to Hospitals); new clause (iv), which indicates that if the actual aggregate costs are greater than estimated in (iii), the supplemental payments will be proportionately reduced across all participating providers; new clause (v), which indicates that supplemental payments are contingent upon the provider's certificate of public expenditures submitted with each cost report; and new clause (vi), which describes when supplemental payments will be recouped.

Revise subsection (d) to delete extraneous language.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the proposed amendment is in effect there will be no fiscal impact to the state. Local governments could see an increase in revenues if they operate a governmental ambulance program that is eligible for supplemental payments; however, HHSC is unable to estimate the increase in revenue to local governments.

Small and Micro-business Impact Analysis

HHSC has determined that there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing or administering the amendment because this amendment only affects governmental ambulance providers, which are public entities.

Public Benefits and Costs

Pam McDonald, Director of the Rate Analysis Department, has determined that for each year of the first five years the proposed amendment is in effect, the public will benefit from the adoption of this rule by allowing governmental ambulance providers to recoup their unreimbursed costs for providing ambulance services to Medicaid and uninsured clients.

Ms. Rymal does not anticipate that there will be any economic cost to persons who are required to comply with the proposed amendment during the first five years the rule will be in effect.

Local Employment Impact

There is no anticipated negative impact on local employment.

Regulatory Analysis

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

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist

in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Government Code.

Public Comment

Written comments on the proposal may be submitted to Yvonne Moorad, Lead Analyst, Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 149030, MC-H400, Austin, Texas 78714-9030; by fax to (512) 730-7475; or by e-mail to yvonne.moorad@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

Statutory Authority

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

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

§355.8600. *Reimbursement Methodology for Ambulance Services.*

(a) Authority. Payments are made to [Introduction: This section establishes the reimbursement methodology for] private and governmental providers of ground and air ambulance services as specified in the ambulance program rules in Chapter 354, Subchapter A, Division 9 of this title (relating to Ambulance Services). The reimbursement determination authority is specified in §355.101 of this title (relating to Introduction).

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

(1) Allowable costs--Expenses that are reasonable and necessary for the normal conduct of operations relating to the provision of ground and air ambulance services.

(2) Centers for Medicare and Medicaid Services (CMS)--The federal agency within the United States Department of Health and Human Services responsible for overseeing and directing Medicare and Medicaid, or its successor.

(3) [(2)] Governmental ambulance provider--An ambulance provider that uses paid government employees to provide ambulance services. The ambulance services must be directly funded by a unit of government as defined in 42 CFR §433.50(a)(i), such as a local government, hospital authority, hospital district, city, county, or state. A private ambulance provider under contract with a governmental entity to provide ambulance services is not considered a governmental ambulance provider for the purposes of this section.

(4) Medicaid shortfall--The unreimbursed cost to an ambulance provider of providing Medicaid ambulance services to Medicaid clients.

(5) [(3)] Private ambulance provider--An ambulance provider that uses paid employees associated and financed through a private entity to provide ambulance services and may be under contract with a local, state, or federal government.

(6) [(4)] Unit of service--A unit of service is based on one or more allowable ambulance services provided to a [Medicaid fee-for-service] client by all modes of approved transportation.

(7) Uncompensated care costs--The sum of the Medicaid shortfall and the uninsured costs.

(8) Uninsured costs--The unreimbursed cost to an ambulance provider of providing ambulance services that meet the definition of "medical assistance" in §1905(a) of the Social Security Act to uninsured patients as defined by CMS.

(c) Reimbursement methodologies.

(1) Fee-for-service ambulance fee. Fee-for-service reimbursement is based on the lesser of a provider's billed charges or the maximum fee established by the Texas Health and Human Services Commission (HHSC). HHSC establishes fees by reviewing the Medicare fee schedule and analyzing any other available ambulance-related data. Fee-for-service rates apply to both private and governmental ambulance providers.

(2) Supplemental payment for governmental ambulance providers. [Governmental ambulance providers may receive a supplemental payment if the governmental ambulance provider's allowable costs exceed the fee-for-service revenues received during the same period.] A governmental ambulance provider may be eligible to receive a supplemental payment in addition to the fee-for-service payment described in paragraph (1) of this subsection.

(A) Eligibility for supplemental payments. A governmental ambulance provider must submit a written request for eligibility for [a] supplemental payment by regular mail or special mail delivery to the HHSC Rate Analysis Department. If eligible, a governmental ambulance provider may begin to claim uncompensated care costs related to services provided on or after [The request, if acceptable, will be effective] the first day of the month after the request for eligibility is approved. HHSC [considers] only considers requests for eligibility from governmental ambulance providers as defined in subsection (b) of this section. HHSC will respond to all written requests for consideration, indicating the requestor's eligibility to receive supplemental payments. An acceptable request must include:

- (i) an overview of the governmental agency;
- (ii) a complete organizational chart of the governmental agency;
- (iii) a complete organizational chart of the ambulance department within the governmental agency providing ambulance services;
- (iv) an identification of the specific geographic service area covered by the ambulance department, by ZIP code;
- (v) copies of all job descriptions for staff types or job categories of staff who work for the ambulance department and an estimated percentage of time spent working for the ambulance department and for other departments of the governmental agency; [and]
- (vi) a primary contact person for the governmental agency who can respond to questions about the ambulance department; and[-]
- (vii) a signed letter documenting the governmental ambulance provider's voluntary contribution of non-federal funds.

(B) Cost reports. Governmental ambulance providers that are eligible for supplemental payments must submit an annual cost report for ground and air ambulance services delivered to Medicaid and, effective March 1, 2012, uninsured clients on a cost report form specified by HHSC. Providers certify through the cost report process their total actual federal and non-federal costs and expenditures for the cost reporting period [fiscal year]. Cost reports must be completed for a full year based on the federal fiscal year. HHSC may require newly

eligible providers to submit a partial-year cost report for their first year of eligibility [through the end of their fiscal year]. The beginning date for the partial-year cost report is the provider's first day of eligibility for supplemental payments as determined by HHSC. The ending date of the partial-year cost report is the last day of the federal fiscal year that encompasses the cost report beginning date.

(i) Due date. The cost report is [Cost reports are] due on or before [by] March 31 of the year following the cost reporting period ending date and must be certified in a manner specified by HHSC [year]. If March 31 falls on a federal or state holiday or weekend, the due date is the first working day after March 31. A provider may request in writing, by regular mail or special mail delivery, an extension of up to 30 days after the due date to submit a cost report. HHSC will respond to all written requests for extensions, indicating whether the extension is granted. HHSC must receive a request for extension before the cost report due date. A request for extension received after the due date is considered denied. A provider whose cost report is not received by the due date or the extended due date is ineligible for supplemental payments for the federal fiscal year.

(ii) Purpose. A cost report documents the provider's actual allowable Medicaid and uncompensated care costs for delivering ambulance services in accordance with the applicable state and federal regulations [to fee-for-service Medicaid clients]. Because the cost report is used to determine supplemental payments, a provider must submit a complete and acceptable cost report to be eligible for a supplemental payment.

(iii) Allocating allowable costs. A provider's total allowable reported costs for ambulance services are allocated to Medicaid and uninsured patients based on the ratio of charges for Medicaid and uninsured patients to the charges for all patients. Only allocable expenditures related to Medicaid, Medicaid managed care, and uncompensated care as defined and approved in the Texas Healthcare Transformation and Quality Improvement §1115 Waiver Program (§1115 Waiver) will be included for supplemental payment. [A provider's reported costs are allocated to the Medicaid program for fee-for-service ambulance services based on a percentage of Medicaid fee-for-service units of service to total units of service.]

~~(iv) Cost reconciliation: The actual allowable Medicaid fee-for-service costs reported for services delivered during a governmental ambulance provider's fiscal year are compared to the fee-for-service Medicaid payments. If a provider's actual allowable Medicaid fee-for-service costs exceed the fee-for-service Medicaid payments, the difference is adjusted by the federal Medicaid assistance percentage (FMAP) to arrive at the supplemental payment owed to the provider. If a provider's fee-for-service Medicaid payments exceed the provider's actual allowable Medicaid fee-for-service costs, the provider is not eligible for supplemental payments.]~~

(C) Calculation of supplemental payment.

(i) For services provided from October 1, 2011, through February 29, 2012, a governmental ambulance provider may be eligible to receive a supplemental payment equal to its Medicaid shortfall for the cost reporting period multiplied by the federal Medical assistance percentage (FMAP) in effect during the cost reporting period.

(ii) For services provided on or after March 1, 2012, and subject to approval by CMS, a governmental ambulance provider may be eligible to receive a supplemental payment equal to its uncompensated care costs for the cost reporting period multiplied by the FMAP in effect during the cost reporting period.

(iii) Supplemental payments based on uncompensated care costs are limited by the maximum aggregate amount of the estimated uncompensated care costs for all eligible governmental ambulance providers as determined by §355.8201 of this chapter (relating to Waiver Payments to Hospitals).

(iv) If the actual aggregate uncompensated care costs for all eligible governmental ambulance providers is greater than the maximum aggregate amount of the estimated uncompensated care costs for all eligible governmental ambulance providers as described in clause (iii) of this subparagraph, then HHSC will reduce the supplemental payments for all participating governmental ambulance providers proportionately.

(v) The supplemental payment is contingent upon the governmental ambulance provider's certificate of public expenditures submitted with each cost report.

(vi) If the federal government disallows federal financial participation related to the receipt or use of supplemental payments under this section, HHSC will recoup an amount equal to the federal share of supplemental payments overpaid or disallowed.

(d) General information. In addition to the requirements of this section, cost reporting guidelines are governed by: §355.101 of this chapter [~~(relating to Introduction)~~]; §355.102 of this chapter (relating to General Principles of Allowable and Unallowable Costs); §355.103 of this chapter (relating to Specifications for Allowable and Unallowable Costs); §355.104 of this chapter (relating to Revenues); §355.105 of this chapter (relating to General Reporting and Documentation Requirements, Methods, and Procedures); §355.106 of this chapter (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports); §355.107 of this chapter (relating to Notification of Exclusions and Adjustments); §355.108 of this chapter (relating to Determination of Inflation Indices); §355.109 of this chapter (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs); and §355.110 of this chapter (relating to Informal Reviews and Formal Appeals). If conflicts arise between this section and other sections governing cost reporting, the provisions of this section prevail.

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 22, 2013.

TRD-201302964

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: September 1, 2013

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

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TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 77. SERVICE CONTRACT PROVIDERS AND ADMINISTRATORS

16 TAC §§77.24, 77.70, 77.80

The Texas Department of Licensing and Regulation (Department) proposes a new rule at 16 Texas Administrative Code (TAC) Chapter 77, §77.24, and amendments to existing rules §77.70 and §77.80, regarding the Service Contract Providers and Administrators program.

Senate Bill 1388 (S.B. 1388), 83rd Legislature, Regular Session (2013), changed the statutory structure for regulating identity recovery service contracts that are financed under Texas Finance Code, Chapters 348 or 353. S.B. 1388 repealed the stand-alone regulation under Texas Occupations Code, Chapter 1306, relating to the regulation of providers, administrators and sellers of identity recovery service contracts, and consolidated the regulation of these identity recovery service contracts under Texas Occupations Code, Chapter 1304, relating to the regulation of providers, administrators and sellers of service contracts. The proposed rules under Chapter 77 are necessary to implement the changes made by S.B. 1388 to Texas Occupations Code, Chapter 1304.

The proposed repeal of the rules for the Identity Recovery Service Contract Provider and Administrator program is published separately in this issue of the *Texas Register*.

S.B. 1388 made the following changes to Texas Occupation Code, Chapter 1304: (1) added the definition of "identity recovery" as it was defined under Chapter 1306; (2) amended the current definition of "service contract" to include service contracts that only provide for identity recovery services and that are financed under Texas Finance Code, Chapters 348 or 353 ("identity recovery service contracts" that were regulated under Chapter 1306); (3) added the quarterly reporting and fee requirements for identity recovery service contracts, which were included in Chapter 1306; and (4) added a provision to protect information regarding the number of contracts sold or issued by a provider that is submitted as part of the quarterly reporting and fee requirements, which was included in Chapter 1306.

The proposed rules add new 16 TAC §77.24 to implement new Texas Occupation Code §1304.1035, as added by S.B. 1388, related to identity recovery service contract quarterly reports and fees. New proposed §77.24 incorporates the provisions under existing rule 16 TAC §90.22 into the Chapter 77 rules. Section 90.22 is being repealed as part of a separate rulemaking published in this issue of the *Texas Register*.

The proposed rules also amend 16 TAC §77.70, Responsibilities of Providers and Administrators, to add a new subsection (e) to incorporate the disclosures specific to identity recovery service contracts that are located under existing rule 16 TAC §90.70(d)(1) - (4). The provisions under 16 TAC §90.70(d)(1) - (4) were adopted to implement Texas Occupations Code §1306.106, Form of Identity Recovery Service Contract and Required Disclosures. Among the required disclosures, §1306.106 required an identity recovery service contract provider to identify the contract holder, to disclose the terms under which the contract is sold, and to specify the services to be provided under the contract and any limitations, exceptions or exclusions. Section 90.70(d)(1) - (4) identified specific terms and conditions that must be addressed as part of these disclosures.

As stated above, S.B. 1388 consolidated the regulation of identity recovery service contracts into Texas Occupations Code, Chapter 1304. While S.B. 1388 repealed Texas Occupations Code, Chapter 1306, the same statutory provisions regarding disclosures are found in Chapter 1304 under §1304.156, Form of Service Contract and Required Disclosures. The proposed

disclosures specific to identity recovery service contracts, which are being added as 16 TAC §77.70(e), are the same as the disclosures required under existing rule 16 TAC §90.70(d)(1) - (4). Section 90.70 is being repealed as part of a separate rulemaking published in this issue of the *Texas Register*.

The proposed rules also amend 16 TAC §77.80 related to fees to reflect the quarterly fees required under new Texas Occupations Code §1304.1035, as added by S.B. 1388.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the proposed rules are in effect there will be an increase in revenue to the state as a result of implementing and administering the new statutory provisions under Texas Occupations Code, Chapter 1304, and the proposed rules under 16 TAC Chapter 77, related to the quarterly fee requirements for identity recovery service contracts. This increase, however, is expected to be offset by the decrease in revenues from the repeal of Texas Occupations Code, Chapter 1306, and the repeal of rules under 16 TAC Chapter 90 (published in the Proposed Rules section of this issue of the *Texas Register*). It is anticipated that there will be a de minimus decrease in revenue to the state related to the registration and renewal fees due to: (a) the differences in fee structures under Texas Occupations Code, Chapter 1304, and 16 TAC Chapter 77 and under Texas Occupations Code, Chapter 1306, and 16 TAC Chapter 90; and (b) the revised definition of "service contract" under Chapter 1304, which would allow a provider or administrator that formerly needed two registrations - one under Chapter 1304 and one under Chapter 1306 - to only need one registration under the consolidated regulation under Chapter 1304.

Mr. Kuntz also has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be streamlined regulation from consolidating the regulation of service contracts and identity recovery service contracts into one set of rules under 16 TAC Chapter 77. S.B. 1388 eliminated the stand-alone regulation under Texas Occupations Code, Chapter 1306, relating to the regulation of providers, administrators and sellers of identity recovery service contracts, and consolidated the regulation of these identity recovery service contracts under Texas Occupations Code, Chapter 1304, relating to the regulation of providers, administrators and sellers of service contracts. The proposed rules herein implement the statutory changes made to Chapter 1304.

The proposed repeal of the rules for the Identity Recovery Service Contract Provider and Administrator program is published separately in this issue of the *Texas Register*.

There will be no adverse economic effect on small or micro-businesses or to persons who are required to comply with the rules as proposed. For providers and administrators currently regulated under Chapter 1304, registration and renewal fees remain the same. For providers and administrators formerly regulated under Chapter 1306, the registration and renewal fees under Chapter 1304 will be the same as or less than the fees formerly required under Chapter 1306. Also, any provider or administrator that needed two registrations - one under Chapter 1304 and one under Chapter 1306 - will only need one registration under the consolidated regulation under Chapter 1304. For providers formerly regulated under Chapter 1306, the statutory quarterly fees under Chapter 1304 will be the same as the statutory quarterly fees formerly required under Chapter 1306. The statutory quarterly fees only apply to providers of service contracts described under §1304.003(a)(2)(B) ("identity recovery service contracts").

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

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

The amendments and new rule are proposed under Texas Occupations Code, Chapters 51 and 1304, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51, 1304, 1306, and 2306, and Texas Finance Code, Chapters 348 and 353. No other statutes, articles, or codes are affected by the proposal.

§77.24. Quarterly Provider Requirements--Identity Recovery Services.

(a) This section applies only to a provider who sells or issues service contracts that provide only for identity recovery services as described by Texas Occupations Code §1304.003(a)(2)(B). For purposes of this section, these service contracts are referred to herein as identity recovery service contracts.

(b) A provider must submit quarterly fees based on the number of identity recovery service contracts sold or issued in this state.

(c) Not later than the 30th day after the date each calendar quarter ends, a provider must report to the department, in a manner prescribed by the executive director, the number of identity recovery service contracts sold or issued to consumers in this state during the calendar quarter and submit to the department a fee equal to one dollar (\$1) for each of those contracts.

(d) The calendar quarter ends on the following dates: March 31, June 30, September 30 and December 31. The due dates for reporting the number of contracts and submitting the appropriate fees under subsection (c) are: April 30, July 30, October 30, and January 30.

(e) Failure of the provider to report the number of contracts or to submit the fee as described in subsection (c) is cause for denial and/or revocation of the registration.

(f) Falsification of information required under subsection (c) is cause for denial and/or revocation of the registration.

§77.70. Responsibilities of Providers and Administrators.

(a) The provider must clearly and conspicuously identify itself on all written service contracts and, on all written advertising materials that are used by the provider, its administrator(s), or its seller(s).

(b) The provider and/or any administrator appointed by the provider must provide service contract holders with a notification that meets all of the following requirements.

(1) The notification must provide the name, mailing address, and telephone number of the department.

(2) The notification must contain a statement that unresolved complaints concerning providers and administrators or questions concerning the regulation of service contract providers and administrators may be addressed to the department.

(3) The notification must be included on all written service contracts. The notification may be stamped on the contract or printed on a separate sheet and stapled to the contract.

(c) The provider and/or any administrator appointed by the provider must provide service contract holders with the provider's complaint resolution procedures.

(d) The provider and/or any administrator appointed by the provider must disclose the following information to service contract holders:

(1) the specific contract provisions and required disclosures in accordance with Texas Occupations Code §1304.156;

(2) the procedures and timeframes for a service contract holder to cancel a service contract in accordance with Texas Occupations Code §1304.1581;

(3) the procedures and timeframes for a provider to refund the purchase price of the service contract and pay any applicable penalty to the service contract holder in accordance with Texas Occupations Code §1304.1581; and

(4) the conditions in which the provider may cancel a service contract and issue a refund in accordance with Texas Occupations Code §1304.159.

(e) As part of the disclosures required under subsection (d), a provider and/or any administrator appointed by the provider who sells or issues service contracts described under Texas Occupations Code §1304.003(a)(2)(B) (referred herein as "identity recovery service contracts") must disclose the following information:

(1) the person or persons who are covered under the identity recovery service contract;

(2) the price of the identity recovery service contract separate from the purchase price of the automobile and any other products or services that are financed with the vehicle;

(3) the term of the identity recovery service contract; and

(4) any conditions that may change the stated term of the identity recovery service contract, including if the identity recovery service contract holder:

(A) pays off the automobile early;

(B) makes late payments or defaults on the payments on the automobile;

(C) refinances the automobile; or

(D) sells or transfers title to the automobile.

(f) [(e)] If not provided by the seller at the time of sale, the provider and/or any administrator appointed by the provider must provide a copy of the service contract to the service contract holder within a reasonable amount of time after the date of purchase that still allows the service contract holder the opportunity to cancel the contract and receive a full refund.

(g) [(f)] If not provided by the seller at the time of sale, the provider and/or any administrator appointed by the provider must provide a receipt for or other written evidence of the purchase of a service contract to the service contract holder within a reasonable amount of time after the date of purchase that still allows the service contract holder the opportunity to cancel the contract and receive a full refund.

(h) [(g)] A provider shall report to the department within 30 days any change in information required by §77.20 and §77.21.

(i) [(h)] An administrator shall report to the department within 30 days any change in information required by §77.22 and §77.23.

(j) [(i)] Upon notification by the department, the provider and/or any administrator appointed by the provider shall allow the department to audit records required to be maintained by Texas Occupations Code Chapter 1304. These records include copies of the service contracts marketed, sold, administered or issued in this state.

§77.80. Fees.

- (a) All registration fees are non-refundable.
- (b) Provider Fees.

(1) The initial registration fee for a service contract provider is \$250.

(2) The annual renewal registration fee for a service contract provider is:

(A) \$250 for registrants selling or issuing 0 to 250 service contracts during the 12-month period preceding the expiration date of the registration;

(B) \$500 for registrants selling or issuing 251 to 499 service contracts during the 12-month period preceding the expiration date of the registration; and

(C) \$1,000 for registrants selling or issuing 500 or more service contracts during the 12-month period preceding the expiration date of the registration.

(3) The fee for a duplicate or amended registration certificate is \$25.

(4) The quarterly contract fee for a provider is \$1 per service contract described by Texas Occupations Code §1304.003(a)(2)(B) sold or issued in the state in the previous calendar quarter as provided under §77.24.

- (c) Administrator Fees.

(1) The initial registration fee for an administrator is \$250.

(2) The annual renewal registration fee for an administrator is \$250.

(3) The fee for a duplicate or amended registration certificate is \$25.

(d) Late renewal fees for registrations issued under this chapter are provided under §60.83 of this title (relating to Late Renewal Fees). The late fee is based on the number of service contracts sold or issued during the 12-month period preceding the expiration date of the registration.

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 22, 2013.

TRD-201302977

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: September 1, 2013

For further information, please call: (512) 463-7348



CHAPTER 81. RENTAL PURCHASE AGREEMENTS

16 TAC §§81.1, 81.10, 81.21, 81.70, 81.80, 81.90

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

The Texas Department of Licensing and Regulation ("Department") proposes the repeal of existing rules at 16 Texas Administrative Code Chapter 81, §§81.1, 81.10, 81.21, 81.70, 81.80, and 81.90, regarding the Rental Purchase Agreement program.

The proposed repeal is necessary to implement Senate Bill 289 (S.B. 289), 83rd Legislature, Regular Session (2013).

Section 1 of S.B. 289 removed the requirement for merchants to submit contracts containing loss damage waivers to the department for approval. While merchants will no longer submit loss damage waivers to the Department, they must continue to comply with the requirements of Chapter 92, Business and Commerce Code.

Section 2 of S.B. 289 also repealed §92.001(2) defining the Texas Commission of Licensing and Regulation (Commission) and §92.001(4) defining the Department. S.B. 289 also repealed Business and Commerce Code §§92.158 (rulemaking authority), 92.159 (fee setting authority), and 92.160 (enforcement authority).

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the proposed repeal is in effect there will be no foreseeable implications relating to cost or revenues of the state or local government as a result of enforcing or administering the proposed repeal.

Mr. Kuntz also has determined that for each year of the first five-year period the repeal is in effect, the public benefit will be a reduction in the costs of compliance with regulations for businesses with a potential of pass through savings to consumers.

There will be no adverse economic effect on small or micro-businesses or to persons who are required to comply with the proposed repeal of these rules.

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

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

The repeal is proposed under Texas Occupations Code, Chapter 51, which authorizes the Commission, the Department's governing body, to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

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

§81.1. Authority.

§81.10. *Definitions.*

§81.21. *Review Requirements--Rental Agreements.*

§81.70. *Responsibilities of Merchants.*

§81.80. *Fees.*

§81.90. *Administrative Penalties and Sanctions.*

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 22, 2013.

TRD-201302979

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: September 1, 2013

For further information, please call: (512) 463-7348



CHAPTER 90. IDENTITY RECOVERY SERVICE CONTRACT PROVIDERS AND ADMINISTRATORS

16 TAC §§90.1, 90.10, 90.20 - 90.24, 90.40 - 90.43, 90.70, 90.71, 90.80, 90.90, 90.91

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

The Texas Department of Licensing and Regulation (Department) proposes the repeal of the existing rules at 16 Texas Administrative Code (TAC) Chapter 90, §§90.1, 90.10, 90.20 - 90.24, 90.40 - 90.43, 90.70, 90.71, 90.80, 90.90, and 90.91, regarding the Identity Recovery Service Contract Providers and Administrators program.

Senate Bill 1388 (S.B. 1388), 83rd Legislature, Regular Session (2013), changed the statutory structure for regulating identity recovery service contracts that are financed under Texas Finance Code, Chapters 348 or 353. S.B. 1388 repealed the stand-alone regulation under Texas Occupations Code, Chapter 1306, relating to the regulation of providers, administrators and sellers of identity recovery service contracts, and consolidated the regulation of these identity recovery service contracts under Texas Occupations Code, Chapter 1304, relating to the regulation of providers, administrators and sellers of service contracts. The proposed repeal of the rules under Chapter 90 is necessary since S.B. 1388 repeals Texas Occupations Code, Chapter 1306, effective September 1, 2013.

Proposed rules for the Service Contract Provider and Administrator program relating to S.B. 1388 changes are published separately in this issue of the *Texas Register*.

S.B. 1388 repealed Texas Occupations Code, Chapter 1306, and incorporated specific provisions formerly under Chapter 1306 into Chapter 1304 for the continued regulation of identity recovery service contracts (see the Proposed Rules section of this issue of the *Texas Register*). The proposed repeal eliminates 16 TAC Chapter 90 in its entirety since the statutory authority under Texas Occupations Code, Chapter 1306, is repealed.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the proposed repeal of these rules is in effect there will be a loss in revenue to the state due to the repeal of Texas Occupations Code, Chapter 1306, and to the repeal of these rules under 16 TAC Chapter 90, related to the quarterly fee requirements for identity recovery service contracts. This loss is expected to be offset, however, by an increase in revenue anticipated from the implementation of Texas Occupations Code, Chapter 1304, as amended by S.B. 1388, and the adoption of proposed rules under 16 TAC Chapter 77 (see the Proposed Rules section of this issue of the *Texas Register*). It is anticipated that there will be a de minimus decrease in revenue to the state related to the registration and renewal fees due to: (a) the differences in fee structures under Texas Occupations Code, Chapter 1304, and 16 TAC Chapter 77 and under Texas Occupations Code, Chapter 1306, and 16 TAC Chapter 90; and (b) the revised definition of "service contract" under Chapter 1304, which would allow a provider or administrator that formerly needed two registrations - one under Chapter 1304 and one under Chapter 1306 - to only need one registration under the consolidated regulation under Chapter 1304.

Mr. Kuntz also has determined that for each year of the first five-year period the proposed repeal is in effect, the public benefit will be streamlined regulation due to eliminating the rules under 16 TAC Chapter 90 and consolidating the regulation of service contracts and identity recovery service contracts in one set of rules under 16 TAC Chapter 77. S.B. 1388 eliminated the stand-alone regulation under Texas Occupations Code, Chapter 1306, relating to the regulation of providers, administrators and sellers of identity recovery service contracts, and consolidated the regulation of these identity recovery service contracts under Texas Occupations Code, Chapter 1304, relating to the regulation of providers, administrators and sellers of service contracts. The proposed repeal of the rules is in accordance with the statutory repeal of Chapter 1306.

There will be no adverse economic effect on small or micro-businesses or to persons who are required to comply with the proposed repeal of these rules.

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

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

The repeal is proposed under Texas Occupations Code, Chapters 51 and 1306, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters.

The statutory provisions affected by the proposed repeal are those set forth in Texas Occupations Code, Chapters 51, 1304, 1306, and 2306, and Texas Finance Code, Chapters 348 and 353. No other statutes, articles, or codes are affected by the proposal.

§90.1. *Authority.*

§90.10. *Definitions.*

§90.20. *Registration Requirements--Provider.*

- §90.21. *Registration Renewal Requirements--Provider.*
- §90.22. *Ongoing Registration Requirements--Providers.*
- §90.23. *Registration Requirements--Administrator.*
- §90.24. *Registration Renewal Requirements--Administrator.*
- §90.40. *Financial Security--General Requirements.*
- §90.41. *Financial Security--Reimbursement Insurance Policy.*
- §90.42. *Financial Security--Funded Reserve Account and Security Deposit.*
- §90.43. *Financial Security--Minimum Net Worth.*
- §90.70. *Responsibilities of Providers and Administrators.*
- §90.71. *Responsibilities of Providers Ceasing Operations or Discontinuing Business.*
- §90.80. *Fees.*
- §90.90. *Administrative Penalties and Sanctions.*
- §90.91. *Enforcement Authority.*

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 22, 2013.

TRD-201302978

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: September 1, 2013

For further information, please call: (512) 463-7348



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS

SUBCHAPTER AA. COMMISSIONER'S

RULES ON SCHOOL FINANCE

19 TAC §61.1011

The Texas Education Agency (TEA) proposes new §61.1011, concerning school finance. The proposed new rule would establish in rule the definitions, assumptions, and calculations used in determining a district's Additional State Aid for Tax Reduction (ASATR).

House Bill (HB) 1, 79th Texas Legislature, Third Called Session, 2005, added the Texas Education Code (TEC), §42.2516. The section provided for state aid known as ASATR to be delivered to certain school districts to compensate them for lowering, or compressing, their maintenance and operations (M&O) tax rates. The section also allowed the commissioner of education to adopt rules to administer the section's provisions. HB 1922, 80th Texas Legislature, 2007, amended the TEC, §42.2516, to provide for the adjustment of a district's ASATR based on its New Instructional Facility Allotment funding. HB 828, 80th Texas Legislature, 2007, amended the TEC, §42.2516, to provide for the adjustment of a district's ASATR based on its transportation allotment

funding and its Additional State Aid for Ad Valorem Tax Credits Under the Texas Economic Development Act. That bill also provided for the adjustment of the tax collections used to calculate a district's ASATR based on whether the district adopted or eliminated an additional residence homestead exemption, whether the district granted an exemption under a tax abatement agreement, and whether the district deposited taxes into a tax increment fund and provided for a corresponding adjustment in the district's ASATR. In addition, HB 828 required that any rules adopted by the commissioner to administer the bill's provisions reflect the bill's requirements. HB 3646, 81st Texas Legislature, 2009, amended the TEC, §42.2516, to add minimum and maximum revenue thresholds to the ASATR calculation. Senate Bill 1, 82nd Texas Legislature, First Called Session, 2011, amended the TEC, §42.2516, to gradually reduce the amount of ASATR a district is entitled to over time until ASATR is finally eliminated altogether in 2017.

The commissioner has not previously adopted rules under the TEC, §42.2516. Proposed new 19 TAC §61.1011 would establish in rule the definitions, assumptions, and calculations currently used in determining a district's ASATR under the TEC, §42.2516. It would also propose changes in the current calculation of ASATR to incorporate transportation allotment adjustments for districts subject to the TEC, Chapter 41.

The proposed new section would have no procedural or reporting implications. The proposed new section would have no locally maintained paperwork requirements.

Lisa Dawn-Fisher, associate commissioner for school finance/chief school finance officer, has determined that for the first five-year period the new section is in effect there will be fiscal implications for state and local government as a result of enforcing or administering the new section. The proposed rule primarily reflects current practice in terms of the calculation of ASATR payments. In response to petitions by two school districts, the rule also reflects proposed modifications in the calculation of ASATR to include changes in the calculated transportation allotment for districts that are subject to the provisions of the TEC, Chapter 41 (the TEA currently applies this adjustment only for districts not subject to Chapter 41). The proposed rule would begin applying this adjustment for all school districts with the 2013-2014 school year. The application of this adjustment would have positive impacts for some districts and negative impacts for others. Overall, based on current estimates, 139 districts would gain an estimated \$10.5 million and 93 districts would lose an estimated \$4.6 million in the 2013-2014 school year based on implementation of the adjustment with that year, for a net estimated cost to the state of \$5.9 million. Similar variation in gains and losses in school district Foundation School Program revenue could be expected in future years, depending on whether a district that received ASATR showed an increase or decrease in its transportation allotment compared to the 2009-2010 school year, although the net cost to the state is expected to decline in conjunction with the phaseout of ASATR.

Dr. Fisher has determined that for each year of the first five years the new section is in effect the public benefit anticipated as a result of enforcing the new section will be providing public school districts with the definitions, assumptions, and calculations used in determining the districts' ASATR funding. There is no anticipated economic cost to persons who are required to comply with the proposed new section.

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

The public comment period on the proposal begins August 2, 2013, and ends September 3, 2013. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to rules@tea.state.tx.us or faxed to (512) 463-5337. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on August 2, 2013.

The new section is proposed under the Texas Education Code, §42.2516, which authorizes the commissioner of education to adopt rules necessary to implement additional state aid for tax reduction.

The new section implements the Texas Education Code, §42.2516.

§61.1011. Additional State Aid for Tax Reduction (ASATR).

(a) Definitions. The following terms have the following meanings when used in this section.

(1) Annual financial report--The annual financial report that a school district is required to submit to the Texas Education Agency (TEA) under the Texas Education Code (TEC), §44.008.

(2) Average daily attendance (ADA)--Average daily attendance as defined by the TEC, §42.005(a).

(3) Chapter 313 tax credit aid--Additional State Aid for Ad Valorem Tax Credits Under the Texas Economic Development Act, as authorized by the TEC, §42.2515, for the purposes of reimbursing school districts for tax credits issued under the Texas Tax Code, Chapter 313.

(4) Compressed tax rate (CTR)--

(A) For the 2006-2007 fiscal year, the CTR is calculated by multiplying the 2005 adopted maintenance and operations (M&O) tax rate by 0.8867.

(B) For the 2007-2008 fiscal year and each subsequent fiscal year, the CTR is calculated by multiplying the 2005 adopted M&O tax rate by the state compression percentage specified in the TEC, §42.2516(a), as that section existed for that fiscal year.

(5) District planning estimates (DPEs)--The figures on the *Summary of Finances* report that reflect:

(A) the data submitted to the TEA by school districts and by the comptroller of public accounts during a given fiscal year; and

(B) the estimated Foundation School Program entitlements of school districts for the year and data specified in subparagraph (A) of this paragraph.

(6) Fiscal year--The state fiscal year, which begins on September 1 of a given year and ends on August 31 of the subsequent year.

(7) Foundation School Program (FSP)--The program established under the TEC, Chapters 41, 42, and 46, or any successor program of state-appropriated funding for school districts in this state.

(8) General Appropriations Act (GAA)--The bill passed by the Texas Legislature that provides funding for state government.

(9) House Bill (HB) 1 weighted average daily attendance--A calculation of weighted average daily attendance based on the TEC, Chapter 42, funding elements as they existed between September 1, 2006, and August 31, 2009, under the provisions of HB 1, 79th Texas Legislature, Third Called Session, 2005.

(10) HB 3646 weighted average daily attendance--A calculation of weighted average daily attendance based on the TEC, Chapter 42, funding elements as they existed between September 1, 2009, and August 31, 2011, under the provisions of HB 3646, 81st Texas Legislature, 2009.

(11) Legislative payment estimates (LPEs)--The figures on the *Summary of Finances* report that reflect:

(A) the data submitted to the Texas Legislature by the TEA and the comptroller of public accounts in accordance with the TEC, §42.254, for use in establishing the FSP appropriation specified in the GAA for a given biennium; and

(B) the FSP entitlements of school districts for each fiscal year of the biennium based on the data specified in subparagraph (A) of this paragraph.

(12) Local maintenance and operations (M&O) tax collections--The amount of local M&O taxes collected by a school district.

(A) Local M&O tax collections to be used in the calculation of FSP entitlements are determined as follows.

(i) On the preliminary *Summary of Finances* report, local M&O tax collections are calculated according to estimates of property value growth rates provided in the GAA.

(ii) On the near-final *Summary of Finances* report, the local M&O tax collections used are those estimated by the school district for the fiscal year of the *Summary of Finances* report and reported to the TEA in the annual tax information survey conducted by the TEA division responsible for state funding.

(iii) On the final *Summary of Finances* report, the local M&O tax collections used are those reported in the school district annual financial report for the fiscal year of the *Summary of Finances* report.

(iv) On the current *Summary of Finances* report, the local M&O tax collections used are those shown on the final *Summary of Finances* report or amended M&O tax collections that have been submitted and approved by the TEA chief school finance officer.

(B) M&O tax collections used to calculate FSP entitlements are adjusted as applicable. M&O tax collections are reduced for:

(i) payments related to a tax increment fund arrangement under the Texas Tax Code, Chapter 311; and

(ii) amounts related to the local share of a district's Instructional Facilities Allotment for a lease-purchase agreement.

(13) Local M&O tax collections for revenue target calculations--The local M&O tax collections used in the calculation of revenue targets in accordance with the TEC, §42.2516(b), as that section existed on September 1, 2006, to determine a school district's minimum entitlement under the TEC, Chapter 42, as that chapter existed on January 1, 2006, as described in subsection (b)(1) and (2) of this section, are determined as follows.

(A) For Scenario 1, the local M&O tax collections used are those reflected on a school district's current *Summary of Finances* report for the 2005-2006 fiscal year.

(B) For Scenario 2, local M&O tax collections are determined by multiplying the following:

(i) the 2006-2007 M&O yield per penny, which is determined by dividing 2006-2007 M&O tax collections reported in a school district's annual financial report by the number of pennies in the 2006-2007 M&O tax rate; and

(ii) the number of pennies in the 2005 adopted M&O tax rate.

(C) For Scenario 3, local M&O tax collections are determined by multiplying the following:

(i) the 2006-2007 M&O yield per penny, which is determined by dividing 2006-2007 M&O tax collections reported in a school district's annual financial report by the number of pennies in the 2006-2007 M&O tax rate; and

(ii) the number of pennies in the effective tax rate for the 2006-2007 fiscal year, calculated under the Texas Tax Code, §26.08(i) or (k)(1), as that section existed on September 1, 2006.

(D) No changes to the calculations of the tax collections described in this paragraph will be made after September 1, 2014.

(14) Local M&O tax collections at the CTR for Scenario 4--

(A) Local M&O tax collections used for Scenario 4 are determined by multiplying the following:

(i) the yield per penny, which is determined by dividing the M&O tax collections for the fiscal year reported in a school district's annual financial report by the number of pennies in the total M&O tax rate for the fiscal year; and

(ii) the number of pennies in the CTR for the fiscal year.

(B) For a school district that experiences an increase in tax collections in tax year 2012 or a subsequent tax year because it meets one or more of the criteria established under the TEC, §42.2516(f-1)(1), (2), and (3), or that ceases to deposit tax collections into a tax increment fund as described in the TEC, §42.2516(f-1)(4), in tax year 2012 or a subsequent tax year, local M&O tax collections used for Scenario 4 are reduced by the amount of the increase in the M&O tax collections at the CTR that is due to the changes described in the TEC, §42.2516(f-1).

(C) For a school district that experiences a decrease in tax collections in tax year 2012 or a subsequent tax year because it meets one or more of the criteria established under the TEC, §42.2516(f-1)(1), (2), and (3), or that begins to deposit tax collections into a tax increment fund as described in the TEC, §42.2516(f-1)(4), in tax year 2012 or a subsequent tax year, local M&O tax collections used for Scenario 4 are increased by the amount of the decrease in the M&O tax collections at the CTR that is due to the changes described in the TEC §42.2516(f-1).

(15) Minimum salary schedule (MSS) employees--Classroom teachers, full-time nurses, full-time counselors, and full-time librarians that are subject to the MSS requirements under the TEC, §21.402.

(16) Scenario 1, 2, or 3--A series of calculations that existed in the TEC as of January 1, 2006, that determined the amount of state and local revenue per student in weighted average daily atten-

dance to which a school district was entitled. The scenario that produced the greatest state and local revenue per student in weighted average daily attendance served as the basis of funding to which a school district was entitled under the TEC, §42.2516(b), as that section existed on September 1, 2006.

(A) Scenario 1 (S1)--The series of calculations that resulted in the amount of state and local revenue per student in weighted average daily attendance described in the TEC, §42.2516(b)(1)(A), as that section existed on September 1, 2006.

(B) Scenario 2 (S2)--The series of calculations that resulted in the amount of state and local revenue per student in weighted average daily attendance described in the TEC, §42.2516(b)(1)(B), as that section existed on September 1, 2006.

(C) Scenario 3 (S3)--The series of calculations that resulted in the amount of state and local revenue per student in weighted average daily attendance described in the TEC, §42.2516(b)(1)(C), as that section existed on September 1, 2006.

(17) Scenario 4 (S4)--The series of calculations that results in the amount of state and local formula revenue per student in weighted average daily attendance generated at the CTR for a given fiscal year.

(18) Settle-up--A two-step process that reconciles the difference between the FSP payments that are made to a school district or charter school during a fiscal year and the actual entitlement earned by the school district or charter school for that year.

(A) Near-final settle-up--The year-end reconciliation process that occurs after the close of a given fiscal year. The process incorporates the final attendance data for that fiscal year that have been submitted to the Public Education Information Management System (PEIMS). The FSP funding adjustments that result from this reconciliation are reflected on the near-final *Summary of Finances* report for the fiscal year.

(B) Final settle-up--The postaudit reconciliation process that occurs after the TEA's receipt of school district annual financial reports for a given fiscal year. The process incorporates the tax collection data that are reported in the annual financial reports and any other changes to funding elements that have occurred since the near-final settle-up. The FSP funding adjustments that result from this reconciliation are reflected on the final *Summary of Finances* report for the fiscal year.

(19) *Summary of Finances (SOF)* report--The document of record for FSP allocations. The different versions of the report are as follows.

(A) Preliminary *SOF* report--The version of the *SOF* report published during a given fiscal year for that year.

(B) Near-final *SOF* report--The version of the *SOF* report that reflects the FSP entitlements of a school district following near-final settle-up for the given fiscal year.

(C) Final *SOF* report--The version of the *SOF* report that reflects the FSP entitlements of a school district following final settle-up for the given fiscal year.

(D) Current *SOF* report--The most recent version of the *SOF* report that reflects the FSP entitlements of a school district for the given fiscal year as of the current date. The report reflects any changes that have been made since the final *SOF* report.

(20) Supplemental tax increment fund (TIF) aid--Aid under the TEC, §42.2514, that may be due to a school district that pays into a TIF.

(21) Target year--The year that produces the greatest revenue per student in weighted average daily attendance in the scenarios defined by subsection (a)(16) of this section and that is thus used in calculating the minimum revenue entitlement for each fiscal year beginning with the 2006-2007 fiscal year. If the maximum target revenue per student in weighted average daily attendance is produced with S1, then 2005-2006 is the target year. If the maximum target revenue per student in weighted average daily attendance is produced with S2 or S3, then 2006-2007 is the target year.

(22) Weighted average daily attendance (WADA)--Weighted average daily attendance as defined by the TEC, §42.302(a). The WADA used for state funding calculations is determined as follows.

(A) During a given fiscal year, WADA is calculated using the LPEs for that year.

(B) On the near-final SOF report, WADA is calculated using the student attendance data reported to the PEIMS for the given fiscal year.

(C) On the final SOF report, WADA is calculated using the student attendance data for the given fiscal year that are available as of the date of the final SOF.

(b) Additional State Aid for Tax Reduction (ASATR). A school district may be entitled to receive ASATR under the TEC, §42.2516(b). The entitlement to ASATR for a given fiscal year is determined by calculating the minimum revenue entitlement applicable to that fiscal year and comparing the minimum revenue entitlement to the total state and local formula revenue based on the CTR for that fiscal year.

(1) Fiscal year 2006-2007. S1, S2, and S3 target revenue; S4 total state and local revenue; and ASATR are calculated as follows for the 2006-2007 fiscal year.

(A) S1 target revenue. S1 target revenue is based on the actual state and local revenue earned by a school district for the 2005-2006 fiscal year as reflected on the current 2005-2006 SOF report. S1 target revenue is calculated as follows.

(i) S1 revenue includes the sum of the following amounts, calculated based on the provisions of the TEC, Chapters 12, 41, and 42, as they existed on January 1, 2006:

(I) Tier 1 state aid earned by the district in 2005-2006;

(II) Tier 2 state aid earned by the district in 2005-2006;

(III) the per pupil allotment as described in Rider 69, GAA, 79th Texas Legislature, 2005;

(IV) Additional State Aid for Professional Staff Salaries earned by the district under the TEC, §42.2512, for 2005-2006;

(V) Additional State Aid for Homestead Exemption earned by the district under the TEC, §42.2511, for 2005-2006;

(VI) Additional State Aid for School Employee Benefits earned by the district under the TEC, §42.2514, for 2005-2006;

(VII) any gain from a Chapter 41 partnership, which is the amount retained by the district as the result of an agreement under the TEC, §41.121. This amount is equal to the funds received by the district as the result of a 2005-2006 agreement under the TEC, §41.121, less the following amounts:

(-a-) funds retained from the district's 2005-2006 FSP allocation due to attendance credits purchased through an agreement under the TEC, §41.121; and

(-b-) funds due from the district to another entity based on a 2005-2006 agreement under the TEC, §41.121; and

(VIII) M&O tax collections for the 2005-2006 fiscal year as defined by subsection (a)(13)(A) of this section.

(ii) The sum is reduced by the amount of the recapture payments owed by the district for the 2005-2006 fiscal year to produce total state and local revenue.

(iii) Total state and local revenue is divided by the number of WADA the district had in 2005-2006 to produce S1 target revenue per WADA.

(iv) S1 target revenue per WADA is multiplied by the district's 2006-2007 WADA to produce S1 total target revenue.

(B) S2 target revenue. S2 target revenue is based on the state and local revenue a school district would have been entitled to in 2006-2007 based on the provisions of the TEC, Chapters 12, 41, and 42, as they existed on January 1, 2006, and on the tax collections defined by subsection (a)(13)(B) of this section. S2 target revenue is calculated as follows.

(i) S2 revenue includes the sum of the following amounts, calculated based on the provisions of the TEC, Chapters 12, 41, and 42, as they existed on January 1, 2006:

(I) Tier 1 state aid the district would have received in 2006-2007;

(II) Tier 2 state aid the district would have received in 2006-2007;

(III) the per pupil allotment as described in Rider 69, GAA, 79th Texas Legislature, 2005;

(IV) Additional State Aid for Professional Staff Salaries the district would have earned under the TEC, §42.2512, for 2006-2007;

(V) Additional State Aid for Homestead Exemption the district would have earned under the TEC, §42.2511, for 2006-2007;

(VI) Additional State Aid for School Employee Benefits the district would have earned under the TEC, §42.2514, for 2006-2007;

(VII) any gain the district would have received from a Chapter 41 partnership, which is the amount the district would have retained as the result of an agreement under the TEC, §41.121. This amount is equal to the funds the district would have received in 2006-2007 if the 2005-2006 agreement had been maintained under the TEC, §41.121, less the following amounts:

(-a-) funds that would have been retained from the district's 2006-2007 FSP allocation due to attendance credits purchased if the 2005-2006 agreement under the TEC, §41.121, had been maintained; and

(-b-) funds that would have been due from the district to another entity if the 2005-2006 agreement under the TEC, §41.121, had been maintained; and

(VIII) M&O tax collections as defined by subsection (a)(13)(B) of this section.

(ii) The sum is reduced by the amount of the recapture obligation that would have been owed in 2006-2007 if the district would have been subject to the provisions of the TEC, Chapter 41, as

that chapter existed on January 1, 2006, based on the 2005 M&O tax rate and the M&O tax collections defined by subsection (a)(13)(B) of this section to produce total state and local revenue.

(iii) Total state and local revenue is divided by the number of WADA the district had in 2006-2007 to produce S2 target revenue per WADA.

(iv) S2 target revenue per WADA is multiplied by the district's 2006-2007 WADA to produce S2 total target revenue.

(C) S3 target revenue. S3 target revenue is based on the state and local revenue a school district would have been entitled to in 2006-2007 based on the provisions of the TEC, Chapters 12, 41, and 42, as they existed on January 1, 2006, and on the tax collections defined by subsection (a)(13)(C) of this section. S3 target revenue is calculated as follows.

(i) S3 revenue includes the sum of the following amounts, calculated based on the provisions of the TEC, Chapters 12, 41, and 42, as they existed on January 1, 2006:

(I) Tier 1 state aid the district would have received in 2006-2007;

(II) Tier 2 state aid the district would have received in 2006-2007 based on the tax rate authorized by the Texas Tax Code, §26.08(i) or (k)(1), as that section existed on September 1, 2006;

(III) the per pupil allotment as described in Rider 69, GAA, 79th Texas Legislature, 2005;

(IV) Additional State Aid for Professional Staff Salaries the district would have earned under the TEC, §42.2512, for 2006-2007;

(V) Additional State Aid for Homestead Exemption the district would have earned under the TEC, §42.2511, for 2006-2007;

(VI) Additional State Aid for School Employee Benefits the district would have earned under the TEC, §42.2514, for 2006-2007;

(VII) any gain the district would have received from a Chapter 41 partnership, which is the amount the district would have retained as the result of an agreement under the TEC, §41.121. This amount is equal to the funds the district would have received in 2006-2007 if the 2005-2006 agreement had been maintained under the TEC, §41.121, less the following amounts:

(-a-) funds that would have been retained from the district's 2006-2007 FSP allocation due to attendance credits purchased if the 2005-2006 agreement under the TEC, §41.121, had been maintained; and

(-b-) funds that would have been due from the district to another entity if the 2005-2006 agreement under the TEC, §41.121, had been maintained; and

(VIII) M&O collections as defined by subsection (a)(13)(C) of this section.

(ii) The sum is reduced by the amount of the recapture obligation that would have been owed in 2006-2007 if the district would have been subject to the provisions of the TEC, Chapter 41, as that chapter existed on January 1, 2006, based on the M&O tax rate resulting from the computation described in the Texas Tax Code, §26.08(i) or (k)(1), as that section existed on September 1, 2006, and the M&O tax collections defined by subsection (a)(13)(C) of this section to produce total state and local revenue.

(iii) Total state and local revenue is divided by the number of WADA the district had in 2006-2007 to produce S3 target revenue per WADA.

(iv) S3 target revenue per WADA is multiplied by 2006-2007 WADA to produce S3 total target revenue.

(D) S4 total state and local revenue. S4 total state and local revenue is determined by the amount of state and local formula revenue that is generated at the CTR for 2006-2007 based on the provisions of the TEC, Chapters 12, 41, and 42, as they existed on September 1, 2006, and on the tax collections defined by subsection (a)(14) of this section. S4 total state and local revenue is calculated as follows.

(i) S4 total state and local revenue includes the sum of the following amounts, calculated for the 2006-2007 fiscal year based on the provisions of the TEC, Chapters 12, 41, and 42, as they existed on September 1, 2006:

(I) Tier 1 state aid;

(II) Tier 2, Level 1, state aid, as determined under the TEC, §42.302(a-1);

(III) the per pupil allotment as described in Rider 69, GAA, 79th Texas Legislature, 2005;

(IV) Additional State Aid for Professional Staff Salaries earned by the district under the TEC, §42.2512;

(V) Additional State Aid for Homestead Exemption earned by the district under the TEC, §42.2511;

(VI) Additional State Aid for School Employee Benefits earned by the district under the TEC, §42.2514;

(VII) any gain from a Chapter 41 partnership as defined by subsection (b)(1)(A)(i)(VII), (B)(i)(VII), or (C)(i)(VII) of this section for the applicable target year; and

(VIII) M&O tax collections at the CTR as defined by subsection (a)(14) of this section.

(ii) The sum is reduced by the cost of recapture based on the M&O tax collections at the CTR as defined by subsection (a)(14) of this section to produce S4 total state and local revenue.

(E) Determining the need for ASATR funding or a reduction of excess revenue.

(i) The need for ASATR funding is determined by comparing the revenue target to S4 total state and local revenue.

(ii) The revenue target is calculated by adding the following:

(I) the base target revenue, which is the greatest of S1 total target revenue as described in subsection (b)(1)(A)(iv) of this section, S2 total target revenue as described in subsection (b)(1)(B)(iv) of this section, and S3 total target revenue as described in subsection (b)(1)(C)(iv) of this section;

(II) the Salary Allotment, which is the product of the number of MSS employees for 2006-2007 multiplied by \$2,500; and

(III) the High School Allotment, which is the product of the number of high school ADA for 2006-2007 multiplied by \$275.

(iii) If the revenue target is greater than S4 total state and local revenue, then the district is entitled to receive ASATR equal to the difference between the revenue target and S4 total state and local revenue. If S4 total state and local revenue is greater than the revenue

target, then ASATR is equal to zero. For a district with an adopted M&O tax rate below the CTR, any ASATR the district is entitled to is reduced in proportion to the amount by which the adopted M&O tax rate is less than the CTR.

(iv) If S4 total state and local revenue is greater than the revenue target, then a reduction of excess revenue is calculated by subtracting S4 total state and local revenue from the revenue target. The result will be a negative number. If the revenue target is greater than S4 total state and local revenue, the reduction of excess revenue is equal to zero.

(F) Timeline for data changes. No changes to the calculations described in this paragraph or to the S1, S2, and S3 target revenue per WADA amounts described in subsection (b)(1)(A)(iii), (B)(iii), and (C)(iii) of this section, respectively, will be made after September 1, 2014.

(2) Fiscal years 2007-2008 and 2008-2009. Adjusted S1, S2, and S3 target revenue; S4 total state and local revenue; and ASATR are calculated as follows for the 2007-2008 and 2008-2009 fiscal years.

(A) Adjusted S1 target revenue. Adjusted S1 target revenue is based on the actual state and local revenue earned by the school district as reflected on the current 2005-2006 SOF report. Adjusted S1 target revenue is calculated as follows.

(i) S1 revenue includes the sum of the amounts summed in subsection (b)(1)(A)(i) of this section.

(ii) The sum is reduced by the amount of the recapture payments owed by the district for the 2005-2006 fiscal year to produce total state and local revenue.

(iii) Total state and local revenue is divided by the number of WADA the district had in 2005-2006 to produce S1 target revenue per WADA.

(iv) S1 target revenue per WADA is multiplied by 2007-2008 or 2008-2009 WADA, as applicable, to produce S1 total target revenue.

(v) S1 total target revenue is adjusted by the following to produce adjusted S1 target revenue:

(I) the difference between the New Instructional Facility Allotment (NIFA) that the district was entitled to receive under the TEC, §42.158, in the target year and the NIFA that the district was entitled to receive in 2007-2008 or 2008-2009, as applicable; and

(II) for districts not subject to the provisions of the TEC, Chapter 41, the difference between the transportation allotment that the district was entitled to receive under the TEC, §42.155, in the target year and the transportation allotment that the district was entitled to receive in 2007-2008 or 2008-2009, as applicable.

(B) Adjusted S2 target revenue. Adjusted S2 target revenue is calculated as follows.

(i) S2 revenue includes the sum of the amounts summed in subsection (b)(1)(B)(i) of this section.

(ii) The sum is reduced by the amount of the recapture obligation that would have been owed in 2006-2007 if the district would have been subject to the provisions of the TEC, Chapter 41, as that chapter existed on January 1, 2006, based on the 2005 M&O tax rate and the M&O tax collections defined by subsection (a)(13)(B) of this section to produce total state and local revenue.

(iii) Total state and local revenue is divided by the number of WADA the district had in 2006-2007 to produce S2 target revenue per WADA.

(iv) S2 target revenue per WADA is multiplied by 2007-2008 or 2008-2009 WADA, as applicable, to produce S2 total target revenue.

(v) S2 total target revenue is adjusted by the following to produce adjusted S2 target revenue:

(I) the difference between the NIFA that the district was entitled to receive under the TEC, §42.158, in the target year and the NIFA that the district was entitled to receive in 2007-2008 or 2008-2009, as applicable; and

(II) for districts not subject to the provisions of the TEC, Chapter 41, the difference between the transportation allotment that the district was entitled to receive under the TEC, §42.155, in the target year and the transportation allotment that the district was entitled to receive in 2007-2008 or 2008-2009, as applicable.

(C) Adjusted S3 target revenue. Adjusted S3 target revenue is calculated as follows.

(i) S3 revenue includes the sum of the amounts summed in subsection (b)(1)(C)(i) of this section.

(ii) The sum is reduced by the amount of the recapture obligation that would have been owed in 2006-2007 if the district would have been subject to the provisions of the TEC, Chapter 41, as that chapter existed on January 1, 2006, based on the M&O tax rate resulting from the computation described in the Texas Tax Code, §26.08(i) or (k)(1), as that section existed on September 1, 2006, and the M&O tax collections defined by subsection (a)(13)(C) of this section to produce total state and local revenue.

(iii) Total state and local revenue is divided by the number of WADA the district had in 2006-2007 to produce S3 target revenue per WADA.

(iv) S3 target revenue per WADA is multiplied by 2007-2008 or 2008-2009 WADA, as applicable, to produce S3 total target revenue.

(v) S3 total target revenue is adjusted by the following to produce adjusted S3 target revenue:

(I) the difference between the NIFA that the district was entitled to receive under the TEC, §42.158, in the target year and the NIFA that the district was entitled to receive in 2007-2008 or 2008-2009, as applicable; and

(II) for districts not subject to the provisions of the TEC, Chapter 41, the difference between the transportation allotment that the district was entitled to receive under the TEC, §42.155, in the target year and the transportation allotment that the district was entitled to receive in 2007-2008 or 2008-2009, as applicable.

(D) S4 total state and local revenue. S4 total state and local revenue is determined by the amount of state and local formula revenue that is generated at the CTR for 2007-2008 or 2008-2009, as applicable, based on the provisions of the TEC, Chapters 12, 41, and 42, as they existed on September 1, 2007, and on the tax collections defined by subsection (a)(14) of this section. S4 total state and local revenue is calculated as follows.

(i) S4 total state and local revenue includes the sum of the following:

(I) Tier 1 state aid;

(II) Tier 2, Level 1, state aid, as determined under the TEC, §42.302(a-1);

(III) the per pupil allotment as described in Rider 69, GAA, 79th Texas Legislature, 2005;

(IV) Additional State Aid for Professional Staff Salaries earned by the district under the TEC, §42.2512;

(V) Additional State Aid for Homestead Exemption earned by the district under the TEC, §42.2511;

(VI) Additional State Aid for School Employee Benefits earned by the district under the TEC, §42.2514;

(VII) any gain from a Chapter 41 partnership as defined by subsection (b)(1)(A)(i)(VII), (B)(i)(VII), or (C)(i)(VII) of this section for the applicable target year; and

(VIII) M&O tax collections at the CTR as defined by subsection (a)(14) of this section.

(ii) The sum is reduced by the cost of recapture based on the M&O tax collections at the CTR as defined by subsection (a)(14) of this section to produce S4 total state and local revenue.

(E) Determining the need for ASATR funding or a reduction of excess revenue.

(i) The need for ASATR funding is determined by comparing the revenue target to S4 total state and local revenue.

(ii) The revenue target is calculated by adding the following:

(I) the base target revenue, which is the greatest of adjusted S1 total target revenue as described in subsection (b)(2)(A)(v) of this section, adjusted S2 total target revenue as described in subsection (b)(2)(B)(v) of this section, and adjusted S3 total target revenue as described in subsection (b)(2)(C)(v) of this section;

(II) the Salary Allotment, which is the product of the number of MSS employees for 2007-2008 or 2008-2009, as applicable, multiplied by \$2,500;

(III) the High School Allotment, which is the product of the number of high school ADA for 2007-2008 or 2008-2009, as applicable, multiplied by \$275;

(IV) any tuition paid adjustment, which is the difference between the tuition paid in 2007-2008 or 2008-2009, as applicable, and the tuition paid in the target year;

(V) any other adjustment to tax collections; and

(VI) any Texas Tax Code, Chapter 313, tax credit aid.

(iii) If the revenue target is greater than S4 total state and local revenue, then the district is entitled to receive ASATR equal to the difference between the revenue target and S4 total state and local revenue. If S4 total state and local revenue is greater than the revenue target, then ASATR is equal to zero. For a district with an adopted M&O tax rate below the CTR, any ASATR the district is entitled to is reduced in proportion to the amount by which the adopted M&O tax rate is less than the CTR.

(iv) If S4 total state and local revenue is greater than the revenue target, then a reduction of excess revenue is calculated by subtracting S4 total state and local revenue from the revenue target. The result will be a negative number. If the revenue target is greater than S4 total state and local revenue, the reduction of excess revenue is equal to zero.

(3) Fiscal year 2009-2010. Adjusted S1, S2, and S3 target revenue; total HB 3646 state and local revenue; and ASATR are cal-

culated as follows for the 2009-2010 fiscal year. Data elements and calculations are based on the provisions of the TEC, Chapters 41 and 42, as they existed on January 1, 2009, unless otherwise specified.

(A) S1 target revenue is based on the state and local revenue a school district would have been entitled to in 2009-2010 based on the provisions of the TEC, Chapters 12, 41, and 42, as they existed on January 1, 2009. Adjusted S1 target revenue is calculated as follows.

(i) S1 target revenue per WADA as described in subsection (b)(1)(A)(iii) of this section is multiplied by the number of 2009-2010 HB 1 WADA to produce S1 target revenue.

(ii) S1 target revenue is adjusted by the following to produce adjusted S1 target revenue:

(I) the difference between the NIFA that the district was entitled to receive under the TEC, §42.158, in 2005-2006 and the NIFA that the district was entitled to receive in 2009-2010; and

(II) the difference between the transportation allotment that the district was entitled to receive under the TEC, §42.155, in 2005-2006 and the transportation allotment that the district was entitled to receive in 2009-2010.

(B) S2 target revenue is based on the state and local revenue a school district would have been entitled to in 2009-2010 based on the provisions of the TEC, Chapters 12, 41, and 42, as they existed on January 1, 2009. Adjusted S2 target revenue is calculated as follows.

(i) S2 target revenue per WADA as described in subsection (b)(1)(B)(iii) of this section is multiplied by the number of 2009-2010 HB 1 WADA to produce S2 target revenue.

(ii) S2 target revenue is adjusted by the following to produce adjusted S2 target revenue:

(I) the difference between the NIFA that the district was entitled to receive under the TEC, §42.158, in 2006-2007 and the NIFA that the district was entitled to receive in 2009-2010; and

(II) the difference between the transportation allotment that the district was entitled to receive under the TEC, §42.155, in 2006-2007 and the transportation allotment that the district was entitled to receive in 2009-2010.

(C) S3 target revenue is based on the state and local revenue a school district would have been entitled to in 2009-2010 based on the provisions of the TEC, Chapters 12, 41, and 42, as they existed on January 1, 2009. Adjusted S3 target revenue is calculated as follows.

(i) S3 target revenue per WADA as described in subsection (b)(1)(C)(iii) of this section is multiplied by the number of 2009-2010 HB 1 WADA to produce S3 target revenue.

(ii) S3 target revenue is adjusted by the following to produce adjusted S3 target revenue:

(I) the difference between the NIFA that the district was entitled to receive under the TEC, §42.158, in 2006-2007 and the NIFA that the district was entitled to receive in 2009-2010; and

(II) the difference between the transportation allotment that the district was entitled to receive under the TEC, §42.155, in 2006-2007 and the transportation allotment that the district was entitled to receive in 2009-2010.

(D) Adjusted HB 1 target revenue for 2009-2010 is calculated by adding the following:

(i) the maximum adjusted target revenue, which is the greatest of adjusted S1 target revenue as described in subsection (b)(3)(A)(ii) of this section, adjusted S2 target revenue as described in subsection (b)(3)(B)(ii) of this section, and adjusted S3 target revenue as described in subsection (b)(3)(C)(ii) of this section;

(ii) the Salary Allotment, which is the product of the number of MSS employees for 2009-2010 multiplied by \$2,500;

(iii) the High School Allotment, which is the product of the number of high school ADA for 2009-2010 multiplied by \$275; and

(iv) any tuition paid adjustment, which is the difference between the tuition paid in 2009-2010 and the tuition paid in the target year.

(E) Adjusted HB 1 revenue per HB 1 WADA is calculated by dividing adjusted HB 1 target revenue by 2009-2010 HB 1 WADA.

(F) HB 3646 base target revenue is calculated by multiplying adjusted HB 1 revenue per HB 1 WADA by 2009-2010 HB 3646 WADA.

(G) HB 3646 adjusted target revenue is calculated by adding the amount of the funds received by the district in 2008-2009 for the Educator Salary Increase as authorized by Rider 86, GAA, 80th Texas Legislature, 2007, to HB 3646 base target revenue.

(H) Minimum revenue hold harmless is calculated by multiplying 2009-2010 HB 3646 WADA by \$120 and adding HB 3646 adjusted target revenue to that amount.

(I) Maximum revenue is calculated by multiplying 2009-2010 HB 3646 WADA by \$350 and adding HB 3646 adjusted target revenue to that amount.

(J) Total HB 3646 state and local revenue is calculated by adding 2009-2010 Tier 1 state aid and 2009-2010 M&O tax collections at the CTR and then subtracting from that sum 2009-2010 recapture at the CTR.

(K) The need for ASATR funding or the reduction of excess revenue is determined as follows.

(i) If minimum revenue hold harmless is greater than total HB 3646 state and local revenue, then the district is entitled to receive ASATR equal to the difference. If total HB 3646 state and local revenue is greater than minimum revenue hold harmless, then ASATR is equal to zero. For a district with an adopted M&O tax rate below the CTR, any ASATR the district is entitled to is reduced in proportion to the amount by which the adopted M&O tax rate is less than the CTR.

(ii) If total HB 3646 state and local revenue is greater than maximum revenue, then a reduction of excess revenue is calculated by subtracting total HB 3646 state and local revenue from maximum revenue. The result will be a negative number. If maximum revenue is greater than total HB 3646 state and local revenue, the reduction of excess revenue is equal to zero.

(L) 2009-2010 revenue at the CTR is the sum of total HB 3646 state and local revenue, any ASATR the district is entitled to for 2009-2010, and any reduction of excess revenue the district is subject to for 2009-2010.

(M) 2009-2010 revenue per WADA at the CTR is calculated by dividing 2009-2010 revenue at the CTR by 2009-2010 HB 3646 WADA.

(N) No changes to the calculations described in this paragraph will be made after September 1, 2014.

(4) Fiscal year 2010-2011. Minimum revenue; adjusted minimum revenue; state and local revenue (S4); and ASATR are calculated as follows for the 2010-2011 fiscal year.

(A) 2010-2011 minimum revenue is calculated as follows.

(i) 2009-2010 adjusted HB 1 revenue per HB 1 WADA as described in subsection (b)(3)(E) of this section is multiplied by 2010-2011 WADA to produce base target revenue.

(ii) The following are added to base target revenue to produce 2010-2011 minimum revenue:

(I) the 2010-2011 minimum increase, which is calculated by multiplying 2010-2011 WADA by \$120;

(II) the amount of any supplemental TIF aid; and

(III) any tuition paid adjustment, which is the difference between the tuition paid in 2009-2010 and that paid in 2010-2011.

(B) 2010-2011 adjusted minimum revenue is calculated by adding the following to 2010-2011 minimum revenue:

(i) the amount of any Chapter 313 tax credit aid;

(ii) the amount of the funds received by the district in 2008-2009 for the Educator Salary Increase as authorized by Rider 86, GAA, 80th Texas Legislature, 2007;

(iii) the difference between the NIFA that the district was entitled to receive under the TEC, §42.158, in 2009-2010 and the NIFA that the district was entitled to receive in 2010-2011; and

(iv) for districts not subject to the provisions of the TEC, Chapter 41, the difference between the transportation allotment that the district was entitled to receive under the TEC, §42.155, in 2009-2010 and the transportation allotment that the district was entitled to receive in 2010-2011.

(C) 2010-2011 state and local revenue (S4) is calculated by adding 2010-2011 Tier 1 state aid and 2010-2011 M&O collections at the CTR and then subtracting from that sum 2010-2011 recapture at the CTR.

(D) 2010-2011 maximum revenue is calculated by adding the following:

(i) the product of 2010-2011 WADA multiplied by 2009-2010 revenue per WADA at the CTR as described in subsection (b)(3)(M) of this section; and

(ii) the product of 2010-2011 WADA multiplied by \$350.

(E) The need for ASATR funding or the reduction of excess revenue is determined as follows.

(i) If 2010-2011 adjusted minimum revenue is greater than 2010-2011 state and local revenue, then the district is entitled to receive ASATR equal to the difference. If 2010-2011 state and local revenue is greater than 2010-2011 adjusted minimum revenue, then ASATR is equal to zero. For a district with an adopted M&O tax rate below the CTR, any ASATR the district is entitled to is reduced in proportion to the amount by which the adopted M&O tax rate is less than the CTR.

(ii) If 2010-2011 state and local revenue is greater than 2010-2011 maximum revenue, then a reduction of excess revenue is calculated by subtracting 2010-2011 state and local revenue from 2010-2011 maximum revenue. The result will be a negative number.

If 2010-2011 maximum revenue is greater than 2010-2011 state and local revenue, the reduction of excess revenue is equal to zero.

(I) If the school district receives state funding based on its CTR, the funding will be reduced by the amount of excess revenue.

(II) If the school district is subject to the recapture provisions of the TEC, Chapter 41, then its cost of recapture will be increased by the amount of excess revenue.

(F) 2010-2011 revenue at the CTR is the sum of 2010-2011 state and local revenue, any ASATR the district is entitled to for 2010-2011, and any reduction of excess revenue the district is subject to for 2010-2011.

(G) 2010-2011 revenue per WADA at the CTR is calculated by dividing 2010-2011 revenue at the CTR by 2010-2011 WADA.

(5) Fiscal year 2011-2012 and subsequent fiscal years. Minimum revenue; adjusted minimum revenue; state and local revenue (S4); and ASATR are calculated as follows for the 2011-2012 fiscal year and each subsequent fiscal year.

(A) Minimum revenue for the applicable year is calculated as follows.

(i) 2009-2010 adjusted HB 1 revenue per HB 1 WADA as described in subsection (b)(3)(E) of this section is multiplied by the number of WADA for the applicable year and then by the multiplier specified in the TEC, §42.2516(i), to establish base target revenue.

(ii) Base target revenue is added to the minimum increase, which is the product of the number of WADA for the applicable year multiplied by \$120 and then by the multiplier specified in the TEC, §42.2516(i).

(iii) The sum is adjusted by the difference between the tuition paid in 2009-2010 and that paid in the applicable year.

(B) Adjusted minimum revenue for the applicable year is calculated as follows.

(i) Minimum revenue for the applicable year is added to the product of the amount of funds received by the district in 2008-2009 for the Educator Salary Increase as authorized by Rider 86, GAA, 80th Texas Legislature, 2007, multiplied by the multiplier specified in the TEC, §42.2516(i).

(ii) For the 2011-2012 and 2012-2013 fiscal years, the sum described by subsection (b)(5)(B)(i) of this section is adjusted by the following to produce adjusted minimum revenue:

(I) the difference between the NIFA that the district was entitled to receive under the TEC, §42.158, in 2009-2010 and the NIFA that the district is entitled to receive in the applicable year; and

(II) for districts not subject to the provisions of the TEC, Chapter 41, the difference between the transportation allotment that the district was entitled to receive under the TEC, §42.155, in 2009-2010 and the transportation allotment that the district is entitled to receive in the applicable year.

(iii) For 2013-2014 and each subsequent fiscal year, the sum described by subsection (b)(5)(B)(i) of this section is adjusted by the following to produce adjusted minimum revenue:

(I) the difference between the NIFA that the district was entitled to receive under the TEC, §42.158, in 2009-2010 and

the NIFA that the district is entitled to receive in the applicable year; and

(II) the difference between the transportation allotment that the district was entitled to receive under the TEC, §42.155, in 2009-2010 and the transportation allotment that the district is entitled to receive in the applicable year.

(C) State and local revenue (S4) for the applicable year is calculated by adding Tier 1 state aid for that year to M&O tax collections at the CTR for that year and then subtracting from that sum recapture at the CTR for that year.

(D) The need for ASATR funding is determined as follows.

(i) If adjusted minimum revenue for the applicable year is greater than state and local revenue for that year, then the district is entitled to receive ASATR equal to the difference. For a district with an adopted M&O tax rate below the CTR, any ASATR the district is entitled to is reduced in proportion to the amount by which the adopted M&O tax rate is less than the CTR.

(ii) If state and local revenue for the applicable year is greater than adjusted minimum revenue for that year, then ASATR is equal to zero.

(E) Revenue at the CTR for the applicable year is the sum of state and local revenue (S4) for that year and any ASATR the district is entitled to for that year.

(F) Revenue per WADA at the CTR for the applicable year is calculated by dividing revenue at the CTR for that year by the number of WADA for that year.

(c) Recapture at the CTR used to calculate state and local revenue (S4) for 2012-2013 and subsequent years.

(1) For a school district that experiences an increase in tax collections in tax year 2012 or a subsequent tax year because it meets one or more of the criteria established under the TEC, §42.2516(f-1)(1), (2), and (3), or that ceases to deposit tax collections into a TIF as described in the TEC, §42.2516(f-1)(4), in tax year 2012 or a subsequent year, recapture at the CTR for use in S4 for the applicable year is reduced by recalculating the recapture owed using M&O tax collections at the CTR that are decreased as described in subsection (a)(14)(B) of this section.

(2) For a school district that experiences a decrease in tax collections in tax year 2012 or a subsequent tax year because it meets one or more of the criteria established under the TEC, §42.2516(f-1)(1), (2), and (3), or that begins to deposit tax collections into a TIF as described in the TEC, §42.2516(f-1)(4), in tax year 2012 or a subsequent year, recapture at the CTR for use in S4 for the applicable year is increased by recalculating the recapture owed using M&O tax collections at the CTR that are increased as described in subsection (a)(14)(C) of this section.

(d) Consolidation.

(1) If two or more school districts consolidate, a new target revenue per WADA for the consolidated district is calculated as follows.

(A) The number of WADA for each district for the applicable year is multiplied by the district's target revenue per WADA for the applicable year.

(B) The results are summed.

(C) The sum is divided by the total number of WADA in the consolidated district to produce target revenue per WADA for the consolidated district.

(2) The new target revenue per WADA applies to the computation of ASATR and any incentive aid under the TEC, §13.281, for the consolidated district.

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 18, 2013.

TRD-201302944

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: September 1, 2013

For further information, please call: (512) 475-1497



TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 185. PHYSICIAN ASSISTANTS

22 TAC §185.29

The Texas Medical Board (Board) proposes new §185.29, concerning Report of Impairment on Registration Form.

The new rule provides that if a licensee has an impairment that affects a licensee's ability to actively practice as a physician assistant, the licensee will be given the opportunity to place his or her license on retired status, convert the license to an inactive status if the impairment is solely physical, voluntarily surrender his or her license, or be referred to the Texas Physician Health Program.

Scott Freshour, General Counsel for the Board, has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing this proposal will be to establish procedures to provide licensees with options when they have impairments that affect their ability to safely practice as physician assistants and to provide the public with safeguards to assist with safe physician assistant practice.

Mr. Freshour has also determined that for the first five-year period the section is in effect there will be no fiscal implication to state or local government as a result of enforcing the section as proposed. The effect to individuals required to comply with the rule as proposed is undetermined but there likely will be additional costs to physicians to meet the requirements under the rule. The effect on small or microbusinesses is undetermined but there will likely be additional costs to medical practices that perform non-surgical medical procedures.

Comments on the proposal may be submitted to Sarah Tuthill, P.O. Box 2018, Austin, Texas 78768-2018 or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

The new rule is proposed under the authority of the Texas Occupations Code Annotated, §204.101, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of

medicine in this state; enforce this subtitle; and establish rules related to licensure.

The new rule is also authorized by §204.157, §204.315, and Chapter 167 of the Texas Occupations Code.

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

§185.29. Report of Impairment on Registration Form.

(a) A physician assistant who reports an impairment that affects his or her ability to actively practice as a physician assistant as defined by §185.4(d) of this title (relating to Procedural Rules for Licensure Applicants) shall be given written notice of the following:

(1) based on the physician assistant's impairment, he or she may request:

(A) to be placed on retired status pursuant to §185.28 of this title (relating to Retired License);

(B) to have the physician assistant's license converted to inactive status as defined under §185.8 of this title (relating to Inactive License) if the physician assistant's impairment is solely physical;

(C) to voluntarily surrender the physician assistant's license pursuant to §185.26 of this title (relating to Voluntary Relinquishment or Surrender of Physician Assistant License); or

(D) to be referred to the Texas Physician Health Program pursuant to Chapter 180 of this title (relating to Texas Physician Health Program and Rehabilitation Orders); and

(2) that failure to respond to the written notice or otherwise not comply with paragraph (1) of this subsection within 45 days shall result in a referral to the Board's Investigation Division for possible disciplinary action.

(b) The Board shall provide written notice as described in subsection (a) of this section within 30 days of receipt of the licensee's registration form indicating the licensee's impairment.

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 22, 2013.

TRD-201302961

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Earliest possible date of adoption: September 1, 2013

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



PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 515. LICENSES

22 TAC §515.8

The Texas State Board of Public Accountancy (Board) proposes an amendment to §515.8, concerning Retirement Status or Permanent Disability.

The amendment to §515.8 will delete the implication that a disability must be permanent in order to qualify for disability status; make it clear that a CPA that serves on a Board of Directors, Board of Trustees, or in a similar governance position is not

eligible for retired status unless the service is provided without compensation and for a charity, civic, or similar non-profit organization; correct a citation; clarify what qualifies for a disability or retirement status; revise a citation resulting from the relocation of a rule; and help the reader understand the meaning of the term "association with accounting work."

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

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

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

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

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a better understanding of what qualifies for retired or disability status.

The probable economic cost to persons required to comply with the amendment will be none.

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

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

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

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on September 3, 2013. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

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

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

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

§515.8. Retired [Retirement Status] or [Permanent] Disability Status.

(a) Retired status. A licensee who is at least 60 years old and has filed a request on a form prescribed by the board stating that he has no association with accounting work for compensation may be granted retired status at the time of license renewal. An individual who has been granted retired status and who reenters the workforce in a position that has an association with accounting work for which he receives compensation automatically loses the retired status. A CPA who serves on a Board of Directors, Board of Trustees, or in a similar governance position is not eligible for retired status unless the service is provided without compensation and for a charity, civic, or similar non-profit organization. Upon reentry into the workforce under such conditions, the individual must notify the board and request a new license renewal notice and:

(1) pay the license fee established by the board for the period since he became employed;

(2) complete a new license renewal notice; and

(3) meet the CPE requirements for the period since he was granted the retired status as required by §523.113(1)(B)(ii) [~~§523.112(5)~~] of this title (relating to Exemptions from CPE [Mandatory CPE Attendance]).

(b) Disability [Permanent disability] status. Disability [Permanent disability] status may be granted to an individual who submits to the board a statement and a notarized affidavit from the licensee's physician which identifies the disability and states that the individual is unable to work because of a severe ongoing physical or mental impairment or medical condition that is not likely to improve within the next 12 consecutive months [and which clearly details the disability]. This status may be granted only at the time of license renewal. [An individual who has been granted permanent disability status and who reenters the workforce in a position that has an association with accounting work for which he receives compensation automatically loses the permanent disability status. Upon reentry into the workforce under such conditions, the individual must notify the board and request a new license renewal notice and:]

(1) Disability status is immediately revoked upon:

(A) the CPA reentering the workforce in a position that has an association with accounting work for which he receives compensation; or

(B) the CPA serving on a Board of Directors, Board of Trustees, or in a similar governance position unless the service is for a charity, civic, or similar non-profit organization.

(2) Upon reentry into the workforce under such conditions, the individual must notify the board and request a new license renewal notice and:

(A) pay the license fee established by the board for the period since he became employed;

(B) complete a new license renewal notice; and

(C) meet the CPE requirements for the period pursuant to §523.113(1)(B)(ii) of this title.

~~{(1) pay the license fee established by the board for the period since he became employed;}~~

~~{(2) complete a new license renewal notice; and}~~

~~[(3) meet the continuing professional education requirements for the period pursuant to §523.112(5) of this title.]~~

(c) For purposes of this section the term "association with accounting work" shall include the following:

(1) working, ~~[or]~~ supervising or providing oversight of accounting work performed in the areas of financial accounting and reporting; tax compliance, planning or advice; management advisory services; accounting information systems; treasury, finance, or audit; or

(2) representing to the public, including an employer, that the individual is a CPA or public accountant in connection with the sale of any services or products involving accounting work, including such designation on a business card, letterhead, proxy statement, promotional brochure, advertisement, or office; or

(3) offering testimony in a court of law purporting to have expertise in accounting and reporting, auditing, tax, or management services; or

(4) for purposes of making a determination as to whether the individual fits one of the categories listed in subsection ~~[subsections]~~ (a) or (b) of this section the questions shall be resolved in favor of including the work as an "association with accounting work."

(d) All board rules and all provisions of the Act apply to an individual in retired or ~~[permanent]~~ disability status.

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 18, 2013.

TRD-201302951

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: September 1, 2013

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



CHAPTER 523. CONTINUING PROFESSIONAL EDUCATION

SUBCHAPTER B. CONTINUING PROFESSIONAL EDUCATION RULES FOR INDIVIDUALS

22 TAC §523.113

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.113, concerning Exemptions from CPE.

The amendment to §523.113 will clarify what constitutes association with accounting work; correct a citation; and clarify what qualifies for a disability or retirement status.

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

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

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

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

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a better understanding of what qualifies for retired or disability status.

The probable economic cost to persons required to comply with the amendment will be none.

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

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

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

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on September 3, 2013. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

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

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

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

§523.113. Exemptions from CPE.

The board shall not issue or renew a license to an individual who has not earned the required CPE credit hours unless an exemption has been granted by the board.

(1) The board may consider granting an exemption from the CPE requirement on a case-by-case basis if:

(A) a licensee completes and forwards to the board a sworn affidavit indicating that the licensee will not be employed during the period for which the exemption is requested;

(B) a licensee completes and forwards to the board a sworn affidavit indicating no association with accounting work. The affidavit shall include, as a minimum, a brief description of the duties

performed, job title, and verification by the licensee's immediate supervisor, if applicable;

(i) For purposes of this section, the term "association with accounting work" shall include the following:

(I) working, providing oversight of accounting, or supervising work performed in the areas of financial accounting and reporting; tax compliance, planning or advice; management advisory services; accounting information systems; treasury, finance, or audit; or

(II) representing to the public, including an employer, that the licensee is a CPA or public accountant in connection with the sale of any services or products involving professional accounting services, including such designation on a business card, letterhead, proxy statement, promotional brochure, advertisement, or office; or

(III) offering testimony in a court of law purporting to have expertise in accounting and reporting, auditing, tax, or management services; or

(IV) for purposes of making a determination as to whether the licensee fits one of the categories listed in this subclause and subclauses (I) - (III) of this clause, the questions shall be resolved in favor of including the work as professional accounting services.

(ii) Prior to providing professional accounting services, a licensee who has been granted exemptions under paragraph (1)(A), (B), (C), (D), (E) and (F) of this section and the exemption is no longer applicable or has been granted retired or disability [disabled] status under §515.8 of this title (relating to Retired [Retirement Status] or [Permanent] Disability Status) and no longer qualifies for retired or disability [disabled] status shall be required to report CPE hours earned in the technical area as described in §523.102 of this chapter (relating to CPE Purpose and Definitions) and §523.130 of this chapter (relating to Ethics Course Requirements). Based on the CPE hours previously reported, the licensee must report the minimum number of required CPE hours as described in this section.

(C) a licensee not residing in Texas, who submits a sworn statement to the board that the licensee does not serve Texas clients from out of state;

(D) a licensee shows reasons of health, certified by a medical doctor, that prevent compliance with the CPE requirement. A licensee must petition the board for the exemption and provide documentation that clearly establishes the period of disability and the resulting physical limitations;

(E) a licensee is on active military duty during the period for which the exemption is requested, and files a copy of orders to active military duty with the board; or

(F) a licensee shows reason which prevents compliance that is acceptable to the board.

(2) A licensee who has been granted the retired or disability [disabled] status under §515.8 of this title is not required to report any CPE hours.

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 18, 2013.
TRD-201302952

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: September 1, 2013

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

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 9. PROPERTY TAX ADMINISTRATION

SUBCHAPTER D. APPRAISAL REVIEW BOARD

34 TAC §9.804

The Comptroller of Public Accounts proposes an amendment to §9.804, concerning arbitration of appraisal review board determinations. This section is amended, including revisions to forms adopted by reference, to implement provisions of House Bill 585, effective June 14, 2013, Senate Bill 1662, effective January 1, 2014, with provisions that duplicate House Bill 585, and Senate Bill 1255, effective June 14, 2013, all passed by the 83rd Legislature, 2013. House Bill 585 and Senate Bill 1662 repeal the provision for expedited arbitration and Senate Bill 1255 provides for appeal through binding arbitration of appraisal review board orders determining protests filed under Tax Code, §41.41(a)(2). This section is also amended to conform the rule to the provisions of Tax Code §1.08 and §1.085 and to make non-substantive, stylistic changes. An emergency amendment to the rule was published in the June 28, 2013, issue of the *Texas Register* (38 TexReg 4061).

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

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by improving the administration of local property valuation and taxation. The proposed amendment would have no fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the amendment may be submitted to Deborah Cartwright, Director, Property Tax Assistance Division, P.O. Box 13528, Austin, Texas 78711-3528.

This amendment is proposed under Tax Code, §41A.13, which authorizes the comptroller to adopt rules necessary for the implementation and administration of Tax Code, Chapter 41A.

This amendment implements Tax Code, Chapter 41A.

§9.804. *Arbitration of Appraisal Review Board Determinations.*

(a) Definitions and instructions. The following words and terms, when used in this subchapter, shall have the following meanings and are subject to the stated instructions and provisions. [In this section:]

(1) ~~["Owner--A[" means a] person or entity having legal title to property. It does not include lessees who have the right to protest property valuations before county appraisal review boards.~~

(2) ~~["Agent--An[" means an] individual for whom written authorization has been granted in accordance with the terms of this subsection and includes the following: an attorney licensed by the State of Texas; a real estate broker or salesperson licensed under Occupations Code, Chapter 1101; a real estate appraiser licensed or certified under Occupations Code, Chapter 1103; an appraisal district employee registered under Occupations Code, Chapter 1151, or an appraisal district contractor; a property tax consultant registered under Occupations Code, Chapter 1152; or a certified public accountant certified under Occupations Code, Chapter 901. An agent, other than an attorney, may not take any action relating to binding arbitration on behalf of an owner without a completed authorization form prescribed by the comptroller. The authorization form must be signed by the owner and specify the actions that the agent is authorized to take on behalf of the owner with respect to binding arbitration. Authorized actions that must be identified on the form include whether or not the agent has the authority to sign the request for binding arbitration, whether or not the agent has the authority to receive deposit refunds, and whether or not the agent has the authority to represent the owner in the arbitration proceeding. The authorization must identify as an agent a specific individual and identify the agent's license or certificate number and applicable licensing board pertaining to the license or certificate under which the agent is qualified to represent the owner pursuant to Tax Code, §41A.08. An authorization identifying a business entity is not valid; identification of an individual meeting the qualifications of Tax Code, §41A.08 is required. If an owner authorizes an agent to receive deposit refunds, the authorization must include the agent's social security number, federal tax identification number, or Texas state tax identification number. If the owner has no agent, all correspondence from the comptroller regarding the arbitration will be sent to the owner. If the owner has authorized an agent to receive deposit refunds as provided in this section, all correspondence from the comptroller regarding the arbitration will be sent to the authorized agent. In order for an agent to represent an appraisal district, other than an attorney or an employee of the appraisal district, a written statement signed by the chief appraiser authorizing the agent to represent the district in the arbitration proceedings shall be submitted in writing to the property owner and the arbitrator at or before the time of the arbitration proceeding.~~

(3) ~~["Binding arbitration--A[" means a] forum in which each party to a dispute presents the position of the party before an impartial third party who is appointed by the comptroller as provided by Tax Code, Chapter 41A, and who renders a specific award that is enforceable in law and may only be appealed as provided by Civil Practices and Remedies Code, §171.088, for purposes of vacating an award.~~

(4) ~~["Appraised value--Has[" has] the meaning included in Tax Code, §1.04(8).~~

(5) ~~["Market value--Has[" has] the meaning included in Tax Code, §1.04(7).~~

(6) ~~["Appraisal district--Has[" has] the meaning included in Tax Code, §6.01.~~

(7) ~~["Comptroller--The[" means the] Comptroller of Public Accounts of the State of Texas.~~

(b) Request for Arbitration.

(1) The appraisal review board of an appraisal district shall include a notice of the owner's right to binding arbitration and a copy of the request for binding arbitration form prescribed by the comptroller with the notice of issuance and the order determining a protest filed

pursuant to Tax Code, §41.41(a)(1) or (2) concerning the appraised or market value of property if the value determined by the order is \$1 million or less or if the property qualifies as the owner's residence homestead under Tax Code, §11.13.

(2) An owner may appeal through binding arbitration an appraisal review board order determining a protest filed pursuant to Tax Code, §41.41(a)(1) or (2) concerning the appraised or market value of property if the value determined by the order is \$1 million or less or if the property qualifies as the owner's residence homestead under Tax Code, §11.13. A protest concerning unequal appraisal, a motion for correction of an appraisal roll, a protest concerning the qualification of property for exemption or special appraisal, or any other issue not specified in Tax Code, §41.41(a)(1) or (2) cannot be appealed through binding arbitration.

(3) A request for binding arbitration must be made on the form prescribed by the comptroller and signed by an owner or agent. If an agent files a request for binding arbitration, a written authorization signed by the owner as described in this section that specifically authorizes the agent to file the request must be attached to the request for binding arbitration. Failure to attach a complete authorization disqualifies the agent from requesting the arbitration. The request for binding arbitration form must be filed with the appraisal district responsible for appraising the property not later than the 45th calendar day after the date the owner receives the order determining protest from the appraisal review board as evidenced by certified mail receipt. A deposit in the ~~[applicable] amount [as] provided by Tax Code, §41A.03 in the form of a money order or a check issued and guaranteed by a banking institution, such as a cashier's or teller's check, payable to the Comptroller of Public Accounts must accompany the request for binding arbitration. Personal check, cash, or other form of payment shall not be accepted. The request for binding arbitration with the required [applicable] deposit and, if applicable, the agent authorization form must be timely submitted to the appraisal district by hand delivery, [or] by certified first-class mail, or as provided by Tax Code, §1.08 or Tax Code, §1.085. [Subject to all provisions set forth in this section, a property owner may request expedited arbitration as provided by Tax Code, §41A.031-]~~

(4) The appraisal district shall reject a request for binding arbitration if the owner or agent fails to attach the required deposit in the manner required by this section. In such event, the appraisal district shall return the request for binding arbitration with a notification of the rejection to the owner or agent by regular first-class mail or other form of delivery requested in writing by the owner or agent.

(5) The chief appraiser of the appraisal district must submit requests for binding arbitration with the required deposits to the comptroller not later than the 10th calendar day after the date the appraisal district receives the requests. The chief appraiser must assign an arbitration number to each request in accordance with the procedures and forms developed by the comptroller. The chief appraiser must certify receipt of the request and state in the certification whether or not the request was timely filed; the request was made on the form prescribed by the comptroller; the deposit was submitted according to this section; and any other information required by the comptroller. In addition, the chief appraiser must submit to the comptroller with each request a copy of the order determining protest or, in the case of an appeal relating to contiguous properties pursuant to Tax Code, §41A.03, a copy of each order determining protest. The chief appraiser must submit the requests for arbitration to the comptroller by hand delivery or certified first-class mail, and must simultaneously deliver a copy of the submission to the owner by regular first-class mail.

(6) Failure by the owner to timely file the request for arbitration and the required ~~[applicable]~~ deposit with the appraisal district shall result in the denial of the request by the comptroller. Failure by the

owner to pay taxes on the property subject to the appeal in an amount equal to the amount of taxes due on the portion of the taxable value of the property that is not in dispute before the delinquency date shall result in the denial of the request for arbitration by the comptroller. If the property owner or agent did not file a protest pursuant to Tax Code, §41.41(a)(1) or (2) concerning the appraised or market value of property determined by the appraisal review board to be valued at \$1 million or less or property that qualifies as the owner's residence homestead under Tax Code, §11.13, the comptroller shall deny the request for binding arbitration. If the property owner or agent filed an appeal in district court concerning the property subject to a request for binding arbitration, the comptroller shall deny the request. Failure by the owner to provide all information required by the comptroller's prescribed form, including but not limited to the signature of the owner or agent and the written authorization of the owner designating an agent, may result in the denial of the request by the comptroller if the information is not provided in a timely manner, not to exceed 10 calendar days, after a written or verbal request by the comptroller to the person requesting arbitration to supplement or complete the form has been made.

(7) On receipt of the request for arbitration, the comptroller shall determine whether to accept the request, deny the request, or request additional information. The comptroller shall notify the owner or agent and appraisal district of the determination. If the comptroller accepts the request, the comptroller shall notify the owner or agent and the appraisal district of the Internet address of the comptroller's website at which the comptroller's registry of arbitrators is maintained and may be accessed. The comptroller shall request in the notice that the parties attempt to select an arbitrator from the registry of arbitrators. The notice shall be delivered electronically, by facsimile transmission, or by regular first-class mail. If requested by the owner or appraisal district, the comptroller shall deliver promptly a copy of the registry of arbitrators in paper form to the owner or the appraisal district by regular first-class mail.

(c) Registry of Arbitrators.

(1) A person seeking to be listed in the comptroller's registry of arbitrators must submit a completed application on a form provided by the comptroller providing all requested information and documentation and affirming that the applicant meets the qualifications set forth in Tax Code, §41A.06. By submitting the application and any documentation required on the prescribed form, the applicant attests that he or she has all of the qualifications required under Tax Code, §41A.06, agrees to conduct an arbitration for a fee that is not more than 90% of the amount of the [applicable] arbitration deposit, and agrees to promptly notify the comptroller of any change in the applicant's qualifications. The attestation shall remain in effect until the renewal date of the applicant's license or certification under which the applicant was qualified, pursuant to Tax Code, §41A.06, to be included in the registry. For an arbitrator to continue to be included in the registry, a new application must be submitted on or before the earlier of each renewal date of the applicant's license or certification under which the applicant was qualified, pursuant to Tax Code, §41A.06, or the second anniversary of the date the arbitrator was initially added to or subsequently renewed on the registry.

(2) A person applying for inclusion in the comptroller's registry of arbitrators must agree to conduct arbitration hearings as required by Tax Code, Chapter 41A, and in accordance with the limitations indicated in the application and by this section. The application must state that false statements provided by applicants may result in misdemeanor or felony convictions. The application must also state that the comptroller may remove a person from the registry of arbitrators at any time due to failure to meet statutory qualifications or to

comply with requirements of this section, or for good cause as determined by the comptroller.

(3) The comptroller shall deny an application if it is determined that the applicant does not qualify for listing in the arbitration registry or if inclusion of the applicant in the arbitration registry would otherwise not be in the interest of impartial arbitration proceedings. A person is ineligible to be listed as an arbitrator if the person is a member of a board of directors of any appraisal district or an appraisal review board in the state; an employee, contractor, or officer of any appraisal district in the state; a current employee of the comptroller; or a member of a governing body, officer, or employee of any taxing unit in the state.

(4) If the application is approved, the applicant's name and other pertinent information provided in the application and the applicant's professional resume or vitae shall be added to the comptroller's registry of arbitrators. The registry may include the arbitrator's experience and qualifications, the geographic areas in which the arbitrator agrees to serve, and other information useful for property owners and county appraisal district personnel in selecting an arbitrator. The arbitrator may be required to conduct arbitrations regionally in order to be included in the registry.

(5) The comptroller must notify the applicant of the approval or denial of the application or the removal of the arbitrator from the registry as soon as practicable and must provide a brief explanation of the reasons for denial. The applicant may provide a written statement of why the denial should be reconsidered by the comptroller within 30 calendar days of the applicant receiving the denial. The comptroller may approve the application if the applicant provides information to justify the approval. If the application is subsequently approved, the comptroller shall notify the applicant as soon as practicable.

(6) Each person who is listed as an arbitrator in the comptroller's registry must report to the comptroller in writing any material change in the information provided in the application within 30 calendar days of the change. A material change includes, but is not limited to a change in address, telephone number, e-mail address, website, loss of required licensure, incapacity, or other condition that would prevent the person from professionally performing arbitration duties. Failure of the arbitrator to report a material change may result in the immediate removal of the arbitrator from the current registry upon its discovery and the denial of future applications for inclusion in the registry. An arbitrator's failure to report a material change as required by this paragraph shall not affect the determinations and awards made by the arbitrator during the period that the arbitrator is listed in the registry.

(7) Owners, agents, and appraisal districts are responsible for verifying the accuracy of the information provided in the arbitrator registry in attempting to agree on an arbitrator. If the information is found to be inaccurate by the owners, agents, or appraisal districts, such fact must be communicated to the comptroller as soon as practicable in order that the registry may be corrected. Inclusion of an arbitrator in the comptroller's registry is not and shall not be construed as a representation by the comptroller that all information provided is true and correct and shall not be construed or represented as a professional endorsement of the arbitrator's qualifications to conduct arbitration proceedings.

(8) The registry shall be maintained on the comptroller's Internet website or in non-electronic form and will be updated within 30 calendar days of the date that arbitrator applications are approved or updated and processed by the comptroller.

(d) Appointment of Arbitrators.

(1) The appraisal district shall notify the comptroller not later than the 20th calendar day after the date the parties receive a copy of the registry or the notice of the comptroller's Internet address of the

registry website, whichever is later, that an arbitrator was selected by the parties by agreement or that an agreement could not be reached.

(2) The comptroller shall promptly appoint an arbitrator selected by agreement of the owner or agent and the appraisal district. The notification of the appointment must be transmitted by regular first-class mail to the arbitrator. The arbitrator shall notify the owner or agent and the appraisal district promptly of the appointment.

(3) If an appraisal district notifies the comptroller that the owner or agent and the appraisal district have been unable to agree to an arbitrator, the comptroller shall appoint an arbitrator from the registry within 20 business days from such notification and inform the arbitrator by regular first-class mail. The arbitrator shall notify the owner or agent and the appraisal district promptly of the appointment.

(4) If the appraisal district fails to notify the comptroller of the selection of an arbitrator or the failure to agree to an arbitrator timely, the comptroller shall appoint an arbitrator from the registry within 20 business days of the date the comptroller becomes aware of the failure of the appraisal district and owner or agent to comply with the requirements of law. The arbitrator shall be notified of the appointment by the comptroller by regular first-class mail. The arbitrator shall notify the owner or agent and the appraisal district promptly of the appointment.

(5) The appointment of an arbitrator by the comptroller shall be made according to preferences included in arbitrator applications geographically and by random selection.

(6) An arbitrator may not accept an appointment and may not continue an arbitration after appointment if the arbitrator has an interest in the outcome of the arbitration or if the arbitrator is related to the owner, an officer, employee, or contractor of the appraisal district, or a member of the appraisal district board of directors or appraisal review board by affinity within the second degree or by consanguinity within the third degree as determined under Government Code, Chapter 573. The owner or appraisal district may request a substitute arbitrator before the arbitration proceedings begin upon a showing, supported by competent evidence, that the assigned arbitrator has an interest in the outcome of the arbitration or that the arbitrator is related to the owner, an officer, employee, or contractor of the appraisal district, or a member of the appraisal district board of directors or appraisal review board by affinity within the second degree or by consanguinity within the third degree as determined under Government Code, Chapter 573.

(7) The comptroller must be notified, in writing, within 5 business days of the arbitrator's receipt of the appointment that the arbitrator is unable or unwilling to conduct the arbitration because of a conflict of interest described by paragraph (6) of this subsection, or for any other reason; or that the appointment is accepted. The notification must be delivered to the comptroller electronically, by facsimile transmission, or by regular first-class mail. If the comptroller does not receive from the arbitrator written notification of acceptance or refusal of the appointment within 5 business days, the comptroller shall presume that the appointment has been refused. If the arbitrator refuses the appointment, the comptroller shall appoint a substitute arbitrator from the registry within 10 business days of the receipt, or the determination pursuant to this subsection, of the arbitrator's refusal. The process of appointment of arbitrators pursuant to this subsection shall continue in this fashion until an acceptance is obtained. A refusal to accept an arbitration appointment may be considered by the comptroller in evaluating subsequent requests for arbitration and appointments.

(e) Provision of Arbitration Services.

(1) The arbitrator may require written agreements with the appraisal district and the owner concerning provision of arbitration ser-

VICES, including but not limited to the time, place, and manner of conducting and concluding the arbitration. Unless the property owner and the appraisal district both agree to arbitration by submission of written documents, the arbitration will be conducted in person or by teleconference. An arbitrator may require that the arbitration be conducted in person. If the arbitration is conducted in person, the proceeding must be held in the county where the appraisal district office is located and from which the appraisal review board order determining protest was issued, unless the parties agree to another location. The arbitrator must give notice and conduct arbitration proceedings in the manner provided by Civil Practice and Remedies Code, §§171.044, 171.045, 171.046, 171.047, 171.049, 171.050, and 171.051, and shall continue a proceeding if both parties agree to the continuance and may continue a proceeding for reasonable cause. The arbitrator must, by written procedures delivered in advance to the parties, require that the parties produce and exchange evidence prior to the hearing.

(2) The arbitrator shall decide to what extent the arbitration hearing procedures are formal or informal and shall deliver written procedures to be used at the hearing. The parties shall be allowed to record the proceedings by audiotape, but may record them by videotape only with the consent of the arbitrator.

(3) The parties to an arbitration proceeding may represent themselves or may be represented by an agent as provided by Tax Code, §41A.08 with timely, written authorization as provided in this section. If an agent was not identified in the request for binding arbitration for purposes of representing an owner in the arbitration proceeding, a written authorization from the owner may be presented at the time of the arbitration proceeding in order for the agent to represent the owner at the proceeding. Such written authorization must be made on the comptroller-prescribed agent authorization form, must be signed by the owner, and may provide only for the agent to represent the owner at the arbitration proceeding. Any deposit refund will be processed in accordance with the original request for binding arbitration. No written authorization is required for an attorney to represent a party at an arbitration proceeding.

(4) The confidentiality provisions of Tax Code, §22.27, concerning information provided to an appraisal office, apply to information provided to arbitrators. The information may not be disclosed except as provided by law.

(5) The arbitrator shall not communicate with the owner, the appraisal district, or their agents, nor shall the owner, the appraisal district, or their agents communicate with the arbitrator, prior to the arbitration hearing concerning specific evidence, argument, facts, merits, or the property subject to arbitration. Such communications may be grounds for the removal of the arbitrator from the comptroller's registry of arbitrators.

(6) The arbitrator shall dismiss a pending arbitration action with prejudice if it is determined during the proceedings that taxes on the property subject to the appeal are delinquent; that the appraisal review board order(s) appealed did not determine a protest filed pursuant to Tax Code, §41.41(a)(1) or (2) concerning the appraised or market value of property determined by the order at \$1 million or less or of property that qualifies as the owner's residence homestead under Tax Code, §11.13; that the request for arbitration was not timely filed; or if the owner files an appeal with the district court under Tax Code, Chapter 42, concerning the value of property at issue in the pending arbitration. When the arbitration involves contiguous tracts of land pursuant to Tax Code, §41A.03(a-1), each appraisal review board order appealed must be a determination of a protest filed pursuant to Tax Code, §41.41(a)(1) concerning the appraised or market value of property determined by the order at \$1 million or less or of property that qualifies as the owner's residence homestead under Tax Code, §11.13;

however, the combined total value of all orders appealed may exceed \$1 million, whether or not the appeal involves a property that qualifies as owner's residence homestead. When the arbitration involves contiguous tracts of land pursuant to Tax Code, §41A.03(a-1), the arbitrator shall dismiss a pending arbitration action with prejudice if it is determined during the proceedings that taxes on any property subject to the appeal are delinquent; that any of the appraisal review board orders appealed did not determine a protest filed pursuant to Tax Code, §41.41(a)(1) or (2) concerning the appraised or market value of property determined by the order at \$1 million or less or of property that qualifies as the owner's residence homestead under Tax Code, §11.13; that the request for arbitration was not timely filed; or if the owner files an appeal with the district court under Tax Code, Chapter 42, concerning the value of any property at issue in the pending arbitration.

(7) The arbitrator must complete an arbitration proceeding in a timely manner and will make every effort to complete the proceeding within 120 days from the acceptance of the appointment by the arbitrator. Failure to comply with the timely completion of arbitration proceedings may result in the removal of the arbitrator from the comptroller's registry of arbitrators.

(f) Arbitration Determinations and Awards.

(1) The arbitrator shall determine the appraised or market value of the property that is the subject of the arbitration [and may only include in the award the remedy provided by Tax Code, §42.25].

(2) If the arbitrator makes a determination of the appraised value of property to be valued under Tax Code, Chapter 23, Subchapters B, C, D, E, or H, these statutory provisions and the comptroller's rules must be followed in making the appraised value determination.

(3) If the arbitrator makes a determination of the value of a residence homestead that has an appraised value that is less than its market value due to the appraised value limitation required by Tax Code, §23.23, the appraised value may not be changed unless:

(A) the arbitrator determines that the formula for calculating the appraised value of the property under Tax Code, §23.23, was incorrectly applied and the change correctly applies the formula;

(B) the calculation of the appraised value of the property reflected in the appraisal review board order includes an amount attributable to new improvements and the change reflects the arbitrator's determination of the value contributed by the new improvements; or

(C) the arbitrator determines that the market value of the property is less than the appraised value indicated on the appraisal review board order and the change reduces the appraised value to the market value determined by the arbitrator.

(4) Within 20 calendar days of the conclusion of the arbitration hearing, the arbitrator shall make a final determination and award on the form prescribed by the comptroller and signed by the arbitrator. A copy of the determination and award form shall be delivered to the owner or agent and the appraisal district by facsimile transmission or regular first-class mail, as requested by the parties, and to the comptroller by regular first-class mail.

(5) All post-appeal administrative procedures provided by Tax Code, Chapter 42, Subchapter C, shall apply to arbitration awards.

(g) Payment of Arbitrators' Fees and Refund of Property Owner Deposit.

(1) Deposits submitted with requests for arbitration by owners or agents, and submitted by appraisal districts to the comp-

troller, shall be deposited into individual accounts for each owner and according to assigned arbitration numbers.

(2) The provisions of Government Code, Chapter 2251, shall apply to the payment of arbitrator fees by the comptroller, if applicable, beginning on the date that the comptroller receives a copy of the arbitrator's determination and award by regular first-class mail.

(3) Payment of arbitrators' fees and arbitration deposit refunds will be processed in accordance with the provisions of Tax Code, §41A.09. An award that determines an appraised or market value at an amount exactly one-half of the difference in value between the property owner's opinion of value as stated in the request for binding arbitration and the value determined by the appraisal review board is deemed to be nearer the appraisal review board's determination of value. The comptroller will retain 10% of each deposit for administrative costs.

(4) If an arbitrator dismisses a pending arbitration as provided by subsection (e)(6) of this section, the comptroller shall refund to the owner or agent the deposit, less the 10% retained by the comptroller for administrative costs. In such event, the arbitrator must seek payment from the owner or agent for the services rendered prior to the dismissal of the proceeding.

(5) An owner or agent may withdraw a request for arbitration only by written notice delivered to the appraisal district, the comptroller, and the arbitrator, if one has been appointed. If the owner or agent withdraws a request for arbitration in writing 14 or more calendar days before the arbitration proceeding is first scheduled, the comptroller shall refund to the owner or agent the deposit, less the 10% retained by the comptroller for administrative costs. If the owner or agent withdraws a request for arbitration less than 14 calendar days before the arbitration proceeding is first scheduled, the comptroller shall pay the fee, if any, charged by the arbitrator. The fee will be paid from the owner's deposit and mailed to the address shown on the arbitrator's registry application. If the arbitrator's fee is less than 90% of the owner's deposit, the comptroller shall refund to the owner or agent any remaining deposit, less 10% retained by the comptroller for administrative costs. If the arbitrator's fee is 90% of the owner's deposit, the comptroller shall retain 10% of the deposit for administrative costs and no refund will be paid.

(6) If the comptroller denies a request for arbitration as provided by subsection (b)(6) of this section, the comptroller shall refund to the owner or agent the deposit, less the 10% retained by the comptroller for administrative costs.

(7) A refund to an owner or agent or a payment to an arbitrator is subject to the provisions of Government Code, §403.055. The comptroller's form for request for binding arbitration will require identification of the social security number or tax identification number of the individual authorized to receive deposit refunds. For an owner, the owner is required to provide the owner's social security number, federal tax identification number, or Texas state tax identification number. If an agent has been authorized by the owner to receive deposit refunds, the agent is required to provide the agent's social security number, federal tax identification number, or Texas state tax identification number. Deposit refunds will not be processed without the required identification. The comptroller shall not issue a warrant for payment to a person who is indebted to the state or has a tax delinquency owing to the state until the indebtedness or delinquency has been fully satisfied.

(h) Pending Arbitrations. No party to an arbitration including, but not limited to, a property owner, a property owner's agent, an appraisal district, or an arbitrator, may seek the comptroller's advice or direction on a matter relating to a pending arbitration under Tax Code, Chapter 41A. An arbitration is pending from the date a request for arbitration is filed and continues until delivery of the arbitrator's final award

pursuant to Tax Code, §41A.09. The prohibition in this subsection shall not apply to administrative matters assigned to the comptroller, such as processing of arbitration requests and deposits.

(i) **Forms Adopted by Reference.** The Comptroller of Public Accounts adopts by reference the Request for Binding Arbitration form and the Arbitration Determination and Award form. Copies of these forms can be obtained from the Comptroller of Public Accounts, Property Tax Assistance Division, P.O. Box 13528, Austin, Texas 78711-3528.

(j) **Other Forms.** All other comptroller forms applicable to this section may be revised at the discretion of the comptroller. The comptroller may also prescribe additional forms for the administration of binding arbitration. Current forms can be obtained from the Comptroller of Public Accounts' Property Tax Assistance Division.

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 16, 2013.

TRD-201302904

Ashley Harden

General Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: September 1, 2013

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



SUBCHAPTER H. TAX RECORD REQUIREMENTS

34 TAC §9.3044

The Comptroller of Public Accounts proposes an amendment to §9.3044, concerning appointment of agents for property taxes. This amendment is proposed to implement provisions of House Bill 3439, effective September 1, 2013, passed by the 83rd Legislature, 2013; to update and clarify the section; to revise the forms applicable to the section; and to delete language that merely duplicates language set forth in the Tax Code.

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

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by improving the administration of local property valuation and taxation. The proposed amendment would have no fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the amendment may be submitted to Deborah Cartwright, Director, Property Tax Assistance Division, P.O. Box 13528, Austin, Texas 78711-3528. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendment is proposed pursuant to Tax Code, §1.111(h).

This section implements Tax Code, §1.111.

§9.3044. *Appointment of Agents for Property Tax Matters [Taxes].*

(a) Except as otherwise provided by existing court order, law, or other comptroller rule [subsection (m) of this section], a property owner shall use comptroller form 50-162 to designate an agent for property tax matters pursuant to Tax Code, §1.111(a). Except as provided in subsection (b) of this section, forms required to be used by this section shall be used as adopted by the comptroller, without changes in form or substance including, but not limited to, content, font size, and pagination. For the purposes of this section, the term "property owner" includes a person who claims a legal interest in the property.

(b) All appraisal districts shall prepare and make available copies of comptroller form 50-162 for property owners [taxpayers] to use in designating agents for property tax matters. An appraisal district may pre-print the appraisal district's name and address in the spaces designated for such information on form 50-162; however, no other changes or modifications may be made. An appraisal district may, if approved in advance in writing by the comptroller, make non-substantive modifications to form 50-162 for purposes of facilitating electronic delivery.

[(e) The appointment of an agent under subsection (a) of this section is not binding on an appraisal district until the designation form is filed with the district. Unless otherwise authorized as provided by Tax Code, §1.111(b), a person who is required to register as a property tax consultant under Occupations Code, Chapter 1152, may not sign form 50-162 or form 50-241 on behalf of a property owner. The property owner shall indicate the date the owner appoints the agent on the designation form. If the property owner files forms designating more than one agent to act in the same capacity for the same item of property, the form bearing the later date of appointment revokes the form bearing the earlier date, as of the date the form bearing the later date is filed. If a conflict arises concerning the representation of a property owner based on the owner's designation of an agent on form 50-162 and the agent's filing of form 50-163 for account updates, the written authorization provided by form 50-162 shall prevail. Nothing in this section is intended to conflict with Tax Code, §1.111(b). An appraisal district shall permit an agent who has been properly authorized to act on behalf of the property owner to represent the owner as provided by the authorization.]

(c) [(d)] Designation of an agent to receive notices or other communications is not effective for any notice or other communication about a property that is mailed or sent by electronic means before the property owner's written notice is filed with the appraisal district in accordance with Tax Code, §1.111(f). A written statement filed pursuant to Tax Code, §1.111(j) is not effective for any notice or other communication about a property that is mailed or sent by electronic means before the written statement is filed with the protest in accordance with Tax Code, §1.111(j). No written designation or request for delivery of tax bills pursuant to Tax Code, §1.111(f) is required for a mortgage lender who is authorized by a deed of trust executed by the property owner to pay taxes on the property [owner or agent files written notice that the designation applies to that property].

[(e) While the appraisal office may act on the basis of information provided from a variety of sources, including persons who verbally represent that they act on behalf of property owners, an appraisal district or appraisal review board should require that the form required by this section be filed with the appraisal district before taking any action that increases the property owner's tax liability on the basis of information provided by a person who claims to represent the property owner.]

(d) [(f)] For the purposes of the prohibition against designating more than one agent for a single item of property in Tax Code, §1.111(d), an item of property means the property included under a single appraisal district account number. Unless the appraisal district has separately listed an improvement or the property owner presents

documentation to the appraisal district showing separate ownership of land and improvements, a property owner may not designate separate agents to represent land and improvements. A property owner may, however, designate a different agent for purposes of Tax Code, Chapter 41A, or any other matter as provided by law or other comptroller rule [different agents to represent him in different capacities on a single item of property or on different aspects of a particular ease].

(c) [(g)] If a property owner directs delivery of tax bills or notices to an agent after the date appraisal records are certified, the chief appraiser, as soon as practicable after the designation is filed, shall notify the affected taxing unit of the property owner's name, the account number of the property, and the name and address of the agent designated for notice.

(f) [(h)] A property owner is not required to file a written designation of agent for a person who:

- (1) acts as a courier for the property owner;
- (2) prepares documents in a clerical capacity for the property owner;
- (3) is an employee of the owner or of a corporate parent, affiliate, or subsidiary of the owner and is authorized by the owner to represent him; or
- (4) is an attorney licensed to practice law in the State of Texas and retained by a property owner to represent him before the appraisal district or appraisal review board.;

[(5) is a mortgage lender who is authorized by a deed of trust executed by the property owner to pay taxes on the property, provided that the agency is only for the purpose of receiving tax bills from collection offices.]

(g) [(i)] A person who owns property in more than one county may file a reproduction of the original signed appointment form with each appraisal district. If the chief appraiser has reason to question the authenticity of the document, the chief appraiser may require the property owner or the agent to provide the original for inspection.

(h) Forms adopted by reference. The Comptroller of Public Accounts adopts by reference Appointment of Agent for Property Tax Matters (Form 50-162) and, for purposes of use as required by court order existing as of the date of amendment of this section, Appointment of Agent for Single-Family Residential Property Tax Matters (Form 50-241). Copies of the forms can be obtained from the Comptroller of Public Accounts, Property Tax Assistance Division, P.O. Box 13528, Austin, Texas 78711-3528.

(i) Other forms. The comptroller may also prescribe additional forms applicable to this section. Any such forms may be revised at the discretion of the comptroller. Copies of the forms can be obtained from the Comptroller of Public Accounts, Property Tax Assistance Division, P.O. Box 13528, Austin, Texas 78711-3528.

(j) Designations signed and filed with an appraisal district prior to the effective date of amendment of this section, until revoked as provided by law, continue in effect to the extent that such designations are consistent with existing law or, as applicable, court order.

[(j) In this section, the term "agent" means a person authorized to perform one or more of the following activities on behalf of the property owner:]

[(1) receive confidential information available to the person designating the agent, subject to the provisions of subsection (k) of this section;]

[(2) negotiate or resolve any disputed tax matters;]

[(3) receive notices, tax statements, appraisal review board orders, and other communications from appraisal districts, appraisal review boards, and tax offices;]

[(4) file notices of protest;]

[(5) present protests before the appraisal review board; or]

[(6) other action required or permitted of a property owner before the appraisal district, appraisal review board, or tax office.]

[(k) An agent designated by a property owner or person who claims an interest in a property may not have access to renditions, agricultural use (1) - (d) applications, or confidential sales information filed with or provided to the appraisal office by a person who has a competing claim of an interest in the property and has not designated the agent as his representative.]

[(l) An agent designated to represent a property owner as required by this section, shall use form 50-163 to provide the appraisal district with information concerning changes, additions, or deletions in the items of properties for which the agent is designated to represent the owner.]

[(m) A property owner shall use form 50-241 to designate an agent for property tax matters related to the owner's single-family residence. All appraisal districts shall prepare and make available to the public copies of comptroller form 50-241.]

[(n) Forms 50-162, 50-241, and 50-163 are adopted by reference. Copies of the forms may be obtained from the Comptroller of Public Accounts, P.O. Box 13528, Austin, Texas 78711-3528. Copies may also be requested by calling our toll-free number 1-800-252-9121. In Austin, call (512) 305-9999.]

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 16, 2013.

TRD-201302905

Ashley Harden

General Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: September 1, 2013

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



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 4. COMMERCIAL VEHICLE REGULATIONS AND ENFORCEMENT PROCEDURES

SUBCHAPTER B. REGULATIONS GOVERNING TRANSPORTATION SAFETY

37 TAC §4.13

The Texas Department of Public Safety (the department) proposes an amendment to §4.13, concerning Authority to Enforce, Training and Certificate Requirements. The proposed amend-

ment is necessary to ensure this section is consistent with the Texas Transportation Code, §644.101, which establishes which peace officers are eligible to enforce Chapter 644 of the Texas Transportation Code.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rule as proposed. There is no anticipated economic cost to individuals who are required to comply with this rule as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of enforcing the rule is maximum efficiency of the Motor Carrier Safety Assistance Program.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this rule. Accordingly, the department is not required to complete a takings impact assessment regarding this rule.

The Texas Department of Public Safety, in accordance with the Administrative Procedure and Texas Register Act, Texas Government Code, §2001.001, et seq., and Texas Transportation Code, Chapter 644, will hold a public hearing on Monday, August 12, 2013, at 10:00 a.m., at the Texas Department of Public Safety, Texas Highway Patrol Division, Building G Annex, 5805 North Lamar, Austin, Texas. The purpose of this hearing is to receive comments from all interested persons regarding adoption of the proposed amendment to 37 TAC §4.13, concerning Authority to Enforce, Training and Certificate Requirements, proposed for adoption under the authority of Texas Transportation Code, Chapter 644, which provides that the director shall, after notice and a public hearing, adopt rules regulating the safe operation of commercial motor vehicles.

Persons interested in attending this hearing are encouraged to submit advance written notice of their intent to attend the hearing and to submit a written copy of their comments. Correspondence should be addressed to Major Chris Nordloh, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500.

Persons with special needs or disabilities who plan to attend this hearing and who may need auxiliary aids or services are requested to contact Major Chris Nordloh at (512) 424-2775 at least three working days prior to the hearing so that appropriate arrangements can be made.

Other comments on this proposal may be submitted to Major Chris Nordloh, Texas Highway Patrol Division, Texas Depart-

ment of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500, (512) 424-2775. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

The amendment is proposed pursuant to Texas Transportation Code, §644.051, which authorizes the director to adopt rules regulating the safe transportation of hazardous materials and the safe operation of commercial motor vehicles; and authorizes the director to adopt all or part of the federal safety regulations, by reference.

Texas Transportation Code, §644.051, is affected by this proposal.

§4.13. *Authority to Enforce, Training and Certificate Requirements.*

(a) Authority to Enforce.

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

(5) A sheriff, or deputy sheriff from any of the following Texas counties meeting the training and certification requirements contained in subsection (b) of this section and certified by the department, may stop, enter or detain on a highway or at a port of entry within the county a motor vehicle subject to Texas Transportation Code, Chapter 644:

(A) (No change.)

(B) a county with a population of 1 [~~2.2~~] million or more.

(6) (No change.)

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

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

Filed with the Office of the Secretary of State on July 15, 2013.

TRD-201302897

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Earliest possible date of adoption: September 1, 2013

For further information, please call: (512) 424-5848

PART 5. TEXAS BOARD OF PARDONS AND PAROLES

CHAPTER 141. GENERAL PROVISIONS

SUBCHAPTER G. DEFINITION OF TERMS

37 TAC §141.111

The Texas Board of Pardons and Paroles proposes amendments to 37 TAC §141.111, concerning definitions. The amendments to §141.111 are proposed to revise the definitions for hearing officer, parole panel, and victim.

Rissie Owens, Chair of the Board, determined that for each year of the first five-year period the proposed amendments are in effect, no fiscal implications exist for state or local government as a result of enforcing or administering this section.

Ms. Owens also has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amendments to this sec-

tion will be to bring the rule into compliance with current board practice. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended rule as proposed.

An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendments will not have an economic effect on small businesses as defined in Texas Government Code §2006.001(2).

Comments should be directed to Bettie Wells, General Counsel, Texas Board of Pardons and Paroles, 209 W. 14th Street, Suite 500, Austin, Texas 78701 or by e-mail to bettie.wells@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposal.

The amendments are proposed under §§508.036, 508.0441, and 508.045, Government Code. Section 508.036 authorizes the board to adopt rules relating to the decision-making processes used by the board and parole panels. Section 508.0441 and §508.045 authorize the board to adopt reasonable rules as proper or necessary relating to the eligibility of an offender for release to mandatory supervision and to act on matters of release to mandatory supervision.

No other statutes, articles, or codes are affected by these amendments.

§141.111. Definition of Terms.

The following words and terms used within these rules shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (15) (No change.)

(16) Hearing officer--A staff member designated by the board and assigned to conduct a preliminary or revocation hearing concerning one or more allegations of violation of the terms and conditions of parole, mandatory supervision, or conditional pardon; and a sex offender conditions hearing to determine whether the offender constitutes a threat to society by reason of lack of sexual control.

(17) - (23) (No change.)

(24) Parole panel--A three member decision-making body of the board authorized to act in release matters. In certain cases, the full board acts as the parole panel.

(25) - (40) (No change.)

(41) Victim--A person who is the victim of the offense of sexual assault, indecent with a child by contact, continuous sexual abuse of a young child or children, aggravated sexual assault, kidnapping, aggravated robbery, trafficking of persons, or injury to a child, elderly individual, or disabled individual or who has suffered personal injury or death as a result of the criminal conduct of another, as defined in the Texas Code of Criminal Procedure, Article 56.01 §2(a) and §3.

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 22, 2013.

TRD-201302971

Bettie Wells

General Counsel

Texas Board of Pardons and Paroles

Earliest possible date of adoption: September 1, 2013

For further information, please call: (512) 406-5388

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CHAPTER 143. EXECUTIVE CLEMENCY
SUBCHAPTER D. REPRIEVE FROM
EXECUTION

37 TAC §143.42

The Texas Board of Pardons and Paroles proposes amendments to 37 TAC §143.42, concerning reprieve recommended by the board. The amendments recognize the right of the victim's family in a capital felony case not to be contacted directly.

Rissie Owens, Chair of the Board, determined that for each year of the first five-year period the proposed amendments are in effect, no fiscal implications exist for state or local government as a result of enforcing or administering this section.

Ms. Owens also has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amendments to this section will be to bring the rule into compliance with current board practice. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended rule as proposed.

An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendments will not have an economic effect on small businesses as defined in Texas Government Code §2006.001(2).

Comments should be directed to Bettie Wells, General Counsel, Texas Board of Pardons and Paroles, 209 W. 14th Street, Suite 500, Austin, Texas 78701 or by e-mail to bettie.wells@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposal.

The amendments are proposed under Article IV, Section 11 of the Texas Constitution and Article 48.01, Code of Criminal Procedure, that invest the Board of Pardons and Paroles with the power to recommend clemency, including pardons, commutations of sentence, and reprieves; and under §508.036(b), Government Code, that provides the Board with authority to adopt rules relating to the decision-making processes used by the Board of Pardons and Paroles.

No other statutes, articles, or codes are affected by these amendments.

§143.42. Reprieve Recommended by the Board.

The board will consider a reprieve of execution from death sentence upon receipt of a written application in behalf of an offender. The individual filing such application, if other than the offender, may be required to demonstrate that he is authorized by the offender to file such application. Any such application shall contain the following information:

(1) - (6) (No change.)

(7) the requested length of duration of the reprieve, which shall be in increments of 30 days that is, 30, 60, 90, etc., unless a different duration is requested upon the basis of the grounds for the application set forth pursuant to paragraph (8) of this section; and,

(8) all grounds upon the basis of which the reprieve is requested; provided that such grounds shall not call upon the board to decide technical questions of law which are properly presented via the judicial process. [~~and~~]

[~~(9)~~ a brief statement of the effect of the prisoner's crime upon the family of the victim.]

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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Bettie Wells

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Texas Board of Pardons and Paroles

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For further information, please call: (512) 406-5388



CHAPTER 145. PAROLE SUBCHAPTER A. PAROLE PROCESS

37 TAC §145.12, §145.13

The Texas Board of Pardons and Paroles proposes amendments to 37 TAC §145.12 and §145.13, concerning action upon review, and action upon review; consecutive (cumulative) felony sentencing. The amendments are proposed to add penal code references for offenders who are eligible for multi-year set-offs and delete voting option FI-4 relating to Pre-Parole Transfer facilities.

Rissie Owens, Chair of the Board, determined that for each year of the first five-year period the proposed amendments are in effect, no fiscal implications exist for state or local government as a result of enforcing or administering these sections.

Ms. Owens also has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amendments to these sections will be to bring the rules into compliance with current board practice. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended rules as proposed.

An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendments will not have an economic effect on small businesses as defined in Texas Government Code §2006.001(2).

Comments should be directed to Bettie Wells, General Counsel, Texas Board of Pardons and Paroles, 209 W. 14th Street, Suite 500, Austin, Texas 78701 or by e-mail to bettie.wells@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposal.

The amendments are proposed under §§508.036, 508.0441, 508.045, and 508.141, Texas Government Code. Section 508.036 requires the board to adopt rules relating to the decision-making processes used by the board and parole panels. Section 508.0441 and §508.045 authorize the Board to adopt reasonable rules as proper or necessary relating to the eligibility of an offender for release to mandatory supervision and to act on matters of release to mandatory supervision. Section 508.141 provides the board authority to adopt policy establishing the date on which the board may reconsider for release an inmate who has previously been denied release.

No other statutes, articles, or codes are affected by these amendments.

§145.12. Action upon Review.

A case reviewed by a parole panel for parole consideration may be:

(1) (No change.)

(2) denied a favorable parole action at this time and set for review on a future specific month and year (Set-Off). The next review date (Month/Year) for an offender serving a sentence listed in §508.149(a), Government Code, or serving a sentence for second or third degree under §22.04 of the Penal Code, may be set at any date after the first anniversary of the date of denial and end before the fifth anniversary of the date of denial. The next review date for an offender serving a sentence not listed in §508.149(a), Government Code, shall be as soon as practicable after the first anniversary of the denial;

(3) denied parole and ordered serve-all, but in no event shall this be utilized if the offender's projected release date is greater than five years for offenders serving sentences listed in §508.149(a), Government Code, or serving a sentence for second or third degree under §22.04 of the Penal Code; or greater than one year for offenders not serving sentences listed in §508.149(a), Government Code. If the serve-all date in effect on the date of the panel decision is extended by more than 180 days, the case shall be placed in regular parole review;

(4) determined that the totality of the circumstances favor the offender's release on parole, further investigation (FI) is ordered with the following available voting options; and, impose all conditions of parole or release to mandatory supervision that the parole panel is required or authorized by law to impose as a condition of parole or release to mandatory supervision;

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

~~[(D) FI-4 (Month/Year)--Transfer to a Pre-Parole Transfer facility prior to presumptive parole date set by a parole panel and release to parole supervision on presumptive parole date;]~~

~~(D) [(E)] FI-4 R (Month/Year)--Transfer to a TDCJ rehabilitation program. Release to parole only after program completion and not earlier than four months from specified date. Such TDCJ program shall be the Sex Offender Education Program (SOEP);~~

~~(E) [(F)] FI-5--Transfer to In-Prison Therapeutic Community Program. Release to aftercare component only after completion of IPTC program;~~

~~(F) [(G)] FI-6--Transfer to a DWI Program. Release to continuum of care program as required by paragraph (5) of this section;~~

~~(G) [(H)] FI-6 R (Month/Year)--Transfer to a TDCJ rehabilitation program. Release to parole only after program completion and no earlier than six months from specified date. Such TDCJ program may include the Pre-Release Therapeutic Community (PRTC), Pre-Release Substance Abuse Program (PRSAP), or In-Prison Therapeutic Community Program (IPTC), or any other approved tier program;~~

~~(H) [(I)] FI-7 R (Month/Year)--Transfer to a TDCJ rehabilitation program. Release to parole only after program completion and not earlier than seven months from the specified date. Such TDCJ program shall be the Serious and Violent Offender Reentry Initiative (SVORI);~~

~~(I) [(J)] FI-9 R (Month/Year)--Transfer to a TDCJ rehabilitation program. Release to parole only after program completion and not earlier than nine months from specified date. Such TDCJ program shall be the Sex Offender Treatment Program (SOTP-9);~~

~~(J) [(K)] FI-18 R (Month/Year)--Transfer to a TDCJ rehabilitation treatment program. Release to parole only after program completion and no earlier than 18 months from specified date. Such~~

TDCJ program shall be either the Sex Offender Treatment Program (SOTP-18), or the InnerChange Freedom Initiative (IFI);

(5) (No change.)

(6) any offender receiving an FI vote, as listed in paragraph (4)(A) - (J) [~~(K)~~] of this section, shall be placed in a program consistent with the vote. If treatment program managers recommend a different program for an offender, a transmittal shall be forwarded to the parole panel requesting approval to place the offender in a different program.

§145.13. Action upon Review; Consecutive (Cumulative) Felony Sentencing.

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

(c) If the case under parole consideration is a pre-final consecutive felony sentencing case, the parole panel may:

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

(3) vote CU/NR (Month/Year Cause Number), deny favorable parole action and set the next review date at one year from the panel decision date. If the offender is serving an offense under §508.149(a), Government Code, or second or third degree under §22.04 of the Penal Code; the next review date (month/year) may be set at any date in the five-year incarceration period following the panel decision date, but in no event shall it be less than one calendar year from the panel decision date; or

(4) vote CU/SA (Month/Year Cause Number): If the offender is serving an offense under §508.149(a), Government Code, or second or third degree under §22.04 of the Penal Code; deny release and order serve-all, but in no event shall this be utilized if the offender's maximum expiration date is over five years from the date of the panel decision. If the offender is not serving an offense under §508.149(a), Government Code, deny release and order serve-all, but in no event shall this be utilized if the offender's maximum expiration date is over one year from the date of the panel decision.

(d) If the case under parole consideration is the last and final in a series of consecutive felony sentencing cases, the case shall be reviewed under [in accordance with] §145.12 of this title (relating to Action upon Review).

(e) (No change.)

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

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Bettie Wells

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Texas Board of Pardons and Paroles

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CHAPTER 146. REVOCATION OF PAROLE OR MANDATORY SUPERVISION

37 TAC §146.9, §146.12

The Texas Board of Pardons and Paroles proposes amendments to 37 TAC §146.9 and §146.12, concerning revocation hearing and procedure after motion to reopen is granted; time; rights of the releasee; final disposition. The amendments are proposed

to clarify the language as it relates to parole panels and clean up the statutory references contained within the rules.

Rissie Owens, Chair of the Board, determined that for each year of the first five-year period the proposed amendments are in effect, no fiscal implications exist for state or local government as a result of enforcing or administering these sections.

Ms. Owens also has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amendments to these sections will be to bring the rules into compliance with current board practice. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended rules as proposed.

An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendments will not have an economic effect on small businesses as defined in Texas Government Code §2006.001(2).

Comments should be directed to Bettie Wells, General Counsel, Texas Board of Pardons and Paroles, 209 W. 14th Street, Suite 500, Austin, Texas 78701 or by e-mail to bettie.wells@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposal.

The amended rules are proposed under §§508.0441, 508.045, 508.281, and 508.283, Government Code. Section 508.0441 vests the Board with the authority to determine the continuation, modification, and revocation of parole or mandatory supervision. Section 508.045 provides parole panels with the authority to grant, deny, revoke parole, or revoke mandatory supervision. Section 508.281 and §508.283 relate to hearings to determine violations of the releasee's parole or mandatory supervision.

No other statutes, articles, or codes are affected by these amendments.

§146.9. Revocation Hearing.

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

(c) At the close of the hearing or within a reasonable time thereafter, the parole panel or designee of the board shall collect, prepare and forward to the [a] parole panel:

(1) all documents [~~and exhibits offered or admitted into evidence at the hearing~~];

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

§146.12. Procedure after Motion to Reopen is Granted; Time; Rights of the Releasee; Final Disposition.

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

(c) When the parole panel or designee of the board convenes the reopening of the hearing, it shall have before it the entire record previously compiled in the case, including:

(1) the record, report, and recommendation of the preliminary hearing under [pursuant to] §146.7 of this title (relating to Preliminary Hearing) or revocation hearing under [pursuant to] §146.9 of this title (relating to Revocation Hearing) collected or prepared by the designee of the board originally assigned to the case;

(2) (No change.)

(3) the releasee's motion to reopen the hearing pursuant to [under] §146.11 of this title; and

(4) (No change.)

(d) (No change.)

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

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Bettie Wells

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Texas Board of Pardons and Paroles

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CHAPTER 148. SEX OFFENDER CONDITIONS OF PAROLE OR MANDATORY SUPERVISION

37 TAC §§148.41 - 148.55

The Texas Board of Pardons and Paroles proposes amendments to 37 TAC §§148.41 - 148.55, concerning public hearings, authority of a panel member, ex parte consultations, motions, witnesses, opinion and expert testimony, evidence, record, decisions, procedure after waiver of hearing, scheduling of hearing, hearing, final panel disposition, releasee's motion to reopen hearing, and procedure after motion to reopen is granted; time; rights of the releasee; final disposition. The amendments are proposed to add hearing officer responsibilities, clean up language, update the title of §148.53, and clean up the statutory references contained within the rules. The amendments to §148.54 are proposed to add language relating to releasee's consent to a reasonable delay in final disposition.

Rissie Owens, Chair of the Board, determined that for each year of the first five-year period the proposed amendments are in effect, no fiscal implications exist for state or local government as a result of enforcing or administering these sections.

Ms. Owens also has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amendments to these sections will be to bring the rules into compliance with current board practice. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended rules as proposed.

An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendments will not have an economic effect on small businesses as defined in Texas Government Code §2006.001(2).

Comments should be directed to Bettie Wells, General Counsel, Texas Board of Pardons and Paroles, 209 W. 14th Street, Suite 500, Austin, Texas 78701 or by e-mail to bettie.wells@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposal.

The amendments are proposed under §§508.036, 508.0441, 508.045, 508.141 and 508.147, Government Code. Section 508.036 authorizes the board to adopt rules relating to the decision-making processes used by the board and parole panels. Section 508.0441 and §508.045 authorize the Board to adopt reasonable rules as proper or necessary relating to the eligibility of an offender for release to mandatory supervision and to act on

matters of release to mandatory supervision. Section 508.0441 provides the board with the authority to adopt reasonable rules as proper or necessary relating to the eligibility of an inmate for release on parole or release to mandatory supervision. Section 508.147 authorizes parole panels to determine the conditions of release to mandatory supervision.

No other statutes, articles, or codes are affected by these amendments.

§148.41. Public Hearings.

(a) (No change.)

(b) Appropriate federal and state constitutional provisions, statutes, regulations, and judicial precedent establishing the confidential or privileged nature of information presented shall be given effect by the hearing officer [~~panel member~~].

(c) To effect this provision, the hearing officer [~~panel member~~] shall have the authority to close the hearing to the extent necessary to protect against the improper disclosure of confidential and/or privileged information.

§148.42. Authority of Hearing Officers [~~a Panel Member~~].

(a) A hearing officer [~~panel member~~] shall have the following authority:

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

(6) to reopen, upon request of a parole panel [~~member~~], or reconvene, or both, any hearing;

(7) - (11) (No change.)

(b) If a hearing officer [~~panel member~~] fails to complete an assigned case, another hearing officer [~~panel member~~] may complete the case without the necessity of duplicating any duty or function performed by the previous hearing officer [~~panel member~~].

§148.43. Ex Parte Consultations.

Unless required for the disposition of matters authorized by law, hearing officers, board members and parole commissioners [~~the panel members~~] assigned to render a decision in a matter may not communicate, directly or indirectly, in connection with any issue of fact or law with any party, except on notice and opportunity for all parties to participate.

§148.44. Motions.

Unless made during a hearing, motions shall be made in writing, set forth the relief or order sought, and shall be filed with the hearing officer [~~panel member~~] assigned to conduct the hearing. Motions based on matters which do not appear of record shall be supported by affidavit.

§148.45. Witnesses.

(a) The hearing officer [~~panel member~~] may determine whether a witness may be excused under the rule that excludes witnesses from the hearing.

(1) In no event shall the hearing officer [~~panel member~~] exclude from the hearing a party under the authority of this section. For these purposes, the term "party" means the definition in §141.111 of this title (relating to Definition of Terms) and includes:

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

(2) In the event that it appears to the satisfaction of the hearing officer [~~panel member~~] that an individual who is present at the hearing and intended to be called by a party as a witness has no relevant, probative, noncumulative testimony to offer on any material issue

of fact or law, then the hearing officer [~~panel member~~], in his sound discretion, may determine that such individual should not be placed under the rule and excluded from the hearing.

(b) All witnesses who testify in person are subject to cross-examination unless the hearing officer [~~panel member~~] specifically finds good cause for lack of confrontation and cross-examination.

(c) Witnesses personally served with a subpoena and who fail to appear at the hearing, and upon good cause determined by the hearing officer [~~panel member~~], may present testimony by written statement.

§148.46. *Opinion and Expert Testimony.*

All witnesses who are testifying in the form of an opinion or inference shall submit a written report to the other party and the hearing officer [~~panel member~~] in the manner prescribed by §148.47 of this title (relating to Evidence).

§148.47. *Evidence.*

(a) No later than five (5) days prior to the scheduled hearing, all parties shall submit all documents that will be introduced into evidence at the hearing to the other party and the hearing officer [~~panel member~~].

(b) All parties shall have an opportunity to present evidence in the form of testimony and written documentation. The hearing officer [~~panel member~~] shall determine the order of presentation of evidence.

(c) (No change.)

(d) The hearing officer [~~panel member~~] shall give effect to the rules of privilege recognized by law.

(e) Relevant testimony shall be confined to the subject of the pending matter. In the event any party at a hearing shall pursue a line of questioning that is, in the opinion of the hearing officer [~~panel member~~], irrelevant, incompetent, unduly repetitious, or immaterial, such questioning shall be terminated.

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

(h) Objections may be made and shall be ruled upon by the hearing officer [~~panel member~~], and any objections and the rulings thereon shall be noted in the record.

§148.48. *Record.*

(a) The record in any case includes all pleadings, motions, and rulings; evidence received or considered; matters officially noticed; questions and offers of proof, objections, and rulings on them; all relevant TDCJ-PD documents, staff memoranda or reports submitted to or considered by the hearing officer [~~parole panel~~] involved in making the decision; and any decision, opinion, or report by [~~or order of~~] the hearing officer [~~parole panel~~] presiding at the hearing.

(b) (No change.)

§148.49. *Decisions.*

(a) A final decision or order shall be in writing and delivered to the releasee or attorney as required by §148.53 of this title (relating to Final Board [~~Panel~~] Disposition).

(b) The releasee or attorney shall be notified in writing and provided with a copy of the report of the hearing officer [~~parole panel~~] and notice of the right to submit a petition to reopen the hearing.

§148.50. *Procedure after Waiver of Hearing.*

(a) The parole panel [~~of the board~~] may accept a waiver of the hearing provided that a waiver of the hearing includes the following:

(1) information that releasee was served with written notice of the following:

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

(D) notice that the releasee has the right to confront and cross-examine witnesses unless the parole panel or designee of the board [~~panel member~~] specifically finds good cause is shown;

(E) - (F) (No change.)

(2) (No change.)

(b) After reviewing the waiver of the right to a sex offender condition hearing and receipt of supporting documentation of evidence of the releasee's sexual deviant behavior in the offense for which the releasee is currently on supervision, the parole panel or designee of the board must determine that, by a preponderance of the evidence, the releasee constitutes a threat to society by reason of his/her lack of sexual control. The parole panel shall make final disposition of the case by taking one of the following actions:

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

§148.51. *Scheduling of Hearing.*

Upon request, the board or the board's scheduling staff [~~panel member or his/her designee~~] shall schedule the hearing unless:

(1) (No change.)

(2) information has not been presented to the board or the board's scheduling staff [~~panel member or his/her designee~~] that the releasee was served with the following:

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

(D) notice that the releasee has the right to confront and cross-examine witnesses unless the hearing officer [~~panel member~~] specifically finds good cause is shown;

(E) - (F) (No change.)

§148.52. *Hearing.*

(a) The parole panel or designee of the board [~~member~~] shall conduct the hearing for the purpose of determining whether sex offender conditions may be imposed as a special condition of release.

(b) The parole panel or designee of the board must determine, as shown by a preponderance of the evidence, the releasee constitutes a threat to society by reason of his/her lack of sexual control.

(c) At the close of the hearing, or within a reasonable time thereafter, the parole panel or designee of the board [~~panel member~~] shall collect, prepare and forward to the parole panel [~~other panel members~~]:

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

(3) [~~and~~] the recording of the hearing.

§148.53. *Final Board [~~Panel~~] Disposition.*

(a) (No change.)

(b) The releasee or attorney shall be notified in writing of the board's disposition and provided a copy of the summary report of the hearing and notice of the right to submit a petition to reopen the hearing.

§148.54. *Releasee's Motion to [~~To~~] Reopen Hearing.*

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

(f) When a releasee's motion to reopen the hearing under this section is granted, the releasee shall be deemed to have consented to such further reasonable delay in the final disposition of his or her case as

shall be required for the procedure under §148.55 of this title (relating to Procedure after Motion to Reopen Is Granted; Time; Rights of the Releasee; Final Disposition).

§148.55. *Procedure after Motion to [Tø] Reopen Is Granted; Time; Rights of the Releasee; Final Disposition.*

(a) When the parole panel disposes of a releasee's motion to reopen under §148.54 of this title (relating to Releasee's Motion to [Tø] Reopen Hearing) by granting said motion to reopen the hearing, the case shall be disposed of or referred to a parole panel or designee of the board [member] for final disposition in accordance with this section and the previous disposition of the case made by the parole panel under §148.53 of this title (relating to Final Board [Panel] Disposition) shall be set aside and shall be of no force and effect.

(b) The purpose of the further proceedings before the parole panel or designee of the board [member] under this section shall be as specified by the parole panel in its order granting the releasee's motion to reopen pursuant to §148.54 of this title.

(c) When the parole panel or designee of the board [member] convenes the reopening of the hearing, it [he/she] shall have before it [him/her] the entire record previously compiled in the case, including:

(1) the record, report, and decision of the hearing under [§148.52 of this title] (relating to Hearing) collected or prepared by the parole panel or designee of the board [member] originally assigned to the case;

(2) (No change.)

(3) the releasee's motion to reopen the hearing pursuant to [under] §148.54 of this title; and

(4) (No change.)

(d) At the conclusion of the proceedings before the parole panel or designee of the board [member], or within a reasonable time thereafter, the parole panel shall make final disposition of the case by taking one of the following actions in any manner warranted by the evidence:

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

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

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Bettie Wells

General Counsel

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CHAPTER 150. MEMORANDUM OF
UNDERSTANDING AND BOARD POLICY
STATEMENTS
SUBCHAPTER A. PUBLISHED POLICIES OF
THE BOARD

37 TAC §150.55

The Texas Board of Pardons and Paroles proposes amendments to 37 TAC §150.55, concerning conflict of interest policy. The

amendments are proposed to clarify the procedure relating to disqualification or recusal.

Rissie Owens, Chair of the Board, determined that for each year of the first five-year period the proposed amendments are in effect, no fiscal implications exist for state or local government as a result of enforcing or administering this section.

Ms. Owens also has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amendments to this section will be to bring the rule into compliance with current board practice. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended rule as proposed.

An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendments will not have an economic effect on small businesses as defined in Texas Government Code §2006.001(2).

Comments should be directed to Bettie Wells, General Counsel, Texas Board of Pardons and Paroles, 209 W. 14th Street, Suite 500, Austin, Texas 78701 or by e-mail to bettie.wells@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposal.

The amendments are proposed under Subtitle B, Ethics, Chapter 572 and §508.0441, Government Code. Subtitle B, Ethics, Chapter 572, is the ethics policy of this state for state officers or state employees. Section 508.0441 requires the board to implement a policy under which a board member or parole commissioner should disqualify himself or herself on parole or mandatory supervision decisions.

No other statutes, articles, or codes are affected by these amendments.

§150.55. *Conflict of Interest Policy.*

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

(d) Section 4--Disqualification.

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

(3) A board member or parole commissioner shall notify the chair and the general counsel in writing when they disqualify or recuse themselves from voting and provide the specific reason for the disqualification or recusal. Additionally, the recusal or disqualification shall be documented on the minute sheet of the offender's file.

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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Bettie Wells

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

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

SUBCHAPTER N. TEXAS HOME LIVING (TXHML) PROGRAM

40 TAC §§9.553, 9.555, 9.567, 9.578, 9.583

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), amendments to §9.553, concerning definitions; §9.555, concerning definitions of TxHmL program service components; §9.567, concerning process for enrollment; §9.578, concerning program provider certification principles: service delivery; and §9.583, concerning TxHmL program principles for local authorities, in Subchapter N, Texas Home Living (TxHmL) Program, in Chapter 9, Intellectual Disability Services--Medicaid State Operating Agency Responsibilities.

BACKGROUND AND PURPOSE

The purpose of the proposed amendments is to ensure compliance with Board of Nursing (BON) standards specific to a registered nurse (RN) in the Texas Home Living (TxHmL) Program. The proposed amendments implement a BON rule at Title 22, Texas Administrative Code, §217.11, and the BON's Position Statement 15.28. The BON rule and position statement provide that the performance of a comprehensive nursing assessment by an RN lays the foundation for the provision of nursing services to a person. Thus, the proposed amendments require that an individual in the TxHmL Program receive a nursing assessment before nursing tasks may be provided to the individual by a nurse or an unlicensed service provider unless one of two exceptions exists. The first exception is if nursing services are not on the proposed individual plan of care (IPC) and the individual or legally authorized representative (LAR) and selected program provider have determined that no nursing tasks will be performed by an unlicensed service provider as documented on DADS form "Nursing Task Screening Tool." This exception is being included because not every individual served in the TxHmL Program needs nursing tasks to be performed during the provision of TxHmL Program services. The DADS form is required to help ensure that the determinations made about the need for nursing tasks are consistent. The second exception to the requirement is if a nursing task will be performed by an unlicensed service provider and a physician has delegated the task as a medical act under Texas Occupations Code, Chapter 157 to the unlicensed service provider. This exception was created because under state law a physician may delegate and supervise the performance of medical acts by an unlicensed service provider and, therefore, an assessment by a nurse is not necessary.

The proposed amendments also require that, if a physician delegates a medical act to an unlicensed service provider in accordance with Texas Occupations Code, Chapter 157, and the program provider has concerns about the health or safety of an individual in the performance of the medical act, the program provider must communicate the concern to the delegating physician and take necessary steps to ensure the health and safety of the individual. The proposed amendments require that an RN

document information from the nursing assessment to help ensure accuracy and consistency of records regarding the provision of nursing services. In addition, the proposed amendments require an RN to provide a copy of the information documented from a nursing assessment to the service coordinator of an individual receiving a service, other than nursing, through the consumer directed services option so the service coordinator will be informed about nursing tasks needed by the individual. The proposed amendments also clarify that a nurse must delegate and supervise nursing tasks performed by an unlicensed service provider in accordance with state law and rules. The proposed amendments identify the state statute, BON rules, and other required documents that nurses must comply with in performing nursing services and list responsibilities under the scope of practice of an RN and licensed vocational nurse (LVN) already required by DADS; that is, that an RN or LVN may teach unlicensed service providers about specific health needs of an individual and that only an RN may develop the nursing service portion of the support methodologies required by §9.578(c)(2) and make and document decisions regarding the delegation of nursing tasks.

The proposed amendments also implement Subchapter D-1 of Chapter 161 of the Texas Human Resources Code, which allows an unlicensed person to provide administration of medication to an individual in the TxHmL Program without delegation or oversight of an RN if the medication meets certain requirements, the individual has been assessed by an RN to determine if the individual's health status allows for such administration, and the unlicensed person is trained by an RN or determined competent by an RN to perform the administration of medication.

Because an individual is free to decline a TxHmL Program service, the proposed amendments describe the consequences of an individual refusing a nursing assessment. The consequences of a refusal are that the program provider may not provide nursing services to the individual and may not provide community support, day habilitation, employment assistance, supported employment, or respite unless an unlicensed service provider does not perform nursing tasks and the program provider determines that it can ensure the individual's health, safety, and welfare in the provision of the service. Further, to help ensure that the individual or LAR is informed about the consequences of refusing an assessment, the proposed amendments require the program provider to give the individual or LAR and service coordinator written notification if the program provider determines that it cannot ensure the individual's health, safety, and welfare in the provision of a service and the reasons for the determination. The proposed amendments also describe the process by which an individual's service coordinator explains the consequences of the individual's refusal of a nursing assessment. Also, to ensure that DADS is aware of instances when the program provider has determined that it cannot ensure the health, safety, and welfare in the provision of a service when the individual or LAR has refused a nursing assessment, the proposed amendments require the program provider to notify DADS of such a determination.

The proposed amendments also replace outdated program terminology with respectful person-first language in response to House Bill 1481, 82nd Legislature, Regular Session, 2011. Minor editorial changes were made for clarity and consistency.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §9.553 adds definitions for "ICF/IID," "ICF/IID program," "ID/RC assessment," "intellectual

disability," "local authority," "LVN," "RN," "service provider," and "staff member." The proposed amendment also clarifies existing definitions for "ICF/MR Program," "LOC," "LON," "MRA," "MR/RC Assessment," "performance contract," "service coordinator," and "service planning team."

The proposed amendment to §9.555 clarifies the definitions of community support and day habilitation services by adding that assistance with medication is determined by an assessment performed by an RN. The proposed amendment clarifies and adds several responsibilities to the definition of the nursing service component, including ensuring that an unlicensed service provider is performing only those tasks identified in a nursing assessment; delegating and supervising tasks assigned to an unlicensed service provider; teaching an unlicensed service provider about an individual's health needs; and performing an assessment of an individual's health condition. In addition, the amendment adds tasks that only an RN may perform, including performing an assessment before an unlicensed service provider performs a nursing task for the individual unless a physician has delegated the task as a medical act; documenting information from the nursing assessment; providing a copy of the documented information to the service coordinator of an individual receiving a service in the consumer directed services option; developing the nursing service portion of the support methodologies; and making and documenting decisions regarding the delegation of nursing tasks. Further, the proposed amendment replaces "licensed nursing personnel" with "RN or LVN." The proposed amendment also describes when an unlicensed person may provide administration of medication to an individual without delegation or oversight of an RN.

The proposed amendment to §9.567 requires the local authority conducting an applicant's enrollment into the TxHmL Program to ensure that the applicant's IPC contains an adequate number of RN nursing units to provide a nursing assessment unless: (1) nursing services are not on the proposed IPC and the individual or LAR and selected program provider have determined that no nursing tasks will be performed by an unlicensed service provider as documented on DADS form "Nursing Task Screening Tool," or (2) a nursing task will be performed by an unlicensed service provider and a physician has delegated the task as a medical act under Texas Occupations Code, Chapter 157. The amendment also provides direction for the local authority if the applicant or LAR refuses to include on the initial proposed IPC a sufficient number of RN nursing units to perform an initial nursing assessment. The local authority must inform the applicant or LAR that refusal will result in the applicant not receiving nursing services and, if the applicant needs community support, day habilitation, employment assistance, supported employment, or respite, will result in the applicant not receiving that service unless the unlicensed service provider does not perform nursing tasks and the program provider determines that it can ensure the applicant's health, safety, and welfare. The proposed amendment also updates a DADS website address.

The proposed amendment to §9.578 states that a program provider must ensure nursing is provided in accordance with an individual's person-directed plan, IPC, and support methodologies, certain state law and rules, and Appendix C of the TxHmL Program waiver application approved by CMS. The proposed amendment also states that a program provider may determine a nursing assessment is not necessary if: (1) nursing services are not on the proposed IPC and the individual or LAR and selected program provider have determined that no nursing tasks will be performed by an unlicensed service provider as

documented on DADS form "Nursing Task Screening Tool," or (2) a nursing task will be performed by an unlicensed service provider and a physician has delegated the task as a medical act under Texas Occupations Code, Chapter 157. The proposed amendment describes the consequences of an individual refusing a nursing assessment. Specifically, the program provider may not provide nursing services to the individual and may not provide community support, day habilitation, employment assistance, supported employment, or respite to the individual unless an unlicensed service provider does not perform nursing tasks and the program provider determines that it can ensure the individual's health, safety, and welfare in the provision of the service. The proposed amendment also requires that, if a physician delegates a medical act to an unlicensed service provider in accordance with Texas Occupations Code, Chapter 157, and the program provider has concerns about the health and safety of the individual in the performance of the medical act, the program provider must communicate the concern to the delegating physician and take necessary steps to ensure the health and safety of the individual. Additionally, the amendment replaces outdated terminology with respectful person-first language.

The proposed amendment to §9.583 requires a service coordinator to inform the individual or LAR of the consequences and risks of refusing a nursing assessment including that the refusal will result in the individual not receiving (1) nursing services, or (2) community support, day habilitation, employment assistance, supported employment, or respite if the individual needs one of those services and the program provider has determined that it cannot ensure the health, safety, and welfare of the individual in the provision of the service. The proposed amendment also requires the service coordinator to notify the program provider if the individual continues to refuse an assessment after the discussion. The proposed amendment also replaces outdated terminology with respectful person-first language and updates a DADS website address and mailing information.

FISCAL NOTE

James Jenkins, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendments are in effect, there are foreseeable implications relating to costs or revenues of state government. There are no foreseeable implications relating to costs or revenues of local governments.

The effect on state government for the first five years the proposed amendments are in effect is an estimated additional cost of \$151,357 in FY 2014; \$206,269 in FY 2015; \$224,191 in FY 2016; \$224,191 in FY 2017; \$224,191 in FY 2018; and \$224,191 in FY 2019.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendments will not have an adverse economic effect on small businesses or micro-businesses because, although program providers will be required to perform a nursing assessment, they are allowed to submit service claims and be paid for that activity.

PUBLIC BENEFIT AND COSTS

Chris Adams, DADS 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 that DADS rules will be consistent with BON requirements and in compliance with state law.

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 Jennifer Chancellor at (512) 438-3228 in DADS CPI Waiver and State Plan Services. Written comments on the proposal may be submitted to *Texas Register* Liaison, Legal Services-12R06, 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 12R06" 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.

§9.553. Definitions.

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

- (1) Applicant--A Texas resident seeking services in the TxHmL Program.
- (2) CARE--Client Assignment and Registration System. A DADS database with demographic and other data about an individual who is receiving services and supports or on whose behalf services and supports have been requested.
- (3) CDS--Consumer directed services. A service delivery option as defined in §41.103 of this title (relating to Definitions).
- (4) CDSA--Consumer directed service agency. An entity, as defined in §41.103 of this title, that provides financial management services and, at the request of an individual or LAR, support consultation to an individual participating in CDS.

(5) CMS--Centers for Medicare and Medicaid Services. The federal agency that administers Medicaid programs.

(6) Critical incident data--Information a program provider provides to DADS as defined in the TxHmL Provider User Guide found at <http://www2.mhmr.state.tx.us/655/cis/training/WAIVER.html>. [~~enters in CARE that includes the number of behavior intervention plans authorizing restraint, the number of restraints used, the number of medication errors, the number of serious physical injuries, and the number of deaths.~~]

(7) DADS--The Department of Aging and Disability Services.

(8) DFPS--The Department of Family and Protective Services.

(9) Financial management services--A service, as defined in §41.103 of this title, that is provided to an individual participating in CDS.

(10) HCS Program--The Home and Community-based Services Program operated by DADS as authorized by CMS in accordance with §1915(c) of the Social Security Act.

(11) HHSC--The Texas Health and Human Services Commission.

(12) ICF/IID--A facility in which ICF/IID Program services are provided.

(13) ICF/IID Program--The Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions Program, which provides Medicaid-funded residential services to individuals with an intellectual disability or related conditions.

(14) [~~(12)~~] ICF/MR Program--ICF/IID Program. [~~The Intermediate Care Facilities for Persons with Mental Retardation or Related Conditions Program.~~]

(15) ID/RC Assessment--A form used by DADS for LOC determination and LON assignment.

(16) [~~(13)~~] Individual--A person enrolled in the TxHmL Program.

(17) Intellectual disability--Significant sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period; referred to in some sections as mental retardation.

(18) [~~(14)~~] IPC--Individual plan of care. A document that describes the type and amount of each TxHmL Program service component to be provided to an individual and medical and other services and supports to be provided through non-TxHmL Program resources.

(19) [~~(15)~~] IPC cost--Estimated annual cost of program services included on an IPC.

(20) [~~(16)~~] IPC year--A 12-month period of time starting on the date an authorized initial or renewal IPC begins.

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

(22) [~~(18)~~] LOC--Level of care. A determination made by DADS about an applicant or individual as part of the TxHmL Program eligibility determination process based on data submitted on the ID/RC [MR/RC] Assessment.

(23) Local authority--An entity described in Texas Health and Safety Code, §531.002(11) to which the executive commissioner of HHSC has delegated authority and responsibility in accordance with Texas Health and Safety Code, §533.035(a).

(24) [(19)] LON--Level of need. An assignment given by DADS for an applicant or individual that is derived from the service level score obtained from the administration of the Inventory for Client and Agency Planning (ICAP) to the individual and from selected items on the ID/RC [MR/RC] Assessment.

(25) LVN--Licensed vocational nurse. A person licensed to practice vocational nursing in accordance with Texas Occupations Code, Chapter 301.

(26) [(20)] MRA--Local authority. [Mental retardation authority. An entity to which HHSC's authority and responsibility described in THSC, §531.002(11) has been delegated.]

(27) [(21)] MR/RC Assessment--ID/RC Assessment. [A form used by DADS for LOC determination and LON assignment.]

(28) [(22)] Own home or family home--A residence that is not:

(A) an ICF/IID [intermediate care facility for persons with mental retardation or related conditions (ICF/MR)] licensed or subject to being licensed in accordance with Texas Health and Safety Code, Chapter 252 or certified by DADS;

(B) a nursing facility licensed or subject to being licensed in accordance with Texas Health and Safety Code, Chapter 242;

(C) an assisted living facility licensed or subject to being licensed in accordance with Texas Health and Safety Code, Chapter 247;

(D) a residential child-care operation licensed or subject to being licensed by DFPS unless it is a foster family home or a foster group home;

(E) a facility licensed or subject to being licensed by the Department of State Health Services;

(F) a residential facility operated by the Department of Assistive and Rehabilitative Services;

(G) a residential facility operated by the Texas Youth Commission, a jail, or a prison; or

(H) a setting in which two or more dwellings, including units in a duplex or apartment complex, single family homes, or facilities listed in subparagraphs (A) - (G) of this paragraph, but excluding supportive housing under Section 811 of the National Affordable Housing Act of 1990, meet all of the following criteria:

(i) the dwellings create a residential area distinguishable from other areas primarily occupied by persons who do not require routine support services because of a disability;

(ii) most of the residents of the dwellings are persons with an intellectual disability [mental retardation]; and

(iii) the residents of the dwellings are provided routine support services through personnel, equipment, or service facilities shared with the residents of the other dwellings.

(29) [(23)] Performance contract--A written agreement between DADS and a local authority [an MRA] for the provision of one or more functions as described in THSC, §533.035(b).

(30) [(24)] PDP--Person-directed plan. A plan developed for an applicant in accordance with §9.567 of this subchapter (relat-

ing to Process for Enrollment) that describes the supports and services necessary to achieve the desired outcomes identified by the applicant or LAR on behalf of the applicant.

(31) [(25)] Program provider--An entity that provides TxHmL Program services under a program provider agreement with DADS in accordance with Subchapter Q of this chapter (relating to Enrollment of Medicaid Waiver Program Providers).

(32) [(26)] Program provider agreement--A written agreement between DADS and a program provider that obligates the program provider to deliver TxHmL Program service components, except for financial management services and support consultation.

(33) [(27)] Respite facility--A site that is not a residence and that is owned or leased by a program provider for the purpose of providing out-of-home respite to not more than six individuals receiving TxHmL Program services or other persons receiving similar services at any one time.

(34) RN--Registered nurse. A person licensed to practice professional nursing in accordance with Texas Occupations Code, Chapter 301.

(35) [(28)] Service back-up plan--A plan, as defined in §41.103 of this title, that ensures continuity of critical service components if service delivery is interrupted.

(36) [(29)] Service coordinator--An employee of a local authority [an MRA] who is responsible for assisting an applicant, individual, or LAR to access needed medical, social, educational, and other appropriate services including TxHmL Program services.

(37) [(30)] Service planning team--A planning team constituted by a local authority [an MRA] consisting of an applicant or individual, LAR, service coordinator, and other persons chosen by the applicant, individual, or LAR.

(38) Service provider--A person, who may be a staff member, who directly provides a TxHmL service to an individual.

(39) Staff member--An employee or contractor of a TxHmL Program provider.

(40) [(31)] Support consultation--A service, as defined in §41.103 of this title, that is provided to an individual participating in the CDS option at the request of the individual or LAR.

(41) [(32)] TAC--Texas Administrative Code. A compilation of state agency rules published by the Texas Secretary of State in accordance with Texas Government Code, Chapter 2002, Subchapter C.

(42) [(33)] THSC--Texas Health and Safety Code. Texas statutes relating to health and safety.

(43) [(34)] TxHmL Program--The Texas Home Living Program, operated by DADS and approved by CMS in accordance with §1915(c) of the Social Security Act, that provides community-based services and supports to eligible individuals who live in their own homes or in their family homes.

§9.555. *Definitions of TxHmL Program Service Components.*

(a) The community support service component provides services and supports in an individual's home and at other community locations that are necessary to achieve outcomes identified in an individual's PDP.

(1) The community support service component provides habitative or support activities that:

(A) provide or foster improvement of or facilitate an individual's ability to perform functional living skills and other activities of daily living;

(B) assist an individual to develop competencies in maintaining the individual's home life;

(C) foster improvement of or facilitate an individual's ability and opportunity to:

(i) participate in typical community activities including activities that lead to successful employment;

(ii) access and use of services and resources available to all citizens in the individual's community;

(iii) interact with members of the community;

(iv) access and use available non-TxHmL Program services or supports for which the individual may be eligible; and

(v) establish or maintain relationships with people[.] who are not paid service providers[.] that expand or sustain the individual's natural support network.

(2) The community support service component provides assistance with medications as determined by an assessment conducted by an RN and the performance of tasks delegated by an RN [a registered nurse] in accordance with state law.

(3) The community support service component does not include payment for room or board.

(4) The community support service component may not be provided at the same time that the respite, day habilitation, or supported employment service component is provided.

(5) The community support service component is reimbursed on an hourly basis.

(b) The day habilitation service component assists an individual to acquire, retain, or improve self-help, socialization, and adaptive skills necessary to live successfully in the community and participate in home and community life and does not include services that are funded under §110 of the Rehabilitation Act of 1973 or §602(16) and (17) of the Individuals with Disabilities Education Act.

(1) The day habilitation service component provides:

(A) individualized activities consistent with achieving the outcomes identified in the individual's PDP;

(B) activities necessary to reinforce therapeutic outcomes targeted by other waiver service components, school, or other support providers;

(C) services in a group setting other than the individual's home for normally up to five days a week, six hours per day;

(D) personal assistance for an individual who cannot manage personal care needs during the day habilitation activity;

(E) assistance with medications as determined by an assessment conducted by an RN and the performance of tasks delegated by an RN [a registered nurse] in accordance with state law; and

(F) transportation during the day habilitation activity necessary for the individual's participation in day habilitation activities.

(2) The day habilitation component may not be provided at the same time supported employment is provided to an individual who has obtained employment.

(3) The day habilitation component is reimbursed on a daily or one-half day unit basis.

(c) The nursing service component provides treatment and monitoring of health care procedures as prescribed by a physician or medical practitioner or as required by standards of professional practice or state law to be performed by a licensed nurse.

(1) The nursing service component includes:

(A) administering [administration of] medication;

(B) monitoring an individual's use of medications;

(C) monitoring an individual's health risks, data, and information, including ensuring that an unlicensed service provider is performing only those nursing tasks identified in a nursing assessment;

(D) assisting an individual or LAR to secure emergency medical services for the individual;

(E) making referrals for appropriate medical services;

(F) performing health care procedures as ordered or prescribed by a physician or medical practitioner and [or as] required by standards of professional practice or law to be performed by an RN or LVN; [licensed nursing personnel; and]

(G) delegating nursing [and monitoring] tasks assigned to an unlicensed [other] service provider and supervising the performance of those tasks [providers by a registered nurse] in accordance with state law and rules;[-]

(H) teaching an unlicensed service provider about the specific health needs of an individual;

(I) performing an assessment of an individual's health condition;

(J) an RN doing the following:

(i) performing a nursing assessment for each individual:

(I) before an unlicensed service provider performs a nursing task for the individual unless a physician has delegated the task as a medical act under Texas Occupations Code, Chapter 157, as documented by the physician; and

(II) as determined necessary by an RN, including if the individual's health needs change;

(ii) documenting information from performance of a nursing assessment;

(iii) if an individual is receiving a service through CDS, providing a copy of the documentation described in clause (ii) of this subparagraph to the individual's service coordinator;

(iv) developing the nursing service portion of an individual's support methodologies required by §9.578(c)(2) of this subchapter (relating to Program Provider Certification Principles: Service Delivery), which includes developing a plan and schedule for monitoring and supervising delegated nursing tasks; and

(v) making and documenting decisions related to the delegation of a nursing task to an unlicensed service provider;

(K) in accordance with Texas Human Resources Code, Chapter 161:

(i) allowing an unlicensed service provider to provide administration of medication to an individual without the delegation or oversight of an RN if:

(I) an RN has performed a nursing assessment and, based on the results of the assessment, determined that the individual's health permits the administration of medication by an unlicensed service provider;

(II) the medication is:

(-a-) an oral medication;

(-b-) a topical medication; or

(-c-) a metered dose inhaler;

(III) the medication is administered to the individual for a predictable or stable condition; and

(IV) the unlicensed service provider has been:

(-a-) trained by an RN or an LVN under the direction of an RN regarding the proper administration of medication;
or

(-b-) determined to be competent by an RN or an LVN under the direction of an RN regarding proper administration of medication, including through a demonstration of proper technique by the unlicensed service provider; and

(ii) ensuring that an RN or an LVN under the supervision of an RN reviews the administration of medication to an individual by an unlicensed service provider at least annually and after any significant change in the individual's condition.

(2) The nursing service component is reimbursed on an hourly unit basis.

(d) The employment assistance service component assists an individual to locate paid employment in the community.

(1) The employment assistance component assists an individual with the participation of the LAR to identify:

(A) the individual's employment preferences;

(B) the individual's job skills;

(C) the individual's requirements for the work setting and work conditions; and

(D) prospective employers that may offer employment opportunities compatible with the individual's identified preferences, skills, and requirements.

(2) The employment assistance provider facilitates the individual's employment by contacting prospective employers and negotiating the individual's employment.

(3) Employment assistance is reimbursed on an hourly unit basis.

(4) The employment assistance service component must be re-authorized by the individual's service planning team every 180 calendar days after the initiation of the service component.

(e) The supported employment service component provides ongoing individualized supports needed by an individual to sustain paid work in an integrated work setting.

(1) An individual receiving supported employment is:

(A) compensated directly by the individual's employer in accordance with the Fair Labor Standards Act; and

(B) employed in an integrated work setting by an employer that has no more than one employee or 3.0% of its employees with disabilities unless the individual's PDP indicates otherwise or the employer subsequently hires an additional employee with disabilities who is receiving services from a provider other than the individual's program provider or who is not receiving services.

(2) Supported employment may only be provided when the service has been denied or is otherwise unavailable to an individual through a program operated by a state rehabilitation agency or the public school system.

(3) Supported employment is provided away from the individual's place of residence.

(4) Supported employment does not include payment for the supervisory activities rendered as a normal part of the business setting.

(5) Supported employment does not include services provided to an individual who does not require such services to continue employment.

(6) An individual's program provider may not be the employer of an individual receiving supported employment unless a variance is approved by DADS in accordance with paragraph (7) or (8) of this subsection. DADS may approve a variance for a period of time not to exceed one year.

(7) DADS may approve a variance of the requirement in paragraph (6) of this subsection if, at the time the applicant or LAR chooses enrollment in the TxHmL Program, the applicant is receiving DADS general revenue funded supported employment from a program provider, the program provider is the applicant's employer, the applicant or LAR requests the program provider to continue providing supported employment to the applicant after enrollment, and the program provider submits a written request for the variance to DADS before the effective date of the applicant's enrollment.

(8) If a variance approved in accordance with paragraph (7) of this subsection expires, DADS may approve a subsequent variance if:

(A) changes to the individual's job duties require individualized supports and training beyond that expected as a normal part of the business setting in order for the individual to sustain current employment; and

(B) the program provider submits a written request for a variance to DADS.

(9) Supported employment is reimbursed on an hourly unit basis.

(f) The behavioral support service component provides specialized interventions that assist an individual to increase adaptive behaviors to replace or modify maladaptive or socially unacceptable behaviors that prevent or interfere with the individual's inclusion in home and family life or community life. The component is reimbursed on an hourly unit basis and includes:

(1) assessment and analysis of assessment findings of the behavior(s) to be targeted necessary to design an appropriate behavioral support plan;

(2) development of an individualized behavioral support plan consistent with the outcomes identified in the individual's PDP;

(3) training of and consultation with the LAR, family members, or other support providers and, as appropriate, with the individual in the purpose/objectives, methods and documentation of the implementation of the behavioral support plan or revisions of the plan;

(4) monitoring and evaluation of the success of the behavioral support plan implementation; and

(5) modification, as necessary, of the behavioral support plan based on documented outcomes of the plan's implementation.

(g) The adaptive aids service component provides devices, controls, appliances, or supplies and the repair or maintenance of such aids, if not covered by warranty, as specified in the waiver application approved by CMS that enable an individual to increase mobility, ability to perform activities of daily living, or ability to perceive, control, or communicate with the environment in which the individual lives.

(1) Adaptive aids are provided to address specific needs identified in an individual's PDP and are limited to:

- (A) lifts;
- (B) mobility aids;
- (C) positioning devices;
- (D) control switches/pneumatic switches and devices;
- (E) environmental control units;
- (F) medically necessary supplies;
- (G) communication aids;
- (H) adapted/modified equipment for activities of daily living; and
- (I) safety restraints and safety devices.

(2) Adaptive aids costing more than \$2,000 but not more than \$6,000 in an IPC year may be provided for an individual if DADS has approved an exception to the service category limit of the Professional and Technical Support Service Category in accordance with §9.559 of this subchapter (relating to Request to Increase Service Category Limits).

(3) The adaptive aids service component does not include items or supplies that are not of direct medical or remedial benefit to the individual or that are available to the individual through the Medicaid State Plan, through other governmental programs, or through private insurance.

(h) The minor home modifications service component provides physical adaptations to the individual's home that are necessary to ensure the health, welfare, and safety of the individual or to enable the individual to function with greater independence in the home and the repair or maintenance of such adaptations, if not covered by warranty.

(1) Minor home modifications as specified in the waiver application approved by CMS may be provided up to a lifetime limit of \$7,500 per individual. Minor home modifications costing more than \$2,000 but not more than \$7,500 in an IPC year may be provided if DADS has approved an exception to the service category limit of the Professional and Technical Support Service Category in accordance with §9.559 of this subchapter. After the \$7,500 lifetime limit has been reached, an individual is eligible for an additional \$300 per IPC year for additional modifications or maintenance of home modifications.

(2) The minor home modifications service component does not include adaptations or improvements to the home that are of general utility, are not of direct medical or remedial benefit to the individual, or add to the total square footage of the home.

(3) Minor home modifications are limited to:

- (A) purchase and repair of mobility/wheelchair ramps;
- (B) modifications to bathroom facilities;
- (C) modifications to kitchen facilities; and
- (D) specialized accessibility and safety adaptations.

(i) The dental treatment service component may be provided up to a maximum of \$1,000 per individual per IPC year for the following treatments:

- (1) emergency dental treatment;
- (2) preventive dental treatment;
- (3) therapeutic dental treatment; and
- (4) orthodontic dental treatment, excluding cosmetic orthodontia.

(j) The respite service component is provided for the planned or emergency short-term relief of the unpaid caregiver of an individual.

(1) The respite service component provides an individual with:

- (A) assistance with activities of daily living and functional living tasks;
- (B) assistance with planning and preparing meals;
- (C) transportation or assistance in securing transportation;
- (D) assistance with ambulation and mobility;
- (E) assistance with medications and performance of tasks delegated by a registered nurse in accordance with state law;
- (F) habilitation and support that facilitate:

(i) an individual's inclusion in community activities, use of natural supports and typical community services available to all people;

(ii) an individual's social interaction and participation in leisure activities; and

(iii) development of socially valued behaviors and daily living and independent living skills.

(2) Reimbursement for respite provided in a setting other than the individual's residence includes payment for room and board.

(3) Respite is provided on an hourly or daily unit basis.

(4) Respite may be provided in the individual's residence or, if certification principles stated in §9.578(o) of this subchapter [(relating to Program Provider Certification Principles: Service Delivery)] are met, in other locations.

(k) The specialized therapies service component provides assessment and treatment by licensed occupational therapists, physical therapists, speech and language pathologists, audiologists, and dietitians and includes training and consultation with an individual's LAR, family members or other support providers. Specialized therapies are reimbursed on an hourly unit basis.

(l) Financial management services are provided if the individual participates in CDS.

(m) Support consultation is provided at the request of the individual or LAR if the individual participates in CDS.

§9.567. *Process for Enrollment.*

(a) If an applicant or LAR chooses participation in the TxHmL Program, the local authority [MRA] must assign a service coordinator who develops, in conjunction with the service planning team, a PDP. At a minimum, the PDP must include the following:

(1) a description of the services and supports the applicant requires to continue living in the applicant's own home or family home;

(2) a description of the applicant's current existing natural supports and non-TxHmL Program services that will be available if the applicant is enrolled in the TxHmL Program;

(3) a description of individual outcomes to be achieved through TxHmL Program service components and justification for each service component to be included in the IPC;

(4) documentation that the type and amount of each service component included in the applicant's IPC do not replace existing natural supports or non-TxHmL Program sources for the service components for which the applicant may be eligible;

(5) a description of actions and methods to be used to reach identified service outcomes, projected completion dates, and person(s) responsible for completion;

(6) a statement that the applicant was provided the information regarding CDS as required by subsection (b) of this section;

(7) if the applicant chooses to participate in CDS, a description of the service components provided through CDS, as required by subsection (e) of this section; and

(8) if the applicant chooses to participate in CDS, a description of the applicant's service back-up plan, as required by subsection (e) of this section.

(b) The local authority [MRA] must:

(1) inform the applicant or LAR of the applicant's right to participate in CDS and discontinue participation in CDS at any time, except as provided in §41.405(a) of this title (relating to Suspension of Participation in CDS);

(2) inform the applicant or LAR that:

(A) except as provided in subparagraph (B) of this paragraph, the applicant or LAR may choose to have one or more service components provided through CDS; and

(B) if the applicant is receiving community support and respite and chooses to have one of these service components provided through CDS, the other service component must also be provided through CDS;

(3) provide the applicant or LAR a copy of Forms 1581, 1582, and 1583, which are available at www.dads.state.tx.us [<http://www.dads.state.tx.us/handbooks/forms/default.asp?HB=CDS>] and which contain information about CDS, including a description of financial management services and support consultation;

(4) provide an oral explanation of the information contained in Forms 1581, 1582, and 1583 to the applicant or LAR; and

(5) provide the applicant or LAR the opportunity to choose to participate in CDS and document the applicant's or LAR's choice on Form 1584, which is available at www.dads.state.tx.us [<http://www.dads.state.tx.us/handbooks/forms/default.asp?HB=CDS>].

(c) The local authority [MRA] must compile and maintain information necessary to process the applicant's or LAR's request for enrollment in the TxHmL Program.

(1) The local authority [MRA] must complete an ID/RC [MR/RC] Assessment.

(A) The local authority [MRA] must:

(i) determine or validate a determination that the applicant has an intellectual disability [mental retardation] in accordance with Chapter 5, Subchapter D of this title (relating to Diagnostic Eligibility for Services and Supports--Intellectual Disability [Mental Retardation] Priority Population and Related Conditions); or

(ii) verify that the applicant [individual] has been diagnosed by a licensed physician as having a related condition as defined in §9.203 of this chapter (relating to Definitions).

(B) The local authority [MRA] must administer the Inventory for Client and Agency Planning (ICAP) or validate a current ICAP and recommend an LON assignment to DADS in accordance with §9.562 of this subchapter (relating to Level of Need (LON) Assignment).

(2) The local authority [MRA] must develop a proposed IPC with the applicant or LAR based on the PDP and §9.555 of this subchapter (relating to Definitions of TxHmL Program Service Components).

(d) The local authority must [For applicants notified of a program vacancy in accordance with §9.566 of this subchapter (relating to Notification of Applicants), the MRA]:

(1) provide [provides] names and contact information to the applicant or LAR regarding all [available] program providers in the local authority's [MRA's] local service area [i.e., program providers operating below their service capacity as identified in the Client Assignment and Registration System (CARE)];

(2) review [reviews] the proposed IPC with potential program providers selected by the applicant or the LAR;

(3) arrange [arranges] for meetings or visits with potential program providers as desired by the applicant or the LAR;

(4) ensure [ensures] that the applicant's or LAR's choice of a program provider is documented, signed by the applicant [individual] or LAR, and retained by the local authority [MRA] in the applicant's record; [and]

(5) negotiate [negotiates] and finalize [finalizes] the proposed IPC with the selected program provider; [:-]

(6) ensure that the proposed IPC includes a sufficient number of RN nursing units to perform an initial nursing assessment, unless:

(A) nursing services are not on the proposed IPC and the applicant or LAR and selected program provider have determined that no nursing tasks will be performed by an unlicensed service provider as documented on DADS form "Nursing Task Screening Tool"; or

(B) a nursing task will be performed by an unlicensed service provider and a physician has delegated the task as a medical act under Texas Occupations Code, Chapter 157, as documented by the physician; and

(7) if an applicant or LAR refuses to include a sufficient number of RN nursing units on the proposed IPC to perform an initial nursing assessment as required by paragraph (6) of this subsection:

(A) inform the applicant or LAR that the refusal:

(i) will result in the applicant not receiving nursing services; and

(ii) if the applicant needs community support, day habilitation, employment assistance, supported employment, or respite, will result in the applicant not receiving the service unless:

(I) the unlicensed service provider does not perform nursing tasks in the provision of the service; and

(II) the program provider determines that it can ensure the applicant's health, safety, and welfare in the provision of the service as described in §9.578(q) of this subchapter (relating to Program Provider Certification Principles: Service Delivery); and

(B) document the refusal of the RN nursing units on the proposed IPC for an initial assessment in the applicant's record.

(e) If an applicant or LAR chooses to participate in CDS, the local authority [MRA] must:

(1) provide names and contact information to the applicant or LAR regarding all CDSAs providing services in the local authority's [MRA's] local service area;

(2) document the applicant's or LAR's choice of CDSA on Form 1584;

(3) document, in the applicant's PDP, a description of the service component provided through CDS; and

(4) document, in the applicant's PDP, a description of the applicant's service back-up plan.

(f) When the selected program provider and CDSA, if applicable have agreed to deliver those services delineated on the IPC, the local authority [MRA] transmits to DADS enrollment information, including the completed ID/RC [MR/RC] Assessment, the proposed IPC, and, if applicable, a request for an increase in a service category limit as described in §9.559 of this subchapter (relating to Request to Increase Service Category Limits). DADS notifies the applicant or LAR, the selected program provider and CDSA, if applicable, and the local authority [MRA] of its approval or denial of the applicant's program enrollment based on the eligibility criteria described in §9.556 of this subchapter (relating to Eligibility Criteria).

(g) If a selected program provider initiates services before DADS [DADS'] notification of enrollment approval, the program provider may not be reimbursed in accordance with §9.573(a)(11)(K) of this subchapter (relating to Reimbursement).

§9.578. Program Provider Certification Principles: Service Delivery.

(a) A program provider must serve an eligible applicant or individual who selects the program provider unless the program provider's enrollment has reached its service capacity as identified in the Client Assignment and Registration System (CARE).

(b) The program provider must maintain a separate record for each individual enrolled with the provider. The individual's record must include:

(1) a copy of the individual's current PDP as provided by the local authority [MRA];

(2) a copy of the individual's current IPC as provided by the local authority [MRA]; and

(3) a copy of the individual's current ID/RC [MR/RC] Assessment as provided by the local authority [MRA].

(c) The program provider must:

(1) participate as a member of the service planning team, if requested by the individual or LAR;

(2) develop, in conjunction with the individual, the individual's family or LAR written support methodologies that describe actions and methods to be used to accomplish outcomes identified in the PDP; and

(3) at least 14 calendar days before the implementation date of the IPC, submit such methodologies to the service coordinator.

(d) The program provider must ensure that service provision is accomplished in accordance with the individual's PDP and the support methodologies described in subsection (c)(2) of this section.

(e) The program provider must ensure that services and supports provided to an individual assist the individual to achieve the outcomes identified in the PDP.

(f) The program provider must ensure that an individual's progress or lack of progress toward achieving the individual's identified outcomes is documented in observable, measurable terms that directly relate to the specific outcome addressed, and that such documentation is available for review by the service coordinator.

(g) The program provider must communicate to the individual's service coordinator changes needed to the individual's PDP or IPC as such changes are identified by the program provider or communicated to the program provider by the individual or LAR.

(h) The program provider must ensure that an individual who performs work for the program provider is paid at a wage level commensurate with that paid to a person without disabilities who would otherwise perform that work. The program provider must comply with local, state, and federal employment laws and regulations.

(i) The program provider must ensure that an individual provides no training, supervision, or care to another individual unless the individual is qualified and compensated in accordance with local, state, and federal regulations.

(j) The program provider must ensure that an individual who produces marketable goods and services during habilitation activities is paid at a wage level commensurate with that paid to a person without disabilities who would otherwise perform that work. Compensation must be paid in accordance with local, state, and federal regulations.

(k) The program provider must offer an individual opportunity [opportunities] for leisure time activities, vacation periods, religious observances, holidays, and days off, consistent with the individual's choice and the routines of other members of the community.

(l) The program provider must offer an individual of retirement age opportunities to participate in activities appropriate to individuals of the same age and provide supports necessary for the individual to participate in such activities consistent with the individual's or LAR's choice and the individual's PDP.

(m) The program provider must offer an individual choices and opportunities for accessing and participating in community activities including employment opportunities and experiences available to peers without disabilities and provide supports necessary for the individual to participate in such activities consistent with an individual's or LAR's choice and the individual's PDP.

(n) The program provider must provide all TxHmL Program service components:

(1) authorized in an individual's IPC;

(2) in accordance with the applicable service component definition as specified in §9.555 of this subchapter (relating to Definitions of TxHmL Program Service Components); and

(3) in accordance with an individual's PDP.

(o) If respite is provided in a location other than an individual's family home, the location must be acceptable to the individual or LAR and provide an accessible, safe, and comfortable environment for the individual that promotes the health and welfare of the individual.

(1) Respite may be provided in the residence of another individual receiving TxHmL Program services or similar services if the

program provider has obtained written approval from the individuals living in the residence or their LARs and:

(A) no more than three individuals receiving TxHmL Program services and other persons receiving similar services are provided services at any one time; or

(B) no more than four individuals receiving TxHmL Program services and other persons receiving similar services are provided services in the residence at any one time and the residence is approved in accordance with §9.188 of this chapter (relating to DADS [DADS] Approval of Residences).

(2) Respite may be provided in a respite facility if the program provider provides or intends to provide respite to more than three individuals receiving TxHmL Program services or persons receiving similar services at the same time; and

(A) the program provider has obtained written approval from the local fire authority having jurisdiction stating that the facility and its operation meet the local fire ordinances; and

(B) the program provider obtains such written approval from the local fire authority having jurisdiction on an annual basis.

(3) Respite must not be provided in an institution such as an ICF/IID [ICF/MR], skilled nursing facility, or hospital.

(p) The program provider must ensure that nursing is provided in accordance with:

(1) the individual's PDP, IPC, and support methodologies required by subsection (c)(2) of this section;

(2) Texas Occupations Code, Chapter 301 (Nursing Practice Act);

(3) 22 TAC Chapter 217 (relating to Licensure, Peer Assistance, and Practice);

(4) 22 TAC Chapter 224 (relating to Delegation of Nursing Tasks by Registered Professional Nurses to Unlicensed Personnel for Clients with Acute Conditions or in Acute Care Environments);

(5) 22 TAC Chapter 225 (relating to RN Delegation to Unlicensed Personnel and Tasks Not Requiring Delegation in Independent Living Environments for Clients with Stable and Predictable Conditions); and

(6) Appendix C of the TxHmL Program waiver application approved by CMS and found at www.dads.state.tx.us.

(q) A program provider may determine that an individual does not require a nursing assessment if:

(1) nursing services are not on the individual's IPC and the program provider has determined that no nursing task will be performed by the program provider's unlicensed service provider as documented on DADS form "Nursing Task Screening Tool"; or

(2) a nursing task will be performed by the program provider's unlicensed service provider and a physician has delegated the task as a medical act under Texas Occupations Code, Chapter 157, as documented by the physician.

(r) If an individual or LAR refuses a nursing assessment described in §9.555(c)(1)(J)(i) of this subchapter (relating to Definitions of TxHmL Program Service Components), the program provider must not:

(1) provide nursing services to the individual; or

(2) provide community support, day habilitation, employment assistance, supported employment, or respite to the individual unless:

(A) an unlicensed service provider does not perform nursing tasks in the provision of the service; and

(B) the program provider determines that it can ensure the individual's health, safety, and welfare in the provision of the service.

(s) If an individual or LAR refuses a nursing assessment and the program provider determines that the program provider cannot ensure the individual's health, safety, and welfare in the provision of a service as described in subsection (r) of this section, the program provider must:

(1) immediately notify the individual or LAR and the individual's service coordinator, in writing, of the determination; and

(2) include in the notification required by paragraph (1) of this subsection the reasons for the determination and the services affected by the determination.

(t) If notified by the service coordinator that the individual or LAR refuses the nursing assessment after the discussion with the service coordinator as described in §9.583(m)(6) of this subchapter (relating to TxHmL Program Principles for Local Authorities), the program provider must immediately send the written notification described in subsection (s) of this section to DADS.

(u) The program provider must, if a physician delegates a medical act to an unlicensed service provider in accordance with Texas Occupations Code, Chapter 157, and the program provider has concerns about the health or safety of the individual in performance of the medical act, communicate the concern to the delegating physician and take additional steps as necessary to ensure the health and safety of the individual.

§9.583. *TxHmL Program Principles for Local [Mental Retardation] Authorities.*

(a) A local authority [~~An~~ MRA] must notify an applicant of a TxHmL Program vacancy in accordance with §9.566 of this subchapter (relating to Notification of Applicants).

(b) A local authority [~~An~~ MRA] must process requests for enrollment in the TxHmL Program in accordance with §9.567 of this subchapter (relating to Process for Enrollment).

(c) A local authority [~~An~~ MRA] must have a mechanism to ensure objectivity in the process to assist an individual or LAR in the selection of a program provider and a system for training all MRA staff who may assist an individual or LAR in such process.

(d) A local authority [~~An~~ MRA] must ensure the development and completion of the initial IPC and all necessary assessments within 45 working days of the individual or LAR documenting the choice of TxHmL Program services over ICF/MR Program services in accordance with §9.566(d)(2) of this subchapter.

(e) A local authority [~~An~~ MRA] must submit to DADS necessary documentation for an applicant's enrollment within 10 working days after the applicant's or LAR's selection of a program provider.

(f) A local authority [~~An~~ MRA] must ensure that its employees and contractors possess legally necessary licenses, certifications, registrations, or other credentials and are in good standing with the appropriate professional agency before performing any function or delivering services.

(g) A local authority [~~An MRA~~] must ensure that an individual or LAR is informed orally and in writing of the following processes for filing complaints about service provision:

(1) processes for filing complaints with the local authority [~~MRA~~] about the provision of service coordination; and

(2) processes for filing complaints about the provision of TxHmL Program services including:

(A) the telephone number of the local authority [~~MRA~~] to file a complaint;

(B) the toll-free telephone number of DADS to file a complaint; and

(C) the toll-free telephone number of DFPS (1-800-647-7418) to file a complaint of abuse, neglect, or exploitation.

(h) A local authority [~~An MRA~~] must maintain for each individual:

(1) a current IPC;

(2) a current PDP;

(3) a current ID/RC [~~MR/RC~~] Assessment; and

(4) current service information.

(i) For an individual receiving TxHmL Program services within the local authority's [~~MRA's~~] local service area, the local authority [~~MRA~~] must provide the individual's program provider a copy of the individual's current PDP, IPC, and ID/RC [~~MR/RC~~] Assessment.

(j) A local authority [~~An MRA~~] must employ service coordinators who:

(1) meet the minimum qualifications and staff training requirements specified in Chapter 2, Subchapter L of this title (relating to Service Coordination for Individuals with an Intellectual Disability [~~Mental Retardation~~]); and

(2) have received training about the TxHmL Program, including the requirements of this subchapter and the TxHmL Program service components as specified in §9.555 of this subchapter (relating to Definitions of TxHmL Program Service Components).

(k) A local authority [~~An MRA~~] must ensure that a service coordinator:

(1) initiates, coordinates, and facilitates the person-directed planning process to meet the desires and needs as identified by an individual and LAR in the individual's PDP;

(2) coordinates the development and implementation of the individual's PDP;

(3) submits a correctly completed request for authorization of payment from non-TxHmL Program sources for which an individual may be eligible;

(4) coordinates and develops an individual's IPC based on the individual's PDP;

(5) coordinates and monitors the delivery of TxHmL Program and non-TxHmL Program services;

(6) integrates various aspects of services delivered under the TxHmL Program and through non-TxHmL Program sources;

(7) records each individual's progress;

(8) develops discharge and transfer plans, when necessary; and

(9) keeps records as they pertain to the implementation of an individual's PDP.

(l) A local authority [~~An MRA~~] must ensure that an individual or LAR is informed of the name of the individual's service coordinator and how to contact the service coordinator.

(m) A service coordinator must:

(1) assist the individual or LAR in exercising the legal rights of the individual as a citizen and as a person with a disability;

(2) assist the individual's LAR or family members to encourage the individual to exercise the individual's rights;

(3) inform the individual or LAR orally and in writing of:

(A) the eligibility criteria for participation in the TxHmL Program;

(B) the services and supports provided by the TxHmL Program and the limits of those services and supports; and

(C) the reasons an individual may be discharged from the TxHmL Program as described in §9.570 of this subchapter (relating to Permanent Discharge from the TxHmL Program Services);

(4) ensure that the individual and LAR participate in developing a personalized PDP and IPC that meet the individual's identified needs and service outcomes and that the individual's PDP is updated when the individual's needs or outcomes change but not less than annually;

(5) ensure that a restriction affecting the individual is approved by the individual's service planning team before the imposition of the restriction;

(6) if notified by the program provider that an individual or LAR has refused a nursing assessment and that the program provider has determined that it cannot ensure the individual's health, safety, and welfare in the provision of a service as described in §9.578(s) of this subchapter (relating to Program Provider Certification Principles: Service Delivery), a service coordinator must:

(A) inform the individual or LAR of the consequences and risks of refusing the assessment, including that the refusal will result in the individual not receiving:

(i) nursing services; or

(ii) community support, day habilitation, employment assistance, supported employment, or respite, if the individual needs one of those services and the program provider has determined that it cannot ensure the health, safety, and welfare of the individual in the provision of the service; and

(B) notify the program provider if the individual or LAR continues to refuse the assessment after the discussion with the service coordinator;

(7) [(6)] ensure that the individual or LAR is informed of decisions regarding denial or termination of services and the individual's or LAR's right to request a fair hearing as described in §9.571 of this subchapter (relating to Fair Hearings);

(8) [(7)] ensure that, if needed, the individual or LAR participates in developing a discharge plan that addresses assistance for the individual after the individual is discharged from the TxHmL Program; and

(9) [(8)] inform the individual or LAR that the service coordinator will assist the individual or LAR to transfer the individual's

TxHmL Program services from one program provider to another program provider as chosen by the individual or LAR.

(n) When a change to an individual's PDP or IPC is indicated [occurs or is needed], the service coordinator must discuss [communicate] the need for the change with [to] the individual or LAR, the individual's program provider, and other appropriate persons as necessary.

(o) At least 30 calendar days before the expiration of an individual's IPC, the service coordinator must:

(1) update the individual's PDP in conjunction with the individual's service planning team; and

(2) submit the updated information to the program provider for completion of necessary support methodologies to be incorporated in the updated PDP.

(p) A service coordinator must:

(1) review the status of an individual who is temporarily discharged at least every 90 calendar days following the effective date of the temporary discharge and document in the individual's record the reasons for continuing the discharge; and

(2) if the temporary discharge continues 270 calendar days, submit written documentation of the 90, 180, and 270 calendar day reviews to DADS for review and approval to continue the temporary discharge status.

(q) A service coordinator must:

(1) inform the individual or LAR orally and in writing, of the requirements described in subsection (m) of this section:

(A) upon receipt of DADS approval of the enrollment of the individual;

(B) if the requirements described in subsection (m) of this section are revised;

(C) at the request of the individual or LAR; and

(D) if the legal status of the individual changes; and

(2) document that the information described in paragraph (1) of this subsection was provided to the individual or LAR.

(r) A service coordinator must, at least annually:

(1) inform the individual or LAR of the individual's right to participate in CDS and discontinue participation in CDS at any time, except as provided in §41.405(a) of this title (relating to Suspension of Participation in the CDS Option);

(2) provide the individual or LAR a copy of Forms 1581, 1582, and 1583, which are available at www.dads.state.tx.us [<http://www.dads.state.tx.us/handbooks/forms/default.asp?HB=CDS>], and which contain information about CDS, including financial management services and support consultation;

(3) provide an oral explanation of the information contained in Forms 1581, 1582, and 1583 to the individual or LAR; and

(4) provide the individual or LAR the opportunity to choose to participate in CDS and document the individual's choice on Form 1584, which is available at www.dads.state.tx.us [<http://www.dads.state.tx.us/handbooks/forms/default.asp?HB=CDS>].

(s) If an individual or LAR chooses to participate in CDS, the service coordinator must:

(1) provide names and contact information to the individual or LAR regarding all CDSAs providing services in the local authority's [MRA's] local service area;

(2) document the individual's or LAR's choice of CDSA on Form 1584;

(3) document, in the individual's PDP, a description of the service components provided through CDS; and

(4) document, in the individual's PDP, a description of the individual's service back-up plan.

(t) The service coordinator must document in the individual's PDP that the information described in subsections (r) and (s)(1) of this section was provided to the individual or LAR.

(u) For an individual participating in CDS, the local authority [MRA] must recommend to DADS that financial management services and support consultation, if applicable, be terminated if the service coordinator determines that:

(1) the individual's continued participation in CDS poses a significant risk to the individual's health, safety or welfare; or

(2) the individual or LAR has not complied with Chapter 41, Subchapter B of this title (relating to Responsibilities of Employers and Designated Representatives).

(v) If a local authority [an MRA] makes a recommendation under subsection (u) of this section, the local authority [MRA] must:

(1) submit the individual's IPC to DADS electronically; and

(2) submit the following, in writing, to the Department of Aging and Disability Services, Access and Intake, Program Enrollment, P.O. Box 149030, Mail Code W-551 [W-354], Austin, Texas 78714-9030:

(A) a description of the service recommended for termination;

(B) the reasons why termination is recommended;

(C) a description of the attempts to resolve the issues before recommending termination; and

(D) other supporting documentation, as appropriate.

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 17, 2013.

TRD-201302932

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: September 1, 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)

TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER S. MOTOR FUEL TAX

34 TAC §3.436

The Comptroller of Public Accounts withdraws the proposed amendment to §3.436 which appeared in the April 26, 2013, issue of the *Texas Register* (38 TexReg 2606).

Filed with the Office of the Secretary of State on July 22, 2013.

TRD-201302969

Ashley Harden

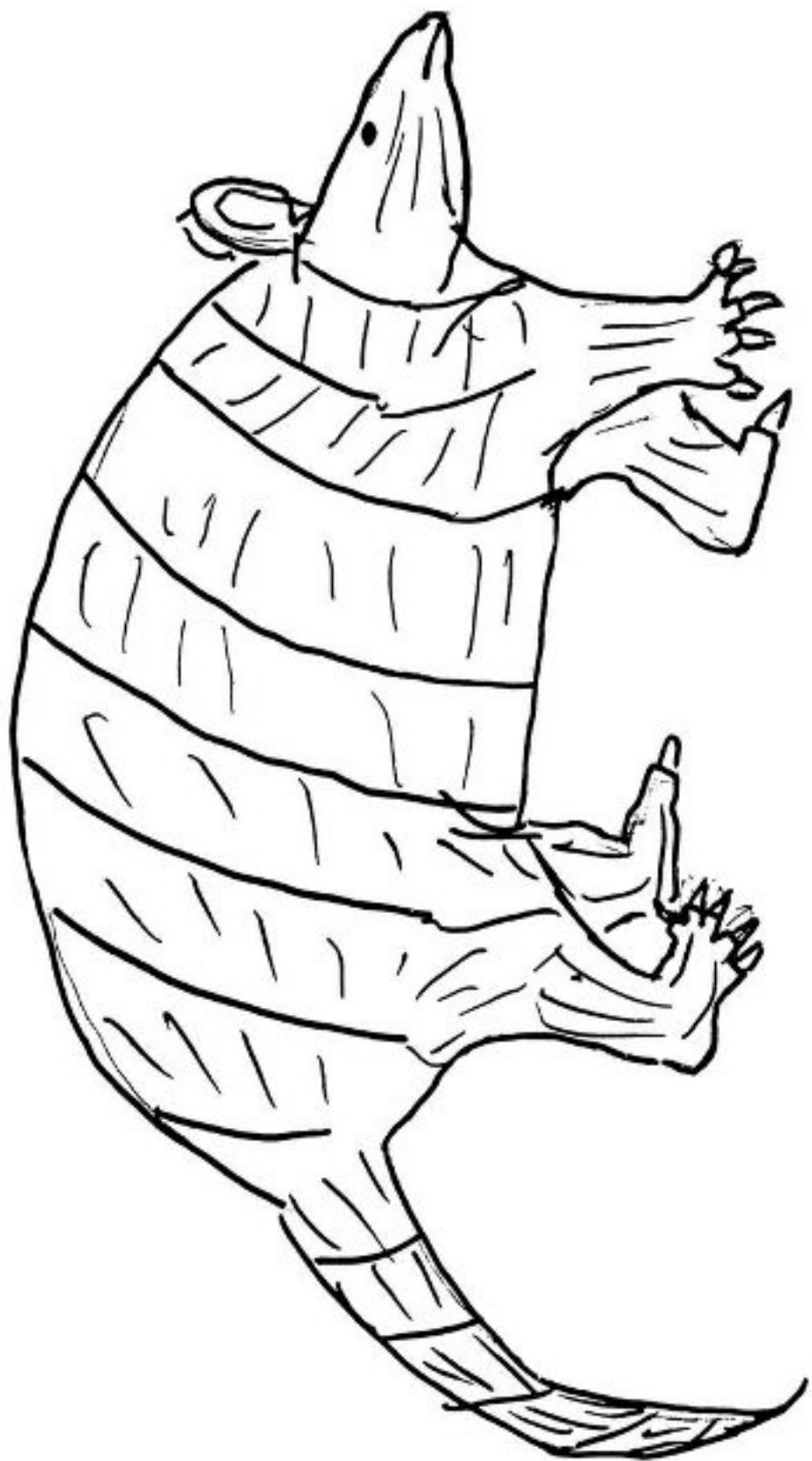
General Counsel

Comptroller of Public Accounts

Effective date: July 22, 2013

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





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 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 79. BUSINESS ENTITY FILINGS SUBCHAPTER B. DOCUMENT REVIEW

1 TAC §79.28

The Office of the Secretary of State ("Office") adopts amendments to §79.28, concerning registered office addresses. The rule is adopted without changes to the proposed text as published in the May 24, 2013, issue of the *Texas Register* (38 TexReg 3227) and will not be republished.

The amendments to §79.28 remove an inconsistency with the Texas Business Organizations Code (the "Code") with respect to use of a post office box as the sole registered office address. With the adoption of the Code, the registered office requirements were set forth in §5.201(c). Section 5.201(c)(3) specifies that the registered office address cannot be solely a mailbox service. As a result, the amendments to §79.28 remove the provision allowing for a post office address for cities with a population of less than 5,000.

No comments were received regarding the amendments.

STATUTORY AUTHORITY

The amendments to §79.28 are adopted under the authority of §12.001 of the Code, which authorizes the secretary of state to adopt procedural rules for the filing of instruments authorized to be filed with the secretary of state under the Code and gives the secretary of state the power and authority reasonably necessary to enable the secretary of state to perform the duties therein imposed upon the secretary of state.

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

Filed with the Office of the Secretary of State on July 16, 2013.

TRD-201302907

Lorna Wassdorf

Director, Business and Public Filings

Office of the Secretary of State

Effective date: August 5, 2013

Proposal publication date: May 24, 2013

For further information, please call: (512) 463-5562



PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER A. PURCHASED HEALTH SERVICES

The Texas Health and Human Services Commission (HHSC) adopts the amendments to §§354.1061, 354.1071, and 354.1101, concerning Additional Claim Information Requirements, without changes to the proposed text as published in the April 19, 2013, issue of the *Texas Register* (38 TexReg 2437) and will not be republished.

Background and Justification

The amendments are adopted to clarify claim information requirements related to diagnosis codes for physician and physician assistant services, hospital services, and podiatry services. The amendments also are adopted to reduce the risk for provider confusion related to required diagnosis code information on claims by deleting text that is no longer relevant for claims adjudication; to update an obsolete citation; and to update personal pronouns related to physicians.

Comments

The 30-day public comment period ended May 19, 2013. During this period, HHSC did not receive any comments regarding the proposed rule amendments.

DIVISION 5. PHYSICIAN AND PHYSICIAN ASSISTANT SERVICES

1 TAC §354.1061

Legal Authority

The amendments are adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

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

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Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 424-6900



DIVISION 6. HOSPITAL SERVICES

1 TAC §354.1071

Legal Authority

The amendments are adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

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

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DIVISION 8. PODIATRY SERVICES

1 TAC §354.1101

Legal Authority

The amendments are adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

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

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



DIVISION 19. PSYCHOLOGISTS' SERVICES

1 TAC §354.1281

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §354.1281, concerning psychologists' services, benefits, and limitations, without changes to the proposed text as published in the April 12, 2013, issue of the *Texas Register* (38 TexReg 2279) and will not be republished.

Background and Justification

The Texas Medicaid program currently covers psychological counseling and services provided by a licensed psychologist or by a licensed psychological associate (LPA) if: the LPA's services are performed under the direct supervision of a licensed psychologist who is in the same office, building, or facility when and where the service is provided and is immediately available to furnish assistance and direction; and the LPA performing the service is an employee of either the licensed psychologist or the legal entity that employs the licensed psychologist.

The rule is adopted to add provisionally licensed psychologists (PLP) as another type of provider who can perform psychological counseling and services under the direct supervision of a licensed psychologist. Under the rules of the Texas State Board of Examiners of Psychologists (TSBEP), an individual who is a licensed psychologist is an individual who holds a doctoral level license for the independent practice of psychology; a PLP is an individual who holds a doctoral level license to practice under the supervision of a licensed psychologist; and an LPA is an individual who holds a sub-doctoral license to practice psychology under the supervision of a licensed psychologist.

The state currently reimburses a licensed psychologist for services provided to Medicaid clients and currently reimburses a licensed psychologist for services provided to Medicaid clients by an LPA under the psychologist's supervision; the state currently does not reimburse a licensed psychologist for services provided to Medicaid clients by a PLP under the psychologist's supervision. Thus, under the current rule, if an individual who is an LPA completes his or her doctoral degree and becomes a PLP, the individual's services are not eligible for Medicaid reimbursement until the individual becomes a licensed psychologist. Therefore, a Medicaid recipient under the care of an LPA must find a new provider after the LPA becomes a PLP, although the Medicaid client could return to the original provider when the PLP is a licensed psychologist. Additionally, a provider type that is academically qualified is excluded from providing Medicaid services.

HHSC is adopting the amendment so that services provided by a PLP will be covered under the same conditions as those provided by an LPA. HHSC believes this amendment makes sense, improves continuity of care for Medicaid clients, and may expand access to care for Medicaid clients. Services provided by the PLP will be reimbursed to the supervising psychologist or legal entity employing the supervising psychologist at rates determined by HHSC under the appropriate rate rules.

The adopted rule also clarifies and updates terminology.

Comments

The original 30-day comment period was extended 30 days and ended June 12, 2013. During this period, HHSC received two comments from individuals. Both commenters supported the rule, citing reasonableness and access to care. No changes were made to this rule as a result of these comments.

Statutory Authority

The amendment is adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and 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.

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

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Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

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



CHAPTER 355. REIMBURSEMENT RATES SUBCHAPTER J. PURCHASED HEALTH SERVICES

DIVISION 5. GENERAL ADMINISTRATION

1 TAC §355.8081

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §355.8081, concerning Reimbursement Methodology for Laboratory and X-ray Services, Radiation Therapy, Physical Therapists' Services, Physician Services, Podiatry Services, Chiropractic Services, Optometric Services, Ambulance Services, Dentists' Services, Psychologists' Services, Licensed Psychological Associates' Services, Provisionally Licensed Psychologists' Services, Maternity Clinic Services, and Tuberculosis Clinic Services, without changes to the proposed text as published in the April 12, 2013, issue of the *Texas Register* (38 TexReg 2280) and will not be republished.

Background and Justification

The adopted amendment is a result of provider concerns regarding Medicaid policies and a lack of reimbursement for PLPs. Currently, the state reimburses for psychological services provided by licensed psychologists and licensed psychological associates, but the state does not reimburse for services provided by a PLP—even though a PLP's level of qualification falls between the qualification of a licensed psychologist and a licensed psychological associate.

The amendment provides that the licensed psychologist who supervises a PLP will be reimbursed for the PLP's services at 70 percent of the Medicaid rate paid for a licensed psychologist's services. This methodology is consistent with that for licensed psychological associates, whose services currently are reimbursed at 70 percent of the Medicaid rate for licensed psychologists.

Comments

The 30-day comment period ended May 12, 2013. The Commission extended the comment period until noon on June 11, 2013, to allow for possible changes to the rule based on pending legislation (House Bill (H.B.) 808, 83rd Legislature, Regular Session,

2013). The enrolled version of H.B. 808 did not result in any required changes to the proposed rule. During the comment period HHSC received comments on the proposed rule from three individuals. All comments were in favor of the proposed amendment, citing reasonableness and improved access to psychological care.

Statutory Authority

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

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Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

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



DIVISION 11. TEXAS HEALTHCARE TRANS- FORMATION AND QUALITY IMPROVEMENT PROGRAM REIMBURSEMENT

1 TAC §355.8203

The Texas Health and Human Services Commission (HHSC) adopts new §355.8203, concerning Waiver Payments to Other Performers, without changes to the proposed text as published in the May 24, 2013, issue of the *Texas Register* (38 TexReg 3228) and will not be republished.

BACKGROUND AND JUSTIFICATION

In December 2011, HHSC received approval from the federal Centers for Medicare and Medicaid Services (CMS) for the Texas Transformation and Quality Improvement Program, a §1115 Waiver. One facet of the §1115 Waiver is the Delivery System Reform Incentive Payment (DSRIP) program in which providers gather in Regional Healthcare Partnerships (RHPs) to propose and implement projects that further HHSC's goal of positive transformation for the state's healthcare system. Providers are given an incentive payment based upon the successful completion of metrics in each DSRIP project.

Reimbursement rules relating to the §1115 Waiver for hospitals and physician practice groups are already codified at §355.8201 and §355.8202. However, there are other types of providers involved in the DSRIP program, such as community mental health centers and local health departments. Additionally, the Program Funding and Mechanics (PFM) Protocol, a CMS-approved document giving in-depth detail about the DSRIP program, allows for HHSC and CMS to agree to allow other providers to partic-

ipate as performers. This new rule is adopted to describe the reimbursement rules for all other providers not addressed by §355.8201 or §355.8202.

The rule includes a description of eligibility requirements, payment methodologies, and the intergovernmental transfer and recoupment processes. This rule does not substantively differ from the reimbursement rules for hospitals or physician practice groups insofar as those rules address the DSRIP program.

COMMENTS

HHSC received no comments regarding adoption of the new section, including at a public hearing held in Austin on June 18, 2013.

STATUTORY AUTHORITY

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

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

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Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

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Proposal publication date: May 24, 2013

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



DIVISION 21. CASE MANAGEMENT FOR CHILDREN AND PREGNANT WOMEN

1 TAC §355.8401

The Texas Health and Human Services Commission (HHSC) adopts the amendment to §355.8401, concerning Reimbursement Methodology for Case Management for Children and Pregnant Women, without changes to the proposed text as published in the May 17, 2013, issue of the *Texas Register* (38 TexReg 2935) and will not be republished.

Background and Justification

Case management services for children and pregnant women are offered through Medicaid. The Department of State Health Services (DSHS) administers the case management program under its rules in 25 TAC Chapter 27, but HHSC is responsible for rules governing the reimbursement rates. Accordingly, HHSC, under its authority and responsibility to administer and implement Medicaid reimbursement rates, adopts §355.8401 to update and clarify the methodology used to determine the Medicaid reimbursement rates for providers of Case Management for Children and Pregnant Women services.

Comments

The 30-day comment period ended June 17, 2013. During this period, HHSC did not receive any comments regarding the proposed rule amendment.

Statutory Authority

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

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Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

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Proposal publication date: May 17, 2013

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



CHAPTER 380. MEDICAL TRANSPORTATION PROGRAM

The Texas Health and Human Services Commission (HHSC) adopts amendments to §§380.101, 380.201, 380.203, 380.205, 380.209, 380.301, and 380.401, concerning Definitions of Terms, Eligibility, Program Services, Program Processes, Program Exclusions, Client Rights and Responsibilities, and Individual Volunteer Contractor Participation Requirements; and adopts new §380.501 and §380.502 in new Subchapter E, concerning Regional Contracted Brokers. The amendment to §380.201 is adopted with changes to the proposed text as published in the April 26, 2013, issue of the *Texas Register* (38 TexReg 2597). The text of the rule will be republished. The amendments to §§380.101, 380.203, 380.205, 380.209, 380.301, and 380.401 and new §380.501 and §380.502 are adopted without changes to the proposed text as published in the April 26, 2013, issue of the *Texas Register* (38 TexReg 2597) and will not be republished.

Background and Justification

The Medical Transportation Program (MTP) provides non-emergency medical transportation services to Medicaid clients and those served by the Children with Special Health Care Needs Services and the Transportation for Indigent Cancer Patients programs. House Bill (H.B.) 2136, 82nd Legislature, Regular Session, 2011, amended §531.02414 of the Government Code to require HHSC to adopt rules to ensure the safe and efficient provision of non-emergency transportation services provided under MTP by regional contracted brokers and subcontractors of regional contracted brokers. H.B. 2136 specifies that the rules adopted by HHSC must include minimum standards regarding the physical condition and maintenance of motor vehicles used to transport MTP clients. Additionally, the rules must require re-

gional contracted brokers to verify that motor vehicle operators providing MTP services have a valid driver's license, to check the driving and criminal records for these operators, and to require motor vehicle operators to receive annual training on specific topics.

The adopted amendments and new rules define the term "regional contracted broker" and specify requirements of participation in the MTP as required by H.B. 2136. In addition, the amended rules update references to agencies, delete obsolete citations and definitions, update language to reflect current policy, and clarify requirements for individuals receiving mileage reimbursement under the MTP.

Comments

The comment period ended June 2, 2013. During this period, HHSC received comments from two organizations, LeFleur Transportation of Texas, Inc., and the Coalition for Nurses in Advanced Practice. A summary of comments relating to the rules and HHSC's responses follows.

Comment: A commenter requested that HHSC consider two additions to the client's rights and responsibilities in §380.301(b) to require recipients and attendants to observe all Texas safety-belt laws while receiving medical transportation services and to require recipients and attendants to provide and install any age appropriate child safety seats required for transport in compliance with state laws.

Response: HHSC recognizes the important safety issues raised by the commenter. However, the comment is outside of the scope of the proposed rulemaking action as published in the *Texas Register*. HHSC will consider the comment for future potential rulemaking purposes.

Comment: A commenter requested clarification on whether §380.502(2) and (3) requires a contracted broker to directly access the Department of Public Safety (DPS) records to obtain required checks or whether the contracted broker is allowed to obtain required checks through a third party vendor that retrieves applicable records for vehicle operators, including any DPS records.

Response: Contracted brokers are required to check the driving record and public criminal record information maintained by DPS of each motor vehicle operator providing services or seeking to provide services under the MTP to satisfy the statutory requirements contained in Government Code §531.02414. Section 380.502(2) and (3) implements the statutory requirements of §531.02414(e)(3) and (4) of the Government Code, which specifically requires a regional contracted broker to check the driver record information and the public criminal record information maintained by DPS and made available to the public through DPS's website of each motor vehicle operator providing services or seeking to provide services under the MTP. Contracted brokers can directly access the information from DPS or elect to use a third party vendor to access the applicable records for vehicle operators through the DPS Internet website. No changes were made to the rules in response to this comment.

Comment: A commenter requested revising the requirements for Transportation for Indigent Cancer Patients (TICP) in §380.201(b)(9) to add an advanced practice registered nurse and a physician assistant to those who are authorized to confirm a cancer or cancer-related diagnosis and §380.201(b)(9)(A) to expand services to allow transportation to a cancer-related diagnostic visit in which the patient will not see a physician.

Response: The comment is outside of the scope of the proposed rulemaking action as published in the *Texas Register*. However, HHSC will consider the comment for future potential rulemaking purposes.

HHSC made the following changes to correct minor problems with sentence structure in the proposed text as published:

In §380.201(b), HHSC removed a hyphen and "TICP" at the beginning of the sentence.

In §380.201(b)(5)(A), HHSC added a closing parenthesis to the subparagraph's parenthetical phrase.

SUBCHAPTER A. PROGRAM OVERVIEW

1 TAC §380.101

Legal Authority

The amendment is adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and 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 §531.02414, which requires HHSC to adopt rules to ensure the safe and efficient provision of nonemergency transportation services under the MTP by regional contracted brokers and subcontractors of regional contracted brokers.

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

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Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

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



SUBCHAPTER B. ELIGIBILITY, PROGRAM SERVICES, PROCESSES, ADDITIONAL TRANSPORTATION CONNECTED WITH AN AUTHORIZED TRIP, LIMITATIONS, AND EXCLUSIONS

1 TAC §§380.201, 380.203, 380.205, 380.209

Legal Authority

The amendments are adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and 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 §531.02414, which requires HHSC to adopt rules to ensure the safe and efficient provision of nonemergency transportation services under the MTP by regional contracted brokers and subcontractors of regional contracted brokers.

§380.201. *Eligibility.*

(a) The following prior authorized Medical Transportation Program (MTP) recipients are eligible to receive reasonable transportation to health care services if medical necessity exists, no other means of transportation are available, the mode of transportation is the most cost-effective mode available that does not endanger the recipient's health and the facility is reasonably close to the prior authorized health care service that meets the recipient's health care needs:

(1) current Medicaid recipients authorized and identified by the Health and Human Services Commission (HHSC) as eligible for Medicaid services under a specific category;

(2) Children with Special Health Care Needs (CSHCN) recipients; and

(3) Transportation for Indigent Cancer Patients (TICP) Program recipients.

(b) To be eligible for participation in the TICP Program, the individual:

(1) must reside in Webb, Zapata, Starr, Jim Hogg, Hidalgo, Cameron, Willacy, or Nueces County and provide a copy of a federal or state ID (driver's license or identification card) and one of the following as proof of residency:

(A) a copy of a utility bill under the applicant's name; or

(B) if residing with a family member, a written verification from that family member stating that the applicant resides in the household and proof that household is in an eligible county;

(2) must not be eligible for Medicaid;

(3) must not be eligible for CSHCN-CIDC;

(4) must be medically indigent (at or below 100% of federal poverty guidelines). Before program services are provided, the monthly household gross income shall be verified by:

(A) financial information obtained through HHSC;

(B) check stub or other written verification for each person in the household who is employed. This form must contain the name, address of employer, income and dates covered for each pay period; or

(C) award letter or other written verification of unearned income (such as Social Security, Worker's Compensation, Unemployment or Veteran's Administration benefits);

(5) is permitted the following allowable deductions from the total monthly household gross income:

(A) \$120 standard deduction per person in household who is employed (the standard deduction per person will be the rate set by HHSC); and

(B) dependent care:

(i) up to \$200 per child under 2 years of age; or

(ii) up to \$175 per child 2 years of age and older;

(6) is not permitted to take deductions on unearned income;

(7) if over the age of 18 and residing with a family member, the family member's household income is not considered. The applicant's gross income, less standard deductions, is used to determine the applicant's eligibility;

(8) has zero income and shall therefore submit written verification from two family members or individuals who can attest that the

household receives no monthly earned or unearned income. Unearned income refers to monetary assistance provided by family, friends, charitable organizations, and such given to the recipient for household expenses;

(9) must provide initial confirmation of cancer or cancer-related diagnosis by a licensed medical physician. The following restrictions apply:

(A) the applicant is eligible for up to 4 diagnostic visits to a licensed medical physician to determine cancer or cancer-related diagnosis if HHSC is provided written verification that diagnostic visits are to rule out the possibility of cancer or cancer-related illness; and

(B) confirmation of cancer or cancer-related diagnosis must be provided on or following the last diagnostic visit for MTP services to continue; and

(10) must be accepted for evaluation or treatment by a medical institution in Texas capable of providing quality cancer services.

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

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Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

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



SUBCHAPTER C. CLIENT RIGHTS

1 TAC §380.301

Legal Authority

The amendment is adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and 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 §531.02414, which requires HHSC to adopt rules to ensure the safe and efficient provision of nonemergency transportation services under the MTP by regional contracted brokers and subcontractors of regional contracted brokers.

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

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Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

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



SUBCHAPTER D. INDIVIDUAL
TRANSPORTATION PARTICIPANT

1 TAC §380.401

Legal Authority

The amendment is adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and 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 §531.02414, which requires HHSC to adopt rules to ensure the safe and efficient provision of nonemergency transportation services under the MTP by regional contracted brokers and subcontractors of regional contracted brokers.

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

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Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

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



SUBCHAPTER E. REGIONAL CONTRACTED
BROKERS

1 TAC §380.501, §380.502

Legal Authority

The new rules are adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and 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 §531.02414, which requires HHSC to adopt rules to ensure the safe and efficient provision of nonemergency transportation services under the MTP by regional contracted brokers and subcontractors of regional contracted brokers.

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

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Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

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



TITLE 4. AGRICULTURE

**PART 1. TEXAS DEPARTMENT OF
AGRICULTURE**

**CHAPTER 1. GENERAL PROCEDURES
SUBCHAPTER R. CHILDREN'S ACCESS TO
NUTRITIOUS FOOD GRANT PROGRAM**

4 TAC §§1.1200 - 1.1204

The Texas Department of Agriculture (the department) adopts new Chapter 1, Subchapter R, §§1.1200 - 1.1204, concerning a grant program for children's access to nutritious food, without changes to the proposed text as published in the May 17, 2013, issue of the *Texas Register* (38 TexReg 2936).

The new sections are adopted to implement Texas Agriculture Code, Chapter 25, which provides that the department by rule shall develop a grant program to award grants to nonprofit organizations for the purpose of allowing food banks to provide children at risk of hunger or obesity with access to nutritious food outside the school day. The new sections provide a statement of purpose for the new grant program; definitions to be used in Subchapter R; eligibility requirements; items that must be included in a proposal submitted under the program; and the reporting requirements.

No comments were received regarding the proposed new sections.

The new sections are adopted under the Texas Agriculture Code, Chapter 25, §25.005, which provides the department with the authority to adopt rules as necessary for the administration of the children's access to nutritious food grant program established under Texas Agriculture Code, Chapter 25.

The code affected by this adoption is the Texas Agriculture Code, Chapter 25.

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 15, 2013.

TRD-201302896

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

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Proposal publication date: May 17, 2013

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



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

**CHAPTER 97. PLANNING AND
ACCOUNTABILITY**

**SUBCHAPTER AA. ACCOUNTABILITY AND
PERFORMANCE MONITORING**

19 TAC §97.1001

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 19 TAC §97.1001 is not included in the print version of the Texas Register. The figure is available in the on-line version of the August 2, 2013, issue of the Texas Register.)

The Texas Education Agency (TEA) adopts an amendment to §97.1001, concerning accountability. The amendment is adopted with changes to the proposed text as published in the June 7, 2013, issue of the *Texas Register* (38 TexReg 3466). The section describes the state accountability rating system and annually adopts the most current accountability manual. The amendment adopts applicable excerpts of the *2013 Accountability Manual*. Earlier versions of the manual will remain in effect with respect to the school years for which they were developed.

Legal counsel with the TEA has recommended that the procedures for issuing accountability ratings for public school districts and campuses be adopted as part of the *Texas Administrative Code*. This decision was made in 2000 given a court decision challenging state agency decision making via administrative letter/publications. Given the statewide application of the accountability rating process and the existence of sufficient statutory authority for the commissioner of education to formally adopt rules in this area, portions of each annual accountability manual have been adopted since 2000. The accountability system evolves from year to year so the criteria and standards for rating and acknowledging schools in the most current year differ to some degree over those applied in the prior year. The intention is to annually update 19 TAC §97.1001 to refer to the most recently published accountability manual.

The amendment to 19 TAC §97.1001 adopts excerpts of the *2013 Accountability Manual* into rule as a figure. The excerpts, *Chapters 3-9 of the 2013 Accountability Manual*, specify the indicators, standards, and procedures used by the commissioner of education to determine accountability ratings for districts, campuses, and charter schools. These chapters also specify indicators, standards, and procedures used to determine Distinction Designations on additional indicators for Texas public school campuses. The TEA will issue accountability ratings and Distinction Designations under the procedures specified in the *2013 Accountability Manual* by August 8, 2013. Ratings and Distinction Designations may be revised as a result of investigative activities by the commissioner as authorized under TEC, §39.056 and §39.057.

In 2013, campuses and districts will be evaluated using a performance index framework. The framework includes four indexes. These indexes include performance on the State of Texas Assessments of Academic Readiness (STAAR®) results for Grades 3-8 and end-of-course, and Texas Assessment of Knowledge and Skills (TAKS) results for Grade 11; longitudinal graduation rates; annual Recommended High School Program/Distinguished Achievement Program graduates; and annual dropout rates. In 2013, the Distinction Designations system will award three distinctions: top 25 percent student progress, academic achievement in reading/English language arts, and academic achievement in mathematics for qualifying campuses that have received an acceptable rating. Distinction Designations are not available for academic achievement in science or social studies for 2013.

In addition to adopting excerpts of the *2013 Accountability Manual* in rule as a figure, the amendment updates statutory cita-

tions. The amendment also updates the rule to remove language that refers to separate procedures for standard and alternative education accountability and to refer to Distinction Designations.

The adopted amendment also modifies subsection (e) to specify that accountability manuals adopted for school years prior to 2013-2014 will remain in effect with respect to those school years.

In response to public comment, changes were made to the manual excerpts to provide a more detailed description of the methodology that will be used to determine the Index 2 targets for campuses. In addition, a technical correction was made to clarify that the exclusion of performance data for certain students with specific attribution codes is applied to campus and district aggregations.

Also at adoption, language was added to subsection (a) to clarify that the TEC sections listed were as those sections existed prior to amendment by legislation passed by the 83rd Texas Legislature, Regular Session, 2013.

The adopted rule action places the specific procedures contained in *Chapters 3-9 of the 2013 Accountability Manual* for annually rating school districts and campuses in the *Texas Administrative Code*. Applicable procedures will be adopted each year as annual versions of the accountability manual are published. The adopted amendment has no locally maintained paperwork requirements.

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

The public comment period on the proposal began June 7, 2013, and ended July 8, 2013. Following is a summary of the public comments received and the corresponding agency responses regarding proposed amendment to 19 TAC Chapter 97, Planning and Accountability, Subchapter AA, Accountability and Performance Monitoring, §97.1001, Accountability Rating System.

Comment: The Texas School Alliance recommended a revision that campuses or districts that meet any two of the applicable index targets should be rated "Met standard," particularly in this first, "stand-alone" year.

Agency Response: The agency disagrees and maintains that the requirement that districts and campuses must meet the performance index targets on all indexes for which they have 2013 performance data is appropriate.

Comment: The Texas School Alliance recommended revisions to establish a performance target on Index 2 that, at least in theory, all schools and districts can meet and to eliminate any use of percentile ranks as performance targets.

Agency Response: The agency partially agrees. In Chapter 5 - Performance Index Indicators, the proposed rule stated that "The Index 2 target will be set at about the fifth percentile of non-AEA campus performance and will be applied to both non-AEA campuses and districts." If this methodology is applied to all campuses independent of campus type, preliminary analyses of the Index 2 outcomes from the spring 2013 State of Texas Assessments of Academic Readiness (STAAR®) administration indicate that a disproportionately high number of high schools, relative to elementary and middle schools, would not meet a uniform Index 2 target that is applied to all campuses. The agency has modified the manual adopted as rule to specifically

state that index targets will be established that represent the fifth percentile of non-AEA campus performance by the following campus types: elementary schools, middle schools/junior high schools, and high schools/multi-grade schools.

Comment: The Texas School Alliance recommended a revision to categorize as "Exceeds expectations" on the state progress measure each student who tests satisfactorily on a STAAR® test that is above his/her enrolled grade level, transitions successfully from Spanish to English STAAR®, or is a pre-ninth-grade student who performs satisfactorily on an end-of-course (EOC) test.

Agency Response: The agency disagrees. The agency has developed the STAAR® progress measure for 2013 implementation to be as inclusive as possible while also maintaining a fair and robust measure for students. During the accountability development process in 2012, the Accountability Technical Advisory Committee (ATAC) members expressed their desire to develop a measure of progress that was independent of meeting student performance standards in order to create four separate index measures of accountability. In defining progress, the agency considered what it means for a student to demonstrate one year's worth of progress based on differences in performance standards from one grade/course to the next. While these definitions are readily applied to students who make the typical annual progression through grades and courses, the application of these definitions to students who make transitions outside of this typical annual progression or who transition between language versions of the assessment is not as straightforward. Given the limited development timeline for the STAAR® progress measure in 2013, the agency has elected to take additional time to consider the most appropriate and fair measures of progress for these students. The agency anticipates inclusion of some if not all of these students in progress measures and Index 2 beginning in 2014. However, due to the large number of accelerated students who move from Grade 7 mathematics to Algebra I, these students are included in the 2013 progress measure.

Comment: The Texas School Alliance recommended a revision to limit consideration of retest results to those cases in which both the initial attempt at an EOC test and the repeat attempts occur within the same accountability year.

Agency Response: The agency disagrees and maintains that the inclusion of both first time and retest results from the summer, fall, and spring EOC administrations is appropriate. During the accountability development process in 2012, the ATAC spent considerable time discussing how best to evaluate the STAAR® EOC results in the new accountability system. The recommendation to limit consideration of retest results to the first year that the EOC test was attempted does not allow schools to receive credit for students who were successfully remediated and passed the EOC test in a subsequent school year.

Comment: The Texas School Alliance recommended a revision to delay implementation of applying any weights in the index calculations until passing standards on the state assessment program have been fully phased in.

Agency Response: In 2013, Index 2 is the only index that will incorporate weights in the index calculations. This index will assign one point credit for tests that *Met* the progress target and two point credit for tests that *Exceeded* the progress target. Therefore, the agency disagrees and maintains that it is unnecessary to delay implementation of using weights in the Index 2 calculations

in 2013 since the progress targets are independent of the phase-in passing standards.

Comment: The Texas School Alliance recommended a revision to lower the 2014 targets that must be met on each weighted index to take into account the impact of the revised calculations.

Agency Response: The agency plans to convene accountability advisory groups in fall 2013 to review and recommend index targets for 2014 and beyond based on the fully implemented system.

Comment: The Texas School Alliance commented that if the requirement that results for economically disadvantaged students must always be evaluated is sustained, then the agency should change the evaluation of the index results to allow for meeting targets on some, but not all, indicators for a rating of "Met Standard." The Texas School Alliance stated that alternatively, the agency should apply minimum size criteria to the economically disadvantaged student group that would require the group to represent at least 10% of total campus or district enrollment before the results are evaluated, similar to the "checks and balances" in the former system.

Agency Response: The agency disagrees and maintains that the requirement that districts and campuses must meet the performance index targets on all indexes for which they have 2013 performance data is appropriate. The agency disagrees that the minimum size criteria for student groups in the prior state accountability system should be used as the minimum size criteria for the economically disadvantaged student group in the Index 3 calculations. Small numbers analysis will be automatically applied to the economically disadvantaged student group by subject. If there are fewer than 10 tests in the accountability subset for economically disadvantaged students, a two-year average will be calculated for the economically disadvantaged assessment indicators because only two years of STAAR® results are available. The calculation based on the aggregated multi-year uniform average will be used in the performance index. If no data are available for current and prior year for economically disadvantaged students, Index 3 will only be evaluated on the lowest performing race/ethnicity student groups that meet minimum size criteria.

Comment: The Texas School Alliance recommended a revision that if the only reason that a campus or district failed to meet any given index target is because of STAAR® Alternate scoring procedures for students whose instructional level is at Level I, then the state should apply an automatic appeal and issue a "Met Standard" rating for that school or district.

Agency Response: The agency disagrees and maintains that the spring 2013 results that have been reported to districts for the STAAR® Alternate assessments at Complexity Level I only are properly included in state accountability at the standards adopted in rule by the commissioner of education. The agency recognizes that there may be unique situations where the STAAR® Alternate assessments at Complexity Level I may be the sole reason for an *Improvement Required* rating in 2013. In these situations, the accountability appeal process is available for districts and campuses to submit an appeal with supporting documentation for review by an independent appeals panel that will make recommendations to the commissioner on the final rating for the campus or district.

Comment: Austin Independent School District requested that the agency consider the intent of Senate Bill 906 and take administrative action to exclude STAAR® Alternate assessments at

Complexity Level I from 2013 accountability calculations in order to avert the unintended consequences of labeling Rosedale School as a school in need of improvement.

Agency Response: The agency disagrees and maintains that the spring 2013 results that have been reported to districts for the STAAR® Alternate assessments at Complexity Level I only are properly included in state accountability at the standards adopted in rule by the commissioner of education. The agency recognizes that there may be unique situations where the STAAR® Alternate assessments at Complexity Level I may be the sole reason for an *Improvement Required* rating in 2013. In these situations, the accountability appeal process is available for districts and campuses to submit an appeal with supporting documentation for review by an independent appeals panel that will make recommendations to the commissioner on the final rating for the campus or district.

Comment: The Texas School Alliance recommended a revision to limit the Recommended High School Program (RHSP)/Distinguished Achievement Program (DAP) calculation to those students who graduate with their 4-year cohort and apply the same exclusions as are used with the graduation rate calculation.

Agency Response: The agency agrees and is currently planning to incorporate the percent of RHSP/DAP graduates based on the longitudinal cohort for the Class of 2013 in the Index 4 calculations that will be used for the 2014 accountability ratings. The percent of RHSP/DAP graduates based on the longitudinal cohort will first be reported in fall 2013 for the Class of 2012. The exclusions that are applied to the longitudinal graduation rate as required by Texas Education Code, §39.053(g-1), will be applied to the RHSP/DAP graduates based on the longitudinal cohort. Since the longitudinal-based RHSP/DAP graduates will be reported for the first time in fall 2013, the percent of RHSP/DAP graduates annual rate will be used in the Index 4 calculations for the 2013 accountability ratings. This is the same rate that has been reported for a number of years on the Academic Excellence Indicator System (AEIS) reports for all high schools and districts statewide.

Comment: The Texas School Alliance requested that the agency actively explore incorporation of non-state-assessment data into the system.

Agency Response: The agency agrees that indicators evaluated in the performance index framework should be expanded to include other indicators of academic success. For example, the agency plans to develop additional indicators based on career and technical education for inclusion in the performance index framework in future years. In addition, House Bill 5, 83rd Texas Legislature, Regular Session, 2013, requires that new indicators such as the percentage of students who satisfy the Texas Success Initiative college readiness benchmarks are incorporated into the accountability rating system. Further, academic distinction designations in reading/English language arts and mathematics will be assigned to eligible campuses concurrent with the release of the state accountability ratings on August 8, 2013. These distinctions are based on a number of non-state-assessment indicators such as attendance rates, performance and participation rates on SAT®/ACT®, and performance and participation rates on Advanced Placement/International Baccalaureate® examinations.

Comment: The Texas School Alliance requested that the agency ensure that districts have adequate opportunity to submit correc-

tions to the agency and/or the state assessment contractor prior to their use in determining accountability ratings.

Agency Response: The agency disagrees. School districts have multiple opportunities to confirm and correct data submitted for accountability purposes. Changes to test answer document fields submitted within the correction window are included in the STAAR® and TAKS data files used in determining the 2013 accountability ratings. The agency maintains that districts are responsible for providing accurate information to the agency, including information provided on student answer documents or submitted via online testing systems.

Comment: The Texas School Alliance requested that the agency publicly announce results of quality control reviews, including data integrity checks, that are applied to the work of the state assessment contractor to develop mutual accountability and transparency around the state's investment in the program.

Agency Response: The agency partially agrees. The agency has requested annual external third party audits of the assessment vendor's technology systems related to scoring and reporting. In addition, the agency has enhanced its own data quality review process in response to the demographic and program information issue that affected the STAAR® Grades 5 and 8 data files this year. The issue that occurred this year was corrected in a timely fashion, with new data files provided to affected districts. Assessment data files have always been provided to regions and districts after every test administration to ensure transparency in the process, and this year, the data files used to calculate accountability will be provided to all districts as well.

The amendment is adopted under the Texas Education Code, §§39.052(a) and (b)(1)(A); 39.053, 39.054, 39.201, and 39.203(a) and (c)(1), as those sections existed before amendment by House Bill 5, 83rd Texas Legislature, Regular Session, 2013; §39.055, as that section existed before amendment by Senate Bill 306, 83rd Texas Legislature, Regular Session, 2013; §39.116; and §29.081(e), which authorize the commissioner of education to adopt rules to evaluate school district and campus performance and to assign each district and campus a performance rating that reflects acceptable performance or unacceptable performance as well as to award distinction designations.

The amendment implements the Texas Education Code, §§39.052(a) and (b)(1)(A); 39.053, 39.054, 39.201, and 39.203(a) and (c)(1), as those sections existed before amendment by House Bill 5, 83rd Texas Legislature, Regular Session, 2013; §39.055, as that section existed before amendment by Senate Bill 306, 83rd Texas Legislature, Regular Session, 2013; §39.116; and §29.081(e).

§97.1001. Accountability Rating System.

(a) The rating standards established by the commissioner of education under Texas Education Code (TEC), §§39.052(a) and (b)(1)(A); 39.053, 39.054, 39.201, and 39.203(a) and (c)(1), as those sections existed before amendment by House Bill 5, 83rd Texas Legislature, Regular Session, 2013; §39.055, as that section existed before amendment by Senate Bill 306, 83rd Texas Legislature, Regular Session, 2013; §39.116; and §29.081(e), shall be used to evaluate the performance of districts, campuses, and charter schools. The indicators, standards, and procedures used to determine ratings will be annually published in official Texas Education Agency publications. These publications will be widely disseminated and cover the following procedures:

(1) indicators, standards, and procedures used to determine district ratings;

(2) indicators, standards, and procedures used to determine campus ratings;

(3) indicators, standards, and procedures used to determine Distinction Designations; and

(4) procedures for submitting a rating appeal.

(b) The procedures by which districts, campuses, and charter schools are rated and acknowledged for 2013 are based upon specific criteria and calculations, which are described in excerpted sections of the *2013 Accountability Manual* provided in this subsection.

Figure: 19 TAC §97.1001(b)

(c) Ratings may be revised as a result of investigative activities by the commissioner as authorized under TEC, §39.056 and §39.057.

(d) The specific criteria and calculations used in the accountability manual are established annually by the commissioner of education and communicated to all school districts and charter schools.

(e) The specific criteria and calculations used in the annual accountability manual adopted for school years prior to 2013-2014 remain in effect for all purposes, including accountability, data standards, and audits, with respect to those school years.

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 18, 2013.

TRD-201302943

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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For further information, please call: (512) 475-1497



TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 185. PHYSICIAN ASSISTANTS

22 TAC §185.28

The Texas Medical Board (Board) adopts new §185.28, concerning Retired License, without changes to the proposed text as published in the April 12, 2013, issue of the *Texas Register* (38 TexReg 2284) and will not be republished.

The new rule provides that Physician Assistants may apply for a Retired License status under which they are not required to pay registration fees. Physician Assistants under official Retired License status are barred from engaging in clinical activities, but are allowed to re-apply for active practice.

No comments were received regarding adoption of the new rule.

The new rule is adopted under the authority of the Texas Occupations Code Annotated, §204.101, which provides authority for the Texas Physician Assistant Board to adopt rules to establish: licensing and other fees; license renewal dates; and procedures for disciplinary action.

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 22, 2013.

TRD-201302960

Mari Robinson, J.D.

Executive Director

Texas Medical Board

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Proposal publication date: April 12, 2013

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



PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 511. ELIGIBILITY

SUBCHAPTER C. EDUCATIONAL

REQUIREMENTS

22 TAC §511.51

The Texas State Board of Public Accountancy adopts an amendment to §511.51, concerning Educational Definitions, without changes to the proposed text as published in the June 7, 2013, issue of the *Texas Register* (38 TexReg 3487). The rule text will not be republished.

The amendment will add and define the term "upper division" to clarify that in order to sit for the CPA exam the 30 hours in accounting must be in junior and senior year college level accounting courses.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151, which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

Filed with the Office of the Secretary of State on July 18, 2013.

TRD-201302948

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Effective date: August 7, 2013

Proposal publication date: June 7, 2013

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



22 TAC §511.57

The Texas State Board of Public Accountancy adopts an amendment to §511.57, concerning Qualified Accounting Courses, without changes to the proposed text as published in the June

7, 2013, issue of the *Texas Register* (38 TexReg 3488). The rule text will not be republished.

The amendment will add the term "upper division" to clarify that in order to sit for the CPA exam the 30 hours in accounting must be in junior and senior year college level accounting courses and that applicants understand which courses constitute upper division accounting courses.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151, which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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J. Randel (Jerry) Hill

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Texas State Board of Public Accountancy

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



CHAPTER 527. PEER REVIEW

22 TAC §527.4

The Texas State Board of Public Accountancy adopts an amendment to §527.4, concerning Enrollment and Participation, without changes to the proposed text as published in the June 7, 2013, issue of the *Texas Register* (38 TexReg 3490). The rule text will not be republished.

The amendment to §527.4 will reduce the amount of time a firm has to provide the Board with Peer Review enrollment information from one year to 90 days, replace the term Statements on Standards for Accounting and Review Services with the acronym SSARS, replace the reference to §§901.002, 901.159 and 901.461 of the Act with the correct titles used in the Act, and replace the reference to SOX with the acronym PCAOB.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151, which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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J. Randel (Jerry) Hill

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Texas State Board of Public Accountancy

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



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 181. VITAL STATISTICS

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts amendments to §§181.1, 181.2, 181.6, 181.8 - 181.11, 181.13, 181.21 - 181.34, and 181.42 - 181.45 and new §§181.35, 181.50 - 181.54, and 181.60 - 181.65, concerning the administration and registration of vital statistics records. The rules are adopted without changes to the proposed text as published in the February 15, 2013, issue of the *Texas Register* (38 TexReg 759) and, therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act), according to the schedule listed therein. Sections 181.1, 181.2, 181.6, 181.8 - 181.11, 181.13, 181.21 - 181.34, and 181.42 - 181.45 have been reviewed, and the department has determined that the rules should continue to exist, with the amendments, because rules on this subject are needed.

SECTION-BY-SECTION SUMMARY

The amendment to §181.1 updates definitions by adding a new definition for "Vital Statistics Unit"; deleting the definition for the "Bureau of Vital Statistics"; and revising various definitions to update legacy agency references.

The amendments to §§181.2, 181.9, 181.11, 181.13, 181.22, 181.23, 181.24, 181.27, 181.29 - 181.32, 181.34, and 181.42 - 181.45 clarify existing language and update legacy agency references from the "Bureau of Vital Statistics" to the "Vital Statistics Unit."

The amendments to §181.6 update recent operational changes, clarifying the responsibility of the State Registrar and Local Registrar's responsibility to file the disinterment permit as opposed to amending the certificate. This is in accordance with House Bill (HB) 2927, 81st Legislature, Regular Session, 2009, which amended Health and Safety Code, Chapter 711, relating to the regulation of cemeteries by state and local government.

Amendments to §181.8 update recent operational changes to enhance the confidentiality of adoption records by shredding paper birth records using a cross cut paper shredder and removing any birth records stored in electronic format from storage media in accordance with the National Institute of Standards and Technologies (NIST) "Guidelines for Media Sanitation" (Publication SP-800-88). The amendments also clarify the submittal

of Acknowledgement of Paternity documents and update legacy agency references.

Amendments to §181.10 update legacy agency references and clarify the method of availability of birth record copies.

Section 181.11 was amended by revising the legal reference in the Health and Safety Code from §191.005 and §192.006 to §191.0045.

The amendment to §181.21 clarifies the criteria for refusal of issuance of records.

The amendment to §181.25 updates legacy agency references and complies with legislative mandates in House Bill (HB) 3666, 81st Legislature, Regular Session, 2009, relating to the application for the issuance of a marriage license which amended Family Code, Subchapter C, §2.209, "Duplicate License."

The amendment to §181.26 updates recent operational changes and clarifies existing language regarding the filing of birth certificates for infants born outside of a licensed institution.

The amendments to §181.28 update recent operational changes, clarify existing language, and address recommendations of Rider 72, 82nd Legislature, 2011, the 2006 Internal Audit, and the 2009 State Audit to issue birth certificates only to qualified applicants.

The amendments to §181.33 update legacy agency references and update obsolete language relative to the completion of a certificate of death.

New §181.35 complies with legislative mandates in HB 3666, 81st Legislature, Regular Session, 2009, which amended Family Code, Subchapter B, §2.102, "Parental Consent of Underage Applicants to Marriage," relating to the application for the issuance of a marriage license.

The amendments to §§181.42 - 181.45 update policies and procedures concerning the Central Adoption Registry.

New §§181.50 - 181.54 concern birth registration, certification requirements and procedures, continuing education requirements and application for Birth Registrar certification and recertification.

New §§181.60 - 181.65 concern delayed birth certification; requirements and acceptability of documentation; verification by the State Registrar; and dismissal after non-completion of application within one year.

COMMENT

The department, on behalf of the commission, has reviewed and prepared responses to the comments received regarding the proposed rules during the comment period, which the commission has reviewed and accepts. One person commented. The commenter was not against the rules in their entirety; however, the commenter suggested recommendations as discussed in the summary of comments.

Comment: The definition of "Fetal Death (stillbirth)" is included in §181.1 and is in current rule in §181.7. Section 181.7 is not included in the proposed rules text nor is "no change" noted for this rule. The public should be made aware if there are changes.

Response: Section 181.1(11) was renumbered to §181.1(10); however, no changes were made to the actual rule text nor to the rule in §181.7, Fetal Death (Stillbirth). Therefore, no change was made as a result of this comment.

Comment: Although the definition of "Genealogist" is included in §181.1(12) of the proposed rules, it is not included elsewhere in the proposed rules. The public should be made aware which proposed rules are linked with the term "Genealogist" as defined.

Response: Section 181.1(12) was renumbered to §181.1(11); however, no change was made to the definition of "Genealogist." Therefore, no change was made as a result of this comment.

Comment: The professions of "licensed funeral director" and "professional archeologist" are used in the proposed rules; these professions are not included in the definitions in §181.1. The public should be made aware of the statutes or commissions that govern these professions and why these professions are involved in disinterment; the involvement should not be left to supposition.

Response: The term "professional archeologist" was added to §181.6(b) as a result of a statute change to Health and Safety Code, §711.0105, which added "professional archeologist" as an entity allowed to oversee the disinterment of remains. The term "licensed funeral director" was already included in the rule text and is in Health and Safety Code, Chapter 711. Therefore, no change was made as a result of this comment.

Comment: Section 181.8(e)(1) and (4) rule text are the same as in current rule, and the public should be made aware if there are changes.

Response: Section 181.8(d)(1) and (4) were renumbered to §181.8(e)(1) and (4); however, no changes were made to the actual rule text in paragraphs (1) and (4). Therefore, no changes were made as a result of this comment.

Comment: Although "(No change)" is indicated for §181.13(a) - (c), the "(No change)" reference is inconsistent with changes made in other sections of the proposed rules concerning capitalization; changes in §§181.1(3), 181.1(16), 181.2(b) and 181.21(a)(2) are examples of changes needed for §181.13(a) and (b). The terms "state registrar" should be capitalized as "State Registrar" in §181.13(a) and (b).

Response: The "(No change)" reference indicates that there are no changes to the existing text in §181.13(a) - (c) as published in the February 15, 2013, issue of the *Texas Register*. After reviewing the rules published in the *Texas Register* (38 TexReg 759), there are not any inconsistencies in capitalization. Therefore, no change was made as a result of this comment.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

SUBCHAPTER A. MISCELLANEOUS PROVISIONS

25 TAC §§181.1, 181.2, 181.6, 181.8 - 181.11, 181.13

STATUTORY AUTHORITY

The amendments are authorized by Health and Safety Code, §191.002, which authorizes rules necessary for the effective administration of Vital Statistics Records; Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services

by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the sections implements Government Code, §2001.039.

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

Filed with the Office of the Secretary of State on July 22, 2013.

TRD-201302980

Lisa Hernandez

General Counsel

Department of State Health Services

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



SUBCHAPTER B. VITAL RECORDS

25 TAC §§181.21 - 181.35

STATUTORY AUTHORITY

The amendments and new rule are authorized by Health and Safety Code, §191.002, which authorizes rules necessary for the effective administration of Vital Statistics Records; Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the sections implements Government Code, §2001.039.

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

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Lisa Hernandez

General Counsel

Department of State Health Services

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



SUBCHAPTER C. CENTRAL ADOPTION REGISTRY

25 TAC §§181.42 - 181.45

STATUTORY AUTHORITY

The amendments are authorized by Health and Safety Code, §191.002, which authorizes rules necessary for the effective administration of Vital Statistics Records; Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and

Safety Code, Chapter 1001. Review of the sections implements Government Code, §2001.039.

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

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Lisa Hernandez

General Counsel

Department of State Health Services

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



SUBCHAPTER D. BIRTH REGISTRATION CERTIFICATION

25 TAC §§181.50 - 181.54

STATUTORY AUTHORITY

The new rules are authorized by Health and Safety Code, §191.002, which authorizes rules necessary for the effective administration of Vital Statistics Records; Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the sections implements Government Code, §2001.039.

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

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Lisa Hernandez

General Counsel

Department of State Health Services

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



SUBCHAPTER E. DELAYED REGISTRATION

25 TAC §§181.60 - 181.65

STATUTORY AUTHORITY

The new rules are authorized by Health and Safety Code, §191.002, which authorizes rules necessary for the effective administration of Vital Statistics Records; Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and

Safety Code, Chapter 1001. Review of the sections implements Government Code, §2001.039.

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

Filed with the Office of the Secretary of State on July 22, 2013.

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Lisa Hernandez

General Counsel

Department of State Health Services

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 65. WILDLIFE

SUBCHAPTER N. MIGRATORY GAME BIRD PROCLAMATION

31 TAC §§65.314, 65.315, 65.319

The Texas Parks and Wildlife Department (the department) adopts amendments to §§65.314, 65.315, and 65.319, concerning the Migratory Game Bird Proclamation. Section 65.315 and §65.319 are adopted with changes to the proposed text as published in the May 24, 2013, issue of the *Texas Register* (38 TexReg 3290). Section 65.314 is adopted without change and will not be republished.

The change to §65.315, concerning Open Seasons and Bag and Possession Limits--Early Season, increases the daily bag limit from four to six for teal ducks during the early September teal season and increases the possession limit for all species of early-season migratory game birds, from twice the daily bag limit to three times the daily bag limit. It is the policy of the Texas Parks and Wildlife Commission to adopt the most liberal provisions possible, consistent with hunter preference, under the frameworks issued by the United States Fish and Wildlife Service (Service) in order to provide maximum hunter opportunity. This year, the federal framework for early-season species of migratory game birds offered a six-bird maximum daily bag limit for teal and an increase in the possession limit for all species of migratory game birds to three times the daily bag limit.

The Service issues annual frameworks for the hunting of migratory game birds in the United States. Regulations adopted by individual states may be more restrictive than the federal frameworks, but may not be less restrictive. Responsibility for establishing seasons, bag limits, means, methods, and devices for harvesting migratory game birds within Service frameworks is delegated to the Texas Parks and Wildlife Commission (Commission) under Parks and Wildlife Code, Chapter 64, Subchapter C. Parks and Wildlife Code, §64.022, authorizes the Commission to delegate rulemaking authority to the Executive Director. 31 Texas Administrative Code §65.313(f) authorizes the Executive

Director, after notification of the Chairman of the Commission, to engage in rulemaking.

Typically, the Service issues the preliminary early-season (dove, teal, snipe, rails, woodcock, gallinules) frameworks in late June and the preliminary late-season (ducks, geese, cranes) frameworks in early August. Because there is no Commission meeting between May and late August, the 2013 - 2014 early-season migratory game bird regulations are being adopted by authority delegated to the Executive Director.

The proposed amendments to the migratory game bird regulations published in the May 24, 2013, issue of the *Texas Register* (38 TexReg 3290) also included amendments to §§65.318, 65.320, and 65.321, which affect late-season species of migratory game birds. The proposed amendments to §§65.318, 65.320, and 65.321 will be considered for adoption by the Commission following the release of the late-season frameworks by the Service in early August, after which the department will file notice of adoption.

The amendment to §65.314, concerning Zones and Boundaries for Early Season Species, expands the Special White Winged Dove Area (SWWDA) in South Texas. For the last two decades, white-winged dove populations have steadily expanded both their numbers and their geographical extent. The department believes this expansion warrants enlargement of the SWWDA in South Texas to provide more hunting opportunity. The Service has determined that expansion of the SWWDA will not result in any negative impacts to dove populations in South Texas. The department has determined that the zone expansion will not result in either depletion or waste.

The amendment to §65.315, concerning Open Seasons and Bag and Possession Limits--Early Season, adjusts the season dates for early-season migratory game birds to allow for calendar shift (i.e., to ensure that seasons open on the desired day of the week, since dates from a previous year do not fall on the same days in following years).

The amendment to §65.315 also implements a 16-day statewide teal season, accounting for calendar shift, to run from September 14 - 29, 2013, and increases the daily bag limit from four birds to six. In addition, the amendment implements a 16-day early Canada goose season, also accounting for calendar shift, in the Eastern Zone to run from September 14 - 29, 2013.

Finally, as noted previously in this preamble, the amendment to §65.315 increases the possession limit for all species of early-season migratory game birds, from twice the daily bag limit to three times the daily bag limit.

The amendment to §65.319, concerning Extended Falconry Season--Early Season Species, adjusts season dates to provide maximum opportunity for the take of early-season species by means of falconry. Because of the dove season structure, adoption of an extended falconry season based strictly on calendar shift would result in reduced opportunity because it would overlap the dove season and result in fewer total days of falconry-only hunting opportunity. The amendment as adopted also increases the possession limit for reasons discussed elsewhere in this preamble.

The department received three comments opposing adoption of the portion of proposed §65.314 that establishes a new boundary for the SWWDA. One of the commenters offered a reason or rationale for opposing adoption. The commenter stated that there should not be a special zone for white-winged doves. The

department disagrees with the comment and responds that without the SWWDA designation, there could be no dove hunting in South Texas prior to the regular opening day for the South Zone. The SWWDA designation allows a portion of South Texas to enjoy hunting several weeks earlier than what would otherwise be authorized. No changes were made as a result of the comment.

The department received six comments in support of adoption of the portion of proposed §65.314 that establishes a new boundary for the SWWDA.

The department received four comments opposing adoption of the portion of proposed §65.315 that establishes season dates and bag limits for doves. All four of the commenters offered a reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that the daily bag limit in the SWWDA should include four mourning doves and the possession limit should be expanded to a minimum of 90 doves, including 12 mourning doves. The department disagrees with the comment and responds that the federal frameworks do not allow the department to authorize the take of more than two mourning doves per day per person during the special white-winged dove season, nor do they permit any person to be in possession of more than 45 birds at any time. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the winter segment dates in the North Zone reflect a bias by the commission towards South Texas. The department disagrees with the comment and responds that the dates chosen for the winter segment in the North Zone reflect the commission's interest in providing more hunting opportunity surrounding the holidays, when youth are out of school and families are together. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the possession limit should be increased to three times the daily bag limit or 90 birds. The department both agrees and disagrees with the comment and responds that this year the federal frameworks allow Texas to increase possession limits to three times the daily bag limit, which is adopted in this rulemaking; however, the maximum daily bag limit allowed under the federal frameworks is 15 birds, which means that the maximum possession limit is 45. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the possession limit should be three times the daily bag limit. The department agrees with the comment and for reasons discussed elsewhere in this preamble has made changes accordingly.

The department received six comments supporting adoption of the portion of proposed §65.315 that establishes season dates and bag limits for doves.

The department received six comments opposing adoption of the portion of proposed §65.315 that establishes season dates and bag limits for teal. Four of the commenters offered a reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that the season should be 23 days in length starting September 14 and ending October 6, 2013. The commenter also stated that the daily bag limit should be increased to six, the possession limit should be three times the daily bag limit, and the September teal season days should not count against the 107 days of total hunting opportunity allowed under the federal frameworks. As noted earlier,

the department agrees that the daily bag and possession limits should be increased and has made those changes accordingly; however, under the federal frameworks issued by the Service, the department cannot exceed 16 days of early teal opportunity or 107 days of total hunting opportunity and does not have the authority to unilaterally exempt itself from those limitations. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the teal season should be shortened in order to add more days to the regular duck season. The department disagrees with the comment. Federal frameworks only allow for a 74-day duck season and the addition of the special September teal season does not have an effect on total days allowed for the regular duck season. Additionally, hunter surveys indicate a strong preference for the early September teal season to be as long as possible under the federal frameworks. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that the bag limit should be six, the same as it is during the regular duck season. The department agrees with the comment and responds that changes have been made accordingly, for reasons explained elsewhere in this preamble.

The department received three comments supporting adoption of the portion of proposed §65.315 that establishes season dates and bag limits for teal.

The department received one comment opposing adoption of the portion of proposed §65.315 that establishes season dates and bag limits for Canada geese. The commenter did not offer a reason or rationale for opposing adoption. No changes were made as a result of the comment.

The department received three comments supporting adoption of the portion of proposed §65.315 that establishes season dates and bag limits for Canada geese.

The department received one comment opposing adoption of the portion of proposed §65.315 that establishes season dates and bag limits for rails, gallinules, snipe, and woodcock. The commenters did not offer a reason or rationale for opposing adoption. No changes were made as a result of the comment.

The department received two comments supporting adoption of the portion of proposed §65.315 that establishes season dates and bag limits for rails, gallinules, snipe, and woodcock.

The department received one comment opposing adoption of proposed §65.319, regarding extended falconry season for early season species of migratory game birds. The commenter did not offer a reason or rationale for opposing adoption. No changes were made as a result of the comment.

The department received one comment supporting adoption of proposed §65.319, regarding extended falconry season for early season species of migratory game birds.

No groups or association commented in support of or opposition to any of the proposed amendments.

The amendments are adopted under Parks and Wildlife Code, Chapter 64, which authorizes the Commission and the Executive Director to provide the open season and means, methods, and devices for the hunting and possessing of migratory game birds.

§65.315. *Open Seasons and Bag and Possession Limits--Early Season.*

- (a) Rails.

(1) Dates: September 14 - 29, 2013 and November 2 - December 25, 2013.

(2) Daily bag and possession limits:

(A) king and clapper rails: 15 in the aggregate per day; 45 in the aggregate in possession.

(B) sora and Virginia rails: 25 in the aggregate per day; 75 in the aggregate in possession.

(b) Dove seasons.

(1) North Zone.

(A) Dates: September 1 - October 23, 2013 and December 20, 2013 - January 5, 2014.

(B) Daily bag limit: 15 mourning doves, white-winged doves, and white-tipped (white-fronted) doves in the aggregate, including no more than two white-tipped doves per day.

(C) Possession limit: 45 mourning doves, white-winged doves, and white-tipped doves in the aggregate, including no more than 6 white-tipped doves in possession.

(2) Central Zone.

(A) Dates: September 1 - October 23, 2013 and December 20, 2013 - January 5, 2014.

(B) Daily bag limit: 15 mourning doves, white-winged doves, and white-tipped (white-fronted) doves in the aggregate, including no more than two white-tipped doves per day.

(C) Possession limit: 45 mourning doves, white-winged doves, and white-tipped doves in the aggregate, including no more than 6 white-tipped doves in possession.

(3) South Zone.

(A) Dates: Except in the special white-winged dove area as defined in §65.314 of this title (relating to Zones and Boundaries for Early Season Species), September 20 - October 27, 2013 and December 20, 2013 - January 20, 2014.

(B) Daily bag limit: 15 mourning doves, white-winged doves, and white-tipped (white-fronted) doves in the aggregate, including no more than two white-tipped doves per day.

(C) Possession limit: 45 mourning doves, white-winged doves, and white-tipped doves in the aggregate, including no more than 6 white-tipped doves in possession.

(4) Special white-winged dove area.

(A) Dates: September 1, 2, 7, and 8, 2013.

(i) Daily bag limit: 15 white-winged doves, mourning doves, and white-tipped (white-fronted) doves, in the aggregate to include no more than two mourning doves and two white-tipped doves per day.

(ii) Possession limit: 45 white-winged doves, mourning doves, and white-tipped doves in the aggregate to include no more than 6 mourning doves and 6 white-tipped doves in possession.

(B) Dates: September 20 - October 23, 2013 and December 20, 2013 - January 20, 2014.

(i) Daily bag limit: 15 white-winged doves, mourning doves, and white-tipped (white-fronted) doves, in the aggregate to include no more than two white-tipped doves per day;

(ii) Possession limit: 45 white-winged doves, mourning doves, and white-tipped doves in the aggregate to include no more than 6 white-tipped doves in possession.

(c) Gallinules.

(1) Dates: September 14 - 29, 2013 and November 2 - December 25, 2013.

(2) Daily bag and possession limits: 15 in the aggregate per day; 45 in the aggregate in possession.

(d) September teal-only season.

(1) Dates: September 14 - 29, 2013.

(2) Daily bag and possession limits: six in the aggregate per day; 18 in the aggregate in possession.

(e) Red-billed pigeons, and band-tailed pigeons. No open season.

(f) Shorebirds. No open season.

(g) Woodcock: December 18, 2013 - January 31, 2014. The daily bag limit is three. The possession limit is nine.

(h) Wilson's snipe (Common snipe): November 2, 2013 - February 16, 2014. The daily bag limit is eight. The possession limit is 24.

(i) Canada geese: September 14 - 29, 2013 in the Eastern Goose Zone as defined in §65.317(b) of this title (relating to Zones and Boundaries for Late Season Species). The daily bag limit is three. The possession limit is nine.

§65.319. *Extended Falconry Season--Early Season Species.*

(a) It is lawful to take the species of migratory birds listed in this section by means of falconry during the following Extended Falconry Seasons:

(1) mourning doves, white-winged doves and white-tipped doves: November 9 - December 15, 2013.

(2) rails and gallinules: January 27 - February 10, 2014.

(3) woodcock: January 27 - February 10, 2014.

(b) The daily bag and possession limits for migratory game birds under this section shall not exceed three and nine birds respectively, singly or in the aggregate.

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 19, 2013.

TRD-201302955

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Effective date: August 8, 2013

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For further information, please call: (512) 389-4775

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 421. STANDARDS FOR CERTIFICATION

37 TAC §421.3, §421.5

The Texas Commission on Fire Protection (the commission) adopts amendments to Chapter 421, Standards for Certification, §421.3, concerning Minimum Standards Set by the Commission; and §421.5, concerning Definitions. The amendments are adopted with changes to the proposed text as published in the June 7, 2013, issue of the *Texas Register* (38 TexReg 3508) and will be republished. The adopted amendments to §421.3(b)(17) and (18) change the capitalization of personnel to lowercase to be consistent with other text of the section and also change the capitalization of commission to lowercase in order to be consistent with other rule text. The adopted amendments to §421.5 change the capitalization of commission to lowercase to be consistent with other rule text.

The amendments are adopted to add functional position descriptions for Hazardous Materials Incident Commander, Fire Officer III, Fire Officer IV, Incident Safety Officer, Basic Wildland Fire Protection Personnel and Intermediate Wildland Fire Protection Personnel. These additions will serve as a guide for anyone interested in the qualifications, competencies and tasks required of fire fighters to operate in the State of Texas. Also, the commission is expanding its definition of college credits to include criminal justice courses related to fire and or arson investigation which can be used to qualify for its Master Arson Investigator certification.

The adopted amendments will provide clear and concise rules regarding the requirements to obtain certifications offered by the commission and to allow additional courses to be counted as college credits.

No comments were received from the public regarding the proposed amendments.

The amendments are adopted under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to adopt rules for the administration of its powers and duties; and §419.032, which provides the commission the authority to adopt rules regarding qualifications and competencies for appointment of fire protection personnel.

§421.3. *Minimum Standards Set by the Commission.*

(a) General statement. It shall be clearly understood that the specified minimum standards described in this section are designated as a minimum program. Employing entities are encouraged to exceed the minimum program wherever possible. Continuous in-service training beyond the minimum standards for fire protection personnel is strongly recommended. Nothing in these regulations shall limit or be construed as limiting the powers of the Civil Service Commission, or the employing entity, to enact rules and regulations which establish a higher standard of training than the minimum specified, or which provides for the termination of the services of unsatisfactory employees during or upon completion of the prescribed probationary period.

(b) Functional position descriptions.

(1) Structural Fire Protection personnel. The following general position description for structural fire protection personnel serves as a guide for anyone interested in understanding the qualifications, competencies, and tasks required of the fire fighter operating in the State of Texas. It is ultimately the responsibility of an employer to define specific job descriptions within each jurisdiction.

(A) Qualifications. Successfully complete a commission approved course; achieve a passing score on written and performance certification examinations; must be at least 18 years of age; generally, the knowledge and skills required show the need for a high school education or equivalent; ability to communicate verbally, via telephone and radio equipment; ability to lift, carry, drag, and balance weight equivalent to the average human weight; ability to interpret in English, written and oral instructions; ability to work effectively in high stress situations; ability to work effectively in an environment with loud noises and flashing lights; ability to function through an entire work shift; ability to calculate weight and volume ratios; ability to read and understand English language manuals including chemical, medical and technical terms, and road maps; ability to accurately discern street signs and address numbers; ability to document in English, all relevant information in prescribed format in light of legal ramifications of such; ability to converse in English with coworkers and other emergency response personnel. Good manual dexterity with ability to perform all tasks related to the protection of life and property; ability to bend, stoop, and crawl on uneven surfaces; ability to withstand varied environmental conditions such as extreme heat, cold, and moisture; and ability to work in low or no light, confined spaces, elevated heights and other dangerous environments.

(B) Competency. A basic fire fighter must demonstrate competency handling emergencies utilizing equipment and skills in accordance with the objectives in Chapter 1 of the commission's Certification Curriculum Manual.

(2) Aircraft Rescue Fire Fighting personnel. The following general position description for aircraft rescue fire fighting personnel serves as a guide for anyone interested in understanding the qualifications, competencies, and tasks required of aircraft rescue fire fighting personnel operating in the State of Texas. It is ultimately the responsibility of an employer to define specific job descriptions within each jurisdiction.

(A) Qualifications. In addition to the qualifications for basic structural fire protection personnel: familiarity with geographic and physical components of an airport; ability to use and understand communication equipment, terminology, and procedures utilized by airports; ability and knowledge in the application of fire suppression agents; and ability to effectively perform fire suppression and rescue operations.

(B) Competency. Basic fire fighting and rescue personnel must demonstrate competency handling emergencies utilizing equipment and skills in accordance with the objectives in Chapter 2 of the commission's Certification Curriculum Manual.

(3) Marine Fire Protection personnel. The following general position description for marine fire protection personnel serves as a guide for anyone interested in understanding the qualifications, competencies, and tasks required of the marine fire fighter operating in the State of Texas. It is ultimately the responsibility of an employer to define specific job descriptions within each jurisdiction.

(A) Qualifications. In addition to the qualifications for basic structural fire protection personnel: familiarity with geographic and physical components of a navigable waterway; ability to use and understand communication equipment, terminology, and procedures used by the maritime industry; and knowledge in the operation of fire fighting vessels.

(B) Competency. A marine fire fighter must demonstrate competency in handling emergencies utilizing equipment and skills in accordance with the objectives in Chapter 3 of the commission's Certification Curriculum Manual.

(4) Fire Inspection personnel. The following general position description for fire inspection personnel serves as a guide for anyone interested in understanding the qualifications, competencies, and tasks required of the fire inspector operating in the State of Texas. It is ultimately the responsibility of an employer to define specific job descriptions within each jurisdiction.

(A) Qualifications. Successfully complete a commission approved course; achieve a passing score on certification examinations; must be at least 18 years of age; generally, the knowledge and skills required to show the need for a high school education or equivalent; ability to communicate verbally, via telephone and radio equipment; ability to lift, carry, and balance weight equivalent to weight of common tools and equipment necessary for conducting an inspection; ability to interpret written and oral instructions; ability to work effectively with the public; ability to work effectively in an environment with potentially loud noises; ability to function through an entire work shift; ability to calculate area, weight and volume ratios; ability to read and understand English language manuals including chemical, construction and technical terms, building plans and road maps; ability to accurately discern street signs and address numbers; ability to document, in writing, all relevant information in a prescribed format in light of legal ramifications of such; ability to converse in English with coworkers and other personnel. Demonstrate knowledge of characteristics and behavior of fire, and fire prevention principles. Good manual dexterity with the ability to perform all tasks related to the inspection of structures and property; ability to bend, stoop, and crawl on uneven surfaces; ability to climb ladders; ability to withstand varied environmental conditions such as extreme heat, cold, and moisture; and the ability to work in low light, confined spaces, elevated heights, and other dangerous environments.

(B) Competency. A fire inspector must demonstrate competency in conducting inspections utilizing equipment and skills in accordance with the objectives in Chapter 4 of the commission's Certification Curriculum Manual.

(5) Fire Investigator personnel. The following general position description for fire investigator personnel serves as a guide for anyone interested in understanding the qualifications, competencies, and tasks required of the fire investigator operating in the State of Texas. It is ultimately the responsibility of an employer to define specific job descriptions within each jurisdiction.

(A) Qualifications. Successfully complete a commission approved course; achieve a passing score on certification examinations; be at least 18 years of age; generally, the knowledge and skills required to show the need for a high school education or equivalent; ability to communicate verbally, via telephone and radio equipment; ability to lift, carry, and balance weight equivalent to weight of common tools and equipment necessary for conducting an investigation; ability to interpret written and oral instructions; ability to work effectively with the public; ability to work effectively in a hazardous environment; ability to function through an entire work shift; ability to calculate area, weight and volume ratios; ability to read and understand English language manuals including chemical, legal and technical terms, building plans and road maps; ability to accurately discern street signs and address numbers; ability to document, in writing, all relevant information in a prescribed format in light of legal ramifications of such; ability to converse in English with coworkers and other personnel. Good manual dexterity with the ability to perform all tasks related to fire investigation; ability to bend, stoop, and walk on uneven surfaces; ability to climb ladders; ability to withstand varied environmental conditions such as extreme heat, cold and moisture; and the ability to work in low light, confined spaces, elevated heights, and other potentially dangerous environments.

(B) Competency. A fire investigator or arson investigator must demonstrate competency in determining fire cause and origin utilizing equipment and skills in accordance with the objectives in Chapter 5 of the commission's Certification Curriculum Manual.

(6) Hazardous Materials Technician personnel. The following general position description for hazardous materials personnel serves as a guide for anyone interested in understanding the qualifications, competencies, and tasks required of the hazardous materials technician operating in the State of Texas. It is ultimately the responsibility of an employer to define specific job descriptions within each jurisdiction.

(A) Qualifications. In addition to the qualifications for basic structural fire protection personnel: successfully complete a commission approved course; achieving a passing score on the certification examination; the ability to analyze a hazardous materials incident, plan a response, implement the planned response, evaluate the progress of the planned response, and terminate the incident.

(B) Competency. A hazardous materials technician must demonstrate competency handling emergencies resulting from releases or potential releases of hazardous materials, using specialized chemical protective clothing and control equipment in accordance with the objectives in Chapter 6 of the commission's Certification Curriculum Manual.

(7) Hazardous Materials Incident Commander personnel. The following general position description for Hazardous Materials Incident Commander serves as a guide for anyone interested in understanding the qualifications, competencies, and tasks required of the Hazardous Materials Incident Commander operating in the State of Texas. It is ultimately the responsibility of an employer to define specific job descriptions within each jurisdiction.

(A) Qualifications. In addition to the qualifications for awareness and operations level personnel, the Hazardous Materials Incident Commander is an individual who has met all the job performance requirements of Hazardous Materials Incident Commander as defined in Chapter 8 of NFPA 472, Competence of Responders to Hazardous Materials Incidents/Weapons of Mass Destruction. The individual should demonstrate knowledge in the policies, plans, and procedures regarding hazardous materials response as adopted by the local jurisdiction; and all components of the incident command system and their proper utilization.

(B) Competency. In addition to the competencies of awareness and operations level personnel, a Hazardous Materials Incident Commander must demonstrate competency in such areas as: analyzing an incident via the collection of information and an estimation of potential outcomes; planning appropriate response operations; implementing a planned response; evaluating the progress of a planned response and revising as necessary; terminating an incident; conducting a post-incident critique; and reporting and documenting an incident in a manner consistent with local, state, and federal requirements.

(8) Driver/Operator-Pumper personnel. The following general position description for driver/operator-pumper personnel serves as a guide for anyone interested in understanding the qualifications, competencies, and tasks required of the driver/operator-pumper of a fire department pumper operating in the State of Texas. It is ultimately the responsibility of an employer to define specific job descriptions within each jurisdiction.

(A) Qualifications. In addition to the qualifications for basic structural fire protection personnel: ability to perform specified routine test, inspection, and maintenance functions; ability to perform practical driving exercises; ascertain the expected fire flow; ability to

position a fire department pumper to operate at a fire hydrant; ability to produce effective streams; and supply sprinkler and standpipe systems.

(B) Competency. A driver/operator-pumper must demonstrate competency operating a fire department pumper in accordance with the objectives in Chapter 7 of the commission's Certification Curriculum Manual.

(9) Fire Officer I personnel. The following general position description for Fire Officer I personnel serves as a guide for anyone interested in understanding the qualifications, competencies, and tasks required of the Fire Officer I operating in the State of Texas. It is ultimately the responsibility of an employer to define specific job descriptions within each jurisdiction.

(A) Qualifications. In addition to the qualifications for basic structural fire protection and Fire Instructor I personnel: the ability to supervise personnel, and assign tasks at emergency operations; the ability to direct personnel during training activities; the ability to recommend action for member-related problems; the ability to coordinate assigned tasks and projects, and deal with inquiries and concerns from members of the community; the ability to implement policies; the ability to perform routine administrative functions, perform preliminary fire investigation, secure an incident scene and preserve evidence; the ability to develop pre-incident plans, supervise emergency operations, and develop and implement action plans; the ability to deploy assigned resources to ensure a safe work environment for personnel, conduct initial accident investigation, and document an incident.

(B) Competency. A Fire Officer I must demonstrate competency in handling emergencies and supervising personnel utilizing skills in accordance with the objectives in Chapter 9 of the commission's Certification Curriculum Manual.

(10) Fire Officer II personnel. The following general position description for Fire Officer II personnel serves as a guide for anyone interested in understanding the qualifications, competencies, and tasks required of the Fire Officer II operating in the State of Texas. It is ultimately the responsibility of an employer to define specific job descriptions within each jurisdiction.

(A) Qualifications. In addition to the qualifications for Fire Officer I and Fire Instructor I personnel: the ability to motivate members for maximum job performance; the ability to evaluate job performance; the ability to deliver life safety and fire prevention education programs; the ability to prepare budget requests, news releases, and policy changes; the ability to conduct pre-incident planning, fire inspections, and fire investigations; the ability to supervise multi-unit emergency operations, identify unsafe work environments or behaviors, review injury, accident, and exposure reports.

(B) Competency. A Fire Officer II must demonstrate competency in supervising personnel and coordinating multi-unit emergency operations utilizing skills in accordance with the objectives in Chapter 9 of the commission's Certification Curriculum Manual.

(11) Fire Officer III personnel. The following general position description for Fire Officer III personnel serves as a guide for anyone interested in understanding the qualifications, competencies, and tasks required of the Fire Officer III operating in the State of Texas. It is ultimately the responsibility of an employer to define specific job descriptions within each jurisdiction.

(A) Qualifications. A Fire Officer III is a midlevel supervisor who performs both supervisory and first-line managerial functions. In addition to the qualifications and competency for Fire Officer II, the Fire Officer III is an individual who has met all the job performance requirements of Fire Officer III as defined in Chapter 6 of NFPA 1021, Standard for Fire Officer Professional Qualifications.

Typical duties of an individual at the Fire Officer III level include: establishing procedures for hiring, assignment, and professional development of personnel; developing public service/partnership and programs; preparing budgets and budget management systems; planning for organizational resource management; evaluating inspection and public safety programs and plans; managing multi-agency plans and operations; serving as Incident Commander at expanding emergency incidents for all hazard types; and developing and managing a departmental safety program.

(B) Competency. A Fire Officer III must demonstrate competency doing research; analyzing data and using evaluative techniques; developing proposals; developing, preparing, and implementing various procedures and programs within an organization; managing personnel resources; preparing and managing budgets; utilizing techniques to encourage personnel participation and development; and working in top-level positions within the incident command system.

(12) Fire Officer IV personnel. The following general position description for Fire Officer IV personnel serves as a guide for anyone interested in understanding the qualifications, competencies, and tasks required of the Fire Officer IV operating in the State of Texas. It is ultimately the responsibility of an employer to define specific job descriptions within each jurisdiction.

(A) Qualifications. A Fire Officer IV is an upper level supervisor who performs both supervisory and managerial functions. In addition to the qualifications and competency for Fire Officer III, the Fire Officer IV is an individual who has met all the job performance requirements of Fire Officer IV as defined in Chapter 7 of NFPA 1021, Standard for Fire Officer Professional Qualifications. Typical duties of an individual at the Fire Officer IV level include: administering job performance requirements; evaluating and making improvements to department operations; developing long-range plans and fiscal projections; developing plans for major disasters; serving as Incident Commander at major incidents for all hazard types; and administering comprehensive risk management programs.

(B) Competency. A Fire Officer IV must demonstrate competency in appraising and evaluating departmental programs to ensure adherence to current laws and best practices; developing medium and long-range plans for organizations; and assuming a top-level leadership role in both the organization and community.

(13) Fire Service Instructor I personnel. The following general position description for Fire Service Instructor I personnel serves as a guide for anyone interested in understanding the qualifications, competencies, and tasks required of the Fire Service Instructor I operating in the State of Texas. It is ultimately the responsibility of an employer to define specific job descriptions within each jurisdiction.

(A) Qualifications. In addition to successfully completing a commission approved course and achieving a passing score on the certification examination: must have the ability to deliver instructions effectively from a prepared lesson plan; the ability to use instructional aids and evaluation instruments; the ability to adapt to lesson plans to the unique requirements of both student and the jurisdictional authority; the ability to organize the learning environment to its maximum potential; the ability to meet the record-keeping requirements of the jurisdictional authority.

(B) Competency. A Fire Service Instructor I must demonstrate competency in delivering instruction in an environment organized for efficient learning while meeting the record-keeping needs of the authority having jurisdiction, utilizing skills in accordance with the objectives in Chapter 8 of the commission's Certification Curriculum Manual.

(14) Fire Service Instructor II personnel. The following general position description for Fire Service Instructor II personnel serves as a guide for anyone interested in understanding the qualifications, competencies, and tasks required of the Fire Service Instructor II operating in the State of Texas. It is ultimately the responsibility of an employer to define specific job descriptions within each jurisdiction.

(A) Qualifications. In addition to successfully completing a commission approved course, achieving a passing score on the certification examination, and meeting the qualifications for Fire Service Instructor I: the ability to develop individual lesson plans for a specific topic, including learning objectives, instructional aids, and evaluation instruments; the ability to schedule training sessions based on the overall training plan of the jurisdictional authority; the ability to supervise and coordinate the activities of other instructors.

(B) Competency. A Fire Service Instructor II must demonstrate competency in developing individual lesson plans; scheduling training sessions; and supervising other instructors, utilizing skills in accordance with the objectives in Chapter 8 of the commission's Certification Curriculum Manual.

(15) Fire Service Instructor III personnel. The following general position description for Fire Service Instructor III personnel serves as a guide for anyone interested in understanding the qualifications, competencies, and tasks required of the Fire Service Instructor III operating in the State of Texas. It is ultimately the responsibility of an employer to define specific job descriptions within each jurisdiction.

(A) Qualifications. In addition to successfully completing a commission approved course, achieving a passing score on the certification examination, and meeting the qualifications for Fire Service Instructor II: the ability to develop comprehensive training curricula and programs for use by single or multiple organizations; the ability to conduct organizational needs analysis; and the ability to develop training goals and implementation strategies.

(B) Competency. A Fire Service Instructor III must demonstrate competency in developing comprehensive training curricula and programs; conducting organizational needs analysis; and developing training goals and implementation strategies, utilizing skills in accordance with the objectives in Chapter 8 of the commission's Certification Curriculum Manual.

(16) Incident Safety Officer personnel. The following general position description for Incident Safety Officer personnel serves as a guide for anyone interested in understanding the qualifications, competencies, and tasks required of the Incident Safety Officer operating in the State of Texas. It is ultimately the responsibility of an employer to define specific job descriptions within each jurisdiction.

(A) Qualifications. An Incident Safety Officer is an individual who has met the requirements of Fire Officer Level I specified in NFPA 1021, Standard for Fire Officer Professional Qualifications and Chapter 6 of NFPA 1521, Standard for Fire Department Safety Officer and has the knowledge, skill, and abilities to manage incident scene safety. Typical Incident Safety Officer duties include risk and resource evaluation; hazard identification and communication; action plan reviews; safety briefings; accident investigation; post incident analysis; and participation in safety committee activities.

(B) Competency. An Incident Safety Officer must demonstrate competency in management of incident scene safety through a working knowledge of the various emergency operations as prescribed by the local jurisdiction; an understanding of building construction; fire science and fire behavior; managing an organization's personnel accountability system; and incident scene rehabilitation methodology.

(17) Basic Wildland Fire Protection personnel. The following general position description for Basic Wildland Fire Protection personnel serves as a guide for anyone interested in understanding the qualifications, competencies, and tasks required of the Basic Wildland Fire Fighter operating in the State of Texas. It is ultimately the responsibility of an employer to define specific job descriptions within each jurisdiction.

(A) Qualifications. A Basic Wildland Fire Fighter is an individual who has met the requirements of Chapter 5 of NFPA 1051, Standard for Wildland Fire Fighter Professional qualifications, and should demonstrate knowledge in: wildland fire behavior; fireline safety and use; limitations of personal protective equipment; fire shelter use; fire suppression tactics and techniques in wildland settings; and have an understanding of the fire fighter's role within the local incident management system.

(B) Competency. A Basic Wildland Fire Fighter must demonstrate competency in such areas as: maintaining personal protective equipment and assigned fire suppression tools and equipment; the ability to quickly prepare for a response when notified; recognizing hazards and unsafe situations in a wildland fire; securing a fire line; mopping up a fire area; and patrolling a fire area so as to ensure fire control.

(18) Intermediate Wildland Fire Protection personnel. The following general position description for Intermediate Wildland Fire Protection personnel serves as a guide for anyone interested in understanding the qualifications, competencies, and tasks required of the Intermediate Wildland Fire Fighter operating in the State of Texas. It is ultimately the responsibility of an employer to define specific job descriptions within each jurisdiction.

(A) Qualifications. In addition to the qualifications and competency for the Basic Wildland Fire Fighter, the Intermediate Wildland Fire Fighter is an individual who has met the requirements of Chapter 6 of NFPA 1051, Standard for Wildland Fire Fighter Professional qualifications, and should demonstrate knowledge in: basic map reading; use of a locating device such as a compass; radio procedures as adopted by the local jurisdiction; and record keeping.

(B) Competency. An Intermediate Wildland Fire Fighter must demonstrate competency in such areas as: the ability to lead a team of fire fighters in the performance of assigned tasks while maintaining the safety of personnel; implementing appropriate fireline construction methods and other techniques for protection of exposed property; operation of water delivery equipment; securing an area of suspected fire origin and associated evidence; and serving as a lookout in a wildland fire.

§421.5. Definitions.

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

(1) Admission to employment--An entry level full-time employee of a local government entity in one of the categories of fire protection personnel.

(2) Appointment--The designation or assignment of a person to a discipline regulated by the commission. The types of appointments are:

(A) permanent appointment--the designation or assignment of certified fire protection personnel or certified part time fire protection employees to a particular discipline (See Texas Government Code, §419.032); and

(B) probationary or temporary appointment--the designation or assignment of an individual to a particular discipline, except for head of a fire department, for which the individual has passed the commission's certification and has met the medical requirement of §423.1(c) of this title (relating to Minimum Standards for Structure Fire Protection Personnel), if applicable, but has not yet been certified. (See Texas Government Code, §419.032.)

(3) Approved training--Any training used for a higher level of certification must be approved by the commission and assigned to either the A-List or the B-List. The training submission must be in a manner specified by the commission and contain all information requested by the commission. The commission will not grant credit twice for the same subject content or course. Inclusion on the A-List or B-List does not preclude the course approval process as stated elsewhere in the Standards Manual.

(4) Assigned/work--A fire protection personnel or a part-time fire protection employee shall be considered "assigned/working" in a position, any time the individual is receiving compensation and performing the duties that are regulated by the commission certification and has been permanently appointed, as defined in this section, to the particular discipline.

(5) Assistant fire chief--The officer occupying the first position subordinate to the head of a fire department.

(6) Auxiliary fire fighter--A volunteer fire fighter.

(7) Benefits--Benefits shall include, but are not limited to, inclusion in group insurance plans (such as health, life, and disability) or pension plans, stipends, free water usage, and reimbursed travel expenses (such as meals, mileage, and lodging).

(8) Chief Training Officer--The individual, by whatever title he or she may be called, who coordinates the activities of a certified training facility.

(9) Class hour--Defined as not less than 50 minutes of instruction, also defined as a contact hour; a standard for certification of fire protection personnel.

(10) Code--The official legislation creating the commission.

(11) College credits--Credits earned for studies satisfactorily completed at an institution of higher education accredited by an agency recognized by the U.S. Secretary of Education and including National Fire Academy (NFA) open learning program colleges, or courses recommended for college credit by the American Council on Education (ACE) or delivered through the National Emergency Training Center (both EMI and NFA) programs. A course of study satisfactorily completed and identified on an official transcript from a college or in the ACE National Guide that is primarily related to Fire Service, Emergency Medicine, Emergency Management, or Public Administration is defined as applicable for Fire Science college credit, and is acceptable for higher levels of certification. A criminal justice course related to fire and or arson investigation that is satisfactorily completed and identified on an official transcript from a college or in the ACE National Guide may be used to qualify for Master Arson Investigator certification.

(12) Commission--Texas Commission on Fire Protection.

(13) Commission-recognized training--A curriculum or training program which carries written approval from the commission, or credit hours that appear on an official transcript from an accredited college or university, or any fire service training received from a nationally recognized source, i.e., the National Fire Academy.

(14) Compensation--Compensation is to include wages, salaries, and "per call" payments (for attending drills, meetings or answering emergencies).

(15) Expired--Any certification that has not been renewed on or before the end of the certification period.

(16) Federal fire fighter--A person as defined in the Texas Government Code, §419.084(h).

(17) Fire chief--The head of a fire department.

(18) Fire department--A department of a local government that is staffed by one or more fire protection personnel or part-time fire protection employees.

(19) Fire protection personnel--Any person who is a permanent full-time employee of a fire department or governmental entity and who is appointed duties in one of the following categories/disciplines: fire suppression, fire inspection, fire and arson investigation, marine fire fighting, aircraft rescue fire fighting, fire training, fire education, fire administration and others employed in related positions necessarily or customarily appertaining thereto.

(20) Fire suppression duties--Engaging in the controlling or extinguishment of a fire of any type or performing activities which are required for and directly related to the control and extinguishment of fires or standing by on the employer's premises or apparatus or nearby in a state of readiness to perform these duties.

(21) Full-time--An officer or employee is considered full-time if the employee works an average of 40 hours a week or averages 40 hours per week or more during a work cycle in a calendar year. For the purposes of this definition paid leave will be considered time worked.

(22) Government entity--The local authority having jurisdiction as employer of full-time fire protection personnel in a state agency, incorporated city, village, town or county, education institution or political subdivision.

(23) High school--A school accredited as a high school by the Texas Education Agency or equivalent accreditation agency from another jurisdiction.

(24) Immediately dangerous to life or health (IDLH)--An atmosphere that poses an immediate threat to life, would cause irreversible adverse health effects, or would impair an individual's ability to escape from a dangerous atmosphere.

(25) Incipient stage fire--A fire which is in the initial or beginning stage and which can be controlled or extinguished by portable fire extinguishers, Class II standpipe or small hose systems without the need for protective clothing or breathing apparatus.

(26) Interior structural fire fighting--The physical activity of fire suppression, rescue or both, inside of buildings or enclosed structures which are involved in a fire situation beyond the incipient stage. (See 29 CFR §1910.155.)

(27) Lead instructor--An individual qualified as an instructor to deliver fire protection training.

(28) Municipality--Any incorporated city, village, or town of this state and any county or political subdivision or district in this state. Municipal pertains to a municipality as defined in this section.

(29) National Fire Academy semester credit hours--The number of hours credited for attendance of National Fire Academy courses is determined as recommended in the most recent edition of the "National Guide to Educational Credit for Training Programs," American Council on Education (ACE).

(30) Non-self-serving affidavit--A sworn document executed by someone other than the individual seeking certification.

(31) Participating volunteer fire fighter--An individual who voluntarily seeks certification and regulation by the commission under the Texas Government Code, Chapter 419, Subchapter D.

(32) Participating volunteer fire service organization--A fire department that voluntarily seeks regulation by the commission under the Texas Government Code, Chapter 419, Subchapter D.

(33) Part-time fire protection employee--An individual who is appointed as a part-time fire protection employee and who receives compensation, including benefits and reimbursement for expenses. A part-time fire protection employee is not full-time as defined in this section.

(34) Personal alert safety system (PASS)--Devices that are certified as being compliant with NFPA 1982 and that automatically activates an alarm signal (which can also be manually activated) to alert and assist others in locating a fire fighter or emergency services person who is in danger.

(35) Political subdivision--A political subdivision of the State of Texas that includes, but is not limited to the following:

- (A) city;
- (B) county;
- (C) school district;
- (D) junior college district;
- (E) levee improvement district;
- (F) drainage district;
- (G) irrigation district;
- (H) water improvement district;
- (I) water control and improvement district;
- (J) water control and preservation district;
- (K) freshwater supply district;
- (L) navigation district;
- (M) conservation and reclamation district;
- (N) soil conservation district;
- (O) communication district;
- (P) public health district;
- (Q) river authority;
- (R) municipal utility district;
- (S) transit authority;
- (T) hospital district;
- (U) emergency services district;
- (V) rural fire prevention district; and
- (W) any other governmental entity that:

(i) embraces a geographical area with a defined boundary;

(ii) exists for the purpose of discharging functions of the government; and

(iii) possesses authority for subordinate self-government through officers selected by it.

(36) Reciprocity for IFSAC seals--Valid documentation of accreditation from the International Fire Service Accreditation Congress used for commission certification may only be used for obtaining an initial certification.

(37) Recognition of training--A document issued by the commission stating that an individual has completed the training requirements of a specific phase level of the Basic Fire Suppression Curriculum.

(38) School--Any school, college, university, academy, or local training program which offers fire service training and included within its meaning the combination of course curriculum, instructors, and facilities.

(39) Structural fire protection personnel--Any person who is a permanent full-time employee of a government entity who engages in fire fighting activities involving structures and may perform other emergency activities typically associated with fire fighting activities such as rescue, emergency medical response, confined space rescue, hazardous materials response, and wildland fire fighting.

(40) Trainee--An individual who is participating in a commission approved training program.

(41) Volunteer fire protection personnel--Any person who has met the requirements for membership in a volunteer fire service organization, who is assigned duties in one of the following categories: fire suppression, fire inspection, fire and arson investigation, marine fire fighting, aircraft rescue fire fighting, fire training, fire education, fire administration and others in related positions necessarily or customarily appertaining thereto.

(42) Volunteer fire service organization--A volunteer fire department or organization not under mandatory regulation by the commission.

(43) Years of experience--For purposes of higher levels of certification or fire service instructor certification:

(A) Except as provided in subparagraph (B) of this paragraph, years of experience is defined as full years of full-time, part-time or volunteer fire service while holding:

(i) a commission certification as a full-time, or part-time employee of a government entity, a member in a volunteer fire service organization, and/or an employee of a regulated non-governmental fire department; or

(ii) a State Firemen's and Fire Marshals' Association advanced fire fighter certification and have successfully completed, as a minimum, the requirements for an Emergency Care Attendant (ECA) as specified by the Department of State Health Services (DSHS), or its successor agency, or its equivalent; or

(iii) an equivalent certification as a full-time fire protection personnel of a governmental entity from another jurisdiction, including the military, or while a member in a volunteer fire service organization from another jurisdiction, and have, as a minimum, the requirements for an ECA as specified by the DSHS, or its successor agency, or its equivalent; or

(iv) for fire service instructor eligibility only, a State Firemen's and Fire Marshals' Association Level II Instructor Certification, received prior to June 1, 2008 or Instructor I received on or after June 1, 2008 or an equivalent instructor certification from the DSHS or the Texas Commission on Law Enforcement. Documentation of at least three years of experience as a volunteer in the fire service shall be in the form of a non self-serving sworn affidavit.

(B) For fire service personnel certified as required in subparagraph (A) of this paragraph on or before October 31, 1998, years of experience includes the time from the date of employment or membership to date of certification not to exceed one year.

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 16, 2013.

TRD-201302910

Tim Rutland

Interim Executive Director

Texas Commission on Fire Protection

Effective date: August 5, 2013

Proposal publication date: June 7, 2013

For further information, please call: (512) 936-3813



CHAPTER 427. TRAINING FACILITY CERTIFICATION

SUBCHAPTER C. TRAINING PROGRAMS FOR ON-SITE AND DISTANCE TRAINING PROVIDERS

37 TAC §427.307

The Texas Commission on Fire Protection (the commission) adopts amendments to Chapter 427, Training Facility Certification, Subchapter C, Training Programs for On-Site and Distance Training Providers, §427.307, concerning On-site and Distance Training Provider Staff Requirements. The amendments are adopted without changes to the proposed text as published in the June 7, 2013, issue of the *Texas Register* (38 TexReg 3514) and will not be republished.

The amendments are adopted to clarify the minimum level of Fire Service Instructor certification required to be a lead instructor for teaching a certification course in all disciplines except Basic and Intermediate Wildland Fire Protection.

The adopted amendments will provide clear and concise rules regarding the requirements to obtain certification as a Fire Service Instructor.

No comments were received from the public regarding the proposed amendments.

The amendments are adopted under Texas Government Code §419.008, which provides the commission the authority to adopt rules for the administration of its powers and duties; and §419.028, which provides the commission the authority to approve training providers and programs for training fire protection personnel.

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 16, 2013.

TRD-201302911

Tim Rutland

Interim Executive Director

Texas Commission on Fire Protection

Effective date: August 5, 2013

Proposal publication date: June 7, 2013

For further information, please call: (512) 936-3813



CHAPTER 437. FEES

37 TAC §437.13

The Texas Commission on Fire Protection (the commission) adopts amendments to Chapter 437, Fees, §437.13, concerning Processing Fees for Test Application. The amendments are adopted without changes to the proposed text as published in the June 7, 2013, issue of the *Texas Register* (38 TexReg 3515) and will not be republished.

The amendments are adopted to assess a non-refundable late fee of one half the amount of the invoice total for a certified training provider whose invoice for test application is 61 to 90 days late. A non-refundable late fee equal to the amount shown on the invoice will be assessed for any payment postmarked more than 90 days after the invoice date.

The adopted amendments will provide clear and concise rules regarding the requirements of a certified training provider who has been invoiced or billed for test applications on behalf of the students in a training class.

No comments were received from the public regarding the proposed amendments.

The amendments are adopted under Texas Government Code §419.008, which provides the commission the authority to adopt rules for the administration of its powers and duties; and §419.026, which provides the commission the authority to set and collect a fee for each examination given to fire protection personnel.

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 16, 2013.

TRD-201302912

Tim Rutland

Interim Executive Director

Texas Commission on Fire Protection

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Proposal publication date: June 7, 2013

For further information, please call: (512) 936-3813



CHAPTER 439. EXAMINATIONS FOR CERTIFICATION

SUBCHAPTER A. EXAMINATIONS FOR ON-SITE DELIVERY TRAINING

37 TAC §§439.1, 439.5, 439.19

The Texas Commission on Fire Protection (the commission) adopts amendments to Chapter 439, Examinations for Certifica-

tion, Subchapter A, Examinations for On-Site Delivery Training, §439.1, concerning Requirements--General; §439.5, concerning Procedures; and §439.19, concerning Number of Test Questions. The amendments are adopted without changes to the proposed text as published in the June 7, 2013, issue of the *Texas Register* (38 TexReg 3516) and will not be republished.

The amendments are adopted to make grammatical changes, delete obsolete language, and provide clear and concise rules regarding procedures for conducting examinations and assessing a late fee when payments are received late.

The amendments are adopted to provide clear and concise rules regarding procedures for payment of examination fees and consequences of late payments.

No comments were received from the public regarding the proposed amendments.

The amendments are adopted under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to adopt rules for the administration of its powers and duties; and §419.026, which provides the commission the authority to set and collect a fee for each examination given to fire protection personnel.

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 16, 2013.

TRD-201302915

Tim Rutland

Interim Executive Director

Texas Commission on Fire Protection

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Proposal publication date: June 7, 2013

For further information, please call: (512) 936-3813



CHAPTER 449. HEAD OF A FIRE DEPARTMENT

37 TAC §449.3, §449.5

The Texas Commission on Fire Protection (the commission) adopts amendments to Chapter 449, Head of a Fire Department, §449.3, concerning Minimum Standards for Certification as Head of a Suppression Fire Department; and §449.5, concerning Minimum Standards for Certification as Head of a Prevention Only Department. The amendments are adopted without changes to the proposed text as published in the June 7, 2013, issue of the *Texas Register* (38 TexReg 3517) and will not be republished.

The adopted amendments will clarify procedures that must be followed for applicants who seek the commission's Head of a Fire Department certification.

The adopted amendments will provide a clear and concise set of rules regarding certification as Head of a Fire Department.

No comments were received from the public regarding the proposed amendments.

The amendments are adopted under Texas Government Code §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; and

§419.032, which provides the commission the authority to adopt rules regarding qualifications and competencies for appointment of fire protection personnel.

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 16, 2013.

TRD-201302913

Tim Rutland

Interim Executive Director

Texas Commission on Fire Protection

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Proposal publication date: June 7, 2013

For further information, please call: (512) 936-3813



CHAPTER 457. MINIMUM STANDARDS FOR INCIDENT SAFETY OFFICER CERTIFICATION

37 TAC §457.5

The Texas Commission on Fire Protection (the commission) adopts amendments to Chapter 457, Minimum Standards for Incident Safety Officer Certification, §457.5, concerning Examination Requirements. The amendments are adopted without changes to the proposed text as published in the June 7, 2013, issue of the *Texas Register* (38 TexReg 3519) and will not be republished.

The amendment is adopted to provide clear and concise rules letting individuals know that in order to be permitted to take the commission examination for Incident Safety Officer they will have to document Fire Officer I certification from the commission or the equivalent IFSAC seal and complete a commission approved Incident Safety Officer curriculum.

The adopted amendments will provide more clear and concise rules regarding the requirements of Incident Safety Officer certification.

No comments were received from the public regarding the adopted amendments.

The amendments are adopted under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to adopt rules for the administration of its powers and duties; and §419.032, which provides the commission the authority to adopt rules regarding qualifications and competencies for the appointment of fire protection personnel.

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 16, 2013.

TRD-201302914

Tim Rutland

Interim Executive Director

Texas Commission on Fire Protection

Effective date: August 5, 2013

Proposal publication date: June 7, 2013

For further information, please call: (512) 936-3813



REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Board of Pardons and Paroles

Title 37, Part 5

Under the 1997 General Appropriations Act, Article IX, Section 167, Review of Agency Rules, the Texas Board of Pardons and Paroles files this notice of intent to review and consider for readoption, revision, or repeal 37 TAC Part 5, Chapter 148 (Sex Offender Conditions of Parole or Mandatory Supervision).

The Board undertakes its review pursuant to Government Code, §2001.039. The Board will accept comments for 30 days following the publication of this notice in the *Texas Register* and will assess whether the reasons for adopting the sections under review continue to exist. Proposed changes to the rule as a result of the rule review will be published in the Proposed Rules section of the *Texas Register*.

The proposed rules will be open for public comment prior to final adoption by the Board, in accordance with the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Any questions or written comments pertaining to this notice of intention to review should for the next 30-day comment period be directed to Bettie Wells, General Counsel, Texas Board of Pardons and Paroles, 209 W. 14th Street, Suite 500, Austin, TX 78701 or by e-mail to bettie.wells@tdcj.state.tx.us.

TRD-201302970

Bettie Wells

General Counsel

Texas Board of Pardons and Paroles

Filed: July 22, 2013





IN

ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of the Attorney General

Notice of Settlement of a Texas Water Code Enforcement Action

The State of Texas gives notice of the following proposed resolution of an environmental enforcement action under the Texas Water Code. Before the State may enter into a voluntary settlement agreement, pursuant to §7.110 of the Texas Water Code the State shall permit the public to comment in writing. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreement if the comments disclose facts or considerations indicating that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the law.

Case Title: United States of America and State of Texas v. San Antonio Water System, Civil Action No. 5:13-cv-00666, in the United States District Court for the Western District of Texas, San Antonio Division.

Background: Plaintiffs filed their initial Complaint in this action on July 23, 2013, pursuant to Section 301 of the Clean Water Act ("CWA"), 33 U.S.C. §1311, and §§7.002, 7.032, 7.101, 7.103, 7.105, 7.108 and chapter 26, §26.01, et seq., of the Texas Water Code ("TWC") against Defendant San Antonio Water System, San Antonio, Bexar County, Texas. This action was filed by the Attorney General of the United States, through the undersigned attorney, on behalf of the U.S. Environmental Protection Agency ("EPA") and by the office of the Texas Attorney General, through the undersigned attorney, on behalf of the Texas Commission on Environmental Quality ("TCEQ"). The Complaint alleges, inter alia, that SAWS has violated the CWA and the TWC by discharging pollutants, including discharges from unpermitted point sources, in violation of the Section 301 of the CWA, 33 U.S.C. §1311, and provisions of the TWC, and that SAWS has violated effluent limitations and other conditions established in the National Pollutant Elimination System ("NPDES"), also known as Texas Pollutant Discharge Elimination System, permits issued to SAWS by TCEQ, pursuant to its EPA-approved permit program under Section 402 of the CWA, 33 U.S.C. §1342.

Nature of the Settlement: The action by the Plaintiffs against SAWS, will be settled by a Consent Decree in the United States District Court for the Western District of Texas, San Antonio Division.

Proposed Settlement: The proposed settlement orders Defendant to pay a fine of \$2.6 million to be divided equally between the Plaintiffs and to implement comprehensive injunctive relief measures to come into compliance with the federal Clean Water Act, the Texas Water Code, and the Defendant's Texas Pollutant Discharge Elimination System permits. The implementation of this relief is aimed at addressing and eliminating effluent violations and unpermitted discharges from Defendant's sanitary sewer system. If approved by the Court, the Consent Decree will resolve the claims and violations alleged in the Complaint.

For a complete description of the proposed settlement, the complete proposed Consent Decree should be reviewed. Requests for copies of the proposed settlement, and written comments on the proposed settlement, should be directed to Mark L. Walters, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 475-4664. Writ-

ten comments must be received within 30 days of publication of this notice to be considered.

TRD-201303004
Katherine Cary
General Counsel
Office of the Attorney General
Filed: July 24, 2013

Comptroller of Public Accounts

Notice of Award

The Texas Comptroller of Public Accounts ("Comptroller") announces this notice of award of a contract to MGT of America, Inc., 4009 Banister Lane, Suite 265, Austin, Texas 78701, to develop Comptroller's annual data processing cost allocation plan (RFP #206f). The total amount of the contract is not to exceed \$34,500.00 for the initial year and the first optional renewal year and \$35,800.00 for each optional year thereafter. The term of the contract is July 17, 2013 through August 31, 2014, with the option to renew for up to three (3) additional one (1) year terms. The Request for Proposals was published in the April 26, 2013, issue of the *Texas Register* (38 TexReg 2654).

TRD-201302941
Jennifer W. Sloan
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: July 18, 2013

Notice of Contract Amendment

The Texas Comptroller of Public Accounts ("Comptroller") announces this notice of amendment of a consulting services contract awarded to AKF Consulting, LLC dba AKF Consulting Group, 1350 Avenue of the Americas, Second Floor, New York, NY 10019, under Request for Proposals (RFP) 198a to assist the Texas Prepaid Higher Education Tuition Board with administering the state's qualified tuition plans. The Notice of RFP was published in the May 14, 2010, issue of the *Texas Register* (35 TexReg 3877). The Notice of Award was published in the December 24, 2010, issue of the *Texas Register* (35 TexReg 11737). The total amount of the contract is not to exceed \$100,000.00. The term of the contract was December 10, 2010 through December 31, 2013. The amendment extends the term through December 31, 2014.

TRD-201302940
Jennifer W. Sloan
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: July 18, 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 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 07/29/13 - 08/04/13 is 18% for Consumer¹/Agricultural/Commercial² credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 07/29/13 - 08/04/13 is 18% for Commercial over \$250,000.

¹ Credit for personal, family or household use.

² Credit for business, commercial, investment or other similar purpose.

TRD-201302986

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: July 22, 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 September 3, 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 September 3, 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: 410 HK Enterprises, Incorporated dba Howdy Doody Food Store; DOCKET NUMBER: 2012-2578-PST-E; IDENTIFIER: RN101442903; LOCATION: Denton, Denton 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 system; PENALTY: \$2,438; ENFORCEMENT COORDINATOR: Jacquelyn

Green, (512) 239-2587; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Abdulali K. Tejani dba FM Express Mart; DOCKET NUMBER: 2013-0106-PST-E; IDENTIFIER: RN102367117; LOCATION: Lakeside, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum underground storage tanks (USTs); 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: \$8,079; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5825; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Addie Marlin dba Marlin Marina Water System; DOCKET NUMBER: 2013-0049-PWS-E; IDENTIFIER: RN101196079; LOCATION: Freeport, Brazoria County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to timely submit a Disinfectant Level Quarterly Operating Report to the executive director each quarter by the tenth day of the month following the end of each quarter; 30 TAC §290.51(a)(6) and TWC, §5.702, by failing to pay Public Health Service fees and associated late fees for TCEQ Financial Administration Account Number 90200461 for Fiscal Years 2007 - 2012; 30 TAC §290.109(f)(3) and Texas Health and Safety Code, §341.031(a), by failing to comply with the Maximum Contaminant Level for total coliform during the month of October 2012; 30 TAC §290.271(b) and §290.274(a) and (c), by failing to timely mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1 of each year and by failing to timely submit to the TCEQ by July 1 of each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility and that the information in the CCR is correct and consistent with compliance monitoring data; and 30 TAC §290.122(c)(2)(A), by failing to post public notification for failure to collect routine monitoring samples for the months of September 2011 and March 2012; PENALTY: \$920; ENFORCEMENT COORDINATOR: Katy Montgomery, (210) 403-4016; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(4) COMPANY: Amin Rafique Properties, Incorporated dba Hardy Stop; DOCKET NUMBER: 2013-0459-PWS-E; IDENTIFIER: RN102320231; LOCATION: Houston, Harris County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.106(e), by failing to provide the results of annual nitrate monitoring to the TCEQ's executive director for the 2010, 2011, and 2012 monitoring periods; and 30 TAC §290.51(a)(6), and TWC, §5.702, by failing to pay annual Public Health Service fees, including any associated late fees, for TCEQ Financial Administration Account Number 91012451 for Fiscal Years 2011 - 2013; PENALTY: \$254; ENFORCEMENT COORDINATOR: Nick Nevid, (512) 239-2612; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(5) COMPANY: Aqua Texas, Incorporated; DOCKET NUMBER: 2013-0481-MWD-E; IDENTIFIER: RN102341666; LOCATION: Channelview, Harris County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System Permit Number WQ0012122001, Final Effluent Limitations and Monitoring Requirements Number 2, by failing to comply with permitted effluent limitations; PENALTY: \$19,125; ENFORCEMENT COORDINATOR: Remington Burkland, (512) 239-2611; REGIONAL OFFICE:

5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(6) COMPANY: ASA MANAGEMENT, INCORPORATED dba ASA Buckner; DOCKET NUMBER: 2013-0430-PST-E; IDENTIFIER: RN103102802; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and Texas Health and Safety Code, §382.085(b), by failing to verify proper operation of the Stage II vapor recovery system at least once every 12 months; PENALTY: \$6,166; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5825; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: B & A MANAGEMENT, INCORPORATED dba Times Market 501; DOCKET NUMBER: 2013-0289-PST-E; IDENTIFIER: RN101544575; LOCATION: Corsicana, Navarro County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the USTs; 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: \$4,192; ENFORCEMENT COORDINATOR: Thomas Greimel, (512) 239-5690; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: Baymon ACME LP dba ACME Materials and Recycling; DOCKET NUMBER: 2013-0342-MLM-E; IDENTIFIER: RN106574007; LOCATION: Melissa, Collin County; TYPE OF FACILITY: mulching and composting; RULE VIOLATED: 30 TAC §330.7(a), by failing to obtain a permit or other authorization prior to conducting storage, processing, or disposal of municipal solid waste; 30 TAC §332.8(b)(1), by failing to maintain a setback distance of at least 50 feet from all property boundaries for storing mulched and/or composted, including in-process and processed materials; 30 TAC §328.5(c), (c)(1), (f), (f)(2) and (3), by failing to comply with the record keeping requirements for recycling; 30 TAC §328.5(b), by failing to provide a completed Notice of Intent to operate a recycling facility to the TCEQ prior to the commencement of new operations; and 30 TAC §324.6 and 40 Code of Federal Regulations §279.22(c), by failing to label or clearly mark containers used to store used oil with the words Used Oil; PENALTY: \$6,650; Supplemental Environmental Project offset amount of \$2,660 applied to Texas Association of Resource Conservation and Development Areas, Incorporated - Household Hazardous Waste Clean-Up; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5825; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: Bosque Utilities Corporation; DOCKET NUMBER: 2013-0634-MWD-E; IDENTIFIER: RN102342821; LOCATION: Corsicana, Navarro 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 WQ0013528001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits; PENALTY: \$8,750; ENFORCEMENT COORDINATOR: Lanae Foard, (512) 239-2554; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: Carlisle Independent School District; DOCKET NUMBER: 2013-0414-MWD-E; IDENTIFIER: RN103014890; LOCATION: Price, Rusk County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and (17)

and §319.7(d), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0014292001, Monitoring and Reporting Requirements Number 1, by failing to timely submit effluent monitoring results at the intervals specified in the permit; 30 TAC §305.125(1) and (17) and TPDES Permit Number WQ0014292001, Sludge Provisions, by failing to timely submit the annual sludge report for the monitoring period ending July 31, 2012, by September 30, 2012; and 30 TAC §§305.125(1), 319.1, 319.4, and 319.5(b), and TPDES Permit Number WQ0014292001, Monitoring and Reporting Requirements Number 1, by failing to collect and analyze effluent samples for *Escherichia coli*; PENALTY: \$2,250; ENFORCEMENT COORDINATOR: Jacquelyn Green, (512) 239-2587; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(11) COMPANY: City of Arlington; DOCKET NUMBER: 2013-0140-PST-E; IDENTIFIER: RN102063583; LOCATION: Arlington, Tarrant 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: \$3,750; ENFORCEMENT COORDINATOR: Stephen Thompson, (512) 239-2558; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(12) COMPANY: City of Bailey; DOCKET NUMBER: 2013-0460-PWS-E; IDENTIFIER: RN101387355; LOCATION: Bailey, Fannin County; TYPE OF FACILITY: municipal public water supply; RULE VIOLATED: 30 TAC §290.106(e), by failing to provide the results of annual nitrate sampling to the executive director for the 2010, 2011, and 2012 monitoring periods; 30 TAC §290.106(e) and §290.107(e), by failing to provide the results of triennial sampling for metals and synthetic organic chemical (SOC) contaminants to the executive director for the January 1, 2009 - December 31, 2011 monitoring period; 30 TAC §§290.106(e), 290.107(e), and 290.113(e), by failing to provide the results of triennial sampling for minerals, SOC contaminants (methods 504, 515, and 531), and Stage I Disinfection By-products to the executive director for the January 1, 2010 - December 31, 2012 monitoring period; and 30 TAC §290.107(e), by failing to provide the results of sexennial sampling for volatile organic chemical contaminants to the executive director for the January 1, 2006 - December 31, 2011 monitoring period; PENALTY: \$500; ENFORCEMENT COORDINATOR: Michaelle Garza, (210) 403-4076; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(13) COMPANY: City of Big Wells; DOCKET NUMBER: 2012-1467-MWD-E; IDENTIFIER: RN101720357; LOCATION: Big Wells, Dimmit 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 WQ0013782001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits; PENALTY: \$35,325; ENFORCEMENT COORDINATOR: Nick Nevid, (512) 239-2612; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(14) COMPANY: City of Charlotte; DOCKET NUMBER: 2012-1290-MWD-E; IDENTIFIER: RN101721033; LOCATION: Charlotte, Atascosa County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010142001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits; PENALTY: \$36,440; ENFORCEMENT COORDINATOR: Heather Brister, (254) 761-3034; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(15) COMPANY: City of Dodd City; DOCKET NUMBER: 2012-2670-MWD-E; IDENTIFIER: RN101608867; LOCATION: Dodd City, Fannin County; TYPE OF FACILITY: domestic wastewater treatment system; RULE VIOLATED: TWC, §26.121(a), 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System Permit Number WQ0010538001, Effluent Limitations and Monitoring Requirements Numbers 1 and 6, and TCEQ AO Docket Number 2009-1954-MWD-E, Ordering Provision Number 3; PENALTY: \$45,325; Supplemental Environmental Project offset amount of \$45,325 applied to Wastewater Treatment Plant Improvements; ENFORCEMENT COORDINATOR: Remington Burkland, (512) 239-2611; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(16) COMPANY: City of Kingsville; DOCKET NUMBER: 2013-0223-MWD-E; IDENTIFIER: RN101612976; LOCATION: Kingsville, Kleberg County; TYPE OF FACILITY: domestic wastewater treatment plant; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(5), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010696001, Permit Conditions (PC) Number 2.g., by failing to prevent the discharge of untreated wastewater from the collection system into or adjacent to water in the state; 30 TAC §305.125(1) and TPDES Permit Number WQ0010696001, Other Requirements Number 7, by failing to timely submit the total copper attainment progress reports on a quarterly basis; 30 TAC §305.125(1) and §319.5(f), and TPDES Permit Number WQ0010696001, Definitions and Standard PC Number 2(e) and Monitoring and Reporting Requirements Number 2.a, by failing to correctly calculate the daily average bacteria concentration; and 30 TAC §305.125(1), and TPDES Permit Number WQ0010696001, Sludge Provisions, by failing to submit a complete annual sludge report for the monitoring period ending July 31, 2012; PENALTY: \$10,318; Supplemental Environmental Project offset amount of \$10,318 applied to Texas Association of Resource Conservation and Development Areas, Incorporated - Water or Wastewater Treatment Assistance; ENFORCEMENT COORDINATOR: Nick Nevid, (512) 239-2612; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(17) COMPANY: CONSUMERS WATER, INCORPORATED; DOCKET NUMBER: 2013-0570-PWS-E; IDENTIFIER: RN101275287; LOCATION: Harris County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(c)(2)(F), by failing to collect at least five routine distribution coliform samples the month following a coliform-positive sample result for the month of December 2012; 30 TAC §290.109(c)(4)(B), by failing to collect a raw groundwater source *Escherichia coli* sample from each of the facility's two wells within 24 hours of notification of a distribution total coliform-positive sample during the month of November 2012; 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to provide a Disinfectant Level Quarterly Operating Report to the executive director each quarter by the tenth day of the month following the end of the quarter; and 30 TAC §290.122(c)(2)(A), by failing to post public notifications for the failure to collect repeat monitoring samples and the failure to collect triggered source monitoring samples for the month of April 2011; PENALTY: \$4,117; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(18) COMPANY: Del Webb Texas Limited Partnership; DOCKET NUMBER: 2013-0535-EAQ-E; IDENTIFIER: RN106335185; LOCATION: Georgetown, Williamson County; TYPE OF FACILITY: residential development; RULE VIOLATED: 30 TAC §213.5(f)(2) and Edwards Aquifer Water Pollution Abatement Plan 11-12013001, Standard Conditions Number 10, by failing to suspend construction

activities in the area of a sensitive feature after discovery; PENALTY: \$7,500; ENFORCEMENT COORDINATOR: Jennifer Graves, (956) 430-6023; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, (512) 339-2929.

(19) COMPANY: DIFCO, INCORPORATED; DOCKET NUMBER: 2013-0599-PST-E; IDENTIFIER: RN102348992; LOCATION: Corpus Christi, Nueces County; TYPE OF FACILITY: fuel distributor; RULE VIOLATED: 30 TAC §334.5(b)(1)(A), by failing to verify that the owner or operator of an underground storage tank (UST) system possessed a valid, current TCEQ delivery certificate prior to depositing a regulated substance into the UST system; PENALTY: \$2,356; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(20) COMPANY: Fakhruz Zaman dba I 10 Shell; DOCKET NUMBER: 2013-0473-PST-E; IDENTIFIER: RN102220449; LOCATION: Alleyton, Colorado 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: \$5,755; ENFORCEMENT COORDINATOR: Troy Warden, (512) 239-1050; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(21) COMPANY: First Omega Partners, Ltd.; DOCKET NUMBER: 2013-0823-WQ-E; IDENTIFIER: RN105649784; LOCATION: Nolanville, Bell County; TYPE OF FACILITY: construction site of single family residences; RULE VIOLATED: 30 TAC §281.25(a)(4) and Texas Pollutant Discharge Elimination System (TPDES) General Permit Number TXR15NT17, Part II, Section E(3)(c), by failing to post a copy of the signed notice of intent at the site in a location where it is readily available for viewing; 30 TAC §281.25(a)(4) and TPDES General Permit Number TXR15NT17, Part II, Section E(3)(d), by failing to post a construction site notice at the site in a location where it is readily available for viewing; and 30 TAC §281.25(a)(4) and TPDES General Permit Number TXR15NT17, Part III, Sections F(2)(c)(i)(B) and (6)(a), by failing to implement effective sediment control practices at the site; PENALTY: \$2,439; ENFORCEMENT COORDINATOR: Stephen Thompson, (512) 239-2558; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(22) COMPANY: GJN L.L.C. dba Sunmart 141; DOCKET NUMBER: 2012-2656-PST-E; IDENTIFIER: RN101954907; 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 (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: \$13,500; ENFORCEMENT COORDINATOR: Theresa Stephens, (512) 239-2540; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(23) COMPANY: Great Southern Wood - Columbus, Incorporated; DOCKET NUMBER: 2013-0633-PST-E; IDENTIFIER: RN101640043; LOCATION: Columbus, Colorado County; TYPE OF FACILITY: fleet refueling; 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; 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: John Fennell, (512) 239-2616; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(24) COMPANY: HANDY SHOP, INCORPORATED; DOCKET NUMBER: 2013-0686-PST-E; IDENTIFIER: RN102383783; 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 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; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(25) COMPANY: HANK'S CLEAN-UP & ROLL-OFF SERVICE, INCORPORATED; DOCKET NUMBER: 2013-0610-PST-E; IDENTIFIER: RN102467347; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: fleet refueling; 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 (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide release detection for the piping associated with the USTs; 30 TAC §334.51(b) and TWC, §26.3475(c)(2), by failing to equip the UST system with spill containment and overflow prevention equipment; 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: \$9,508; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5825; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(26) COMPANY: Hola Amigo, Incorporated; DOCKET NUMBER: 2012-1060-PST-E; IDENTIFIER: RN101382109; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the underground storage tank (UST) system; and 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; PENALTY: \$6,314; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(27) COMPANY: HSBM Retail Management, LLC dba M & W Express; DOCKET NUMBER: 2013-0284-PST-E; IDENTIFIER: RN102354743; LOCATION: Corsicana, Navarro 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; 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: \$4,500; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(28) COMPANY: KT CORPORATION dba Lamp Post; DOCKET NUMBER: 2013-0463-PST-E; IDENTIFIER: RN101665818; LOCATION: Whitney, Hill County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least

once every month (not to exceed 35 days between each monitoring); 30 TAC §334.10(b)(1)(B), by failing to maintain UST records and making them immediately available for inspection upon request by agency personnel; and 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the UST system; PENALTY: \$7,813; ENFORCEMENT COORDINATOR: Margarita Dennis, (817) 588-5892; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(29) COMPANY: LAKE LIVINGSTON WATER SUPPLY AND SEWER SERVICE CORPORATION; DOCKET NUMBER: 2013-0139-PWS-E; IDENTIFIER: RN101201960; LOCATION: Livingston, Polk County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(b)(1)(D)(i), by failing to provide two or more wells having a total capacity of 0.37 gallons per minute per connection as required by the approved alternate capacity requirement; 30 TAC §290.46(l), by failing to flush all dead-end mains at monthly intervals or more often as needed if water quality complaints are received from water customers or if disinfectant residuals fall below acceptable levels; and 30 TAC §290.113(f)(4) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes based on the running annual average; PENALTY: \$1,464; ENFORCEMENT COORDINATOR: Katy Montgomery, (210) 403-4016; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(30) COMPANY: Mark Robinson; DOCKET NUMBER: 2013-0394-WQ-E; IDENTIFIER: RN106335920; LOCATION: College Station, Brazos County; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §281.25(a)(4) and Texas Pollutant Discharge Elimination System (TPDES) General Permit Number TXR15TJ72, Part III, Sections F(2)(c)(i)(B) and (6)(a), by failing to implement effective sediment control practices at the site; and 30 TAC §281.25(a)(4) and TPDES General Permit Number TXR15TJ72, Part II, Section E(3)(a), by failing to develop an adequate storm water pollution prevention plan according to the provisions of the permit; PENALTY: \$1,991; ENFORCEMENT COORDINATOR: Nick Nevid, (512) 239-2612; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(31) COMPANY: Mohammed Nadeem dba Stop N Drive; DOCKET NUMBER: 2013-0098-PST-E; IDENTIFIER: RN103045969; LOCATION: Point Blank, San Jacinto 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)(1)(B), by failing to maintain UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: \$5,131; ENFORCEMENT COORDINATOR: Theresa Stephens, (512) 239-2540; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(32) COMPANY: New Mart Corporation dba J & C Mobil; DOCKET NUMBER: 2013-0431-PST-E; IDENTIFIER: RN101435279; LOCATION: Stafford, 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 for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$3,563; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(33) COMPANY: Phu Vo dba Vo's BP Service Center; DOCKET NUMBER: 2013-0035-PST-E; IDENTIFIER: RN102425568; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (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)(1)(B), by failing to maintain UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: \$4,730; ENFORCEMENT COORDINATOR: Theresa Stephens, (512) 239-2540; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(34) COMPANY: R & W Convenience Stores, LLC dba OT's Landing; DOCKET NUMBER: 2013-0652-PST-E; IDENTIFIER: RN101894731; LOCATION: Texarkana, Bowie 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: \$5,755; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(35) COMPANY: Royal Food & Service, Incorporated dba One Stop Fuel; DOCKET NUMBER: 2013-0324-PST-E; IDENTIFIER: RN101449809; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and Texas Health and Safety Code (THSC), §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months, and vapor space manifolding and dynamic back pressure at least once every 36 months or upon major system replacement or modification, whichever occurs first; and 30 TAC §115.242(3)(C) and THSC, §382.085(b), by failing to maintain the Stage II vapor recovery system in proper operating condition and free of defects that would impair the effectiveness of the system, including but not limited to absence or disconnection of any component that is a part of the approved system; PENALTY: \$4,909; ENFORCEMENT COORDINATOR: Rebecca Boyett, (512) 239-2503; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(36) COMPANY: Severn Trent Environmental Services, Incorporated; DOCKET NUMBER: 2013-0537-PST-E; IDENTIFIER: RN102048121; LOCATION: Katy, Harris County; TYPE OF FACILITY: wastewater treatment plant with an associated emergency generator; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(b), by failing to provide release detection for the suction piping associated with the underground storage tank system; PENALTY: \$2,955; ENFORCEMENT COORDINATOR: Heather Brister, (254) 761-3034; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(37) COMPANY: St. Charles Bay Trailer Inn, Incorporated; DOCKET NUMBER: 2013-0484-PWS-E; IDENTIFIER: RN106311624; LOCATION: Rockport, Aransas County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 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 the quarter; 30 TAC §290.109(c)(2)(A)(ii) and Texas Health and Safety Code (THSC), §341.033(d), by failing to collect routine distribution water samples for coliform analysis for the months of February and March 2012; 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 sample result on a routine sample collected during the month of July 2012; 30 TAC §290.109(c)(2)(F) and THSC, §341.033(d), by failing to collect at least five distribution coliform samples for the month following a total coliform-positive sample result for the month of August 2012; 30 TAC §290.109(c)(4)(B), by failing to collect raw groundwater source *Escherichia coli* samples from all active sources within 24 hours of being notified of a distribution total coliform-positive result on a routine sample during the months of July and October 2012; and 30 TAC §290.106(e), by failing to timely provide the results of triennial asbestos sampling to the executive director for the January 1, 2010 - December 31, 2012 monitoring period; PENALTY: \$1,739; ENFORCEMENT COORDINATOR: Michaelle Garza, (210) 403-4076; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(38) COMPANY: Superior Powder Coating, Incorporated; DOCKET NUMBER: 2012-2591-IWD-E; IDENTIFIER: RN102964152; LOCATION: Stephenville, Erath County; TYPE OF FACILITY: coating and engraving; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to maintain authorization under the No Exposure Certification for exclusion from permit requirements of the Texas Pollutant Discharge Elimination System Multi-Sector General Permit Number TXR050000; PENALTY: \$6,250; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5886; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(39) COMPANY: Texas Petroleum Group, LLC dba Timewise 546 07; DOCKET NUMBER: 2013-0740-PST-E; IDENTIFIER: RN102793635; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and Texas Health and Safety Code, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months and the vapor space manifolding and dynamic back pressure at least once every 36 months or upon major system replacement or modification, whichever occurs first; PENALTY: \$7,303; ENFORCEMENT COORDINATOR: Troy Warden, (512) 239-1050; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(40) COMPANY: TOM-TOM INVESTMENTS, INCORPORATED dba Texas Meat Market 4; DOCKET NUMBER: 2013-0468-PST-E; IDENTIFIER: RN102271301; 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 TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$2,813; ENFORCEMENT COORDINATOR: Jason Fraley, (512) 239-2552; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(41) COMPANY: Tong Ky Vun dba Alvin Food Mart 2; DOCKET NUMBER: 2013-0647-PST-E; IDENTIFIER: RN101245850; LOCATION: Alvin, Brazoria 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: \$3,375; ENFORCEMENT COORDINATOR: Rebecca Boyett, (512) 239-2503; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(42) COMPANY: Woody Butler Homes, Incorporated; DOCKET NUMBER: 2013-0195-MLM-E; IDENTIFIER: RN106081391; LOCATION: Hewitt, McLennan County; TYPE OF FACILITY:

residential construction; RULE VIOLATED: 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of municipal solid waste; 30 TAC §281.25(a)(4) and Texas Pollutant Discharge Elimination System (TPDES) Construction General Permit Number TXR15RK68, Part II, Section E(3)(c), by failing to post a copy of the notice of intent at the construction site where it is readily available for viewing; 30 TAC §281.25(a)(4) and TPDES Construction General Permit Number TXR15RK68, Part II, Section E(3)(d), by failing to post a construction site notice at the site; and 30 TAC §281.25(a)(4) and TPDES Construction General Permit Number TXR15RK68, Part III, Section F(2)(c)(i)(B), by failing to install sediment controls for all downslope boundaries of the construction area at the site; PENALTY: \$2,927; ENFORCEMENT COORDINATOR: Remington Burkland, (512) 239-2611; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

TRD-201302992

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: July 23, 2013



Enforcement Orders

An agreed order was entered regarding TEX-S, L.L.C., Docket No. 2010-1135-AGR-E on July 2, 2013 assessing \$5,723 in administrative penalties with \$1,144 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3034, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding M & F, INC. dba Marathon Phillips, Docket No. 2011-0019-PST-E on July 2, 2013 assessing \$4,574 in administrative penalties with \$914 deferred.

Information concerning any aspect of this order may be obtained by contacting Theresa Stephens, Enforcement Coordinator at (512) 239-2540, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Chemical Lime, Ltd., Docket No. 2011-0274-AIR-E on July 2, 2013 assessing \$7,400 in administrative penalties with \$1,480 deferred.

Information concerning any aspect of this order may be obtained by contacting Amancio Gutierrez, Enforcement Coordinator at (512) 239-3921, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Henry Peeples, Docket No. 2012-1747-LII-E on July 2, 2013 assessing \$1,097 in administrative penalties with \$219 deferred.

Information concerning any aspect of this order may be obtained by contacting Nadia Hameed, Enforcement Coordinator at (713) 767-3629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TEXAS NEW HORIZON, INC. dba Country Store, Docket No. 2012-1765-PST-E on July 2, 2013 assessing \$5,464 in administrative penalties with \$1,092 deferred.

Information concerning any aspect of this order may be obtained by contacting Joel McAlister, Enforcement Coordinator at (512)

239-2619, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Robert Bryer dba Bentwood Estates Mobile Home Park, Docket No. 2012-2047-PWS-E on July 2, 2013 assessing \$939 in administrative penalties with \$187 deferred.

Information concerning any aspect of this order may be obtained by contacting James Fisher, Enforcement Coordinator at (512) 239-2537, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding WILDCAT GROCERY, Inc., Docket No. 2012-2189-PST-E on July 2, 2013 assessing \$2,813 in administrative penalties with \$562 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Craftmasters Powder Coating, Inc., Docket No. 2012-2317-AIR-E on July 2, 2013 assessing \$1,500 in administrative penalties with \$300 deferred.

Information concerning any aspect of this order may be obtained by contacting Jessica Schildwachter, Enforcement Coordinator at (512) 239-2617, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding UPSHUR-RURAL ELECTRIC COOPERATIVE CORPORATION, Docket No. 2012-2352-PST-E on July 2, 2013 assessing \$3,750 in administrative penalties with \$750 deferred.

Information concerning any aspect of this order may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2616, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Luke Choi dba Belton Shell, Docket No. 2012-2387-PST-E on July 2, 2013 assessing \$2,568 in administrative penalties with \$513 deferred.

Information concerning any aspect of this order may be obtained by contacting Jennifer Graves, Enforcement Coordinator at (956) 430-6023, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding JILA DEVELOPMENT, L.L.C. dba On The Road, Docket No. 2012-2403-PST-E on July 2, 2013 assessing \$3,506 in administrative penalties with \$701 deferred.

Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (713) 767-3682, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Alan Matysiak Long Point Corner Store, Docket No. 2012-2432-PST-E on July 2, 2013 assessing \$3,881 in administrative penalties with \$776 deferred.

Information concerning any aspect of this order may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2616, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PLAINVIEW SERENITY CENTER, INC., Docket No. 2012-2440-PWS-E on July 2, 2013 assessing \$900 in administrative penalties with \$180 deferred.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (361) 825-3425, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Shaikh Ilyas Shakoor dba Hira's Four Corner Grocery, Docket No. 2012-2462-PST-E on July 2, 2013 assessing \$3,375 in administrative penalties with \$675 deferred.

Information concerning any aspect of this order may be obtained by contacting Nadia Hameed, Enforcement Coordinator at (713) 767-3629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Leedo Manufacturing Co., L.P., Docket No. 2012-2482-AIR-E on July 2, 2013 assessing \$5,437 in administrative penalties with \$1,087 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ESSEX HOSPITALITY INC dba Yantis Food Mart, Docket No. 2012-2494-PST-E on July 2, 2013 assessing \$7,500 in administrative penalties with \$1,500 deferred.

Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding RTF, L.L.C. dba Calliham Store, Docket No. 2012-2498-PST-E on July 2, 2013 assessing \$3,133 in administrative penalties with \$626 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ramanlal T. Patel dba The Junction, Docket No. 2012-2512-PST-E on July 2, 2013 assessing \$3,375 in administrative penalties with \$675 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Thomson Enterprises, Inc. dba Bender Texaco, Docket No. 2012-2528-PST-E on July 2, 2013 assessing \$5,063 in administrative penalties with \$1,012 deferred.

Information concerning any aspect of this order may be obtained by contacting Jason Fraley, Enforcement Coordinator at (512) 239-2552, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TIMBER FOREST CHEVRON, INC., Docket No. 2012-2536-PST-E on July 2, 2013 assessing \$6,750 in administrative penalties with \$1,350 deferred.

Information concerning any aspect of this order may be obtained by contacting Jim Fisher, Enforcement Coordinator at (512) 239-2537, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Cross Development/Montgomery LP, Docket No. 2012-2540-PST-E on July 2, 2013 assessing \$6,001 in administrative penalties with \$1,199 deferred.

Information concerning any aspect of this order may be obtained by contacting Lanae Foard, Enforcement Coordinator at (512) 239-2554, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding 1251 WOODHAVEN FOOD MART, INC., Docket No. 2012-2593-PST-E on July 2, 2013 assessing \$2,931 in administrative penalties with \$586 deferred.

Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding JPPS Inc. dba Jacks Grocery 1, Docket No. 2012-2612-PST-E on July 2, 2013 assessing \$2,813 in administrative penalties with \$562 deferred.

Information concerning any aspect of this order may be obtained by contacting Nick Nevid, Enforcement Coordinator at (512) 239-2612, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Colonial Distribution, Inc. dba Wez Mart 1, Docket No. 2012-2615-PST-E on July 2, 2013 assessing \$2,943 in administrative penalties with \$588 deferred.

Information concerning any aspect of this order may be obtained by contacting Kimberly Morales, Enforcement Coordinator at (713) 422-8938, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Minesh Patel dba Time Saver Grocery, Docket No. 2012-2631-PST-E on July 2, 2013 assessing \$2,438 in administrative penalties with \$487 deferred.

Information concerning any aspect of this order may be obtained by contacting Jason Fraley, Enforcement Coordinator at (512) 239-2552, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding William Marsh Rice University, Docket No. 2012-2685-PST-E on July 2, 2013 assessing \$4,038 in administrative penalties with \$807 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding H Sunny Inc. dba Benbrook Food Mart, Docket No. 2012-2688-PST-E on July 2, 2013 assessing \$4,500 in administrative penalties with \$900 deferred.

Information concerning any aspect of this order may be obtained by contacting Elvia Maske, Enforcement Coordinator at (512) 239-0789, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding 838 Bandera Road Management LLC dba Phillips Bandera, Docket No. 2012-2713-PST-E on July 2, 2013 assessing \$5,000 in administrative penalties with \$1,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (713) 767-3682, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CLARA, INC. dba Chevron Clara's Store & Bakery, Docket No. 2012-2732-PST-E on July 2, 2013 assessing \$5,380 in administrative penalties with \$1,076 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding AWAIS & HADI LLC dba Hanna Mart 2, Docket No. 2012-2733-PST-E on July 2, 2013 assessing \$4,687 in administrative penalties with \$937 deferred.

Information concerning any aspect of this order may be obtained by contacting Lanae Foard, Enforcement Coordinator at (512) 239-2554, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Mercedes, Docket No. 2013-0005-PWS-E on July 2, 2013 assessing \$1,123 in administrative penalties with \$224 deferred.

Information concerning any aspect of this order may be obtained by contacting Lanae Foard, Enforcement Coordinator at (512) 239-2554, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Rentech Nitrogen Pasadena, LLC, Docket No. 2013-0012-AIR-E on July 2, 2013 assessing \$6,563 in administrative penalties with \$1,312 deferred.

Information concerning any aspect of this order may be obtained by contacting Nadia Hameed, Enforcement Coordinator at (713) 767-3629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding COOK CHILDREN'S MEDICAL CENTER, Docket No. 2013-0015-PST-E on July 2, 2013 assessing \$3,375 in administrative penalties with \$675 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding FUELCON MANAGEMENT LLC dba Horizon, Docket No. 2013-0016-PST-E on July 2, 2013 assessing \$4,125 in administrative penalties with \$825 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Pavan Sut, Inc. dba Dalton's Corner, Docket No. 2013-0026-PST-E on July 2, 2013 assessing \$3,750 in administrative penalties with \$750 deferred.

Information concerning any aspect of this order may be obtained by contacting Jennifer Graves, Enforcement Coordinator at (956) 430-6023, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Huntington Independent School District, Docket No. 2013-0033-PST-E on July 2, 2013 assessing \$3,375 in administrative penalties with \$675 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ICT Holdings, LLC, Docket No. 2013-0037-AIR-E on July 2, 2013 assessing \$2,425 in administrative penalties with \$485 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator at (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BASHIR INTERESTS, INC. dba FM Foods, Docket No. 2013-0054-PST-E on July 2, 2013 assessing \$3,881 in administrative penalties with \$776 deferred.

Information concerning any aspect of this order may be obtained by contacting Jennifer Graves, Enforcement Coordinator at (956) 430-6023, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PECAN GROVE CAR WASH, INC., Docket No. 2013-0068-PST-E on July 2, 2013 assessing \$2,438 in administrative penalties with \$487 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3034, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding NISU, Inc. dba Eastland Food Mart 2, Docket No. 2013-0072-PST-E on July 2, 2013 assessing \$3,750 in administrative penalties with \$750 deferred.

Information concerning any aspect of this order may be obtained by contacting Jennifer Graves, Enforcement Coordinator at (956) 430-6023, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding New Jonathon Enterprise Incorporated dba Checkered Flag 11, Docket No. 2013-0113-PST-E on July 2, 2013 assessing \$2,565 in administrative penalties with \$513 deferred.

Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (512) 827-1703, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bosque Trading Enterprises, Inc. dba Old Mill Store, Docket No. 2013-0154-PST-E on July 2, 2013 assessing \$3,880 in administrative penalties with \$776 deferred.

Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding VERMA ENTERPRISES INC Corner Mart, Docket No. 2013-0188-PST-E on July 2, 2013 assessing \$2,942 in administrative penalties with \$588 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Kemp, Docket No. 2013-0229-PWS-E on July 2, 2013 assessing \$325 in administrative penalties with \$65 deferred.

Information concerning any aspect of this order may be obtained by contacting Katy Montgomery, Enforcement Coordinator at (210) 403-4016, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Candelario Reyna, Docket No. 2013-0271-OSS-E on July 2, 2013 assessing \$1,620 in administrative penalties with \$324 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, P.E., Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Petroleum Group, LLC dba Shell Retail Facility, Docket No. 2013-0276-PST-E on July 2, 2013 assessing \$6,323 in administrative penalties with \$1,264 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Pierce Metals, LLC, Docket No. 2013-0311-AIR-E on July 2, 2013 assessing \$1,125 in administrative penalties with \$225 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator at (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sac-N-Pac Stores, Inc. dba Sac N Pac 601, Docket No. 2013-0364-PST-E on July 2, 2013 assessing \$5,625 in administrative penalties with \$1,125 deferred.

Information concerning any aspect of this order may be obtained by contacting Christopher Bost, Enforcement Coordinator at (512) 239-4575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ram/Taha, LLC dba Diamond Mini Mart, Docket No. 2013-0382-PST-E on July 2, 2013 assessing \$2,813 in administrative penalties with \$562 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Boyett, Enforcement Coordinator at (512) 239-2503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201303000

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 24, 2013



Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

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 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 **September 3, 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 A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on September 3, 2013**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, TWC, §7.075 provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: BOBCAT KUNTRY INCORPORATED; DOCKET NUMBER: 2013-0943-PST-E; TCEQ ID NUMBER: RN101561066; LOCATION: 204 East Pecan Street, Celina, Collin County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide corrosion protection for the UST system; PENALTY: \$4,875; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053 REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: DAWANI BUSINESS, INC.; DOCKET NUMBER: 2013-0830-PST-E; TCEQ ID NUMBER: RN102054590; LOCATION: 23931 Nichols Sawmill Road #C, Hockley, Montgomery County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$9,000; STAFF ATTORNEY: Phillip M. Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(3) COMPANY: K C UTILITIES, INC.; DOCKET NUMBER: 2012-2088-PWS-E; TCEQ ID NUMBER: RN101243921; LOCATION: the intersection of County Road 144 and County Road 870, Brazoria County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.42(m) and TCEQ AO Docket Number 2010-0905-PWS-E, Ordering Provision Number 2.c.i., by failing to ensure the facility is enclosed by an intruder-resistant fence; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the facility and its equipment; 30 TAC §290.46(s)(1), by failing to calibrate the facility's well meter at least once every three years; 30 TAC §290.110(c)(4)(A), by failing to monitor the disinfectant residual at representative locations in the distribution system at least once every seven days; 30 TAC §290.46(m)(1)(A), by failing to inspect the ground storage tank annually; and 30 TAC §290.46(m)(1)(B), by failing to inspect the pressure tank annually; PENALTY: \$2,145; STAFF ATTORNEY: Kari L. Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(4) COMPANY: SARMEEN ENTERPRISE INC. d/b/a Eagle Mart; DOCKET NUMBER: 2013-0063-PST-E; TCEQ ID NUMBER: RN102378890; LOCATION: 315 South Lockwood Drive, Houston, Harris County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the UST for releases at a frequency of at least

once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: \$4,500; STAFF ATTORNEY: David A. Terry, Litigation Division, MC 175, (512) 239-0619; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(5) COMPANY: S S S ENTERPRISES, INC. d/b/a On The Go Mart; DOCKET NUMBER: 2012-2666-PST-E; TCEQ ID NUMBER: RN101822039; LOCATION: 8901 Howard Drive, Houston, Harris County TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: Texas Health and Safety Code (THSC), §382.085(b) and 30 TAC §115.245(2), by failing to verify proper operation of the Stage II equipment at least once every 36 months; and THSC, §382.085(b) and 30 TAC §115.242(3), by failing to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable California Air Resources Board Executive Order, and free of defects that would impair the effectiveness of the system; PENALTY: \$3,942; STAFF ATTORNEY: Rebecca M. Combs, Litigation Division, MC 175, (512) 239-6939; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(6) COMPANY: VUYURU INTERESTS Inc. d/b/a Queen Fuel Grocery 1314; DOCKET NUMBER: 2012-1558-PST-E; TCEQ ID NUMBER: RN105572473; LOCATION: 18092 Farm-to-Market Road 1314, Conroe, Montgomery County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$4,125; STAFF ATTORNEY: David A. Terry, Litigation Division, MC 175, (512) 239-0619; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-201302989

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: July 23, 2013



Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **September 3, 2013**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inap-

propriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on September 3, 2013**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing**.

(1) COMPANY: AKAL BUSINESS INC. d/b/a 154 Exxon; DOCKET NUMBER: 2012-2599-PST-E; TCEQ ID NUMBER: RN101729812; LOCATION: 16955 State Highway 154, Harleton, Harrison; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(b) and 30 TAC §334.50(b)(2), by failing to provide release detection for the suction piping associated with the UST system; PENALTY: \$3,891; STAFF ATTORNEY: Rebecca M. Combs, Litigation Division, MC 175, (512) 239-6939; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(2) COMPANY: Federico Zavala; DOCKET NUMBER: 2011-1927-LII-E; TCEQ ID NUMBER: RN106073695; LOCATION: Harris County; TYPE OF FACILITY: landscaping business; RULES VIOLATED: TWC, §37.003 and 30 TAC §30.5(b) and §344.34(a), by failing to refrain from advertising or representing himself to the public as a holder of a license or registration unless he possessed a current license or registration or employs an individual who holds a current license, and failing to refrain from using the license number of someone else who is a licensed irrigator; PENALTY: \$7,500; STAFF ATTORNEY: Elizabeth Lieberknecht, Litigation Division, MC 175, (512) 239-0620; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(3) COMPANY: Marine Quest-Hidden Cove, L.P.; DOCKET NUMBER: 2012-2478-MWD-E; TCEQ ID NUMBER: RN102094950; LOCATION: approximately 1.75 miles south of Farm-to-Market Road 720 and approximately 3.0 miles west of Farm-to-Market Road 423, Denton County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(17), §319.7(d), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0013785001, Monitoring and Reporting Requirements Number 1, by failing to submit monitoring results at the intervals specified in its TPDES Permit; PENALTY: \$17,500; STAFF ATTORNEY: Phillip M. Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: PRODUCERS COOPERATIVE ELEVATOR; DOCKET NUMBER: 2012-2698-PST-E; TCEQ ID NUMBER: RN102789062; LOCATION: Northwest corner of Farm-to-Market Road 28 and Motley Street, Dougherty, Floyd County; TYPE OF FACILITY: inactive underground storage tank (UST) system; RULES VIOLATED: TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide corrosion protection for the UST system; TWC,

§26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month, not to exceed 35 days between each monitoring; TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the pressurized piping associated with the USTs; and 30 TAC §334.10(b)(1)(B), by failing to maintain UST records and make them immediately available for review upon request by agency personnel; PENALTY: \$8,881; STAFF ATTORNEY: Phillip M. Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Lubbock Regional Office, 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7902.

(5) COMPANY: Silkot International, Inc. d/b/a Speed Trak; DOCKET NUMBER: 2012-2459-PST-E; TCEQ ID NUMBER: RN101900124; LOCATION: 2615 East Commerce Street, Tyler, Smith County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide corrosion protection for the UST system; PENALTY: \$7,500; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(6) COMPANY: Yetta Hustead dba High Five Bar & Grill; DOCKET NUMBER: 2013-0359-PWS-E; TCEQ ID NUMBER: RN101221240; LOCATION: 6484 County Road 659, Brazoria, Brazoria County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.121(a) and (b), and TCEQ DO Docket Number 2010-1633-PWS-E, Ordering Provision Number 3.c.iii., by failing to provide 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; 30 TAC §290.42(l) and TCEQ DO Docket Number 2010-1633-PWS-E, Ordering Provision Number 3.c.iv., by failing to provide a plant operations manual for operator review and reference; 30 TAC §290.41(c)(3)(K) and TCEQ DO Docket Number 2010-1633-PWS-E, Ordering Provision Number 3.c.ii., by failing to provide the well with a casing vent that has an opening that is covered with a 16-mesh or finer corrosion-resistant screen, facing downward, and that is elevated and located so as to minimize the drawing of contaminants into the well; 30 TAC §290.41(c)(1)(F) and TCEQ DO Docket Number 2010-1633-PWS-E, Ordering Provision Number 3.d.ii., by failing to obtain a sanitary control easement that covers the land within 150 feet of the facility's well; and 30 TAC §290.51(a)(6) and TWC, §5.702, by failing to pay Public Health Service fees, including late fees, for TCEQ Financial Administration Account Number 90200492 for fiscal years 2012 and 2013; PENALTY: \$3,200; STAFF ATTORNEY: Jennifer Cook, Litigation Division, MC 175, (512) 239-1873; REGIONAL OFFICE: Austin Regional Office, Post Office Box 13087, MC R-11, Austin, Texas 78711, (512) 339-2929.

TRD-201302990

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: July 23, 2013



Notice of Opportunity to Comment on Shutdown/Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Shutdown/Default Orders (S/DOs). Texas Water Code (TWC), §26.3475 authorizes the commission to order the shutdown of

any underground storage tank (UST) system found to be noncompliant with release detection, spill and overflow prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes a Shutdown Order after the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill and overflow prevention, and/or, after December 22, 1998, cathodic protection violations documented at the facility. The commission proposes a Default Order when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. In accordance with TWC, §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **September 3, 2013**. The commission will consider any written comments received and the commission may withdraw or withhold approval of an S/DO if a comment discloses facts or considerations that indicate that consent to the proposed S/DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed S/DO is not required to be published if those changes are made in response to written comments.

Copies of each of the proposed S/DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the S/DO shall be sent to the attorney designated for the S/DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on September 3, 2013**. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission attorneys are available to discuss the S/DOs and/or the comment procedure at the listed phone numbers; however, comments on the S/DOs shall be submitted to the commission in **writing**.

(1) COMPANY: Chikita Investment Group LLC d/b/a Chikita Express Store; DOCKET NUMBER: 2013-0052-PST-E; TCEQ ID NUMBER: RN101684306; LOCATION: 100 North Bicentennial Boulevard, McAllen, Hidalgo County; TYPE OF FACILITY: UST system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide corrosion protection for the UST system; TWC, §26.3475(a) and (c)(1), and 30 TAC §334.59(b)(1)(A) and (2), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and failing to provide release detection for the pressurized piping associated with the UST system; and 30 TAC §334.10(b)(1)(B), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: \$8,881; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(2) COMPANY: Chottani LLC d/b/a Express Stop 2; DOCKET NUMBER: 2012-2594-PST-E; TCEQ ID NUMBER: RN101764751; LOCATION: 1204 West Gentry Parkway, Tyler, Smith County; TYPE OF FACILITY: UST system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases

at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$7,500; STAFF ATTORNEY: Phillip M. Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(3) COMPANY: HEART VENTURES, L.L.C. d/b/a Hearts Delight Travel Center; DOCKET NUMBER: 2013-0084-PST-E; TCEQ ID NUMBER: RN104514385; LOCATION: 112 North United States Highway 281, Falfurrias, Brooks County; TYPE OF FACILITY: UST system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for release at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$7,500; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(4) COMPANY: SIRAJ MINARA, INC. d/b/a Grocery Plus; DOCKET NUMBER: 2012-2236-PST-E; TCEQ ID NUMBER: RN101878908; LOCATION: 2455 Texas Avenue, Bridge City, Orange County; TYPE OF FACILITY: UST system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$3,750; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(5) COMPANY: William Burkett d/b/a New Way; DOCKET NUMBER: 2012-1907-PST-E; TCEQ ID NUMBER: RN102345097; LOCATION: 4306 West Marshall Avenue, Longview, Gregg County; TYPE OF FACILITY: UST system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(a) and (c)(1), and 30 TAC §334.50(b)(1)(A) and (2), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), and by failing to provide proper release detection for the product piping associated with the UST system; PENALTY: \$4,629; STAFF ATTORNEY: David A. Terry, Litigation Division, MC 175, (512) 239-0619; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

TRD-201302991

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: July 23, 2013



Notice of Water Quality Applications

The following notices were issued on July 12, 2013 through July 19, 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

SOUTH CENTRAL WATER COMPANY has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES)

Permit No. WQ0015078001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 300,000 gallons per day. The facility will be located approximately 8116 feet south of the intersection of US 180 and Farm-to-Market Road 611 in Fisher County, Texas 79556.

CITY OF GUNTER has applied for a renewal of TPDES Permit No. WQ0010569001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 240,000 gallons per day. The facility is located adjacent to the St. Louis-San Francisco and Texas Railway, approximately 2,300 feet west of State Highway 289 and approximately 1,400 feet north of Farm-to-Market Road 121 in the City of Gunter in Grayson County, Texas 75058.

UTILITIES INVESTMENTS COMPANY INC has applied for a renewal of TPDES Permit No. WQ0012251001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 51,000 gallons per day. The facility is located at 12107 Crosby Lane, Huffman, approximately 2,000 feet northwest of the intersection of Farm-to-Market Road 1960 with Farm-to-Market Road 2100, immediately west of the community of Huffman in Harris County, Texas 77336.

UTILITIES INVESTMENT COMPANY INC has applied for a renewal of TPDES Permit No. WQ0012863001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The facility is located at 209 Courtland Court, Highlands, approximately 1,000 feet northeast of the intersection of Crosby-Lynchburg Road and Fig Orchard Road, and 3 1/4 miles south of the intersection of Farm-to-Market Road 2100 and Farm-to-Market Road 1942 in Harris County, Texas 77562.

THE MIDDLESTEADT SHOPPING CENTER LP has applied for a renewal of TPDES Permit No. WQ0013569001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 1,500 gallons per day. The facility is located at 14919 Stuebner-Airline Road, on the northwest corner of Stuebner-Airline Road and Mittlestedt Road, between Farm-to-Market Road 1960 and Cypress Road, Houston, in Harris County, Texas 77069.

SOUTHWEST MILAM WATER SUPPLY CORPORATION has applied for a renewal of TPDES Permit No. WQ0014110001, which authorizes the discharge of treated filter backwash effluent from a water treatment plant at a daily average flow not to exceed 31,000 gallons per day. The facility is located at 4584 Farm-to-Market Road 908 South, Rockdale in Milam County, Texas 76567.

AQUA WATER SUPPLY CORPORATION has applied for a major amendment to TPDES Permit No. WQ0014225001 to authorize the removal of the second sludge holding pond from the treatment process. The current permit authorizes the discharge of treated filter backwash effluent at a daily average flow not to exceed 27,000 gallons per day. The facility is located on State Highway 95, approximately 2.8 miles south of the U.S. Highway 290 and State Highway 95 intersection in the City of Elgin, in Bastrop County, Texas 78621.

BRAZORIA COUNTY MUNICIPAL UTILITY DISTRICT NO. 29 has applied for a renewal of TPDES Permit No. 14253-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 450,000 gallons per day. The facility is located approximately 1,200 feet southwest of the intersection of County Road 405 and State Highway 288 in Brazoria County, Texas.

CINCO SOUTHWEST MUNICIPAL UTILITY DISTRICT NO 1 has applied for a renewal of TPDES Permit No. WQ0014343001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,250,000 gallons per day. The facility is located at 9417 1/2 South Fry Road, approximately 500 feet east and

3,250 feet north of the intersection of South Fry Road and Farm-to-Market Road 723 in Fort Bend County, Texas 77494.

BRAZORIA COUNTY MUNICIPAL UTILITY DISTRICT NO 30 has applied for a renewal of TPDES Permit No. WQ0014461001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. The facility will be located along the north side of State Highway 6, approximately 3,500 feet east of the intersection of State Highway 288 and State Highway 6 in Brazoria County, Texas 77578.

SOUTH CENTRAL WATER COMPANY has applied for a renewal of TPDES Permit No. WQ0014592001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 320,000 gallons per day. The facility will be located approximately 1,560 feet southeast of the intersection of Lone Star and Farm-to-Market Road 1774, and approximately 840 feet south of the intersection of Farm-to-Market Road 149 and Farm-to-Market Road 1774 in Montgomery County, Texas 77354.

STRIPES LLC has applied for a renewal of TPDES Permit No. WQ0014932001 with a change to decrease the discharge of treated domestic wastewater from a daily average flow not to exceed 5,000 gallons per day to a daily average flow not to exceed 3,500 gallons per day. The facility will be located at 1801 West Mount Houston Road, northwest of the intersection of West Mount Houston Road (State Highway 249) and Veterans Memorial Drive, Houston in Harris County, Texas 77038.

ROLLING V RANCH WATER CONTROL AND IMPROVEMENT DISTRICT NO 1 of Wise County has applied for a renewal of TPDES Permit No. WQ0014977001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 250,000 gallons per day. The facility will be located approximately 9,500 feet south and 1,850 feet east of the intersection of US 287, Texas 114 and Farm-to-Market-Road 3433 near the City of Rhome in Wise County, Texas 76078.

If you need more information about these permit applications or the permitting process, please call the TCEQ Public Education Program, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.tceq.texas.gov. Si desea información en español, puede llamar al 1-800-687-4040.

TRD-201302999

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 24, 2013



Request for Nominations for the Tax Relief for Pollution Control Property Advisory Committee

In 1993, Texans voted in favor of a ballot initiative listed as Proposition 2, amending the Texas Constitution to authorize the Texas Legislature to exempt from *ad valorem* taxation "all or part of real and personal property used, constructed, acquired, or installed wholly or partly to meet or exceed rules or regulations adopted by an environmental protection agency of the United States, this state, or a political subdivision of this state for the prevention, monitoring, control, or reduction of air, water, or land pollution." The legislature implemented Proposition 2 by enacting Texas Tax Code, §11.31. The Texas Commission on Environmental Quality (TCEQ) adopted 30 TAC Chapter 17, establishing the procedures for obtaining a "positive use determination" under the program. The goal of the program is to provide tax relief to individuals, companies, and political subdivisions that make capital investments to

meet or exceed federal, state, or local environmental rules or regulations.

The TCEQ is currently accepting applications for potential Tax Relief for Pollution Control Property Advisory Committee members to advise the commission on matters related to property tax exemptions for pollution control property from the following affiliations: three industry representatives; two appraisal district representatives; one taxing unit representative; and one person who does not represent industry, appraisal districts, taxing units, environmental groups, or school districts but who has substantial technical expertise in pollution control technology and environmental engineering.

Applications for the advisory committee positions can be found on the TCEQ website at:

http://www.tceq.texas.gov/airquality/taxrelief/advisory_group.html

To apply, complete the nomination form and submit to the TCEQ by 5:00 p.m. CST on September 3, 2013 by e-mail to txrelief@tceq.texas.gov or mail to TCEQ, Tax Relief Program, MC-110, P.O. Box 13087, Austin, Texas 78711-3087. Applications postmarked after that date will only be considered if there are insufficient qualified individuals in specific groups. You can nominate yourself or another person, but the TCEQ asks that only interested persons be nominated.

Questions regarding the advisory committee application process can be directed by phone to Ron Hatlett at (512) 239-6348 or by e-mail to txrelief@tceq.texas.gov.

TRD-201302987

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: July 23, 2013



Texas Ethics Commission

List of Late Filers

Listed below are the names of filers from the Texas Ethics Commission who did not file a report or failed to pay the penalty fine for the late report in reference to the listed filing deadline. If you have any questions, you may contact Robbie Douglas at (512) 463-5780.

Deadline: Personal Financial Statement due August 11, 2011

Christopher Gilbert, 1629 W. Alabama St., Houston, Texas 77006

Deadline: Personal Financial Statement due January 22, 2013

Susan Delgado, 2284 Jean St., Houston, Texas 77023

TRD-201303001

David A. Reisman

Executive Director

Texas Ethics Commission

Filed: July 24, 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 24, 2013. The public comment period for this project will close at 5:00 p.m. on August 23, 2013.

FEDERAL AGENCY ACTIONS:

Applicant: Jefferson County Drainage District No. 6; Location: The project is located in North Prong Mud Bayou, Barnes Bayou, two unnamed bayous, and the Gulf Intracoastal Waterway (GIWW), near High Island, in Jefferson and Chambers Counties, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Mud Lake and Whites Ranch, Texas. Latitude: 29.629922; Longitude -94.314390 West. Project Description: The applicant will impact 16.39 acres of waters of the U.S., of which 15.43 acres are open water, 0.47 acre is coastal marsh, and 0.49 acre is unvegetated flats, with this proposed project. The applicant will impact these waters of the U.S. with 5.94 acres of excavation activities and 10.45 acres of fill activities. The applicant proposes to relocate the four existing outfalls from their current upstream location downstream to near the confluence of the bayous and the GIWW to reduce sedimentation within the canals and reduce current and future maintenance dredging. The applicant will place riprap along the banks downstream of the constructed outfalls and along the shoreline of the GIWW below the mean high tide line. The applicant proposes to reconstruct the existing canals by using the previously created dredged material levees as fill material to reduce the existing canal width from 80 to 120 feet wide to the newly proposed 50 feet wide and to create the new levees needed with the reduced canal. The newly formed canals will also be dredged to a depth of 4 feet deep. The areas that are currently upland levees will be restored to prior contours and elevations consistent with the adjacent coastal wetlands and will be planted with native coastal marsh species. The outfall structures consist of vinyl sheet and timber pilings, aluminum box culverts, aluminum flap gates, and access roads over the constructed structures. CMP Project No.: 13-1276-F1. 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).

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@glo.texas.gov. Comments should be sent to Ms. Land at the above address or by email.

TRD-201303010
Larry L. Laine
Chief Clerk/Deputy Land Commissioner
General Land Office
Filed: July 24, 2013



Texas Health and Human Services Commission

Public Notice

The Texas Health and Human Services Commission (HHSC) announces its intent to submit an amendment to the Texas State Plan for Medical Assistance under Title XIX of the Social Security Act. The proposed amendment is effective September 1, 2013.

The purpose of this amendment is to update the fee schedules in the current state plan by adjusting fees for the following existing services:

Ambulance;

Chemical Dependency Treatment Facilities;

Physicians and Other Practitioners; Early and Periodic Screening, Diagnostic, and Treatment; and

Physical, Occupational, and Speech Therapy provided by Comprehensive Outpatient Rehabilitation Facilities/Outpatient Rehabilitation Facilities (CORF/ORF), Home Health Agencies (HHA), and Independent Therapists.

These rate actions are being taken to comply with applicable adjustments in response to direction from the Texas Legislature as set out in the 2012-2013 General Appropriations Act (House Bill 1, Article II, 82nd Texas Legislature, Regular Session, 2011) and the 2014-2015 General Appropriations Act (Senate Bill 1, Article II, 83rd Legislature, Regular Session, 2013), effective September 1, 2013, including adjustments described in Rider 51 of the health and human services portion of article II. All of the proposed adjustments are being made in accordance with 1 TAC §355.201.

The proposed amendment is estimated to result in an annual savings of \$4,824,823 for federal fiscal year (FFY) 2013, consisting of \$2,861,120 in federal funds and \$1,963,703 in state general revenue. For FFY 2014, the estimated annual saving is \$68,512,104, consisting of \$40,209,754 in federal funds and \$28,302,350 in state general revenue. For FFY 2015, the estimated annual saving is \$71,832,896, consisting of \$41,778,012 in federal funds and \$30,054,884 in state general revenue.

To obtain copies of the proposed amendment or to submit written comments, interested parties may contact Dan Huggins, Director of Rate Analysis for Acute Care Services, by mail at the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 149030, Austin, Texas 78714-9030; by telephone at (512) 707-6071; by facsimile at (512) 730-7475; or by e-mail at dan.huggins@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-201302942

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Filed: July 18, 2013



Public Notice

The Texas Health and Human Services Commission (HHSC) announces its intent to submit an amendment to the Texas State Plan for Medical Assistance under Title XIX of the Social Security Act. The proposed amendment is effective September 1, 2013.

The purpose of this amendment is to update the fee schedules in the current state plan for Family Planning Services, an existing service.

These rate actions are being taken to comply with §355.8085, Reimbursement Methodology for Physicians and Other Practitioners; and §355.8581, Reimbursement Methodology for Family Planning Services, under Title 1, Part 15, Chapter 355, Subchapter J, Division 5 of the Texas Administrative Code, which together require HHSC to review fees for individual services at least once every two years. After performing the required review, HHSC has determined that amendments to the fee schedule are appropriate.

The proposed amendment is estimated to result in an additional annual cost of \$299,198 for federal fiscal year (FFY) 2014, consisting of \$269,278 in federal funds and \$29,920 in state general revenue. For FFY 2015, the estimated annual cost is \$3,751,903, consisting of \$3,376,713 in federal funds and \$375,190 in state general revenue. For FFY 2016, the estimated annual cost is \$3,902,663, consisting of \$3,512,397 in federal funds and \$390,266 in state general revenue.

To obtain copies of the proposed amendment or to submit written comments, interested parties may contact Dan Huggins, Director of Rate Analysis for Acute Care Services, by mail at the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 149030, H-400, Austin, Texas 78714-9030; by telephone at (512) 707-6071; by facsimile at (512) 730-7475; or by e-mail at dan.huggins@hhsc.state.tx.us. Copies of the proposal also will be made available for public review at the local offices of the Department of Aging and Disability Services.

TRD-201302947

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Filed: July 18, 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 Youth Empowerment Services (YES) waiver program, under the authority of §1915(c) of the Social Security Act. The Youth Empowerment Services waiver program is currently approved for the five-year period beginning April 1, 2013, and ending March 31, 2018. The proposed effective date for the amendment is September 1, 2013.

The Youth Empowerment Services waiver program is designed to provide community-based services to children with serious emotional disturbances and their families, with a goal of reducing or preventing children's inpatient psychiatric treatment and the consequent removal from their families. At any given time, the waiver can serve up to 400 youth who are at least age three but under age 19 and who are predicted to remain in the waiver for 12 months. The waiver is limited to individuals residing in Bexar, Tarrant, and Travis counties.

The purpose of this amendment is to add supported employment and employment assistance as available services in the waiver; update the service definition for paraprofessional services; and change the name of professional services to specialized therapies. In addition, Texas is adopting a nationally recognized assessment tool, the Child and Adolescent Needs and Strengths (CANS) tool. The Texas Health and Human Services Commission is requesting the waiver amendment be approved for the period beginning September 1, 2013 through March 31, 2018. This amendment maintains cost neutrality for waiver years 2013 through 2018.

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

78711-3247, phone (512) 462-6289, fax (512) 730-7472 or by email at TX_Medicaid_Waivers@hhsc.state.tx.us.

TRD-201303006

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Filed: July 24, 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 17, 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) issued an order to temporarily schedule the following substances:

1. (1-pentyl-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone (Other names: UR-144 and 1-pentyl-3-(2,2,3,3-tetramethylcyclopropyl)indole);
2. [1-(5-fluoro-pentyl)-1H-indol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone (Other names: 5-fluoro-UR-144 and 5-F-UR-144 and XLR11 and 1-(5-fluoro-pentyl)-3-(2,2,3,3-tetramethylcyclopropyl)indole); and
3. N-(1-adamantyl)-1-pentyl-1H-indazole-3-carboxamide (Other names: APINACA and AKB48) including salts, isomers and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible, as Schedule I controlled substances in the federal schedules of controlled substances under the authority of the United States Controlled Substances Act (USCSA) effective May 16, 2013. This final order was published in the *Federal Register*, Volume 78, Number 95, pages 28735 - 28738. The Administrator of the DEA has taken this action based on findings that the placement of these synthetic cannabinoids and their salts, isomers and salts of isomers is necessary to avoid an imminent hazard to the public safety.

Pursuant to Section 481.034(g) 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*. In the capacity as Commissioner of the Department of State Health Services, David L. Lakey, M. D. hereby orders:

1. (1-pentyl-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone (Other names: UR-144 and 1-pentyl-3-(2,2,3,3-tetramethylcyclopropyl)indole);
2. [1-(5-fluoro-pentyl)-1H-indol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone (Other names: 5-fluoro-UR-144 and 5-F-UR-144 and XLR11 and 1-(5-fluoro-pentyl)-3-(2,2,3,3-tetramethylcyclopropyl)indole); and
3. N-(1-adamantyl)-1-pentyl-1H-indazole-3-carboxamide (Other names: APINACA and AKB48) including salts, isomers and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible be placed into Schedule I temporarily scheduled substances.

SCHEDULE I

Schedule I consists of:

Schedule I opiates

Schedule I opium derivatives

Schedule I hallucinogenic substances

Schedule I stimulants

Schedule I depressants

Schedule I Cannabimimetic agents

Schedule I temporarily listed substances

*Unless specifically excepted or unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following substances or that contains any of the substance's salts, isomers, and salts of isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation.

*1. (1-pentyl-1*H*-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone (Other names: UR-144 and 1-pentyl-3-(2,2,3,3-tetramethylcyclopropyl)indole);

*2. [1-(5-fluoro-pentyl)-1*H*-indol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone (Other names: 5-fluoro-UR-144 and 5-F-UR-144 and XLR11 and 1-(5-flouro-pentyl)-3-(2,2,3,3-tetramethylcyclopropyl)indole); and

*3. N-(1-adamantyl)-1-pentyl-1*H*-indazole-3-carboxamide (Other names: APINACA, AKB48).

Changes to the schedules are designated by a single asterisk (*)

TRD-201302954

Lisa Hernandez

General Counsel

Department of State Health Services

Filed: July 19, 2013



Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
College Station	Texas A&M University	L06561	College Station	00	07/03/13
Houston	Qualitek, L.L.C.	L06564	Houston	00	07/12/13
Lufkin	Vivek Mangla, M.D.	L06562	Lufkin	00	07/09/13
Nacogdoches	GeoInstruments, Inc.	L06563	Nacogdoches	00	07/12/13
Throughout TX	Pioneer Inspection Services, Inc.	L06553	Baytown	00	07/10/13

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Austin	Austin Radiological Association	L00545	Austin	173	07/08/13
Austin	St. David's Healthcare Partnership, L.P., L.L.P. dba St. David's Medical Center	L00740	Austin	118	07/03/13
Austin	Texas Oncology	L06206	Austin	09	07/10/13
Bay City	Matagorda County Hospital District dba Matagorda Regional Medical Center	L02701	Bay City	18	07/10/13
Bay City	Bay City Cardiology Clinic	L05975	Bay City	06	07/10/13
Bellaire	Texas Nuclear Imaging, Inc. dba Excel Diagnostics Imaging Clinic Medical Center	L05009	Bellaire	44	07/15/13
Corpus Christi	Christus Health System dba Christus Spohn Hospital Corpus Christi Memorial	L00265	Corpus Christi	99	07/03/13
Dallas	University of Texas Southwestern Medical Center at Dallas	L05947	Dallas	26	07/01/13
Denton	Texas Woman's University	L00304	Denton	64	07/08/13
Denton	Numed, Inc.	L02129	Denton	62	07/16/13
Fort Worth	Texas Health Care, P.L.L.C.	L06210	Fort Worth	01	07/08/13
Frisco	Forest Park Medical Center at Frisco, L.L.C. dba Forest Park Medical Center Frisco	L06534	Frisco	01	07/09/13
Houston	The Methodist Hospital	L00457	Houston	186	07/09/13
Houston	The Methodist Hospital	L00457	Houston	187	07/15/13
Houston	St. Luke's Episcopal Health System Corporation dba St. Luke's Episcopal Health System and Texas Heart Institute	L00581	Houston	101	07/03/13
Houston	Baylor College of Medicine	L00680	Houston	110	07/11/13
Houston	Texas Childrens Hospital	L04612	Houston	59	07/03/13
Houston	South Texas Nuclear Pharmacy	L05304	Houston	12	07/01/13
Houston	Houston Cyclotron Partners, L.P. dba Cyclotope	L05585	Houston	22	07/09/13
Houston	Houston Cyclotron Partners, L.P. dba Cyclotope	L05585	Houston	23	07/16/13
Houston	NIS Holdings, Inc. dba Nuclear Imaging Services	L05775	Houston	89	07/11/13
La Porte	J. V. Industrial Company, Ltd.	L05785	La Porte	10	07/09/13
Lubbock	ISORX Texas, Ltd.	L05284	Lubbock	27	07/10/13
Marshall	Harrison County Hospital Association dba Good Shepherd Medical Center - Marshall	L02572	Marshall	33	07/11/13
Midland	West Texas Nuclear Pharmacy Partners	L04573	Midland	22	07/03/13
Muenster	Muenster Hospital District dba Muenster Memorial Hospital	L04887	Muenster	15	07/09/13

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amendment #	Date of Action
Odessa	Suresh N. Gadasalli, M.D., P.A. dba The Healthy Heart Center	L05156	Odessa	15	07/01/13
Paris	Radiology Center of Paris, Ltd.	L05445	Paris	19	07/03/13
Plainview	Methodist Hospital Plainview dba Covenant Hospital Plainview	L02493	Plainview	33	07/01/13
Plano	Baylor Regional Medical Center of Plano	L05844	Plano	13	07/01/13
San Angelo	San Angelo Hospital, L.P. dba San Angelo Community Medical Center	L02487	San Angelo	52	07/01/13
San Angelo	Regional Employee Assistance Program dba Community Medical Associates	L06172	San Angelo	06	07/01/13
San Antonio	Trinity University Department of Biology	L01668	San Antonio	49	07/15/13
San Antonio	Trinity University Department of Biology	L01668	San Antonio	50	07/16/13
San Antonio	South Texas Cardiovascular Consultants, P.L.L.C.	L03833	San Antonio	37	07/08/13
San Antonio	Cancer Care Network of South Texas, P.A. dba Cancer Care Centers of South Texas	L06449	San Antonio	02	07/03/13
Temple	Scott and White Memorial Hospital and Scott Sherwood and Brindley Foundation dba Scott and White Memorial Hospital	L00331	Temple	93	07/10/13
Throughout TX	Hunter Well Science, Inc.	L06413	Arlington	03	07/15/13
Throughout TX	Professional Service Industries	L04947	Austin	22	07/01/13
Throughout TX	Ranger Excavating, L.P.	L06314	Austin	04	07/12/13
Throughout TX	Weatherford International, L.L.C.	L00747	Benbrook	91	07/11/13
Throughout TX	Rone Engineering Services, Ltd.	L02356	Dallas	41	07/11/13
Throughout TX	The University of Texas at El Paso Radiation Safety Office	L00159	El Paso	72	07/08/13
Throughout TX	AMEC Environment & Infrastructure, Inc.	L03622	El Paso	29	07/12/13
Throughout TX	H & H X-Ray Services, Inc.	L02516	Flint	88	07/16/13
Throughout TX	METCO	L03018	Houston	216	07/12/13
Throughout TX	Kleinfelder Central, Inc.	L01351	Irving	81	07/03/13
Throughout TX	Kleinfelder Central, Inc.	L01351	Irving	82	07/12/13
Throughout TX	Weld Spec, Inc.	L05426	Lumberton	96	07/10/13
Throughout TX	Professional Service Industries, Inc.	L03642	Spring	29	07/03/13
Tomball	Northwest Houston Heart Center	L05958	Tomball	15	02/15/13
Tomball	Tomball Texas Hospital Company, L.L.C. dba Tomball Regional Medical Center	L06472	Tomball	05	07/01/13
Weatherford	Medical and Heart Center, P.A.	L05573	Weatherford	06	07/10/13

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Pasadena	Pasadena Refining System, Inc.	L01344	Pasadena	34	07/02/13

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Abilene	MDI of Abilene	L06133	Abilene	02	07/09/13
Denton	Rocky Mountain Medical Center, L.P. dba North Texas Hospital	L05936	Denton	05	07/03/13
Fort Worth	Naresh H. Patel, M.D., P.A. dba Texas Cardiology Clinic	L05520	Fort Worth	10	07/08/13
La Porte	Qisi, Inc. dba Quality Inspection Services	L06219	La Porte	12	07/10/13

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of 25 Texas Administrative Code (TAC) Chapter 289 regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, Radiation Material Licensing - Mail Code 2835, P.O. Box 149347, Austin, Texas 78714-9347. For information call (512) 834-6688.

TRD-201302953
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: July 19, 2013

Texas Department of Housing and Community Affairs
Asset Management Division
Attention: Misael Arroyo
Mailing Address:
P.O. Box 13941
Austin, Texas 78711-3941
Physical Address for Overnight Carriers:
221 East 11th Street
Austin, Texas 78701-2410
(512) 475-2596
TRD-201303013
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Filed: July 24, 2013

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Texas Department of Housing and Community Affairs

Extension of Application Deadline for and Modification of the 2013 Notice of Funding Availability for the Redevelopment of a Site Located in Dickinson, Texas

SUMMARY. The Texas Department of Housing and Community Affairs (the "Department") announces the extension of the application deadline for the Redevelopment Notice of Funding Availability for new construction of affordable multifamily rental housing for low-income households in the City of Dickinson in Galveston County. The site is located at 3914 Wagon Road, Dickinson, Texas 77539 and consists of approximately 2.02 acres. Applications are requested in accordance with the guidelines stated in the Notice of Funding Availability (the "NOFA") for the redevelopment of at minimum 34 affordable rental units that will be encumbered by a HOME Land Use Restriction Agreement (the "HOME LURA"). The Application Deadline has been extended, and the NOFA has been modified and amended to remove the threshold requirement for Applicants with previous HOME Program experience to a scoring item.

POSTING DATE AND DEADLINE FOR SUBMISSION. The NOFA was posted on TUESDAY, JUNE 18, 2013. The deadline for application submission in response to the NOFA has been extended to **5:00 p.m., Central Daylight Saving Time, WEDNESDAY, AUGUST 28, 2013.** No submittal received after the deadline will be considered. No incomplete, unsigned, or late qualification summaries will be accepted after the deadline, unless the Department determines, in its sole discretion that it is in the best interest of the Department to do so.

Individuals or firms interested in submitting an application should visit our website at: <http://www.tdhca.state.tx.us/> under the "What's New" section or visit <http://esbd.cpa.state.tx.us/>, for a complete copy of the NOFA. Throughout the application round, all questions relating to this NOFA must be submitted to the Department in writing to Colton Sanders (colton.sanders@tdhca.state.tx.us).

PLACE AND METHOD OF QUALIFICATION DELIVERY.

Applications shall be delivered to:

◆ ◆ ◆

Texas Department of Licensing and Regulation

Vacancies on Air Conditioning and Refrigeration Contractors Advisory Board

The Texas Department of Licensing and Regulation (Department) announces two vacancies on the Air Conditioning and Refrigeration Contractors Advisory Board (Board) established by Texas Occupations Code, Chapter 1302, Subchapter E. The pertinent rule may be found in 16 TAC §75.65. The purpose of the Air Conditioning and Refrigeration Contractors Advisory Board is to advise the Texas Commission of Licensing and Regulation (Commission) in adopting rules, administering and enforcing this chapter, and setting fees.

The Board is composed of nine members appointed by the presiding officer of the Commission, with the Commission's approval. The Board consists of one official of a municipality with a population of more than 250,000; one official of a municipality with a population of not more than 250,000; five full-time licensed air conditioning and refrigeration contractors, as follows: one member who holds a Class A license and practices in a municipality with a population of more than 250,000; one member who holds a Class B license and practices in a municipality with a population of more than 250,000; one member who holds a Class A license and practices in a municipality with a population of more than 25,000 but not more than 250,000; one member who holds a Class B license and practices in a municipality with a population of

not more than 25,000; one member who holds a license of any classification under this chapter, is principally engaged in air conditioning and refrigeration contracting, and practices in a municipality; one must be a building contractor who is principally engaged in home construction and is a member of a statewide building trade association; and one public member. At least one appointed Board member must be an air conditioning and refrigeration contractor who employs organized labor. The executive director and the chief administrator of this chapter serve as ex officio, nonvoting members of the Board. Members serve staggered six-year terms. The terms of two appointed members expire on February 1 of each odd-numbered year.

This announcement is for (1) a member who holds a license of any classification under this chapter, is principally engaged in air conditioning and refrigeration contracting, and practices in a municipality; and (2) a building contractor who is principally engaged in home construction and is a member of a statewide building trade association.

Interested persons should submit an application on the Department website at: <https://www.tdlr.texas.gov/AdvisoryBoard/login.aspx>. Applicants can also request an application from the Department by telephone at (800) 803-9202, fax at (512) 475-2874 or email to advisory.boards@tdlr.texas.gov.

Applicants may be asked to appear for an interview; however, any required travel for an interview would be at the applicant's expense.

TRD-201303008

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Filed: July 24, 2013



Vacancies on Electrical Safety and Licensing Advisory Board

The Texas Department of Licensing and Regulation (Department) announces two vacancies on the Electrical Safety and Licensing Advisory Board (Board) established by Texas Occupations Code, Chapter 1305. The pertinent rule may be found in 16 TAC §73.65. The purpose of the Electrical Safety and Licensing Advisory Board is to provide advice and recommendations to the Texas Commission of Licensing and Regulation (Commission) on technical matters relevant to the administration and enforcement of this chapter, including examination content, licensing standards, electrical code requirements, and continuing education requirements.

The Board is composed of nine members appointed by the presiding officer of the Commission, with the Commission's approval. The Board consists of three master electrician members, three journeyman electrician members, and three public members. Members serve staggered six-year terms. This announcement is for the positions of (1) a journeyman electrician and (2) a public member who is a building contractor principally engaged in home construction and is a member of a statewide building trade association.

Interested persons should submit an application on the Department website at: <https://www.tdlr.texas.gov/AdvisoryBoard/login.aspx>. Applicants can also request an application from the Department by telephone at (800) 803-9202, fax at (512) 475-2874 or email to advisory.boards@tdlr.texas.gov.

Applicants may be asked to appear for an interview; however, any required travel for an interview would be at the applicant's expense.

TRD-201303009

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Filed: July 24, 2013



Vacancy on Architectural Barriers Advisory Committee

The Texas Department of Licensing and Regulation (Department) announces a vacancy on the Architectural Barriers Advisory Committee (Committee) established by Texas Government Code, Chapter 469. The pertinent rule may be found in 16 TAC §68.65. The purpose of the Architectural Barriers Advisory Committee is to advise the Texas Commission of Licensing and Regulation (Commission) in adopting rules.

The Committee is composed of nine members appointed by the presiding officer of the Commission, with the Commission's approval. The Committee consists of building professionals and persons with disabilities who are familiar with architectural barrier problems and solutions. Members serve at the will of the Commission. This announcement is for the position of a person with a disability who is familiar with architectural barrier problems and solutions.

Interested persons should submit an application on the Department website at: <https://www.tdlr.texas.gov/AdvisoryBoard/login.aspx>. Applicants can also request an application from the Department by telephone at (800) 803-9202, fax at (512) 475 2874, or email to advisory.boards@tdlr.texas.gov.

Applicants may be asked to appear for an interview; however, any required travel for an interview would be at the applicant's expense.

TRD-201303007

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Filed: July 24, 2013



Lone Star Rail District

Notice of Request for Qualifications

Lone Star Rail District (Rail District) seeks responses from qualified firms to provide the Rail District with **engineering, environmental, and planning services** for its EIS program.

The Request for Qualifications (RFQ) is available on the Rail District website: www.LoneStarRail.com.

Responses to the RFQ must be received by the Rail District no later than **2:00 p.m. CDT, August 21, 2013**, to be considered.

TRD-201302993

Ross Milloy

Executive Director

Lone Star Rail District

Filed: July 23, 2013



Texas Lottery Commission

Instant Game Number 1554 "Weekly Half Grand"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1554 is "WEEKLY HALF GRAND". The play style is "match 3 of X".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1554 shall be \$1.00 per Ticket.

1.2 Definitions in Instant Game No. 1554.

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: \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$100, \$500 and HGRND SYMBOL.

D. Play Symbol Caption - the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1554 - 1.2D

PLAY SYMBOL	CAPTION
\$1.00	ONE\$
\$2.00	TWO\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$50.00	FIFTY
\$100	ONE HUND
\$500	FIV HUN
HGRND SYMBOL	WEEK

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, \$4.00, \$5.00, \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$50.00, \$100 or \$500.

H. High-Tier Prize - A top prize of \$500/wk (\$500 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 (1554), 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: 1554-0000001-001.

K. Pack - A Pack of "WEEKLY HALF GRAND" Instant Game Tickets contains 150 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Ticket 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. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "WEEKLY HALF GRAND" Instant Game No. 1554 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 "WEEKLY HALF GRAND" Instant Game is determined once the latex on the Ticket is scratched off to expose 6 (six) Play Symbols. If a player reveals 3 matching prize amounts, the player wins that amount. If a player reveals 3 "HGRND" Play Symbols, the player wins \$500 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 6 (six) 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 6 (six) 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 6 (six) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 6 (six) 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 one (1) time.

D. No Ticket will contain two (2) sets of three (3) identical Prize Symbols.

E. No Ticket will contain four (4) or more identical Prize Symbols.

F. No Ticket will contain more than three (3) "HGRND" Play Symbols.

G. Wins using the "HGRND" Play Symbol will only appear as dictated by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "WEEKLY HALF GRAND" Instant Game prize of \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$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, in some cases, 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 "WEEKLY HALF GRAND" top level prize of \$500 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.

C. When claiming a "WEEKLY HALF GRAND" Instant Game prize of \$500 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 \$500 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 \$2,326 less Federal withholding will be made the month of the claim. Each additional month, a payment of \$2,166 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 \$6,500 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 \$26,000 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.

D. As an alternative method of claiming a "WEEKLY HALF GRAND" Instant Game prize of \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$100 or \$500, 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.

E. 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.

F. 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 "WEEKLY HALF 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 "WEEKLY HALF 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 personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Tickets ordered. The number of actual prizes available in a game may vary based on number of Tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game Ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game Ticket in the space designated, a Ticket shall be owned by the physical possessor of said Ticket. When a signature is placed on the back of the Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Ticket in the space designated. If more than one name appears on the back of the Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game Tickets and shall not be required to pay on a lost or stolen Instant Game Ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 30,240,000 Tickets in the Instant Game No. 1554. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1554 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$1	3,628,800	8.33
\$2	1,646,400	18.37
\$4	604,800	50.00
\$5	470,400	64.29
\$10	168,000	180.00
\$20	67,200	450.00
\$50	7,224	4,186.05
\$100	5,880	5,142.86
\$500	1,260	24,000.00
\$500/WK	4	7,560,000.00

*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 4.58. 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. 1554 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. 1554, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201302956
 Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: July 19, 2013



Instant Game Number 1555 "Weekly Grand"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1555 is "WEEKLY GRAND". The play style is "multiple games".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1555 shall be \$2.00 per Ticket.

1.2 Definitions in Instant Game No. 1555.

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: \$2.00, \$4.00, \$5.00, \$10.00, \$40.00, \$100, \$300, GRAND SYMBOL, STACK OF CASH SYMBOL, WATCH SYMBOL, PIGGY BANK SYMBOL, HORSESHOE SYMBOL, POT OF GOLD SYMBOL, SAFE SYMBOL, 01, 02, 03, 04, 05, 06, 07 and 08.

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. 1555 - 1.2D

PLAY SYMBOL	CAPTION
\$2.00	TWOS
\$4.00	FOURS
\$5.00	FIVES
\$10.00	TEN\$
\$40.00	FORTY
\$100	ONE HUND
\$300	THR HUN
GRAND SYMBOL	WEEK
STACK OF CASH SYMBOL	CASH
WATCH SYMBOL	WATCH
PIGGY BANK SYMBOL	PGYBNK
HORSESHOE SYMBOL	HRSH
POT OF GOLD SYMBOL	POTGLD
SAFE SYMBOL	SAFE
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. There will be a four (4) digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$2.00, \$4.00, \$5.00, \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$40.00 or \$300.

H. High-Tier Prize - A prize of \$1,000/wk (\$1,000 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 (1555), 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: 1555-000001-001.

K. Pack - A Pack of "WEEKLY GRAND" Instant Game Tickets contains 125 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One Ticket will be folded over to expose a front

and back of one Ticket on each Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "WEEKLY GRAND" Instant Game No. 1555 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 "WEEKLY GRAND" Instant Game is determined once the latex on the Ticket is scratched off to expose 15 (fifteen) Play Symbols. GAME 1: If a player reveals 3 matching prize amounts, the player wins that amount. If a player reveals 3 "GRAND" Play Symbols, the player wins \$1,000 per week for 20 years. GAME 2: If a player matches 2 out of 3 Play Symbols, the player wins \$20 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 a player wins a "GRAND" Play Symbol, the player wins \$1,000 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 15 (fifteen) 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 15 (fifteen) 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 15 (fifteen) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 15 (fifteen) 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 four (4) 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: No game will contain two (2) sets of three (3) matching Prize Symbols.

H. GAME 1: No Ticket will contain more than three (3) "GRAND" Play Symbols.

I. GAME 1: Wins using the "GRAND" Play Symbol will only appear as dictated by the prize structure.

J. GAME 2: There will never be more than two (2) matching Play Symbols in a game.

K. GAME 2: You can win up to one (1) time in this play area and wins will only appear as per the prize structure.

L. GAME 3: You can win up to two (2) times in this play area and wins will only appear as per the prize structure.

M. GAME 3: The YOUR NUMBER Play Symbol will never be the same as the THEIR NUMBER Play Symbol.

N. GAME 3: The YOUR NUMBER Play Symbol will never be a "1" Play Symbol.

O. GAME 3: The THEIR NUMBER Play Symbol will never be an "8" Play Symbol.

P. GAME 3: Non-winning rows on a Ticket will not have the same Play Symbols regardless of order.

Q. GAME 3: Wins revealing the "GRAND" Prize Symbol will only appear as per the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "WEEKLY GRAND" Instant Game prize of \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$40.00 or \$300, 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 \$40.00 or \$300 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 for-

warded 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 "WEEKLY GRAND" top level prize of \$1,000 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.

C. When claiming a "WEEKLY GRAND" Instant Game prize of \$1,000 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 \$1,000 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 \$4,413 less Federal withholding will be made the month of the claim. Each additional month, a payment of \$4,333 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 \$13,000 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 \$52,000 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.

D. As an alternative method of claiming a "WEEKLY GRAND" Instant Game prize of \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$40.00 or \$300, 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.

E. 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.

F. 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 "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 "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 personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Tickets ordered. The number of actual prizes available in a game may vary based on number of Tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game Ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game Ticket in the space designated, a Ticket shall be owned by the physical possessor of said Ticket. When a signature is placed on the back of the Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Ticket and shall

be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Ticket in the space designated. If more than one name appears on the back of the Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game Tickets and shall not be required to pay on a lost or stolen Instant Game Ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 30,000,000 Tickets in the Instant Game No. 1555. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1555 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$2	3,720,000	8.06
\$4	2,680,000	11.19
\$5	480,000	62.50
\$10	440,000	68.18
\$20	120,000	250.00
\$40	133,750	224.30
\$300	8,500	3,529.41
\$1,000/WK	4	7,500,000.00

*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 3.96. 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. 1555 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. 1555, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201302957
 Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: July 19, 2013



Instant Game Number 1556 "Bonus Weekly Grand"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1556 is "BONUS WEEKLY GRAND". The play style is "multiple games".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1556 shall be \$5.00 per Ticket.

1.2 Definitions in Instant Game No. 1556.

A. Display Printing - That area of the Instant Game Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Ticket.

C. Play Symbol - The printed data under the latex on the front of the Instant Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: \$5.00, \$10.00, \$20.00, \$50.00, \$100, \$1,000, \$20,000, GRAND PRIZE SYMBOL, STACK OF CASH SYMBOL, STAR SYMBOL, WISHBONE SYMBOL, BANANA SYMBOL, MOON SYMBOL, DIAMOND SYMBOL, CLUB SYMBOL, 2X SYMBOL, 01, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24 and 25.

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. 1556 - 1.2D

PLAY SYMBOL	CAPTION
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$50.00	FIFTY
\$100	ONE HUND
\$1,000	ONE THOU
\$20,000	20 THOU
GRAND SYMBOL	PRIZE
STACK OF CASH SYMBOL	DOUBLE
STAR SYMBOL	STAR
WISHBONE SYMBOL	WSHBNE
BANANA SYMBOL	BANANA
MOON SYMBOL	MOON
DIAMOND SYMBOL	DMND
CLUB SYMBOL	CLUB
2X SYMBOL	WIN2X
01	ONE
03	THR
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	TWFO

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 or \$20.00.

G. Mid-Tier Prize - A prize of \$25.00, \$50.00 or \$100.

H. High-Tier Prize - A prize of \$1,000, \$20,000 or top prize of \$2,500/wk (\$2,500 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 (1556), 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: 1556-0000001-001.

K. Pack - A Pack of "BONUS WEEKLY GRAND" Instant Game Tickets contains 075 Tickets, packed in plastic shrink-wrapping and fan-folded in pages of one (1). Ticket 001 will be shown on the front of the Pack; the back of Ticket 075 will be revealed on the back of the Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack. Every other book will reverse i.e., reverse order will be: the back of Ticket 001 will be shown on the front of the Pack and the front of Ticket 075 will be shown on the back of the Pack.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "BONUS WEEKLY GRAND" Instant Game No. 1556 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 "BONUS WEEKLY GRAND" Instant Game is determined once the latex on the Ticket is scratched off to expose 27 (twenty-seven) 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 "STACK OF CASH" Play Symbol, the player wins DOUBLE that prize! If a player reveals 3 "GRAND" Play Symbols, the player wins \$2,500 per week for 20 years. GAME 2: If a player matches 2 out of 3 Play Symbols, the player wins \$50 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 "2X" Play Symbol, the player wins 2 TIMES the PRIZE for that row instantly! If a player wins a "GRAND" Prize Symbol, the player wins \$2,500 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 27 (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, 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 27 (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 27 (twenty-seven) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 27 (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: 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 eight (8) 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: No game will contain two (2) sets of three (3) matching Prize Symbols.

H. GAME 1: On winning Tickets, two (2) matching Prize Symbols and the "STACK OF CASH" Play Symbol will win DOUBLE the prize amount shown and will only win as per the prize structure.

I. GAME 1: There will never be more than one (1) "STACK OF CASH" Play Symbol in this game.

J. GAME 1: On Non-Winning Tickets, the "STACK OF CASH" Play Symbol may appear when all symbols are different.

K. GAME 1: The "STACK OF CASH" Play Symbol will never appear on a Ticket which contains three (3) matching Prize Symbols.

L. GAME 1: No more than one pair of matching Prize Symbols will appear on a winning Ticket which does not contain a "STACK OF CASH" Play Symbol.

M. GAME 1: No more than one pair of matching Prize Symbols will appear on a Ticket containing a "STACK OF CASH" Play Symbol.

N. GAME 1: No Ticket will contain more than three (3) "GRAND" Prize Symbols.

O. GAME 1: Wins using the "GRAND" Prize Symbol will only appear as dictated by the prize structure.

P. GAME 2: There will never be more than two (2) matching Play Symbols in a game.

Q. GAME 2: You can win up to one (1) time in this play area and wins will only appear as per the prize structure.

R. GAME 3: You can win up to six (6) times in this play area and wins will only appear as per the prize structure.

S. GAME 3: The YOUR NUMBER Play Symbol will never be the same as the THEIR NUMBER Play Symbol in the same row.

T. GAME 3: The YOUR NUMBER Play Symbol will never be a "1" Play Symbol.

U. GAME 3: The THEIR NUMBER Play Symbol will never be a "25" Play Symbol.

V. GAME 3: Rows on a Ticket will not have the same symbols regardless of order.

W. GAME 3: Wins revealing the "GRAND" Prize Symbol will only appear as per the prize structure.

X. GAME 3: The "2X" (double) Play Symbol will never appear as a THEIR NUMBER Play Symbol.

Y. GAME 3: The "2X" (double) Play Symbol will never appear on Non-Winning Tickets.

Z. GAME 3: The "2X" (double) Play Symbol will win double the prize amount shown as per the prize structure.

AA. GAME 3: No Play Symbol will appear more than two (2) times across the YOUR NUMBER Play Symbols and THEIR NUMBER Play Symbols.

BB. GAME 3: Non-winning Prize Symbols will never appear more than two (2) times and must be different from any winning Prize Symbol.

2.3 Procedure for Claiming Prizes.

A. To claim a "BONUS WEEKLY GRAND" Instant Game prize of \$5.00, \$10.00, \$20.00, \$25.00, \$50.00 or \$100, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$25.00, \$50.00 or \$100 Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "BONUS WEEKLY GRAND" Instant Game prize of \$1,000 or \$20,000, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. To claim a "BONUS WEEKLY GRAND" top level prize of \$2,500 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 "BONUS WEEKLY GRAND" Instant Game prize of \$2,500 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 \$2,500 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 re-

ceive 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 \$10,913 less Federal withholding will be made the month of the claim. Each additional month, a payment of \$10,833 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 \$32,500 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 \$130,000 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 "BONUS WEEKLY GRAND" Instant Game prize of \$5.00, \$10.00, \$20.00, \$25.00, \$50.00, \$100, \$1,000 or \$20,000, 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 "BONUS 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 "BONUS 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 personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Tickets ordered. The number of actual prizes available in a game may vary based on number of Tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game Ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game Ticket in the space designated, a Ticket shall be owned by the physical possessor of said Ticket. When a signature is placed on the back of the Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Ticket in the space designated. If more than one name appears on the back of the Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game Tickets and shall not be required to pay on a lost or stolen Instant Game Ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 15,120,000 Tickets in the Instant Game No. 1556. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1556 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$5	2,016,000	7.50
\$10	1,108,800	13.64
\$20	403,200	37.50
\$25	100,800	150.00
\$50	185,640	81.45
\$100	5,460	2,769.23
\$1,000	806	18,759.31
\$20,000	20	756,000.12
\$2,500/WK	4	3,780,000.00

*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 3.96. 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. 1556 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. 1556, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201302958

Bob Biard

General Counsel

Texas Lottery Commission

Filed: July 19, 2013



Instant Game Number 1574 "Break the Bank Limited Edition"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1574 is "BREAK THE BANK LIMITED EDITION". The play style is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1574 shall be \$2.00 per Ticket.

1.2 Definitions in Instant Game No. 1574.

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 GREEN 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 and 35. 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, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$100, \$200, \$1,000 and \$30,000.

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. 1574 - 1.2D

PLAY SYMBOL	CAPTION
1 (GREEN)	ONE
2 (GREEN)	TWO
3 (GREEN)	THR
4 (GREEN)	FOR
5 (GREEN)	FIV
6 (GREEN)	SIX
7 (GREEN)	SVN
8 (GREEN)	EGT
9 (GREEN)	NIN
10 (GREEN)	TEN
11 (GREEN)	ELV
12 (GREEN)	TLV
13 (GREEN)	TRN
14 (GREEN)	FTN
15 (GREEN)	FFN
16 (GREEN)	SXN
17 (GREEN)	SVT
18 (GREEN)	ETN
19 (GREEN)	NTN
20 (GREEN)	TWY
21 (GREEN)	TWON
22 (GREEN)	TWTO
23 (GREEN)	TWTH
24 (GREEN)	TWFR
25 (GREEN)	TWV
26 (GREEN)	TWSX
27 (GREEN)	TWSV
28 (GREEN)	TWET
29 (GREEN)	TWNI
30 (GREEN)	TRTY
31 (GREEN)	TRON
32 (GREEN)	TRTO
33 (GREEN)	TRTH
34 (GREEN)	TRFR
35 (GREEN)	TRV
1 (BLACK)	ONE
2 (BLACK)	TWO
3 (BLACK)	THR
4 (BLACK)	FOR
5 (BLACK)	FIV
6 (BLACK)	SIX
7 (BLACK)	SVN
8 (BLACK)	EGT
9 (BLACK)	NIN
10 (BLACK)	TEN
11 (BLACK)	ELV

12 (BLACK)	TLV
13 (BLACK)	TRN
14 (BLACK)	FTN
15 (BLACK)	FFN
16 (BLACK)	SXN
17 (BLACK)	SVT
18 (BLACK)	ETN
19 (BLACK)	NTN
20 (BLACK)	TWY
21 (BLACK)	TWON
22 (BLACK)	TWTO
23 (BLACK)	TWTH
24 (BLACK)	TWFR
25 (BLACK)	TWV
26 (BLACK)	TWSX
27 (BLACK)	TWSV
28 (BLACK)	TWET
29 (BLACK)	TWNI
30 (BLACK)	TRTY
31 (BLACK)	TRON
32 (BLACK)	TRTO
33 (BLACK)	TRTH
34 (BLACK)	TRFR
35 (BLACK)	TRFV
\$2.00	TWO\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$50.00	FIFTY
\$100	ONE HUND
\$200	TWO HUND
\$1,000	ONE THOU
\$30,000	30 THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$2.00, \$4.00, \$6.00, \$8.00, \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$50.00 or \$200.

H. High-Tier Prize - A prize of \$1,000 or \$30,000.

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 (1574), 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: 1574-0000001-001.

K. Pack - A Pack of "BREAK THE BANK LIMITED EDITION" Instant Game Tickets contains 125 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One Ticket will be folded over to expose a front and back of one Ticket on each Pack. Please note the books will be in an A, B, C and D configuration.

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 "BREAK THE BANK LIMITED EDITION" Instant Game No. 1574 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 "BREAK THE BANK LIMITED EDITION" Instant Game is determined once the latex on the Ticket is scratched off to expose 22 (twenty-two) Play Symbols. If the player matches any of YOUR NUMBERS Play Symbols to either LOCK NUMBER Play Symbol, the player wins the prize for that number. If the matching number Play Symbol is "GREEN", the player wins 5 TIMES the prize for that number. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. Exactly 22 (twenty-two) Play Symbols must appear under the Latex Overprint on the front portion of the Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Ticket;
8. The Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Ticket must not be counterfeit in whole or in part;
10. The Ticket must have been issued by the Texas Lottery in an authorized manner;
11. The Ticket must not have been stolen, nor appear on any list of omitted Tickets or non-activated Tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The Ticket must be complete and not miscut and have exactly 22 (twenty-two) Play Symbols under the Latex Overprint on the front portion of the Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the Ticket;
14. The Serial Number of an apparent winning Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Tickets, and a Ticket with that Serial Number shall not have been paid previously;
15. The Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 22 (twenty-two) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 22 (twenty-two) Play Symbols on the Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Players can win up to ten (10) times on a Ticket in accordance with the approved prize structure.

B. Adjacent Non-Winning Tickets within a Pack will not have identical symbol patterns. Two (2) Tickets have identical symbol patterns if they have the same symbols in the same positions.

C. Each Ticket will have two (2) different "LOCK NUMBERS" Play Symbols.

D. Non-winning Prize Symbols will never appear more than three (3) times.

E. Non-winning Prize Symbols will never be the same as the winning Prize Symbol(s).

F. The Top Prize Symbol will appear on every Ticket unless otherwise restricted.

G. No prize amount in a non-winning spot will correspond with the "YOUR NUMBERS" Play Symbol (i.e., 5 and \$5).

H. Non-winning "YOUR NUMBERS" Play Symbols will all be different, regardless of color.

I. No GREEN "YOUR NUMBERS" Play Symbols will match a BLACK "YOUR NUMBERS" Play Symbol.

J. There will be at least four (4) and no more than six (6) GREEN "YOUR NUMBERS" Play Symbols on every Ticket unless otherwise restricted.

2.3 Procedure for Claiming Prizes.

A. To claim a "BREAK THE BANK LIMITED EDITION" Instant Game prize of \$2.00, \$4.00, \$6.00, \$8.00, \$10.00, \$20.00, \$50.00 or \$200, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and,

if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not required to pay a \$50.00 or \$200 Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "BREAK THE BANK LIMITED EDITION" Instant Game prize of \$1,000 or \$30,000, 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 "BREAK THE BANK LIMITED EDITION" 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 1V-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 "BREAK THE BANK LIMITED EDITION" 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 "BREAK THE BANK LIMITED EDITION" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Tickets ordered. The number of actual prizes available in a game may vary based on number of Tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game Ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game Ticket in the space designated, a Ticket shall be owned by the physical possessor of said Ticket. When a signature is placed on the back of the Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Ticket in the space designated. If more than one name appears on the back of the Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game Tickets and shall not be required to pay on a lost or stolen Instant Game Ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 7,200,000 Tickets in the Instant Game No. 1574. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1574 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$2	633,600	11.36
\$4	691,200	10.42
\$6	172,800	41.67
\$8	72,000	100.00
\$10	57,600	125.00
\$20	28,800	250.00
\$50	32,670	220.39
\$200	3,150	2,285.71
\$1,000	90	80,000.00
\$30,000	7	1,028,571.43

*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 4.26. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1574 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. 1574, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201302959
 Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: July 19, 2013

◆ ◆ ◆
North Central Texas Council of Governments

Notice of Consultant Contract Award

Pursuant to the provisions of the Texas Government Code, Chapter 2254, the North Central Texas Council of Governments publishes this notice of consultant contract award. The consultant request appeared in the April 19, 2013, issue of the *Texas Register* (38 TexReg 2563). The selected consultant will perform technical and professional work to develop the Dallas-Fort Worth Clean Cities Interactive Website.

The consultant selected for this project is Civica Software, 20101 SW Birch Street, Suite 250, Newport Beach, California 92660. The amount of the contract is not to exceed \$80,000.

TRD-201302946
 R. Michael Eastland
 Executive Director
 North Central Texas Council of Governments
 Filed: July 18, 2013

◆ ◆ ◆
Public Utility Commission of Texas

Notice of Application to Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on July 19, 2013, to amend a certificate of convenience and necessity for a proposed transmission line in Jefferson County, Texas.

Docket Style and Number: Application of Entergy Texas, Inc. to Amend its Certificate of Convenience and Necessity for a Proposed 230-kV Transmission Line within Jefferson County. Docket Number 41638.

The Application: The proposed project is designated as the China to Amelia 230-kV transmission line project. The facilities include construction of a new 230-kV transmission line to connect two existing ETI owned substations, the China substation located west of China and the Amelia Bulk substation located just west of Beaumont in northern Jefferson County, Texas. The total estimated cost for the project ranges from approximately \$32 to \$39 million depending on the route chosen.

The proposed project is presented with six alternate routes and is estimated to be approximately 10 to 15 miles in length depending on the final route selected. The commission may approve any of the routes or route segments presented in the application.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or

toll-free at (888) 782-8477. The deadline for intervention in this proceeding is September 3, 2013. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) (800) 735-2989. All comments should reference Docket Number 41638.

TRD-201303002

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: July 24, 2013



Texas Department of Transportation

Aviation Division - Request for Qualifications for Professional Architectural/Engineering Services

Tejas Avco, Inc., 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: Tejas Avco Inc. TxDOT CSJ No.: 1312HOUSW. Scope: Provide engineering and design services for the construction of the south-side partial parallel taxiway, southwest perimeter access road, southeast perimeter access road, drainage improvements, and demolish obsolete pavement.

The DBE goal for the current project is 8 percent. TxDOT Project Manager is Stephanie Kleiber, P.E.

The following is a listing of proposed projects at the Houston Southwest 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:

Construct north-side and south-side apron, construct north-side and south-side hangar access taxiway, install segmented circle and lighted windcone, demolish obsolete pavement, drainage improvements and rehabilitate and mark runway 9-27, taxiways, taxilanes and apron.

Tejas Avco, Inc. 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 "Houston Southwest." 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-PILOT (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:

Six 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 August 27, 2013, 4:00 p.m. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Sheri Quinlan.

The consultant selection committee will be composed of Aviation Division staff members and one owner's representative. 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 Sheri Quinlan, Grant Manager. For technical questions, please contact Stephanie Kleiber, P.E., Project Manager.

TRD-201302996

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: July 23, 2013



Aviation Division - Request for Qualifications for Professional Architectural/Engineering Services

The City of McGregor, 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 McGregor. TxDOT CSJ No.: 1409MGREG. Scope: Provide engineering/design services to:

1. Rehabilitate and mark Runway 17-35
2. Construct 10-unit T-hangar
3. Repair concrete trench drain

The DBE goal for the current project is 8 percent. The TxDOT Project Manager is Ryan Hindman.

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 "McGregor Executive 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-PILOT (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:

SIX completed copies of Form AVN-550 **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, TX 78704 no later than September 10, 2013, 4:00 p.m. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Beverly Longfellow.

The consultant selection committee will be composed of Aviation Division staff members and one local Sponsor member. 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-201303011

Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: July 24, 2013



Public Hearing Notice - Statewide Transportation Improvement Program

The Texas Department of Transportation (department) will hold a public hearing on Monday, August 26, 2013 at 10:00 a.m. at 200 East Riverside Drive, Room 1A-2, in Austin, Texas to receive public comments on the August 2013 Quarterly Revisions to the Statewide Transportation Improvement Program (STIP) for FY 2013-2016.

The STIP reflects the federally funded transportation projects in the FY 2013-2016 Transportation Improvement Programs (TIPs) for each Metropolitan Planning Organization (MPO) in the state. The STIP includes both state and federally funded projects for the nonattainment areas of Beaumont, Dallas-Fort Worth, El Paso, and Houston. The STIP also contains information on federally funded projects in rural areas that are not included in any MPO area, and other statewide programs as listed.

Title 23, United States Code, §134 and §135 require each designated MPO and the state, respectively, to develop a TIP and STIP as a condition to securing federal funds for transportation projects under Title 23 or the Federal Transit Act (49 USC §5301, et seq.). Section 134 requires an MPO to develop its TIP in cooperation with the state and affected public transit operators and to provide an opportunity for interested parties to participate in the development of the program. Section 135 requires the state to develop a STIP for all areas of the state in cooperation with the designated MPOs and, with respect to non-metropolitan areas, in consultation with affected local officials, and further requires an opportunity for participation by interested parties as well as approval by the Governor or the Governor's designee.

A copy of the proposed August 2013 Quarterly Revisions to the FY 2013-2016 STIP will be available for review, at the time the notice of hearing is published, at each of the department's district offices, at the department's Transportation Planning and Programming Division offices located in Building 118, Second Floor, 118 East Riverside Drive, Austin, Texas, or (512) 486-5033, and on the department's website at:

<http://www.txdot.gov/government/programs/stips.html>

Persons wishing to speak at the hearing may register in advance by notifying Lori Morel, Transportation Planning and Programming Division, at (512) 486-5033 not later than Friday, August 23, 2013, or they may register at the hearing location beginning at 9:00 a.m. on the day of the hearing. Speakers will be taken in the order registered. Any interested person may appear and offer comments or testimony, either orally or in writing; however, questioning of witnesses will be reserved exclusively to the presiding authority as may be necessary to ensure a complete record. While any persons with pertinent comments or testimony will be granted an opportunity to present them during the course of the hearing, the presiding authority reserves the right to restrict testimony in terms of time or repetitive content. Groups, organizations, or associations should be represented by only one speaker. Speakers are requested to refrain from repeating previously presented testimony. Persons with disabilities who have special communication or accommodation needs or who plan to attend the hearing may contact the Transportation Planning and Programming Division, at 118 East Riverside Drive Austin, Texas 78704-1205, (512) 486-5038. Requests should be made no later than three days prior to the hearing. Every reasonable effort will be made to accommodate the needs.

Interested parties who are unable to attend the hearing may submit comments regarding the proposed August 2013 Quarterly Revisions to the FY 2013-2016 STIP to Marc Williams, P.E., Director of Planning, P.O. Box 149217, Austin, Texas 78714-9217. In order to be considered, all written comments must be received at the Transportation Planning and Programming office by 4:00 p.m. on Tuesday, September 3, 2013.

TRD-201302997
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: July 23, 2013



Public Notice - Aviation

Pursuant to Transportation Code, §21.111, Title 43 Texas Administrative Code §30.209, the Texas Department of Transportation conducts public hearings to receive comments from interested parties concerning proposed approval of various aviation projects. For information regarding actions and times for aviation public hearings, please go to the following website:

www.txdot.gov/inside-txdot/get-involved/about/hearings-meetings. Or visit www.txdot.gov, How Do I Find Hearings and Meetings, choose Hearings and Meetings, and then choose Schedule. Or contact Texas Department of Transportation, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4501 or 1-800-68-PILOT.

TRD-201302995
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: July 23, 2013



Request for Qualifications

Pursuant to the authority granted under Transportation Code, Chapter 223, Subchapter F (enabling legislation), the Texas Department of Transportation (department) may enter into, in each fiscal year, up to three design-build contracts for the design, construction, expansion, extension, related capital maintenance, rehabilitation, alteration, or repair of a highway project with a construction cost estimate of \$50 million or more. The enabling legislation authorizes private involvement in design-build projects and provides a process for the department to solicit proposals for such projects. Transportation Code, §223.245 prescribes requirements for issuance of a request for qualifications and requires the department to publish a notice of such issuance in the *Texas Register*. The Texas Transportation Commission (commission) adopted Texas Administrative Code, Title 43, Chapter 9, Subchapter I relating to design-build contracts (the "rules"). The enabling legislation, as well as the rules, govern the submission and processing of qualifications submittals, provide for publication of notice that the department is requesting qualifications submittals, and set forth the basic criteria for qualifications, experience, technical competence, and ability to develop 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 (RFQ) to design and construct the Energy Sector Roadway Repair Project, referred to as the "Project," pursuant to a design-build contract. The purpose of the Project is to provide maintenance and safety, including repairs to roadways and bridges in the Corpus Christi, Yoakum, Laredo, and San Antonio Districts of the department where the highway systems have been damaged by oversize vehicles, overweight loads, or by above normal vehicle usage in the development and production of energy re-

sources, and may include a base bid and an option(s) for additional work. The Project has an estimated construction cost of approximately \$150 million. This notice represents the next step in the procurement process.

Through this notice, the department is seeking qualifications submittals (QS) from teams interested in entering into a design-build contract. The department intends to evaluate any QS received in response to the RFQ and may request submission of detailed proposals, potentially leading to negotiation, award, and execution of a design-build contract. The department will accept for consideration any QS received in accordance with the enabling legislation, 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 proposals (RFP) to the shortlisted entities. After review and a best value evaluation of the responses to the RFP, the department may negotiate and enter into a design-build contract for the Project.

RFQ Evaluation Criteria. QSs will be evaluated by the department for shortlisting purposes using the following general criteria: qualifications and experience, 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 August 2, 2013. Copies of the RFQ will be available at the Texas Department of Transportation, 814 Arion Parkway, Suite 401, San Antonio, Texas 78216 or on the following website:

<http://txdot.gov/business/partnerships/current-cda/energy-sector.html>
QSs will be due by 3:00 p.m. CST on August 29, 2013 at the address specified in the RFQ.

TRD-201303012
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: July 24, 2013



Rescinding of Notice of Intent to Prepare an Environmental Impact Statement on Loop 9 from US 287 to I-20 in Dallas, Ellis, and Kaufman Counties, Texas

The Texas Department of Transportation (department) in cooperation with the Federal Highway Administration (FHWA) is rescinding the Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) for proposed improvements to Loop 9 from US 287 to I-20. The NOI was originally published in the August 9, 2002, issue of the *Texas Register* (27 TexReg 7309) and an amended NOI was published in the January 16, 2004, issue of the *Texas Register* (29 TexReg 561).

The department, in cooperation with FHWA, issued an NOI on August 9, 2002 advising the public that they would be preparing an EIS for transportation improvements to the proposed Loop 9 project, a new location highway from SH 360 to I-20, in southern Dallas and northern Ellis Counties. The study corridor was approximately 40 miles in length. The department and FHWA then issued an amended NOI on January 16, 2004 to advise the public of changes to the proposed project. Due to changes in the proposed alignment in the vicinity of SH 360, the study limits were revised to US 287 to I-20. The study corridor was approximately 40 miles in length.

As a result of the retirement of the Trans-Texas Corridor concept plan and change in the regional growth projections in the study area, it was

determined that the travel demand in the Loop 9 project area would not warrant the project as originally proposed. The department intends to conduct a feasibility study to determine a new direction for this transportation corridor. As a result, the above mentioned notices are rescinded.

Agency Contact: Comments or questions concerning this action should be sent to Carlos Swonke, P.G., Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483, (512) 416-2734.

TRD-201302994
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: July 23, 2013



Trinity County

Request for Comments and Proposals from Parties Interested in Providing Additional Medicaid Beds in Trinity County, Texas

Section 32.0244 of the Texas Human Resources Code permits a County Commissioners Court of a county with no more than two (2) nursing homes to request that the Department of Aging and Disability Services (DADS) contract for additional Medicaid nursing facility beds in that county. This may be done without regard to the occupancy rate of available beds in the county.

The Commissioners Court of Trinity County is considering requesting that DADS contract for more Medicaid nursing facility beds in Trinity County. The Commissioners Court is soliciting comments on whether the request should be made. Further, the Commissioners Court seeks proposals from persons interested in providing additional Medicaid beds in Trinity County, including persons providing Medicaid beds in a nursing facility with a high occupancy rate, to determine if qualified entities are interested in submitting proposals to provide these additional Medicaid nursing facility beds.

Comments and proposals for DADS to contract for additional Medicaid beds in Trinity County should be presented to the Commissioners Court of Trinity County, Texas in the regular session **Monday, August 12, 2013 at 9:00 a.m.** in the Commissioners Courtroom, Courthouse, 162 West 1st Street, Groveton, Texas.

TRD-201303005
Doug Page
County Judge
Trinity County
Filed: July 24, 2013



Texas State University-San Marcos

Request for Qualifications for Public-Private Partnership Consulting Services

Texas State University-San Marcos (TxState) is seeking Statements of Qualifications (SOQ) from professional consulting firms to assist in identifying options for consideration in the delivery of a Public-Private Partnership (P3) project for a combined heat and power facility including financing, ownership, design, construction, operations, maintenance, repair, managing risk, and contractual and payment agreements.

Through this notice, TxState is seeking SOQs from firms interested in entering into a P3 consultant agreement in response to Request for Qualifications (RFQ) No. 754-P3. TxState intends to evaluate any SOQ received and may request submission of detailed proposals, potentially leading to negotiation, award, and execution of a P3 consultant. TxState will accept for consideration any SOQ received in accordance with the requirements of the RFQ on or before the deadline in this notice. TxState anticipates issuing the RFQ, receiving and analyzing the SOQs, and developing a shortlist of proposing entities or consortia. After review and a best value evaluation of the submittals, TxState may negotiate and enter into a P3 agreement for the project. Pursuant to §2155.004 of the Texas Government Code, the firm selected pursuant to this solicitation will not be eligible to receive compensation for the design or construction of the Project.

RFQ Evaluation Criteria. SOQs will be evaluated by TxState for shortlisting purposes using the following general criteria: technical qualifications and capability, statement of technical approach, project finance qualifications and capability, and conceptual project financing discussion. The specific criteria under the foregoing categories will be identified in the RFQ, as will the relative weighting of the criteria.

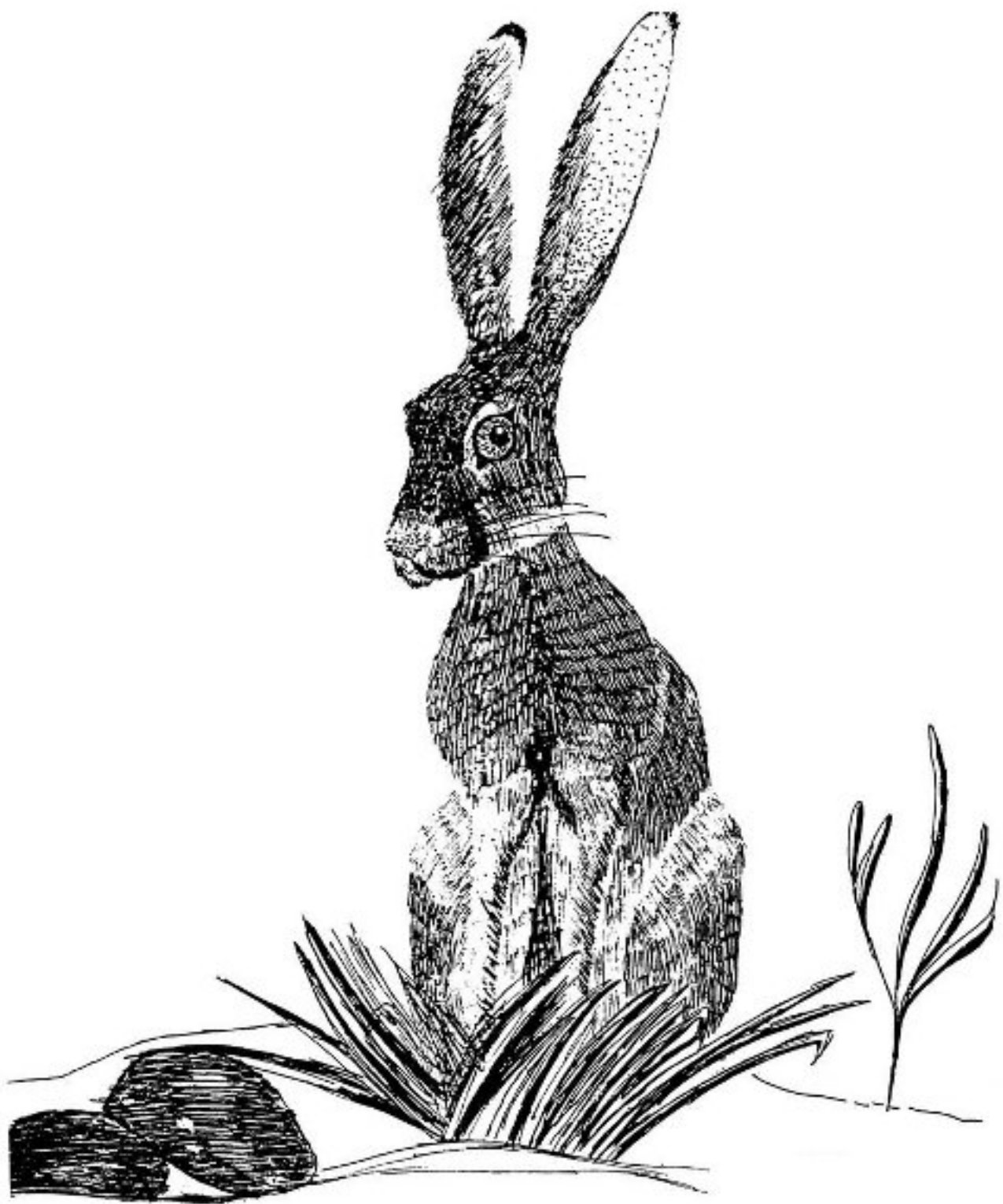
Release of RFQ and Due Date. TxState currently anticipates that the RFQ will be available on August 1, 2013. Copies of the RFQ will be available at the TxState's Physical Plant Warehouse located at 151 E. Sessom, San Marcos, Texas 78666 and on the Electronic State Business Daily at the following website: <http://esbd.cap.state.tx.us>.

SOQs will be due at 2:00 p.m. CST on August 29, 2013, at the address specified in the RFQ.

CEO Determination: As provided by Texas Government Code, §2254.028(c), the President, as chief executive officer of Texas State University, has found that the consulting services sought pursuant to this notice are both reasonable and necessary to Owner. The engagement of a consultant is necessary to obtain expertise and experience that neither TSUS nor the University possess in house.

TRD-201302988
Juan M. Guerra
Associate Vice President, Facilities
Texas State University-San Marcos
Filed: July 23, 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)

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Sales - To purchase additional subscriptions or back issues (beginning with Volume 30, Number 36 – Issued September 9, 2005), you may contact LexisNexis Sales at 1-800-223-1940 from 7am to 7pm, Central Time, Monday through Friday.

***Note:** Back issues of the *Texas Register*, published before September 9, 2005, must be ordered through the Texas Register Section of the Office of the Secretary of State at (512) 463-5561.

Customer Support - For questions concerning your subscription or account information, you may contact LexisNexis Matthew Bender Customer Support from 7am to 7pm, Central Time, Monday through Friday.

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